

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 420

By Senator Vratil

2-2

12 AN ACT concerning civil procedure; relating to costs; amending K.S.A.
13 60-2002 and repealing the existing section.

14

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

16 Section 1. K.S.A. 60-2002 is hereby amended to read as follows: 60-
17 2002. (a) *As of course.* Unless otherwise provided by statute, or by order
18 of the judge, the costs shall be allowed to the party in whose favor judg-
19 ment is rendered. The court shall have the discretion to order that the
20 alternative dispute resolution fees be, in whole or in part, paid by or from
21 any combination of any party or parties, from any fund authorized to pay
22 such fees, or from the proceeds of any settlement or judgment.

23 (b) *Offer of judgment.* At any time more than 15 days before the trial
24 begins, a party defending against a claim to a lawsuit may serve upon the
25 any adverse party an offer to allow of judgment to be taken against such
26 party for the money or property or to the effect specified in such party's
27 offer, with costs then accrued. If within 10 days after the service of the
28 offer the adverse party serves written notice that the offer is accepted,
29 either party may then file the offer and notice of acceptance, together
30 with proof of service thereof; and thereupon the clerk shall enter judg-
31 ment. An offer not *timely* accepted shall be deemed withdrawn and evi-
32 dence thereof is not admissible except in a proceeding to determine *an*
33 *award of attorney fees and costs.* If ~~the~~, *from the perspective of the offeror,*
34 *the final judgment finally obtained by the offeree is not* more favorable
35 than the offer, the offeree must pay ~~the~~ *to the offeror the court costs*
36 *incurred after the making of the offer and reasonable attorney fees in-*
37 *curring by the offeror after the making of the offer. Reasonable attorney*
38 *fees awarded by the court shall not exceed the lesser of: (1) Reason-*
39 *able attorney fees incurred by the offeror after the making of the*
40 *offer, or (2) reasonable attorney fees incurred by the offeree after*
41 *the making of the offer.* The fact that an offer is made but not accepted
42 does not preclude a subsequent offer. When the liability of one party to
43 another has been determined by verdict or order or judgment, but the

1 amount or extent of the liability remains to be determined by further
2 proceedings, ~~the any party adjudged liable~~ may make an offer of judg-
3 ment; which shall have the same effect as an offer made before trial if it
4 is served within a reasonable time prior to the commencement of pro-
5 ceedings to determine the amount or extent of liability. **[The payment**
6 **of reasonable attorney fees established in this subsection shall not**
7 **apply to actions filed pursuant to article 16 of chapter 60 of the**
8 **Kansas Statutes Annotated, and amendments thereto.]**

9 (c) *Duty of clerk.* The clerk of the court shall tax the costs and, upon
10 request, shall furnish a cost statement to counsel of record for the party
11 ordered by the court to pay costs. The taxation of the costs by the clerk
12 shall be subject to review by the judge on timely motion by any interested
13 party.

14 Sec. 2. K.S.A. 60-2002 is hereby repealed.

15 Sec. 3. This act shall take effect and be in force from and after its
16 publication in the statute book.