

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2473

As Amended by House Committee of the Whole

Brief*

HB 2473 would amend the Kansas Code of Civil Procedure to conform to recent changes in federal law. First, it would remove "discharge in bankruptcy" from the list of affirmative defenses a party must state in responding to a pleading. Next, it would provide that the draft required disclosures concerning expert witnesses and drafts of a disclosure by an expert witness, in lieu of the required disclosures, would be protected from discovery, regardless of the form in which the draft is recorded. Similarly, it would provide that communications between a party's attorney and expert witnesses are protected from disclosure regardless of the form of the communications, except to the extent the communications:

- Relate to the compensation for the expert's study or testimony;
- Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Further, the bill would require disclosure of the subject matter on which the expert is expected to testify and the substance of the facts and opinions to which the expert is

*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 <http://www.kslegislature.org>

expected to testify, regardless of whether the expert is retained or specially employed to provide expert testimony.

Background

In the House Committee on Judiciary, a representative of the Kansas Judicial Council appeared in support of the bill. No opponents offered testimony. The Committee amended the bill to provide that reports signed by an expert witness disclosed in lieu of the required disclosures would be protected from discovery, regardless of the form in which the draft is recorded.

The House Committee of the Whole amended the bill to clarify that drafts of a disclosure by an expert witness provided in lieu of the required disclosures would be protected from discovery, rather than reports signed by the expert witness.

The fiscal note for HB 2473, as introduced, indicates passage of the bill would have no fiscal effect.