

Hilary E. Segura
Assistant Vice President and Counsel, State Government Relations

February 14, 2022

The Honorable Fred Patton
Chair, House Judiciary
300 W. 10th, Room 519-N
Topeka, KS 66612

RE: SUPPORT of HB2694, Third Party Litigation Financing Disclosure – WRITTEN TESTIMONY ONLY

Dear Chairman Patton and members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. In Kansas, APCIA’s members write more than \$4.2 billion in property and casualty insurance premiums. We respectfully submit the following comments in **SUPPORT** of **HB2694**.

Third-party litigation financing (TPLF) is a growing and extremely concerning trend in our judicial system. Lawsuits are increasingly being viewed as investment vehicles, degrading our civil justice system. TPLF is when an investor helps to finance a lawsuit or medical services related to a liability claim in which the investor has no personal stake, utilizing outside resources instead of the litigant’s own funds. It is typically structured as a non-recourse investment by a funder in a lawsuit or arbitration in exchange for an agreed-upon payment by the litigant to the funder from the proceeds of the legal proceeding – at an exorbitantly high interest rate or as a significant portion of the proceeds from the legal proceeding. Parties to TPLF agreements are not required to disclose TPLF, so defendants and courts do not know the presence or identity of the funders as real parties in interest.

TPLF is estimated to be a \$11-12 billion industry in the United States¹. To ensure a high rate of return on its investment, the funder seeks to increase the likelihood of trial, thus enhancing the possibility of frivolous and misguided litigation. By turning the civil justice system into a money-making machine, TPLF discourages amicable settlement of disputes and encourages aggressive and prolonged litigation of marginal or frivolous claims. This adds to the state's already significant “tort tax” on households and drives up the costs of products, services, and insurance. TPLF also redirects monetary damages awards -- intended to compensate claimants for injury -- away from the injured parties and towards unrelated financiers.

APCIA supports reforming third-party litigation financing in Kansas and across the country to facilitate transparency in litigation and limiting the damage the unregulated world of TPLF has on the fair and efficient

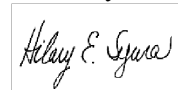
¹ Estimates are difficult given lack of transparency amongst financiers and hedge funds in the space.

administration of justice. By requiring disclosure of TPLF to parties in litigation and the courts, balance can be restored to the legal system and the related increased product, service, and insurance costs to society reduced.

Importantly, this is a step that has been and is increasingly being taken nationwide. Wisconsin and West Virginia already require disclosure of TPLF in litigation as do dozens of Federal and State Court civil practice rules. Currently, we are aware of legislation introduced in IA, KS, ME, NY, IL and RI aimed at improving transparency of litigation financing. It is worth noting too that Kansas Civil Procedure law already requires the disclosure of insuring agreements that defend and indemnify civil defendants under K.S.A § 60-226. Why would a financing arrangement in support of a claimant not be similarly disclosed?

We appreciate the opportunity to express our support and urge the committee to vote “**YES**” on **HB2694**. Please contact me directly at 847-553-3689 or via e-mail at hilary.segura@apci.org or APCIA’s local counsels Larrie Ann Brown at 785-640-2747 or via e-mail at larriannbrown@gmail.com or Brad Smoot at 785-224-1200 or via e-mail at bradsmoot@smootlawoffice.com with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Hilary E. Segura". The signature is written in black ink and is positioned above a horizontal line.

Hilary E. Segura