

HOUSE BILL No. 2426

By Representative Highberger

12-12

1 AN ACT concerning civil procedure; relating to the code of civil
2 procedure; small claims procedure act; code of civil procedure for
3 limited actions; amending K.S.A. 60-467 and 61-2706 and K.S.A. 2019
4 Supp. 61-2709 and 61-3105 and repealing the existing sections.

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

7 Section 1. K.S.A. 60-467 is hereby amended to read as follows: 60-
8 467. (a) As tending to prove the content of a writing, no evidence other
9 than the writing itself is admissible, except as otherwise provided in these
10 rules, unless the judge finds that: (1) If the writing is a telefacsimile
11 communication as defined in subsection (d) and is used by the proponent
12 or opponent as the writing itself, such telefacsimile communication shall
13 be considered as the writing itself; (2) (A) the writing is lost or has been
14 destroyed without fraudulent intent on the part of the proponent, (B) the
15 writing is outside the reach of the court's process and not procurable by the
16 proponent, (C) the opponent, at a time when the writing was under the
17 opponent's control has been notified, expressly or by implication from the
18 pleadings, that it would be needed at the hearing, and on request at the
19 hearing has failed to produce it, (D) the writing is not closely related to the
20 controlling issues and it would be inexpedient to require its production, (E)
21 the writing is an official record, or is a writing affecting property
22 authorized to be recorded and actually recorded in the public records as
23 described in ~~exception (s)~~ of K.S.A. 60-460(q), and amendments thereto,
24 or (F) calculations or summaries of content are called for as a result of an
25 examination by a qualified witness of multiple or voluminous writings,
26 which cannot be conveniently examined in court, but the adverse party
27 shall have had a reasonable opportunity to examine such records before
28 trial, and such writings are present in court for use in cross-examination, or
29 the adverse party has waived their production, or the judge finds that their
30 production is unnecessary.

31 (b) If the judge makes one of the findings specified in subsection (a),
32 secondary evidence of the content of the writing is admissible. If evidence
33 is offered by the opponent tending to prove that (1) the asserted writing
34 never existed, (2) a writing produced at the trial is the asserted writing or
35 (3) the secondary evidence does not correctly reflect the content of the
36 asserted writing, the evidence is irrelevant and inadmissible upon the

1 question of admissibility of the secondary evidence but is relevant and
2 admissible upon the issues of the existence and content of the asserted
3 writing to be determined by the trier of fact.

4 (c) If the procedure specified by ~~subsection (b)~~ of K.S.A. 60-245a(b),
5 and amendments thereto, for providing business records has been
6 complied with and no party has required the personal attendance of a
7 custodian of the records or the production of the original records, the copy
8 of the records produced shall not be excluded under subsection (a).

9 (d) As used in this section, telefacsimile communication means the
10 use of electronic equipment to send or transfer a copy of an original
11 document via telephone lines.

12 Sec. 2. K.S.A. 61-2706 is hereby amended to read as follows: 61-
13 2706. (a) Whenever a plaintiff demands judgment beyond the scope of the
14 small claims jurisdiction of the court, the court shall either: (1) Dismiss the
15 action without prejudice at the cost of the plaintiff; (2) allow the plaintiff
16 to amend the plaintiff's pleadings and service of process to bring the
17 demand for judgment within the scope of the court's small claims
18 jurisdiction and thereby waive the right to recover any excess, assessing
19 the costs accrued to the plaintiff; or (3) if the plaintiff's demand for
20 judgment is within the scope of the court's general jurisdiction, allow the
21 plaintiff to amend the plaintiff's pleadings and service of process so as to
22 commence an action in such court in compliance with K.S.A. ~~61-1703~~ 61-
23 2902, and amendments thereto, assessing the costs accrued to the plaintiff.

24 (b) Whenever a defendant asserts a claim beyond the scope of the
25 court's small claims jurisdiction, but within the scope of the court's general
26 jurisdiction, the court may determine the validity of defendant's entire
27 claim. If the court refuses to determine the entirety of any such claim, the
28 court must allow the defendant to: (1) Make no demand for judgment and
29 reserve the right to pursue the defendant's entire claim in a court of
30 competent jurisdiction; (2) make demand for judgment of that portion of
31 the claim not exceeding \$4,000, plus interest, costs and any damages
32 awarded pursuant to K.S.A. 60-2610, and amendments thereto, and reserve
33 the right to bring an action in a court of competent jurisdiction for any
34 amount in excess thereof; or (3) make demand for judgment of that portion
35 of the claim not exceeding \$4,000, plus interest, costs and any damages
36 awarded pursuant to K.S.A. 60-2610, and amendments thereto, and waive
37 the right to recover any excess.

38 Sec. 3. K.S.A. 2019 Supp. 61-2709 is hereby amended to read as
39 follows: 61-2709. (a) An appeal may be taken from any judgment under
40 the small claims procedure act. All appeals shall be by notice of appeal
41 specifying the party or parties taking the appeal and the order, ruling,
42 decision or judgment complained of and shall be filed with the clerk of the
43 district court within 14 days after entry of judgment. All appeals shall be

1 tried and determined de novo before a district judge, other than the judge
2 from which the appeal is taken. The provisions of K.S.A. 60-2001 and ~~61-~~
3 ~~1716~~ 61-3202, and amendments thereto, shall be applicable to actions
4 appealed pursuant to this subsection. The appealing party shall cause
5 notice of the appeal to be served upon all other parties to the action in
6 accordance with the provisions of K.S.A. 60-205, and amendments
7 thereto. An appeal shall be perfected upon the filing of the notice of
8 appeal. When the appeal is perfected, the clerk of the court or the judge
9 from which the appeal is taken shall refer the case to the chief judge for
10 assignment in accordance with this section. All proceedings for the
11 enforcement of any judgment under the small claims procedure act shall be
12 stayed during the time within which an appeal may be taken and during the
13 pendency of an appeal, without the necessity of the appellant filing a
14 supersedeas bond. If the appellee is successful on an appeal pursuant to
15 this subsection, the court shall award to the appellee, as part of the costs,
16 reasonable attorney fees incurred by the appellee on appeal.

17 (b) Any order, ruling, decision or judgment rendered by a district
18 judge on an appeal taken pursuant to subsection (a) may be appealed in the
19 manner provided in article 21 of chapter 60 of the Kansas Statutes
20 Annotated, and amendments thereto.

21 Sec. 4. K.S.A. 2019 Supp. 61-3105 is hereby amended to read as
22 follows: 61-3105. (a) Any party to an action pursuant to the code of civil
23 procedure for limited actions may take the testimony of any person,
24 including a party, either within or without the state, by deposition upon
25 oral examination or written questions but only for use as evidence in the
26 action. Unless the court orders otherwise, the parties may by written
27 stipulation provide that depositions may be taken before any person, at any
28 time or place, upon any notice, and in any manner and when so taken may
29 be used like other depositions. The taking of such depositions shall be
30 governed by the provisions of K.S.A. 60-228, ~~subsections (b) through (h)~~
31 ~~of K.S.A. 60-230(b) through (h), K.S.A. 60-231 and subsection (d) of~~
32 ~~K.S.A. 60-232(d)~~, and amendments thereto, except that any party desiring
33 to take a deposition shall first file with the court, and serve on all other
34 parties to the action, a motion that the taking of such deposition be allowed
35 due to the existence of at least one of the conditions prescribed in
36 subsection (b) for the use of depositions as evidence. Within seven days
37 after any such motion has been made, any other party to the action may
38 file an objection to such motion, and in such event, the court shall hold a
39 hearing within seven days thereof to determine the issue. No deposition
40 shall be taken unless and until the court shall have granted the motion
41 requesting permission therefor.

42 (b) At the trial, or upon the hearing of a motion or an interlocutory
43 proceeding, any part or all of a deposition of a witness, whether or not a

1 party, so far as it is admissible under the rules of evidence, may be used for
2 any purpose against any party who was present or represented at the taking
3 of the deposition, or who had due notice thereof, if the court finds that:

4 (1) The witness is dead;

5 (2) the witness is outside of the county of the place of trial or hearing,
6 unless it appears that the absence of the witness was procured by the party
7 offering the deposition;

8 (3) the witness is unable to attend or testify because of age, sickness,
9 infirmity or imprisonment;

10 (4) the party offering the deposition has been unable to procure the
11 attendance of the witness by subpoena; or

12 (5) upon application and notice, that such exceptional circumstances
13 exist as to make it desirable, in the interest of justice and with due regard
14 to the importance of presenting the testimony of witnesses orally in open
15 court, to allow the deposition to be used.

16 (c) In addition to the uses of depositions enumerated in subsection
17 (b), the court on motion may permit the use of depositions as provided in
18 ~~subsections (b)(1), (2) and (4) of K.S.A. 60-232(a)(1), (2) and (4), and~~
19 ~~amendments thereto, in the interest of justice and on such terms and~~
20 ~~conditions as will fairly protect the parties.~~

21 Sec. 5. K.S.A. 60-467 and 61-2706 and K.S.A. 2019 Supp. 61-2709
22 and 61-3105 are hereby repealed.

23 Sec. 6. This act shall take effect and be in force from and after its
24 publication in the statute book.