

KANSAS OFFICE *of*
REVISOR *of* STATUTES
LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 10, 2025

Subject: Bill Brief on SB 54

Senate Bill 54 limits discovery and disclosure of third-party litigation funding agreements in certain circumstances and requires reporting of such agreements to the judicial council for study.

The bill amends K.S.A. 60-226, which is the statute in the rules of civil procedure that covers discovery. The bill provides that a party may obtain discovery of the existence and content of any third-party agreement, subject to specified limitations. Third-party 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.

On motion, a court shall prohibit any inquiry into the existence or nonexistence of a third-party agreement on finding, by a preponderance of the evidence, that such inquiry may cause undue prejudice to the party objecting to such inquiry. Information concerning the third-party agreement is not by reason of disclosure admissible in evidence at trial. Unless the court finds that a third-party agreement would be admissible under the rules of evidence and necessary to prove an element of a claim in the case, disclosure of the existence or content of such agreement shall not be required in any action brought: (1) By or on behalf of the state or any political subdivision of the state enforcing a law or seeking to protect against an imminent threat to health or public safety; or (2) solely in the public interest or on behalf of the general public if certain criteria are met.

When requested by the disclosing party, the court shall 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.

The bill also requires reporting of third-party agreements to the judicial council. On and after July 1, 2025, any third-party agreement under which a person has a contractual right to receive, directly or indirectly, compensation that is contingent in any respect on the outcome of the claim shall be reported to the judicial council within 45 days after the commencement of an action in any Kansas court in which such a third-party agreement exists or within 45 days after such third-party agreement is entered into, whichever is later. The judicial council shall provide the person who reported such agreement documentation showing that such report was made. Any third-party agreement that is not reported is void and unenforceable unless such agreement relates to a specified action described above. The clerk of the supreme court shall prescribe a form for this reporting and reports received shall be confidential and shall not be subject to the provisions of the open records act.

Finally, the bill requires a judicial council committee to study third-party agreements. On or before July 1, 2028, the judicial council shall establish a committee that is required to review all third-party agreement reports submitted and any other information related to such agreements the committee deems necessary. Beginning on December 1, 2029, and each December 1 thereafter, the judicial council shall report 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 agreements in Kansas and in other states and make recommendations on the use of such third-party agreements in Kansas.