

## Senate Substitute for HOUSE BILL No. 2197

By Committee on Judiciary

3-23

1 AN ACT concerning the code of civil procedure; amending K.S.A. 2016  
2 Supp. 60-102, 60-206, 60-216, 60-226, 60-230, 60-231, 60-234, 60-237  
3 and 60-255 and repealing the existing sections; also repealing K.S.A.  
4 2016 Supp. 60-268.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 60-102 is hereby amended to read as  
8 follows: 60-102. The provisions of this act shall be liberally construed  
9 ~~and~~, administered *and employed by the court and the parties* to secure the  
10 just, speedy and inexpensive determination of every action and  
11 proceeding.

12 Sec. 2. K.S.A. 2016 Supp. 60-206 is hereby amended to read as  
13 follows: 60-206. (a) *Computing time*. The following provisions apply in  
14 computing any time period specified in this chapter, in any local rule or  
15 court order or in any statute or administrative rule or regulation that does  
16 not specify a method of computing time.

17 (1) *Period stated in days or a longer unit*. When the period is stated  
18 in days or a longer unit of time:

19 (A) Exclude the day of the event that triggers the period;

20 (B) count every day, including intermediate Saturdays, Sundays and  
21 legal holidays; and

22 (C) include the last day of the period, but if the last day is a Saturday,  
23 Sunday or legal holiday, the period continues to run until the end of the  
24 next day that is not a Saturday, Sunday or legal holiday.

25 (2) *Period stated in hours*. When the period is stated in hours:

26 (A) Begin counting immediately on the occurrence of the event that  
27 triggers the period;

28 (B) count every hour, including hours during intermediate Saturdays,  
29 Sundays and legal holidays; and

30 (C) if the period would end on a Saturday, Sunday or legal holiday,  
31 the period continues to run until the same time on the next day that is not a  
32 Saturday, Sunday or legal holiday.

33 (3) *Inaccessibility of the clerk's office*. Unless the court orders  
34 otherwise, if the clerk's office is inaccessible:

35 (A) On the last day for filing under subsection (a)(1), then the time  
36 for filing is extended to the first accessible day that is not a Saturday,

1 Sunday or legal holiday; or

2 (B) during the last hour for filing under subsection (a)(2), then the  
3 time for filing is extended to the same time on the first accessible day that  
4 is not a Saturday, Sunday or legal holiday.

5 (4) *"Last day" defined.* Unless a different time is set by a statute, local  
6 rule or court order, the last day ends:

7 (A) For electronic or telefacsimile filing, at midnight in the court's  
8 time zone; and

9 (B) for filing by other means, when the clerk's office is scheduled to  
10 close.

11 (5) *"Next day" defined.* The "next day" is determined by continuing to  
12 count forward when the period is measured after an event and backward  
13 when measured before an event.

14 (6) *"Legal holiday" defined.* "Legal holiday" means any day declared  
15 a holiday by the president of the United States, the congress of the United  
16 States or the legislature of this state, or any day observed as a holiday by  
17 order of the Kansas supreme court. A half holiday is considered as other  
18 days and not as a holiday.

19 (b) *Extending time.* (1) *In general.* When an act may or must be done  
20 within a specified time, the court may, for good cause, extend the time:

21 (A) With or without motion or notice if the court acts, or if a request  
22 is made, before the original time or its extension expires; or

23 (B) on motion made after the time has expired if the party failed to  
24 act because of excusable neglect.

25 (2) *Exceptions.* A court must not extend the time to act under  
26 ~~subsection (b) of K.S.A. 60-250(b), subsection (b) of K.S.A. 60-252(b),~~  
27 ~~subsections (b), (c) and (f) of K.S.A. 60-259(b), (e) and (f) and subsection~~  
28 ~~(b) of K.S.A. 60-260(b), and amendments thereto.~~

29 (c) *Motions, notices of hearing and affidavits or declarations.* (1) *In*  
30 *general.* A written motion and notice of the hearing must be served at least  
31 seven days before that time specified for the hearing with the following  
32 exceptions:

33 (A) When the motion may be heard ex parte;

34 (B) when these rules set a different time; or

35 (C) when a court order, which a party may, for good cause, apply for  
36 ex parte, sets a different time.

37 (2) *Supporting affidavit or declaration.* Any affidavit or declaration  
38 pursuant to K.S.A. 53-601, and amendments thereto, supporting a motion  
39 must be served with the motion. Except as otherwise provided in  
40 ~~subsection (d) of K.S.A. 60-259(d), and amendments thereto,~~ any  
41 opposing affidavit or declaration must be served at least one day before the  
42 hearing, unless the court permits service at another time.

43 (d) *Additional time after certain kinds of service.* When a party may

1 or must act within a specified time after ~~service being served~~ and service is  
2 made under ~~subsections (b)(2)(C), (D), (E) or (F)~~ of K.S.A. 60-205(b)(2)  
3 (C) (mail), or (D) (leaving with the clerk), and amendments thereto, three  
4 days are added after the period would otherwise expire under subsection  
5 (a).

6 Sec. 3. K.S.A. 2016 Supp. 60-216 is hereby amended to read as  
7 follows: 60-216. (a) *Purposes of a pretrial conference.* In any action, the  
8 court must on the request of any party, or may without a request, order the  
9 attorneys for the parties and any unrepresented parties to appear for one or  
10 more conferences to expedite processing and disposition of the litigation,  
11 minimize expense and conserve time.

12 (b) *Case management conference.* In any action, the court must on the  
13 request of any party, or may without a request, conduct a case management  
14 conference with attorneys and any unrepresented parties. The court must  
15 schedule the conference as soon as possible. The conference must be  
16 conducted within 45 days after the filing of an answer, unless the court  
17 extends the time to meet the needs of the case.

18 (1) At a case management conference the court must consider and  
19 take appropriate action on the following matters:

20 (A) Identifying the issues and exploring the possibilities of  
21 stipulations and settlement;

22 (B) determining whether the action is suitable for alternative dispute  
23 resolution;

24 (C) exchanging information on the issues, including key documents  
25 and witness identification;

26 (D) establishing a plan and schedule for discovery, including setting  
27 limits on discovery, if any, designating the time and place of discovery,  
28 restricting discovery to certain designated witnesses or requiring  
29 statements be taken in writing or by use of electronic recording rather than  
30 by stenographic transcription;

31 (E) determining issues relating to disclosure ~~or~~, discovery *or*  
32 *preservation* of electronically stored information, including the form or  
33 forms in which it should be produced;

34 (F) determining issues relating to claims of privilege or of protection  
35 as trial-preparation material, including, ~~if the parties agree on a procedure~~  
36 ~~to assert such claims after production, whether to ask the court to include~~  
37 ~~their agreement in an order~~ *any agreements the parties reach for asserting*  
38 *claims of privilege or of protection as trial-preparation material after*  
39 *information is produced, including agreements reached under K.S.A. 60-*  
40 *426a, and amendments thereto;*

41 (G) requiring completion of discovery within a definite number of  
42 days after the conference has been conducted;

43 (H) setting deadlines for filing motions, joining parties and

1 amendments to the pleadings;

2 (I) setting the date or dates for conferences before trial, a final pretrial  
3 conference, and trial; and

4 (J) such other matters as are necessary for the proper management of  
5 the action.

6 (2) If a case management conference is held, no depositions, other  
7 than of the parties may be taken until after the conference is held, except  
8 by agreement of the parties, by order of the court or as provided in  
9 ~~subsection (a)(2)(B) of K.S.A. 60-230(a)(2)(B)~~, and amendments thereto.  
10 If the case management conference is not held within 45 days after the  
11 filing of an answer, the restrictions of this paragraph no longer apply.

12 (3) If discovery cannot be completed within the time originally  
13 prescribed by the court, the party not able to complete discovery may file a  
14 motion for additional time to complete discovery. The motion must be  
15 filed prior to the expiration of the original period, contain a discovery plan  
16 and state the reason why discovery cannot be completed within the  
17 original period. If additional time is allowed, the court must grant only that  
18 amount of time reasonably necessary to complete discovery.

19 (c) *Attendance and matters for consideration at a pretrial conference.*

20 (1) *Attendance.* A represented party must authorize at least one of its  
21 attorneys to make stipulations and admissions about all matters that can be  
22 reasonably anticipated for discussion at a pretrial conference. If  
23 appropriate, the court may require that a party or its representative be  
24 present or reasonably available by other means in order to consider  
25 possible settlement of the dispute. The court may allow a pretrial  
26 conference to be held by a telephone conference call or other means.

27 (2) *Matters for consideration.* At any pretrial conference, the court  
28 may consider and take appropriate action on the following matters:

29 (A) Simplifying the issues;

30 (B) determining the issues of law that may eliminate or affect the trial  
31 of issues of fact;

32 (C) amending the pleadings if necessary or desirable;

33 (D) obtaining admissions and stipulations about facts and documents  
34 to avoid unnecessary proof;

35 (E) limiting the number of expert witnesses;

36 (F) referring issues to a master; and

37 (G) such other matters as may aid in the disposition of the action,  
38 including alternative dispute resolution.

39 (d) *Pretrial orders.* After any conference held under this section, the  
40 court should issue an order reciting the action taken. This order controls  
41 the subsequent course of the action unless the court modifies it.

42 (e) *Final pretrial conference and orders.* In any action, the court must  
43 on the request of any party, or may without a request, conduct a final

1 pretrial conference in accordance with procedures established by rule of  
2 the supreme court. The court may modify the order issued after a final  
3 pretrial conference only to prevent manifest injustice.

4 (f) *Sanctions.* (1) *In general.* On motion or on its own, and after  
5 opportunity to be heard, the court may issue any just orders, including  
6 those authorized by ~~subsections (b)(2)(A)(ii) through (vii) of K.S.A. 60-~~  
7 ~~237(b)(2)(A)(ii) through (vii),~~ and amendments thereto, if a party or its  
8 attorney:

9 (A) Fails to appear at a case management or other pretrial conference;

10 (B) is substantially unprepared to participate, or does not participate  
11 in good faith, in the conference; or

12 (C) fails to obey a scheduling or other pretrial order.

13 (2) *Imposing fees and costs.* Instead of, or in addition to any other  
14 sanction, the court must order the party, its attorney, or both to pay the  
15 reasonable expenses, including attorney's fees, incurred because of any  
16 noncompliance with this section, unless the noncompliance was  
17 substantially justified or other circumstances make an award of expenses  
18 unjust.

19 Sec. 4. K.S.A. 2016 Supp. 60-226 is hereby amended to read as  
20 follows: 60-226. (a) *Discovery methods.* Parties may obtain discovery by  
21 one or more of the following methods: Depositions on oral examination or  
22 written questions; written interrogatories; production of documents or  
23 things or permission to enter onto land or other property under K.S.A. 60-  
24 234, ~~subsection (a)(1)(A)(iii) of K.S.A. 60-245(a)(1)(A)(iii) or K.S.A. 60-~~  
25 ~~245a,~~ and amendments thereto; physical and mental examinations; and  
26 requests for admission.

27 (b) *Discovery scope and limits.* (1) *Scope in general.* Unless  
28 otherwise limited by court order, the scope of discovery is as follows:  
29 Parties may obtain discovery regarding any nonprivileged matter that is  
30 relevant to ~~the subject matter involved in the action, whether it relates to~~  
31 ~~any party's claim or defense, including the existence, description, nature,~~  
32 ~~eustody, condition and location of any documents or other tangible things~~  
33 ~~and the identity and location of persons who know of any discoverable~~  
34 ~~matter. Relevant information need not be admissible at the trial if the~~  
35 ~~discovery appears reasonably calculated to lead to the discovery of~~  
36 ~~admissible evidence and proportional to the needs of the case, considering~~  
37 ~~the importance of the issues at stake in the action, the amount in~~  
38 ~~controversy, the parties' relative access to relevant information, the~~  
39 ~~parties' resources, the importance of the discovery in resolving the issues~~  
40 ~~and whether the burden or expense of the proposed discovery outweighs~~  
41 ~~its likely benefit. Information within this scope of discovery need not be~~  
42 ~~admissible in evidence to be discoverable.~~

43 (2) *Limitations on frequency and extent.* (A) On motion, or on its

1 own, the court may limit the frequency or extent of discovery methods  
2 otherwise allowed by the rules of civil procedure and must do so if it  
3 determines that:

4 (i) The discovery sought is unreasonably cumulative or duplicative,  
5 or can be obtained from some other source that is more convenient, less  
6 burdensome or less expensive;

7 (ii) the party seeking discovery has had ample opportunity to obtain  
8 the information by discovery in the action; or

9 ~~(iii) the burden or expense of the proposed discovery outweighs its  
10 likely benefit, considering the needs of the case, the amount in  
11 controversy, the parties' resources, the importance of the issues at stake in  
12 the action and the importance of the proposed discovery in resolving the  
13 issues is outside the scope permitted by subsection (b)(1).~~

14 (B) A party need not provide discovery of electronically stored  
15 information from sources that the party identifies as not reasonably  
16 accessible because of undue burden or cost. On motion to compel  
17 discovery or for a protective order, the party from whom discovery is  
18 sought must show that the information is not reasonably accessible  
19 because of undue burden or cost. If that showing is made, the court may  
20 nonetheless order discovery from such sources if the requesting party  
21 shows good cause, considering the limitations of subsection (b)(2)(A). The  
22 court may specify conditions for the discovery.

23 (3) *Insurance agreements.* A party may obtain discovery of the  
24 existence and contents of any insurance agreement under which an  
25 insurance business may be liable to satisfy part or all of a possible  
26 judgment in the action or to indemnify or reimburse for payments made to  
27 satisfy the judgment. Information concerning the insurance agreement is  
28 not by reason of disclosure admissible in evidence at trial. For purposes of  
29 this paragraph, an application for insurance is not a part of an insurance  
30 agreement.

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

37 (i) They are otherwise discoverable under paragraph (1); and

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

41 (B) *Protection against disclosure.* If the court orders discovery of  
42 those materials, it must protect against disclosure of the mental  
43 impressions, conclusions, opinions or legal theories of a party's attorney or

1 other representative concerning the litigation.

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

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

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

13 (5) *Trial preparation; experts.*

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

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

23 (C) *Trial-preparation protection for communications between a*  
24 *party's attorney and expert witnesses.* Subsections (b)(4)(A) and (b)(4)(B)  
25 protect communications between the party's attorney and any witness  
26 about whom disclosure is required under subsection (b)(6), regardless of  
27 the form of the communications, except to the extent that the  
28 communications:

29 (i) Relate to compensation for the expert's study or testimony;

30 (ii) identify facts or data that the party's attorney provided and that  
31 the expert considered in forming the opinions to be expressed; or

32 (iii) identify assumptions that the party's attorney provided and that  
33 the expert relied on in forming the opinions to be expressed.

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

40 (i) As provided in ~~subsection (b) of~~ K.S.A. 60-235(b), and  
41 amendments thereto; or

42 (ii) on showing exceptional circumstances under which it is  
43 impracticable for the party to obtain facts or opinions on the same subject

1 by other means.

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

4 (i) Pay the expert a reasonable fee for time spent in responding to  
5 discovery under subsection (b)(5)(A) or (b)(5)(D); and

6 (ii) for discovery under subsection (b)(5)(D), also pay the other party  
7 a fair portion of the fees and expenses it reasonably incurred in obtaining  
8 the expert's facts and opinions.

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

12 (i) The subject matter on which the expert is expected to testify; and

13 (ii) the substance of the facts and opinions to which the expert is  
14 expected to testify.

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

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

24 (i) At least 90 days before the date set for trial or for the case to be  
25 ready for trial; or

26 (ii) if the evidence is intended solely to contradict or rebut evidence  
27 on the same subject matter identified by another party under subsection (b)  
28 (6)(B), within 30 days after the other party's disclosure.

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

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

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

34 (ii) filed with the court in accordance with ~~subsection (d) of K.S.A.~~  
35 60-205(d), and amendments thereto.

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

40 (i) Expressly make the claim; and

41 (ii) describe the nature of the documents, communications or things  
42 not produced or disclosed, and do so in a manner that, without revealing  
43 information itself privileged or protected, will enable other parties to



1 assess the claim.

2 (B) *Information produced.* If information produced in discovery is  
3 subject to a claim of privilege or of protection as trial preparation material,  
4 the party making the claim may notify any party that received the  
5 information of the claim and the basis for it. After being notified, a party  
6 must promptly return, sequester or destroy the specified information and  
7 any copies it has; must not use or disclose the information until the claim  
8 is resolved; must take reasonable steps to retrieve the information if the  
9 party disclosed it before being notified; and may promptly present the  
10 information to the court under seal for a determination of the claim. The  
11 producing party must preserve the information until the claim is resolved.

12 (c) *Protective orders.* (1) *In general.* A party or any person from  
13 whom discovery is sought may move for a protective order in the court  
14 where the action is pending, as an alternative on matters relating to a  
15 deposition, in the district court where the deposition will be taken. The  
16 motion must include a certification that the movant has in good faith  
17 conferred or attempted to confer with other affected parties in an effort to  
18 resolve the dispute without court action and must describe the steps taken  
19 by all attorneys or unrepresented parties to resolve the issues in dispute.  
20 The court may, for good cause, issue an order to protect a party or person  
21 from annoyance, embarrassment, oppression or undue burden or expense,  
22 including one or more of the following:

23 (A) Forbidding the disclosure or discovery;

24 (B) specifying terms, including time and place *or the allocation of*  
25 *expenses*, for the disclosure or discovery;

26 (C) prescribing a discovery method other than the one selected by the  
27 party seeking discovery;

28 (D) forbidding inquiry into certain matters, or limiting the scope of  
29 disclosure or discovery to certain matters;

30 (E) designating the persons who may be present while the discovery  
31 is conducted;

32 (F) requiring that a deposition be sealed and opened only on court  
33 order;

34 (G) requiring that a trade secret or other confidential research,  
35 development or commercial information not be revealed or be revealed  
36 only in a specified way; and

37 (H) requiring that the parties simultaneously file specified documents  
38 or information in sealed envelopes, to be opened as the court orders.

39 (2) *Ordering discovery.* If a motion for a protective order is wholly or  
40 partly denied the court may, on just terms, order that any party or person  
41 provide or permit discovery.

42 (3) *Awarding expenses.* The provisions of K.S.A. 60-237, and  
43 amendments thereto, apply to the award of expenses.

1 (d) *Sequence of discovery.* Unless, ~~on motion,~~ the parties stipulate or  
2 the court orders otherwise for the parties' and witnesses' convenience and  
3 in the interests of justice:

4 (1) Methods of discovery may be used in any sequence; and

5 (2) discovery by one party does not require any other party to delay  
6 its discovery.

7 (e) *Supplementing disclosures and responses.* (1) *In general.* A party  
8 who has made a disclosure under subsection (b)(6), or who has responded  
9 to an interrogatory, request for production or request for admission, must  
10 supplement or correct its disclosure or response:

11 (A) In a timely manner if the party learns that in some material  
12 respect the disclosure or response is incomplete or incorrect, and if the  
13 additional or corrective information has not otherwise been made known  
14 to the other parties during the discovery process or in writing; or

15 (B) as ordered by the court.

16 (2) *Expert witness.* For an expert to whom the disclosure requirement  
17 in subsection (b)(6) applies, the party's duty to supplement extends both to  
18 information included in the disclosure and to information given during the  
19 expert's deposition. Any additions or changes to this information must be  
20 disclosed at least 30 days before trial, unless the court orders otherwise.

21 (f) *Signing disclosures and discovery requests, responses and*  
22 *objections.* (1) *Signature required; effect of signature.* Every disclosure  
23 under subsection (b)(6) and every discovery request, response or objection  
24 must be signed by at least one attorney of record in the attorney's own  
25 name, or by the party personally, if unrepresented, and must state the  
26 signor's address, e-mail address and telephone number. By signing, an  
27 attorney or party certifies that to the best of the person's knowledge,  
28 information and belief formed after a reasonable inquiry:

29 (A) With respect to a disclosure, it is complete and correct as of the  
30 time it is made;

31 (B) with respect to a discovery request, response or objection, it is:

32 (i) Consistent with the rules of civil procedure and warranted by  
33 existing law or by a nonfrivolous argument for extending, modifying or  
34 reversing existing law or for establishing new law;

35 (ii) not interposed for any improper purpose, such as to harass, cause  
36 unnecessary delay or needlessly increase the cost of litigation; and

37 (iii) neither unreasonable nor unduly burdensome or expensive  
38 considering the needs of the case, prior discovery in the case, the amount  
39 in controversy and the importance of the issues at stake in the action.

40 (2) *Failure to sign.* Other parties have no duty to act on an unsigned  
41 disclosure, request, response or objection until it is signed, and the court  
42 must strike it unless a signature is promptly supplied after the omission is  
43 called to the attorney's or party's attention.

1       (3) *Sanction for improper certification.* If a certification violates this  
2 section without substantial justification, the court, on motion, or on its  
3 own, must impose an appropriate sanction on the signer, the party on  
4 whose behalf the signer was acting, or both. The sanction may include an  
5 order to pay the reasonable expenses, including attorney's fees, caused by  
6 the violation.

7       Sec. 5. K.S.A. 2016 Supp. 60-230 is hereby amended to read as  
8 follows: 60-230. (a) *When a deposition may be taken.* (1) *Without leave.* A  
9 party may, by oral questions, depose any person including a party, without  
10 leave of court except as provided in subsection (a)(2). The deponent's  
11 attendance may be compelled by subpoena under K.S.A. 60-245, and  
12 amendments thereto.

13       (2) *With leave.* A party must obtain leave of court, and the court must  
14 grant leave to the extent consistent with ~~subsection (b)(2) of~~ K.S.A. 60-  
15 226(b)(1) and (2), and amendments thereto:

16       (A) If the parties have not stipulated to the deposition and:

17       (i) The deponent has already been deposed in the case; or

18       (ii) the party seeks to take the deposition of a nonparty before the  
19 time specified in ~~subsection (b) of~~ K.S.A. 60-216(b), and amendments  
20 thereto, unless the party certifies in the notice, with supporting facts, that  
21 the deponent is expected to leave Kansas and be unavailable for  
22 examination in Kansas after that time; or

23       (B) if the deponent is confined in prison.

24       (b) *Notice of the deposition; other formal requirements.* (1) *Notice in*  
25 *general.* A party who wants to depose a person by oral questions must give  
26 reasonable written notice to every other party. The notice must state the  
27 time and place of the deposition and, if known, the deponent's name and  
28 address. If the name is unknown, the notice must provide a general  
29 description sufficient to identify the person or the particular class or group  
30 to which the person belongs.

31       (2) *Producing documents.* If a subpoena duces tecum is to be served  
32 on the deponent, the materials designated for production, as set out in the  
33 subpoena, must be listed in the notice or in an attachment. The notice to a  
34 party deponent may be accompanied by a request under K.S.A. 60-234,  
35 and amendments thereto, to produce documents and tangible things at the  
36 deposition.

37       (3) *Method of recording.* (A) *Method stated in a stipulation or order.*  
38 The parties may stipulate or the court may order that the testimony at a  
39 deposition be recorded by other than stenographic means. A party may  
40 arrange to have a stenographic record made at the party's own expense.

41       (B) *Additional method.* With prior notice to the deponent and other  
42 parties, any party may record on videotape, or a comparable medium, any  
43 deposition that is to be recorded stenographically. That party bears the

1 expense of the additional record or transcript unless the court orders  
2 otherwise.

3 (4) *By remote means.* The parties may stipulate, or the court may on  
4 motion order, that a deposition be taken by telephone or other remote  
5 means. For the purposes of this section and ~~subsection (e) of K.S.A. 60-~~  
6 ~~226(c), subsection (a) of K.S.A. 60-228(a), subsections (a)(1) and (b)(1) of~~  
7 ~~K.S.A. 60-237(a)(1) and (b)(1) and subsection (a)(2) of K.S.A. 60-245(a)~~  
8 ~~(2),~~ and amendments thereto, the deposition takes place where the  
9 deponent answers the questions.

10 (5) *Officer's duties.* (A) *Before the deposition.* Unless the parties  
11 stipulate otherwise a deposition must be conducted before an officer  
12 appointed or designated under K.S.A. 60-228, and amendments thereto.  
13 The officer must begin the deposition with an on-the-record statement that  
14 includes:

15 (i) The officer's name and business address;  
16 (ii) the date, time and place of the deposition;  
17 (iii) the deponent's name;  
18 (iv) the officer's administration of the oath or affirmation to the  
19 deponent; and  
20 (v) the identity of all persons present.

21 (B) *Conducting the deposition; avoiding distortion.* If the deposition  
22 is recorded nonstenographically, the officer must repeat the items in  
23 subsection (b)(5)(A)(i) through (iii) at the beginning of each unit of the  
24 recording medium. The deponent's and attorneys' appearance or demeanor  
25 must not be distorted through recording techniques.

26 (C) *After the deposition.* At the end of a deposition, the officer must  
27 state on the record that the deposition is complete and must set out any  
28 stipulations made by the attorneys about custody of the transcript or  
29 recording and of the exhibits, or about any other pertinent matters.

30 (6) *Notice or subpoena directed to an organization.* In its notice or  
31 subpoena, a party may name as the deponent a public or private  
32 corporation, a partnership, an association, a governmental agency or other  
33 entity and must describe with reasonable particularity the matters for  
34 examination. The named organization must then designate one or more  
35 officers, directors or managing agents, or designate other persons who  
36 consent to testify on its behalf; and it may set out the matters on which the  
37 person designated will testify. A subpoena must advise a nonparty  
38 organization of its duty to make this designation. The persons designated  
39 must testify about information known or reasonably available to the  
40 organization. This subsection does not preclude a deposition by any other  
41 procedure allowed by the rules of civil procedure.

42 (c) *Examination and cross-examination; record of the examination;*  
43 *objections; written questions.* (1) *Examination and cross-examination.* The

1 examination and cross-examination of a deponent proceed as they would  
2 at trial under the provisions of K.S.A. 60-243, and amendments thereto.  
3 After putting the deponent under oath or affirmation, the officer must  
4 record the testimony by the method designated under subsection (b)(3)(A).  
5 The testimony must be recorded by the officer personally or by a person  
6 acting in the presence and under the direction of the officer. If requested by  
7 one of the parties, the testimony must be transcribed. The court may order  
8 the cost of transcription paid by one or some of, or apportioned among, the  
9 parties.

10 (2) *Objections.* An objection at the time of the examination, whether  
11 to evidence, to a party's conduct, to the officer's qualifications, to the  
12 manner of taking the deposition or to any other aspect of the deposition,  
13 must be noted on the record, but the examination still proceeds; the  
14 testimony is taken subject to any objection. An objection must be stated  
15 concisely in a nonargumentative and nonsuggestive manner. A person may  
16 instruct a deponent not to answer only when necessary to preserve a  
17 privilege, to enforce a limitation ordered by the court or to present a  
18 motion under subsection (d)(3).

19 (3) *Participating through written questions.* Instead of participating in  
20 the oral examination, a party may serve written questions in a sealed  
21 envelope on the party noticing the deposition, who must deliver them to  
22 the officer. The officer must ask the deponent those questions and record  
23 the answers verbatim.

24 (d) *Motion to terminate or limit.* (1) *Grounds.* At any time during a  
25 deposition, the deponent or a party may move to terminate or limit it on  
26 the ground that it is being conducted in bad faith or in a manner that  
27 unreasonably annoys, embarrasses or oppresses the deponent or party. The  
28 motion may be filed in the court where the action is pending or where the  
29 deposition is being taken. If the objecting deponent or party so demands,  
30 the deposition must be suspended for the time necessary to obtain an order.

31 (2) *Order.* The court may order that the deposition be terminated or  
32 may limit its scope and manner as provided in ~~subsection (e) of~~ K.S.A. 60-  
33 226(c), and amendments thereto. If terminated, the deposition may be  
34 resumed only by order of the court where the action is pending.

35 (3) *Award of expenses.* The provisions of ~~subsection (a) of~~ K.S.A. 60-  
36 237(a), and amendments thereto, apply to the award of expenses.

37 (e) *Review by the witness; changes.* (1) *Review; statement of*  
38 *changes.* Unless waived by the deponent and by the parties, the deponent  
39 must be allowed 30 days after being notified by the officer that the  
40 transcript or recording is available in which:

41 (A) To review the transcript or recording; and

42 (B) if there are changes in form or substance, to sign a statement  
43 listing the changes and the reasons for making them.

1 (2) *Changes indicated in the officer's certificate.* The officer must  
2 note in the certificate prescribed by subsection (f)(1) whether the  
3 deposition was reviewed and, if so, must attach any changes the deponent  
4 makes during the 30-day period.

5 (f) *Certification and delivery; exhibits; copies of the transcript or*  
6 *recording; notice of delivery or filing; retention of original.* (1)  
7 *Certification and delivery.* The officer must certify in writing that the  
8 witness was duly sworn and that the deposition accurately records the  
9 witness's testimony. The certificate must accompany the record of the  
10 deposition. Unless the court orders otherwise, the officer must seal the  
11 deposition in an envelope or package bearing the title of the action and  
12 marked "Deposition of (witness's name)" and must promptly send it to the  
13 attorney who arranged for the transcript or recording. The attorney must  
14 store it under conditions that will protect it against loss, destruction,  
15 tampering or deterioration.

16 (2) *Documents and tangible things.* (A) *Originals and copies.*  
17 Documents and tangible things produced for inspection during a  
18 deposition must, on a party's request, be marked for identification and  
19 attached to the deposition. Any party may inspect and copy them, but if the  
20 person who produced them wants to keep the originals the person may:

21 (i) Offer copies to be marked, attached to the deposition and then  
22 used as originals, after giving all parties a fair opportunity to verify the  
23 copies by comparing them with the originals; or

24 (ii) give all parties a fair opportunity to inspect and copy the originals  
25 after they are marked, in which event the originals may be used as if  
26 attached to the deposition.

27 (B) *Order regarding the originals.* Any party may move for an order  
28 that the originals be attached to the deposition pending final disposition of  
29 the case.

30 (3) *Copies of the transcript or recording.* Unless otherwise stipulated  
31 or ordered by the court, the officer must retain the stenographic notes of a  
32 deposition taken stenographically or a copy of the recording of a  
33 deposition taken by another method. When paid reasonable charges, the  
34 officer must furnish a copy of the transcript or recording to any party or  
35 the deponent.

36 (4) *Notice of delivery or filing.* The court may order the officer to file  
37 the deposition promptly with the court. The officer must serve notice of  
38 the sending or filing of the deposition on all parties.

39 (5) *Retention of original.* Except when filed with the court, the  
40 original of a deposition must be retained by the party to whom it is sent  
41 and made available for appropriate use by any party.

42 (g) *Failure to attend a deposition or serve a subpoena; expenses;*  
43 *persons attending.* A party who, expecting a deposition to be taken, attends

1 in person or by an attorney may recover reasonable expenses for attending,  
2 including attorney's fees, if the noticing party failed to:

3 (1) Attend and proceed with the deposition; or

4 (2) serve a subpoena on a nonparty deponent, who consequently did  
5 not attend.

6 (h) *Persons attending deposition.* Unless otherwise stipulated or  
7 ordered by the court, no person may attend a deposition except:

8 (1) The officer before whom the deposition is being taken;

9 (2) the reporter, stenographer or person recording the deposition;

10 (3) the parties to the action;

11 (4) the parties' attorneys and the attorneys' paralegals or legal  
12 assistants; and

13 (5) the deponent.

14 Sec. 6. K.S.A. 2016 Supp. 60-231 is hereby amended to read as  
15 follows: 60-231. (a) *When a deposition may be taken.* (1) *Without leave.* A  
16 party may, by written questions, depose any person, including a party,  
17 without leave of court except as provided in subsection (a)(2). The  
18 deponent's attendance may be compelled by subpoena under K.S.A. 60-  
19 245, and amendments thereto.

20 (2) *With leave.* A party must obtain leave of court, and the court must  
21 grant leave to the extent consistent with ~~subsection (b)(2) of~~ K.S.A. 60-  
22 226(b)(1) and (2), and amendments thereto:

23 (A) If the parties have not stipulated to the deposition and:

24 (i) The deponent has already been deposed in the case; or

25 (ii) the party seeks to take the deposition before the time specified in  
26 ~~subsection (b) of~~ K.S.A. 60-216(b), and amendments thereto; or

27 (B) if the deponent is confined in prison.

28 (3) *Service; required notice.* A party who wants to depose a person by  
29 written questions must serve them on every other party, with a notice  
30 stating, if known, the deponent's name and address. If the name is  
31 unknown, the notice must provide a general description sufficient to  
32 identify the person or the particular class or group to which the person  
33 belongs. The notice must also state the name or descriptive title and the  
34 address of the officer before whom the deposition will be taken.

35 (4) *Questions directed to an organization.* A public or private  
36 corporation, a partnership, an association, a governmental agency or other  
37 entity may be deposed by written questions in accordance with ~~subsection~~  
38 ~~(b)(6) of~~ K.S.A. 60-230(b)(6), and amendments thereto.

39 (5) *Questions from other parties.* Any question to the deponent from  
40 other parties must be served on all parties as follows: cross-questions,  
41 within 14 days after being served with the notice and direct questions;  
42 redirect questions, within 14 days after being served with cross-questions;  
43 and recross-questions, within 14 days after being served with redirect

1 questions. The court may, for good cause, extend or shorten these times.

2 (b) *Delivery to the officer; officer's duties.* The party who noticed the  
3 deposition must deliver to the officer a copy of all the questions served and  
4 of the notice. The officer must promptly proceed in the manner provided in  
5 ~~subsections (c), (e) and (f) of K.S.A. 60-230(c), (e) and (f),~~ and  
6 amendments thereto, to:

7 (1) Take the deponent's testimony in response to the questions;  
8 (2) prepare and certify the deposition; and  
9 (3) send it to the party, attaching a copy of the questions and of the  
10 notice.

11 (c) *Notice of completion or filing.* (1) *Completion.* The party who  
12 noticed the deposition must notify all other parties when it is completed.

13 (2) *Filing.* A party who files the deposition must promptly notify all  
14 other parties of the filing.

15 Sec. 7. K.S.A. 2016 Supp. 60-234 is hereby amended to read as  
16 follows: 60-234. (a) *In general.* A party may serve on any other party a  
17 request within the scope of ~~subsection (b) of K.S.A. 60-226(b),~~ and  
18 amendments thereto:

19 (1) To produce and permit the requesting party, or its representative,  
20 to inspect, copy, test or sample the following items in the responding  
21 party's possession, custody or control:

22 (A) Any designated documents or electronically stored information,  
23 including writings, drawings, graphs, charts, photographs, sound  
24 recordings, images and other data or data compilations, stored in any  
25 medium from which information can be obtained either directly or,  
26 if necessary, after translation by the responding party into a reasonably  
27 usable form; or

28 (B) any designated tangible things; or

29 (2) to permit entry onto designated land or other property possessed  
30 or controlled by the responding party, so that the requesting party may  
31 inspect, measure, survey, photograph, test or sample the property or any  
32 designated object or operation on it.

33 (b) *Procedure.* The request may be served on the plaintiff after  
34 commencement of the action and on any other party with or after service  
35 of process on that party.

36 (1) *Contents of request.* The request:

37 (A) Must describe with reasonable particularity each item or category  
38 of items to be inspected;

39 (B) must specify a reasonable time, place and manner for the  
40 inspection and for performing the related acts; and

41 (C) may specify the form or forms in which electronically stored  
42 information is to be produced.

43 (2) *Responses and objections.* (A) *Time to respond.* The party to



1 whom the request is directed must respond in writing within 30 days after  
2 being served, except that a defendant may serve a response within 45 days  
3 after being served with process. A shorter or longer time may be stipulated  
4 to under K.S.A. 60-229, and amendments thereto, or be ordered by the  
5 court.

6 (B) *Responding to each item.* For each item or category, the response  
7 must either state that inspection and related activities will be permitted as  
8 requested or state ~~an objection~~ *with specificity the grounds for objecting to*  
9 *the request, including the reasons. The responding party may state that it*  
10 *will produce copies of documents or of electronically stored information*  
11 *instead of permitting inspection. The production must then be completed*  
12 *no later than the time for inspection specified in the request or another*  
13 *reasonable time specified in the response.*

14 (C) *Objections.* *An objection must state whether any responsive*  
15 *materials are being withheld on the basis of that objection. An objection to*  
16 *part of a request must specify the part and permit inspection of the rest.*

17 (D) *Responding to a request for production of electronically stored*  
18 *information.* The response may state an objection to a requested form for  
19 producing electronically stored information. If the responding party  
20 objects to a requested form, or if no form was specified in the request, the  
21 party must state the form or forms it intends to use.

22 (E) *Producing the documents or electronically stored information.*  
23 Unless otherwise stipulated or ordered by the court, these procedures apply  
24 to producing documents or electronically stored information:

25 (i) A party must produce documents as they are kept in the usual  
26 course of business or must organize and label them to correspond to the  
27 categories in the request;

28 (ii) if a request does not specify a form for producing electronically  
29 stored information, a party must produce it in a form or forms in which it  
30 is ordinarily maintained or in a reasonably usable form or forms; and

31 (iii) a party need not produce the same electronically stored  
32 information in more than one form.

33 (c) *Nonparties.* As provided in K.S.A. 60-245 and 60-245a, and  
34 amendments thereto, a nonparty may be compelled to produce documents,  
35 electronically stored information and tangible things or to permit an  
36 inspection.

37 Sec. 8. K.S.A. 2016 Supp. 60-237 is hereby amended to read as  
38 follows: 60-237. (a) *Motion for an order compelling disclosure or*  
39 *discovery.* (1) *In general.* On notice to other parties and all affected  
40 persons, a party may move for an order compelling disclosure or  
41 discovery. The motion must include a certification that the movant has in  
42 good faith conferred or attempted to confer with the person or party failing  
43 to make disclosure or discovery in an effort to obtain it without court

1 action and must describe the steps taken by all attorneys or unrepresented  
2 parties to resolve the issues in dispute.

3 (2) *Appropriate court.* A motion for an order to a party must be made  
4 in the court where the action is pending. A motion for an order to a  
5 nonparty must be made in the district where the discovery is or will be  
6 taken.

7 (3) *Specific motions.* (A) *To compel disclosure.* If a party fails to  
8 make a disclosure required by ~~subsection (b)(6) of K.S.A. 60-226(b)(6)~~,  
9 and amendments thereto, any other party may move to compel disclosure  
10 and for appropriate sanctions.

11 (B) *To compel a discovery response.* A party seeking discovery may  
12 move for an order compelling an answer, designation, production or  
13 inspection. This motion may be made if:

14 (i) A deponent fails to answer a question asked under K.S.A. 60-230  
15 or 60-231, and amendments thereto;

16 (ii) a corporation or other entity fails to make a designation under  
17 ~~subsection (b)(6) of K.S.A. 60-226(b)(6)~~ or ~~subsection (a)(4) of K.S.A. 60-~~  
18 ~~231(a)(4)~~, and amendments thereto;

19 (iii) a party fails to answer an interrogatory submitted under K.S.A.  
20 60-233, and amendments thereto; or

21 (iv) a party fails to *produce documents or fails to* respond that  
22 inspection will be permitted, or fails to permit inspection, as requested  
23 under K.S.A. 60-234, and amendments thereto.

24 (C) *Related to a deposition.* When taking an oral deposition the party  
25 asking a question may complete or adjourn the examination before moving  
26 for an order.

27 (4) *Evasive or incomplete disclosure, answer or response.* For  
28 purposes of this subsection, an evasive or incomplete disclosure, answer or  
29 response must be treated as a failure to disclose, answer or respond.

30 (5) *Payment of expenses; protective orders.* (A) *If the motion is*  
31 *granted, or disclosure or discovery is provided after filing.* If the motion is  
32 granted, the court must, and if disclosure occurs before the motion is  
33 granted, the court may, after giving an opportunity to be heard, require the  
34 party or deponent whose conduct necessitated the motion, the party or  
35 attorney advising that conduct, or both to pay the movant's reasonable  
36 expenses incurred in making the motion, including attorney's fees. But the  
37 court must not order this payment if:

38 (i) The movant filed the motion before attempting in good faith to  
39 obtain the disclosure or discovery without court action;

40 (ii) the opposing party's nondisclosure, response or objection was  
41 substantially justified; or

42 (iii) other circumstances make an award of expenses unjust.

43 (B) *If the motion is denied.* If the motion is denied, the court may

1 issue any protective order authorized under ~~subsection (e) of K.S.A. 60-~~  
2 ~~226(c)~~, and amendments thereto, and must, after giving an opportunity to  
3 be heard, require the movant, the attorney filing the motion, or both to pay  
4 the party or deponent who opposed the motion its reasonable expenses  
5 incurred in opposing the motion, including attorney's fees. But the court  
6 must not order this payment if the motion was substantially justified or  
7 other circumstances make an award of expenses unjust.

8 (C) *If the motion is granted in part and denied in part.* If the motion  
9 is granted in part and denied in part, the court may issue any protective  
10 order authorized under ~~subsection (e) of K.S.A. 60-226(c)~~, and  
11 amendments thereto, and may, after giving an opportunity to be heard,  
12 apportion the reasonable expenses for the motion.

13 (b) *Failure to comply with a court order.* (1) *Sanctions in the district*  
14 *where the deposition is taken.* If the court in the district where the  
15 discovery is taken orders a deponent to be sworn or to answer a question  
16 and the deponent fails to obey, the failure may be treated as contempt of  
17 court.

18 (2) *Sanctions in the district where the action is pending.* (A) *For not*  
19 *obeying a discovery order.* If a party or a party's officer, director or  
20 managing agent, or a witness designated under ~~subsection (b)(6) of K.S.A.~~  
21 ~~60-230(b)(6)~~ or ~~subsection (a)(4) of K.S.A. 60-231(a)(4)~~, and amendments  
22 thereto, fails to obey an order to provide or permit discovery, including an  
23 order under subsection (a) or under K.S.A. 60-235, and amendments  
24 thereto, the court where the action is pending may issue further just orders.  
25 They may include the following:

26 (i) Directing that the matters embraced in the order or other  
27 designated facts be taken as established for purposes of the action, as the  
28 prevailing party claims;

29 (ii) prohibiting the disobedient party from supporting or opposing  
30 designated claims or defenses, or from introducing designated matters in  
31 evidence;

32 (iii) striking pleadings in whole or in part;

33 (iv) staying further proceedings until the order is obeyed;

34 (v) dismissing the action or proceeding in whole or in part;

35 (vi) rendering a default judgment against the disobedient party; or

36 (vii) treating as contempt of court the failure to obey any order except  
37 an order to submit to a physical or mental examination.

38 (B) *For not producing a person for examination.* If a party fails to  
39 comply with an order under ~~subsection (a) of K.S.A. 60-235(a)~~, and  
40 amendments thereto, requiring it to produce another person for  
41 examination, the court may issue any of the orders listed in paragraphs (2)  
42 (A)(i) through (2)(A)(vi), unless the disobedient party shows that it cannot  
43 produce the other person.

1 (C) *Payment of expenses.* Instead of, or in addition to, the orders  
2 above, the court must order the disobedient party, the attorney advising  
3 that party, or both to pay the reasonable expenses, including attorney's  
4 fees, caused by the failure, unless the failure was substantially justified or  
5 other circumstances make an award of expenses unjust.

6 (c) *Failure to disclose, to supplement an earlier response or to admit.*

7 (1) *Failure to disclose or supplement.* If a party fails to provide  
8 information or identify a witness as required by ~~subsection (b)(6) or (e) of~~  
9 K.S.A. 60-226(b)(6) or (e), and amendments thereto, the party is not  
10 allowed to use that information or witness to supply evidence on a motion,  
11 at a hearing or at a trial, unless the failure was substantially justified or is  
12 harmless. In addition to, or instead of this sanction, the court, on motion  
13 and after giving an opportunity to be heard:

14 (A) May order payment of the reasonable expenses, including  
15 attorney's fees, caused by the failure;

16 (B) may inform the jury of the party's failure; and

17 (C) may impose other appropriate sanctions, including any of the  
18 orders listed in subsections (b)(2)(A)(i) through (b)(2)(A)(vi).

19 (2) *Failure to admit.* If a party fails to admit what is requested under  
20 K.S.A. 60-236, and amendments thereto, and if the requesting party later  
21 proves the document to be genuine or the matter true, the requesting party  
22 may move that the party who failed to admit pay the reasonable expenses,  
23 including attorney's fees, incurred in making that proof. The court must so  
24 order unless:

25 (A) The request was held objectionable under ~~subsection (a) of~~  
26 K.S.A. 60-236(a), and amendments thereto;

27 (B) the admission sought was of no substantial importance;

28 (C) the party failing to admit had a reasonable ground to believe that  
29 it might prevail on the matter; or

30 (D) there was other good reason for the failure to admit.

31 (d) *Party's failure to attend its own deposition, serve answers to*  
32 *interrogatories or respond to a request for inspection.* (1) *In general.* (A)  
33 *Motion; grounds for sanctions.* The court where the action is pending may,  
34 on motion, order sanctions if:

35 (i) A party or a party's officer, director or managing agent, or a person  
36 designated under ~~subsection (b)(6) of~~ K.S.A. 60-230(b)(6) or ~~subsection~~  
37 ~~(a)(4) of~~ K.S.A. 60-231(a)(4), and amendments thereto, fails, after being  
38 served with proper notice, to appear for that person's deposition; or

39 (ii) a party, after being properly served with interrogatories under  
40 K.S.A. 60-233, and amendments thereto, or a request for inspection under  
41 K.S.A. 60-234, and amendments thereto, fails to serve its answers,  
42 objections or written response.

43 (B) *Certification.* A motion for sanctions for failing to answer or

1 respond must include a certification that the movant has in good faith  
2 conferred or attempted to confer with the party failing to act in an effort to  
3 obtain the answer or response without court action and must describe the  
4 steps taken by all attorneys or unrepresented parties to resolve the issues in  
5 dispute.

6 (2) *Unacceptable excuse for failing to act.* A failure described in  
7 paragraph (1)(A) is not excused on the ground that the discovery sought  
8 was objectionable, unless the party failing to act has a pending motion for  
9 a protective order under ~~subsection (e) of~~ K.S.A. 60-226(c), and  
10 amendments thereto.

11 (3) *Types of sanctions.* Sanctions may include any of the orders listed  
12 in subsections (b)(2)(A)(i) through (b)(2)(A)(vi). Instead of, or in addition  
13 to, these sanctions, the court must require the party failing to act, the  
14 attorney advising the party, or both to pay the reasonable expenses,  
15 including attorney's fees, ~~cause~~ caused by the failure, unless the failure  
16 was substantially justified or other circumstances make an award of  
17 expenses unjust.

18 (e) *Failure to ~~provide~~ preserve electronically stored information.*  
19 ~~Absent exceptional circumstances, a court may not impose sanctions under~~  
20 ~~this article on a party for failing to provide electronically stored~~  
21 ~~information lost as a result of the routine, good-faith operation of an~~  
22 ~~electronic information system. If electronically stored information that~~  
23 ~~should have been preserved in the anticipation or conduct of litigation is~~  
24 ~~lost because a party failed to take reasonable steps to preserve it, and it~~  
25 ~~cannot be restored or replaced through additional discovery, the court:~~

26 (1) *Upon finding prejudice to another party from loss of the*  
27 *information, may order measures no greater than necessary to cure the*  
28 *prejudice; or*

29 (2) *only upon finding that the party acted with the intent to deprive*  
30 *another party of the information's use in the litigation, may:*

31 (A) *Presume that the lost information was unfavorable for the party;*

32 (B) *instruct the jury that it may or must presume the information was*  
33 *unfavorable to the party; or*

34 (C) *dismiss the action or enter a default judgment.*

35 Sec. 9. K.S.A. 2016 Supp. 60-255 is hereby amended to read as  
36 follows: 60-255. (a) *Entry.* When a party against whom a judgment for  
37 affirmative relief is sought has failed to plead or otherwise defend, the  
38 party is in default. On request and a showing that a party is entitled to a  
39 default judgment, the court must render judgment against the party in  
40 default for the remedy to which the requesting party is entitled. But a  
41 default judgment may be entered against a minor or incapacitated person  
42 only if represented by a guardian, conservator or other legally authorized  
43 representative who has appeared in the action, or by a guardian ad litem

1 appointed by the court. If the party against whom a default judgment is  
2 sought has appeared personally, or by a representative, that party or its  
3 representative must be served with written notice of the request for  
4 judgment at least seven days before the hearing. The court may conduct  
5 hearings or make referrals, preserving any statutory right to a jury trial,  
6 when to enter or effectuate judgment it needs to:

- 7 (1) Conduct an accounting;
  - 8 (2) determine the amount of damages;
  - 9 (3) establish the truth of any allegation by evidence; or
  - 10 (4) investigate any other matter.
- 11 (b) *Setting aside a default judgment.* The court may set aside a *final*  
12 default judgment under ~~subsection (b)~~ of K.S.A. 60-260(b) and ~~K.S.A. 60-~~  
13 ~~309~~, and amendments thereto.
- 14 (c) *Judgment against the state.* A default judgment may be entered  
15 against the state, its officers or its agencies only if the claimant establishes  
16 a claim or right to relief by evidence that satisfies the court.
- 17 Sec. 10. K.S.A. 2016 Supp. 60-102, 60-206, 60-216, 60-226, 60-230,  
18 60-231, 60-234, 60-237, 60-255 and 60-268 are hereby repealed.
- 19 Sec. 11. This act shall take effect and be in force from and after its  
20 publication in the statute book.