

**SENATE BILL No. 54**

By Committee on Judiciary

1-21

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 agreements in certain circumstances; requiring reporting of such  
4 agreements to the judicial council and a judicial council committee to  
5 study third-party agreements; requiring the clerk of the supreme court  
6 to develop a form for reports; exempting such reports from the open  
7 records act; amending K.S.A. 2024 Supp. 60-226 and repealing the  
8 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 agreements.* A party may obtain discovery of the  
21 existence and content of any third-party agreement.

22 (ii) *Limitations on discovery of third-party agreements. (a) On*  
23 *motion, a court must prohibit any inquiry into the existence or*  
24 *nonexistence of a third-party agreement on a finding, by a preponderance*  
25 *of the evidence, that such inquiry may cause undue prejudice to the party*  
26 *objecting to such inquiry. When making such a finding, the court must*  
27 *consider the political, ideological or social nature of the case, the likely*  
28 *balance of litigation resources between the parties, whether such inquiry*  
29 *would be proportional to the needs of the case and any other relevant*  
30 *information presented by the parties.*

31 (b) *Information concerning the third-party agreement is not by*  
32 *reason of disclosure admissible in evidence at trial.*

33 (c) *Subsection (b)(3)(B) shall not be construed to require a nonprofit*  
34 *corporation or association to disclose its members or donors or require*  
35 *disclosure of otherwise privileged information.*

36 (d) *Unless the court finds that a third-party agreement would be*  
37 *admissible under the rules of evidence and necessary to prove an element*  
38 *of a claim in the case, disclosure of the existence or content of such*  
39 *agreement must not be required in any action brought:*

40 (1) *By or on behalf of the state or any political subdivision of the*  
41 *state enforcing a law or seeking to protect against an imminent threat to*  
42 *health or public safety; or*

43 (2) *solely in the public interest or on behalf of the general public if:*

1       (A) *The plaintiff does not seek any relief that is different from the*  
2 *relief sought for the general public or a class of which the plaintiff is a*  
3 *member unless such relief is a claim for attorney fees, costs or penalties;*

4       (B) *the action, if successful, would enforce an important right*  
5 *affecting the public interest and would confer a significant pecuniary or*  
6 *nonpecuniary benefit on the general public or a large class of persons;*  
7 *and*

8       (C) *private enforcement is necessary and places a disproportionate*  
9 *financial burden on the plaintiff's state in the matter.*

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

14       (C) *Reporting of third-party agreements. (i) On and after July 1,*  
15 *2025, any third-party agreement under which a person has a contractual*  
16 *right to receive, directly or indirectly, compensation that is contingent in*  
17 *any respect on the outcome of the claim must be reported to the judicial*  
18 *council within 45 days after the commencement of an action in any Kansas*  
19 *court in which such a third-party agreement exists or within 45 days after*  
20 *such third-party agreement is entered into, whichever is later. The judicial*  
21 *council must provide the person who reported such agreement*  
22 *documentation showing that such report was made. Any third-party*  
23 *agreement that is not reported pursuant to this subparagraph is void and*  
24 *unenforceable unless such agreement relates to an action described in*  
25 *subsection (b)(3)(B)(ii)(d).*

26       (ii) *The clerk of the supreme court shall prescribe a form for use*  
27 *under this subparagraph. Such form shall include a method of reporting*  
28 *whether the third-party agreement is a third-party agreement with a*  
29 *foreign person and any other information the clerk determines is*  
30 *necessary for the judicial council to complete the study required by*  
31 *subsection (b)(3)(D).*

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

38       (D) *On or before July 1, 2028, the judicial council shall establish a*  
39 *committee to study the issue of third-party agreements. Such committee*  
40 *shall review all reports submitted pursuant to subsection (b)(3)(C) and*  
41 *any other information related to such agreements the committee deems*  
42 *necessary. Beginning on December 1, 2029, and each December 1*  
43 *thereafter, the judicial council shall report to the chief justice of the*

1 *supreme court, attorney general, house standing committee on judiciary*  
2 *and senate standing committee on judiciary on the topic of third-party*  
3 *agreements in Kansas and in other states and make recommendations on*  
4 *the use of such third-party agreements in Kansas.*

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

11 (i) They are otherwise discoverable under ~~paragraph (1)~~ *subsection*  
12 *(b)(1)*; and

13 (ii) the party shows that it has substantial need for the materials to  
14 prepare its case and cannot, without undue hardship, obtain their  
15 substantial equivalent by other means.

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

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

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

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

31 (5) *Trial preparation; experts.*

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

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

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

1 about whom disclosure is required under subsection (b)(6), regardless of  
2 the form of the communications, except to the extent that the  
3 communications:

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

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

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

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

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

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

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

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

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

- 41 (i) At least 90 days before the date set for trial or for the case to be  
42 ready for trial; or
- 43 (ii) if the evidence is intended solely to contradict or rebut evidence

1 on the same subject matter identified by another party under subsection (b)  
2 (6)(B), within 30 days after the other party's disclosure.

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

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

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

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

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

14 (i) Expressly make the claim; and

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

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

26 (1) *"Foreign person" means:*

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

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

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

33 (D) *a government, political subdivision or political party of a county  
34 other than the United States;*

35 (E) *an entity that is organized under the laws of a country other than  
36 the United States;*

37 (F) *an entity that has a principal place of business in a country other  
38 than the United States and has shares or other ownership interest held by  
39 the government or a government official of a country other than the  
40 United States; or*

41 (G) *an organization in which any person or entity described in  
42 subsections (g)(1)(A) through (g)(1)(F) holds a controlling or majority  
43 interest or in which the holdings of any such persons or entities,*



1 *considered together, would constitute a controlling or majority interest.*

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

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

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

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

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