Ohio Insurance Institute
Representing Ohio's property/casualty insurance industry

Our mission
To act as the Ohio property and casualty insurance industry's voice on matters affecting or involving the industry.

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Proponent Testimony—HB 105 Third Party Litigation Funding (Craig, Thomas)
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Chair Lampton, Vice Chair Craig, Ranking Member Tims, and members of the House Insurance Committee, thank you for allowing me to come before this Committee to discuss the importance of HB 105. I am Michael Farley, and I have the distinct honor to serve as the Vice President, Government Affairs and General Counsel for the Ohio Insurance Institute ("OII"). The OII is a trade and information association of more than 55 Ohio-based property and casualty insurance companies and related affiliate organizations. OII members write approximately 90% of home and auto insurance in Ohio and 81% of home insurance. And OII members write more than three-quarters of the commercial insurance in the state.

Since HB 105 was introduced, you have heard about Third Party Litigation Funding ("TPLF"). As a matter of first principles of what HB 105 seeks to accomplish, allow me to outline a few key points regarding the operation of TPLF arrangements:

Who Receives Funds from TPLF?
There are essentially two different types of recipients: 1) consumer/commercial and 2) lawyers and law firms. The Supreme Court of Ohio substantially regulates, via the Ohio Rules of Professional Conduct, those funding arrangements with attorneys and law firms.

What is the Difference Between a Consumer and a Commercial TPLF Agreement?
For purposes of HB 105 the difference is in the definition. A "consumer" is defined as a natural person or estate for a decedent with a legal claim. The maximum amount a consumer may enter into a consumer litigation funding agreement for is $400,000. The $400,000 is the ceiling stated by the consumer loan industry as the maximum litigation amount they would fund.

The commercial side is much more opaque and less understood. There is no ceiling on the agreements. Based on public information, these commercial agreements stretch into the multi-million stratosphere. From 2000 to 2020, many entities were forced to seek added yield for investments. Interest rates were near zero so other types of investments were sought out. This gave rise to the terrible meltdown during the financial crisis.

During this same time, investors sought to speculate in the outcomes of large scale, complex litigation. Their purchase of the "lottery ticket" provided much more opportunity for yield than the near-zero interest rate markets. These wagers provided significant cash flow.

But for the cash flow to continue, litigation must continue. Instead of the judicial system being used as a last chance remedy, where mediation and settlement are the preferred outcome, third party litigation funders rolled the dice on a veritable jurisprudential Vegas casino of mass tort, class action, and spurious claims to drive U.S. business owners to less advantageous settlements—or face additional, costly litigation. The only hope of avoiding bankruptcy was to avoid the unlucky roll of the dice, or the unfavorable card at "the river."

The business community in Ohio has come together to support this legislation under three basic public policy goals.

Transparency
Consumer Protection
Protecting Ohio Courts from Foreign Influence

TRANSPARENCY

In 1970, the Supreme Court of Ohio, with assent from the Ohio General Assembly, adopted Civil Rule 26(B)(2). This provision of the Civil Rules required parties to disclose the existence of an insurance policy and the actual insurance policy. Much like HB 105, Civ.R. 26 shielded the contents from the jury.

The accompanying staff note explaining the purposes of the rule stated: "The rule adopts the philosophy that before trial discovery of the existence and contents of insurance **will aid in realistic evaluation and settlement**." (emphasis added)

The Supreme Court of Ohio has long acknowledged the virtues of promoting settlement in lieu of litigation[1]. Settlement allows for the proper functioning of already busy courts. Settlement prevents the unnecessary payment of legal fees and project delays.

In short, the disclosure provisions of HB 105 seek to place third party litigation funding agreements on the same footing as insurance policies. This has been a requirement in Ohio for over 55 years.

CONSUMER PROTECTION

Ohio law goes to great lengths to protect consumers. HB 105 seeks to require additional consumer disclosures and to add teeth to the required actions by the third party litigation funders. There is not a prohibitive regulatory environment proposed for TPLF. Instead,

[1] See Spercel v. Sterling Industries, Inc. 285 N.E.2d 324

HB 105 spells out minimum information to be included for inclusion in the agreement. HB 105 subjects the consumer agreements to the Ohio Consumer Sales Practices Act and provides remedies for those consumers who are wronged by the consumer litigation funders. Certain violations of the proposed statute will render the TPLF agreement unenforceable.

Mandatory disclosure also protects consumers by providing additional awareness to attorneys and the courts as to the contents of the TPLF agreements. Requirements without enforcement or transparency would likely be rendered superfluous.

PROTECTING OHIO COURTS FROM FOREIGN INFLUENCE

In December 2024 the Government Accountability Office published a report that TPLF investment in patent litigation has increased significantly since 2019. Other technology-related litigation is also on the rise in funding opportunities for the roulette table of potential TPLF funding opportunities.

The shadowy world of TPLF funding is most pronounced when foreign funders are in the mix. Questions that must be asked are: why would a foreign investor wish to invest in patent or other technology litigation? Do the foreign investors have access to sensitive information found during discovery? Will those investors use the information properly?

When Secretary of State Marco Rubio still served in the U.S. Senate, he (along with Senator Rick Scott) sent a letter to the chief judges of the three federal district courts requesting that the courts require disclosure of foreign TPLF in their respective district courts. According to the 2023 letter "the potential impacts of allowing unfettered and undisclosed foreign TPLF throughout the judiciary could be severe unless properly addressed." The letter continued: "Foreign actors attempting to capitalize on such influence may seek to, among other things, forward frivolous lawsuits, needlessly and excessively prolong litigation disputes, exacerbate domestic discourse, or seize control of the litigation from the case's original parties."

HB 105 seeks to ban foreign funds from being used for TPLF. This simple act will protect the future trajectory of the Ohio economy. In recent years, Ohio has seen major announcements of chip factories, advanced battery cells, increased emphasis on monetizing research in Ohio universities, and the existence of significant military and defense expertise throughout the state of Ohio—in particular in the Wright-Patterson Air Force Base region and the NASA Glenn research complex near Cleveland.

I believe the General Assembly has the authority to ban, outright, the use of Third Party Litigation Funding agreements in Ohio under the authority of Rancman. Here, HB 105 only seeks to make very basic change to promote transparency, protect consumers, and protect Ohio courts from foreign interference. The courts in Ohio have the explicit authority to protect Ohio courts against vexatious litigators. Here, it would seem that the

Ohio General Assembly could and should affirmatively restore their authority to protect Ohio courts from potential nefarious actors all around the world seeking to clog up, miscast, and misuse Ohio's courts to advance a notion of a foreign country.

Thank you for allowing me to testify on this significant legislation. Mr. Chair, I am happy to answer any questions the Committee may have.