Senate Judiciary Committee

Pete Mulvey 271-4063

HB 733-FN, relative to reporting requirements for persons or entities financing lawsuits.

Hearing Date: April 24, 2025

Time Opened: 2:20 p.m. **Time Closed**: 3:21 p.m.

Members of the Committee Present: Senators Gannon, Abbas, McConkey, Altschiller and Reardon

Members of the Committee Absent : None

Bill Analysis: This bill regulates consumer litigation finance agreements and makes violations of the chapter a violation of the New Hampshire consumer protection act.

Sponsors:
Rep. Cole Rep. Ouellet Rep. Kofalt

Who supports the bill: 11 signed in support of HB 733-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who opposes the bill: four signed in opposition for HB 733-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who is neutral on the bill: n/a.

Summary of testimony:

Representative Brian Cole

Hillsborough – District 26

- HB 733 dealt with third party litigation financing, TPLF.
- TPLF is where investors financed a suit, with no stake, for profit.
- Currently, parties involved in TPLF agreements do not have to disclose such agreements.
- Lenders engaging in TPLF are unregulated, often foreign hedge funds according to Rep. Cole.
- TPLF put upward pressure on the cost of doing business, particularly regarding liability insurance costs.
- Rep. Cole noted that New Hampshire is particularly vulnerable to TPLF, and that it costs New Hampshire households $1505 a year.

- Organizations providing services for at risk youth cannot find liability insurance largely because of the risk they carry. One factor which increased risk was TPLF agreements.
- TPLF transparency laws elsewhere had reduced insurance costs for at risk youth.
- HB 733 included common sense guardrails for TPLF agreements, particularly funding prohibitions and mandatory disclosure requirements.
- Preventing hostile foreign involvement is the primary function of HB 733.
- Sen. Gannon asked if Rep, Cole was just asking for guardrails and wasn't opposed to the agreements intrinsically.
    - Rep. Cole said that was true. The intent was not to discourage the practice but just to disclose financers.
- Sen. Abbas asked if attorneys entered TPLF agreements or the plaintiffs.
    - Rep. Cole said an agreement may be instigated by either the client or attorney.

John Reynolds

State Director - National Federation for Independent Business

- The NFIB supports HB 733.
- A common theme is that businesses wanted to level the playing field. This mattered because defenses were hard to prepare when you did not know who was on the field for civil litigation.
- There was a broad public interest in HB 733. Citizens were concerned with torts, and judgements impact on the costs of insurance or other services.
- 15 years ago, life insurance rules were changed to prevent hedge funds from being beneficiaries. Mr. Johnson found the situation with TPLF agreements analogous.
- Sen. Gannon asked if the other party would be disclosed as to how much money financed the other side of the lawsuit.
    - Mr. Reynolds said he was unsure and believed that financers and the amount of funding provided would be disclosed.
- Sen. Gannon asked if that was fair.
    - Mr. Reynolds believed it was as financing could affect a settlement.
- Sen. Reardon asked if Mr. Reynolds would oppose receiving notice of an agreement as opposed to the contents of the agreement.
    - Mr. Reynolds said that it was hard to answer. The amount of investment from a third party didn't just matter to litigants, but also mattered as far as public policy was concerned.
- Sen. Reardon asked if it was prejudicial for one side to access such disclosures but not the other.
    - Mr. Reynolds said he was unsure how it would be considered prejudicial.

Tony Sculimbrene

Attorney, Gill and Sculimbrene

- Mr. Sculimbrene testified in opposition to the bill.
- HB 733 violated attorney client privilege.
- Mr. Sculimbrene said that TPLF agreements would not be admissible in court.
- Whoever paid the bills for a case was irrelevant according to Mr. Sculimbrene.
- HB 733 would require lawyers to disclose intimate details on how they ran their cases.

- There were no individuals in the State of New Hampshire looking for cases as venture capitalists. Rather, injured parties to a case need money while their case is pending, which is why they seek TPLF according to Mr. Sculimbrene.
- Sen. Abbas questioned lines 6 through 8, relative to contingency fee agreements. The Bar Association's code of conduct is referenced. Sen. Abbas asked if that should reflect New Hampshire's specific rules and code of conduct instead.
    - Mr. Sculimbrene said that would be appropriate. The error was an indication that HB 733 was a national template bill farmed around by insurance companies according to Mr. Sculimbrene.
- Sen. Abbas asked if there were differences between HB 733 and other situations were there were mandatory disclosures in place.
    - Mr. Sculimbrene said that other matters subject to mandatory disclosure were typically mediated and resolved out of the courtroom. Mr. Sculimbrene added that full disclosure of TPLF would enable opposing counsel to structure their case around the other counsel/claimants' resources to run out the clock or rush to mediation.
- Sen. Abbas asked if it would be helpful to know those things.
    - Mr. Sculimbrene said it may be helpful to understand the details of a lien or agreement if the value overshadowed any recovery but added that such situations were extremely rare.
- Control of a case is not provided to third party investors in any circumstance according to Mr. Sculimbrene.
- Sen. Altschiller was concerned that HB 733 could hamper cases revolving around assault. Lawsuits against the Catholic church, the boy scouts, and the US Olympic gymnastics team all relied on third party litigation funding.
    - Mr. Sculimbrene believed that HB 733 would have a chilling effect upon the types of plaintiffs described.

DJ Bettencourt

Commissioner - New Hampshire Department of Insurance

- Commissioner Bettencourt believed compromise was possible surrounding TPLF.
- HB 733 is a model law written by the National Council of Insurance Commissions.
- When a model to be considered by all states is contemplated, there must be room for flexibility and customization.
- Commissioner Bettencourt emphasized that HB 733 did not ban TPLF but simply mandated disclosure for commercial litigation, not criminal litigation as cited by Sen. Altschiller's example surrounding the Boy Scouts, Catholic Church or US Gymnastics Team.
- The insurance industry is experiencing a hard market. That meant carriers were suffering large losses.
- A hard market dynamic resulted in more expensive coverage. This has impacted behavioral health nonprofits, and childcare providers quite significantly regarding general liability insurance.
- Disclosure enhanced risk transparency, which aided in evaluation to ultimately improve premiums.
- HB 733 may better inform underwriting decisions and improve competition in the marketplace.
- HB 733 would create more options for consumers and made claims more transparent and easier to manage. Insurers could identify common disputes and adjust their risk assessments and policy terms accordingly.

Will Infantine

Insurance Agents Association

- Mr. Infantine was a house representative for nine terms.
- Mr. Infantine has been an insurance agent for 35 years.
- The Insurance Agents Association supported HB 733.
- TPLF has a purpose. Transparency is also important.
- The Kansas framework related to TPLF omitted having to provide the financier's budget.
- The financier cannot be involved in the settlement process under Kansas' law.
- The financier does not have access to private, sensitive plaintiff information either.
- Transparency could do no harm according to Mr. Infantine.
- Sen. Reardon reiterated her question whether simple notice of an agreement which lacked budget information would be acceptable.
    - Mr. Infantine characterized Sen. Reardon's suggestion as like the Kansas model, which he said was okay, and which he did not oppose.

Cameron Lapine

Orr and Reno

- Orr and Reno represented the NH Association of Domestic Insurance Companies and the American Property Casualty Insurance Association.
- Mr. Lapine spoke in support of HB 733.
- HB 733 prohibited entities of concern; namely China, Cuba, North Korea, Iran, and the Maduro regime, from investing in these cases.
- HB 733 requires the automatic disclosure of a TPLF agreement to all parties to the court pending civil action. Mr. Lapine stated that the standard is in parity with insurance companies
- As amended by the house, HB 733 addressed large scale, high dollar commercial litigation cases.
- HB 733 is not concerned with small cases where a payday loan may be provided. The bill is concerned with multimillion dollar lawsuits.
- TPLF posed an extreme cost to individuals doing business in New Hampshire.
- Mr. Lapine concurred with Senator Gannon's statement that HB 733 does not consider TPLF bad, or prohibited, but rather it provides disclosure.
- Sen. Abbas had asked if plaintiffs entered the agreement. Mr. Lapine said that they sometimes did. Typically, though, third party investors put money into buckets of cases through law firms to recoup their investments.
- Mr. Lapine did not believe that the bill would chill plaintiffs for assault as HB 733 didn't ban TPLF and just provided disclosures and suggested further contemplation.
- Sen. Abbas asked where language surrounding foreign involvement in commercial financing was in the bill.
    - Mr. Lapine said page two, line twenty-three through page three, line four, addressed foreign entities involvement with these cases.

Sean Thompson

International Legal Finance Association

- Mr. Thompson opposed HB 733.
- Many cases rely on commercial litigation financing.
- Mr. Thompson represented paragon capital.
- Commercial and consumer litigation financing have key distinctions.
- Mr. Thompson provided more details on the Kansas compromise relative to TPLF.
- Many examples provided before the committee related to consumer cases and would not be impacted by HB 733 according to Mr. Thompson.
- Judges already have the authority under existing law to order the production of litigation financing documents.
- HB 733 targeted law firm financing inappropriately, which is distinct from claimant funding.
- HB 733 would force the disclosure of law firm financing.
- Mr. Thompson reiterated that the Kansas framework related to TPLF benefits everyone without prejudicing claimants or defendants.
- Sen. Abbas asked if Mr. Thompson supported Kansas' TPLF law.
    - Mr. Thompson said that he did.
- Sen. Reardon asked if the Kansas compromise defined claimant and law firm financing separately in the Kansas law.
    - Mr. Thompson believed that the law defined claimant funding in a manner to exclude law firm funding.

Kierstan Schultz

State Farm Insurance

- Ms. Schultz and State Farm Insurance supported HB 733.
- The proposed Kansas compromise does not obtain the discovery of the funding agreement itself, and would order judges to conduct an in-camera review of a TPLF agreement and its terms
- HB 733 would be beneficial to insurers and policy holders in the State.
- Mr. Schultz believed that adding confidentiality protections and no control provisions would be considerable if further amendment was agreed to.

Nathan Fennessy

Attorney, Preti Flaherty

- Mr. Fennessy spoke in support of the bill.
- If there was money behind a plaintiff, everyone deserved to know the extent.
- Mr. Fennessy did not see an issue with providing a copy of the Third-Party Litigation Financing agreement to parties of the case.
- Sen. Reardon asked if it was different to understand what the potential payments from insurance companies were, and what resources the opposite party brought to a case.
- Mr. Fennessy said in regard to insurance, defense costs have eroded policy agreements.
- If an insurance payout is for a specific amount, the opposing counsel knows exactly how much gas the opposition has in the tank before they have to self-finance the suit.

- Sen. Abbas suggested that prior to investing in a case, an investor would consider whether their capital could sustain the case to completion.
- Mr. Fenessy said he could not speak to if investors provided sufficient capital or not as that depended case by case.

Marissa Chase

New Hampshire Association of Justice

- Ms. Chase clarified that the Youth Development Center claims were made against the State itself, that the State did not have insurance, and that the Attorney General's settlement funds came from the State's funds.
- HB 733 is applicable to mass tort, multidistrict venue cases.
- Ms. Chase asked the committee not to waste its time on HB 733.
- Ms. Chase maintained that HB 733 was an effort to nationalize a standard policy across all fifty states.

PM
Date Hearing Report completed: April 29, 2025