

60-459. Definitions. As used in K.S.A. 60-460, its exceptions and in this section:

- (a) "Statement" means not only an oral or written expression but also nonverbal conduct of a person intended by him or her as a substitute for words in expressing the matter stated.
- (b) "Declarant" is a person who makes a statement.
- (c) "Perceive" means acquire knowledge through one's own senses.
- (d) "Public official" of a state or territory of the United States includes an official of a political subdivision of such state or territory and of a municipality.
- (e) "State" includes the District of Columbia.
- (f) "A business" as used in exception K.S.A. 60-460 (m) shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.
- (g) "Unavailable as a witness" includes situations where the witness is (1) exempted on the ground of privilege from testifying concerning the matter to which his or her statement is relevant, or (2) disqualified from testifying to the matter, or (3) unable to be present or to testify at the hearing because of death or then existing physical or mental illness, or (4) absent beyond the jurisdiction of the court to compel appearance by its process, or (5) absent from the place of hearing because the proponent of his or her statement does not know and with diligence has been unable to ascertain his or her whereabouts.

But a witness is not unavailable (1) if the judge finds that his or her exemption, disqualification, inability or absence is due to procurement or wrongdoing of the proponent of his or her statement for the purpose of preventing the witness from attending or testifying, or to the culpable neglect of such party, or (2) if unavailability is claimed under clause (4) of the preceding paragraph and the judge finds that the deposition of the declarant could have been taken by the exercise of reasonable diligence and without undue hardship, and that the probable importance of the testimony is such as to justify the expense of taking such deposition.

History: L. 1963, ch. 303, 60-459; Jan. 1, 1964.