



## KANSAS TRIAL LAWYERS ASSOCIATION

To: Rep. Fred Patton, Chair  
Members of the House Judiciary Committee

From: David R. Morantz, Shamberg, Johnson & Bergman, Chtd, Kansas City  
On behalf of the Kansas Trial Lawyers Association

Date: February 15, 2022

Re: HB 2694 Concerning the code of civil procedure; enacting the third-party litigation financing consumer protection act (OPPOSE)

I am David Morantz with Shamberg, Johnson & Bergman, Chtd, of Kansas City. I am a Member and Past President of the Kansas Trial Lawyers Association and I'm testifying on behalf of KTLA in opposition to HB 2694.

HB 2694 is a new regulatory framework for businesses that provide financing for litigants during the pendency of their lawsuits. Litigation funding may be relevant to consumers waiting for the resolution of a personal injury claim when they are unable to work, have limited or no income, but must continue to pay household bills. Consumer litigation funding operates differently than a traditional loan and may be a better option for plaintiffs than a traditional lender or a pay day lender; however, due to Kansas regulations, such litigation funding is not available in Kansas. Lack of money may force a plaintiff to settle a claim out of financial necessity.

HB 2694 goes beyond protecting consumers and contains provisions that will do harm, and that are unnecessary to the bill. The provisions in New Section 5 eliminate the usual requirements and limitations of discovery when applied to the financial contracts or agreements made between a consumer and a financing company. The effect is to require production and disclosure of financial information that potentially benefits an adversary's case.

In 5(a), such contracts or agreements must be provided to all parties, including insurance companies, without awaiting a discovery request. New Section 5(b) applies to personal injury claims. By specifically allowing discovery of litigation financing, financing transactions, and all participants in financing arrangements it reduces consumers' ability to challenge discovery requests if they are overly broad.

Financing contracts or agreements may include a wide array of documents such as information exchanged between a party and financial institutions, creditors, or others that includes account balances and account numbers, protected health information, credit information and scores, and loans. The documents may also contain information about the consumer's case and is work product and privileged and should not be discoverable at all.

There is nothing about the nature of the agreements or information that requires disclosure, especially to an opposing party. (And HB 2694 does not contain similar disclosure requirements for defendants.) Neither the court nor the opposing party has any interest in whether a consumer is funded by an outside source. The effect of providing the opposing party with such information is to encourage settlement based on the consumer's financial information instead of the issues in dispute. New Section 5 is not necessary to the bill.

Under current law, when a party can show that financial information or a funding agreement is relevant, the court may grant a request for discovery of such agreements. The current law works well and allows opposing parties access to necessary information but protects confidentiality and deters unnecessary discovery.

HB 2694 fails to protect the confidentiality of consumers entering into a litigation funding agreement. The bill requires litigation financiers to file a report annually with the Secretary of State (New Section 2), and to report every person that receives litigation financing (New Section 6). However, information filed by financiers with the Secretary of State are open records under New Section 2. The provisions unfairly penalize consumers that receive funding by opening their personal financial transactions to public scrutiny. The New Section 6 provisions are unnecessary to the bill.

KTLA is willing to work with the committee and stakeholders in the event there is interest in considering a new statutory framework for regulating litigation funding companies. The topic deserves thoughtful attention. HB 2694 contains unnecessary provisions that will harm the consumers it is supposed to help, and we must oppose it.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the committee take no action on HB 2694.