



**KANSAS
TRIAL LAWYERS
ASSOCIATION**

To: Rep. Susan Humphries, Chair
Members of the House Judiciary Committee

From: Joseph Michael McGreevy, McGreevy Law Offices, Westwood, Kansas

Date: January 31, 2024

Re: HB 2510 – Concerning the code of civil procedure; relating to regulation of litigation funding by third parties (OPPOSE)

Thank you, on behalf of the Kansas Trial Lawyers Association, for the opportunity to provide this testimony in opposition to HB 2510. On behalf of KTLA's members, I would like to briefly address multiple concerns with this legislation and to request that the committee not pass HB 2510.

Kansas law permits discovery of any non-privileged matter that is relevant to the claims and defenses in the case. Current law also gives courts the ability to limit or deny discovery if it is excessive, burdensome, or irrelevant to the dispute.

KTLA opposes HB 2510 because requiring the disclosure of plaintiff's litigation financing agreement to a defendant creates an unlevel playing field between the parties using information that is completely irrelevant to the actual dispute.

HB 2510 also contains no discovery protections for privileged and confidential information, and it provides the courts with no guidance to determine what financing agreements meet the definition in the bill and are discoverable.

Litigation financing, meaning the provision of capital to law firms as non-recourse investments in case outcomes, may be a business practice that is more usual in other states. It is not an arrangement that KTLA members engage in and does not appear to be prevalent in Kansas.

Litigation financing, meaning loans to individuals to pay personal household expenses while they await case outcomes, is also not regular in the experience of most KTLA members.

That said, plaintiffs in litigation may find themselves in need of short-term financing during the pendency of their cases. Currently, plaintiffs have the option to seek loans from family or friends, banks, or credit unions. Depending on the quality of their job, they also may seek out payday lenders.

Several KTLA members reported that they advise their clients against seeking such loans because many lenders want the attorney to sign the loan agreement, which poses an ethical conflict with Rule 1.8(e) of the Rules of Professional Responsibility.¹ Further, high interest rates may take a substantial amount of the client's settlement or judgment, leaving the client with little in the way of a recovery. That said, some clients still need immediate funding and turn to third parties for help.

KTLA opposes HB 2510 because allowing the discovery of irrelevant litigation financial agreements will put plaintiffs at a strategic disadvantage against defendants and their insurers, who will know information about plaintiff's financial position and thus willingness to settle.

In most instances, the parties' personal financial conditions are completely irrelevant to the underlying case, and in most cases, entirely inadmissible. However, the forced disclosure contemplated in this bill would be immensely valuable to large corporate defendants and their insurance companies, whose goal is to minimize settlements, because they would know very specific information regarding plaintiff's financial condition.

Moreover, information in a litigation financing agreement may contain attorney-client and other privileged or confidential information. HB 2510 contains no limitations that restrict or allow a judge to restrict privileged information from being discoverable.

The Legislature has different options to address litigation financing concerns than the one proposed in HB 2510. Under current law, a judge may review any issue with a litigation financing agreement *in-camera* upon the motion of either party. An *in-camera* review protects both confidential and privileged information, too.

The Legislature could also direct the court through legislation by requiring an *in-camera* inspection of all litigation financing agreements. For example, in the multidistrict opioid litigation, the judge "required the attorneys to disclose [TPLF] to the Court and provide

¹ A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

information, for *in-camera* review, confirming that the funder was not controlling the litigation, influencing counsel's judgment, or creating a conflict of interest."

On behalf of the Kansas Trial Lawyers Association, thank you again for the opportunity to testify. KTLA and its members respectfully request that the committee not pass HB 2510.