

SENATE BILL No. 199

AN ACT concerning civil procedure; relating to appellate procedure; supersedeas bond requirements; amending K.S.A. 2017 Supp. 60-2103 and repealing the existing section.

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

Section 1. K.S.A. 2017 Supp. 60-2103 is hereby amended to read as follows: 60-2103. (a) *When and how taken.* When an appeal is permitted by law from a district court to an appellate court, the time within which an appeal may be taken shall be 30 days from the entry of the judgment, as provided by K.S.A. 60-258, and amendments thereto, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of judgment the district court in any action may extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed. The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subsection commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: Granting or denying a motion for judgment under ~~subsection (b) of~~ K.S.A. 60-250(b), and amendments thereto; or granting or denying a motion under ~~subsection (b) of~~ K.S.A. 60-252(b), and amendments thereto, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; or granting or denying a motion under K.S.A. 60-259, and amendments thereto, to alter or amend the judgment; or denying a motion for new trial under K.S.A. 60-259, and amendments thereto.

A party may appeal from a judgment by filing with the clerk of the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this chapter, or when no remedy is specified, for such action as the appellate court having jurisdiction over the appeal deems appropriate, which may include dismissal of the appeal. If the record on appeal has not been filed with the appellate court, the parties, with the approval of the district court, may dismiss the appeal by stipulation filed in the district court, or that court may dismiss the appeal upon motion and notice by the appellant.

(b) *Notice of appeal.* The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or part thereof appealed from, and shall name the appellate court to which the appeal is taken. The appealing party shall cause notice of the appeal to be served upon all other parties to the judgment as provided in K.S.A. 60-205, and amendments thereto, but such party's failure so to do does not affect the validity of the appeal.

(c) *Security for costs.* Security for the costs on appeal shall be given in such sum and manner as shall be prescribed by a general rule of the supreme court unless the appellate court shall make a different order applicable to a particular case.

(d) *Supersedeas bond.* (1) Whenever an appellant entitled thereto desires a stay on appeal, such appellant may present to the district court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. Subject to paragraph (2), the bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed, or if the judgment is affirmed, and to satisfy in full such modification of the judgment such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed after notice and hearing at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. When an order is made discharging, vacating, or modifying a provisional remedy,

or modifying or dissolving an injunction, a party aggrieved thereby shall be entitled, upon application to the judge, to have the operation of such order suspended for a period of not to exceed 14 days on condition that, within such period of 14 days such party shall file a notice of appeal and obtain the approval of such supersedeas bond as is required under this section.

(2) (A) Except as provided in ~~paragraph subparagraphs (B) (C) and (D)~~, if an appellant appeals from any form of judgment based on any legal theory and seeks a stay of enforcement during the period of appeal, the supersedeas bond shall be set at the full amount of the judgment. If the appellant proves by a preponderance of the evidence that setting the supersedeas bond at the full amount of the judgment will result in the appellant suffering an undue hardship or a denial of the right to an appeal, then the court may reduce the amount of the supersedeas bond as follows:

(i) If the judgment is less than or equal to \$1,000,000 in value, the supersedeas bond shall be set at the full amount of the judgment; or

(ii) if the judgment exceeds \$1,000,000 in value, the supersedeas bond shall be set at a total of \$1,000,000 plus 25% of any amount in excess of \$1,000,000.

(B) (i) *There shall be a rebuttable presumption that an appellant will suffer an undue hardship pursuant to subparagraph (A) when the:*

(a) *Judgment amount exceeds \$2,500,000;*

(b) *defendant is a small business; and*

(c) *judgment is for a claim arising from activities within the appellant's ordinary course of business.*

(ii) *For the purposes of this subparagraph, "small business" means a sole proprietorship, partnership, limited liability company, corporation or other business entity, whether for-profit or not-for-profit, that has between two and 50 employees and is not a corporate affiliate or subsidiary of, or owned in whole or in part by, any other business.*

(C) *The amount of a supersedeas bond shall not exceed \$25,000,000, regardless of the full amount of the judgment.*

(D) The limitations on the amount of a supersedeas bond established by ~~paragraph (A)(i) or (A)(ii)~~ subparagraph (A), (B) or (C) shall not apply if:

(i) ~~the~~ the appellee proves by a preponderance of the evidence that the appellant bringing the appeal is purposefully dissipating or diverting assets outside of the ordinary course of its business, *or is likely to purposefully dissipate or divert assets outside of the ordinary course of its business*, for the *primary* purpose of avoiding ultimate payment of the judgment, ~~and~~. In such event, the court may enter such orders as are necessary to stop the dissipation and diversion of assets, including a requirement that the appellant post a bond in the full amount of the judgment, ~~or~~

(ii) ~~the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets reasonably necessary to satisfy the judgment, and in such event, the court may increase the amount of such bond required not to exceed the full amount of the judgment.~~

~~(E)~~ Nothing in this section shall be construed to prohibit a court from setting a supersedeas bond in a lower amount as may be otherwise required by law or for good cause shown.

~~(F)~~ A bond shall not be found insufficient under any other provision of law due to limits imposed under this subsection.

(e) *Failure to file or insufficiency of bond.* If a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the appellate court.

(f) *Judgment against surety.* By entering into a supersedeas bond given pursuant to subsections (c) and (d), the surety submits such surety's self to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting such surety's liability on the bond may be served. Such surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the judge prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if such surety's address is known.

(g) *Docketing record on appeal.* The record on appeal shall be filed and docketed with the appellate court at such time as the supreme court may prescribe by rule.

(h) *Cross-appeal.* When notice of appeal has been served in a case and the appellee desires to have a review of rulings and decisions of which such appellee complains, the appellee shall, within 21 days after the notice of appeal has been served upon such appellee and filed with the clerk of the trial court, give notice of such appellee’s cross-appeal.

(i) *Intermediate rulings.* When an appeal or cross-appeal has been timely perfected, the fact that some ruling of which the appealing or cross-appealing party complains was made more than 30 days before filing of the notice of appeal shall not prevent a review of the ruling.

(j) *The amendments to subsection (d) by this act shall apply to any proceeding that is filed on or after the effective date of this act.*

Sec. 2. K.S.A. 2017 Supp. 60-2103 is hereby repealed.

Sec. 3. 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 adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.