

As Amended by Senate Committee

Session of 2017

SENATE BILL No. 199

By Committee on Federal and State Affairs

2-16

1 AN ACT concerning civil procedure; relating to appellate procedure;
2 supersedeas bond requirements; amending K.S.A. ~~2016~~ **2017** Supp. 60-
3 2103 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. ~~2016~~ **2017** Supp. 60-2103 is hereby amended to
7 read as follows: 60-2103. (a) *When and how taken.* When an appeal is
8 permitted by law from a district court to an appellate court, the time within
9 which an appeal may be taken shall be 30 days from the entry of the
10 judgment, as provided by K.S.A. 60-258, and amendments thereto, except
11 that upon a showing of excusable neglect based on a failure of a party to
12 learn of the entry of judgment the district court in any action may extend
13 the time for appeal not exceeding 30 days from the expiration of the
14 original time herein prescribed. The running of the time for appeal is
15 terminated by a timely motion made pursuant to any of the rules
16 hereinafter enumerated, and the full time for appeal fixed in this
17 subsection commences to run and is to be computed from the entry of any
18 of the following orders made upon a timely motion under such rules:
19 Granting or denying a motion for judgment under ~~subsection (b)~~ of K.S.A.
20 60-250(b), and amendments thereto; or granting or denying a motion under
21 ~~subsection (b)~~ of K.S.A. 60-252(b), and amendments thereto, to amend or
22 make additional findings of fact, whether or not an alteration of the
23 judgment would be required if the motion is granted; or granting or
24 denying a motion under K.S.A. 60-259, and amendments thereto, to alter
25 or amend the judgment; or denying a motion for new trial under K.S.A.
26 60-259, and amendments thereto.

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

1 notice by the appellant.

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

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

13 (d) *Supersedeas bond.* (1) Whenever an appellant entitled thereto
14 desires a stay on appeal, such appellant may present to the district court for
15 its approval a supersedeas bond which shall have such surety or sureties as
16 the court requires. Subject to paragraph (2), the bond shall be conditioned
17 for the satisfaction of the judgment in full together with costs, interest, and
18 damages for delay, if for any reason the appeal is dismissed, or if the
19 judgment is affirmed, and to satisfy in full such modification of the
20 judgment such costs, interest, and damages as the appellate court may
21 adjudge and award. When the judgment is for the recovery of money not
22 otherwise secured, the amount of the bond shall be fixed at such sum as
23 will cover the whole amount of the judgment remaining unsatisfied, costs
24 on the appeal, interest, and damages for delay, unless the court after notice
25 and hearing and for good cause shown fixes a different amount or orders
26 security other than the bond. When the judgment determines the
27 disposition of the property in controversy as in real actions, replevin, and
28 actions to foreclose mortgages or when such property is in the custody of
29 the sheriff or when the proceeds of such property or a bond for its value is
30 in the custody or control of the court, the amount of the supersedeas bond
31 shall be fixed after notice and hearing at such sum only as will secure the
32 amount recovered for the use and detention of the property, the costs of the
33 action, costs on appeal, interest, and damages for delay. When an order is
34 made discharging, vacating, or modifying a provisional remedy, or
35 modifying or dissolving an injunction, a party aggrieved thereby shall be
36 entitled, upon application to the judge, to have the operation of such order
37 suspended for a period of not to exceed 14 days on condition that, within
38 such period of 14 days such party shall file a notice of appeal and obtain
39 the approval of such supersedeas bond as is required under this section.

40 (2) (A) Except as provided in ~~paragraph~~ *subparagraphs (B) and (C)*,
41 if an appellant appeals from any form of judgment based on any legal
42 theory and seeks a stay of enforcement during the period of appeal, the
43 supersedeas bond shall be set at the full amount of the judgment. If the

1 appellant proves by a preponderance of the evidence that setting the
2 supersedeas bond at the full amount of the judgment will result in the
3 appellant suffering an undue hardship or a denial of the right to an appeal,
4 then the court may reduce the amount of the supersedeas bond as follows:

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

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

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

12 ~~(i)~~—the appellee proves by a preponderance of the evidence that the
13 appellant bringing the appeal is purposefully dissipating or diverting assets
14 outside of the ordinary course of its business for the purpose of avoiding
15 ultimate payment of the judgment, and in such event, the court may enter
16 such orders as are necessary to stop the dissipation and diversion of assets,
17 including a requirement that the appellant post a bond in the full amount of
18 the judgment; ~~or~~

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

23 (C) (i) *The amount of a supersedeas bond of any individual appellant*
24 *and its successors or corporate affiliates, individually or collectively, shall*
25 *not exceed ~~\$25,000,000~~ **\$25,000,000**, regardless of the full amount of the*
26 *judgment.*

27 (ii) *If the appellant is a small business, the amount of such*
28 *appellant's supersedeas bond shall not exceed ~~\$1,000,000~~ **\$2,500,000** or*
29 *the amount of the judgment, whichever is less. For the purposes of this*
30 *clause, "small business" means an independently owned and operated*
31 *business or nonprofit organization with not more than 50 full-time*
32 *employees and not more than ~~\$50,000,000~~ **\$25,000,000** in annual revenue.*

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

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

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

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

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

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

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

22 (j) *The amendments to subsection (d) by this act shall apply to any*
23 *proceeding that is filed on or after the effective date of this act, ~~or was~~*
24 *filed prior to the effective date of this act and is pending or on appeal on*
25 *or after the effective date of this act.*

26 Sec. 2. K.S.A. ~~2016~~ 2017 Supp. 60-2103 is hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after its
28 publication in the Kansas register.