

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **HB 2510** be amended on page 2, in line 16, after "(B)" by inserting "(i)"; in line 17, by striking all after "agreement"; by striking all in lines 18 through 21; in line 22, by striking all before the period; following line 22, by inserting:

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

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

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

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

(1) 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

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

(A) The plaintiff does not seek any relief that is different from the 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;

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

(C) private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

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

(iii) The provisions of this subparagraph shall expire on July 1, 2029.

(C) *Reporting of third-party agreements.* (i) On and after July 1, 2024, any third-party agreement under which a person has a contractual right to receive, directly or indirectly, compensation that is contingent in any respect on the outcome of the claim shall be reported to the judicial council within 45 days after the commencement of an action in any Kansas court in which such a third-party agreement exists or within 45 days after such third-party agreement is entered into, whichever is later. The judicial council shall provide the person who reported such agreement documentation showing that such report was made. Any third-party agreement that is not reported pursuant to this subparagraph is void and unenforceable unless such agreement relates to an action described in subsection (b)(3)(B)(ii)(d).

(ii) The clerk of the supreme court shall prescribe a form for use under this subparagraph. Such form shall include a method of reporting whether the third-party agreement is a third-party

agreement with a foreign person and any other information the clerk determines is necessary for the judicial council to complete the study required by subsection (b)(3)(D).

(iii) Reports received pursuant to this subparagraph shall be confidential and shall not be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this clause shall expire on July 1, 2029, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto.

(iv) The provisions of this subparagraph shall expire on July 1, 2029.

(D) (i) On or before July 1, 2027, the judicial council shall establish a committee to study the issue of third-party agreements. Such committee shall review all reports submitted pursuant to subsection (b)(3)(C) and any other information related to such agreements the committee deems necessary. Between September 1, 2028, and December 1, 2028, the judicial council shall report to the chief justice of the supreme court, attorney general, house standing committee on judiciary and senate standing committee on judiciary on the topic of third-party agreements in Kansas and in other states and make recommendations on the use of such third-party agreements in Kansas.

(ii) The provisions of this subparagraph shall expire on July 1, 2029.";

On page 2, in line 29, by striking "paragraph (1)" and inserting "subsection (b)(1)";

On page 6, following line 40, by inserting:

"(g) As used in this section:

(1) "Foreign person" means:

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

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

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

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

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

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

(G) an organization in which any person or entity described in subsections (g)(1)(A) through (g)(1)(F) holds a controlling or majority interest or in which the holdings of any such persons or entities, considered together, would constitute a controlling or majority interest.

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

(3) "Third-party agreement" means 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. "Third-party agreement" 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 such nonparty has contractually agreed to provide plus reasonable interest.

(h) The provisions of subsections (b)(3)(B), (b)(3)(C) and (b)(3)(D) are severable. If any portion of such subsections is held by a court to be unconstitutional or invalid, or the application of any portion of such subsections to any person or circumstance is held by a court to be unconstitutional or invalid, the invalidity shall not affect the other portions of such subsections that can be given effect without the invalid portion or application, and the applicability of such

other portions of such subsections to any person or circumstance remains valid and enforceable.";

On page 1, in the title, in line 2, by striking "authorizing discovery of an agreement thereof" and inserting "limiting discovery and disclosure of third-party agreements in certain circumstances; requiring reporting of such agreements to the judicial council and a judicial council committee to study third-party agreements; requiring the clerk of the supreme court to develop a form for reports; exempting such reports from the open records act"; and the bill be passed as amended.

_____Chairperson