

Substitute for SENATE BILL No. 54

By Committee on Judiciary

2-18

1 AN ACT concerning the code of civil procedure; relating to litigation
2 funding by third parties; limiting discovery and disclosure of third-
3 party litigation funding agreements; requiring reporting of such
4 agreements to the court and requiring the judicial council to study third-
5 party litigation funding agreements; requiring the clerk of the supreme
6 court to develop a form for reports; exempting such reports from the
7 open records act; amending K.S.A. 2024 Supp. 60-226 and repealing
8 the existing section.
9

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

11 Section 1. K.S.A. 2024 Supp. 60-226 is hereby amended to read as
12 follows: 60-226. (a) *Discovery methods.* Parties may obtain discovery by
13 one or more of the following methods: Depositions on oral examination or
14 written questions; written interrogatories; production of documents or
15 things or permission to enter onto land or other property under K.S.A. 60-
16 234, ~~K.S.A. 60-245(a)(1)(A)(iii)~~ or ~~K.S.A. 60-245a~~, and amendments
17 thereto; physical and mental examinations; and requests for admission.

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

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

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

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

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

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

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

20 (B) (i) *Third-party litigation funding agreements. (a) A party shall*
21 *provide to the court, for in camera review, any third-party litigation*
22 *funding agreement within 30 days after commencement of a legal action*
23 *or 30 days after execution of a third-party litigation funding agreement,*
24 *whichever is later.*

25 (b) *Except as otherwise stipulated by the parties or ordered by the*
26 *court, if a party has entered into a third-party litigation funding*
27 *agreement, such party shall deliver to all other parties, within 30 days*
28 *after commencement of a legal action or 30 days after execution of such*
29 *third-party litigation funding agreement, whichever is later, a sworn*
30 *statement disclosing:*

31 (1) *The identity of all contracting parties to the third-party litigation*
32 *funding agreement, including the name, address and, if a party is a legal*
33 *entity, the place of formation of such entity;*

34 (2) *whether the agreement grants a third-party funder control or*
35 *approval rights with respect to litigation or settlement decisions or*
36 *otherwise has the potential to create conflicts of interest between the third-*
37 *party funder and the party and, if the agreement does grant such control*
38 *or approval rights, the nature of the terms and conditions relating to such*
39 *control of approval rights;*

40 (3) *whether the agreement grants a third-party funder the right to*
41 *receive materials designated as confidential pursuant to a protective or*
42 *confidentiality agreement or order in the action;*

43 (4) *the existence of any known relationship between a third-party*

1 *funder and the adverse party, the adverse party's counsel or the court;*

2 (5) *a description of the nature of the financial interest, including, but*
3 *not limited to, whether such interest is, in whole or in part, recourse or*
4 *non-recourse; and*

5 (6) *whether any foreign person from a foreign country of concern is*
6 *providing funding, directly or indirectly, for the third-party litigation*
7 *funding agreement and, if so, the name, address and country of*
8 *incorporation or registration of the foreign person.*

9 (ii) *Limitations on discovery of third-party litigation funding*
10 *agreements. (a) Information concerning the third-party litigation funding*
11 *agreement is not by reason of disclosure admissible in evidence at trial.*

12 (b) *Subsection (b)(3)(B)(i) shall not be construed to require a*
13 *nonprofit corporation or association to disclose its members or donors.*

14 (c) *Except as provided in subsection (b)(3)(B)(i), the provisions of*
15 *this section shall not be construed to modify the applicability of articles 2*
16 *or 4 of chapter 60 of the Kansas Statutes Annotated, and amendments*
17 *thereto.*

18 (iii) *Reporting of third-party litigation funding agreements. (a) On*
19 *and after July 1, 2025, courts shall provide any third-party funding*
20 *litigation agreement received under subsection (b)(3)(B)(i)(a) to the*
21 *judicial council. The judicial council shall provide to the party who*
22 *provided the third-party funding litigation agreement to the court under*
23 *subsection (b)(3)(B)(i)(a) documentation that such agreement was*
24 *received by the judicial council.*

25 (b) *The clerk of the supreme court shall prescribe a form for use*
26 *under this clause. Such form shall include a method of reporting whether*
27 *the third-party litigation funding agreement is an agreement with a foreign*
28 *person from a foreign country of concern and any other information the*
29 *clerk determines is necessary for the judicial council to complete the study*
30 *required by subsection (b)(3)(B)(iii)(d).*

31 (c) *A report received pursuant to this subparagraph shall be*
32 *confidential and shall not be subject to the provisions of the open records*
33 *act, K.S.A. 45-215, et seq., and amendments thereto. The provisions of this*
34 *subclause shall expire on July 1, 2030, unless the legislature reviews and*
35 *reenacts these provisions pursuant to K.S.A. 45-229, and amendments*
36 *thereto.*

37 (d) *On or before January 1, 2030, the judicial council shall study the*
38 *issue of third-party litigation funding agreements and submit a report*
39 *containing its conclusions and recommendations to the chief justice of the*
40 *supreme court, attorney general, house standing committee on judiciary*
41 *and senate standing committee on judiciary on the topic of third-party*
42 *litigation funding agreements in Kansas. The judicial council's report*
43 *shall include recommendations on the use of third-party litigation funding*

1 *agreements in Kansas and whether future reporting of such agreement*
2 *would be beneficial. On January 1, 2031, and each January 1 thereafter,*
3 *the judicial council shall report the total number of reports received in the*
4 *previous calendar year under subsection (b)(3)(B)(iii) to the chief justice*
5 *of the supreme court, attorney general, house standing committee on*
6 *judiciary and senate standing committee on judiciary.*

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

13 (i) They are otherwise discoverable under paragraph (1); and
14 (ii) the party shows that it has substantial need for the materials to
15 prepare its case and cannot, without undue hardship, obtain their
16 substantial equivalent by other means.

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

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

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

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

32 (5) *Trial preparation; experts.*

33 (A) *Deposition of an expert who may testify.* A party may depose any
34 person who has been identified as an expert whose opinions may be
35 presented at trial. If a disclosure is required under subsection (b)(6), the
36 deposition may be conducted only after the disclosure is provided.

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

42 (C) *Trial-preparation protection for communications between a*
43 *party's attorney and expert witnesses.* Subsections (b)(4)(A) and (b)(4)(B)

1 protect communications between the party's attorney and any witness
2 about whom disclosure is required under subsection (b)(6), regardless of
3 the form of the communications, except to the extent that the
4 communications:

- 5 (i) Relate to compensation for the expert's study or testimony;
- 6 (ii) identify facts or data that the party's attorney provided and that
7 the expert considered in forming the opinions to be expressed; or
- 8 (iii) identify assumptions that the party's attorney provided and that
9 the expert relied on in forming the opinions to be expressed.

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

- 16 (i) As provided in K.S.A. 60-235(b), and amendments thereto; or
- 17 (ii) on showing exceptional circumstances under which it is
18 impracticable for the party to obtain facts or opinions on the same subject
19 by other means.

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

- 22 (i) Pay the expert a reasonable fee for time spent in responding to
23 discovery under subsection (b)(5)(A) or (b)(5)(D); and
- 24 (ii) for discovery under subsection (b)(5)(D), also pay the other party
25 a fair portion of the fees and expenses it reasonably incurred in obtaining
26 the expert's facts and opinions.

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

- 30 (i) The subject matter on which the expert is expected to testify; and
- 31 (ii) the substance of the facts and opinions to which the expert is
32 expected to testify.

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

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

- 42 (i) At least 90 days before the date set for trial or for the case to be
43 ready for trial; or

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

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

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

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

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

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

15 (i) Expressly make the claim; and

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

20 (B) *Information produced.* If information produced in discovery is
21 subject to a claim of privilege or of protection as trial preparation material,
22 the party making the claim may notify any party that received the
23 information of the claim and the basis for it. After being notified, a party
24 must promptly return, sequester or destroy the specified information and
25 any copies it has; must not use or disclose the information until the claim
26 is resolved; must take reasonable steps to retrieve the information if the
27 party disclosed it before being notified; and may promptly present the
28 information to the court under seal for a determination of the claim. The
29 producing party must preserve the information until the claim is resolved.

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

41 (A) Forbidding the disclosure or discovery;

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

- 1 (C) prescribing a discovery method other than the one selected by the
- 2 party seeking discovery;
- 3 (D) forbidding inquiry into certain matters, or limiting the scope of
- 4 disclosure or discovery to certain matters;
- 5 (E) designating the persons who may be present while the discovery
- 6 is conducted;
- 7 (F) requiring that a deposition be sealed and opened only on court
- 8 order;
- 9 (G) requiring that a trade secret or other confidential research,
- 10 development or commercial information not be revealed or be revealed
- 11 only in a specified way; and
- 12 (H) requiring that the parties simultaneously file specified documents
- 13 or information in sealed envelopes, to be opened as the court orders.
- 14 (2) *Ordering discovery.* If a motion for a protective order is wholly or
- 15 partly denied the court may, on just terms, order that any party or person
- 16 provide or permit discovery.
- 17 (3) *Awarding expenses.* The provisions of K.S.A. 60-237, and
- 18 amendments thereto, apply to the award of expenses.
- 19 (d) *Sequence of discovery.* Unless the parties stipulate or the court
- 20 orders otherwise for the parties' and witnesses' convenience and in the
- 21 interests of justice:
 - 22 (1) Methods of discovery may be used in any sequence; and
 - 23 (2) discovery by one party does not require any other party to delay
 - 24 its discovery.
- 25 (e) *Supplementing disclosures and responses.* (1) *In general.* A party
- 26 who has made a disclosure under subsection (b)(6), or who has responded
- 27 to an interrogatory, request for production or request for admission, must
- 28 supplement or correct its disclosure or response:
 - 29 (A) In a timely manner if the party learns that in some material
 - 30 respect the disclosure or response is incomplete or incorrect, and if the
 - 31 additional or corrective information has not otherwise been made known
 - 32 to the other parties during the discovery process or in writing; or
 - 33 (B) as ordered by the court.
- 34 (2) *Expert witness.* For an expert to whom the disclosure requirement
- 35 in subsection (b)(6) applies, the party's duty to supplement extends both to
- 36 information included in the disclosure and to information given during the
- 37 expert's deposition. Any additions or changes to this information must be
- 38 disclosed at least 30 days before trial, unless the court orders otherwise.
- 39 (f) *Signing disclosures and discovery requests, responses and*
- 40 *objections.* (1) *Signature required; effect of signature.* Every disclosure
- 41 under subsection (b)(6) and every discovery request, response or objection
- 42 must be signed by at least one attorney of record in the attorney's own
- 43 name, or by the party personally, if unrepresented, and must state the

1 signor's address, e-mail address and telephone number. By signing, an
2 attorney or party certifies that to the best of the person's knowledge,
3 information and belief formed after a reasonable inquiry:

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

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

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

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

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

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

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

25 (g) *Definitions. As used in this section:*

26 (1) *"Foreign country of concern" means any foreign adversary as*
27 *such term is defined by 15 C.F.R. § 7.4, as in effect on July 1, 2025, and*
28 *any organization that is designated as a foreign terrorist organization as*
29 *of July 1, 2025, pursuant to 8 U.S.C. § 1189, as in effect on July 1, 2025.*

30 (2) *"Foreign person" means:*

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

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

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

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

39 (E) *an entity that is organized under the laws of a county other than*
40 *the United States;*

41 (F) *an entity that has a principal place of business in a country other*
42 *than the United States and has shares or other ownership interest held by*
43 *the government or a government official of a country other than the*

1 *United States; or*

2 *(G) an organization in which any person or entity described in*
3 *subsections (g)(2)(A) through (g)(2)(F) holds a controlling or majority*
4 *interest or in which the holdings of any such persons or entities,*
5 *considered together, would constitute a controlling majority interest.*

6 *(3) "Reasonable interest" means a total interest not greater than*
7 *11.1% of the principal.*

8 *(4) "Third-party litigation funding agreement" means any agreement*
9 *under which any person, other than a party, an attorney representing the*
10 *party, such attorney's firm or a member of the family or household of a*
11 *party has agreed to pay expenses directly related to prosecuting the legal*
12 *claim and has a contractual right to receive compensation that is*
13 *contingent in any respect on the outcome of the claim. "Third-party*
14 *litigation funding agreement" does not include an agreement that does not*
15 *afford the nonparty agreeing to pay legal expenses any profit from the*
16 *legal claim beyond repayment of the amount such nonparty has*
17 *contractually agreed to provide plus reasonable interest.*

18 *(h) The provisions of subsection (b)(3)(B) are severable. If any*
19 *portion of such subsection is held by a court to be unconstitutional or*
20 *invalid, or the application of any portion of such subsection to any person*
21 *or circumstance is held by a court to be unconstitutional or invalid, the*
22 *invalidity shall not affect the other portions of such subsection that can be*
23 *given effect without the invalid portion or application, and the*
24 *applicability of such other portions of such subsection to any person or*
25 *circumstance remains valid and enforceable.*

26 *Sec. 2. K.S.A. 2024 Supp. 60-226 is hereby repealed.*

27 *Sec. 3. This act shall take effect and be in force from and after its*
28 *publication in the statute book.*