



HouseJudiciary@rilegislature.gov

March 12, 2024

Representative Robert E. Craven, Sr.
Chair, House Judiciary Committee
Rhode Island State House
Providence, RI 02903

Re: House 7574 – An Act Relating to Courts and Civil Procedure – Procedure Generally – Third-Party Litigation Financing Consumer Protection Act

Dear Chair Craven:

This statement in support of House 7574 is submitted by the American Property Casualty Insurance Association (APCIA).¹ This bill proposes to insert into Title 9 a new chapter with comprehensive consumer protections in the area of third-party litigation financing. The bill contains provisions related to the registration of such entities, provides for substantial consumer protections and disclosures, makes the existence of such agreements discoverable in litigation, and requires the filing of an annual report.

Third party litigation financing (TPLF) is private investment betting on the plaintiff's outcome in a claim or lawsuit with the intent to profit. TPLF is private investment by an anonymous entity that otherwise has no relationship to civil litigation in exchange for a portion of a settlement or judgment or some agreed value above the amount loaned to a claimant. It increases the volume and costs of litigation that everyone must bear. Such increases in volume and costs ultimately are borne by consumers and businesses who must purchase insurance.

TPLF and its use of supposed "non-recourse" lending to avoid conventional disclosure and oversight of lenders is merely a new twist on a very old theme -- third parties seeking to profit off claimants' injuries. Invest, fund, and build up damages that would otherwise not exist so that the financier can profit. This is not a victimless act. All policyholders pay for these efforts in their insurance premiums.

¹ Representing nearly 65% of the U.S. property casualty insurance market, 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. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. Several APCIA members are located in Rhode Island and many more do business here. Together, APCIA members write almost 72% of the property casualty insurance sold in the state.

Efforts by third parties to profit off investments in litigation have a long history and in the common law the concept is called champerty. It is not well-regarded and has long been associated with the notion of usury. Indeed, past legislation in this state to regulate TPLF activities focused on changing the state's usury law.

Today, litigation financing has been developed into an art form by large hedge funds. These funds currently have more than \$9.5 billion invested across the United States in litigation. To these hedge funds it is a simple matter – this is an investment and a significant return on investment for investors is expected, just as in investing in stocks or start-ups. The hedge fund searches out those who have been injured, or class actions, and invests in them by taking control of all costs associated with discovery and trial. It is common for these hedge funds to require up to 40% of the contingent fee proceeds. Alternatively, the amount funded might be a non-recourse loan, but with interest, an origination fee of about 10%, and a usage fee, that adds up over one, two or three years, or more. In one case the interest and charges added up to 70%. This takes a significant bite out of monies available to an injured plaintiff, keeping in mind that these funds are on top of the amounts received by plaintiff's counsel. In short, these are draconian agreements aimed at maximizing an investment – period.

To some, this may beg the question, if this practice is so bad, why not ban it? The reality is that the proverbial horse is out of the barn here and some litigants may feel desperate enough to avail themselves of such a potentially draconian option. Rather than forcing this industry and these practices further underground, this bill aims for transparency. It takes the point of view that if such transactions are going to be allowed, there should be at least some modicum of protection for the consumer and the parties involved in the litigation.

In sum, H.7574 contains a modest set of oversight rules for a growing industry. It combines them with a series of limitations on lender practices and important consumer disclosures to ensure fair dealing and full transparency. In addition, not unlike the disclosure of policy limits, it allows for discovery of the presence of a TPLF agreement in a case. Together, all of these provisions seek to resist the commoditization of justice by those with little more than a financial interest in the outcome of a case.

APCIA requests that the committee recommend passage of H.7574. We are also happy to answer any questions or provide any additional information the committee may require.

Very truly yours,

A handwritten signature in black ink that reads "Francis C. O'Brien". The signature is written in a cursive, flowing style with a large initial 'F' and a prominent 'B'.

Francis C. O'Brien
Vice President, State Gov't. Relations