

SESSION OF 2025

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 54**

As Recommended by Senate Committee on
Judiciary

Brief*

Sub. for SB 54 would amend the Kansas Code of Civil Procedure to require the disclosure of third-party litigation funding agreements (TPLF agreements or agreements), and require reporting of such agreements to the Judicial Council for study.

Third Party Litigation Funding Agreements

The bill would define 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 would specify 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 the nonparty has contractually

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

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 would require a party to provide the TPLF agreement to the court for *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 private.]

Facts required to be disclosed by the bill would 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;
- Whether any foreign person from a foreign county of concern (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 would provide the following limitations on the discovery of TPLF agreements:

- Disclosed information concerning an agreement would not be admissible as evidence at trial solely because it was disclosed;
- A nonprofit corporation or association would not be required to disclose its members or donors in order to comply with the provisions of the bill; and
- Nothing in the bill could 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.

Reporting of Third Party Funding Litigation Agreements

Report to Judicial Council

On and after July 1, 2025, the bill would require courts to report any TPLF agreement received to the Judicial Council (Council). The Council would be required to provide the party who provided the agreement to the court a document acknowledging receipt of the report.

Report Form

The clerk of the Supreme Court would be required to prescribe a form including the method of reporting a TPFL agreement with a foreign person and any other information

the clerk determines necessary for the Council study described below.

Report Confidentiality

Reports submitted to the Council would be considered confidential and not subject to the Kansas Open Records Act. This provision would expire on July 1, 2030, unless the Legislature reviews and reenacts this provision as required under continuing law.

Judicial Council Committee

The bill would require the Council to establish a Judicial Council Committee (Committee) to study the issue of agreements on or before July 1, 2028. The Committee would be required to review all required TPLF agreement reports and any other information related to agreements the Committee deems necessary.

Beginning on December 1, 2029, the Council would be required to report its conclusions and recommendations related to the topic of TPLF agreements in Kansas to the Chief Justice of the Supreme Court, Attorney General, House Committee on Judiciary, and Senate Committee on Judiciary. The bill would require the Council's report to include recommendations of the use of TPLF agreements in Kansas and whether future reporting of such agreements would be beneficial.

On January 1, 2031, and each January 1 thereafter, the Council would be required to report the total number of TPLF reports received in the previous calendar year to the same entities described above.

Definitions

The bill would define the term “foreign country of concern” as any foreign adversary as defined by the U.S. Secretary of Commerce 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 would define 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 would constitute a controlling or majority interest.

Severability

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

Background

The bill was introduced by the Senate Committee on Judiciary at the request of the Kansas Chamber.

Senate Committee on Judiciary

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Hinkle Law Firm; Kansas Association of Insurance Agents; Kansas Chamber; Kansas Medical Society and Kansas Medical Mutual Insurance Company; and the National Federation of Independent Business. The proponents generally stated the bill would enhance transparency by allowing parties to discover persons and entities with a financial stake in a court proceeding and allow defendants to better determine whether they should settle a claim.

Written-only proponent testimony was provided by representatives of the American Property Casualty Insurance Association, Kansas Association of Defense Counsel, Kansas Association of Property and Casualty Insurance Companies, and National Association of Mutual Insurance Companies.

Opponent testimony was provided by representatives of the International Legal Finance Association and Parabellum Capital. The opponents generally stated concerns with requiring disclosure in all cases, noting that information

regarding funding agreements could be provided under current law, if relevant.

Written-only opponent testimony was provided by representatives of the Kansas Bar Association and the Kansas Trial Lawyers Association.

As introduced, the bill would have allowed a party to obtain discovery of the existence and content of any third-party agreement. The Senate Committee adopted a substitute bill incorporating provisions requiring delivery of a sworn statement disclosing certain facts related to any third-party litigation funding agreement to all parties, and disclosure of such agreement to the court for *in camera* review within 30 days. The substitute bill also incorporates provisions modifying the Judicial Council's required reporting of third-party litigation funding agreements and adds references to "foreign countries of concern."

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates enactment of the bill could increase expenditures for the Judicial Branch because the bill requires additional findings and items for the court to consider in certain cases. In addition, the bill requires that the appellate court clerk create a reporting form. However, the Office states that a fiscal effect cannot be determined until the Judicial Branch has had an opportunity to operate under the provisions of the bill.

The Judicial Council states that it would need to establish an advisory committee by FY 2029 to study third-party agreements. Approximately six meetings would be necessary to conduct the initial study to comply with the provisions of the bill, with an additional three meetings in FY 2029 and three meetings in FY 2030. Beginning in FY 2031, the Council would need to hold two meetings per year to

report findings to the appropriate entities. The Council states the cost per meeting would be \$1,575 for reimbursement of travel expenses and subsistence payments. The Council states it would not be able to fund expenditures associated with the provisions of the bill within existing resources.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2026 Governor's Budget Report*.

Code of Civil Procedure; third-party litigation financing; disclosure; Judicial Council