MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
March 14, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:02 p.m. on Tuesday, March 14, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Senator Scott Hammond, Senatorial District No. 18

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Sally Ramm, Committee Secretary

OTHERS PRESENT:

Aaron D. Ford, Attorney General
Nathan Holland, Deputy Attorney General, Government and Natural Resources Division, Office of the Attorney General
Page Faulk, Executive Vice President, U.S. Chamber of Commerce Institute for Legal Reform
Paul J. Moradkhan, Vegas Chamber
David Meyerson, U.S. Chamber of Commerce

Tom Clark, Reno Sparks Chamber of Commerce
Tray Abney, Nevada State Director, National Federation of Independent Business
Paul Enos, CEO, Nevada Trucking Association
Susan L. Fisher, Nevada Home Builders Association; Southern Nevada Home Builders Association; Builders Association of Northern Nevada; Nevada Restaurant Association; Nevada Housing Alliance
John Sande IV, Nevada Franchised Auto Dealers Association
Warren Hardy, Associated Builders and Contractors Nevada Chapter
Lea Case, American Property Casualty Insurance Association
Chase Whittemore, Nevada Builders Alliance
Michael Mills, Las Vegas Defense Lawyers
Connor Kane, Nevada Bankers Association
Misty Grimmer, Nevada Resort Association
Aviva Gordon, Henderson Chamber of Commerce
Tim Cashman
Gina Bongiovi, Managing Partner, Bongiovi Law Firm
Jamie Cogburn, Nevada Justice Association
Brian Garelli, Preferred Capital Funding-Nevada
Eric Schuller, President, Alliance for Responsible Consumer Legal Funding
Dai Wai Chin Feman, Director, Parabellum Capital

CHAIR SCHEIBLE:
The hearing on Senate Bill (S.B.) 37 is now opened.

SENATE BILL 37: Authorizes governmental attorneys to volunteer as third-party neutral mediators under certain circumstances. (BDR 1-428)

AARON D. FORD (Attorney General):
We are here to present Senate Bill 37. My colleague, Nathan Holland, will take the lead on the bill.

NATHAN HOLLAND (Deputy Attorney General, Government and Natural Resources Division, Office of the Attorney General):
This revision of *Nevada Revised Statutes* (NRS) 7.065 would expand access to volunteer mediation services, provide additional avenues for attorneys and the public sector to volunteer time to benefit their communities. Before I explain the bill, I would like to briefly describe how the idea came about for the statutory change. Attorney General Ford reminds the Office of Attorney General that our

job is justice. He describes our office priorities as the five Cs, one of which is community engagement. The other four are constitutional rights, criminal justice reform, consumer protections and client services.

As a Deputy Attorney General, my practice includes representing the Labor Relations Unit, Division of Human Resource Management, Department of Administration, which engages in collective bargaining with designated representatives of State employees. I have experience in resolving disputes through cooperative mediation and negotiations. My passion for negotiation and Attorney General Ford's commitment to community engagement led me to consider ways that I could use my skills to benefit the community. I began looking into volunteering my time with local community service organizations to assist people in resolving their differences amicably. I learned that statute allowing public attorneys to volunteer to represent indigent people in pro bono services, NRS 7.065, does not allow for us to serve as neutral mediators.

Attorney General Ford encourages his employees to bring forward bill drafts, and his office approved my request to amend this section to allow public sector attorneys to serve as volunteer mediators. Senate Bill 37 would add to subsection 2 in NRS 7.065, allowing public service attorneys to serve as third-party neutral mediators if certain conditions are met, mirroring the conditions in place for attorneys who volunteer to represent indigent individuals. An added requirement to both sections is that the attorney's efforts must comply with the Nevada Rules of Professional Conduct in NRS 7.065, subsection 2 by adding a new paragraph (e).

The five commonsense restrictions on volunteering are as follows. First, the employer of the attorney must be aware of the attorney's intent to serve and can object to the representation. Second, the employer and mediating parties must be confident that the attorney is free from any bias or outside interests in both the attorneys' day job and volunteer work. Third, it must be true community service to assist those unable to pay for mediation services provided through an organization that provides free mediation services to individuals. Fourth, this must be a true volunteer opportunity and not a second job or a means to supplement the attorney's income; the attorney must not receive compensation for the services. Fifth, the services and mediator must meet all existing ethical obligations contained in the Nevada Rules of Professional Conduct.

In closing, S.B. 37 is one small but important change with many community benefits. It allows attorneys who are employed by public employers to serve as third-party neutral mediators. It expands the pool of volunteer mediators available to assist organizations providing no-cost mediation services. This increases access to volunteer mediators for individuals seeking to resolve their differences amicably. This also assists our community in developing the skills to resolve differences outside of the court of law, which should decrease the number of cases that must be resolved by judges and justices across the State.

SENATOR NGUYEN:
Could you give me a couple of examples or at least an example of a type of case or mediation people have requested but have not been able to participate in using third-party mediation?

MR. HOLLAND:
People come forward with a wide variety of cases, from a homeowners' association disputing what color somebody can paint his or her house, to a dog barking in a neighborhood or loud neighbors in an apartment complex. For indigent individuals, it can involve situations like two siblings sharing a room, needing to figure out how to divide it up properly, or it can be more serious.

SENATOR NGUYEN:
Would this allow you to participate in programs like Adopt-a-Vet, advice programs throughout the State or any of those other organizations that provide other types of legal services?

MR. HOLLAND:
I did not contemplate comparison to other types of programs. I believe that they could.

SENATOR DONDERO LOOP:
Part of my question is whether something specific like a legal aid organization working with pro bono attorneys could then ask if you could help with its service.

MR. HOLLAND:
Yes, absolutely.

SENATOR OHRENSCHALL:
In southern Nevada, we have a program called Neighborhood Justice Center that tries to resolve disputes between neighbors to avoid them going to court, or neighbors, when passions get high, turning to self-help and things going bad. Would this bill allow governmental attorneys to volunteer with organizations like Neighborhood Justice Center to help resolve some of those disputes between neighbors?

MR. HOLLAND:
That is exactly what I had in mind. When I drafted this bill, I reached out to the Neighborhood Mediation Center here in northern Nevada that gave me some ideas about what it needed. This was the catalyst for drafting this bill.

SENATOR HARRIS:
Is there a shortage of these neutral mediators?

MR. HOLLAND:
According to my conversations with the different mediation centers around town, there is a desperate shortage for people to volunteer. They believe that allowing this change in statute, giving public attorneys the legal ability to volunteer, will increase the numbers of people coming to volunteer.

SENATOR HARRIS:
Is any kind of training required? Mediation is a different skill set than litigation or other types of attorney work. Is there any requirement that these folks be trained in arbitration or mediation?

MR. HOLLAND:
A 40-hour mediation training course is required before anyone can volunteer for most of the volunteer mediation centers. Most of them provide an in-house mediation course. I am signed up to take the 40-hour mediation course at The National Judicial College in Reno.

SENATOR HANSEN:
I just went to small claims court. My little plumbing company is trying to collect some money. We had to go through mediation. I did not realize it is mandatory in the Reno Justice Court to go through a mediation program. Is that the kind of service you are talking about providing to indigent people?

MR. HOLLAND:
That is right. The mediation you went through would have been the exact type that would have happened through the local nonprofit mediation centers where it would have been free.

SENATOR HARRIS:
How do you define indigent? Is there something in statute? Who qualifies as an indigent person to need the assistance of a voluntary mediator?

MR. HOLLAND:
Organizations like the Neighborhood Mediation Center have certain criteria they go through to define somebody as indigent. To qualify as indigent, there is an economic background check they do to determine income. Most of them allow a limited number of mediations to anyone regardless of income.

SENATOR HANSEN:
On page 2 of S.B. 37, lines 9 and 10 from NRS 7.065 have similar language to lines 23 and 24. One is law and the other is proposed law. Is there a difference between an attorney receiving no compensation for representing a client and mediating for no compensation?

MR. HOLLAND:
The difference is representation would be whenever an attorney is representing an individual pro bono and service would be pro bono mediation. The law as proposed would differentiate between an attorney representing an individual and an attorney providing a service for both individuals without representing one or both.

SENATOR STONE:
Do you see yourself getting involved in some of the family law issues like impoverished people getting divorces or child custody cases?

MR. HOLLAND:
I do not. I looked into both the Second Judicial District Court and the Eighth Judicial Court that have mediators they work with. But those are paid mediations. The mediation fee is $350. This bill does not include that type of mediation.

SENATOR STONE:
When a public employee gets called for jury duty, most often the public entity will pay the salary for this community service. Am I clear that when you or your colleagues volunteer their time, they are not going to be paid for it? You are not going to be on the time of the public entity, right? It will be your time volunteering.

MR. HOLLAND:
That is correct. This will be a strictly volunteer activity. It will be pro bono just like representing a normal individual. It would provide an opportunity for people who have a specific skill set as a public employee to dedicate time and help the community while using skills needed in a different setting from their daily work.

SENATOR KRASNER:
Would this apply exclusively to indigent persons?

MR. HOLLAND:
The bill is written to apply specifically to indigent persons. They would have to show qualification of a limited income to qualify for this.

CHAIR SCHEIBLE:
To clarify a couple of things first regarding the indigent. The term indigent is used throughout *Nevada Revised Statutes*. It does not always mean the same thing, which is fine, because that allows different entities to have their own definitions. Different judicial districts, for example, might say that anybody who is under 200 percent of the poverty line is indigent and gets a public defender. It might be that in another context, anybody who is under 300 percent of the poverty line is indigent for purposes of waiving a fee to file a certain complaint. Would this use of the term indigent fall into that same category where the individual, the Neighborhood Justice Center, Neighborhood Mediation Center or whatever the association that provides the services could define indigent as appropriate for them?

MR. HOLLAND:
That is correct.

CHAIR SCHEIBLE:
The other thing to clarify is these services are being offered through an organization or association that provides services to indigent people. It would

also allow those associations or organizations to develop any other guidelines or rules that they need to create around conflicts or training for mediators or the ethics and responsibilities of the mediator. This bill does not provide all the guardrails organizations could put in place to ensure that the attorneys are serving an appropriate capacity.

MR. HOLLAND:
That is correct. Senate Bill 37 requires the attorneys to get their employers' approvals of all volunteer activities.

ATTORNEY GENERAL FORD:
You all began your comments thanking the Attorney General for the bill. But frankly, this is Nathan Holland's bill. He came forward with this request to fulfill our job of being justice. You have heard me say that for as long as you have known me in this position, and you have heard us focus on our five Cs, including community engagement, so I am proud to sit beside him. You saw how prepared and diligent he was in researching this and how enthusiastic he is and others will be about participating in this if you are to grant us the ability to do this work.

CHAIR SCHEIBLE:
I will now close the hearing on S.B. 37 and open the hearing on S.B. 179.

SENATE BILL 179: Revises provisions relating to civil litigation. (BDR 2-612)

SENATOR SCOTT HAMMOND (Senatorial District No. 18):
I am joined today at the table by David Myerson, U.S. Chamber of Commerce; Paul Moradkhan, Vegas Chamber; and Page Faulk, U.S. Chamber of Commerce Institute for Legal Reform from Washington, D.C. I appreciate the opportunity to share with you the intent of S.B. 179. Any legislation that we bring forward should be focused on protecting and helping Nevada's families. Senate Bill 179 is designed to do that by bringing greater transparency to third-party litigation funding (TPLF) and enhancing advertising standards for legal services in the areas of prescription drugs and medical devices in Nevada. It is my goal to bring greater public awareness to how these outside funds in advertising tactics work by shepherding legislation that will provide critical disclosure and provide a baseline of regulations to the industry of TPLF.

This industry has quickly become a multibillion-dollar trade within the civil litigation industry. It is important to share with the Committee how litigation funding typically works. It can involve groups like hedge funds and other parties that invest in big-ticket litigation such as mass tort claims and class actions as well as commercial litigation. These investors will front money to a law firm or party in exchange for a predetermined percentage of any award or settlement. This sophisticated industry is multifaceted, but it includes funders investing in individual cases or with increasing frequency an entire portfolio of cases at a particular law firm. Third-party litigation funding can increase the number of lawsuits of questionable standing or frivolous nature to be filed which can have dire consequences for Nevada businesses.

This is happening because TPLF enables lenders to spread their risk of loss. It reduces risk for the plaintiff's law firm because it no longer acts alone but now has a group of investors supporting its financial operations. The problem is these types of investments are neither disclosed in the normal course of discovery nor typically asked about given the opaque nature of this national industry.

Some opponents may argue that this type of agreement is not relevant to the case, but it is. Transparency is a component of good public policy and protects consumers. I am bringing this bill forward because TPLF can also be used as a vehicle for making an advanced loan, often with high interest, for plaintiffs. They may accept a high-interest loan in advance of their expected settlement.

What we have seen in some instances is that after the interest accrues, the plaintiff requires an even larger settlement to pay back this loan to the law firm or attorney, which increases the overall cost of a settlement to businesses. Third-party litigation funding is actively being used in Nevada. Recently, the *Las Vegas Review-Journal* reported about a case in Las Vegas where individuals swindled half a billion dollars from people who were promised exorbitant returns for investing in a TPLF. Instead, it was a massive Ponzi scheme.

Another critical area of consumer protection this bill addresses is the need for strengthening advertising standards within the legal profession. Nevadans are deluged with television commercials and Internet ads soliciting for legal services and encouraging our constituents to call right now and file a lawsuit. At times, these ads are presented as public health alerts, warning viewers that use of a consumer product can cause an illness or disease, even if contrary to scientific

consensus. This practice should concern all of us as it creates the impression that the product is dangerous even when approved by the Food and Drug Administration (FDA) as safe and effective. Therefore, we need to create advertising standards for legal services to protect Nevadans.

I want to stress that this bill in no way bans the use of TPLF or advertising for legal services. Instead, it balances the need for consumer protection while still allowing those in legal services to earn a profit and operate a business with regulatory guidelines and standards, as has been done with many industries that operate in Nevada.

I will highlight what the bill does in three parts. Section 2 would provide transparency and disclosure to the practice of litigation funding transactions by requiring any party and counsel to disclose that they are receiving financing for the litigation from a third party. The section would codify the right to disclose this relationship at the outset of the litigation without formal discovery and provide a copy of the funding agreement to the court and interested parties.

Section 3 would require that the TPLF company is jointly and severally liable for any reasonable attorney's fees or costs awarded by the court against a party to a civil action or proceeding. This section also creates the definition of a TPLF company.

Section 4 of the bill relates to advertising standards for legal services specifically in the areas of prescription drugs or medical devices. This section of the bill would require statements that the advertisement is a paid advertisement for legal services, disclose the sponsor of the ad and identify the attorney or law firm that will be the primary provider of the legal services. This section would also prohibit these advertisements to use words such as "consumer medical alert," "health alert," "consumer alert" or "public health service announcement." Additionally, section 4 would also create standards by not allowing these advertisements to knowingly make a false representation regarding a connection to or claiming affiliation with government agencies. The bill also regulates the use of the word "recall" and using specific scenarios. Most importantly, the bill would require the warning: "Do not stop taking a prescribed drug without first consulting with your doctor. Discontinuing a prescribed drug without your doctor's advice can result in injury or death."

The remaining sections of the bill are conforming changes to NRS. Ms. Faulk will share her perspectives on this important consumer protection bill.

PAGE FAULK (Executive Vice President, U.S. Chamber of Commerce Institute for Legal Reform):
We have been studying the effects of TPLF for many years and the impact of certain lawsuit advertising. In addition, we have engaged in public advocacy in state legislatures, the U.S. Congress and the judiciary. Investor groups are pouring billions of dollars into financing litigation in the United States according to the Government Accountability Office in a recent report to Congress. Investors are attracted by the prospect of hefty returns not tied to economic or market conditions. The Institute for Legal Reform in the U.S. Chamber of Commerce (ILR) and other business and civil justice groups believe that litigation funding leads to the filing of speculative lawsuits. The funders' presence can unreasonably prolong cases and frustrate settlement. The presence of TPLF can change what is a two-party negotiation into a multiparty settlement with an under-the-table constituent. A TPLF company also raises serious ethical issues including a threat to a lawyer's ability to exercise independent judgment in cases where the TPLF has authority to make key litigation decisions.

In most states, litigation funding arrangements do not need to be disclosed and therefore remain hidden in the shadows from public scrutiny. The practice operates with little to no transparency, making it difficult for judges and parties to know who has an interest in the outcome of litigation. Third-party litigation funding entities should not be allowed to conceal the use of funding for improper purposes. Funders resist disclosure because it may reveal facilitation of illicit activity. For example, a few years ago, *The New York Times* published a front-page article on litigation funders financing unnecessary surgery so women could file stronger claims in vaginal mesh litigation. This could have become known much sooner had funding disclosure been required.

A newer concern about third-party litigation funding involves foreign financers who could weaponize the courts for strategic goals by exploiting the lack of transparency in our litigation system about TPLF. According to Professor Donald Kochan of George Mason University, foreign adversaries may fund lawsuits in the U.S. to weaken critical industries or obtain confidential materials through the discovery process. In December 2022, 14 state attorneys general wrote to ask U.S. Attorney General Merrick Garland and other top officials about steps being taken to protect the Country against potential national

security threats posed by litigation funding. The Government Accountability Office, in its 2022 report to Congress on TPLF, said that at least two large litigation funders, in addition to other large investors, invest in sovereign wealth funds—government-controlled funds that seek to invest in other countries. It is also attracting a lot of attention.

During its Sunday evening show, a well-known television news network did a segment on TPLF, covering the bigger hedge fund TPLF funders and an individual plaintiff in the 9/11 litigation which funded the litigation of a New York City police officer with injuries. He had injuries after rushing to help on the 9/11 terrorist attacks and had a lawsuit lender or TPLF involved in his claim. His original claim was $90,000, and he received only $30,000. The litigation funder charged over a 150 percent interest rate. Another interesting part of that segment is about an article written by Professor Maya Steinitz at the University of Iowa, who has written many articles on TPLF. Professor Steinitz explains that the public should care about TPLF because litigation funders are "reshaping every aspect of the litigation process," which cases get brought, how long they are pursued, when they are settled, and all this is happening without transparency. "We have one of the three branches of government, the judiciary, that's really being quietly transformed."

I also want to talk briefly about the advertising part of this legislation. The misleading television commercials that Senator Hammond talked about have consequences. The FDA did a study a few years ago and found that 66 patients of an antidiabetic drug, after viewing a lawsuit ad, did not consult their doctor and stopped taking the medication. Unfortunately, half of these patients had strokes, 7 people died and 24 people experienced other serious injuries. Most of the victims were senior citizens. The American Medical Association has called on legislatures to act and encouraged legislatures not to allow advertising that leads people to stop taking their medication without consulting their doctors. And with that, the ILR supports S.B. 179.

PAUL J. MORADKHAN (Vegas Chamber):
The Chamber believes S.B. 179 will strengthen civil litigation standards in Nevada. Our leaders and our membership believe this is an important bill for Nevada's legal environment to ensure it is fair, transparent and predictable. We also need to ensure Nevada's employers, employees and their families are protected with transparency as proposed by S.B. 179. This can be achieved by having commonsense regulatory oversight by this Body. The Chamber is

championing S.B. 179. We appreciate the partnership with the U.S. Chamber and the bill sponsor for bringing this bill forward.

This bill does three important things. It brings transparency to the practices of TPLF. It will require TPLF companies to be held for joint and several liability, and it strengthens advertising standards within the legal profession. This bill as proposed does not prohibit or restrict the use of TPLF in Nevada. We view this as a consumer protection bill.

SENATOR OHRENSCHALL:
I have one question for Senator Hammond or the presenters. In the legislation, you are asking the plaintiffs to disclose if they are getting help with funding the litigation and paying legal bills. But I do not see a requirement for financial disclosure from the defendant. Also, what happens if the issue must go to appeal? Sometimes, if an important issue goes up on appeal, we get amicus curiae who want to file and get involved because it can affect a lot of things. I do not see any requirement about funding appellate litigation.

My concern is about asking the plaintiff to disclose how legal bills are paid but not asking the defendant. You are not asking potential amici who might get involved if this goes up on appeal.

DAVID MEYERSON (U.S. Chamber of Commerce):
Our position would be the disclosure needs to be for all parties. I must double-check within the text of this, but our read is this applies to all parties throughout the process who would need to disclose any third-party funding.

SENATOR OHRENSCHALL:
If someone is helping a plaintiff pay legal bills, how is that relevant to the case or controversy issue? Seven or eight years ago, we had a tragedy in southern Nevada where a well-respected medical professional, an endoscopy clinic, was negligent in its practices. Many people got hepatitis, some passed away due to unsafe practices at that clinic. If a member of my family had been one of those injured patients, we did not have the resources to fund this lawsuit and we had gone to a bank or to one of these TPLF, how would that have been relevant to the injury? I am just not sure I see the connection.

SENATOR HAMMOND:
We are not trying to block anybody's access. Third-party lending is helping people access the courts. We are not asking to stop that. We understand the TPLF practice is here to stay. We are asking to shine a bright light on the process itself. To show how this is relevant, a plaintiff was in court suing the defendant. A settlement was offered of a million dollars, and she did not take it despite the fact a million-dollar settlement would have taken care of costs incurred, the medical expenses and made her very comfortable. Why did she not accept this settlement? She had a contract with a TPLF, which should be disclosed so all the parties understand what the contract is requiring. The contract held by the person funding the case required a payment of $600,000 to the TPLF. Additionally, the person suing must pay the court costs and other expenses. When everything was settled and paid, she would have had to pay about $70,000 out of her own pocket if she had taken the million-dollar settlement. This forced her to go back to court and settle the case for a much higher amount to recoup the cost of the TPLF getting involved in the settlement.

It is important for everybody involved in the case to understand those contracts and who is paying. Other things I learned during research about this include the fact that anybody who gets involved should have authority to look at the evidence. The TPLF has access to some of the evidence in the court case so it can make certain determinations regarding the strength of the case. If that TPLF decided to get involved in both sides of the case and have access to evidence on both sides, the funding entity could then see which case is stronger and then decide whether to back out of one side and double down on the other. That is why we want disclosure, so every party understands who is involved and what the contract is saying.

MR. MEYERSON:
Nowhere in this bill are we looking to ban TPLF. We do not want to impede access to justice but to make clear who and what is involved in these cases. Litigation funding at a minimum is a $2.5 billion industry in this Country, and it may be much more than that. We lack the necessary understanding of it because there is not full disclosure.

A case that came out last week involving Sysco, a food-processing company looking to settle a lawsuit moving through the court system. Burford, a TPLF, was funding Sysco's case in the amount of over $100 million. Sysco wanted to

settle, but Burford said no. How would that impact your lawsuit? How would that impact anyone's lawsuit without transparency, without disclosure? We simply do not know enough about third-party litigation funding now.

SENATOR OHRENSCHALL:
I appreciate the answers. The rules of professional conduct which govern the practice of law are clear. The attorney has a duty of loyalty to the client, even if someone else is helping that client pay the bills.

SENATOR NGUYEN:
This pertains to the advertising section. In the practice of law, we are inundated with rules we must follow and by disclosures we must put into advertisements that must be approved through the State Bar of Nevada. Some of these provisions are specific. Why is this needed when there is already so much self-regulation within the rule? It would not be a good situation where we have multiple regulatory bodies looking at advertising of lawyers, including their own State Bar.

Additionally, the bill is specific on some of the terms. If this went into effect, I would be worried that we would be coming back here every session amending different terms of art now being used to describe potential lawsuits in advertising when a perfectly good body is already doing that. How is this different? Why is this needed outside of what is already covered by another regulatory board?

MR. MEYERSON:
I am happy to go through and determine which specific terms you are looking at. But six other states have already enacted some form of trial lawyer advertising regulations because they saw a problem. I am a fellow lawyer, and I would like to think most of us are upstanding professionals. There are occasionally bad apples; it is not about the bad apples but about the fact that these ads can at times be misleading. And we know of times where folks did not understand the ad and stopped taking FDA-approved medicine recommended by a doctor with dire consequences. This is yet another check on that. There are many rules and many regulations, but this is another needed piece of legislation to prevent harm and protect consumers.

SENATOR NGUYEN:
You mentioned six other states that have enacted similar provisions. Every state bar regulates its attorneys in a different manner and has varied rules around advertising ethics. Every state has a different regulatory structure. You can follow up with the Committee afterward on those other states that enacted this. And if their ethical and advertising rules are similar for their state bars as in Nevada or our State Bar rules are even more comprehensive than what you seek to include here, this seems like it might be redundant.

MR. MEYERSON:
I am happy to collaborate with the Committee on that. I would flag a First Amendment challenge to this law in West Virginia. In that case in the U.S. Court of Appeals for the Fourth Circuit, the court upheld the law by a unanimous decision. There is precedent for a challenge; thus far, these laws have been upheld.

SENATOR HANSEN:
Transparency is the issue to me as a nonlawyer looking at this. With litigation funding agreements as part of your process with formal discovery, are you now able in a lawsuit to get access to the litigation funding agreement?

MS. FAULK:
In certain instances through discovery, litigation funding agreements have been discoverable. When they do become known, they often demonstrate the control the litigation funder has over litigation, such as hiring of attorneys, when to settle and things like that. Many of the litigation funding agreements that have become known in discovery have been problematic. There was a question earlier about parity. The insurance agreements on the defense side are required to be disclosed at the onset of litigation. Having the plaintiff disclose a litigation funding agreement without having to do a discovery request would be parity.

SENATOR HANSEN:
Okay, that makes sense. I am just wondering if that is right now. You are prevented from doing it, but you are capable. The more information both parties share in advance, the better for the outcome of the whole thing. The idea that you would want to hide a litigation funding agreement and be forced to have a discovery process to get that evidence to court defeats the idea of transparency and getting all the evidence in front of everybody prior to being forced into a courtroom. It all makes perfect sense. This is simply a case of a need for

disclosure transparency because some secret thing could dramatically impact how the process works, at least on one of the parties in the lawsuit.

SENATOR STONE:
The TPLF agreements must be disclosed, in accordance with your bill, before a judge and the other side. When we see advertisements on television seeking people to come join a lawsuit against a drug company, will they have to disclose the funding entity? I mention this because pharmaceuticals are a big business, trillions of dollars, and you may have two drugs out there accomplishing an important task. There may be some side effects reported with the drug. Just by claiming these side effects exist, there will be a lawsuit that will cause physicians and patients to stop using the product. If the drug is manufactured by a major drug manufacturer and an advertisement on television claims the drug has been implicated in causing side effects, this will affect sales of the drug. If then determined that the negative advertising was funded by a competing drug company, people seeing the ad should know that. Therefore, transparency matters. But will the consumer subscribing to these lawsuits know who is underwriting them?

MR. MORADKHAN:
No, it would be two different provisions of the bill. If you are in an active lawsuit, you have disclosed that. But if you are calling in and so forth, that information will not be disclosed as we understand the drafted bill.

SENATOR STONE:
You might consider that because the public has a right to know who is funding these lawsuits they are being asked to join. Mr. Meyerson brought up a good point about a million-dollar settlement wherein somebody looking at the situation would say, "That is a very appropriate settlement considering the damages and medical costs and pain and suffering, et cetera," but then the settlement had to be redone because of an agreement that specified the investors were getting a big portion of the settlement. How does this bill prevent the escalation of settlements on behalf of businesses with agreements in place that inflate the award typically given under appropriate legal circumstances? It seems like this would be antibusiness.

MR. MORADKHAN:
This bill will help us not only to understand the agreements but also to reduce the cost associated with the litigation industry out there right now.

SENATOR STONE:
Would a judge force a jury to hear that these TPLF agreements exist and therefore the settlement offered allows this plaintiff to have to pay out of pocket instead of getting an award?

SENATOR HAMMOND:
Senator, could you repeat the question one more time to put it a little differently?

SENATOR STONE:
Would a judge give instructions to a jury when they are considering an award that this TPLF agreement exists and they need to take into consideration the provisions of this agreement to make the plaintiff whole? If that is the case, your bill is warranted. We should not be inflating awards to accommodate investors and lawsuits.

MR. MEYERSON:
I will let my colleague talk about any of the jury component. But in terms of your question, part of the need for disclosure here is that in most cases, no one is aware of the agreement—not the judge. Oftentimes, not even the plaintiffs themselves in these class actions are aware there is funding. So yes, this would bring costs down for everyone because often—and the Sysco case I cited earlier is the greatest example—the parties want to settle and are being told no by the funder. Sysco is not the only case with a result like this one, raising costs for everyone.

SENATOR KRASNER:
Mr. Meyerson, can attorneys or law firms force their clients to enter these agreements? That is my first question. And the second one is why would a plaintiff even enter into one of these agreements?

MR. MEYERSON:
I will address the second question first. There are reasons for plaintiffs to enter these agreements. There are times when people need outside funding to pursue litigation, and that is why we are not looking to ban that. In terms of why a plaintiff would enter the agreement, it is because litigation is expensive. There is a need. But there is also the need for transparency and for disclosure, so everyone knows what is happening. There is not an equal playing field. Is it possible to rephrase the first question?

SENATOR KRASNER:
Is there a way that a law firm or an attorney can force someone to enter into these agreements? Is that what is happening, or is there a way they do that?

MS. FAULK:
At times, the plaintiff in the case may not even know that litigation funding is involved. This happens in class actions and is also found where the attorney has entered into a litigation funding agreement to fund this individual case or a portfolio of cases as we have seen most recently. California is also looking at third-party litigation funding disclosure legislation after the disbarment of Tom Girardi, Erin Brockovich's attorney. He was a well-known plaintiff's lawyer, but he entered into some litigation funding agreements unknown to his clients. This has become an issue in the bankruptcy related to the firm. Remember, third-party litigation funding operates in secret. The plaintiff knows, but not always. That is why we are requiring disclosure of third-party litigation funding to the court and to all parties.

SENATOR HARRIS:
Your last comment raised a question for me. Do you anticipate courts having some different analysis if they know there is a third-party funder versus not knowing? Generally, do you want disclosure to change behavior? Do you anticipate that courts should take this into consideration in some way? Otherwise, I might not know why it is useful for the judge to know.

MS. FAULK:
There are also instances where judges themselves may need to know for conflict-of-interest purposes. They could be an investor in the TPLF and not know that litigation funding is appearing before the court. If judges are aware of the funding, it could certainly help facilitate settlement negotiations. It would identify the potential real parties of interest behind the litigation. The litigation funding agreement could show control by the litigation funder. That would be important for the judge to know. This happened in a U.S. Sixth Circuit Court of Appeals case where litigation funding was deemed illegal, violating the ancient doctrines of jeopardy and maintenance, related to the meddling by a stranger to a lawsuit, and the plaintiff had entered into a series of litigation funding agreements where the litigation funder exercised control. The case made it up to the Sixth Circuit that overruled the litigation funding agreement and overturned the agreement. It is important for judges to know.

SENATOR HARRIS:
It seems to me that the conflict of interest would arise once the judge knows a third-party funder may be invested but would not arise if the jurist had no idea about the identity of the funder. Further, you have heard this from some of the attorneys on the panel that the party of interest is the client. And that is always who is supposed to drive the case. As attorneys, we are trained to keep in mind that it really does not matter who is paying; even if it is your parents, they still have no say in the direction of the litigation. It is client-driven. I would just push back a little bit on the idea that because they are funding the litigation, they then become a true party of interest. Our focus is on the client's interest and should be client-driven regardless of who is funding. That happens all the time. The parents are paying; a friend is helping. Our standard of practice is always about the client, and the client's interest, who remains the true party, not whoever is funding, regardless of whatever structures we have set up.

SENATOR HAMMOND:
What troubled me was hearing about this case of Sysco and Burford. When Sysco, which was involved in the original lawsuit, was willing to settle and that settlement became known, it was Burford doing the investing. Burford asked the judge for a stay, saying, "Wait a second, do not let anybody settle." And if I am not mistaken, Burford is granted a stay for at least a couple of days. I am troubled that Burford, in this case which you might say is an outlier, happened where an investor is involved. We would like to make sure we do not allow this to happen here. The troubling thing is having the stay allowed and not settling right away. You are trained that the client is driving everything, but this case is not exactly fitting into that mold. I would hate to see this situation continue.

MR. MEYERSON:
I echo your comments, Senator Hammond, and Senator Harris, I share your outlook. That is why this bill is so important, as it keeps the focus on the client and ensures that everyone is aware of everything. It may be a one-off situation. But as Senator Hammond rightly pointed out, the allegation in this case involving Sysco is that Burford and the law firm representing Sysco did not have the client's interest in mind when they attempted to stop the settlement. These may be rare instances, but the bottom line is we simply do not know. Disclosure at a minimum is the best way to ensure the client is top of mind for everyone involved.

SENATOR HARRIS:
Am I understanding correctly that the judge accepted a filing from someone who was not a party in the case?

MR. MEYERSON:
We can get you background information on this. I do not want to speak out of turn, but the facts in the news story indicate the relationship between the law firm and Burford. I do not want to comment in terms of what the judge accepted. We can get you that background information quite easily.

SENATOR HARRIS:
Can you briefly explain again why the State Bar of Nevada (SBN) is not equipped to deal with these types of improper lawyering? We have avenues of complaints if lawyers are not pursuing their clients' interests. I am wondering why we need legislation as opposed to what has been operating for however long. The SBN is the organization that technically manages these types of things and ensures that attorneys are not doing some of the conduct to which you all have alluded.

MR. MORADKHAN:
The Vegas Chamber respects the SBN and has support building over the years to the Business Law Section. To the point about transparency and disclosure, it is what we do not know, but there is a solution. There have also been issues on national security and intellectual property lawsuits for much larger losses. We can share a recent report from the U.S. Chamber on what was released in November 2022, citing four or five cases regarding concerns about foreign entities and foreign sovereign funds acting as third-party vendors, filing suits and getting information to use against either national defense issues or large corporations on intellectual property development.

SENATOR OHRENSCHALL:
I have a follow-up on Senator Nguyen's questions about section 4 of the bill regarding attorney advertisements. I am looking at the *Nevada Rules of Professional Conduct*, Rule 7.1, which says:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law,

> or omits a fact necessary to make the statement considered as a whole not materially misleading.

An attorney subject to discipline from the SBN, if found to have misled through advertising, could incur suspension, even disbarment. Senate Bill 179, section 4 amends NRS 598, the deceptive trade practices statute regarding goods and services of any business. In NRS 598, it appears the Consumer Affairs Unit, Department of Business and Industry, could decide an attorney was advertising and trying to mislead the public up to the point that it rose to a deceptive trade practice. I interpret this to say the Consumer Affairs Unit could seek civil and criminal penalties against that attorney even without the language in section 4. Based on my reading of NRS 598 regarding deceptive trade practices. Is the language in section 4 needed? An attorney, just like any other business, could be charged with deceptive trade practices by the Consumer Affairs Unit.

MR. MORADKHAN:
With the way advertising standards are now, a firm can decide something should be broadcast and depend on its interpretation of a medical alert. Section 4 is drafted to say advertising must comply with either State, federal or local declaration. If it is a recall, it is a medical emergency. The concern would have to have some government backing to use those words, so consumers know it is sanctioned by the government or a governmental body.

SENATOR OHRENSCHALL:
With the state of NRS 598 regarding deceptive trade practices and the *Nevada Rules of Professional Conduct* governing attorney advertising, has either the Vegas Chamber or the U.S. Chamber of Commerce filed complaints with the State Bar regarding attorney advertising or approached the Consumer Affairs Unit alleging that an attorney's ads have risen to the level of being misleading or deceptive trade practices? That has been done under current practice, statute and *Nevada Rules of Professional Conduct.*

MR. MORADKHAN:
Though the Chamber has not done so itself, we do have members, individual companies, that over the years have filed complaints to the SBN for a variety of reasons. But the Chamber itself has not.

SENATOR OHRENSCHALL:
Do you have any information about the Consumer Affairs Unit, deceptive trade practices and advertising? If any members have sought the help, or if they felt that attorneys' advertisements were misleading? You can follow up with this offline, I do not expect you to have that.

MR. MORADKHAN:
For the record, over the years we have had members who approached the Chamber about filing complaints. I will try to get that information for you.

CHAIR SCHEIBLE:
You mentioned national security a couple of times. And you implied at one point that a third-party funder would be entitled to the information gathered by the attorney representing the client in a suit, through their conversations or through the discovery process. Are you suggesting that the rules of privilege do not apply when an attorney represents a client and has a third-party funder?

MS. FAULK:
The issue is that third-party litigation funding is operating completely in the shadows. We really do not know who is investing in litigation. There could be a scenario where a litigation funder that is a foreign sovereign wealth fund or a foreign state, through litigation, could gain access to information through the sharing of information with the litigation funder by the attorney or the client.

The problem with litigation funding is that we do not know because it operates in secret. For this reason, S.B. 179 is common sense that requires transparency of the fact that litigation funding exists in the case.

CHAIR SCHEIBLE:
I am not understanding how information that is somehow a threat to national security be shared with litigation funders in a way that does not already violate an attorney's professional responsibility or privilege; in which case, we should be going after attorneys who are violating the Rules of Professional Conduct and violating their clients' privilege by sharing their information with a third-party funder.

MR. MEYERSON:
It is multifaceted. There is quite a lot we do not know. What we do know is that nefarious actors are out there—Russia, China, Iran—that want to get, at a

minimum, a competitive advantage against important industries in this Country like aerospace and chip manufacturing by bringing lawsuits and using third-party litigation funding to sue American companies. They hold them hostage and hold them in the litigation mechanism. This results in not freeing up dollars for investment or innovation. That is one angle. Another angle we know about is election interference. This is a way to change hearts and minds through the litigation system. I grant you, some of these things are unknown, but that is why we need disclosure to understand what these sovereign wealth funds and foreign governments may be doing through the American litigation system.

CHAIR SCHEIBLE:
I appreciate that. We do not know what we do not know. And there is certainly some information we are missing, but you just stated on the record in this hearing that China and Russia are funding litigation in the United States to gain a competitive advantage in technological fields.

MR. MEYERSON:
I did not attempt to imply we know for certain that China and Russia are looking to use the system. We know they are adversaries, and this could be one of the tools in their toolbox.

CHAIR SCHEIBLE:
You just spent ten minutes telling us of a problem of grave importance. You are telling me now that you are not sure that is happening.

MR. MEYERSON:
I am telling you that from our perspective, disclosure is critical to have a full view of this. Paul Moradkhan was about to mention a full report of these concerns that details in much greater length than I could in my short remarks. Yes, there is a serious belief among national security experts in this Country that nations like China and Russia may be using the court system for nefarious actions.

MR. MORADKHAN:
We will send a copy of the report. It is comprehensive with several cases footnoted in the research. We will give that to the Committee this afternoon and can follow up afterward. That would be helpful.

CHAIR SCHEIBLE:
We will move to testimony in support of S.B. 179. If you say anything on the record about what may be happening, what may be true, this Committee does maintain the ability to ask you to back statements up with evidence, proof or factual basis. Please keep your comments limited to things we know about.

TOM CLARK (Reno Sparks Chamber of Commerce):
On behalf of the Reno Sparks Chamber of Commerce, my testimony is truthful and simply saying me too. We support S.B. 179.

TRAY ABNEY (Nevada State Director, National Federation of Independent Business):
We are here in strong support of S.B. 179. Just to clarify, the average employee count of my membership of the National Federation of Independent Business (NFIB) in Nevada is four to eight people. Any time a bill brings sunshine to the litigation process, we support. We do not have legal departments or human resources departments. In fact, most times business owners are at their counter or at their desk every time the door is unlocked and open. Simply put, we cannot afford these lawsuits. Inflation has been bad enough on its own without adding this. You may be saying most of this type of lawsuit is against large, non-NFIB members. We are not just concerned about lawsuits against my members but large businesses like wholesalers and transportation companies that supply small businesses. They pay for lawsuits. Then our customers, which are every one of you here in the room and listening to this today, pay more because of those lawsuits. That is why we stay in strong support.

PAUL ENOS (CEO, Nevada Trucking Association):
We support S.B. 179. I represent an industry that moves 95.3 percent of all the manufactured freight in the Silver State. Most of those companies are small; 95.7 percent of trucking companies have fewer than ten trucks. That is great because it allows us to be nimble and be one of those resilient links on the supply chain that can deal with pressures like weather, traffic, import delays, and then find other places to go. We have seen a 967 percent increase over a dozen years, according to the American Transportation Research Institute, in judgments from these lawsuits and especially from nuclear judgments—a judgment of more than $10 million. We have also seen a 49 percent increase in our insurance rates, and that is driving a lot of small carriers out of business.

There are a lot of reasons for the costs of litigation going up. Litigation financing is one of those. I have a member who about half a dozen years ago told me, Paul, I am getting out of the trucking business. I went and met with a guy who goes to my church who is in litigation financing. He is promising 13 percent a quarter return. Now, the trucker said he could not do it because of his trucker heart. Lucky for him, he did not do it because that was part of the $300 million Ponzi scheme. If we had some transparency, those people who were bilked out of that money would have an opportunity to see what lawsuits were being financed. We have seen transparency increased in discovery of how much insurance we have, and this is a fair way to move forward.

SUSAN L. FISHER (Nevada Home Builders Association; Southern Nevada Home Builders Association; Builders Association of Northern Nevada; Nevada Restaurant Association; Nevada Housing Alliance):
We are in support of S.B. 179 because this will help protect Nevada employers and employees from predatory practices. There is an appropriate time for litigation, but when litigation becomes more about seeking money damages than remedying the wrong, the system is opened for potential abuse. Many of our clients have experienced this in some form, and this bill helps shepherd legislation seeking justice and not purely financial gain. This bill brings transparency to the practice of third-party litigation funding and strengthens advertising within the profession. We appreciate the Vegas Chamber for bringing this forward to help Nevada businesses.

JOHN SANDE IV (Nevada Franchised Auto Dealers Association):
I come at this from a slightly different perspective. I have had conversations with litigation funding services in my private practice, and I see the value in these for certain litigation. Also, in an industry, such as automobile sales, we are no strangers to disclosures. Important items could have an impact, especially if settlement is being considered or anything like that; bringing that to light is a key factor. It is important from our perspective that we do not prohibit lenders the opportunity to fund meritorious litigation but also enjoy the disclosures portion of this. We do not have a position on the advertising.

WARREN HARDY (Associated Builders and Contractors Nevada Chapter):
I do not want to rehash what has been said, but Associated Builders and Contractors is in support of the legislation.

LEA CASE (American Property Casualty Insurance Association):
American Property Casualty Insurance Association submitted a letter (Exhibit C) in support of S.B. 179.

CHASE WHITTEMORE (Nevada Builders Alliance):
I am an attorney who practices in civil litigation and has done some plaintiff and defense work. To address Senator Ohrenschall's question about the necessity of TPLF, the decision-making and reasons disclosures are important: When an attorney is representing the defense and getting discovery early in the case, TPLF could help the client reach an early decision on whether to settle and for how much. This allows for the process of settlement to work better for both parties.

If a settlement is offered early in a case, it is better for the plaintiff to know where he or she stands, the numbers, the economics of the deal and how to move forward. For either the defense attorney or plaintiff's attorney evaluating the case, cost and length of the litigation compared to the damages and liability, having this information early in the proceedings gives the attorneys information to advise the client better and to settle early. For those reasons and others, we fully support this bill.

MICHAEL MILLS (Las Vegas Defense Lawyers):
I have been an attorney for 35 years. When I started as an attorney, a lot of the discovery would be asked for, in other words, I am asking you for your list of witnesses, for the documents you intend to disclose and damages you are claiming as part of this litigation. As part of those disclosures, that information would come in by way of requests, like an interrogatory or other written discovery. The idea of transparency overtook the idea of asking for what we need, and we are forcing or pushing information to the other side. The purpose of that is to encourage a settlement of a case. We are trying to get all the documents out, figure out who all the witnesses are and learn everything we can about the case, so we can better resolve and address the case.

To answer one of Senator Ohrenschall's questions, by way of those disclosures, we had to disclose all our insurance information. The insurance policy must be disclosed, even if the primary insurance is not fully implicated. Even excess insurance must be disclosed. We must disclose all our insurance policies. For purposes of parity, point is well made. If plaintiffs are telling defense attorneys where the agreements are and how much this impacts the possibility of

settlement, it will help realize part of the goal of *Nevada Rules of Civil Procedure* to get a just, speedy and inexpensive resolution of litigation.

To answer Senator Stone's question about this discovery coming into evidence, the answer is not if the court brings in the collateral source rule. Insurance information does not get admitted at trial. I doubt very much the judge is ever going to let this kind of agreement in as evidence at a trial.

CONNOR KANE (Nevada Bankers Association):
We are also in support of S.B. 179.

MISTY GRIMMER (Nevada Resort Association):
We too are in support.

AVIVA GORDON (Henderson Chamber of Commerce):
Beyond representing the Henderson Chamber of Commerce today, I am also a practicing attorney in southern Nevada who has had the great privilege of working in southern Nevada for 30 years as a litigator. While the Henderson Chamber of Commerce provides unmitigated support to S.B. 179, I would like to provide specific attention to sections 2 and 3 of the bill.

Third-party litigation funding companies have the potential of unduly influencing civil litigation and changing the dynamic of strategy between attorney and client. The strategies can come into play as to valuation of the case and when is an appropriate time to settle, if ever. The funding companies function as an additional mouth needing to be fed in the process by taking a piece of the proceeds from a judgment or settlement of claims. Their role forces both lawyers and clients to adopt different strategies in resolving claims and when to resolve claims. That change in strategy further slows down our overloaded judicial system and has the potential of prolonging any resolution for a plaintiff in that case who needs those funds.

Furthermore, the financial relationship between third-party litigation funding companies in the process may interfere with the direct relationship between attorney and client as to those fundamental questions about how and when to proceed with a case. Sections 2 and 3 of S.B. 179 give transparency to the rights and obligations set forth in those third-party litigation funding agreements and ensure that such companies would shoulder the risk of fees and costs for advancing litigation in the process. The risk of fees always plays a part in

settlement discussions and having transparency with respect to that risk of fees is fundamental for the rights of the clients.

TIM CASHMAN:
As a member of the business community for 40 years and whose family has been in southern Nevada doing business for 118 years, I can share with you the importance of the legal environment that fosters fairness, transparency and predictability. That is why I am supporting S.B. 179. I am supportive of the bill for two reasons. We cannot allow Nevada's legal system to become a system that consumes the private sector with countless frivolous lawsuits or unreasonable monetary judgments being awarded against it. Secondly, we need to protect consumers from predatory practices that can occur with TPLF commonsense regulation. As introduced, S.B. 179 will make for a stronger legal services industry in Nevada and will benefit Nevada by increasing public interest, transparency and confidence in the legal system.

As someone who believes in free enterprise, this bill does not hamper or deter the use of third-party litigation, but it creates awareness of the practice and brings to light the investors who are funding these cases. It also highlights how these interest-bearing loans work and what the public needs to know before entering these types of loan agreements. We have an obligation as Nevadans to ensure employers, employees and their families are protected from predatory practices. This can be achieved by having commonsense regulation as proposed in this bill. I ask you to vote yes on a bill that will protect the residents of our State.

GINA BONGIOVI (Managing Partner, Bongiovi Law Firm):
I am involved with several civic organizations and business associations including the Vegas Chamber and its Government Affairs Committee. As a licensed attorney who practices and lives in Las Vegas, I support S.B. 179. The focus of my practice is helping small employers and entrepreneurs with legal guidance regarding State and local government regulations, licensing processes, business contracts and business management. As an attorney who has helped thousands of clients and assisted in the creation of hundreds of businesses in Nevada, it is essential to the success of the legal services industry that we provide greater transparency to the use and practice of TPLF in Nevada.

Consumers need to better understand how third-party litigation funding works. There is no sound policy argument as to why the identities of these funders

should not be disclosed. It should be automatically included in the normal course of the civil process and not only be provided as part of discovery as stated previously. This type of funding mechanism can increase litigation costs and may negatively impact the client because the loans usually come with a high interest rate that must be paid. The target market of TPLF companies is often vulnerable people who are not sophisticated enough to understand the grave risks of entering these arrangements that can result in them owing money.

Practical and reasonable regulation does not hurt an industry but strengthens it. It will provide greater trust in our legal system and protect consumers from bad actors who may try to take advantage of clients who do not fully understand the funding mechanism and the interest-bearing loans they are offered through TPLF. I urge the Committee to please support the passage of S.B. 179.

JAMIE COGBURN (Nevada Justice Association):
I want to clean up a couple of earlier statements about how Nevada works regarding the ethical obligations of attorneys. I understand some of the previous testifiers are not from Nevada; but in Nevada, attorneys cannot assign a tort claim to any company. If people are hurt, they cannot assign part of that claim to a litigation funding company. It is their personal claim. The Nevada Supreme Court ruled that just a couple of years ago.

When we are talking about the State Bar regulations, attorneys cannot split fees with nonattorneys. There is no fee splitting. A lawyer cannot pay a funding company extra money because it funds a lawsuit. And when you talk about law firms, we do not buy mechanical gear or machinery. The only asset we have as a law firm is cases. Do law firms get loans? Yes. In fact, the Small Business Administration (SBA) will give a law firm a loan, and SBA then has an interest in every single case the firm handles. Under this bill, supporters would want us to disclose the SBA loan documents and our financials. That is what they are asking for. They are not asking for transparency. In fact, they mentioned the U.S. Government Accountability Office in the study they did. What they failed to mention is that study found that nonclient third-party funders did not influence what the lawyers or the clients did. And in Nevada, we have ethical rules that require the client to control the case. I have recommended that clients settle their cases. The clients say no, they want to move forward. They make that decision, not the attorney and not a litigation company.

Some testifiers also mentioned a *60 Minutes* piece. Surprisingly, they did not mention the Sriracha small farmer; eighty percent of his business went to the Sriracha Company that breached its contract. He would have been out of business, but he did have litigation funding. This case does not involve consumer law. It is a commercial business suing another commercial business. He would have been out of business and bankrupt if he did not have someone help him fund this case. Sriracha, the large corporation, knew that the farmer was a small business. This does not help small businesses.

I wish we could lower interest rates. But here in Nevada, a maximum interest rate can be charged, and it is high. If a consumer is out of work because of an injury, sometimes the only recourse the person has to take loans, and those are fully disclosed. If a law firm funds litigation for a plaintiff in Nevada, it is disclosed to the client as required by our rules.

Testifiers mentioned national security, but I am just not sure on that. There is attorney-client privilege. We have protective orders in litigation. We have protective orders to say it is for attorney eyes only. You cannot even show these documents to your clients because they are so sensitive. And that is regular litigation, not national security type of things.

When we are talking about the advertising, it is a First Amendment issue. Nevada attorneys are governed by the SBN. We must disclose every single ad to the Bar for approval. We will have ethical violations brought against us if we run ads that are not approved or misleading and not appropriate, but we must disclose those ads to the SBN. They must be approved by the SBN. They require disclaimers such as stating, "Notice, this is an advertisement." Nobody is telling anybody to stop taking a drug. I heard mention of patients who got sick because they stopped taking the drug and had reactions, and the ads failed to mention thousands who died or were injured from that drug. So let us talk about the numbers here. Nobody is telling anybody to stop taking their medications. With that, we would ask that you oppose the bill.

SENATOR KRASNER:
I asked the question can an attorney or law firm force a plaintiff to enter this type of agreement? And the answer is no, the plaintiff does so voluntarily. And then the next thing that was said was the example of Erin Brockovich where a group of individuals sued a large power company because it was putting chemicals into the water that were cancerous. Does this bill stop individual

people from being able to sue large entities? Is this how individual people can sue a large entity? Because of this type of agreement?

MR. COGBURN:
It depends. Most law firms that work with plaintiffs do not get paid unless they win. Mr. Mills, who is a fine defense attorney in Las Vegas, gets paid hourly whether he wins, loses or it is a draw. He is getting funding all along. If a lawyer is getting financing, it is for large litigation, like millions of dollars. The firm will get a loan from a bank just like any business gets loans for machinery or anything else for a building. To be clear, if the lawyer is passing along interest from a loan because it is specific to a case, the client must be aware and must approve it.

SENATOR HANSEN:
Is the legal system in Nevada already requiring these things? If you require a forced discovery of TPLF, you have been saying that does not really change much in Nevada. The bill would not cause any damage to your clients. All it would do in my mind is help expand the transparency to make sure everybody knows who is involved all the way up and down the food chain when it comes to paying the bills. Correct?

MR. COGBURN:
I would disagree. For example, my office has lines of credit with Bank of Nevada. I would have to disclose we have those credit lines in every single litigation. My Bank of Nevada credit line says it has an interest in every case I have because that is the only asset of my law firm that provides our income. This happens with disclosure and what they are talking about when requiring this information to be disclosed for strategic advantage.

The defense does not disclose the insurance agreement, it discloses the declaration page. That is a one-page document that confirms the insurance company has coverage of a certain amount of money. It does not finance the way a plaintiff does, and individual plaintiffs are not going to find funding. There are different levels of funding.

We are comparing apples and oranges sometimes here when talking about business funding. Some are like the Sriracha case, a small business that does find funding because the lawsuit is worth millions of dollars. The Sriracha farmer did win and stayed in business. It is like David vs. Goliath, and that is where it

hurts small businesses. If the agreement is disclosed, then the other side has a strategic advantage, knowing the terms like when it expires and when the note is due. The opposition can then starve out that party.

SENATOR HANSEN:
If we had a bill here today to help expand the amount of transparency on insurance policies like you just mentioned, I assume you would be glad to see that. Even if they had to ask you a question like who is funding this whole lawsuit? On the scale of those we are talking about, that is not much of an issue; however, on some of the ones being discussed of hundreds of millions of dollars, national lawsuits, in some cases, international involvement, then this makes a lot more sense.

In the absence of passing this bill into law, how do litigants learn about all the interested parties? In my mind, it is a discovery transparency issue. And if there are issues with the opposing parties not divulging enough information, bring that here because I suspect this Committee would be anxious to help that process be as transparent as humanly possible to make sure judgments are as good, clear, concise and as inexpensive for the citizens of that as we can legislate.

MR. COGBURN:
I agree with you. Transparency is key. The way the bill is written, it is not distinguishing between the distinct types of loans. This puts certain groups at a disadvantage when discussing large business-to-business cases instead of consumers. The Sriracha case, as an example, is a business versus business loan. This is a different type of financing than a consumer who hires a law firm and that law firm now just gets normal funding through a bank. That law firm is being told it needs to disclose all financial material to the other side. This is not what our judicial system is about. In our judicial system, the judge controls what evidence should be disclosed. Yes, judges can require the disclosure of these agreements, and either side can simply ask the judge to do so. It is expected that everybody is being honest; if there is an agreement, it would be disclosed.

BRIAN GARELLI (Preferred Capital Funding-Nevada):
I am an owner of a TPLF, the largest one in Nevada. And I am also a lawyer. I have been a lawyer for 32 years. There has been a lot of testimony, but this bill is solely designed and brought by the insurance industry to gain advantage with plaintiffs. The litigation funding I do is for the plaintiff in personal injury

actions, and my average loan to that person is about $2,000. These are lifelines to pay people's rent, utilities and put food on their tables while their cases are pending. This allows them to wait for a fair settlement offer and not have to settle their case for pennies on the dollar.

I was a defense lawyer for ten years before I started Preferred Capital. I saw plaintiff after plaintiff be forced to take a reduced amount of what the case was worth just because the individual could not pay rent and utilities as the court case dragged on.

Existing TPLF legislation that passed in your State was brought by the third-party litigation funding industry, and it prohibited virtually all the things the Chamber of Commerce is talking about. That litigation funding legislation specifically says the litigation funder cannot have any say in the outcome of the case solely to be determined by the attorney and the client. It specifically limits interest rates. We do not have issues where the litigation funding company is taking too much of the settlement, and it also makes it nonrecourse. If the plaintiff loses the case, the litigation funding company gets nothing. The litigation funding company has no incentive to invest in frivolous litigation or extend litigation. It is trying to help the plaintiff get to the finish line and balance the playing field between multibillion-dollar insurance companies and small plaintiffs that need a few thousand dollars to fund the litigation.

I heard a lot of scaremongering today and a lot of things about foreign entities. I own my own company. I have employees in Nevada. I do not know why the Chamber of Commerce is attacking my business to further the insurance industry. It does not seem right to me, but that is all going on in Nevada. Interest is already heavily regulated by the banking regulators in Nevada with over 12 consumer protections put into the bill. Regulators come in and inspect my business and all the funding I do. Whether plaintiffs take a loan of $2,000, forcing them to disclose, this is solely designed to embarrass them because they had to borrow money while their case was pending. If the Chamber is really interested in settling cases quickly, the lawsuit-funding industry would not exist. But as it started stretching out well-documented cases in the 1990s, the litigation funding industry sprung up. I urge you to vote against this bill. It is a bad bill for consumers.

I represent the trade association that represents the companies that offer this product. We passed legislation in Nevada in 2019; S.B. No. 432 of the

80th Session regulates consumer legal funding in the State. What the money can and cannot be used for is clear. The funds cannot be used to fund the litigation itself. There is some mix-up within the bill. It was evident by the testimony offered here that the primary focus of this legislation is those entities that fund litigation. I can give you some examples. Our average funding for consumers is just a few thousand dollars. The minimum at Burford, a large TPLF company, is around $5 billion.

If S.B. 179 moves forward, we are requesting clarification to say the bill only covers those instances in which funds are used to fund litigation itself. Mandates in the bill are not meant to apply to those using the funds for household needs toward rent or mortgage to keep a roof over their heads while the case is making it is way through the legal system.

DAI WAI CHIN FEMAN (Director, Parabellum Capital):
What I am reading delineates the differences between commercial litigation funding and consumer litigation, and has been filed as opposition testimony (Exhibit D).

CHAIR SCHEIBLE:
I have documents supporting S.B. 179 from the U.S. Chamber of Commerce Institute for Legal Reform (Exhibit E), TruLine (Exhibit F) and National Association of Mutual Insurance Companies (Exhibit G).

SENATOR HAMMOND:
Mr. Cogburn made some excellent points, including the disclosures of certain types of loans, business to business. I will be more than happy to work with him to make a distinction and to move the legislation forward if we can. Mr. Schuller from Alliance for Responsible Consumer Legal Funding submitted a proposed amendment today. I would like to work with him on the kind of language he was discussing earlier.

In S.B. 179, we are proposing not to dissuade, remove or discontinue the practice. We believe that it is here. After this proposed legislation was discussed with me, I did research and listened to a lot of symposiums on this. Nothing is more scintillating than listening to several different lawyers produce different points of view on the same subject matter. I was listening to a Berkeley symposium where five or six different lawyers were discussing issues

arising because there does not seem to be a lot of guardrails on this industry right now.

I watched the Sunday evening news show with Leslie Stahl, and I will end with this. I thought it was a fair and balanced view of the industry. The program gave points on both sides on how to address it moving forward. I really loved the question Leslie Stahl asked of the representative of one of the companies, law firms or litigation funding companies. I am paraphrasing, but she said: "Could there be an instance where the funders walk away with more money than the aggrieved?" And the answer to that question was a simple yes.

Remainder of page intentionally left blank; signature page to follow.

CHAIR SCHEIBLE:
The hearing is closed on S.B. 179, and this meeting is adjourned at 3:11 p.m.

RESPECTFULLY SUBMITTED:

_____
Sally Ramm
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

Date: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 179	C	26	American Property Casualty Insurance Association	Support Testimony
S.B. 179	D	35	Dai Wai Chin Feman	Opposition Testimony
S.B. 179	E	35	U.S. Chamber of Commerce Institute for Legal Reform	Support Material
S.B. 179	F	35	TruLine	Support Testimony
S.B. 179	G	35	National Association of Mutual Insurance Companies	Support Testimony