

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2070**

As Agreed to April 4, 2024

Brief*

HB 2070 would update the Code of Civil Procedure to allow a party to a legal proceeding to obtain discovery of the existence and content of a third-party agreement (TPA) to pay expenses directly related to the legal claim and would provide a right to compensation based on the outcome of the case.

The bill would also provide limitations on discovery of TPAs, require reporting of TPAs, establish a Judicial Council Committee to review the use of TPAs, and make technical changes.

Third-Party Agreement

The bill would define the term “third-party agreement” 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 bill would specify the term does not include a TPA in which the nonparty would receive an amount contingent on the outcome of the case. However, such nonparty could receive repayment of the amount they contractually agreed to provide, plus reasonable interest, limited by the bill to an amount not greater than 11.1 percent of the principal.

Agreement Discovery—Limitations

The bill would allow a party to obtain discovery of the existence and content of any TPA within certain limitations. Disclosed information concerning the TPA would not be admissible as evidence at trial solely because it was disclosed.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

Court Order

The bill would allow a party to make a motion asking that the court prohibit further inquiry into the existence of a TPA. Upon a finding by preponderance of the evidence that the inquiry may cause undue prejudice to the moving party, the court would be required to prohibit further inquiry.

When making such a finding, the court would be required to consider:

- The political, ideological, or social nature of the case;
- The likely balance of litigation resources between the parties disputing the discovery;
- Whether the inquiry would be proportional to the needs of the case; and
- Any other relevant information presented by the parties disputing the discovery.

Nonprofit Corporations

The bill specifically provides that its provisions shall not be construed as requiring a nonprofit corporation or association to disclose its members or donors or to require disclosure of otherwise privileged information.

Disclosure by Certain Parties

Unless the court finds a TPA would be admissible under the Rules of Evidence and necessary to prove an element of a claim, the bill would not allow a TPA's disclosure in any action brought:

- 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
- Solely in the public interest or on behalf of the general public if:
 - The plaintiff does not seek any relief different from relief sought for the general public or a class of which the plaintiff is a member unless such relief is a claim for attorney fees, costs, or penalties;
 - If the action is successful, would enforce an important right affecting the public interest and would confer a significant pecuniary or nonpecuniary benefit on the general public or large class of persons; and
 - Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to their stake in the matter.

Confidentiality of Disclosed Information

When requested by the disclosing party, the court would be required to issue an order to protect discovery of a TPA other than to the parties, the parties' counsel, experts, and others necessary to the legal claim.

Reporting

On and after July 1, 2024, the bill would require reporting of any TPA to the Judicial Council (Council) within 45 days after the commencement of an action in any Kansas court in which such a TPA exists or within 45 days after a TPA is entered into, whichever is later. The Council would be required to provide the person who reported the TPA a document acknowledging receipt of the report.

Any unreported TPA would be void and unenforceable unless it would not be required to be disclosed under the bill's provisions.

Report Confidentiality

TPA reports submitted to the Council would be considered confidential and not subject to the Kansas Open Records Act (KORA). This provision would expire on July 1, 2029, unless the Legislature reviews and reenacts this provision as required under current KORA.

Report Form

The clerk of the Supreme Court would be required to prescribe a form including the method of reporting a TPA with a foreign person and any other information the clerk determines necessary for the Council study described below.

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.

Judicial Council Committee

The bill would require the Council to establish a Judicial Council Committee (Committee) to study the issue of TPAs on or before July 1, 2027. The Committee would be required to review

all required TPA reports and any other related information to TPAs the Committee deems necessary.

Between September 1, 2028, and December 1, 2028, the Council would be required to report to the Chief Justice of the Supreme Court, Attorney General, House Committee on Judiciary, and Senate Committee on Judiciary on the topic of TPAs in Kansas and in other states, and make recommendations on the use of TPAs in Kansas.

Severability—Sunset Provision

The bill's provisions related to TPA disclosure, reporting, and the Judicial Council Committee would be severable under the bill and would expire on July 1, 2029.

Technical Amendments

The bill would make technical amendments to implement the provisions of the bill and to ensure consistency in statutory phrasing.

Conference Committee Action

The second Conference Committee agreed to remove the contents of Senate Sub. for HB 2070, as passed by the Senate, and insert the provisions of HB 2510, as passed by the House.

Background

The second Conference Committee agreed to remove the contents of Senate Sub. for HB 2070, as passed by the Senate, regarding the Office of the Child Advocate and insert the provisions of HB 2510, as passed by the House, regarding third-party litigation funding.

[*Note:* The provisions of Senate Sub. for HB 2070 were placed into the Conference Committee report for SB 115.]

HB 2510 (Third-party Litigation Funding)

HB 2510 was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Chamber of Commerce.

House Committee on Judiciary

In the House Committee hearing on January 31 and February 1, 2024, **proponent** testimony was provided by representatives of the Alliance for Responsible Consumer Legal Funding, the Kansas Chamber of Commerce, and the U.S. Chamber of Commerce Institute for Legal Reform. The proponents generally stated the bill would create 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. Additionally, the proponents

stated the legislation is in response to institutional investors looking to fund lawsuits in expectation of getting a return on that funding.

Opponent testimony was provided by two representatives of International Legal Finance Association and a representative of the Kansas Trial Lawyers Association. The opponents generally stated concerns with disclosure, noting that the information would be provided under current law, if relevant, and expressed a desire for legal claims to be brought forward based on merit rather than whether a party is well-funded.

Neutral testimony was provided by a representative of the Kansas Attorney General, who generally stated the bill would no longer allow anonymous donations to public law firms, which have been protected by the U.S. Supreme Court. The representative noted that disclosure is already allowed under the Code of Civil Procedure if the disclosure is relevant and proportional to the needs of the case. The representative also stated the Attorney General is concerned about national security risks with third-party funding, and concerned that disclosure information would be used for reasons beyond the court proceedings.

Written-only proponent testimony was provided by representatives of the American Property Casualty Insurance Company, the Kansas Agribusiness Retailers Association and Kansas Grain and Feed Association, the Kansas Association of Defense Counsel, the Kansas Association of Insurance Agents, the Kansas Association of Property and Casualty Insurance, the Kansas Medical Society, and the National Association of Mutual Insurance Companies, generally stating the bill would promote additional transparency and help mitigate litigation costs.

Written-only opponent testimony was provided by a representative of the Kansas Bar Association, stating the bill is overly broad and may result in fewer opportunities for meritorious claims to be heard by a court.

On February 21, 2024, the bill was withdrawn from the House Committee on Judiciary and referred to the House Committee on Appropriations. On February 22, 2024, the bill was withdrawn from the House Committee on Appropriations and rereferred to the House Committee on Judiciary.

On March 7, 2024, the House Committee amended the bill to include limitations on discovery of TPAs, reporting of TPAs, creating a Judicial Council Committee, and adding definitions related to TPAs.

[*Note:* The second Conference Committee retained these amendments.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2510, as introduced, the Office of Judicial Administration indicates enactment of the bill would have negligible effect on the operations of the Judicial Branch.

Litigation funding; third parties; evidence; civil procedure

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