

## **Third-party Litigation Funding Agreements; Sub. for SB 54**

**Sub. for SB 54** amends the Kansas Code of Civil Procedure to require the disclosure of third-party litigation funding agreements (TPLF agreements or agreements).

### ***Third-party Litigation Funding Agreements***

The bill defines the term “third-party litigation funding agreement” as an 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 bill specifies the term does not include an agreement that does not afford the non-party agreeing to pay legal expenses any profit from the legal claim beyond repayment of the amount the non-party has contractually agreed to provide, plus reasonable interest, limited by the bill to an amount not greater than 11.1 percent of the principal.

### ***Disclosure***

The bill requires a party to provide the TPLF agreement to the court for an *in camera* review, and unless otherwise stipulated by the parties or ordered by the court, deliver a sworn statement disclosing certain facts related to the agreement within 30 days after commencement of legal action or 30 days after the execution of the agreement, whichever is later. [Note: “*In camera*” is a legal term that means in private.]

Facts required to be disclosed by the bill include:

- The identity of all contracting parties to the agreement;
- 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;
- Whether the agreement grants a third-party funder the right to receive materials designated as confidential in the action;
- The existence of any known relationship between a third-party funder and the adverse party, adverse party’s counsel, or the court;
- A description of the nature of the financial interest, including whether such interest is in whole or in part recourse or non-recourse; and

- Whether any foreign person from a foreign country of concern, as defined by the bill, is providing funding, directly or indirectly, for the agreement, and if so, the name, address, and country of incorporation or registration of the foreign person.

### *Limitations on Discovery of Third-party Litigation Funding Agreements*

The bill provides the following limitations on the discovery of TPLF agreements:

- Disclosed information concerning an agreement shall not be admissible as evidence at trial solely because it was disclosed;
- A non-profit corporation or association shall not be required to disclose its members or donors in order to comply with the provisions of the bill; and
- Nothing in the bill may be construed to modify the applicability of the Kansas Rules of Civil Procedure or Kansas Rules of Evidence, except as provided in provisions related to the disclosure of agreements.

### **Definitions**

The bill defines the term “foreign country of concern” as any foreign adversary as defined by the U.S. Secretary of Commerce in regulation as in effect on July 1, 2025, and any organization that is designated as a foreign terrorist organization as of July 1, 2025, by the U.S. Secretary of State.

The bill defines the term “foreign person” as:

- An individual who is not a U.S. citizen or an alien lawfully admitted for permanent residence in the United States;
- An unincorporated association where the majority of the members are not U.S. citizens or aliens lawfully admitted for permanent residence in the United States;
- A corporation that is not incorporated in the United States;
- A government, political subdivision, or political party of a country other than the United States;
- An entity that is organized under the laws of a country other than the United States and has shares or other ownership interest held by a government or government official from a country other than the United States; or
- An organization in which any person or entity as described above holds a controlling or majority interest, or in which the holdings of any such persons or entities shall constitute a controlling or majority interest.

***Severability***

The bill's provisions related to TPLF disclosure are severable, ensuring any court decision holding these provisions invalid or unconstitutional will not affect the validity and enforceability of provisions that may be given effect notwithstanding the invalidity.