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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 11, 2025
Subject: Bill Brief for SB 54 (Substitute for SB 54)

Substitute for Senate Bill 54 by Committee on Judiciary limits discovery and disclosure of third-party litigation funding agreements and requires reporting of such agreements to the judicial council for study.

The bill amends K.S.A. 60-226, the statute in the rules of civil procedure that covers discovery, to provide rules for discovery related to third-party litigation funding agreements. "Third-party litigation funding agreement" is defined as any agreement under which any person, other than a party, an attorney representing the party, such attorney's firm or a member of the family or household of a party has agreed to pay expenses directly related to prosecuting the legal claim and has a contractual right to receive compensation that is contingent in any respect on the outcome of the claim. The term does not include an agreement that does not afford the nonparty agreeing to pay legal expenses any profit from the legal claim beyond repayment of the amount such nonparty has contractually agreed to provide plus reasonable interest, defined in the bill as a total interest not greater than 11.1% of the principal.

The bill provides that a party shall provide to the court, for in camera review, any third-party litigation funding agreement within 30 days after commencement of a legal action or 30 days after execution of a third-party litigation funding agreement, whichever is later. Except as otherwise stipulated by the parties or ordered by the court, if a party has entered into a third-party litigation funding agreement, such party shall deliver to all other parties, within 30 days after commencement of a legal action or 30 days after execution of such third-party litigation funding agreement, whichever is later, a sworn statement disclosing:

- 1) The identity of all contracting parties to the third-party litigation funding agreement;

- 2) whether the agreement grants a third-party funder control or approval rights with respect to litigation or settlement decisions or otherwise has the potential to create conflicts of interest between the third-party funder and the party and, if the agreement does grant such control or approval rights, the nature of the terms and conditions relating to such control of approval rights;
- 3) whether the agreement grants a third-party funder the right to receive materials designated as confidential pursuant to a protective or confidentiality agreement or order in the action;
- 4) the existence of any known relationship between a third-party funder and the adverse party, the adverse party's counsel or the court;
- 5) a description of the nature of the financial interest, including, but not limited to, whether such interest is, in whole or in part, recourse or non-recourse; and
- 6) whether any foreign person from a foreign country of concern is providing funding, directly or indirectly, for the third-party litigation funding agreement.

The bill provides that information concerning the third-party litigation funding agreement is not by reason of disclosure admissible in evidence at trial. Further, the provisions shall not be construed to require a nonprofit corporation or association to disclose its members or donors. Except for the in camera review requirement, the provisions of this section shall not be construed to modify the applicability of articles 2 or 4 of chapter 60 of the Kansas Statutes Annotated.

The bill also requires reporting of third-party agreements to the judicial council. On and after July 1, 2025, courts shall provide any third-party funding litigation agreement received under the new provisions to the judicial council. The judicial council shall provide to the party who provided the third-party funding litigation agreement to the court documentation that such agreement was received by the judicial council. The clerk of the supreme court shall prescribe a form for this reporting, which shall include a method of reporting whether the third-party litigation funding agreement is an agreement with a foreign person from a foreign country of concern and any other information the clerk determines is necessary for the judicial council to complete the study required below. Reports received shall be confidential and shall not be subject to the provisions of the open records act.

Finally, the bill requires that on or before January 1, 2030, the judicial council shall study the issue of third-party litigation funding agreements and submit a report containing its conclusions and recommendations to the chief justice of the supreme court, attorney general, house standing committee on judiciary and senate standing committee on judiciary on the topic of third-party litigation funding agreements in Kansas. The judicial council's report shall include recommendations on the use of third-party litigation funding agreements in Kansas and whether future reporting of such agreements would be beneficial. On January 1, 2031, and each January 1 thereafter, the judicial council shall report the total number of reports received in the previous calendar year to the chief justice of the supreme court, attorney general, house standing committee on judiciary and senate standing committee on judiciary.

The bill would take effect from and after publication in the statute book, July 1, 2025.