

## HOUSE BILL No. 2187

By Committee on Judiciary

1-24

---

9 AN ACT concerning civil procedure; relating to depositions; amending  
10 K.S.A. 60-230 and repealing the existing section.

11

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

13 Section 1. K.S.A. 60-230 is hereby amended to read as follows: 60-  
14 230. (a) *When depositions may be taken; when leave required.* (1) A party  
15 may take the testimony of any person, including a party, by deposition  
16 upon oral examination without leave of court except as provided in par-  
17 agraph (2) or (3). The attendance of witnesses may be compelled by  
18 subpoena as provided in K.S.A. 60-245 and amendments thereto.

19 (2) A party must obtain leave of court, which shall be granted to the  
20 extent consistent with the principles stated in subsection (b)(2) of K.S.A.  
21 60-226 and amendments thereto, if the person to be examined is confined  
22 in prison or if, without written stipulation of the parties:

23 (A) The person to be examined already has been deposed in the case;

24 (B) a party seeks to take a deposition of a nonparty before the time  
25 specified in subsection (b) of K.S.A. 60-216 and amendments thereto,  
26 unless the notice contains a certification, with supporting facts, that the  
27 person to be examined is expected to leave Kansas and be unavailable for  
28 examination in Kansas unless deposed before that time; or

29 (C) the plaintiff seeks to take a deposition of a party, or a deposition  
30 of a nonparty in an action in which a case management conference has  
31 not been scheduled under subsection (b) of K.S.A. 60-216 and amend-  
32 ments thereto, prior to the expiration of 30 days after service of the sum-  
33 mons and petition upon any defendant or service made under K.S.A. 60-  
34 301 et seq., and amendments thereto, unless (i) a defendant has served  
35 a notice of taking deposition or otherwise sought discovery or (ii) the  
36 notice contains a certification, with supporting facts, that the person to  
37 be examined is expected to leave Kansas and be unavailable for exami-  
38 nation in Kansas unless deposed before expiration of the 30-day period.

39 (3) *A party must obtain leave of court, without written stipulation of*  
40 *the parties, if the party seeks to take a deposition intended for use at trial*  
41 *of an expert witness identified by that party pursuant to K.S.A. 60-226,*  
42 *and amendments thereto, and the basis therefore is that the expert witness*  
43 *is located more than 100 miles from the place of trial or the party is*

1 *otherwise unable to procure the attendance of the expert witness by sub-*  
2 *poena. The court may make such order as it deems necessary to prevent*  
3 *undue expense or hardship on the part of the adverse party in the event*  
4 *leave to take such deposition is granted.*

5 (b) *Notice of examination; general requirements; nonstenographic re-*  
6 *recording; production of documents and things; deposition of organization.*

7 (1) A party desiring to take the deposition of any person upon oral ex-  
8 amination shall give reasonable notice in writing to every other party to  
9 the action. The notice shall state the time and place for taking the dep-  
10 osition and the name and address of each person to be examined, if  
11 known, and, if the name is not known, a general description sufficient to  
12 identify the person or the particular class or group to which the person  
13 belongs. If a subpoena *duces tecum* is to be served on the person to be  
14 examined, a designation of the materials to be produced as set forth in  
15 the subpoena shall be attached to or included in the notice.

16 (2) The parties may stipulate in writing or the court may upon motion  
17 order that the testimony at a deposition be recorded by other than sten-  
18 ographic means. The stipulation or order shall designate the person be-  
19 fore whom the deposition shall be taken, the manner of recording, pre-  
20 serving and filing the deposition, and may include other provisions to  
21 assure that the recorded testimony will be accurate and trustworthy. A  
22 party may arrange to have a stenographic transcription made at the party's  
23 own expense. Any objections under subsection (c), any changes made by  
24 the witness, the signature identifying the deposition as the signature of  
25 the witness or the statement of the officer that is required by subsection  
26 (e) if the witness does not sign and the certification of the officer required  
27 by subsection (f) shall be set forth in writing to accompany a deposition  
28 recorded by nonstenographic means.

29 (3) Unless otherwise agreed by the parties, a deposition shall be con-  
30 ducted before an officer appointed or designated under K.S.A. 60-228  
31 and amendments thereto, and shall begin with a statement on the record  
32 by the officer that includes: (A) The officer's name and business address;  
33 (B) the date, time and place of the deposition; (C) the name of the de-  
34 ponent; (D) the administration of the oath or affirmation to the deponent;  
35 and (E) an identification of all persons present. If the deposition is re-  
36 corded other than stenographically, the officer shall repeat items (A)  
37 through (C) at the beginning of each unit of recorded tape or other re-  
38 cording medium. The appearance or demeanor of deponents or attorneys  
39 shall not be distorted through camera or sound-recording techniques. At  
40 the end of the deposition, the officer shall state on the record that the  
41 deposition is complete and shall set forth any stipulations made by counsel  
42 concerning the custody of the transcript or recording and the exhibits, or  
43 concerning other pertinent matters. Any deposition which is to be re-

1 corded stenographically may also be recorded on videotape, or a com-  
2 parable medium, by any party by giving notice to the other parties prior  
3 to the deposition.

4 (4) The notice to a party deponent may be accompanied by a request  
5 made in compliance with K.S.A. 60-234 and amendments thereto for the  
6 production of documents and tangible things at the taking of the depo-  
7 sition. The procedure of K.S.A. 60-234 and amendments thereto shall  
8 apply to the request.

9 (5) A party may in the notice and in a subpoena name as the deponent  
10 a public or private corporation or a partnership, association or govern-  
11 mental agency and designate with reasonable particularity the matters on  
12 which examination is requested. The named organization shall designate  
13 one or more officers, directors, managing agents or other persons who  
14 consent to testify on its behalf and may set forth, for each person desig-  
15 nated, the matters on which the person will testify. A subpoena shall  
16 advise a nonparty organization of its duty to make such a designation. The  
17 designated persons shall testify as to matters known or reasonably avail-  
18 able to the organization. This subsection does not preclude taking a dep-  
19 osition by any other procedure authorized in these rules.

20 (6) The parties may stipulate in writing or the court may upon motion  
21 order that a deposition be taken by telephone or other remote electronic  
22 means. For the purposes of this section and subsection (c) of K.S.A. 60-  
23 226, subsection (a) of K.S.A. 60-228, subsection (a)(1) of K.S.A. 60-237,  
24 subsection (b)(1) of K.S.A. 60-237 and subsection (a)(2) of K.S.A. 60-245  
25 and amendments thereto, a deposition taken by telephone or other re-  
26 mote electronic means is taken in the district and at the place where the  
27 deponent answers questions.

28 (c) *Examination and cross-examination; record of examination; oath;*  
29 *objections.* Examination and cross-examination of witnesses may proceed  
30 as permitted at the trial under the provisions of K.S.A. 60-243 and amend-  
31 ments thereto. The officer before whom the deposition is to be taken  
32 shall put the witness on oath or affirmation and shall personally, or by  
33 some one acting under the direction and in the presence of the officer,  
34 record the testimony of the witness. The testimony shall be taken sten-  
35 ographically or recorded by any other means ordered in accordance with  
36 subsection (b)(2). If requested by one of the parties, the testimony shall  
37 be transcribed. The judge may order the cost of transcription paid by one  
38 or some of, or apportioned among, the parties. All objections made at the  
39 time of the examination to the qualifications of the officer taking the  
40 deposition, to the manner of taking it, to the evidence presented, to the  
41 conduct of any party or to any other aspect of the proceedings shall be  
42 noted by the officer upon the record of the deposition; but the exami-  
43 nation shall proceed, with the testimony being taken subject to the ob-

1 jectons. In lieu of participating in the oral examination, parties may serve  
2 written questions in a sealed envelope on the party taking the deposition  
3 and the party shall transmit the questions to the officer who shall pro-  
4 pound such questions to the witness and record the answers verbatim.

5 (d) *Motion to terminate or limit examination.* At any time during the  
6 taking of the deposition, on motion of a party or of the deponent and  
7 upon a showing that the examination is being conducted in bad faith or  
8 in such manner as unreasonably to annoy, embarrass or oppress the de-  
9 ponent or party, the judge in the district where the action is pending or  
10 where the deposition is being taken may order the officer conducting the  
11 examination to cease forthwith from taking the deposition or may limit  
12 the scope and manner of the taking of the deposition as provided in  
13 subsection (c) of K.S.A. 60-226 and amendments thereto. If the order  
14 made terminates the examination, it shall be resumed only upon the order  
15 of the judge where the action is pending. Upon demand of the objecting  
16 party or deponent the taking of the deposition shall be suspended for the  
17 time necessary to make a motion for an order. The provisions of subsec-  
18 tion (a) of K.S.A. 60-237 and amendments thereto apply to the award of  
19 expenses incurred in relation to the motion.

20 (e) *Review by witness; changes; signing.* Unless waived by the de-  
21 ponent and by the parties, the deponent shall have 30 days after being  
22 notified by the officer that the transcript or recording is available in which  
23 to review the transcript or recording and, if there are changes in form or  
24 substance, to sign a statement reciting such changes and the reasons given  
25 by the deponent for making such changes. The officer shall indicate in  
26 the certificate prescribed by subsection (f)(1) whether the deposition was  
27 reviewed and, if so, shall append any changes made by the deponent  
28 during the period allowed.

29 (f) *Certification and delivery or filing by officer; notice of delivery or*  
30 *filing; copies; exhibits; retention of original.* (1) The officer shall certify  
31 that the witness was duly sworn by the officer and that the deposition is  
32 a true record of the testimony given by the witness. This certificate shall  
33 be in writing and accompany the record of the deposition. Unless oth-  
34 erwise ordered by the court, the officer shall securely seal the deposition  
35 in an envelope or package indorsed with the title of the action and marked  
36 “deposition of (here insert name of witness)” and shall promptly deliver  
37 the deposition to the party taking the deposition, who shall store the  
38 deposition under conditions that will protect the deposition against loss,  
39 destruction, tampering or deterioration. If so ordered by the court, the  
40 officer shall promptly file the deposition with the court in which the action  
41 is pending or send it by first-class mail to the clerk for filing. The officer  
42 shall serve notice of the delivery or filing of the deposition on all parties.

43 Documents and things produced for inspection during the examination

1 of the witness, upon the request of a party, shall be marked for identifi-  
2 cation and annexed to the deposition and may be inspected and copied  
3 by any party, except that if the person producing the materials desires to  
4 retain them the person may (A) offer copies to be marked for identifi-  
5 cation and annexed to the deposition and to serve as originals, if the  
6 person affords to all parties an opportunity to verify the copies by com-  
7 parison with the originals, or (B) offer the originals to be marked for  
8 identification, after giving to each party an opportunity to inspect and  
9 copy them, in which event the materials may then be used in the same  
10 manner as if annexed to and returned with the deposition. Any party may  
11 move for an order that the original be annexed to the deposition.

12 (2) Unless otherwise ordered by the court or agreed by the parties,  
13 the officer shall retain stenographic notes of any deposition taken sten-  
14 ographically or a copy of the recording of any deposition taken by another  
15 method. Upon payment of reasonable charges therefore, the officer shall  
16 furnish a copy of the transcript or other recording of the deposition to  
17 any party or to the deponent.

18 (3) Except when filed with the court, the original of a deposition shall  
19 be retained by the party to whom it is delivered and made available for  
20 appropriate use by any party.

21 (g) *Failure to attend or to serve subpoena; expenses.* (1) If the party  
22 giving the notice of the taking of a deposition fails to attend and proceed  
23 therewith and another party attends in person or by attorney pursuant to  
24 the notice, the court may order the party giving the notice to pay to such  
25 other party the reasonable expenses incurred by that party and attorney  
26 in so attending, including reasonable attorney fees.

27 (2) If the party giving the notice of the taking of a deposition of a  
28 witness fails to serve a subpoena upon the witness and because of such  
29 failure the witness does not attend, and if another party attends in person  
30 or by attorney because the party expects the deposition of that witness to  
31 be taken, the court may order the party giving the notice to pay the  
32 reasonable expenses and attorney fees of the party and the party's attorney  
33 in attending the taking of the deposition.

34 (h) *Persons to be present.* Unless otherwise ordered by the judge or  
35 stipulated by counsel, no person shall be present while a deposition is  
36 being taken except the officer before whom it is being taken; the reporter,  
37 stenographer or person recording the deposition; the parties to the action,  
38 their respective counsel and paralegals or legal assistants of such counsel;  
39 and the deponent.

40 Sec. 2. K.S.A. 60-230 is hereby repealed.

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