

December 6, 2023

RE: SUPPORT for SB 19, Non-Recourse Civil Litigation Advance Business

Chair Manning & Members of the Senate Judiciary 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 Ohio, APCIA's members write more than \$13.1 billion in property and casualty insurance premiums. We respectfully submit the following comments in **SUPPORT of SB 19**.

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, in exchange for an agreed-upon payment by the litigant from the proceeds of the legal proceeding. Typically, the agreement will include an exorbitantly high interest rate or 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 an estimated \$13 billion industry in the United States.¹ 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.

As if hidden money in civil litigation was not enough of a concern, there are serious national security concerns with this practice as it is well known foreign nations are investing in these enterprises. A recent report examining this, *A New Threat: The National Security Risk of Third Party Litigation Funding*, can be found at <https://instituteforlegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding/>. This is a significant enough concern that US

¹ <https://www.gao.gov/assets/gao-23-105210.pdf>

Senator John Kennedy wrote Attorney General Garland and Chief Justice Roberts in January regarding the need for disclosure of this practice based on the national security implications of foreign sovereign wealth investment in US civil litigation. See <https://www.kennedy.senate.gov/public/2023/1/kennedy-urges-roberts-garland-to-take-action-to-protect-national-security-from-foreign-actors-meddling-in-u-s-courts>.

States and courts are beginning to act. West Virginia, Wisconsin and now Indiana and Montana have statutory laws requiring disclosure and discovery to the parties, and similar disclosure legislation is pending elsewhere. Courts have also begun to require disclosure via local rules and standing orders, including the US District Courts in Delaware, New Jersey, and the North District of California. Now is the time to act to prevent this hidden money from distorting our civil justice system in Ohio.

Specifically, APCIA supports legislation that requires common-sense guardrails around the use of TPLF in Ohio and across the country to facilitate transparency, including mandatory disclosure of TPLF agreements and to preserve the correct role of discovery of those arrangements in Ohio lawsuits. Further, disclosure of TPLF would be commensurate with Ohio's mandatory disclosure and discovery obligations of insurance agreements.²

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.

We appreciate the opportunity to express our support and urge the committee to vote “**YES**” on **SB 19**. Please feel to contact me or APCIA's local counsel Steve Buehrer if we can answer any questions or be of assistance.

Respectfully,

Joe Roth
Assistant Vice President, State Government Relations
American Property Casualty Insurance Association

² See Ohio Civ. R. 26 (B)(2) Scope of Discovery. Insurance agreements A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure subject to comment or admissible in evidence at trial. (B)(3) Without awaiting a discovery request, a party must provide to the other parties, except as exempted by Civ.R. 26(B)(3)(b) or as otherwise stipulated, or ordered by the court: (iv) For inspection and copying as under Civ.R. 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.