



KANSAS TRIAL LAWYERS ASSOCIATION

To: Sen. Kellie Warren, Chair
Members of the Senate Judiciary Committee

From: Callie Jill Denton
Executive Director

Date: February 14, 2022

Re: SB 152 Concerning the code of civil procedure; relating to regulation of litigation funding by third parties (OPPOSE)

I am submitting written testimony on behalf of the Kansas Trial Lawyers Association. KTLA has reviewed SB 152 and believes it will have unintended consequences. The rules of civil procedure as currently enacted allow courts to admit litigation funding agreements that are relevant and to keep out opposing parties' discovery requests that are excessive. On behalf of KTLA I respectfully request that the committee take no action on SB 152.

SB 152 is an attempt to regulate 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; however, due to Kansas regulations, such funding is not available in Kansas. Options open to Kansans include pay-day lenders or traditional lenders based on financial qualifications or settling a claim out of financial necessity.

SB 152 addresses a problem that Kansas does not have and in doing so, creates other problems. First, New Section 1 (a) and (b) is a broad definition that includes even generous friends and family who loan the plaintiff money and makes them jointly liable for litigation costs and penalties.

SB 152 also amends K.S.A. 2020 Supp. 60-226(b)(3) by requiring parties to provide, without a discovery request, "any agreement under which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise."

The effect of the amendment is to require production of a broad array of documents related to such an agreement without a discovery request. Such documents could include 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.

There is nothing about the nature of the agreements or such information that requires disclosure to the opposing party. In many cases, such information is protected by state and federal law from disclosure and must be securely held by anyone in possession of it.

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 potentially impact settlement offers, and encourage settlement based on the opposing party's financial information instead of the issues in dispute.

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.

SB 152 will affect financial arrangements that are not typically considered to be litigation funding by third parties yet fall within the bill's definition in New Section 1. SB 152 will require that agreements related to such arrangements be disclosed without discovery requests. SB 152 is overly broad and intrusive.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the committee take no action on SB 152.