

As Amended by House Committee

Session of 2024

HOUSE BILL No. 2510

By Committee on Judiciary

Requested by Eric Stafford on behalf of the Kansas Chamber of Commerce

1-16

1 AN ACT concerning the code of civil procedure; relating to litigation
2 funding by third parties; ~~authorizing discovery of an agreement thereof~~
3 **limiting discovery and disclosure of third-party agreements in**
4 **certain circumstances; requiring reporting of such agreements to**
5 **the judicial council and a judicial council committee to study third-**
6 **party agreements; requiring the clerk of the supreme court to**
7 **develop a form for reports; exempting such reports from the open**
8 **records act; amending K.S.A. 2023 Supp. 60-226 and repealing the**
9 **existing section.**

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 2023 Supp. 60-226 is hereby amended to read as
13 follows: 60-226. (a) *Discovery methods.* Parties may obtain discovery by
14 one or more of the following methods: Depositions on oral examination or
15 written questions; written interrogatories; production of documents or
16 things or permission to enter onto land or other property under K.S.A. 60-
17 234, ~~K.S.A.~~ 60-245(a)(1)(A)(iii) or ~~K.S.A.~~ 60-245a, and amendments
18 thereto; physical and mental examinations; and requests for admission.

19 (b) *Discovery scope and limits.* (1) *Scope in general.* Unless
20 otherwise limited by court order, the scope of discovery is as follows:
21 Parties may obtain discovery regarding any nonprivileged matter that is
22 relevant to any party's claim or defense and proportional to the needs of
23 the case, considering the importance of the issues at stake in the action, the
24 amount in controversy, the parties' relative access to relevant information,
25 the parties' resources, the importance of the discovery in resolving the
26 issues and whether the burden or expense of the proposed discovery
27 outweighs its likely benefit. Information within this scope of discovery
28 need not be admissible in evidence to be discoverable.

29 (2) *Limitations on frequency and extent.* (A) On motion, or on its
30 own, the court may limit the frequency or extent of discovery methods
31 otherwise allowed by the rules of civil procedure and must do so if it
32 determines that:

33 (i) The discovery sought is unreasonably cumulative or duplicative,
34 or can be obtained from some other source that is more convenient, less
35 burdensome or less expensive;

1 (ii) the party seeking discovery has had ample opportunity to obtain
2 the information by discovery in the action; or

3 (iii) the proposed discovery is outside the scope permitted by
4 subsection (b)(1).

5 (B) A party need not provide discovery of electronically stored
6 information from sources that the party identifies as not reasonably
7 accessible because of undue burden or cost. On motion to compel
8 discovery or for a protective order, the party from whom discovery is
9 sought must show that the information is not reasonably accessible
10 because of undue burden or cost. If that showing is made, the court may
11 nonetheless order discovery from such sources if the requesting party
12 shows good cause, considering the limitations of subsection (b)(2)(A). The
13 court may specify conditions for the discovery.

14 (3) *Agreements. (A) Insurance agreements.* A party may obtain
15 discovery of the existence and contents of any insurance agreement under
16 which an insurance business may be liable to satisfy part or all of a
17 possible judgment in the action or to indemnify or reimburse for payments
18 made to satisfy the judgment. Information concerning the insurance
19 agreement is not by reason of disclosure admissible in evidence at trial.
20 For purposes of this paragraph, an application for insurance is not a part of
21 an insurance agreement.

22 (B) (i) *Third-party agreements.* ~~A party may obtain discovery of the~~
23 ~~existence and content of any third-party agreement under which any~~
24 ~~person, other than an attorney representing a party, has agreed to pay~~
25 ~~expenses directly related to prosecuting the legal claim and has a~~
26 ~~contractual right to receive compensation that is contingent on and~~
27 ~~sourced from any proceeds. Information concerning the third-party~~
28 ~~agreement is not, by reason of disclosure, admissible as evidence at trial.~~

29 (ii) **Limitations on discovery of third-party agreements. (a) On**
30 **motion, a court shall prohibit any inquiry into the existence or**
31 **nonexistence of a third-party agreement on finding, by a**
32 **preponderance of the evidence, that such inquiry may cause undue**
33 **prejudice to the party objecting to such inquiry. When making such**
34 **finding, the court shall consider the political, ideological or social**
35 **nature of the case, the likely balance of litigation resources between**
36 **the parties, whether such inquiry would be proportional to the needs**
37 **of the case and any other relevant information presented by the**
38 **parties.**

39 (b) **Information concerning the third-party agreement is not by**
40 **reason of disclosure admissible in evidence at trial.**

41 (c) **Subsection (b)(3)(B) shall not be construed to require a**
42 **nonprofit corporation or association to disclose its members or donors**
43 **or to require disclosure of otherwise privileged information.**

1 (d) Unless the court finds that a third-party agreement would be
2 admissible under the rules of evidence and necessary to prove an
3 element of a claim in the case, disclosure of the existence or content of
4 such agreement shall not be required in any action brought:

5 (1) By or on behalf of the state or any political subdivision of the
6 state enforcing a law or seeking to protect against an imminent threat
7 to health or public safety; or

8 (2) solely in the public interest or on behalf of the general public
9 if:

10 (A) The plaintiff does not seek any relief that is different from the
11 relief sought for the general public or a class of which the plaintiff is a
12 member unless such relief is a claim for attorney fees, costs or
13 penalties;

14 (B) the action, if successful, would enforce an important right
15 affecting the public interest and would confer a significant pecuniary
16 or nonpecuniary benefit on the general public or a large class of
17 persons; and

18 (C) private enforcement is necessary and places a
19 disproportionate financial burden on the plaintiff in relation to the
20 plaintiff's stake in the matter.

21 (e) When requested by the disclosing party, the court shall issue
22 an order to protect discovery of a third-party agreement from
23 disclosure other than to the parties, the parties' counsel, experts and
24 others necessary to the legal claim.

25 (iii) The provisions of this subparagraph shall expire on July 1,
26 2029.

27 (C) *Reporting of third-party agreements.* (i) On and after July 1,
28 2024, any third-party agreement under which a person has a
29 contractual right to receive, directly or indirectly, compensation that is
30 contingent in any respect on the outcome of the claim shall be
31 reported to the judicial council within 45 days after the
32 commencement of an action in any Kansas court in which such a
33 third-party agreement exists or within 45 days after such third-party
34 agreement is entered into, whichever is later. The judicial council shall
35 provide the person who reported such agreement documentation
36 showing that such report was made. Any third-party agreement that is
37 not reported pursuant to this subparagraph is void and unenforceable
38 unless such agreement relates to an action described in subsection (b)
39 (3)(B)(ii)(d).

40 (ii) The clerk of the supreme court shall prescribe a form for use
41 under this subparagraph. Such form shall include a method of
42 reporting whether the third-party agreement is a third-party
43 agreement with a foreign person and any other information the clerk

1 determines is necessary for the judicial council to complete the study
2 required by subsection (b)(3)(D).

3 (iii) Reports received pursuant to this subparagraph shall be
4 confidential and shall not be subject to the provisions of the open
5 records act, K.S.A. 45-215 et seq., and amendments thereto. The
6 provisions of this clause shall expire on July 1, 2029, unless the
7 legislature reviews and reenacts this provision pursuant to K.S.A. 45-
8 229, and amendments thereto.

9 (iv) The provisions of this subparagraph shall expire on July 1,
10 2029.

11 (D) (i) On or before July 1, 2027, the judicial council shall
12 establish a committee to study the issue of third-party agreements.
13 Such committee shall review all reports submitted pursuant to
14 subsection (b)(3)(C) and any other information related to such
15 agreements the committee deems necessary. Between September 1,
16 2028, and December 1, 2028, the judicial council shall report to the
17 chief justice of the supreme court, attorney general, house standing
18 committee on judiciary and senate standing committee on judiciary on
19 the topic of third-party agreements in Kansas and in other states and
20 make recommendations on the use of such third-party agreements in
21 Kansas.

22 (ii) The provisions of this subparagraph shall expire on July 1,
23 2029.

24 (4) *Trial preparation; materials.* (A) *Documents and tangible things.*
25 Ordinarily, a party may not discover documents and tangible things that
26 are prepared in anticipation of litigation or for trial by or for another party
27 or its representative, including the other party's attorney, consultant, surety,
28 indemnitor, insurer or agent. But, subject to subsection (b)(5), those
29 materials may be discovered if:

30 (i) They are otherwise discoverable under ~~paragraph (1)~~ subsection
31 (b)(1); and

32 (ii) the party shows that it has substantial need for the materials to
33 prepare its case and cannot, without undue hardship, obtain their
34 substantial equivalent by other means.

35 (B) *Protection against disclosure.* If the court orders discovery of
36 those materials, it must protect against disclosure of the mental
37 impressions, conclusions, opinions or legal theories of a party's attorney or
38 other representative concerning the litigation.

39 (C) *Previous statement.* Any party or other person may, on request
40 and without the required showing, obtain the person's own previous
41 statement about the action or its subject matter. If the request is refused,
42 the person may move for a court order, and K.S.A. 60-237, and
43 amendments thereto, applies to the award of expenses. A previous

1 statement is either:

2 (i) A written statement that the person has signed or otherwise
3 adopted or approved; or

4 (ii) a contemporaneous stenographic, mechanical, electrical or other
5 recording, or a transcription of it, that recites substantially verbatim the
6 person's oral statement.

7 (5) *Trial preparation; experts.* (A) *Deposition of an expert who may*
8 *testify.* A party may depose any person who has been identified as an
9 expert whose opinions may be presented at trial. If a disclosure is required
10 under subsection (b)(6), the deposition may be conducted only after the
11 disclosure is provided.

12 (B) *Trial-preparation protection for draft disclosures.* Subsections (b)
13 (4)(A) and (b)(4)(B) protect drafts of any disclosure required under
14 subsection (b)(6), and drafts of a disclosure by an expert witness provided
15 in lieu of the disclosure required by subsection (b)(6), regardless of the
16 form in which the draft is recorded.

17 (C) *Trial-preparation protection for communications between a*
18 *party's attorney and expert witnesses.* Subsections (b)(4)(A) and (b)(4)(B)
19 protect communications between the party's attorney and any witness
20 about whom disclosure is required under subsection (b)(6), regardless of
21 the form of the communications, except to the extent that the
22 communications:

23 (i) Relate to compensation for the expert's study or testimony;

24 (ii) identify facts or data that the party's attorney provided and that
25 the expert considered in forming the opinions to be expressed; or

26 (iii) identify assumptions that the party's attorney provided and that
27 the expert relied on in forming the opinions to be expressed.

28 (D) *Expert employed only for trial preparation.* Ordinarily, a party
29 may not, by interrogatories or deposition, discover facts known or
30 opinions held by an expert who has been retained or specially employed
31 by another party in anticipation of litigation or to prepare for trial and who
32 is not expected to be called as a witness at trial. But a party may do so
33 only:

34 (i) As provided in K.S.A. 60-235(b), and amendments thereto; or

35 (ii) on showing exceptional circumstances under which it is
36 impracticable for the party to obtain facts or opinions on the same subject
37 by other means.

38 (E) *Payment.* Unless manifest injustice would result, the court must
39 require that the party seeking discovery:

40 (i) Pay the expert a reasonable fee for time spent in responding to
41 discovery under subsection (b)(5)(A) or (b)(5)(D); and

42 (ii) for discovery under subsection (b)(5)(D), also pay the other party
43 a fair portion of the fees and expenses it reasonably incurred in obtaining

1 the expert's facts and opinions.

2 (6) *Disclosure of expert testimony. (A) Required disclosures.* A party
3 must disclose to other parties the identity of any witness it may use at trial
4 to present expert testimony. The disclosure must state:

5 (i) The subject matter on which the expert is expected to testify; and

6 (ii) the substance of the facts and opinions to which the expert is
7 expected to testify.

8 (B) *Witness who is retained or specially employed.* Unless otherwise
9 stipulated or ordered by the court, if the witness is retained or specially
10 employed to provide expert testimony in the case, or is one whose duties
11 as the party's employee regularly involve giving expert testimony, the
12 disclosure under subsection (b)(6)(A) must also state a summary of the
13 grounds for each opinion.

14 (C) *Time to disclose expert testimony.* A party must make these
15 disclosures at the times and in the sequence that the court orders. Absent a
16 stipulation or court order, the disclosures must be made:

17 (i) At least 90 days before the date set for trial or for the case to be
18 ready for trial; or

19 (ii) if the evidence is intended solely to contradict or rebut evidence
20 on the same subject matter identified by another party under subsection (b)
21 (6)(B), within 30 days after the other party's disclosure.

22 (D) *Supplementing the disclosure.* The parties must supplement these
23 disclosures when required under subsection (e).

24 (E) *Form of disclosures.* Unless otherwise ordered by the court, all
25 disclosures under this subsection must be:

26 (i) In writing, signed and served; and

27 (ii) filed with the court in accordance with K.S.A. 60-205(d), and
28 amendments thereto.

29 (7) *Claiming privilege or protecting trial preparation materials. (A)*
30 *Information withheld.* When a party withholds information otherwise
31 discoverable by claiming that the information is privileged or subject to
32 protection as trial preparation material, the party must:

33 (i) Expressly make the claim; and

34 (ii) describe the nature of the documents, communications or things
35 not produced or disclosed, and do so in a manner that, without revealing
36 information itself privileged or protected, will enable other parties to
37 assess the claim.

38 (B) *Information produced.* If information produced in discovery is
39 subject to a claim of privilege or of protection as trial preparation material,
40 the party making the claim may notify any party that received the
41 information of the claim and the basis for it. After being notified, a party
42 must promptly return, sequester or destroy the specified information and
43 any copies it has; must not use or disclose the information until the claim

1 is resolved; must take reasonable steps to retrieve the information if the
2 party disclosed it before being notified; and may promptly present the
3 information to the court under seal for a determination of the claim. The
4 producing party must preserve the information until the claim is resolved.

5 (c) *Protective orders.* (1) *In general.* A party or any person from
6 whom discovery is sought may move for a protective order in the court
7 where the action is pending, as an alternative on matters relating to a
8 deposition, in the district court where the deposition will be taken. The
9 motion must include a certification that the movant has in good faith
10 conferred or attempted to confer with other affected parties in an effort to
11 resolve the dispute without court action and must describe the steps taken
12 by all attorneys or unrepresented parties to resolve the issues in dispute.
13 The court may, for good cause, issue an order to protect a party or person
14 from annoyance, embarrassment, oppression or undue burden or expense,
15 including one or more of the following:

16 (A) Forbidding the disclosure or discovery;

17 (B) specifying terms, including time and place or the allocation of
18 expenses, for the disclosure or discovery;

19 (C) prescribing a discovery method other than the one selected by the
20 party seeking discovery;

21 (D) forbidding inquiry into certain matters, or limiting the scope of
22 disclosure or discovery to certain matters;

23 (E) designating the persons who may be present while the discovery
24 is conducted;

25 (F) requiring that a deposition be sealed and opened only on court
26 order;

27 (G) requiring that a trade secret or other confidential research,
28 development or commercial information not be revealed or be revealed
29 only in a specified way; and

30 (H) requiring that the parties simultaneously file specified documents
31 or information in sealed envelopes, to be opened as the court orders.

32 (2) *Ordering discovery.* If a motion for a protective order is wholly or
33 partly denied the court may, on just terms, order that any party or person
34 provide or permit discovery.

35 (3) *Awarding expenses.* The provisions of K.S.A. 60-237, and
36 amendments thereto, apply to the award of expenses.

37 (d) *Sequence of discovery.* Unless the parties stipulate or the court
38 orders otherwise for the parties' and witnesses' convenience and in the
39 interests of justice:

40 (1) Methods of discovery may be used in any sequence; and

41 (2) discovery by one party does not require any other party to delay
42 its discovery.

43 (e) *Supplementing disclosures and responses.* (1) *In general.* A party

1 who has made a disclosure under subsection (b)(6), or who has responded
2 to an interrogatory, request for production or request for admission, must
3 supplement or correct its disclosure or response:

4 (A) In a timely manner if the party learns that in some material
5 respect the disclosure or response is incomplete or incorrect, and if the
6 additional or corrective information has not otherwise been made known
7 to the other parties during the discovery process or in writing; or

8 (B) as ordered by the court.

9 (2) *Expert witness.* For an expert to whom the disclosure requirement
10 in subsection (b)(6) applies, the party's duty to supplement extends both to
11 information included in the disclosure and to information given during the
12 expert's deposition. Any additions or changes to this information must be
13 disclosed at least 30 days before trial, unless the court orders otherwise.

14 (f) *Signing disclosures and discovery requests, responses and*
15 *objections.* (1) *Signature required; effect of signature.* Every disclosure
16 under subsection (b)(6) and every discovery request, response or objection
17 must be signed by at least one attorney of record in the attorney's own
18 name, or by the party personally, if unrepresented, and must state the
19 signor's address, e-mail address and telephone number. By signing, an
20 attorney or party certifies that to the best of the person's knowledge,
21 information and belief formed after a reasonable inquiry:

22 (A) With respect to a disclosure, it is complete and correct as of the
23 time it is made;

24 (B) with respect to a discovery request, response or objection, it is:

25 (i) Consistent with the rules of civil procedure and warranted by
26 existing law or by a nonfrivolous argument for extending, modifying or
27 reversing existing law or for establishing new law;

28 (ii) not interposed for any improper purpose, such as to harass, cause
29 unnecessary delay or needlessly increase the cost of litigation; and

30 (iii) neither unreasonable nor unduly burdensome or expensive
31 considering the needs of the case, prior discovery in the case, the amount
32 in controversy and the importance of the issues at stake in the action.

33 (2) *Failure to sign.* Other parties have no duty to act on an unsigned
34 disclosure, request, response or objection until it is signed, and the court
35 must strike it unless a signature is promptly supplied after the omission is
36 called to the attorney's or party's attention.

37 (3) *Sanction for improper certification.* If a certification violates this
38 section without substantial justification, the court, on motion, or on its
39 own, must impose an appropriate sanction on the signer, the party on
40 whose behalf the signer was acting, or both. The sanction may include an
41 order to pay the reasonable expenses, including ~~attorney's~~ attorney fees,
42 caused by the violation.

43 (g) **As used in this section:**

1 **(1) "Foreign person" means:**

2 **(A) An individual that is not a citizen of the United States or an**
3 **alien lawfully admitted for permanent residence in the United States;**

4 **(B) an unincorporated association when a majority of the**
5 **members are not citizens of the United States or aliens lawfully**
6 **admitted for permanent residence in the United States;**

7 **(C) a corporation that is not incorporated in the United States;**

8 **(D) a government, political subdivision or political party of a**
9 **country other than the United States;**

10 **(E) an entity that is organized under the laws of a country other**
11 **than the United States;**

12 **(F) an entity that has a principal place of business in a country**
13 **other than the United States and that has shares or other ownership**
14 **interest held by the government or a government official of a country**
15 **other than the United States; or**

16 **(G) an organization in which any person or entity described in**
17 **subsections (g)(1)(A) through (g)(1)(F) holds a controlling or majority**
18 **interest or in which the holdings of any such persons or entities,**
19 **considered together, would constitute a controlling or majority**
20 **interest.**

21 **(2) "Reasonable interest" means a total interest not greater than**
22 **11.1% of the principal.**

23 **(3) "Third-party agreement" means any agreement under which**
24 **any person, other than a party, an attorney representing the party,**
25 **such attorney's firm or a member of the family or household of a**
26 **party has agreed to pay expenses directly related to prosecuting the**
27 **legal claim and has a contractual right to receive compensation that is**
28 **contingent in any respect on the outcome of the claim. "Third-party**
29 **agreement" does not include an agreement that does not afford the**
30 **nonparty agreeing to pay legal expenses any profit from the legal**
31 **claim beyond repayment of the amount such nonparty has**
32 **contractually agreed to provide plus reasonable interest.**

33 **(h) The provisions of subsections (b)(3)(B), (b)(3)(C) and (b)(3)**
34 **(D) are severable. If any portion of such subsections is held by a court**
35 **to be unconstitutional or invalid, or the application of any portion of**
36 **such subsections to any person or circumstance is held by a court to be**
37 **unconstitutional or invalid, the invalidity shall not affect the other**
38 **portions of such subsections that can be given effect without the**
39 **invalid portion or application, and the applicability of such other**
40 **portions of such subsections to any person or circumstance remains**
41 **valid and enforceable.**

42 Sec. 2. K.S.A. 2023 Supp. 60-226 is hereby repealed.

43 Sec. 3. This act shall take effect and be in force from and after its

- 1 publication in the statute book.