KANSAS BAR ASSOCIATION

TO: **The Honorable Fred Patton**
And Members of the House Judiciary Committee

FROM: **Joseph Molina**
On Behalf of the Kansas Bar Association

RE: **HB 2694 -** Enacting the third-party litigation financing consumer protection act to require regulation of litigation financing.

DATE: **February 15, 2022**

Chairman Patton and Members of the House Judiciary Committee:

My name is Joseph Molina and I provide this testimony on behalf of the Kansas Bar Association. The KBA appreciates the opportunity to participate in the hearing for **HB 2694 -** Enacting the third-party litigation financing consumer protection act to require regulation of litigation financing.

The KBA has concerns with HB 2694 as it relates to mandatory disclosure of third-party agreements and admissibility of these agreements at trial.

New Section 5, beginning on page 4, states that:

(a) "Except as otherwise stipulated by the court, a consumer or such consumer's legal representative shall, without awaiting a discovery request, provide to all parties to the litigation, including an insurer engaged prior to litigation, any litigation financing contract or agreement under which any person, other than a legal representative permitted to charge a contingent fee representing a party, has received or has a right to receive compensation or proceeds from the consumer that are contingent on and sourced from any proceeds of the civil action by settlement, judgment or otherwise".

This section treats litigation financers differently than other risk mitigating services/products when it comes to discovery and admissibility. For instance, many parties in litigation have insurance agreements that provide them with some form of judgment protection should they be found liable. Discovery of these types of agreements are governed by KSA 60-226 which states that "a party **may** obtain discovery of the existence and contents of any insurance agreement under which an insurance business may be liable to satisfy part or all of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment..."

Under HB 2496, KSA 60-226 does not apply to litigation financers. Litigation financers are forced to disclose their agreement. While problematic as it relates to litigation strategy and settlement options, this mandatory disclosure could prove prejudicial because under HB 2694 it would be admissible into evidence.

In contrast, KSA 60-226 states that "... information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial."

There is also concern that HB 2694 is overly broad. As defined, a "litigation financer" means a person, group of persons or legal entity engaged in the business of litigation financing, or **any other mechanism** created with the intent to finance litigation. This added provision could extend to individuals who out of familial obligation provided funding to pursue a claim. This example is further implicated when HB 2694 defines "litigation financing" to include the purchase of bills, accounts or liens or otherwise paying for or purchasing services related to claims or litigation. Items that could easily be paid for with funds from family members. The KBA would recommend reviewing these definitions to ensure unintended consequences are minimized.

For these reasons, the Kansas Bar Association opposes HB 2694. Thank you for your time and attention.

About the Kansas Bar Association:
The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 5,500 members include lawyers, judges, law students, and paralegals. www.ksbar.org