

HOUSE BILL NO. 1372

Statement of the American Property Casualty Insurance Association

APCIA is a national trade association representing home, auto, and business insurers. APCIA members account for over 70% of all property and casualty insurance in the United States, generating more than \$13.1 billion in premiums. We respectfully submit the following comments in **SUPPORT of House Bill No. 1372.**

APCIA strongly advocates for regulation and oversight of Third-Party Litigation Financing or (TPLF), a concerning trend in our judicial system.

TPLF is estimated to be a \$500 billion global industry, with the U.S. portion exceeding \$15 billion. This financing model treats lawsuits as investment opportunities, which undermines and exploits our civil justice system. By nature, TPLF increases litigation costs by introducing unknown third parties whose sole interest is to maximize their returns on investment. Additionally, TPLF diverts monetary awards—meant to compensate claimants for their injuries—away from the actual injured parties and toward unrelated financiers.

The economic interests of these financiers rely heavily on prolonged litigation and the discouragement of amicable settlements. This dynamic favors the third-party funders while complicating the pursuit of justice for all involved. It is essential and fair for all parties engaged in litigation to have access to these funding agreements, ensuring both plaintiffs and defendants are equally equipped to seek justice.

TPLF typically claims a large share of claimants' settlements and judgments, often inflating the amounts necessary to account for funders' returns. **This practice deprives claimants of due compensation and complicates the prompt resolution of cases. For instance, plaintiffs may reject reasonable settlement offers due to the obligations they owe to the funders.** One prominent funder has publicly acknowledged that they intentionally complicate case settlements. Increased transparency is crucial for ensuring quicker and more efficient resolutions in these matters.

Moreover, litigation funding can leave consumers with greater debts to lenders than the amounts awarded by the court once a lawsuit concludes. This scenario effectively places unknown third parties in control of the litigation, making it significantly more difficult and costly to settle disputes. By transforming the civil justice system into a profitability-driven enterprise, TPLF discourages amicable resolutions and promotes aggressive, drawn-out litigation of marginal or frivolous claims. This ultimately increases costs for products, services, and potentially insurance.

As if hidden money in civil litigation was not enough of a concern, there have been multiple recent reports of serious national security concerns with this practice, as it is well known that foreign nations are investing in these lawsuits, including in patent litigation.³ This is a significant enough concern that U.S. 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 U.S. civil litigation.⁴

All parties and the courts should know if foreign countries are investing in the U.S. civil justice system for profit.

Given these serious concerns, states and courts have started to act. West Virginia, Wisconsin, Indiana, and Montana have enacted laws requiring TPLF disclosure and discovery to the involved parties. Similar legislation is pending in several other states. Importantly, the legislation in West Virginia, Wisconsin, and Montana also mandates the disclosure of the funding agreements themselves. More courts are also instituting similar disclosure requirements through local rules and standing orders.¹

And disclosure is what is required of insurance agreements during litigation, not only in federal cases pursuant to FRCP 26, but in virtually all states, including North Dakota, since the state has adopted a corollary to Rule 26. **This should be no different.** By requiring disclosure and discovery of TPLF to all parties in litigation, balance can be restored to the legal system.

Accordingly, APCIA supports reforming third-party litigation financing in North Dakota and across the country to facilitate transparency in litigation and limit the damage the unregulated and secret world of TPLF has on the fair and efficient administration of justice. As such, we support **HB 1372** to ensure that consumers and our courts are adequately protected.

Thank you for your ongoing commitment to maintaining a fair, efficient, and transparent civil justice system.

Brooke Kelley

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¹ Including the U.S. District Courts in Delaware, New Jersey, and the North and Central Districts of California.

³ See e.g., <https://insituteforlegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding/>

⁴ 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>

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