

Kansas Code of Civil Procedure—Updates; Service; Case Management; Discovery; Default Judgment; House Sub. for SB 120

House Sub. for SB 120 amends the Kansas Code of Civil Procedure (Code). The bill states the Code shall be employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. Previous law required the Code to be liberally construed and administered for the same purpose.

The bill also amends the law granting an additional three days for action after being served *via* certain kinds of service. The bill clarifies this provision applies to a party “after being served,” rather than simply “after service.” Additionally, the bill removes service by fax and electronic service from the list of kinds of service that allow additional time to act.

In the statute listing matters on which the court must take appropriate action at a case management conference, the bill adds issues related to preservation of electronically stored information (ESI). Additionally, in determining issues related to claims of privilege or protection as trial-preparation material, the bill requires consideration of agreements made under state law controlling the effect of disclosure of information covered by the attorney-client privilege or work-product protection.

The bill makes several amendments to the statute governing discovery. Specifically, the bill amends the scope of discovery to be any nonprivileged matter relevant to any party’s claim or defense and revises language allowing courts to limit the scope of discovery based on the needs of the case considering the importance of the issues at stake; the amount in controversy; the parties’ resources and relative access to relevant information; the importance of discovery in resolving the issues; and whether the burden or expense of the proposed discovery outweighs its likely benefit. The bill provides that information need not be admissible if it falls within this scope of discovery. This language replaces previous law defining the scope of discovery to include any nonprivileged matter relevant to the subject matter involved in the action, including the existence, description, nature, custody, condition, and location of any documents or other tangible things; the identity and location of persons who know of any discoverable matter; and inadmissible information if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

The bill amends the subsection of the discovery statute governing protective orders to allow the court to specify in the order the allocation of expenses for disclosure or discovery. In another subsection, the bill allows parties to stipulate to the sequence of discovery.

In the statute governing requests parties may serve on each other, the bill amends the subsection concerning responses to require the response to state with specificity the grounds for objecting to the request. Further, the responding party may state it will produce copies of documents or of ESI instead of permitting inspection. The bill then requires production to be complete no later than the time for inspection specified in the request or another reasonable time specified in the response. In another subsection, the bill requires objections to state whether any responsive materials are being withheld on the basis of that objection.

The bill amends the statute concerning failure to comply with disclosure or discovery to allow a motion to compel disclosure if a party fails to produce documents. Additionally, the bill replaces language concerning sanctions when a party fails to preserve ESI with language

outlining the court's options when ESI that should have been preserved in 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. After making certain findings, the court may presume the information lost was unfavorable to the party, instruct the jury to presume the information lost was unfavorable to the party, or dismiss the action or enter a default judgment.

Concerning when a default judgment can be set aside, the bill specifies the court may set aside a "final" default judgment pursuant to current statutory provisions concerning relief from a final judgment, order, or proceeding and judgments entered on service by publication in a newspaper.

Finally, the bill makes technical amendments and repeals KSA 2016 Supp. 60-268, which stated that forms provided by the Judicial Council suffice under the Code and illustrate the simplicity and brevity the Code contemplates.