SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 4374

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2025

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 4374.

As amended, this bill requires disclosure of third-party litigation funding agreements and establishes certain responsibilities for litigation funders.

The bill provides that, in any civil or administrative action, a party or party's attorney is to, without awaiting a discovery request, disclose any litigation funding agreement, defined, in part, to mean a written agreement in which a third party agrees to provide funding to one of the named parties or affiliated law firms and that creates a direct or collateralized interest in the proceeds of the civil or administrative action or group of civil or administrative actions.

The bill also provides that the litigation funding agreement is to be disclosed at the time of the filing of an initial pleading or at the time of the agreement, if the agreement occurs after the initial pleading. Any amendment to a litigation funding agreement that is required to be disclosed is to be provided to all parties at the time the amendment is made. The participants to any litigation funding agreement and nature of that investment or arrangement also are permissible subjects for discovery.

The court, executive branch agency, or tribunal is authorized to impose sanctions for a party's failure to make the required disclosures. The bill does not require disclosure of a contingent fee agreement entered into by a party and the party's legal representative in a civil or administrative action.

The bill additionally codifies a fiduciary duty by litigation funders to the party whose civil or administrative action is subject to the funding agreement to ensure the funder acts in the interests of the party. The litigation funder is jointly liable for costs and any monetary sanction against the party or party's attorney.

The bill also prohibits a litigation funder from engaging in certain conduct that can interfere with the party's civil or administrative action. Specifically, a funder is prohibited from (1) influencing, making or overturning decisions relating to the initiation, conduct, settlement, or resolution of the underlying civil or administrative action, (2) offering to provide or providing legal

advice to the party or party's attorney, or selecting a party's attorney, (3) attempting to secure a particular remedy or obtain a waiver of any remedy potentially available to the party, (4) receiving any payment that exceeds 25 percent of the litigation proceeds, or receiving without express consent of the party whose civil or administrative action is subject to the funding agreement, a combined payment with the party's attorney fee that exceeds 50 percent of the monetary relief obtained, and (5) assigning or securitizing a litigation funding agreement in whole or in part.

The bill provides that a litigation funding agreement is unenforceable by the litigation funder or any successor-in-interest if the funder breaches its fiduciary duty or engages in conduct prohibited by the bill. The bill also provides that a court, executive branch agency, or tribunal may find a litigation funding agreement violates the bill and is unenforceable. Further, a funder's breach of fiduciary duty or engagement in conduct prohibited by the bill constitutes an unfair or deceptive act or practice and a violation of the New Jersey consumer fraud act. The bill also authorizes a court, executive branch agency, or tribunal to impose sanctions, in addition to any remedy otherwise available, for noncompliance with any provision of the bill.

Lastly, the bill provides that it will not apply to pre-settlement funding obtained by an individual who is a party to a civil or administrative action. For purposes of the bill, "pre-settlement funding" means funding solely intended to pay costs of living or other personal or familial expenses during the pendency of a civil action where those funds are not used to defray litigation expenses.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) add a definition of "administrative action" and modify the definitions of "court" and "civil action;"

(2) incorporate executive branch agencies and tribunals as part of provisions granting courts certain authorities or assigning courts certain roles;

(3) clarify the court, executive branch agency, or tribunal does not need a litigation funding agreement, including any amendment, disclosed to it with respect to a civil or administrative action;

(4) remove certain references to a party or parties as "funded;"

(5) require a motion be made prior to the issuance of sanctions by the court for failure to disclose a litigation funding agreement;

(6) require a litigation funder to agree as a condition of providing funding that it will be jointly liable for any award or order imposing or assessing costs or monetary sanctions;

(7) clarify that it is the absence of express consent of a party whose civil or administrative action is subject to a litigation funding

agreement that caps the combined payment to the litigation funder and attorney fee at 50 percent; and

(8) provide that the bill will not apply to pre-settlement funding obtained by an individual who is a party to a civil or administrative action.