



KANSAS BAR
ASSOCIATION

TO: **The Honorable Kellie Warren**
 And Members of the Senate Judiciary Committee

FROM: **Joseph Molina**
 On Behalf of the Kansas Bar Association

RE: **SB 54 - Limiting discovery and disclosure of third-party litigation funding agreements in certain circumstances and requiring reporting of such agreements to the judicial council for study.**

DATE: **February 10, 2025**

Madam Chair and Members of the Senate Judiciary Committee:

The KBA appreciates the opportunity to provide this written testimony in **OPPOSITION** to **SB 54 - Limiting discovery and disclosure of third-party litigation funding agreements in certain circumstances and requiring reporting of such agreements to the judicial council for study**

The Kansas Bar Association has a long-standing policy of supporting access to justice and access to the courts. Access to justice commonly refers to an injury consisting of, or resulting from, denial of access to courts, denial of procedural fairness and due process in relation to court proceedings. Requiring a party to disclose third-party agreements may lead to fewer opportunities for meritorious claims to be heard by the court due to a party's inability to fund the action.

SB 54 may curtail that access by removing a tool the financially underfunded could use to litigate claims. Third-Party financing promotes equal access to the judicial system by assisting with financial barriers that litigants often face. This assistance prevents the legal system from favoring only those with significant financial resources. SB 54 would place plaintiffs at a strategic disadvantage against well-funded defendants and their insurers by forcing the disclosure of valuable information that could be used to force settlements.

Further, SB 54 also appears to be overly broad because it does not define what types of agreements are subject to mandatory disclosure, nor does it define which types of entities have a right to receive compensation from civil action. Page two, line 20-21 of the bill reads as follows:

"...(B) (i) Third-party agreements. A party may obtain discovery of the existence and content of any third-party agreement".

This specific section would be overly broad as its terms are not defined and may very well require disclosure of all Medicaid, Medicare and ERISA agreements and a host of other types of agreements that do not appear to be the primary focus of the bill.

SB 54 also places additional burdens on the disclosing party to protect information that may be contained within a third-party agreement. On page 3, line 10-13 of the bill reads as follows:

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

In this section the disclosing party must request the court order others not to disclose the contents of a third-party agreement. This type of protection should be automatic because these agreements often contain attorney-client information.

It is for these reasons the KBA opposes **SB 54** - Limiting discovery and disclosure of third-party litigation funding agreements in certain circumstances and requiring reporting of such agreements to the judicial council for study.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 5,500 members include lawyers, judges, law students, paralegal students and paralegals. www.ksbar.org