

House Substitute for SENATE BILL No. 120

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

Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

(A) On the last day for filing under subsection (a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) setting deadlines for filing motions, joining parties and amendments to the pleadings;

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

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

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

(3) If discovery cannot be completed within the time originally prescribed by the court, the party not able to complete discovery may file a motion for additional time to complete discovery. The motion must be filed prior to the expiration of the original period, contain a discovery plan

and state the reason why discovery cannot be completed within the original period. If additional time is allowed, the court must grant only that amount of time reasonably necessary to complete discovery.

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

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

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

- (A) Simplifying the issues;
- (B) determining the issues of law that may eliminate or affect the trial of issues of fact;
- (C) amending the pleadings if necessary or desirable;
- (D) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof;
- (E) limiting the number of expert witnesses;
- (F) referring issues to a master; and
- (G) such other matters as may aid in the disposition of the action, including alternative dispute resolution.

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

(e) *Final pretrial conference and orders.* In any action, the court must on the request of any party, or may without a request, conduct a final pretrial conference in accordance with procedures established by rule of the supreme court. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

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

- (A) Fails to appear at a case management or other pretrial conference;
- (B) is substantially unprepared to participate, or does not participate in good faith, in the conference; or
- (C) fails to obey a scheduling or other pretrial order.

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

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

(b) *Discovery scope and limits.* (1) *Scope in general.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to the subject matter involved in the action, ~~whether it relates to any party's claim or defense, including the existence, description, nature, custody, condition and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues and whether the bur-~~

den or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Limitations on frequency and extent.* (A) On motion, or on its own, the court may limit the frequency or extent of discovery methods otherwise allowed by the rules of civil procedure and must do so if it determines that:

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

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

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

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

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

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

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

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

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

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

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

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

(5) *Trial preparation; experts.*

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

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

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

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

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

- (i) As provided in ~~subsection (b) of~~ K.S.A. 60-235(b), and amendments thereto; or
- (ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

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

- (i) Pay the expert a reasonable fee for time spent in responding to discovery under subsection (b)(5)(A) or (b)(5)(D); and
- (ii) for discovery under subsection (b)(5)(D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

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

- (i) The subject matter on which the expert is expected to testify; and
- (ii) the substance of the facts and opinions to which the expert is expected to testify.

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

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

- (i) At least 90 days before the date set for trial or for the case to be ready for trial; or
- (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under subsection (b)(6)(B), within 30 days after the other party's disclosure.

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

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

- (i) In writing, signed and served; and
- (ii) filed with the court in accordance with ~~subsection (d) of~~ K.S.A. 60-205(d), and amendments thereto.

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

- (i) Expressly make the claim; and
- (ii) describe the nature of the documents, communications or things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the infor-

mation of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

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

- (A) Forbidding the disclosure or discovery;
- (B) specifying terms, including time and place *or the allocation of expenses*, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court orders.

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

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

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

- (1) Methods of discovery may be used in any sequence; and
- (2) discovery by one party does not require any other party to delay its discovery.

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

- (A) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
- (B) as ordered by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) if the deponent is confined in prison.

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

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

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

(B) *Additional method.* With prior notice to the deponent and other parties, any party may record on videotape, or a comparable medium, any deposition that is to be recorded stenographically. That party bears the expense of the additional record or transcript unless the court orders otherwise.

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

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

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

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

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

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

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

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

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

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

(2) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in ~~subsection (c) of~~ K.S.A.

60-226(c), and amendments thereto. If terminated, the deposition may be resumed only by order of the court where the action is pending.

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

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

(A) To review the transcript or recording; and

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

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

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

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

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

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

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

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

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

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

(g) *Failure to attend a deposition or serve a subpoena; expenses; persons attending.* A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) Attend and proceed with the deposition; or

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

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

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

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

(3) the parties to the action;

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

(5) the deponent.

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

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

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

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

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

(B) if the deponent is confined in prison.

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

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

(5) *Questions from other parties.* Any question to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 14 days after being served with cross-questions; and recross-questions, within 14 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

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

(1) Take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

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

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

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

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

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

(B) any designated tangible things; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) a corporation or other entity fails to make a designation under

~~subsection (b)(6) of K.S.A. 60-226(b)(6) or subsection (a)(4) of K.S.A. 60-231(a)(4), and amendments thereto;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) striking pleadings in whole or in part;

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

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

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

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

(B) *For not producing a person for examination.* If a party fails to comply with an order under ~~subsection (a) of K.S.A. 60-235(a), and amendments thereto,~~ requiring it to produce another person for examination, the court may issue any of the orders listed in paragraphs (2)(A)(i)

through (2)(A)(vi), unless the disobedient party shows that it cannot produce the other person.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) *Certification.* A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action and must describe the steps taken by all attorneys or unrepresented parties to resolve the issues in dispute.

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

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

(e) *Failure to ~~provide~~ preserve electronically stored information.* ~~Absent exceptional circumstances, a court may not impose sanctions under this article on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because~~

a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

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

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

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

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

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

Sec. 9. K.S.A. 2016 Supp. 60-255 is hereby amended to read as follows: 60-255. (a) *Entry*. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the party is in default. On request and a showing that a party is entitled to a default judgment, the court must render judgment against the party in default for the remedy to which the requesting party is entitled. But a default judgment may be entered against a minor or incapacitated person only if represented by a guardian, conservator or other legally authorized representative who has appeared in the action, or by a guardian ad litem appointed by the court. If the party against whom a default judgment is sought has appeared personally, or by a representative, that party or its representative must be served with written notice of the request for judgment at least seven days before the hearing. The court may conduct hearings or make referrals, preserving any statutory right to a jury trial, when to enter or effectuate judgment it needs to:

- (1) Conduct an accounting;
- (2) determine the amount of damages;
- (3) establish the truth of any allegation by evidence; or
- (4) investigate any other matter.

(b) *Setting aside a default judgment*. The court may set aside a final default judgment under ~~subsection (b) of K.S.A. 60-260(b) and K.S.A. 60-309~~, and amendments thereto.

(c) *Judgment against the state*. A default judgment may be entered against the state, its officers or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Sec. 10. K.S.A. 2016 Supp. 60-102, 60-206, 60-216, 60-226, 60-230, 60-231, 60-234, 60-237, 60-255 and 60-268 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.