BEFORE THE SENATE JUDICIARY COMMITTEE
PROPONENT TESTIMONY ON SENATE BILL 19

BRINGING TRANSPARENCY TO LITIGATION FINANCING

Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee, thank you for the opportunity to provide proponent testimony on Senate Bill 19 (SB 19). My name is Kevin Shimp and I am an associate attorney at the law firm Dickinson Wright testifying on behalf of the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate. The organization represents over 8,000 companies that do business in Ohio and their mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

In our efforts to champion economic competitiveness, the Ohio Chamber supports SB 19 because it makes needed reforms to third-party litigation financing in Ohio. The most common form of third-party litigation funding occurs when a company specializing in this industry advances money to a plaintiff in a lawsuit before it has concluded in exchange for the right to receive an amount of any potential proceeds. These cash advances are non-recourse meaning the consumer or plaintiff only has to repay the company if they realize any proceeds from the lawsuits. While the consumer is not on the hook for repayment if they lose the lawsuit, these advances are not subject to interest rate caps and other common consumer protections.

The presence of a third-party funder in a lawsuit is problematic in Ohio because there is a lack of transparency since current law does not require any financing agreement to be disclosed to other parties in the litigation. In turn, non-disclosure of financing agreements enables third party litigation financing companies to conceal their involvement in a lawsuit. The existence of this secretive party leads to litigation based upon speculation of who has an interest in a lawsuit rather than all parties having actual knowledge of who is involved in the litigation – which is a bedrock principle of America's civil justice system and hampers the ability of other parties to develop their litigation strategy.

Third-party litigation financing also introduces incentives that prolong litigation and lead to more speculative lawsuits. Despite the non-recourse nature of these advances, third-party funding can create more frivolous litigation since – like any good investor – these companies' diversity their portfolio. This means they are willing to invest a relatively small amount into some lawsuits that may be riskier but could payoff with a hefty return. Similarly, if a plaintiff has engaged a financier, they may be more likely to reject a reasonable settlement offer since they know any proceeds must be shared with the funder.

Senate Bill 19 begins to address the issues raised by third-party litigation financing and will prove beneficial to Ohio's business and legal climates. First, the disclosure of financing agreements will remove the secretive party in the litigation. This simple step creates parity in litigation since insurance agreements – which often dictate the value of a claim – are automatically disclosed during discovery. Moreover, creating greater transparency about who has an interest in the outcome of a particular lawsuit aids the ability of all parties to develop litigation strategy and helps evaluate what a claim is worth.

Likewise, the myriad of consumer protections in the bill looks out for the interests of everyday Ohioans and prevents bad actors from operating in the Buckeye State. Limiting the interest rate that can be charged on advances, prohibiting financing agreements from lasting more than three years, and requiring companies obtain a corporate surety bond assures only well-established and financially stable litigation financiers can offer their product in Ohio.

In closing, the Ohio Chamber urges your support of Senate Bill 19 because it brings greater transparency to litigation financing in Ohio. That transparency is important because it will bolster the business and legal climates in the Buckeye State by promoting a common-sense civil justice system that balances the interests of all parties in litigation.

Thank you for the opportunity to provide testimony today, and I welcome any questions from the committee.