HOUSE BILL No. 2656

AN ACT concerning the code of civil procedure; amending K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-4,107, 23-701, 26-503, 26-510, 59-807, 59-2947, 59-29a14, 59-29b47, 59-3052, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241, 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-249, 60-249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-257, 60-258, 60-258a, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264, 60-265, 60-266, 60-267, 60-268, 60-270, 60-271, 60-301, 60-302, 60-304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312, 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629, 60-2002, 60-2103, 60-2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105, 61-3201, 61-3301, 61-3304, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902, 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-2229, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2350, 38-2362, 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-216, 60-226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-308, 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-4107, 61-2707, 61-3703 and 77-503 and repealing the existing sections; also repealing K.S.A. 59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-3052, as amended by section 12 of 2010 House Bill No. 2364, 60-248a and 60-258b and K.S.A. 2009 Supp. 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, and 60-206, as amended by section 14 of 2010 House Bill No. 2364.

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

New Section 1. (a) *Citation of section.* This section may be cited as the uniform interstate depositions and discovery act.

(b) *Definitions.* In this section:

(1) "Foreign jurisdiction" means a state other than this state or a foreign country.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or political subdivision, agency or instrumentality or any other legal or commercial entity.

(4) "State" means a state of the United States, the district of Columbia, Puerto Rico, the United States Virgin islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) Attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information or tangible things in the possession, custody or control of the person; or

(C) permit inspection of premises under the control of the person.

(c) *Issuance of subpoena.* (1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena in this state under this section does not constitute an appearance in the courts of this state.

(2) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, must promptly issue a subpoena for service on the person to which the foreign subpoena is directed.

(3) A subpoena under subsection (c)(2) must:

(A) Incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) *Service of subpoena.* A subpoena issued by a clerk of court under subsection (c) must be served in compliance with K.S.A. 60-303, and amendments thereto.

(e) *Deposition, production and inspection.* K.S.A. 60-245 and 60-245a, and amendments thereto, apply to subpoenas issued under subsection (c).

(f) *Application to court.* An application to the court for a protective

order or to enforce, quash or modify a subpoena issued by a clerk of court under subsection (c) must comply with the statutes of this state and be submitted to the court in the county in which discovery is to be conducted.

(g) *Uniformity of application and construction.* In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(h) *Application to pending action.* This section applies to requests for discovery in cases pending on the effective date of this section.

Sec. 2. K.S.A. 8-113a is hereby amended to read as follows: 8-113a. An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for a period of ~~thirty (30)~~ *30* days, shall within ~~five (5)~~ *seven* days after the expiration of that period, report the vehicle as unclaimed to the department. A vehicle left by its owner whose name and address are known to the operator or an employee of the operator is not considered unclaimed. A person who fails to report a vehicle as unclaimed in accordance with this section is guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than ~~ten dollars ($10)~~ *$10* for each day such failure to report continues.

Sec. 3. K.S.A. 2009 Supp. 8-235 is hereby amended to read as follows: 8-235. (a) No person, except those expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license. No person shall receive a driver's license unless and until such person surrenders or with the approval of the division, lists to the division all valid licenses in such person's possession issued to such person by any other jurisdiction. All surrendered licenses or the information listed on foreign licenses shall be returned by the division to the issuing department, together with information that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid license at any time.

(b) Any person licensed under the motor vehicle drivers' license act may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any local authority. Nothing herein shall prevent cities from requiring licenses of persons who drive taxicabs or municipally franchised transit systems for hire upon city streets, to protect the public from drivers whose character or habits make them unfit to transport the public. If a license is denied, the applicant may appeal such decision to the district court of the county in which such city is located by filing within ~~10~~ *14* days after such denial, a notice of appeal with the clerk of the district court and by filing a copy of such notice with the city clerk of the involved city. The city clerk shall certify a copy of such decision of the city governing body to the clerk of the district court and the matter shall be docketed as any other cause and the applicant shall be granted a trial of such person's character and habits. The matter shall be heard by the court *de novo* in accordance with the code of civil procedure. The cost of such appeal shall be assessed in such manner as the court may direct.

(c) Any person operating in this state a motor vehicle, except a motorcycle, which is registered in this state other than under a temporary thirty-day permit shall be the holder of a driver's license which is classified for the operation of such motor vehicle, and any person operating in this state a motorcycle which is registered in this state shall be the holder of a class M driver's license, except that any person operating in this state a motorcycle which is registered under a temporary thirty-day permit shall be the holder of a driver's license for any class of motor vehicles.

(d) No person shall drive any motorized bicycle upon a highway of this state unless: (1) Such person has a valid driver's license which entitles the licensee to drive a motor vehicle in any class or classes; (2) such person is at least 15 years of age and has passed the written and visual examinations required for obtaining a class C driver's license, in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles; or (3) such person has had their driving privileges suspended, for a violation other than a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto, and has made application to the division for the issuance of a

class C license for the operation of motorized bicycles, in accordance with paragraph (2), in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles.

(e) Violation of this section shall constitute a class B misdemeanor.

Sec. 4. K.S.A. 2009 Supp. 8-259 is hereby amended to read as follows: 8-259. (a) Except in the case of mandatory revocation under K.S.A. 8-254 or 8-286, and amendments thereto, mandatory suspension for an alcohol or drug-related conviction under subsection (b) of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(2)(A), (a)(3)(A) or (a)(3)(B) of K.S.A. 8-2,142, and amendments thereto, the cancellation, suspension, revocation, disqualification or denial of a person's driving privileges by the division is subject to review. Such review shall be in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 et seq., and amendments thereto, or of an order of disqualification under subsection (a)(1)(D) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within ~~10~~ *14* days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held or the county where the person was arrested. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial *de novo* to the court. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension, cancellation or revocation under the provisions of this act. Unless the petitioner's driving privileges have been extended pursuant to subsection (o) of K.S.A. 8-1020, and amendments thereto, the court on review may grant a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto, after considering the petitioner's traffic violations record and liability insurance coverage. If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon ~~20~~ *21* days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section, within ~~10~~ *14* days after the final disposition of such appeal, shall forward a notification of the final disposition to the division.

Sec. 5. K.S.A. 2009 Supp. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto, shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol

or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30th day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within ~~five~~ *seven* days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall

proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

(g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

(h) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the effective date of suspension set out in subsection (d).

Sec. 6. K.S.A. 2009 Supp. 8-1020 is hereby amended to read as follows: 8-1020. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked ~~10~~ *14* days after service of notice; or

(2) transmitting a written request by electronic facsimile which is received by the division within ~~10~~ *14* days after service of notice.

(b) If the licensee makes a timely request for an administrative hearing, any temporary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30th day after the effective date of the decision made by the division.

(c) If the licensee fails to make a timely request for an administrative hearing, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

(d) Upon receipt of a timely request for a hearing, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.

(e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than ~~five~~ *seven* days prior to the date of hearing:

(1) The officer's certification and notice of suspension;

(2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;

(3) in the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument; and

(4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

(f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the video or audio tape is kept. The licensee may obtain a copy of any such video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed $25 per tape.

(g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

(E) the person who operated the testing equipment was qualified;

(F) the testing procedures used were reliable;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and

(H) the person was operating or attempting to operate a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same

manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.

(l) Evidence at the hearing shall be limited to the following:

(1) The documents set out in subsection (e);

(2) the testimony of the licensee;

(3) the testimony of any certifying officer;

(4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;

(5) any affidavits submitted from other witnesses;

(6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and

(7) any video or audio tape record of the events upon which the administrative action is based.

(m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

(p) Such review shall be in accordance with this section and the act for judicial review and civil enforcement of agency actions. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within ~~10~~ *14* days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. If the court finds that the grounds for action by the agency have been met, the court shall affirm the agency action.

(q) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside.

(r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

(s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.

(t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

(u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

Sec. 7. K.S.A. 21-4311 is hereby amended to read as follows: 21-4311. (a) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in K.S.A. 21-4310, and amendments thereto. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of K.S.A. 21-4310, and amendments thereto, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after ~~20~~ *21* days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after ~~20~~ *21* days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition, the court shall determine whether the animal may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal.

(b) The owner or custodian of an animal placed for adoption or killed pursuant to subsection (a) shall not be entitled to recover damages for the placement or killing of such animal unless the owner proves that such placement or killing was unwarranted.

(c) Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (a), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, as defined in K.S.A. 21-4310, and amendments thereto, shall be

assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.

(d) Upon the filing of a sworn complaint by any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility alleging the commission of cruelty to animals, as defined in K.S.A. 21-4310, and amendments thereto, the county or district attorney shall determine the validity of the complaint and shall forthwith file charges for the crime if the complaint appears to be valid.

(e) If a person is adjudicated guilty of the crime of cruelty to animals, as defined in K.S.A. 21-4310, and amendments thereto, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.

Sec. 8. K.S.A. 2009 Supp. 21-4316 is hereby amended to read as follows: 21-4316. (a) When a person is arrested under K.S.A. 21-4315, and amendments thereto, a law enforcement agency may take into custody any dog on the premises where the dog fight is alleged to have occurred and any dog owned or kept on the premises of any person arrested for unlawful conduct of dog fighting, unlawful attendance of dog fighting or unlawful possession of dog fighting paraphernalia under K.S.A. 21-4315, and amendments thereto.

(b) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the dog for adoption or euthanize the dog at any time after ~~20~~ *21* days after the dog is taken into custody, unless the owner or custodian of the dog files a renewable cash or performance bond with the county clerk of the county where the dog is being held, in an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon receiving such petition, the court shall determine whether the dog may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal. Except as provided in subsection (c), if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or county attorney shall order that the dog be returned to its owner when the dog is not needed as evidence in a case filed under K.S.A. 21-4315 or 21-4310, and amendments thereto. The owner or keeper of a dog placed for adoption or humanely killed under this subsection (b) shall not be entitled to damages unless the owner or keeper proves that such placement or killing was unwarranted.

(c) If a person is convicted of unlawful conduct of dog fighting, unlawful attendance of dog fighting or unlawful possession of dog fighting paraphernalia under K.S.A. 21-4315, and amendments thereto, a dog taken into custody pursuant to subsection (a) shall not be returned to such person and the court shall order the owner or keeper to pay to the animal shelter all expenses incurred for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such dog shall be in accordance with K.S.A. 21-4311, and amendments thereto. If no such conviction results, the dog shall be returned to the owner or keeper and the court shall order the county where the dog was taken into custody to pay to the animal shelter all expenses incurred by the shelter for the care, treatment

and boarding of such dog, including any damages caused by such dog, prior to its return.

Sec. 9. K.S.A. 21-4623 is hereby amended to read as follows: 21-4623. (a) If, under K.S.A. 21-4624, and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(b) At the hearing, the court shall determine whether the defendant is mentally retarded. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within ~~10~~ *14* days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(c) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631, and amendments thereto.

(d) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is mentally retarded, the court shall sentence the defendant as otherwise provided by law, and no sentence of death or life without the possibility of parole shall be imposed hereunder.

(e) As used in this section, "mentally retarded" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01, and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Sec. 10. K.S.A. 21-4624 is hereby amended to read as follows: 21-4624. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than ~~five~~ *seven* days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced to life without the possibility of parole, and no sentence of death shall be imposed hereunder.

(b) Except as provided in K.S.A. 21-4622 and 21-4623, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for ex-

emption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4625, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625, and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of life without the possibility of parole and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant to life without the possibility of parole, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

(g) A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence. Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

Sec. 11. K.S.A. 21-4634 is hereby amended to read as follows: 21-4634. (a) If a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of the crime of murder in the first degree based upon the finding of premedi-

tated murder, the defendant's counsel or the director of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638*, and amendments thereto*. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(b) At the hearing, the court shall determine whether the defendant is mentally retarded. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within ~~10~~ *14* days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(c) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638*, and amendments thereto*.

(d) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is mentally retarded, the court shall sentence the defendant as otherwise provided by law, and no mandatory term of imprisonment shall be imposed hereunder.

(e) Unless otherwise ordered by the court for good cause shown, the provisions of this section shall not apply if it has been determined, pursuant to K.S.A. 21-4623, and amendments thereto, that the defendant is not mentally retarded.

(f) As used in this section, "mentally retarded" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01, and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Sec. 12. K.S.A. 21-4718 is hereby amended to read as follows: 21-4718. (a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or the state, shall hold a hearing to consider imposition of a departure sentence other than an upward durational departure sentence. The motion shall state the type of departure sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

(2) At the conclusion of the hearing or within ~~20~~ *21* days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court must notify all parties of its intent and allow reasonable time for either party to respond if requested. The notice shall state the type of departure intended by the court and the reasons and factors relied upon.

(4) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure as provided in this subsection regardless of whether a hearing is requested.

(b) (1) Upon motion of the county or district attorney to seek an

upward durational departure sentence, the court shall consider imposition of such upward durational departure sentence in the manner provided in subsection (b)(2). The county or district attorney shall file such motion to seek an upward durational departure sentence not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within ~~five~~ *seven* days from the date of the arraignment.

(2) The court shall determine if the presentation of any evidence regarding the alleged fact or factors that may increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be presented to a jury and proved beyond a reasonable doubt during the trial of the matter or following the determination of the defendant's innocence or guilt.

(3) If the presentation of the evidence regarding the alleged fact or factors is submitted to the jury during the trial of the matter as determined by the court, then the provisions of subsections (b)(5), (b)(6) and (b)(7) shall be applicable.

(4) If the court determines it is in the interest of justice, the court shall conduct a separate departure sentence proceeding to determine whether the defendant may be subject to an upward durational departure sentence. Such proceeding shall be conducted by the court before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the upward durational departure sentence proceeding, the court may conduct such upward durational departure sentence proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. Any decision of an upward durational departure sentence proceeding shall be decided by a unanimous decision of the jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the upward durational departure sentence proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the upward durational departure sentence proceeding has been waived or the trial jury has been waived, the upward durational departure sentence proceeding shall be conducted by the court.

(5) In the upward durational departure sentence proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of determining if any specific factors exist that may serve to enhance the maximum sentence as provided by K.S.A. 21-4716 or 21-4717, and amendments thereto. Only such evidence as the state has made known to the defendant prior to the upward durational departure sentence proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the upward durational departure sentence proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral arguments.

(6) The court shall provide oral and written instructions to the jury to guide its deliberations.

(7) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more specific factors exist that may serve to enhance the maximum sentence, the defendant may be sentenced pursuant to K.S.A. 21-4716 through 21-4719, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation that one or more of the specific factors that may serve to enhance the maximum sentence exists, shall designate in writing, signed by the foreman of the jury, the specific factor or factors which the jury found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict of finding any of the specific factors, the court shall dismiss the jury and shall only impose a sentence as provided by law. In nonjury cases, the court shall follow the requirements of this subsection in determining if one or more of the specific factors exist that may serve to enhance the maximum sentence.

Sec. 13. K.S.A. 22-2408 is hereby amended to read as follows: 22-2408. (1) Except as otherwise provided in subsection (6) of this section, whenever a law enforcement officer detains any person without a warrant, for any act punishable as a misdemeanor, and such person is not immediately taken before a magistrate for further proceedings, the officer may serve upon such person a written notice to appear in court. Such notice to appear shall contain the name and address of the person detained, the crime charged, and the time and place when and where such person shall appear in court.

(2) The time specified in such notice to appear must be at least ~~five (5)~~ *seven* days after such notice is given unless the person shall demand an earlier hearing.

(3) The place specified in such notice to appear must be before some court within the county in which the crime is alleged to have been committed which has jurisdiction of such crime.

(4) The person detained, in order to secure release as provided in this section, must give his or her written promise to appear in the court by signing the written notice prepared by the officer. The original of the notice shall be retained by the officer; a copy delivered to the person detained, and the officer shall forthwith release the person.

(5) Such law enforcement officer shall cause to be filed, without unnecessary delay, a complaint in the court in which a person released under subsection (4) is given notice to appear, charging the crime stated in said notice. If the person released fails to appear as required in the notice to appear, a warrant shall be issued for his or her arrest.

(6) The procedures prescribed by this section shall not apply to the detention or arrest of any person for the violation of any law regulating traffic on the highways of this state, and the provisions of K.S.A. 8-2104 ~~to~~ *through* 8-2108, ~~inclusive, and any acts amendatory thereof,~~ *and amendments thereto,* and the code of procedure for municipal courts shall govern such procedures.

Sec. 14. K.S.A. 22-2516 is hereby amended to read as follows: 22-2516. (1) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing, upon oath or affirmation, to a judge of competent jurisdiction, and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the prosecuting attorney making the application, and the identity of the investigative or law enforcement officer requesting such application to be made;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify such applicant's belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) except as provided in subsection (10), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication first has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts known to the applicant concerning all previous applications made to any judge for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testi-

mony or documentary evidence in support of the application. Oral testimony shall be under oath or affirmation, and a record of such testimony shall be made by a certified shorthand reporter and reduced to writing.

(3) Upon such application the judge may enter an *ex parte* order, as requested or as modified, authorizing the interception of wire, oral or electronic communications within the territorial jurisdiction of such judge, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that a person is committing, has committed or is about to commit a particular offense enumerated in subsection (1) of K.S.A. 22-2515, and amendments thereto;

(b) there is probable cause for belief that particular communications concerning the offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and

(d) except as provided in subsection (10), there is probable cause for belief that the facilities from which, or the place where, the wire, oral or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of or commonly used by such person.

(4) Each order authorizing the interception of any wire, oral or electronic communication shall:

(a) Specify the identity of the person, if known, whose communications are to be intercepted;

(b) specify the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) specify with particularity a description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) specify the identity of each agency authorized to intercept the communications, and of the person authorizing the application;

(e) specify the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(f) upon request of the applicant, direct that a provider of wire or electronic communication service or public utility, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, utility, landlord, custodian or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service or public utility, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or technical assistance.

(5) No order entered under this section may authorize the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of any such extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this act, and must terminate upon attainment of the authorized objective, or in any event in 30 days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this

chapter may be conducted in whole or in part by government personnel, or by an individual operating under a contract with the government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing the interception of wire or oral communications is entered pursuant to this act, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) (a) The contents of any wire, oral or electronic communication intercepted by any means authorized by this act shall be recorded, if possible, on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall be done in a manner which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under such judge's directions. Custody of the recordings shall be wherever the judge orders, and the recordings shall not be destroyed except upon order of the issuing or denying judge and, in any event, shall be kept for not less than 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections ~~(2)~~ *(b)* and ~~(3)~~ *(c)* of K.S.A. 22-2515, and amendments thereto, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral or electronic communication or evidence derived therefrom under subsection ~~(4)~~ *(d)* of K.S.A. 22-2515, and amendments thereto.

(b) Applications made and orders granted under this act shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for not less than 10 years.

(c) Any violation of the provisions of paragraph (a) or (b) of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than 90 days after the termination of the period of an order or extensions thereof the issuing or denying judge shall cause to be served on the persons named in the order or the application and, in the interest of justice, such other parties to intercepted communications as the judge may determine, an inventory which shall include notice of:

(i) the fact of the entry of the order or the application;

(ii) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(iii) the fact that during the period wire, oral or electronic communications were or were not intercepted.

The judge, upon the filing of a motion in such judge's discretion, may make available to such person or such person's counsel for inspection, such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an *ex parte* showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(8) The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any federal court or court of this state, unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. Such ten-day period may be waived by the judge, if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding, and that the party will not be prejudiced by the delay in receiving such information.

(9) (a) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the United States, this state, or a political subdivision thereof,

may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

(i) The communication was unlawfully intercepted;

(ii) The order of authorization under which it was intercepted is insufficient on its face; or

(iii) The interception was not made in conformity with the order of authorization.

Such motion shall be made before the trial, hearing or proceeding, unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this act. Upon the filing of such motion by the aggrieved person, the judge in such judge's discretion may make available to the aggrieved person or such person's counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal:

(i) From an order granting a motion to suppress made under paragraph (a) of this subsection. Such appeal shall be taken within ~~10~~ *14* days after the order of suppression was entered and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court may adopt;

(ii) From an order denying an application for an order authorizing the interception of wire or oral communications, and any such appeal shall be *ex parte* and shall be in camera in preference to all other pending appeals in accordance with rules promulgated by the supreme court.

(10) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application is by a law enforcement officer and is approved by the attorney general and the county or district attorney where the application is sought;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electronic communication:

(i) the application is by a law enforcement officer and is approved by the attorney general and the county or district attorney where the application is sought;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that such purpose has been adequately shown.

(11) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (10) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (10)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this act involving such communications.

Sec. 15. K.S.A. 22-2807 is hereby amended to read as follows: 22-2807. (1) If a defendant fails to appear as directed by the court and

guaranteed by an appearance bond, the court in which the bond is deposited shall declare a forfeiture of the bail.

(2) An appearance bond may only be forfeited by the court upon a failure to appear. If a defendant violates any other condition of bond, the bond may be revoked and the defendant remanded to custody. The magistrate shall forthwith set a new bond pursuant to requirements of K.S.A. 22-2802, and amendments thereto.

(3) The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture. If the surety can prove that the defendant is incarcerated somewhere within the United States prior to judgment of default then the court shall set aside the forfeiture. Upon the defendant's return, the surety may be ordered to pay the costs of that return.

(4) When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. If the forfeiture has been decreed by a district magistrate judge and the amount of the bond exceeds the limits of the civil jurisdiction prescribed by law for a district magistrate judge, the judge shall notify the chief judge in writing of the forfeiture and the matter shall be assigned to a district judge who, on motion, shall enter a judgment of default. By entering into a bond the obligors submit to the jurisdiction of any court having power to enter judgment upon default and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice thereof may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. No default judgment shall be entered against the obligor in an appearance bond until more than ~~10~~ *14* days after notice is served as provided herein.

(5) After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subsection (3).

Sec. 16. K.S.A. 22-2901 is hereby amended to read as follows: 22-2901. (1) Except as provided in subsection (7), when an arrest is made in the county where the crime charged is alleged to have been committed, the person arrested shall be taken without unnecessary delay before a magistrate of the court from which the warrant was issued. If the arrest has been made on probable cause, without a warrant, he shall be taken without unnecessary delay before the nearest available magistrate and a complaint shall be filed forthwith.

(2) Except as provided in subsection (7), when an arrest is made in a county other than where the crime charged is alleged to have been committed, the person arrested may be taken directly to the county wherein the crime is alleged to have been committed without unnecessary delay or at the request of the defendant he shall be taken without unnecessary delay before the nearest available magistrate. Such magistrate shall ascertain the nature of the crime charged in the warrant and the amount of the bond, if any, endorsed on the warrant. If no warrant for the arrest of the person is before the magistrate he shall make use of telephonic, telegraphic or radio communication to ascertain the nature of the charge and the substance of any warrant that has been issued. If no warrant has been issued, a complaint shall be filed and a warrant issued in the county where the crime is alleged to have been committed, and the nature of the charge, the substance of the warrant, and the amount of the bond shall be communicated to the magistrate before whom the defendant is in custody. Upon receipt of such information, the magistrate shall proceed as hereinafter provided.

(3) The magistrate shall fix the terms and conditions of the appearance bond upon which the defendant may be released. If the first appearance is before a magistrate in a county other than where the crime is alleged to have been committed, the magistrate may release the defendant on an appearance bond in an amount not less than that endorsed on the warrant. The defendant shall be required to appear before the magistrate who issued the warrant or a magistrate of a court having jurisdiction on a day certain, not more than ~~10~~ *14* days thereafter.

(4) If the defendant is released on an appearance bond to appear

before the magistrate in another county, the magistrate who accepts the appearance bond shall forthwith transmit such appearance bond and all other papers relating to the case to the magistrate before whom the defendant is to appear.

(5) If the person arrested cannot provide an appearance bond, or if the crime is not bailable, the magistrate shall commit him to jail pending further proceedings or shall order him delivered to a law enforcement officer of the county where the crime is alleged to have been committed.

(6) The provisions of this section shall not apply to a person who is arrested on a bench warrant. Such persons shall without unnecessary delay be taken before the magistrate who issued the bench warrant.

(7) If a person is arrested on a warrant or arrested on probable cause without a warrant, pursuant to a violation of subsection (a)(1)(C) of K.S.A. 21-3721, and amendments thereto, such person shall not be allowed to post bond pending such person's first appearance in court provided that a first appearance occurs within 48 hours after arrest. The magistrate may fix as a condition of release on the appearance bond that such person report to a court services officer. Nothing in this section shall be construed to be an unnecessary delay as such term is used in this section.

Sec. 17. K.S.A. 22-2902 is hereby amended to read as follows: 22-2902. (1) The state and every person charged with a felony shall have a right to a preliminary examination before a magistrate, unless such charge has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within ~~10~~ *14* days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

(3) The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and except for witnesses who are children less than 13 years of age, the witnesses shall be examined in the defendant's presence. The defendant's voluntary absence after the preliminary examination has been begun in the defendant's presence shall not prevent the continuation of the examination. Except for witnesses who are children less than 13 years of age, the defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. When the victim of the felony is a child less than 13 years of age, the finding of probable cause as provided in this subsection may be based upon hearsay evidence in whole or in part presented at the preliminary examination by means of statements made by a child less than 13 years of age on a videotape recording or by other means.

(4) If the defendant and the state waive preliminary examination, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case.

(5) Any judge of the district court may conduct a preliminary examination, and a district judge may preside at the trial of any defendant even though such judge presided at the preliminary examination of such defendant.

(6) The complaint or information, as filed by the prosecuting attorney pursuant to K.S.A. 22-2905, and amendments thereto, shall serve as the formal charging document at trial. When a defendant and prosecuting attorney reach agreement on a plea of guilty or *nolo contendere*, the defendant and the prosecuting attorney shall notify the district court of such agreement and arrange for a time to plead, pursuant to K.S.A. 22-3210, and amendments thereto.

(7) The judge of the district court, when conducting the preliminary examination, shall have the discretion to conduct arraignment, subject to assignment pursuant to K.S.A. 20-329, and amendments thereto, at the conclusion of the preliminary examination.

Sec. 18. K.S.A. 22-3208 is hereby amended to read as follows: 22-3208. (1) Pleadings in criminal proceedings shall be the complaint, information or indictment, the bill of particulars when ordered, and the pleas of not guilty, guilty or with the consent of the court, *nolo contendere.* All

other pleas, demurrers and motions to quash are abolished and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief.

(2) Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(3) Defenses and objections based on defects in the institution of the prosecution or in the complaint, information or indictment other than that it fails to show jurisdiction in the court or to charge a crime may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the complaint, information or indictment to charge a crime shall be noticed by the court at any time during the pendency of the proceeding.

(4) The motion to dismiss shall be made at any time prior to arraignment or within ~~20~~ *21* days after the plea is entered. The period for filing such motion may be enlarged by the court when it shall find that the grounds therefor were not known to the defendant and could not with reasonable diligence have been discovered by the defendant within the period specified herein. A plea of guilty or a consent to trial upon a complaint, information or indictment shall constitute a waiver of defenses and objections based upon the institution of the prosecution or defects in the complaint, information or indictment other than it fails to show jurisdiction in the court or to charge a crime.

(5) A motion before trial raising defenses or objections to prosecution shall be determined before trial unless the court orders that it be deferred for determination at the trial.

(6) If a motion is determined adversely to the defendant, such defendant shall then plead if such defendant had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the complaint, information or indictment, it may also order that the defendant be held in custody or that the defendant's appearance bond be continued for a specified time not exceeding one day pending the filing of a new complaint, information or indictment.

(7) Any hearing conducted by the court to determine the merits of any motion may be conducted by two-way electronic audio-video communication between the defendant and defendant's counsel in lieu of personal presence of the defendant and defendant's counsel in the courtroom in the discretion of the court. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such hearing if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

Sec. 19. K.S.A. 22-3212 is hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution. Except as provided in subsections (a)(2)

and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law.

(c) If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b), the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at any hearing, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

(d) The prosecuting attorney and the defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

(e) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(f) Discovery under this section must be completed no later than ~~20~~ *21* days after arraignment or at such reasonable later time as the court may permit.

(g) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) For crimes committed on or after July 1, 1993, the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 et seq., and amendments thereto.

(i) The prosecuting attorney and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant.

Sec. 20. K.S.A. 22-3302 is hereby amended to read as follows: 22-3302. (1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(2) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(3) The court shall determine the issue of competency and may im-

panel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) If the defendant is charged with a felony, commit the defendant to the state security hospital or any county or private institution for examination and report to the court, or, if the defendant is charged with a misdemeanor, commit the defendant to any appropriate state, county or private institution for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary of social and rehabilitation services that examination of the defendant should be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court. If the court commits the defendant to an institution for the examination, the commitment shall be for not more than 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding. Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned not later than ~~five~~ *seven* days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the ~~five~~ *seven*-day period.

(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(5) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303, and amendments thereto.

(6) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(7) The defendant shall be present personally at all proceedings under this section.

Sec. 21. K.S.A. 22-3305 is hereby amended to read as follows: 22-3305. (1) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303, and amendments thereto, and the defendant is not committed to a treatment facility as a patient, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303, and amendments thereto, and the secretary shall promptly notify the court and the county or district attorney of the county in which the criminal proceedings are pending of the result of the involuntary commitment proceeding.

(2) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303, and amendments thereto, and the defendant is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to the care and treatment act for mentally ill persons, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303, and amendments thereto, and the head of the treatment facility shall promptly notify the court and the county or district attorney

of the county in which the criminal proceedings are pending that the defendant is to be discharged.

When giving notification to the court and the county or district attorney pursuant to subsection (1) or (2), the treatment facility shall include in such notification an opinion from the head of the treatment facility as to whether or not the defendant is now competent to stand trial. Upon request of the county or district attorney, the court may set a hearing on the issue of whether or not the defendant has been restored to competency. If no such request is made within ~~10~~ *14* days after receipt of notice pursuant to subsection (1) or (2), the court shall order the defendant to be discharged from commitment and shall dismiss without prejudice the charges against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302, and amendments thereto.

Sec. 22. K.S.A. 22-3428 is hereby amended to read as follows: 22-3428. (1) (a) When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, the defendant shall be committed to the state security hospital for safekeeping and treatment. A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state security hospital, the district or county attorney, the defendant and the defendant's attorney. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq., and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4).

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under subsection (1)(d) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection (3). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

(b) Any person committed under subsection (1)(d) may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's mental illness; (d) recommendations for future treatment, if any; and (e) rec-

ommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment and to the district or county attorney of the county from which the person was originally ordered committed and shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least ~~five~~ *seven* days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (4), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment.

(4) In order to ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed 30 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of district court probation and parole services, community treatment facility or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b, and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within ~~15~~ *14* days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the

evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957, and amendments thereto, or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense that the defendant lacked the required mental state pursuant to K.S.A. 22-3220, and amendments thereto, is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a, and amendments thereto:

(a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

(A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(B) is likely to cause harm to self or others.

(c) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

Sec. 23. K.S.A. 22-3428a is hereby amended to read as follows: 22-3428a. (1) Any person found not guilty, pursuant to K.S.A. 22-3220 and 22-3221, *and amendments thereto,* who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428, and amendments thereto, shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within ~~20~~ *21* days from the date when notice from the court was received. Within ~~10~~ *14* days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has

elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person and the person's counsel. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508, and amendments thereto, may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least ~~five~~ *seven* days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428, and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released.

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

Sec. 24. K.S.A. 2009 Supp. 22-3437 is hereby amended to read as follows: 22-3437. (1) In any hearing or trial, a report concerning forensic examinations and certificate of forensic examination executed pursuant to this section shall be admissible in evidence if the report and certificate are prepared and attested by a criminalist or other employee of the Kansas bureau of investigation, Kansas highway patrol or any laboratory of the federal bureau of investigation, federal postal inspection service, federal bureau of alcohol, tobacco and firearms or federal drug enforcement administration. If the examination involves a breath test for alcohol content, the report must also be admissible pursuant to K.S.A. 8-1001, and amendments thereto, and be conducted by a law enforcement officer or other person who is certified by the department of health and environment as a breath test operator as provided by K.S.A. 65-1,107 et seq., and amendments thereto.

(2) Upon the request of any law enforcement agency, such person as provided in subsection (1) performing the analysis shall prepare a certificate. Such person shall sign the certificate under oath and shall include in the certificate an attestation as to the result of the analysis. The presentation of this certificate to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this section have been complied with. This certificate shall be supported by a written declaration pursuant to K.S.A. 53-601, and amendments thereto, or shall be sworn to before a notary public or other person empowered by law to take oaths and shall contain a statement establishing the following: The type of analysis performed; the result achieved; any conclusions reached based upon that result; that the subscriber is the person who performed the analysis and made the conclusions; the subscriber's training or experience to perform the analysis; the nature and condition of the equipment used; and the certification and foundation requirements for admissibility

of breath test results, when appropriate. When properly executed, the certificate shall, subject to the provisions of subsection (3) and notwithstanding any other provision of law, be admissible evidence of the results of the forensic examination of the samples or evidence submitted for analysis and the court shall take judicial notice of the signature of the person performing the analysis and of the fact that such person is that person who performed the analysis.

(3) Whenever a party intends to proffer in a criminal or civil proceeding, a certificate executed pursuant to this section, notice of an intent to proffer that certificate and the reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least ~~20~~ *21* days before the beginning of a hearing where the proffer will be used. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection and the grounds for the objection within ~~10~~ *14* days upon receiving the adversary's notice of intent to proffer the certificate. Whenever a notice of objection is filed, admissibility of the certificate shall be determined not later than two days before the beginning of the trial. A proffered certificate shall be admitted in evidence unless it appears from the notice of objection and grounds for that objection that the conclusions of the certificate, including the composition, quality or quantity of the substance submitted to the laboratory for analysis or the alcohol content of a blood or breath sample will be contested at trial. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objections to the admission of the certificate. The time limitations set forth in this section may be extended upon a showing of good cause.

Sec. 25. K.S.A. 22-3501 is hereby amended to read as follows: 22-3501. (1) The court on motion of a defendant may grant a new trial to ~~him~~ *the defendant* if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ~~10~~ *14* days after the verdict or finding of guilty or within such further time as the court may fix during the ~~10~~ *14*-day period.

(2) A motion for a new trial shall be heard and determined by the court within 45 days from the date it is made.

Sec. 26. K.S.A. 22-3502 is hereby amended to read as follows: 22-3502. The court on motion of a defendant shall arrest judgment if the complaint, information or indictment does not charge a crime or if the court was without jurisdiction of the crime charged. The motion for arrest of judgment shall be made within ~~10~~ *14* days after the verdict or finding of guilty, or after a plea of guilty or *nolo contendere,* or within such further time as the court may fix during the ~~10~~ *14*-day period.

Sec. 27. K.S.A. 22-3603 is hereby amended to read as follows: 22-3603. When a judge of the district court, prior to the commencement of trial of a criminal action, makes an order quashing a warrant or a search warrant, suppressing evidence or suppressing a confession or admission an appeal may be taken by the prosecution from such order if notice of appeal is filed within ~~ten (10)~~ *14* days after entry of the order. Further proceedings in the trial court shall be stayed pending determination of the appeal.

Sec. 28. K.S.A. 22-3608 is hereby amended to read as follows: 22-3608. (a) If sentence is imposed, the defendant may appeal from the judgment of the district court not later than 10 days after the expiration of the district court's power to modify the sentence. The power to revoke or modify the conditions of probation or the conditions of assignment to a community correctional services program shall not be deemed power to modify the sentence. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(b) If the imposition of sentence is suspended, the defendant may appeal from the judgment of the district court within 10 days after the

order suspending imposition of sentence. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(c) For crimes committed on or after July 1, 1993, the defendant shall have ~~10~~ *14* days after the judgment of the district court to appeal.

Sec. 29. K.S.A. 22-3609 is hereby amended to read as follows: 22-3609. (1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt. The appeal shall be assigned by the chief judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than ~~10~~ *14* days after the date of the judgment appealed from.

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) Except as provided herein, the trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. All appeals taken by a defendant from a municipal judge in contempt findings, cigarette or tobacco infraction or traffic infraction cases shall be tried by the court.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 30. K.S.A. 22-3609a is hereby amended to read as follows: 22-3609a. (1) A defendant shall have the right to appeal from any judgment of a district magistrate judge. The chief judge shall be responsible for assigning a district judge for any such appeal. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to a district judge shall be taken by filing a notice of appeal with the clerk of the court. No appeal shall be taken more than ~~10~~ *14* days after the date of the judgment appealed from.

(3) The clerk of the district court shall deliver the complaint, warrant and any appearance bond to the district judge to whom such appeal is assigned. The case shall be tried *de novo* before the assigned district judge.

(4) No advance payment of a docket fee shall be required when the appeal is taken.

(5) All appeals taken by a defendant from a district magistrate judge in misdemeanor cases shall be tried by the court unless a jury trial is requested in writing by the defendant. All appeals taken by a defendant from a district magistrate judge in traffic infraction and cigarette or tobacco infraction cases shall be to the court.

(6) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (c) of K.S.A. 22-2909, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 31. K.S.A. 22-3707 is hereby amended to read as follows: 22-3707. (a) Except as otherwise provided by this section, the Kansas parole board shall consist of three members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments

thereto, no person shall exercise any power, duty or function as a member of the board until confirmed by the senate. No successor shall be appointed as provided in this section for the office of one of the members of the Kansas parole board whose term expires on January 15, 2003. No appointment to the board shall be made that would result in more than two members of the board being members of the same political party. The term of office of the members of the board shall be four years and until their successors are appointed and confirmed. If a vacancy occurs in the membership of the board before the expiration of the term of office, a successor shall be appointed for the remainder of the unexpired term in the same manner that original appointments are made. Each member of the board shall devote the member's full time to the duties of membership on the board.

(b) The governor may not remove any member of the Kansas parole board except for disability, inefficiency, neglect of duty or malfeasance in office. Before removal, the governor shall give the member a written copy of the charges against the member and shall fix the time when the member can be heard at a public hearing, which shall not be less than ~~10~~ *14* days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings.

Sec. 32. K.S.A. 2009 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638, and amendments thereto; K.S.A. 8-1567, and amendments thereto; K.S.A. 21-4642, and amendments thereto; and K.S.A 21-4624, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(D) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of postrelease supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of su-

pervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section.

"Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be

released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a, and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear ~~before~~ either in person or via a video con-

ferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agen-

cies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within ~~10~~ *14* days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to the effective date of this act who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the Kansas parole board or the court orders a person to be electronically monitored, the board or court shall order the person

to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

Sec. 33. K.S.A. 22-3902 is hereby amended to read as follows: 22-3902. (1) Unless otherwise provided by law, proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be governed by the provisions of the Kansas code of civil procedure relating to the abatement of common nuisances.

(2) (A) In addition to the procedure established by this section, if a person is arrested for an unlawful act listed in K.S.A. 22-3901, and amendments thereto, the attorney general, city, county or district attorney may petition the court for a hearing to determine whether an unlawful activity is or has been occurring on such owner's property. The owner of the property on which such person is or was committing an unlawful activity may be given notice of such hearing. Except as provided by paragraph (B), a hearing shall be held before the court within 30 days of the notification. If the court determines by a preponderance of the evidence that an unlawful act occurred, such act shall render void any lease under which a tenant holds possession, and shall cause the right of possession to revert to the owner who may evict the tenant. If the owner does not commence eviction proceedings against the tenant within 30 days of the court determination, the attorney general or the city, county or district attorney may proceed to file a petition pursuant to subsection (3). The provisions of this subsection are in addition to any remedy provided pursuant to the residential landlord and tenant act.

(B) In the case of a violation of subsection (k) of K.S.A. 22-3901, and amendments thereto, a hearing shall be held before the court within ~~five~~ *seven* days of the notification.

(3) Proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be instituted only in the name of the state of Kansas upon the petition of the attorney general or the city, county or district attorney to enjoin a nuisance within the city, county or district.

(4) The petition shall describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted and shall identify the owner or person in charge of such real estate. It shall describe any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used in such unlawful activity. It shall pray for the particular relief sought with respect to such property.

(5) The petition for injunction may include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property described in the petition. If the court finds that there is probable cause to believe that the personal property described is or has been used for any of the unlawful purposes set forth in K.S.A. 22-3901, and amendments thereto, the court may order the sheriff or other law enforcement officer to seize such personalty and to hold it in custody pending further order of the court. An order for seizure shall particularly describe the personal property to be seized.

(6) An order for seizure of materials alleged to be obscene shall not be issued until after a hearing at which evidence in support of the application for such order has been heard. At least ~~three~~ *seven* days notice of such hearing shall be given to the owner or person in possession of such material. Pending such hearing, the court may make an order prohibiting the owner or person in possession from removing such material from the jurisdiction of the court.

(7) No bond or other security shall be required for any restraining order, order for seizure or injunction issued under K.S.A. 22-3901 through 22-3904, and amendments thereto, in an action brought by the attorney general or city, county or district attorney.

(8) The provisions of K.S.A. 22-3901 through 22-3904, and amendments thereto, shall not limit nor otherwise affect proceedings under K.S.A. 60-908, and amendments thereto, but shall be supplemental and in addition to, and not in lieu of, the remedy provided by that statute.

(9) The attorney general or the city, county or district attorney shall give notice of proceedings under K.S.A. 22-3901 through 22-3904, and

amendments thereto, by sending a copy of the petition to enjoin a nuisance by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if: (a) The property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact at the time of seizure; or (c) the property is subject to a security interest perfected in accordance with the uniform commercial code. The attorney general or the city, county or district attorney shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, the attorney general or city, county or district attorney is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

Sec. 34. K.S.A. 22-4006 is hereby amended to read as follows: 22-4006. (a) At any time prior to execution, a convict under sentence of death, such convict's counsel or the warden of the correctional institution or sheriff having custody of such convict may request a determination of the convict's sanity by a district judge of the judicial district in which such convict was tried and sentenced. If the district judge determines that there is not sufficient reason to believe that the convict is insane, the judge shall so find and refuse to suspend the execution of such convict. If the district judge determines that there is sufficient reason to believe that the convict is insane, the judge shall suspend the execution and conduct a hearing to determine the sanity of the convict.

(b) At the hearing, the district judge shall determine the issue of the convict's sanity. The judge shall order a psychiatric or psychological examination of the convict. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the convict and report their findings in writing to the judge within ~~10~~ *14* days after the order of examination is issued. The convict shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the convict in the course of any examination provided for by this section, whether or not the convict consents to the examination, shall be admitted in evidence against the convict in any criminal proceeding.

(c) If, at the conclusion of a hearing pursuant to this section, the judge determines that the convict is sane, the judge shall enter an order recording the determination. A copy of the order shall be delivered to the clerk of the supreme court and to the secretary of corrections. Upon receipt of the order, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court, commanding the secretary or a warden designated pursuant to K.S.A. 22-4001, and amendments thereto, to proceed to carry out the sentence of execution during the week designated by the supreme court. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court.

(d) If, at the conclusion of a hearing pursuant to this section, the judge determines that the convict is insane, the judge shall suspend the execution until further order. The judge shall enter an order recording the determination. A copy of the order shall be delivered to the clerk of the supreme court and the secretary of corrections. Upon receipt of the order, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court suspending the sentence. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court. Any time thereafter when the judge has sufficient reason to believe that the convict has become sane, the judge again shall determine the sanity of the convict as provided by this section. Proceedings pursuant to this section may continue to be held at such times as the district judge orders until it is determined either that such convict is sane or incurably insane.

Sec. 35. K.S.A. 22-4904 is hereby amended to read as follows: 22-4904. (a) (1) Except as provided in subsection (a)(2), within ~~10~~ *14* days of the offender coming into any county in which the offender resides or is temporarily domiciled for more than ~~10~~ *14* days, the offender shall register with the sheriff of the county.

(2) Within ~~10~~ *14* days of the offender coming into any county in which

the offender resides or temporarily resides for more than ~~10~~ *14* days, any offender who has provided the information and completed and signed the registration form as required in K.S.A. 22-4905, and amendments thereto, shall verify with the sheriff of the county that the sheriff has received such offender's information and registration form.

(3) Upon registration with a school or educational institution, a nonresident student attending such school or educational institution shall register with the sheriff within ~~10~~ *14* days of the commencement of the school term.

(4) Upon commencement of employment, a nonresident worker shall register with the sheriff within ~~10~~ *14* days of the commencement date of employment.

(5) For persons required to register as provided in subsections (a)(1), (a)(3) and (a)(4), the sheriff shall: (A) Explain the duty to register and the procedure for registration;

(B) obtain the information required for registration as provided in K.S.A. 22-4907, and amendments thereto;

(C) inform the offender that the offender must give written notice of any change of address within ~~10~~ *14* days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

(D) inform the nonresident student offender that the offender must give written notice to the sheriff and the Kansas bureau of investigation of any change or termination of attendance at the school or educational institution the offender is attending, within ~~10~~ *14* days of such change or termination;

(E) inform the nonresident worker offender that the offender must give written notice to the sheriff and the Kansas bureau of investigation of any termination of employment at the offender's place of employment, within ~~10~~ *14* days of such termination;

(F) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within ~~10~~ *14* days of such change in residence;

(G) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;

(H) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within ~~10~~ *14* days upon commencement of enrollment or employment;

(I) inform the offender that if there is any change or termination in attendance or employment at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within ~~10~~ *14* days of the change or termination;

(J) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. 8-1325a, and amendments thereto; and

(K) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.

(6) Such sheriff, within ~~three~~ *seven* days of receipt of the initial registration shall forward this information to the Kansas bureau of investigation.

(7) Notwithstanding any other provision of law, if a diversionary agreement or probation order, either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act then all provisions of that act shall apply, except that the term of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(b) If any person required to register as provided in this act changes the address of the person's residence, the offender, within ~~10~~ *14* days,

shall inform in writing the law enforcement agency where such offender last registered and the Kansas bureau of investigation of the new address.

(c) Any person who is required to register under this act shall report in person three times each year to the sheriff's office in the county in which the person resides or is otherwise located. The person shall be required to report once during the month of the person's birthday and every four months thereafter. The sheriff's office may determine the appropriate times and days for reporting by the person, consistent with this subsection. The person shall verify:

(1) Whether the person still resides at the address last reported;

(2) whether the person still attends the school or educational institution last reported;

(3) whether the person is still employed at the place of employment last reported; and

(4) whether the person's vehicle registration information is the same as last reported.

Nothing contained in this subsection shall be construed to alleviate any person required to register as provided in this act from meeting the requirements prescribed in subsections (a)(1), (a)(2) and (b).

The sheriff's office shall forward any updated information and current photograph required under subsection (d), to the Kansas bureau of investigation.

(d) Every person who is required to register under this act shall submit to the taking of an updated photograph by the sheriff's office on each occasion when the person reports to the sheriff's office in the county in which the person resides or is otherwise located.

(e) Every person who is required to register under this act shall remit payment to the sheriff in the amount of $20 on each occasion when the person reports to the sheriff's office in the county in which the person resides or is otherwise located. All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for law enforcement and criminal prosecution purposes and which shall not be used as a source of revenue to reduce the amount of funding otherwise made available to the sheriff's office.

Sec. 36. K.S.A. 22-4905 is hereby amended to read as follows: 22-4905. (a) (1) Any offender, who is discharged or paroled from a prison, hospital or other institution or facility involving a violation of any crime or confinement as provided in subsection (a), (b), (d) or (f) of K.S.A. 22-4902, and amendments thereto, prior to discharge, parole or release, shall be informed by the staff of the facility in which the offender was confined of the duty to register as provided in this act.

(2) (A) The staff of the facility shall: (i) Explain the duty to register and the procedure for registration;

(ii) obtain the information required for registration as provided in K.S.A. 22-4907, and amendments thereto;

(iii) inform the offender that the offender must give written notice of any change of address within ~~10~~ *14* days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

(iv) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within ~~10~~ *14* days of such change in residence;

(v) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;

(vi) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days or an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within ~~10~~ *14* days upon commencement of enrollment or employment;

(vii) inform the offender that if there is any change or termination in

attendance or employment, at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within ~~10~~ *14* days of the change or termination;

(viii) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. ~~2007~~ *2009* Supp. 8-1325a, and amendments thereto; and

(ix) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.

(B) The staff of the facility shall give one copy of the form to the person, within ~~three~~ *seven* days, and shall send two copies of the form provided by subsection (2)(A)(v) to the Kansas bureau of investigation, which shall then forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole or release. The Kansas bureau of investigation must immediately ensure that such information is entered in the state law enforcement record system. The Kansas bureau of investigation shall transmit such conviction data and fingerprints to the federal bureau of investigation.

(b) (1) Any offender who is released on probation, receives a suspended sentence, sentenced to community corrections or released on postrelease supervision because of the commission of any crime as provided in subsection (a), (b) or (d) of K.S.A. 22-4902, and amendments thereto, prior to release, shall be informed of the offenders duty to register as provided in this act by the court in which the offender is convicted.

(2) (A) The court shall: (i) Explain the duty to register and the procedure for registration;

(ii) obtain the information required for registration as provided in K.S.A. 22-4907, and amendments thereto;

(iii) inform the offender that the offender must give written notice of any change of address within ~~10~~ *14* days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

(iv) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within ~~10~~ *14* days of such change in residence;

(v) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;

(vi) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days or for an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within ~~10~~ *14* days upon commencement of enrollment or employment;

(vii) inform the offender that if there is any change or termination in attendance or employment at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within ~~10~~ *14* days of the change or termination;

(viii) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. ~~2007~~ *2009* Supp. 8-1325a, and amendments thereto; and

(ix) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.

(B) The court shall give one copy of the form to the person and, within ~~three~~ *seven* days, shall send two copies of the form provided by subsection (2)(A)(v) to the Kansas bureau of investigation which shall then forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon release. The Kansas bureau of investigation must immediately ensure that such information is entered in the state law enforcement record system. The Kansas bureau of inves-

tigation shall transmit such conviction data and fingerprints to the federal bureau of investigation.

Sec. 37. K.S.A. 22-4907 is hereby amended to read as follows: 22-4907. (a) Registration as required by this act shall consist of a form prepared by the Kansas bureau of investigation, which shall include a statement that the requirements provided in this section have been explained to the person, and shall be signed by the person. Such registration form shall include the following:

(1) Name;

(2) date and place of birth;

(3) offense or offenses committed, date of conviction or convictions obtained;

(4) city or county of conviction or convictions obtained;

(5) sex and age of victim;

(6) current address;

(7) social security number;

(8) identifying characteristics such as race, skin tone, sex, age, hair and eye color, scars, tattoos and blood type;

(9) occupation, name of employer and place of employment;

(10) drivers license and vehicle information, including the registration number of each license plate assigned to any motor vehicle normally operated by the offender;

(11) documentation of any treatment received for a mental abnormality or personality disorder of the offender; for purposes of documenting the treatment received, sheriffs, prison officials and courts may rely on information that is readily available to them from existing records and the offender.

(12) anticipated future residence;

(13) a photograph;

(14) fingerprints;

(15) school; and

(16) any and all e-mail addresses and online identities used by the offender on the internet.

(b) (1) The offender shall also provide to the registering law enforcement agency DNA exemplars, unless already on file.

(2) If the exemplars to be taken require the withdrawal of blood, such withdrawal may be performed only by: (A) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person;

(B) a registered nurse or a licensed practical nurse;

(C) any qualified medical technician; or

(D) a licensed phlebotomist.

(c) Unless the person has provided the information and completed and signed the registration form as provided in K.S.A. 22-4905, and amendments thereto, within ~~three~~ *seven* days, the registering law enforcement agency shall forward the registration form to the Kansas bureau of investigation.

(d) The Kansas bureau of investigation may participate in the federal bureau of investigation's NCIC 2000.

Sec. 38. K.S.A. 23-701 is hereby amended to read as follows: 23-701. (a) The purpose of this section is to enhance the enforcement of court ordered child visitation rights and parenting time by establishing a simplified, expedited procedure to provide justice without necessitating the assistance of legal counsel.

(b) A party who has been granted visitation rights or parenting time may file with the court a motion alleging denial or interference with those rights and enforcement of those rights. The district court shall provide a form on which such motion may be filed. Such expedited matters shall be heard by a district judge, court trustee, or magistrate, sitting as a hearing officer. The provisions of this section are in addition to those enforcement procedures provided in the uniform child custody jurisdiction and enforcement act, and amendments thereto, and other remedies provided by law.

(c) When a motion seeking expedited enforcement under subsection (b) is filed, the hearing officer shall immediately:

(1) Set a time and place for a hearing on the motion, which shall not be more than 21 days after the date on which the motion was filed; or

(2) if deemed appropriate, issue an ex parte order for mediation in accordance with K.S.A. 23-601 *et seq.*, and amendments thereto.

(d) If mediation ordered pursuant to subsection (c) is completed, the mediator shall submit a summary of the parties' understanding to the hearing officer within five days after it is signed by the parties. Upon receipt of the summary, the hearing officer shall enter an order in accordance with the parties' agreement or set a time and place for a hearing on the matter, which shall be not more than 10 days after the summary is received by the hearing officer.

(e) If mediation ordered pursuant to subsection (c) is terminated pursuant to K.S.A. 23-604, and amendments thereto, the mediator shall report the termination to the hearing officer within five days after the termination. Upon receipt of the report, the matter shall be set for hearing. Any such hearing shall be not more than 10 days after the mediator's report of termination is received by the hearing officer.

(f) Notice of the hearing date set by the hearing officer shall be given to all interested parties by certified mail, return receipt requested, or as the court may order.

(g) If, upon hearing the hearing officer finds that there has been an unreasonable interference with or denial of visitation or parenting time, the hearing officer shall enter an order providing for one or more of the following:

(1) A specific schedule for visitation or parenting time;

(2) compensating visitation or parenting time to the party suffering interference or denial of visitation or parenting time, which time shall be of the same type (e.g., holiday, weekday, weekend, summer) as for which denial or interference was found and which shall be at the convenience of the party suffering the denial or interference of visitation or parenting time;

(3) the posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights or parenting time;

(4) assessment of reasonable attorney fees, mediation costs and costs of the proceedings to enforce visitation rights or parenting time against the person responsible for the unreasonable denial or interference with visitation or parenting time other than the child;

(5) attendance of one or more of the parties to the action at counseling or educational sessions which focus on the impact on children of disputes regarding visitation or parenting time. Expenses shall be assessed to the person responsible for the denial or interference with visitation or parenting time;

(6) supervised visitation or parenting time; or

(7) any other remedy which the hearing officer considers appropriate, except, if a hearing officer is not a district judge, the hearing officer shall not enter any order which grants a new order, or modifies an existing order for child support, child custody, residency, or maintenance.

(h) Decisions of any hearing officer who is not a district judge shall be subject to review by a district judge on the motion of any party filed within ~~10~~ *14* days after the order was entered.

(i) In no case shall final disposition of a motion filed pursuant to this section take place more than 45 days after the filing of such motion.

Sec. 39. K.S.A. 23-4,107 is hereby amended to read as follows: 23-4,107. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or (l), all new or modified orders for support shall provide for immediate issuance of an income withholding order. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) Except as otherwise provided in this subsection or subsections (j) or (l), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for

one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. 39-7,147, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, any income withholding order prepared in a standard format prescribed by the secretary of social and rehabilitation services shall be deemed to be in compliance with this act.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 23-4,108 and 23-4,109, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 23-4,121, and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 23-4,108, 23-4,109, 23-4,119 and 23-4,122, and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor only by personal service or registered mail, return receipt requested.

(2) Without the requirement of further notice to the obligor, the IV-D agency may cause a copy of any income withholding order to be served on the payor only by personal service or registered mail, return receipt requested or by any alternate method acceptable to the payor. No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, "copy of the income withholding order" means any document or notice, regardless of format, that advises the

payor of the same general duties, requires the same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or (l), at any time following entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor only by personal service or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (B) a written agreement among all interested parties provides for an alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pur-

suant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

(A) The agreement was not in writing;

(B) the agreement was not approved by all interested parties;

(C) the terms of the agreement or alternative arrangement are not being met;

(D) the agreement or alternative arrangement is not in the best interests of the child; or

(E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 23-4,110*,* and amendments thereto*,* apply to any motion pursuant to paragraph (3) or (4) of this subsection (j).

(k) (1) An ex parte interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

(2) An ex parte interlocutory order for support may be enforced pursuant to subsection (c) only if ~~10~~ *14* or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

Sec. 40. K.S.A. 26-503 is hereby amended to read as follows: 26-503. The plaintiff shall cause to be published once in a newspaper of general circulation in the county where the lands are situated a notice of the proceeding at least ~~nine (9)~~ *14* days in advance of the date fixed by the court for consideration of the petition and appointment of appraisers, and shall at least ~~seven (7)~~ *14* days before such date mail to each interested party as named in K.S.A. 26-502*, and amendments thereto,* and whose address is known or can with reasonable diligence be ascertained a copy of such publication notice and petition insofar as it relates to his interest. No defect in any notice or in the service thereof shall invalidate any proceedings.

Sec. 41. K.S.A. 2009 Supp. 26-505 is hereby amended to read as follows: 26-505. After such appointment, the appraisers shall take an oath to faithfully discharge their duties as appraisers. The judge shall instruct the appraisers on matters including, but not limited to, the following: (1) That ~~they~~ *the appraisers* are officers of the court and not representatives of the plaintiff or any other party, (2) that ~~they~~ *the appraisers* are to receive ~~their~~ instructions only from the judge, (3) the nature of ~~their~~ *the appraisers*' duties and authority, (4) the basis, manner and measure of ascertaining the value of the land taken and damages resulting from such taking, (5) that, except for incidental contact for the purpose of verifying factual information relating to the subject real estate or to discuss scheduling matters, appraisers shall refrain from any *ex parte* meetings or discussions with representatives of the plaintiff or property owner without first advising the adverse party and providing such party with the oppor-

tunity to be present, and (6) that all written material provided to an appraiser or appraisers by a party shall be provided forthwith to the adverse party. The instructions shall be in writing. Upon the completion of ~~their~~ *the appraisers'* work the appraisers shall file the report in the office of the clerk of the district court and shall notify the condemner of such filing. The condemner, within ~~three~~ *seven* days after receiving such notice, shall mail a written notice of the filing of such report to every person who owns any interest in any of the property being taken, if the address of such person is known, and shall file in the office of the clerk of the district court an affidavit showing proof of the mailing of such notice. The fees and expenses of the appraisers shall be determined and assessed by the court against the plaintiff.

Sec. 42. K.S.A. 2009 Supp. 26-506 is hereby amended to read as follows: 26-506. (a) *Notice, time, place and manner of hearing.* The appraisers shall, after ~~they have~~ *having* been sworn, and instructed by the judge, make ~~their~~ *an* appraisal and assessment of damages, by actual view of the lands to be taken and of the tracts of which ~~they~~ *the lands* are a part, and by hearing of oral or written testimony from the plaintiff and each interested party as named in K.S.A. 26-502, and amendments thereto, appearing in person or by an attorney. Such testimony shall be given at a public hearing held in the county where the action is pending at a time and place fixed by the appraisers. Notice of the hearing shall be mailed at least ~~10~~ *14* days in advance thereof to the plaintiff and to each party named in the petition if their address is known or can with reasonable diligence be ascertained, and by one publication in a newspaper of general circulation in each county where the lands are situated at least ~~10~~ *14* days in advance of the hearing. In case of failure to meet on the day designated in the notice, the appraisers may meet on the following day without further notice. In case of failure to meet on either of such days, a new notice shall be required. A hearing begun pursuant to proper notice may be continued or adjourned from day to day and from place to place until the hearing with respect to all properties involved in the action has been concluded.

(b) *Form of notice.* The notice of hearing shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

Sec. 43. K.S.A. 2009 Supp. 26-507 is hereby amended to read as follows: 26-507. (a) *Payment of award; vesting of rights.* If the plaintiff desires to continue with the proceeding as to particular tracts the plaintiff, within 30 days from the time the appraisers' report is filed, shall pay to the clerk of the district court the amount of the appraisers' award as to those particular tracts and court costs accrued to date, including appraisers' fees. Such payment shall be without prejudice to plaintiff's right to appeal from the appraisers' award. Except as provided further, upon such payment being made, the title, easement or interest appropriated in the land condemned shall thereupon immediately vest in the plaintiff, and it shall be entitled to the immediate possession of the land to the extent necessary for the purpose for which taken and consistent with the title, easement or interest condemned. If such property contains a defendant's personal property, a defendant shall have ~~10~~ *14* days from the date such payment is made to the clerk of the district court to remove such personal property from the premises. The plaintiff shall be entitled to all the remedies provided by law for the securing of such possession. The clerk of the district court shall notify the interested parties that the appraisers' award has been paid and that the defendant shall have ~~10~~ *14* days from the payment date to remove personal property from the premises.

(b) *Abandonment.* If the plaintiff does not make the payment prescribed in subsection (a) for any of the tracts described in the petition, within 30 days, from the time the appraisers' report is filed, the condemnation is abandoned as to those tracts, and judgment for costs, including the appraisers' fees together with judgment in favor of the defendant for the reasonable expenses incurred in defense of the action, shall be entered against the plaintiff. After such payment is made by the plaintiff to the clerk of the court, as provided in subsection (a), the proceedings as to those tracts for which payment has been made can only be abandoned by the mutual consent of the plaintiff and the parties interested in the award.

Sec. 44. K.S.A. 2009 Supp. 26-508 is hereby amended to read as follows: 26-508. (a) If the plaintiff, or any defendant, is dissatisfied with the award of the appraisers, such party, within 30 days after the filing of the appraisers' report, may appeal from the award by filing a written notice of appeal with the clerk of the district court. The appeal shall be deemed perfected upon the filing of the notice of appeal. In the event any parties shall perfect an appeal, copies of such notice of appeal shall be mailed to all parties affected by such appeal, within ~~three~~ *seven* days after the date of the perfection thereof. An appeal by the plaintiff or any defendant shall bring the issue of damages to all interests in the tract before the court for trial *de novo.* The appeal shall be docketed as a new civil action, the docket fee of a new court action shall be collected and the appeal shall be tried as any other civil action. The only issue to be determined therein shall be the compensation required by K.S.A. 26-513, and amendments thereto.

(b) This section, as amended by this act, shall be construed and applied prospectively, as well as retroactively to July 1, 2003, and shall apply to all eminent domain proceedings pending on or commenced after July 1, 2003.

Sec. 45. K.S.A. 26-510 is hereby amended to read as follows: 26-510. (a) The clerk of the district court shall notify the defendants within ~~15~~ *14* days that the plaintiff has paid the amount of the appraisers' award pursuant to K.S.A. 26-507, and amendments thereto.

(b) The defendants may by order of the judge and without prejudice to ~~their~~ *the defendants'* right of appeal withdraw the amount paid to the clerk of the court as ~~their~~ *the defendants'* interests are determined by the appraisers' report.

Sec. 46. K.S.A. 2009 Supp. 38-2229 is hereby amended to read as follows: 38-2229. (a) The secretary, a law enforcement officer, or a multidisciplinary team appointed pursuant to K.S.A. 2009 Supp. 38-2228, and amendments thereto, may request disclosure of documents, reports or information in regard to a child, who is the subject of a report of abuse or neglect, by making a written verified application to the district court. Upon a finding by the court that there is probable cause to believe the information sought will assist in the investigation of a report of child abuse or neglect, the court may issue a subpoena, subpoena *duces tecum* or an order for the production of the requested documents, reports or information and directing the documents, reports or information to be delivered to the applicant at a specific time, date and place.

(b) The time and date of delivery shall not be sooner than five days after the service of the subpoena or order, excluding Saturdays, Sundays ~~and~~, holidays*, and days on which the office of the clerk of the court is not accessible*. The court issuing the subpoena or order shall keep all applications filed pursuant to this subsection and a copy of the subpoena or order in a special file maintained for that purpose. Upon receiving service of a subpoena, subpoena *duces tecum* or an order for production pursuant to this section, the person or agency served shall give oral or written notice of service to any person known to have a right to assert a privilege or assert a right of confidentiality in regard to the documents, reports or information sought at least ~~three~~ *seven* days before the date of delivery.

(c) Any parent, child, guardian *ad litem*, person or entity subpoenaed or subject to an order of production or person or entity who claims a privilege or right of confidentiality may request in writing that the court issuing the subpoena or order of production quash the subpoena, subpoena *duces tecum* or order for production issued pursuant to this section. The request shall automatically stay the operation of the subpoena, subpoena *duces tecum* or order for production and the documents, reports or information requested shall not be delivered until the issuing court has held a hearing to determine if the documents, reports or information are subject to the claimed privilege or right of confidentiality, and whether it is in the best interests of the child for the subpoena or order to produce to be honored. The request to quash shall be filed with the district court issuing the subpoena or order at least 24 hours prior to the specified time and date of delivery, excluding Saturdays, Sundays ~~or~~, holidays, *or days on which the office of the clerk of the court is not accessible,* and a copy of the written request must be given to the person subpoenaed or subject

to the order for production at least 24 hours prior to the specified time and date of delivery.

Sec. 47. K.S.A. 2009 Supp. 38-2255 is hereby amended to read as follows: 38-2255. (a) *Considerations.* Prior to entering an order of disposition, the court shall give consideration to:

(1) The child's physical, mental and emotional condition;

(2) the child's need for assistance;

(3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;

(4) any relevant information from the intake and assessment process; and

(5) the evidence received at the dispositional hearing.

(b) *Placement with a parent.* The court may place the child in the custody of either of the child's parents subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including, but not limited to:

(1) Supervision of the child and the parent by a court services officer;

(2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and

(3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) *Removal of a child from custody of a parent.* The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

(d) *Custody of a child removed from the custody of a parent.* If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and notify the court of the placement or proposed placement of the child within ~~10~~ *14* days of the order awarding custody.

(A) After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(B) The secretary may propose and the court may order the child to be placed in the custody of a parent or parents if the secretary has provided and the court has approved an appropriate safety action plan which includes services to be provided. The court may order the parent or parents and the child to perform tasks as set out in the safety action plan.

(2) The custodian designated under this subsection shall notify the court in writing at least ~~10~~ *14* days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set the date for a hearing to determine if the child shall be allowed to return home. If

the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

(3) The court may grant any person reasonable rights to visit the child upon motion of the person and a finding that the visitation rights would be in the best interests of the child.

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2009 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(5) The court shall provide a copy of any orders entered within ~~10~~ *14* days of entering the order to the custodian designated under this subsection.

(e) *Further determinations regarding a child removed from the home.* If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2009 Supp. 38-2264, and amendments thereto. If a permanency plan is provided at the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: Murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or a felony battery that resulted in bodily injury;

(2) whether a parent has subjected the child or another child to aggravated circumstances;

(3) whether a parent has previously been found to be an unfit parent in proceedings under this code or in comparable proceedings under the laws of another state or the federal government;

(4) whether the child has been in extended out of home placement;

(5) whether the parents have failed to work diligently toward reintegration;

(6) whether the secretary has provided the family with services necessary for the safe return of the child to the home; and

(7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

(f) *Proceedings if reintegration is not a viable alternative.* If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

(g) *Additional Orders.* In addition to or in lieu of any other order authorized by this section:

(1) The court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health provider shall charge a greater fee for court-ordered counseling than the provider would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2009 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2009 Supp. 38-2279, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Sec. 48. K.S.A. 2009 Supp. 38-2258 is hereby amended to read as follows: 38-2258. (a) Except as provided in K.S.A. 2009 Supp. 38-2255(d)(2) and 38-2259, and amendments thereto, if a child has been in the same foster home or shelter facility for six months or longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court having jurisdiction over the child; (2) each parent whose address is available; (3) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (4) the child, if 12 or more years of age; and (5) the child's guardian ad litem.

(b) The notice shall state the placement to which the secretary plans to transfer the child and the reason for the proposed action. The notice shall be mailed by first class mail 30 days in advance of the planned transfer, except that the secretary shall not be required to wait 30 days to transfer the child if all persons enumerated in subsection (a) (2) through (5) consent in writing to the transfer.

(c) Within ~~10~~ *14* days after receipt of the notice, any person receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been received, the court shall schedule a hearing and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a) (2) through (5). The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.

(d) When, after the notice set out above, a child in the custody of the secretary is removed from the home of a parent after having been placed in the home of a parent for a period of six months or longer, the secretary

shall request a finding that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

(e) The secretary shall present to the court in writing the efforts to maintain the family unit and prevent the unnecessary removal of the child from the child's home. In making the findings, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such finding, the court, not more than 45 days from the date of the request, shall provide the secretary with a written copy of the findings by the court for the purpose of documenting these orders.

Sec. 49. K.S.A. 2009 Supp. 38-2305 is hereby amended to read as follows: 38-2305. (a) Venue for proceedings in any case involving a juvenile shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the county where the adjudication occurred. When the sentencing hearing is to be held in a county other than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing court a facsimile of the complaint, the adjudication journal entry or judge's minutes, if available, and any recommendations in regard to sentencing. Such documents shall be sent for purposes of notification and shall not constitute original court documents. The adjudicating court shall also send to the sentencing court a complete copy of the official and social files in the case by mail within ~~five~~ *seven* working days of the adjudication.

(c) If the juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the sentencing hearing may be held in the county in which the adjudication was made if the adjudicating judge, upon motion by any person authorized to appeal, finds that it is in the interest of justice.

Sec. 50. K.S.A. 2009 Supp. 38-2329 is hereby amended to read as follows: 38-2329. A juvenile whose defense to the allegations in the complaint is that of alibi or mental disease or defect shall give written notice to the county or district attorney and the court of such juvenile's proposed defense not less than ~~10~~ *14* days prior to the adjudicatory hearing. For good cause shown the court may allow such notice to be given at a later time. The notice shall include the names and addresses of witnesses that the juvenile plans to call to provide evidence in support of the defense. Upon receipt of the notice of the defense of mental disease or defect, the court may order an independent examination of and report on the juvenile.

Sec. 51. K.S.A. 2009 Supp. 38-2343 is hereby amended to read as follows: 38-2343. (a) *Length of detention.* Whenever a juvenile is taken into custody, the juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays ~~and~~, legal holidays, *and days on which the office of the clerk of the court is not accessible,* from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is necessary.

(b) *Waiver of detention hearing.* The detention hearing may be waived in writing by the juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by subsection (c)(1) of K.S.A. 2009 Supp. 38-2332, and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

(d) *Oral notice.* When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.

(e) *Hearing, finding, bond.* At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours*, excluding Saturdays, Sundays and legal holidays,* to obtain attendance of the attorney appointed. At the detention hearing, if the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto. In the absence of either finding, the court shall order the juvenile released or placed in temporary custody as provided in subsection (f).

In determining whether to place a juvenile in a juvenile detention facility pursuant to this subsection, the court shall consider all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2009 Supp. 38-2331, and amendments thereto. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(f) *Temporary custody.* If the court determines that detention is not necessary but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility, some other suitable person willing to accept temporary custody or the commissioner. Such finding shall be made in accordance with K.S.A. 2009 Supp. 38-2334 and 38-2335, and amendments thereto.

(g) *Audio-video communications.* Detention hearings may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

Sec. 52. K.S.A. 2009 Supp. 38-2350 is hereby amended to read as follows: 38-2350. (a) If, after proceedings as required by K.S.A. 2009 Supp. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 2009 Supp. 38-2348, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 2009 Supp. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 2009 Supp. 38-2348, and amendments thereto, that the proceedings shall be resumed, within ~~five~~ *seven* days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from

commitment and shall dismiss the charges without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 2009 Supp. 38-2348, and amendments thereto.

Sec. 53. K.S.A. 2009 Supp. 38-2362 is hereby amended to read as follows: 38-2362. (a) When sentencing a juvenile offender, the court may order a juvenile offender's parent to participate in counseling, mediation sessions or an alcohol and drug evaluation and treatment program ordered as part of the juvenile offender's sentence under K.S.A. 2009 Supp. 38-2361, and amendments thereto, or to participate in parenting classes.

(1) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within ~~10~~ *14* days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent.

(2) If the parent does not request a hearing within ~~10~~ *14* days after entry of the order, the order shall take effect at that time.

(3) If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 2009 Supp. 38-2306, and amendments thereto.

(b) In addition to any other orders provided for by this section, the parent of a juvenile offender may be held responsible for the costs of sanctions or the support of the juvenile offender as follows:

(1) The board of county commissioners of a county may provide by resolution that the parent of any juvenile offender placed under a house arrest program pursuant to subsection (a)(9) of K.S.A. 2009 Supp. 38-2361, and amendments thereto, shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall prepare a sliding financial scale based on the ability of the parent to pay for such a program.

(2) If child support has been requested and a parent has a duty to support the juvenile offender, the court may order, and when custody is placed with the commissioner shall order, one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent already is subject to an order to pay support for the juvenile. If the parent currently is not ordered to pay support for the juvenile and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2009 Supp. 38-2319, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2009 Supp. 38-2321, and amendments thereto. The parent also shall be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Sec. 54. K.S.A. 2009 Supp. 38-2371 is hereby amended to read as follows: 38-2371. (a) (1) Whenever a person is adjudicated as a juvenile offender, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to

the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within ~~20~~ *21* days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of conviction may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in subsection (c)(2) of K.S.A. 21-4716, and amendments thereto, and in subsection (a) of K.S.A. 21-4717, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. When a departure sentence is appropriate, the sentencing judge may depart from the matrix as provided in this section. When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term;

(2) the court shall have no authority to reduce the minimum term of confinement as defined within the placement matrix; and

(3) the maximum term for commitment of any juvenile offender to a juvenile correctional facility is age 22 years, 6 months.

(e) A departure sentence may be appealed as provided in K.S.A. 2009 Supp. 38-2380, and amendments thereto.

Sec. 55. K.S.A. 2009 Supp. 38-2373 is hereby amended to read as follows: 38-2373. (a) *Actions by the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall forthwith notify the commissioner of the commitment and provide the commissioner with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court shall provide those items from the social file which could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the recommendation shall be included in the sentence. After the court has received notice of the juvenile correctional facility designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the juvenile offender to the facility at the time designated by the commissioner.

(2) When a juvenile offender is residing in a juvenile correctional facility and is required to go back to court for any reason, the county demanding the juvenile's presence shall be responsible for transportation, detention, custody and control of such offender. In these cases, the county sheriff shall be responsible for all transportation, detention, custody and control of such offender.

(b) *Actions by the commissioner.* (1) Within three days, *excluding Saturdays, Sundays and legal holidays,* after receiving notice of commitment as provided in subsection (a), the commissioner shall notify the committing court of the facility to which the juvenile offender should be conveyed, and when to effect the immediate transfer of study and control to the juvenile justice authority. The date of admission shall be no more

than five days, *excluding Saturdays, Sundays and legal holidays,* after the notice to the committing court. Until received at the designated facility, the continuing detention, custody, and control of and transport for a juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the responsibility of the committing county.

(2) Except as provided by K.S.A. 2009 Supp. 38-2332, and amendments thereto, the commissioner may make any temporary out-of-home placement the commissioner deems appropriate pending placement of the juvenile offender in a juvenile correctional facility, and the commissioner shall notify the court, local law enforcement agency and school district in which the juvenile will be residing if the juvenile is still required to attend a secondary school of that placement.

(c) *Transfers.* During the time a juvenile offender remains committed to a juvenile correctional facility, the commissioner may transfer the juvenile offender from one juvenile correctional facility to another.

Sec. 56. K.S.A. 2009 Supp. 38-2374 is hereby amended to read as follows: 38-2374. (a) When a juvenile offender has satisfactorily completed the term of incarceration at the juvenile correctional facility to which the juvenile offender was committed or placed, the person in charge of the juvenile correctional facility shall have authority to release the juvenile offender under appropriate conditions and for a specified period of time. Prior to release from a juvenile correctional facility, the commissioner shall consider any recommendations made by the juvenile offender's community case management officer.

(b) At least ~~20~~ *21* days prior to releasing a juvenile offender as provided in subsection (a), the person in charge of the juvenile correctional facility shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released. The person in charge of the juvenile correctional facility shall notify the school district in which the juvenile offender will be residing if the juvenile is still required to attend a school. Such notification to the school shall include the name of the juvenile offender, address upon release, contact person with whom the juvenile offender will be residing upon release, anticipated date of release, anticipated date of enrollment in school, name and phone number of case worker, crime or crimes of adjudication if not confidential based upon other statutes, conditions of release and any other information the commissioner deems appropriate. To ensure the educational success of the student, the community case manager or a representative from the residential facility where the juvenile offender will reside shall contact the principal of the receiving school in a timely manner to review the juvenile offender's case. If such juvenile offender's offense would have constituted an off-grid crime, nondrug felony crime ranked at severity level 1, 2, 3, 4 or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, if committed by an adult, the person in charge of the juvenile correctional facility shall notify the county or district attorney of the county where the offender was adjudicated a juvenile offender of the date and conditions upon which it is proposed the juvenile offender is to be released. The county or district attorney shall give written notice at least ~~five~~ *seven* days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(c) Upon receipt of the notice required by subsection (b), the court shall review the terms of the proposed conditional release and may recommend modifications or additions to the terms.

(d) If, during the conditional release, the juvenile offender is not returning to the county from which committed, the person in charge of the juvenile correctional facility shall also give notice to the court of the county in which the juvenile offender is to be residing.

(e) To assure compliance with conditional release from a juvenile correctional facility, the commissioner shall have the authority to prescribe the manner in which compliance with the conditions shall be su-

pervised. When requested by the commissioner, the appropriate court may assist in supervising compliance with the conditions of release during the term of the conditional release. The commissioner may require the parent of the juvenile offender to cooperate and participate with the conditional release.

(f) For acts committed before July 1, 1999, the juvenile justice authority shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the release of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(g) Conditional release programs shall include, but not be limited to, the treatment options of aftercare services.

Sec. 57. K.S.A. 2009 Supp. 38-2381 is hereby amended to read as follows: 38-2381. (a) An appeal may be taken by the prosecution from an order:

(1) Dismissing proceedings when jeopardy has not attached;

(2) denying authorization to prosecute a juvenile as an adult;

(3) quashing a warrant or a search warrant;

(4) suppressing evidence or suppressing a confession or admission; or

(5) upon a question reserved by the prosecution.

(b) An appeal upon a question reserved by the prosecution shall be taken within ~~10~~ *14* days after the juvenile has been adjudged to be a juvenile offender. Other appeals by the prosecution shall be taken within ~~10~~ *14* days after the entry of the order appealed.

Sec. 58. K.S.A. 59-807 is hereby amended to read as follows: 59-807. (a) When the will of a nonresident decedent designates one or more individuals or a qualified corporation as executor, letters testamentary shall be granted to any or all of ~~them~~ *the designees* as in estates of resident decedents. If such designated individual or corporation has not applied in this state for such letters, any interested person may apply for the issuance of letters testamentary and, after reasonable notice to such individual or qualified corporation of such application, the manner and nature of which is to be determined by the court, and after hearing thereon, and if such individual or corporation be found unsuitable, incompetent, or unqualified, or does not qualify within ~~three (3)~~ *seven* days after being found by the court to be entitled thereto, then the court may issue letters testamentary with will annexed to such other person, persons~~,~~ or corporations as in this section provided.

(b) When the nonresident decedent dies intestate or dies testate and no letters testamentary are granted as in this section heretofore provided, then letters of administration, upon proper application by an interested person, may be granted to the following persons:

(1) To the husband or wife or to ~~his or her nominee~~ *the nominee of the husband or wife* who is an individual or a qualified corporation of this state;

(2) To one or more individuals who are entitled to distribution of the estate, whom the court shall believe will best manage and preserve the estate, or to a nominee of one or more of those entitled to distribution of the estate. Such nominee shall be an individual or a qualified corporation of this state.

(c) If proper application by an interested person for the issuance of letters, either to the applicant or otherwise, has been made, and if the court believes that no one of the persons otherwise entitled under this

section to have letters issued to ~~him or her~~ *such person* is a competent and suitable person, then the court may grant letters to some other person or to a qualified corporation of this state.

Sec. 59. K.S.A. 2009 Supp. 59-2401a is hereby amended to read as follows: 59-2401a. (a) An appeal by an interested party from a district magistrate judge to a district judge may be taken no later than ~~10~~ *14* days from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

(2) the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq., and amendments thereto);

(3) the care and treatment act for persons with an alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto); or

(4) the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto).The appeal shall be heard no later than 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo. Except as provided further, if a record was made of the proceedings, the district judge shall conduct the appeal on the record. Upon motion of any party to the proceedings, the district judge may hold a trial de novo.

(b) An appeal by an interested party from the district court to an appellate court shall be taken pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

(2) the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq., and amendments thereto);

(3) the sexually violent predator act (K.S.A. 59-29a01 et seq., and amendments thereto);

(4) the care and treatment act for persons with an alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto); or

(5) the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto).

Except for cases otherwise specifically provided for by law, appeals under this section shall have priority over all others.

(c) Pending the determination of an appeal pursuant to section (a) or (b) of this section, any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to section (a) or (b) of this section, the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

(e) As used in this section, "interested party" means:

(1) The parent in a proceeding pursuant to the Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

(2) the patient under the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq., and amendments thereto);

(3) the patient under the care and treatment act for persons with an alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto);

(4) the person adjudicated a sexually violent predator under the sexually violent predator act (K.S.A. 59-29a01 et seq., and amendments thereto);

(5) the ward or conservatee under the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto);

(6) the parent of a minor person adjudicated a ward or conservatee

under the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto);

(7) the petitioner in the case on appeal; and

(8) any other person granted interested party status by the court from which the appeal is being taken.

(f) This section shall be part of and supplemental to the Kansas probate code.

Sec. 60. K.S.A. 59-2947 is hereby amended to read as follows: 59-2947. *(a)* In computing the date upon or by which any act must be done or hearing held by under provisions of this article, the day on which an act or event occurred and from which a designated period of time is to be calculated shall not be included, but the last day in a designated period of time shall be included unless that day falls on a Saturday, Sunday or legal holiday, in which case the next day which is not a Saturday, Sunday or legal holiday shall be considered to be the last day.

(b) Unless the court orders otherwise, if the clerk's office is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday.

(c) "Legal holiday" means any day declared a holiday by the president of the United States, the congress of the United States or the legislature of this state, or any day observed by order of the Kansas supreme court. A half holiday is considered as other days and not as a holiday.

Sec. 61. K.S.A. 59-29a14 is hereby amended to read as follows: 59-29a14. (a) The county or district attorney shall file a special allegation of sexual motivation within ~~10~~ *14* days after arraignment in every criminal case other than sex offenses as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(b) In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(c) The county or district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

Sec. 62. K.S.A. 59-29b47 is hereby amended to read as follows: 59-29b47. *(a)* In computing the date upon or by which any act must be done or hearing held by under provisions of this article, the day on which an act or event occurred and from which a designated period of time is to be calculated shall not be included, but the last day in a designated period of time shall be included unless that day falls on a Saturday, Sunday or legal holiday, in which case the next day which is not a Saturday, Sunday or legal holiday shall be considered to be the last day.

(b) Unless the court orders otherwise, if the clerk's office is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday.

(c) "Legal holiday" means any day declared a holiday by the president of the United States, the congress of the United States or the legislature of this state or any day observed as a holiday by order of the Kansas supreme court. A half holiday is considered as other days and not as a holiday.

Sec. 63. K.S.A. 59-3052 is hereby amended to read as follows: 59-3052. *(a)* In computing the date upon or by which any act must be done or hearing held under provisions of this article, the day on which an act or event occurred and from which a designated period of time is to be calculated shall not be included, but the last day in a designated period

of time shall be included unless that day falls on a Saturday, Sunday or legal holiday, in which case the next day which is not a Saturday, Sunday or legal holiday shall be considered to be the last day.

(b) Unless the court orders otherwise, if the clerk's office is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday.

(c) "Legal holiday" means any day declared a holiday by the president of the United States, the congress of the United States or the legislature of this state or any day observed as a holiday by order of the Kansas supreme court. A half holiday is considered as other days and not as a holiday.

Sec. 64. K.S.A. 60-101 is hereby amended to read as follows: 60-101. This act ~~shall~~ *may* be ~~known~~ *cited* as the code of civil procedure.

Sec. 65. K.S.A. 60-102 is hereby amended to read as follows: 60-102. The provisions of this act shall be liberally construed and administered to secure the just, speedy and inexpensive determination of every action ~~or~~ *and* proceeding.

Sec. 66. K.S.A. 60-103 is hereby amended to read as follows: 60-103. The term "restricted mail" as used in this chapter means mail ~~which carries~~*, sent postage or other delivery fees prepaid, that is endorsed* on its face ~~the endorsements "return receipt requested showing address where delivered" and "deliver to addressee only" and for which the appropriate fees have been paid upon mailing for the processing of mail so endorsed in accordance with the regulations of the postal department, except that mail on which the addressee is not a natural person or persons the endorsement "deliver to addressee only" may be omitted~~ *pursuant to applicable postal regulations so that the sender will receive a return receipt notification with the date and address of delivery, and, if the addressee is a natural person, only the addressee or an authorized agent will receive the mail.*

Sec. 67. K.S.A. 60-104 is hereby amended to read as follows: 60-104. ~~Without regard to whether the word "court" or the word "judge" is used in any provisions of this chapter, all trials upon~~ *All trials on* the merits ~~shall~~ *must* be conducted in open court and*, subject to K.S.A. 20-347, and amendments thereto,* in a regular courtroom ~~if reasonably possible~~. All other acts or proceedings, including the entry of a ruling or judgment, may be done or conducted by a judge or judge pro tem in chambers, without the attendance of the clerk or other court officials ~~and~~ *, or* at any place either ~~within or without~~ *in or outside* the district; but no hearing, other than one *ex parte,* ~~shall~~ *may* be conducted outside the district without the consent of all *affected* parties ~~affected thereby who are~~ not in default.

Sec. 68. K.S.A. 60-201 is hereby amended to read as follows: 60-201. (a) The provisions of *this* article ~~2 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, shall~~ *may* be ~~known and~~ cited as the rules of civil procedure.

(b) This article governs the procedure *in all civil actions and proceedings* in the district courts of Kansas, other than actions commenced pursuant to the code of civil procedure for limited actions ~~and governs the procedure in all original proceedings in the supreme court in all suits of a civil nature whether cognizable as cases at law or in equity, except as provided in K.S.A. 60-265, and amendments thereto~~.

Sec. 69. K.S.A. 60-202 is hereby amended to read as follows: 60-202. There ~~shall be but~~ *is* one form of action ~~to be known as "~~*, the* civil action~~,"~~ ~~in which the party complaining shall be designated "plaintiff" and the adverse party "defendant."~~.

Sec. 70. K.S.A. 60-203 is hereby amended to read as follows: 60-203. (a) A civil action is commenced at the time of: (1) Filing a petition with ~~the clerk of~~ the court, if service of process is obtained or the first publication is made for service by publication within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff; or (2) service of process or first publication, if service of process or first publication is not made within the time specified by ~~provision~~ *paragraph* (1).

(b) If service of process or first publication purports to have been made but is later adjudicated to have been invalid due to ~~any~~ *an* irregu-

larity in form or procedure or ~~any~~ *a* defect in making service, the action ~~shall nevertheless be deemed~~ *is considered* to have been commenced at the applicable time under subsection (a) if valid service is obtained or first publication is made within 90 days after that adjudication, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff.

(c) The filing of an entry of appearance ~~shall have~~ *has* the same effect as service. Written contact with the court by a defendant, or an attorney for ~~a~~ *the* defendant ~~evoking the~~ *invoking* protection for ~~such~~ *the* defendant under the servicemembers civil relief act ~~shall not be deemed~~ *(50 U.S.C. 501 et seq.), and amendments thereto, is not* an entry of appearance ~~by the court~~.

(d) As used in this section, filing a petition with ~~the clerk of~~ the court ~~shall include~~ *includes* receipt by the ~~clerk~~ *court* of a petition by ~~telefacsimile communication~~ *electronic means* complying with supreme court rules.

Sec. 71. K.S.A. 60-204 is hereby amended to read as follows: 60-204. The methods of serving process ~~as set forth~~ *set out* in article 3 of this chapter ~~shall~~ constitute sufficient service of process in all civil actions and ~~special~~ proceedings, but ~~they shall be alternative to, and not in restriction of~~ *are alternatives to and do not restrict* different methods specifically provided by law. ~~In~~ *Substantial compliance with* any method of serving process~~, substantial compliance therewith shall effect~~ *effects* valid service of process if the court finds that, notwithstanding some irregularity or omission, the party served was made aware that an action or proceeding was pending in a specified court ~~in which his or her person, status or property were subject to being affected~~ *that might affect the party or the party's status or property*.

Sec. 72. K.S.A. 60-205 is hereby amended to read as follows: 60-205. ~~The method of service and filing of pleadings and other papers as provided in this section shall constitute sufficient service and filing in all civil actions and special proceedings but they shall be alternative to, and not in restriction of, different methods specifically provided by law.~~

~~(a) *When required.* Except as otherwise provided in this chapter, the following shall be served upon each of the parties: Every order required by its terms to be served, every pleading subsequent to the original petition, unless the court otherwise orders because of numerous defendants, every paper relating to disclosure of expert testimony or discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in article 3 of chapter 60.~~

~~(b) *How made.* Whenever under this article service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by: (1) Delivering a copy to the attorney or a party; (2) mailing it to the attorney or a party at the last known address; (3) if no address is known, by leaving it with the clerk of the court; or (4) sending or transmitting to such attorney a copy by telefacsimile communication. For the purposes of this subsection, "Delivery of a copy" means: Handing it to the attorney or to the party; leaving it at the attorney's or party's office with the person in charge thereof or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the attorney's or party's office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by telefacsimile communication is complete upon receipt of a confirmation generated by the transmitting machine.~~

~~(c) *Numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that services of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative~~

~~defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.~~

~~(d) *Filing.* (1) Interrogatories, depositions other than those taken under K.S.A. 60-227 and amendments thereto, disclosures of expert testimony under K.S.A. 60-226 and amendments thereto and discovery requests or responses under K.S.A. 60-234 or 60-236, and amendments thereto, shall not be filed except on order of the court or until used in a trial or hearing, at which time the documents shall be filed.~~

~~(2) A party serving discovery requests or responses under K.S.A. 60-233, 60-234 or 60-236, and amendments thereto, or disclosures of expert testimony under K.S.A. 60-226 and amendments thereto, shall file with the court a certificate stating what document was served, when and upon whom.~~

~~(3) All other papers filed after the petition and required to be served upon a party, shall be filed with the court either before service or within a reasonable time thereafter.~~

~~(e) *Filing with the court defined.* The filing of pleadings and other papers with the court as required by this article shall be made by filing them with the clerk of the court. In accordance with K.S.A. 60-271 and amendments thereto and supreme court rules, pleadings and other papers may be filed by telefacsimile communication. The judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.~~ *(a) Service; when required.*

(1) In general. Except as otherwise provided in this chapter, each of the following papers must be served on every party:

(A) An order stating that service is required;

(B) a pleading filed after the original petition, unless the court orders otherwise under subsection (c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, offer of judgment or any similar paper.

(2) If a party fails to appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party in the manner provided for service of summons in article 3 of chapter 60 of the Kansas Statutes Annotated.

(b) Service; how made.

(1) Serving an attorney. If a party is represented by an attorney, service under this section must be made on the attorney unless the court orders service on the party.

(2) Service in general. A paper is served under this section by:

(A) Handing it to the person;

(B) leaving it:

(i) At the person's office with a clerk or other person in charge, or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by telefacsimile communication, in which event service is complete upon receipt of a confirmation generated by the transmitting machine; or

(F) serving it by electronic means when authorized by supreme court rule or a local rule.

(c) Serving numerous defendants.

(1) In general. If an action involves an unusually large number of defendants, the court may on motion, or on its own, order that:

(A) Defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance or affirmative defense in

those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying parties. A copy of every order must be served on the parties as the court directs.

(d) Filing. (1) Required filings; certificate of service. Any paper after the petition that is required to be served, together with a certificate of service, must be filed within a reasonable time after service. Only a certificate of service must be filed for expert disclosures under K.S.A. 60-226, and amendments thereto, and the following discovery requests and responses, which must not be filed until they are used in the proceeding or the court orders filing:

(A) Depositions other than those taken under K.S.A. 60-227, and amendments thereto;

(B) interrogatories;

(C) requests for documents or tangible things, or to permit entry onto land; and

(D) requests for admission.

(2) How filing is made; in general. A paper is filed by delivering it:

(A) To the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date and the time on the paper and promptly send it to the clerk.

(3) Electronic filing, signing or verification. In accordance with K.S.A. 60-271, and amendments thereto, and supreme court rules, pleadings and other papers may be filed, signed or verified by electronic means.

(e) Section not exclusive. The methods of serving and filing pleadings and other papers provided in this section constitute sufficient service and filing, but they are alternatives to and do not restrict different methods specifically provided by law.

Sec. 73. K.S.A. 2009 Supp. 60-206 is hereby amended to read as follows: 60-206. ~~The following provisions shall govern the computation and extension of time:~~

~~(a) *Computation; legal holiday defined.* In computing any period of time prescribed or allowed by this chapter, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state, or observed as a holiday by order of the supreme court. When an act is to be performed within any prescribed time under any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply.~~

~~(b) *Enlargement.* When by this chapter or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the judge for cause shown may at any time in the judge's discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under subsection (b) of K.S.A. 60-250, subsection (b) of K.S.A. 60-252, subsections (b), (c) and (f) of K.S.A. 60-259 and subsection (b) of K.S.A. 60-260, and amendments thereto, except to the extent and under the conditions stated in them.~~

~~(c) *For motions—affidavits.* A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the judge. Such~~

~~an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and except as otherwise provided in subsection (d) of K.S.A. 60-259, and amendments thereto, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at the time of hearing.~~

~~(d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period.~~ *(a) Computing time. The following provisions apply in computing any time period specified in this chapter, in any local rule or court order or in any statute or administrative rule or regulation that does not specify a method of computing time.*

(1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:

(A) Exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

(2) Period stated in hours. When the period is stated in hours:

(A) Begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays and legal holidays; and

(C) if the period would end on a Saturday, Sunday or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday or legal holiday.

(3) Inaccessibility of the clerk's office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) On the last day for filing under subsection (a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

(B) during the last hour for filing under subsection (a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday or legal holiday.

(4) "Last day" defined. Unless a different time is set by a statute, local rule or court order, the last day ends:

(A) For electronic or telefacsimile filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "Legal holiday" defined. "Legal holiday" means any day declared a holiday by the president of the United States, the congress of the United States or the legislature of this state, or any day observed as a holiday by order of the Kansas supreme court. A half holiday is considered as other days and not as a holiday.

(b) Extending time. (1) In general. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) With or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions. A court must not extend the time to act under subsection (b) of K.S.A. 60-250, subsection (b) of K.S.A. 60-252, subsections (b), (e) and (f) of K.S.A. 60-259 and subsection (b) of K.S.A. 60-260, and amendments thereto.

(c) Motions, notices of hearing and affidavits or declarations. (1) In general. A written motion and notice of the hearing must be served at least seven days before that time specified for the hearing with the following exceptions:

(A) When the motion may be heard ex parte;

(B) when these rules set a different time; or

(C) when a court order, which a party may, for good cause, apply for ex parte, sets a different time.

(2) Supporting affidavit or declaration. Any affidavit or declaration pursuant to K.S.A. 53-601, and amendments thereto, supporting a motion must be served with the motion. Except as otherwise provided in subsection (d) of K.S.A. 60-259, and amendments thereto, any opposing affidavit or declaration must be served at least one day before the hearing, unless the court permits service at another time.

(d) Additional time after service by mail. When a party may or must act within a specified time after service and service is by mail, three days are added after the period would otherwise expire under subsection (a).

Sec. 74. K.S.A. 60-207 is hereby amended to read as follows: 60-207. ~~(a) *Pleadings.* There shall be a petition and an answer, a reply to a counterclaim denominated as such, an answer to a cross-claim, if the answer contains a cross-claim, a third-party petition, if a person who was not an original party is summoned under the provision of K.S.A. 60-214, and a third-party answer, if a third-party petition is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer. Any petition filed in the district court pursuant to chapter 60 of the Kansas Statutes Annotated shall designate, immediately below the names of the parties in the caption, that such petition is filed pursuant to chapter 60 of the Kansas Statutes Annotated. Any such designation shall be sufficient if labeled "Petition Pursuant to K.S.A. Chapter 60" immediately below the caption.~~

~~(b) *Motions and other papers.* (1) An application to the court or judge for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. (2) The sections of this article applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by this article.~~

~~(c) *Demurrers, pleas, etc., abolished.* Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.~~ *(a) Pleadings. Only these pleadings are allowed:*

(1) A petition that complies with subsection (c);

(2) an answer to a petition;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party petition;

(6) an answer to a third-party petition; and

(7) if the court orders one, a reply to an answer.

(b) Motions and other papers. (1) *In general. A request for a court order must be made by motion. The motion must:*

(A) Be in writing, unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

(2) Form. The sections of this article governing captions, signing and other matters of form in pleadings apply to motions and other papers.

(c) Designation of petition. A petition must designate immediately below the names of the parties in the caption that the petition is filed pursuant to chapter 60 of the Kansas Statutes Annotated. The designation is sufficient if labeled "Petition Pursuant to K.S.A. Chapter 60" immediately below the caption.

(d) *Lost pleadings.* If an original pleading is lost, destroyed, or withheld by any person, the court ~~or judge~~ may allow a copy ~~thereof~~ *of the pleading* to be substituted.

Sec. 75. K.S.A. 60-208 is hereby amended to read as follows: 60-208. (a) ~~Claims~~ *Claim for relief.* A pleading ~~which sets forth~~ *that states* a claim for relief~~, whether an original claim, counterclaim, cross-claim, or third-party claim, shall~~ *must* contain:

(1) A short and plain statement of the claim showing that the pleader is entitled to relief; and

(2) a demand for ~~judgment for the relief to which the pleader deems such pleader's self entitled. Every pleading demanding relief for damages in money in excess of $75,000, without demanding any specific amount of money, shall set forth only that the amount sought as damages is in~~

~~excess of $75,000, except in actions sounding in contract. Every pleading demanding relief for damages in money in an amount of $75,000 or less shall specify the amount of such damages sought to be recovered. Relief in the alternative or of several different types may be demanded.~~

~~(b) *Defenses; form of denials.* A party shall state in short and plain terms such party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all averments, the pleader may do so by general denial, subject to the obligations set forth in K.S.A. 60-211, and amendments thereto.~~

~~(c) *Affirmative defenses.* In pleading to a preceding pleading a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, *res judicata,* statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.~~

~~(d) *Effect of failure to deny.* Averments in a pleading to which a responsive pleading is required or permitted, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.~~

~~(e) *Pleading to be concise and direct; consistency.* (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.~~

~~(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in K.S.A. 60-211, and amendments thereto.~~

~~(f) *Construction of pleadings.* All pleadings shall be so construed as to do substantial justice.~~ *the relief sought, which may include relief in the alternative or different types of relief. Except in contract actions, every pleading demanding relief for money damages in excess of $75,000, without demanding a specific amount of money, must state only that the amount sought as damages is in excess of $75,000. Every pleading demanding relief for money damages in an amount of $75,000 or less must specify the amount sought as damages.*

(b) Defenses, admissions and denials. (1) *In general. In responding to a pleading, a party must:*

(A) State in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials; responding to the substance. A denial must fairly respond to the substance of the allegation.

(3) General and specific denials. A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all

the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying part of an allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking knowledge or information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of failing to deny. An allegation, other than one relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative defenses. (1) In general. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) Accord and satisfaction;
(B) arbitration and award;
(C) assumption of risk;
(D) contributory negligence or comparative fault;
(E) discharge in bankruptcy;
(F) duress;
(G) estoppel;
(H) failure of consideration;
(I) fraud, illegality;
(J) injury by fellow servant;
(K) laches;
(L) license;
(M) payment;
(N) release;
(O) res judicata;
(P) statute of frauds;
(Q) statute of limitations; and
(R) waiver.

(2) Mistaken designation. If a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to be concise and direct; alternative statements; inconsistency. (1) In general. Each allegation must be simple, concise and direct. No technical form is required.

(2) Alternative statements of a claim or defense. A party may set out two or more statements of a claim or defense alternately or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent claims or defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing pleadings. Pleadings must be construed so as to do justice.

Sec. 76. K.S.A. 60-209 is hereby amended to read as follows: 60-209. ~~(a) *Capacity.* It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of any party to sue or be sued in a representative capacity, the party raising the issue shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleader's knowledge.~~

~~(b) *Fraud, mistake, conditions of the mind.* In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.~~ *(a) Capacity or authority to sue; legal existence. (1) In general. A pleading need not allege:*

(A) A party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising those issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or mistake; conditions of the mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge and other conditions of a person's mind may be alleged generally.

(c) *Conditions precedent.* In pleading ~~the performance or occurrence of~~ conditions precedent, it ~~is sufficient to aver~~ *suffices to allege* generally that all conditions precedent have *occurred or have* been performed ~~or have occurred~~. ~~A denial of performance or occurrence shall be made specifically and~~ *But when denying that a condition precedent has occurred or been performed, a party must do so* with particularity.

(d) *Official document or act.* In pleading an official document or official act, it ~~is sufficient to aver~~ *suffices to allege* that the document was *legally* issued or the act *legally* done ~~in compliance with law~~.

(e) *Judgment.* In pleading a judgment or decision of a domestic or foreign court, *a* judicial or quasi-judicial tribunal, or ~~of~~ a board or officer, it ~~is sufficient to aver~~ *suffices to plead* the judgment or decision without ~~setting forth matter~~ showing jurisdiction to render it.

(f) *Time and place.* ~~For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter~~ *An allegation of time or place is material when testing the sufficiency of a pleading.*

~~(g) *Special damage.* When items of special damage are claimed, their nature shall be specifically stated. In actions where exemplary or punitive damages are recoverable, the amended petition shall not state a dollar amount for damages sought to be recovered but shall state whether the amount of damages sought to be recovered is in excess of or not in excess of $75,000.~~

~~(h) *Pleading written instrument.* Whenever a claim, defense or counterclaim is founded upon a written instrument, the same may be pleaded by reasonably identifying the same and stating the substance thereof or it may be recited at length in the pleading, or a copy may be attached to the pleading as an exhibit.~~

~~(i) *Tender of money.* When a tender of money is made in any pleading, it shall not be necessary to deposit the money in court when the pleading is filed, but it shall be sufficient if the money is deposited in the court at the trial, unless otherwise ordered by the court.~~

~~(j) *Libel and slander.* In an action for libel or slander, it shall not be necessary to state in the petition any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the claim arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be not controverted in the answer, it shall not be necessary to prove it on the trial, in other cases it shall be necessary. The defendant may, in such defendant's answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances admissible in evidence to reduce the amount of damages, and whether the defendant proves the justification or not, the defendant may give in evidence any mitigating circumstances.~~

(g) Special damages. If an item of special damage is claimed, it must be specifically stated. If the court allows an amended petition pursuant to K.S.A. 60-3703, and amendments thereto, to include a claim for exemplary or punitive damages the amended petition must state only whether the amount sought as damages is or is not in excess of $75,000.

(h) Pleading a written instrument. A claim, defense or counterclaim founded on a written instrument may be pleaded by:

(1) Reasonably identifying the written instrument and stating its substance;

(2) reciting the contents of the written instrument in the pleading; or

(3) attaching a copy to the pleading as an exhibit.

(i) Tender of money. When a tender of money is made in a pleading, the money need not be deposited in court prior to trial, unless the court orders otherwise.

(j) Libel and slander. In an action for libel or slander, it suffices to

allege generally that defamatory matter was published or spoken concerning the plaintiff, and if that allegation is not denied in the answer, it need not be proved at trial. The defendant's answer may allege both the truth of the matter charged as defamatory and any mitigating circumstances that reduce the amount of damages. Whether the defendant proves justification, the defendant may introduce evidence of any mitigating circumstances.

Sec. 77. K.S.A. 60-210 is hereby amended to read as follows: 60-210. ~~(a) *Caption; names of parties.* Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in K.S.A. 60-207 (a). In the petition the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.~~

~~(b) *Paragraphs; separate statements.* All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense.~~ *(a) Caption; names of parties. Every pleading must have a caption with the court's name, a title, a file number and a designation as in subsection (a) of K.S.A. 60-207, and amendments thereto. The title of the petition must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.*

(b) Paragraphs; separate statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence, and each defense other than a denial, must be stated in a separate count or defense.

(c) *Adoption by reference; exhibits.* ~~Statements~~ *A statement* in a pleading may be adopted by reference ~~in a different part of~~ *elsewhere in* the same pleading or in ~~another~~ *any other* pleading or ~~in any~~ motion. A copy of ~~any~~ *a* written instrument ~~which~~ *that* is an exhibit to a pleading is a part ~~thereof~~ *of the pleading* for all purposes.

(d) *Change of name.* If *the name of a party changes* after an action has been commenced ~~the name of any party thereto changes~~, either before or after judgment, by reason of marriage, divorce, adoption, a change of name proceeding, amendment of articles of incorporation, the assumption of an alias or otherwise, or if an action is mistakenly commenced against a party by a former name no longer ~~in use~~ *used* by the party, any party in interest may cause ~~such~~ *that* fact to be noted of record ~~in the action by the filing therein of~~ *by filing* a certified copy of a marriage record, decree of divorce, amended articles of incorporation, order of adoption or change of name, or an affidavit *or a declaration pursuant to K.S.A. 53-601, and amendments thereto,* by an informed person ~~setting forth any such fact~~. ~~Thereafter, the use of~~ The name as changed ~~shall also~~ *must* be used in the alternative in all subsequent proceedings in ~~such~~ *the* action.

Sec. 78. K.S.A. 60-211 is hereby amended to read as follows: 60-211. ~~(a) Every pleading, motion and other paper provided for by this article of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address and telephone number shall be stated. A pleading, motion or other paper provided for by this article of a party who is not represented by an attorney shall be signed by the party and shall state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit.~~ *(a) Signature. Every pleading, written motion and other paper must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto. The court must strike an unsigned paper unless the*

omission is promptly corrected after being called to the attorney's or party's attention.

(b) ~~The signature of a person constitutes a certificate by the person that the person has read the pleading, motion or other paper and~~ *Representations to the court. By presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an attorney or unrepresented party certifies* that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass ~~or to~~, cause unnecessary delay or ~~needless~~ *needlessly* increase ~~in~~ the cost of litigation;

(2) the claims, defenses and other legal contentions ~~therein~~ are warranted by existing law or by a nonfrivolous argument for ~~the extension, modification or reversal of~~ *extending, modifying or reversing* existing law or ~~the establishment of~~ *for establishing* new law;

(3) the ~~allegations and other~~ factual contentions have evidentiary support or, if specifically so identified, ~~are~~ *will* likely ~~to~~ have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on *belief or* a lack of information ~~or belief~~.

~~(c) If a pleading, motion or other paper provided for by this article is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper provided for by this article is signed in violation of this section, the court, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed it or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees. A motion for sanctions under this section may be served and filed at any time during the pendency of the action but not later than 10 days after the entry of judgment.~~

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subsection (b) has been violated, the court may impose an appropriate sanction on any attorney, law firm or party that violated the statute or is responsible for a violation committed by its partner, associate or employee. The sanction may include an order to pay to the other party or parties that reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper. A motion for sanctions under this section may be served and filed at any time during pendency of the action, but must be filed not later than 14 days after the entry of judgment.

(d) *Inapplicability to discovery.* Subsections (a) through (c) do not apply to disclosures and discovery requests, responses, objections and motions that are subject to the provisions of K.S.A. 60-226 through 60-237, and amendments thereto.

(e) *Applicability to the state.* The state of Kansas, ~~or any agency thereof, and all political subdivisions of the state shall be~~ *including an agency or political subdivision thereof, is* subject to ~~the provisions of~~ this section ~~in the same manner as any other party~~.

(f) *Monetary sanctions against inmate.* If the court imposes monetary sanctions on an inmate in the custody of the secretary of corrections, the secretary is ~~hereby~~ authorized to disburse any money in the inmate's account to pay ~~such~~ *the* sanctions.

Sec. 79. K.S.A. 60-212 is hereby amended to read as follows: 60-212. ~~(a) *When defenses and objections presented.* A defendant shall serve such defendant's answer within 20 days after the service of the summons and petition upon such defendant, except where service by publication is had the defendant shall serve such defendant's answer within the time fixed in the notice which shall not be less than 41 days from the time the notice is first published. A party served with a pleading stating a cross-claim against such party shall serve an answer thereto within 20 days after the service upon such party. The plaintiff shall serve such plaintiff's reply to~~

~~a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this section alters these periods of time as follows, unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action, (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.~~

~~(b) *How presented.* Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under K.S.A. 60-219 and amendments thereto. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense provided in subsection (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in K.S.A. 60-256 and amendments thereto, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by K.S.A. 60-256 and amendments thereto.~~

~~(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in K.S.A. 60-256 and amendments thereto, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.~~

~~(d) *Preliminary hearings.* The defenses specifically enumerated in subsection (1) through (7) of subsection (b), whether made in a pleading or by motion, and the motion for judgment mentioned in subsection (c) shall be heard and determined before trial on application of any party, unless the judge orders that the hearing and determination thereof be deferred until the trial.~~

~~(e) *Motion for more definite statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, such party may move for a more definite statement before interposing such party's responsive pleadings. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the judge is not obeyed within 10 days after notice of the order or within such time as the court may fix, the judge may strike the pleading to which the motion was directed or make such order as the judge deems just.~~

~~(f) *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this article, upon motion made by a party within 20 days after the service of the pleading upon such party or upon the court's own initiative at any time, the judge may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.~~

~~(g) *Consolidation of defenses in motion.* A party who makes a motion under this section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this section but omits therefrom any defense or objection then available to such party which this section permits to be raised by motion, such party shall not thereafter make a motion based on the defense or objection so omitted,~~

~~except a motion as provided in subsection (h)(2) on any of the grounds there stated.~~

~~(h) *Waiver or preservation of certain defenses.* (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subsection (g) or (B) if it is neither made by motion under this section nor included in a responsive pleading or an amendment thereof permitted by subsection (a) of K.S.A. 60-215 and amendments thereto to be made as a matter of course.~~

~~(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party under K.S.A. 60-219 and amendments thereto, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under subsection (a) of K.S.A. 60-207 and amendments thereto, or by motion for judgment on the pleadings, or at the trial on the merits.~~

~~(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.~~ *(a) Time to serve a responsive pleading. (1) In general. Unless otherwise provided by law, the time for serving a responsive pleading is as follows:*

(A) A defendant must serve an answer:

(i) Within 21 days after being served with the summons and petition; or

(ii) within the time fixed in the notice when service is by publication, which must not be less than 41 days from the time the notice is first published;

(B) a party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim; and

(C) a party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) Effect of a motion. Unless the court sets a different time, serving a motion under this section alters these periods as follows:

(A) If the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to present defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) Lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under K.S.A. 60-219, and amendments thereto.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for judgment on the pleadings. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

(d) Result of presenting matters outside the pleadings. If, on a motion under subsection (b)(6) or (c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under K.S.A. 60-256, and amendments thereto. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a more definite statement. A party may move for a more definite statement of a pleading to which a responsive pleading is

allowed, but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading, and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent or scandalous matter. The court may act:

(1) On its own; or

(2) on motion made by a party either before responding to the pleading, or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining motions. (1) Right to join. A motion under this section may be joined with any other motions allowed under this section.

(2) *Limitation on further motions. Except as provided in subsection (h)(2) or (3), a party that makes a motion under this section must not make another motion under this section raising a defense or objection that was available to the party, but omitted from its earlier motion.*

(h) Waiving and preserving certain defenses. (1) When some are waived. A party waives any defense listed in subsections (b)(2) through (5) by:

(A) Omitting it from a motion in the circumstances described in subsection (g)(2); or

(B) failing to either:

(i) Make it by motion under this section; or

(ii) include it in a responsive pleading, or in an amendment allowed by subsection (a)(1) of K.S.A. 60-215, and amendments thereto, as a matter of course.

(2) When to raise others. Failure to state a claim upon which relief can be granted, to join a person required by subsection (b) of K.S.A. 60-219, and amendments thereto, or to state a legal defense to a claim may be raised:

(A) In any pleading allowed or ordered under subsection (a) of K.S.A. 60-207, and amendments thereto;

(B) by a motion under subsection (c); or

(C) at trial.

(3) Lack of subject-matter jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing before trial. If a party so moves, any defense listed in subsections (b)(1) through (7), whether made in a pleading or by a motion, and a motion under subsection (c), must be heard and decided before trial unless the court orders a deferral until trial.

~~(i)~~ *(j) Answer for minor or incapacitated person.* The guardian or conservator of a minor or incapacitated person, or *the* attorney for a person in prison ~~shall deny~~ *must* in the answer *deny* all the material allegations in the petition prejudicial to ~~such~~ *the* defendant.

Sec. 80. K.S.A. 60-213 is hereby amended to read as follows: 60-213. ~~(a) *Compulsory counterclaims.* A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, but the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon such party's claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this section.~~

~~(b) *Permissive counterclaims.* A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.~~

~~(c) *Counterclaim exceeding opposing claim.* A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It~~

~~may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.~~

~~(d) *Effect of death or limitations.* When cross demands have existed between persons under such circumstances that, if one had brought an action against the other, a counterclaim or cross-claim could have been set up, neither can be deprived of the benefit thereof by the assignment or death of the other or by reason of the statute of limitations if arising out of the contract or transaction set forth in the petition as the foundation of plaintiff's claim or connected with the subject of the action, but the two demands must be deemed compensated so far as they equal each other.~~

~~(e) *Counterclaim maturing or acquired after pleading.* A claim which either matured or was acquired by the pleader after serving the pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.~~

~~(f) *Omitted counterclaim.* When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.~~

~~(g) *Compulsory cross-claim against co-party.* In an action involving a claim governed by K.S.A. 60-258a and amendments thereto, a party shall state as a cross-claim any claim that party has against any co-party arising out of the transaction or occurrence that is the subject matter of the claim governed by K.S.A. 60-258a and amendments thereto.~~

~~(h) *Permissive cross-claim against co-party.* A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.~~

~~(i) *Joinder of additional parties.* Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of K.S.A. 60-219 and 60-220, and amendments thereto.~~

~~(j) *Separate trials; separate judgments.* If the court orders separate trials as provided in K.S.A. 60-242 and amendments thereto judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of K.S.A. 60-254 and amendments thereto when the judge has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.~~

~~(k) *Appealed and removed actions.* When an action is filed in the district court pursuant to the code of civil procedure for limited actions and such action is transferred as provided in K.S.A. 61-2910, and amendments thereto or such action is heard by a district magistrate judge and is appealed and a trial *de novo* will be held before a district judge, any counterclaim made compulsory by subsection (a) shall be stated as an amendment to the pleading within 20 days after such filing or such other time as the court shall allow. Other counterclaims and cross-claims shall be permitted as in an original action in the district court pursuant to this chapter.~~ *(a) Compulsory counterclaims. (1) In general. A pleading must state as a counterclaim any claim that, at the time of its service, the pleader has against an opposing party if the claim:*

(A) Arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) Exceptions. The pleader need not state the claim if:

(A) When the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this section.

(b) Permissive counterclaims. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief sought in a counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief

that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Effect of death or limitations. If a party's claim arises out of the contract or transaction that is the basis of an opposing party's claim or is connected with the subject of the action and it could have been asserted as a counterclaim or crossclaim against a person if the person had asserted a claim against the party previously, the party's claim is not extinguished by: (i) An assignment by the person; (ii) the death of the person; or (iii) the expiration of the statute of limitations. However, the party's claim may be asserted in these circumstances only to the extent that it does not exceed the amount awarded to the opposing party.

(e) Counterclaim maturing or acquired after pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Compulsory crossclaim against a co-party. When a claim is governed by K.S.A. 60-258a, and amendments thereto, a party must state as a crossclaim any claim that party has against any co-party, if the claim arises out of the transaction or occurrence that is the subject matter of the claim governed by K.S.A. 60-258a, and amendments thereto.

(g) Permissive crossclaim against a co-party. A pleading may state as a crossclaim any claim by one party against a co-party, if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the co-party is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) Joining additional parties. K.S.A. 60-219 and 60-220, and amendments thereto, govern the addition of a person as a party to a counterclaim or crossclaim.

(i) Separate trials; separate judgments. If the court orders separate trials under subsection (b) of K.S.A. 60-242, and amendments thereto, it may enter judgment on a counterclaim or crossclaim under subsection (b) of K.S.A. 60-254, and amendments thereto, when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

(j) Appealed and removed actions. When an action filed pursuant to chapter 61 of the Kansas Statutes Annotated is transferred as provided in K.S.A. 61-2910, and amendments thereto, or an action heard by a district magistrate judge is appealed, any counterclaim or crossclaim made compulsory by subsection (a) or (f) must be stated in an amended pleading within 21 days after service of the order of transfer or notice of appeal, or such other time as the court allows. Other counterclaims and crossclaims are permitted as provided in this chapter.

Sec. 81. K.S.A. 60-214 is hereby amended to read as follows: 60-214. ~~(a) *When defendant may bring in third party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and petition to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party petition not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party petition, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in K.S.A. 60-212 and amendments thereto and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in K.S.A. 60-213 and amendments thereto. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert~

~~any defenses as provided in K.S.A. 60-212 and amendments thereto and any counterclaims and cross-claims as provided in K.S.A. 60-213 and amendments thereto. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this section against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.~~ *(a) When defending party may bring in a third-party. (1) Timing of the summons and complaint. A defending party may, as a third-party plaintiff, serve a summons and petition on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.*

(2) Third-party defendant's claims and defenses. The person served with the summons and third-party petition, the "third-party defendant":

(A) Must assert any defenses against the third-party plaintiff's claim under K.S.A. 60-212, and amendments thereto;

(B) must assert any counterclaim against the third-party plaintiff under subsection (a) of K.S.A. 60-213, and amendments thereto, or any crossclaim against another third-party defendant under subsection (f) of K.S.A. 60-213, and amendments thereto, and may assert any counterclaim against the third-party plaintiff under subsection (b) of K.S.A. 60-213, and amendments thereto, or any crossclaims against another third-party defendant under subsection (g) of K.S.A. 60-213, and amendments thereto;

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) Plaintiff's claims against a third-party defendant. The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under K.S.A. 60-212, and amendments thereto, and any counterclaim under subsection (a) of K.S.A. 60-213, and amendments thereto, or crossclaim under subsection (f) of K.S.A. 60-213, and amendments thereto, and may assert any counterclaim under subsection (b) of K.S.A. 60-213, and amendments thereto, or any crossclaim under subsection (g) of K.S.A. 60-213, and amendments thereto.

(4) Motion to strike, sever or try separately. Any party may move to strike the third-party claim, to sever it or to try it separately.

(5) Third-party defendant's claim against a nonparty. A third-party defendant may proceed under this section against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) *When a plaintiff may bring in a third-party.* When a ~~counterclaim~~ *claim* is asserted against a plaintiff, the plaintiff may ~~cause~~ *bring in* a third-party ~~to be brought in under circumstances which under this section would entitle~~ *if this section would allow* a defendant to do so.

(c) *Execution by third-party plaintiff; limitation.* Where a third-party defendant is liable to the plaintiff, or to anyone holding a similar position under subsections (a) and (b), on the claim on which a third-party plaintiff has been sued, execution by the third-party plaintiff on a judgment against such third-party defendant shall be permitted only to the extent that the third-party plaintiff has paid any judgment obtained against the third-party plaintiff by the obligee.

Sec. 82. K.S.A. 60-215 is hereby amended to read as follows: 60-215. ~~(a) *Amendments.* A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days~~

~~after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.~~

~~(b) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.~~

~~(c) *Relation back of amendments.* An amendment of a pleading relates back to the date of the original pleading when:~~

~~(1) The claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or~~

~~(2) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (1) is satisfied and, within the period provided by law for commencing the action against the party including the period for service of process under K.S.A. 60-203 and amendments thereto, the party to be brought in by amendment: (A) Has received such notice of the institution of the action that the party would not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.~~

~~(d) *Supplemental pleadings.* Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the judge deems it advisable that the adverse party plead to the supplemental pleading, the judge shall so order, specifying the time therefor.~~

(a) Amendments before trial. (1) Amending as a matter of course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it; or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under subsections (b), (e) or (f) of K.S.A. 60-212, and amendments thereto, whichever is earlier.

(2) Other amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent, or the court's leave. The court should freely give leave when justice so requires.

(3) Time to respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 21 days after service of the amended pleading, whichever is later.

(b) Amendments during and after trial. (1) Based on an objection at trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For issues tried by consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move at any time, even after judgment, to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation back of amendments. An amendment to a pleading relates back to the date of the original pleading when:

(1) The law that provides the applicable statute of limitations allows relation back;

(2) the amendment asserts a claim or defense that arose out of the conduct, transaction or occurrence set out, or attempted to be set out, in the original pleading; or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted, if paragraph (2) is satisfied and if, within the period provided by law for commencing the action against the party, including the period for service of process under K.S.A. 60-203, and amendments thereto, the party to be brought in by amendment:

(A) Received such notice of the action that it will not be prejudiced in defending on the merits; and

(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(d) Supplemental pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Sec. 83. K.S.A. 2009 Supp. 60-216 is hereby amended to read as follows: 60-216. (a) ~~*Pretrial conferences; objectives*~~ *Purposes of a pretrial conference*. In any action, the court ~~shall~~ *must* on the request of ~~either~~ *any* party, or may ~~in its discretion~~ without ~~such request, direct~~ *a request, order* the attorneys for the parties *and any unrepresented parties* to appear ~~before it for a conference or conferences before trial~~ *for one or more conferences* to expedite processing and disposition of the litigation, minimize expense and conserve time.

(b) *Case management conference.* In any action, the court ~~shall~~ *must* on the request of ~~either~~ *any* party, or may ~~in its discretion~~ without ~~such~~ *a* request, conduct a case management conference with ~~counsel~~ *attorneys* and any unrepresented parties. The *court must schedule the* conference ~~shall be scheduled by the court~~ as soon as possible ~~and shall~~. *The conference must* be conducted within 45 days ~~of~~ *after* the filing of an answer~~. However, in the discretion of the court, the time for the conference may be extended or reduced~~, *unless the court extends the time* to meet the needs of the ~~individual~~ case.

(1) At ~~any~~ *a case management* conference ~~under this subsection consideration shall be given, and the court shall take appropriate action, with respect to~~ *the court must consider and take appropriate action on the following matters*:

~~(1)~~ *(A)* Identifying the issues and exploring the possibilities of stipulations and settlement;

~~(2)~~ *(B) determining* whether the action is suitable for alternative dispute resolution;

~~(3)~~ *(C)* exchanging information on the issues ~~of the case~~, including key documents and witness identification;

~~(4)~~ *(D)* establishing a plan and schedule for discovery, including setting ~~limitations~~ *limits* on discovery, if any, designating the time and place of discovery, restricting discovery to certain designated witnesses or requiring statements be taken in writing or by use of electronic recording rather than by stenographic transcription;

~~(5) any~~ *(E) determining* issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

~~(6) any~~ *(F) determining* issues relating to claims of privilege or of protection as trial-preparation material, including, if the parties agree on a procedure to assert such claims after production, whether to ask the court to include their agreement in an order;

~~(7)~~ *(G)* requiring completion of discovery within a definite number of days after the conference has been conducted;

~~(8)~~ *(H)* setting deadlines for filing motions, joining parties and amendments to the pleadings;

~~(9)~~ *(I)* setting the date or dates for conferences before trial, a final pretrial conference, and trial; and

~~(10)~~ *(J)* such other matters as are necessary for the proper management of the action.

(2) If a case management conference is held, ~~except as provided in subsection (a)(2)(B) of K.S.A. 60-230, and amendments thereto,~~ no depositions, other than of the parties ~~to the action, shall~~ *may* be taken until after the conference is held, except by agreement of the parties ~~or~~, *by* order of the court *or as provided in subsection (a)(2)(B) of K.S.A. 60-230, and amendments thereto*. If the case management conference is not held within 45 days ~~of~~ *after* the filing of an answer, the restrictions of this paragraph ~~shall~~ no longer apply.

(3) If discovery cannot be completed within the ~~period of~~ time originally prescribed by the court, the party not able to complete discovery ~~shall~~ *may* file a motion ~~prior to the expiration of the original period~~ for additional time to complete discovery. ~~Such~~ *The* motion ~~shall~~ *must be filed prior to the expiration of the original period,* contain a discovery plan and ~~shall set forth~~ *state* the reason why discovery cannot be completed within the original period. If additional time is allowed, the court ~~shall~~ *must* grant only that amount of time reasonably necessary to complete discovery.

~~(c) *Subjects for consideration at pretrial conferences.* At any pretrial conference consideration may be given, and the court may take appropriate action, with respect to:~~

~~(1) The simplification of the issues;~~

~~(2) the determination of issues of law which may eliminate or affect the trial of issues of fact;~~

~~(3) the necessity or desirability of amendments to the pleadings;~~

~~(4) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;~~

~~(5) the limitation of the number of expert witnesses;~~

~~(6) the advisability of a preliminary reference of issues to a master, and~~

~~(7) such other matters as may aid in the disposition of the action.~~

~~At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.~~

~~In the discretion of the court, any pretrial conference may be held by a telephone conference call.~~

~~(d) *Final pretrial conference.* In any action, the court shall on the request of either party, or may in its discretion without such request, conduct a final pretrial conference in accordance with procedures established by rule of the supreme court.~~

~~(e) *Pretrial orders.* After any conference held under this section, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only by agreement of the parties, or by the court to prevent manifest injustice.~~

~~(f) If a party or party's attorney fails to obey a pretrial order, if no appearance is made on behalf of a party at a pretrial conference, if a party or party's attorney is substantially unprepared to participate in the conference or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative and after opportunity to be heard, may make such orders with regard thereto as are just, and among others any of the orders provided in subsections (b)(2)(B), (C) and (D) of K.S.A. 60-237, and amendments thereto. In lieu of or in addition to any other sanction, the judge shall require the party or the party's attorney, or both, to pay the reasonable expenses incurred because of any noncompliance with this section, including attorney fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.~~ *Attendance and matters for consideration at a pretrial conference.* (1) *Attendance. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can be reasonably anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by*

other means in order to consider possible settlement of the dispute. The court may allow a pretrial conference to be held by a telephone conference call or other means.

(2) Matters for consideration. At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) Simplifying the issues;

(B) determining the issues of law that may eliminate or affect the trial of issues of fact;

(C) amending the pleadings if necessary or desirable;

(D) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof;

(E) limiting the number of expert witnesses;

(F) referring issues to a master; and

(G) such other matters as may aid in the disposition of the action, including alternative dispute resolution.

(d) Pretrial orders. After any conference held under this section, the court should issue an order reciting the action taken. This order controls the subsequent course of the action unless the court modifies it.

(e) Final pretrial conference and orders. In any action, the court must on the request of any party, or may without a request, conduct a final pretrial conference in accordance with procedures established by rule of the supreme court. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) Sanctions. (1) In general. On motion or on its own, and after opportunity to be heard, the court may issue any just orders, including those authorized by subsections (b)(2)(A)(ii) through (vii) of K.S.A. 60-237, and amendments thereto, if a party or its attorney:

(A) Fails to appear at a case management or other pretrial conference;

(B) is substantially unprepared to participate, or does not participate in good faith, in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) Imposing fees and costs. Instead of, or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses, including attorney's fees, incurred because of any noncompliance with this section, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Sec. 84. K.S.A. 60-217 is hereby amended to read as follows: 60-217. ~~(a) *Real party in interest.* Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, conservator, trustee of an express trust, receiver, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in the party's own name without joining the party for whose benefit the action is brought. When a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Kansas. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest, and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.~~

~~(b) *Claim accruing under law of another state.* Whenever a cause of action has accrued under or by virtue of the laws of any other state or territory, such cause of action may be sued upon in any of the courts of this state by the person or persons who are authorized to bring and maintain an action thereon in the state or territory where the same arose. When the law of the state or territory where a cause of action for death arose authorizes said action to be prosecuted by an administrator or executor, then said action may also be maintained in any of the courts of this state by an administrator or executor appointed under the laws of the state of Kansas.~~

~~(c) *Minors or incapacitated persons.* Whenever a minor or incapacitated person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incapacitated person. If a minor or incapacitated person does not have a duly appointed representative the minor or incapacitated person may sue by the minor or incapacitated person's next~~

~~friend or by a guardian *ad litem*. The court shall appoint a guardian *ad litem* for a minor or incapacitated person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incapacitated person.~~ *(a) Real party in interest. (1) Designation in general. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:*

(A) An executor;

(B) an administrator;

(C) a guardian;

(D) a conservator;

(E) a bailee;

(F) a trustee of an express trust;

(G) a receiver;

(H) a party with whom or in whose name a contract has been made for another's benefit; and

(I) a party authorized by statute.

(2) Action in the name of the state of Kansas for another's use or benefit. When a statute so provides, an action for another's use or benefit must be brought in the name of the state of Kansas.

(3) Joinder of the real party in interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join or be substituted into the action. After ratification, joinder or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Claim accruing under law of another state. A claim for relief that has accrued under the laws of another state or territory may be sued upon by the person or persons authorized to bring and maintain an action on the claim in the state or territory where it arose. When the law of the state or territory where a claim for relief for death arose authorizes the action to be prosecuted by an administrator or executor, then the action may also be maintained by an administrator or executor appointed under the laws of this state.

(c) Minor or incapacitated person. (1) With a representative. The following representatives may sue or defend on behalf of a minor or an incapacitated person:

(A) A general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) Without a representative. A minor or an incapacitated person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incapacitated person who is unrepresented in an action.

(d) Public officer's title and name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

Sec. 85. K.S.A. 60-218 is hereby amended to read as follows: 60-218. (a) ~~*Joinder of claims*~~ *In general.* A party asserting a claim ~~to relief as an original claim~~, counterclaim, ~~cross-claim,~~ *crossclaim* or third-party claim, may join ~~either as independent or as alternate claims as many claims, legal or equitable, as he~~*, as independent or alternative claims, as many claims as it* has against an opposing party.

(b) Joinder of ~~remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, but not exclusively, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money; a plaintiff may state in his original claim against the defendant and also in either the original or an amended petition or in a reply, a claim for having any release, composition, settlement, or discharge of the original claim set aside as fraudulent or otherwise wrongfully procured.~~ *contingent claims. A party may join two claims even though one of them*

is contingent on the disposition of the other, but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money; a plaintiff may state in the original claim or an amended petition or in an answer or a reply, a claim to have any release, settlement or discharge of the original claim set aside as fraudulent or wrongfully procured.

Sec. 86. K.S.A. 60-219 is hereby amended to read as follows: 60-219. ~~(a) *Persons to be joined if feasible.* Whenever a "contingently necessary" person, as hereafter defined, is subject to service of process, he shall be joined as a party in the action. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.~~

~~A person is contingently necessary if (1) complete relief cannot be accorded in his absence among those already parties, or (2) he claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action in his absence may (i) as a practical matter substantially impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.~~

~~(b) *Determination by court whenever joinder not feasible.* If a contingently necessary person cannot be made a party, the court shall determine whether in equity and good conscience the action ought to proceed among the parties before it or ought to be dismissed. The factors to be considered by the court include: First, to what extent a judgment rendered in the absence of the contingently necessary person might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided, third, whether a judgment rendered in the absence of the contingently necessary person would be adequate; fourth, whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.~~

~~(c) *Pleading reasons for nonjoinder.* A pleading asserting a claim for relief shall state the names, if known to the pleader, of contingently necessary persons who are not joined, and the reasons why they are not joined.~~

~~(d) *Exception of class actions.* This section is subject to the provisions of K.S.A. 60-223.~~ *(a) Persons required to be joined if feasible. (1) Required party. A person who is subject to service of process must be joined as a party if:*

(A) In that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) As a practical matter, impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.

(2) Joinder by court order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss the party.

(b) When joinder is not feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) The extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) Protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the reasons for nonjoinder. When asserting a claim for relief, a party must state:

(1) The name, if known of any person who is required to be joined if feasible, but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for class actions. This section is subject to the provisions of K.S.A. 60-223, and amendments thereto.

(e) Nominee. In an action in which any relief sought would determine title or affect a security interest in real property, a person who is subject to service of process must be joined as a party if the person is a nominee of record on behalf of a beneficial owner of a claimed interest in the property that is the subject of the action. The nominee need not be a party required to be joined under subsection (a)(1).

Sec. 87. K.S.A. 60-220 is hereby amended to read as follows: 60-220. ~~(a) *Permissive joinder.* All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.~~

~~(b) *Separate trials.* The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.~~ *(a) Persons who may join or be joined. (1) Plaintiffs. Persons may join in one action as plaintiffs if:*

(A) They assert any right to relief jointly, severally or in the alternative with respect to or arising out of the same transaction, occurrence or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) Defendants. Persons may be joined in one action as defendants if:

(A) Any right to relief is asserted against them jointly, severally or in the alternative with respect to or arising out of the same transaction, occurrence or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) Extent of relief. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective measures. The court may issue orders, including an order for separate trials, to protect a party against embarrassment, delay, expense or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Sec. 88. K.S.A. 60-221 is hereby amended to read as follows: 60-221. Misjoinder of parties is not *a* ground for ~~dismissal of~~ *dismissing* an action. ~~Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any~~ *On motion, or on its own, the court may at any time, on*

just terms, add or drop a party. The court may also sever any claim against a party ~~may be severed and proceeded with separately~~.

Sec. 89. K.S.A. 60-222 is hereby amended to read as follows: 60-222. ~~(a) *Persons required to interplead.* Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he or she is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim.~~

~~(b) *Disclaimer by defendant.* In any action upon contract or for the recovery of personal property, the defendant may answer that some third party without collusion with him or her has or makes a claim to the subject of the action, and that he or she is ready to pay or dispose of the same as the court may direct, the court or judge may make an order for the safekeeping, or for the payment or deposit in court, or delivery of the subject of the action to such persons as it may direct, and may make an order requiring such third party to appear in a reasonable time and maintain or relinquish his or her claim against the defendant. If such third party, being served with a copy of the order by the sheriff, or such other person as the court or judge may direct, fail to appear, the court may declare him or her barred of all claim in respect to the subject of the action against the defendant therein. If such third party appear, he or she shall be allowed to make himself or herself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his or her compliance with the order of the court or judge for the payment, deposit or delivery thereof.~~ *(a) Grounds. (1) By a plaintiff. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:*

(A) The claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) By a defendant. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Disclaiming interpleader. (1) A party's answer may plead that:

(A) Another person, without collusion with the party, has a claim or has made a claim to money or property in the party's possession; and

(B) the party is ready to pay or dispose of the money or property as the court orders.

(2) The court may issue an order for the safekeeping, including the payment or deposit in court or the delivery to a custodian, of the money or property. The court may issue an order requiring the person to appear at a specific time and assert or relinquish a claim against the money or property. A copy of the order must be served on the person in the manner provided for service of summons in article 3 of chapter 60 of the Kansas Statutes Annotated.

(3) If the person fails to appear at the specified time, the court may bar any claim by the person to the money or property. If the person appears and asserts a claim against the money or property, the court must discharge the party from all liability with respect to the money or property upon the party's deposit or delivery of the money or property as ordered by the court. The court must realign the remaining parties as their interests appear.

(c) *Application.* The provisions of this section supplement and do not in any way limit the joinder of parties permitted in K.S.A. 60-220*, and amendments thereto*.

Sec. 90. K.S.A. 60-223 is hereby amended to read as follows: 60-223. (a) *Prerequisites ~~to a class action~~*. One or more members of a class may sue or be sued as representative parties on behalf of all *members* only if*:* (1) The class is so numerous that joinder of all members is impracticable~~,~~*;*

(2) there are questions of law or fact common to the class~~,~~*;* (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class~~,~~*;* and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) ~~*Class actions maintainable.* An action may be maintained as a class action~~ *Types of class actions. A class action may be maintained* if the prerequisites of ~~subdivision~~ *subsection* (a) are satisfied~~, and in addition~~ *and if*:

(1) ~~The prosecution of~~ *Prosecuting* separate actions by or against individual members ~~of the class~~ would create a risk of*:* (A) Inconsistent or varying adjudications with respect to individual *class* members ~~of the class which~~ *that* would establish incompatible standards of conduct for the party opposing the class~~,~~*;* or (B) adjudications with respect to individual *class* members ~~of the class which would~~ *that* as a practical matter*, would* be dispositive of the interests of the other members not parties to the *individual* adjudications or *would* substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds ~~generally applicable~~ *that apply generally* to the class, ~~thereby making appropriate~~ *so that* final injunctive relief or corresponding declaratory relief ~~with respect to~~ *is appropriate respecting* the class as a whole; or

(3) the court finds that the questions of law or fact common to ~~the~~ *class* members ~~of the class~~ predominate over any questions affecting only individual members, and that a class action is superior to other available methods for ~~the fair and efficient adjudication of~~ *fairly and efficiently adjudicating* the controversy. The matters pertinent to ~~the~~ *these* findings include: (A) The ~~interest of members of the~~ class *member's interest* in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already ~~commenced~~ *begun* by or against *class* members ~~of the class~~; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; *and* (D) the *likely* difficulties ~~likely to be encountered in the management of~~ *in managing* a class action.

~~(c) *Determination by order whether class action to be maintained, notice; judgment; actions conducted partially as class actions.* (1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.~~

~~(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: (A) The court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion, if the member desires, may enter an appearance through counsel.~~

~~(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.~~

~~(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall then be construed and applied accordingly.~~

~~(d) *Orders in conduct of actions.* In the conduct of actions to which this section applies, the court may make appropriate orders: (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the op-~~

~~portunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action, (3) imposing conditions on the representative parties or on intervenors, (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly, (5) dealing with similar procedural matters. The orders may be combined with an order under K.S.A. 60-216 and amendments thereto, and may be altered or amended as may be desirable from time to time.~~

~~(c) *Dismissal or compromise.* A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.~~

(c) Certification order; notice to class members; judgment; issues classes; subclasses. (1) Certification order. (A) Time to issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the class; appointing class counsel. An order that certifies a class action must define the class and the class claims, issues or defenses, and must appoint class counsel under subsection (g).

(C) Altering or amending the order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice. (A) For subsection (b)(1) or (b)(2) classes. For any class certified under subsection (b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For subsection (b)(3) classes. For any class certified under subsection (b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) The nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under subsection (c)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) In an action maintained as a class action under subsection (b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) in an action maintained as a class action under subsection (b)(3), include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this section.

(d) Conducting the action. (1) In general. In conducting an action under this section, the court may issue orders that:

(A) Determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require, to protect class members and fairly conduct the action, giving appropriate notice to some or all class members of:

(i) Any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations

about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and amending orders. An order under subsection (d)(1) may be altered or amended from time to time and may be combined with an order under K.S.A. 60-216, and amendments thereto.

(e) Settlement, voluntary dismissal or compromise. The claims, issues or defenses of a certified class may be settled, voluntarily dismissed or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal;

(2) if the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable and adequate;

(3) the parties seeking approval must file a statement identifying any agreement made in connection with the proposal;

(4) if the class action was previously certified under subsection (b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion, but did not do so; and

(5) any class member may object to the proposal if it requires court approval under this subsection (e); the objection may be withdrawn only with the court's approval.

(f) *Appeals.* The court of appeals may ~~in its discretion~~ permit an appeal from an order ~~of a district court~~ granting or denying class action certification under this section if application is made to the court within ~~10~~ *14* days after ~~entry of~~ the order *is entered*. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class counsel. (1) Appointing class counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) Must consider:

(i) The work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under subsection (h); and

(E) may make further orders in connection with the appointment.

(2) Standard for appointing class counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under subsection (g)(1) and (g)(4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of class counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's fees and nontaxable costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion, subject to the provisions of this subsection, at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner;

(2) a class member, or a party from whom payment is sought, may object to the motion;

(3) the court may hold a hearing and must find the facts and state its legal conclusions under subsection (a) of K.S.A. 60-252, and amendments thereto; and

(4) the court may refer issues related to the amount of the award to a special master as provided in K.S.A. 60-253, and amendments thereto.

Sec. 91. K.S.A. 60-223a is hereby amended to read as follows: 60-223a. ~~In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the petition shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the state of Kansas which it would not otherwise have. The petition shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary under the applicable law, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may be maintained only if the court is satisfied that the plaintiff will adequately represent the interest of the corporation or association. In the conduct of the action the court may make appropriate orders corresponding with those described in K.S.A. 60-223 (d). The action may be dismissed or compromised only with the approval of the court upon notice to shareholders or members in such manner as the court may direct.~~ *(a) Prerequisites. This section applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.*

(b) Pleading requirements. The petition must be verified and must:

(1) Allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) Any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) Conducting the action. In conducting an action under this section, the court may issue any appropriate orders corresponding with those described in subsection (d) of K.S.A. 60-223, and amendments thereto.

(d) Settlement, dismissal and compromise. A derivative action may be settled, voluntarily dismissed or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal or compromise must be given to shareholders or members in the manner that the court orders.

Sec. 92. K.S.A. 60-223b is hereby amended to read as follows: 60-223b. *This section applies to* an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties*. The action* may be maintained only if ~~the court is satisfied that the representative~~ *it appears that those* parties will fairly and adequately protect the interests of the association and its members. In ~~the conduct of~~ *conducting* the action, the court may ~~make~~ *issue any* appropriate orders corresponding with those described in *subsection (d) of* K.S.A. 60-223 ~~(d)~~*, and amendments thereto*, and the procedure for *settlement, voluntary* dismissal or compromise ~~of the action shall~~ *must* correspond with ~~that provided in~~ *the procedure in subsection (e) of* K.S.A. 60-223 ~~(e)~~*, and amendments thereto*.

Sec. 93. K.S.A. 60-224 is hereby amended to read as follows: 60-224. ~~(a) *Intervention of right.* Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest~~

~~relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter substantially impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.~~

~~(b) *Permissive intervention.* Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.~~

~~(c) *Motion to intervene and practice in intervention.* (1) A person desiring to intervene shall serve a motion to intervene upon the parties as provided in K.S.A. 60-205. The motion shall state the grounds therefor, and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of this state gives a right to intervene. (2) When the validity of a statute, regulation or constitutional provision of this state, or an ordinance or regulation of a governmental subdivision thereof affecting the public interest, is drawn in question in any action to which the state or governmental subdivision or an officer, agency or employee thereof is not a party, the court may in its discretion notify the chief legal officer of the state or subdivision thereof affected, and permit intervention on proper application.~~ *(a) Intervention of right. On timely motion, the court must permit anyone to intervene who:*

(1) Is given an unconditional right to intervene by a statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter substantially impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive intervention. (1) In general. On timely motion, the court may permit anyone to intervene who:

(A) Is given a conditional right to intervene by a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) By a government officer or agency. (A) On timely motion, the court may permit a governmental officer or agency to intervene if a party's claim or defense is based on:

(i) A statute or executive order administered by the officer or agency; or

(ii) any regulation, order, requirement or agreement issued or made under the statute or executive order.

(B) When the validity of an ordinance, regulation, statute or constitutional provision of this state or a governmental subdivision of this state is drawn in question in any action to which the state or governmental subdivision or an officer, agency or employee thereof is not a party, the court may notify the chief legal officer of the state or its subdivision, and permit intervention on proper application.

(3) Delay or prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and pleading required. A motion to intervene must be served on the parties as provided in K.S.A. 60-205, and amendments thereto. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Sec. 94. K.S.A. 60-225 is hereby amended to read as follows: 60-225. ~~(a) *Death of party. (1) Where claim not extinguished.* If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party or by any party and, together with the notice of the hearing, shall be served on the parties as provided in K.S.A. 60-205, and upon persons not parties in the manner provided for the service of a summons. Unless the motion for substitution is made within a reasonable time after the death is suggested upon the record by service of a statement of the fact~~

~~of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.~~

~~(2) *Where right survives only to or against surviving party.* In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.~~

~~(b) *Incapacity.* If a party becomes an incapacitated person, the court, upon motion served as provided in subsection (a) of this section, may allow the action to be continued by or against his or her representative as provided in K.S.A. 60-217 (c).~~

~~(c) *Transfer of interest.* In case of any transfer of interest, the action may be continued by or against the original party, unless the court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a) of this section.~~

~~(d) *Public officers — death or separation from office.* When any public officer is a party to an action as such and during its pendency dies, resigns or otherwise ceases to hold office, the action may be continued and maintained by or against his or her successor upon motion for substitution. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object. If no successor is otherwise appointed or elected, the court in which the action is pending may appoint a successor for the prosecution or defense of the action.~~

~~(e) *Continued representation by attorney.* An attorney representing a party who dies or becomes an incapacitated person, or a public officer who dies or is separated from his or her office, in any action, may, in order to protect rights and avoid time limitations, continue such representation in the name of the original party until there has been a substitution therefor.~~ *(a) Death. (1) Substitution if the claim is not extinguished. If a party dies and the claim is not extinguished, the court must on motion order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within a reasonable time after service of a statement noting the death, the action by or against the decedent must be dismissed.*

(2) Continuation among the remaining parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in K.S.A. 60-205, and amendments thereto, and on nonparties in the manner provided for the service of a summons. A statement noting death must be served in the same manner.

(b) Incapacity. If a party becomes an incapacitated person, the court may, on motion permit the action to be continued by or against the party's representative as provided in subsection (c) of K.S.A. 60-217, and amendments thereto. The motion must be served as provided in subsection (a)(3).

(c) Transfer of interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in subsection (a)(3).

(d) Public officers; death or separation from office. An action does not abate when a public officer who is a party in an official capacity dies, resigns or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

(e) Continued representation by attorney. If a party dies or becomes an incapacitated person, that party's attorney may continue the representation in the name of the original party until a substitution has been made.

Sec. 95. K.S.A. 2009 Supp. 60-226 is hereby amended to read as follows: 60-226. ~~(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under K.S.A. 60-234, subsection (a)(1)(C) of K.S.A. 60-245 or 60-245a and amendments thereto, for inspection and other purposes; physical and mental examinations; and requests for admission.~~

~~(b) *Scope of discovery.* Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) *In general:* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Except as permitted under subsection (b)(4), a party shall not require a deponent to produce, or submit for inspection, any writing prepared by, or under the supervision of, an attorney in preparation for trial.~~

~~(2) *Limitations.* (A) The frequency or extent of use of the discovery methods otherwise permitted under the rules of civil procedure shall be limited by the court only if it determines that: (i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subsection (c).~~

~~(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(2)(A). The court may specify conditions for the discovery.~~

~~(3) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.~~

~~(4) *Trial preparation: Materials.* Subject to the provisions of subsection (b)(5), a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative, including such other party's attorney, consultant, surety, indemnitor, insuror or agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and that such party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impression, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.~~

~~A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party.~~

Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of K.S.A. 60-237, and amendments thereto, apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) *Trial preparation: Experts.* (A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a disclosure from the expert is required under subsection (b)(6), the deposition shall not be conducted until after the disclosure is provided.

(B) A party, through interrogatories or by deposition, may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in K.S.A. 60-235, and amendments thereto, or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subsection; and (ii) with respect to discovery obtained under subsection (b)(5)(B) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) *Disclosure of expert testimony.*

(A) A party shall disclose to other parties the identity of any person who may be used at trial to present expert testimony.

(B) Except as otherwise stipulated or directed by the court, this disclosure, with respect to a witness (i) whose sole connection with the case is that the witness is retained or specially employed to provide expert testimony in the case or (ii) whose duties as an employee of the party regularly involve giving expert testimony, shall state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (b)(6)(B), within 30 days after the disclosure made by the other party. The party shall supplement these disclosures when required under subsection (e)(1).

(D) Unless otherwise ordered by the court, all disclosures under this subsection shall be made in writing, signed and served. Such disclosures shall be filed with the court in accordance with subsection (d) of K.S.A. 60-205, and amendments thereto.

(7) *Claims of Privilege or Protection of Trial-Preparation Materials.* (A) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has and may not use or disclose the information

until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including one or more of the following:

(1) That the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court, on such terms and conditions as are just, may order that any party or person provide or permit discovery. The provisions of K.S.A. 60-237, and amendments thereto, apply to the award of expenses incurred in relation to the motion.

(d) *Sequence and timing of discovery.* Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of responses.* A party who has made a disclosure under subsection (b)(6) or responded to a request for discovery is under a duty to supplement or correct the party's disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under subsection (b)(6) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert under subsection (b)(6) the duty extends both to information contained in the disclosure and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed at least 30 days before trial, unless otherwise directed by the court.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) *Signing of disclosures, discovery requests, responses and objections.* (1) Every request for discovery or response or objection to discovery made by a party represented by an attorney shall be signed by at least one attorney of record in such attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state such party's address. The signature of the attorney or party constitutes a certification that the attorney or party has read the request, response or objection and that to

~~the best of such attorney's or party's knowledge, information and belief formed after reasonable inquiry it is: (A) Consistent with the rules of civil procedure and warranted by existing law or good faith argument for the extension, modification or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation. If a request, response or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party or person making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.~~

~~(2) Every disclosure made under subsection (b)(6) shall be signed by at least one attorney of record in the attorney's individual name whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.~~

~~(3) If, without substantial justification, a certification is made in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification or the party on whose behalf the disclosure, request, response or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of reasonable expenses incurred because of the violation, including reasonable attorney fees.~~ *(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: Depositions on oral examination or written questions; written interrogatories; production of documents or things or permission to enter onto land or other property under K.S.A. 60-234, subsection (a)(1)(A)(iii) of K.S.A. 60-245 or K.S.A. 60-245a, and amendments thereto; physical and mental examinations; and requests for admission.*

(b) Discovery scope and limits. (1) Scope in general. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to the subject matter involved in the action, whether it relates to any party's claim or defense, including the existence, description, nature, custody, condition and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations on frequency and extent. (A) On motion, or on its own, the court may limit the frequency or extent of discovery methods otherwise allowed by the rules of civil procedure and must do so if it determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the proposed discovery in resolving the issues.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(2)(A). The court may specify conditions for the discovery.

(3) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which an insurance

business may be liable to satisfy part or all of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance is not a part of an insurance agreement.

(4) Trial preparation; materials. (A) Documents and tangible things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative, including the other party's attorney, consultant, surety, indemnitor, insurer or agent. But, subject to subsection (b)(5), those materials may be discovered if:

(i) They are otherwise discoverable under paragraph (1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection against disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and K.S.A. 60-237, and amendments thereto, applies to the award of expenses. A previous statement is either:

(i) A written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical or other recording, or a transcription of it, that recites substantially verbatim the person's oral statement.

(5) Trial preparation; experts.

(A) Expert who may testify. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a disclosure is required under subsection (b)(6), the deposition may be conducted only after the disclosure is provided.

(B) Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) As provided in subsection (b) of K.S.A. 60-235, and amendments thereto; or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) Payment. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) Pay the expert a reasonable fee for time spent in responding to discovery under subsection (b)(5)(A) or (b)(5)(B); and

(ii) for discovery under subsection (b)(5)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(6) Disclosure of expert testimony. (A) In general. A party must disclose to other parties the identity of any witness it may use at trial to present expert testimony.

(B) Required disclosures. Unless otherwise stipulated or ordered by the court, if the witness is retained or specially employed to provide expert testimony in the case, or is one whose duties as the party's employee regularly involve giving expert testimony, the disclosure must state:

(i) The subject matter on which the expert is expected to testify;

(ii) the substance of the facts and opinions to which the expert is expected to testify; and

(iii) a summary of the grounds for each opinion.

(C) Time to disclose expert testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or court order, the disclosures must be made:

(i) At least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under subsection (b)(6)(B), within 30 days after the other party's disclosure.

(D) Supplementing the disclosure. The parties must supplement these disclosures when required under subsection (e).

(E) Form of disclosures. Unless otherwise ordered by the court, all disclosures under this subsection must be:

(i) In writing, signed and served; and

(ii) filed with the court in accordance with subsection (d) of K.S.A. 60-205, and amendments thereto.

(7) Claiming privilege or protecting trial preparation materials. (A) Information withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial preparation material, the party must:

(i) Expressly make the claim; and

(ii) describe the nature of the documents, communications or things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information produced. If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective orders. (1) In general. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, as an alternative on matters relating to a deposition, in the district court where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action and must describe the steps taken by all attorneys or unrepresented parties to resolve the issues in dispute. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(A) Forbidding the disclosure or discovery;

(B) specifying terms, including time and place, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court orders.

(2) Ordering discovery. If a motion for a protective order is wholly or partly denied the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding expenses. The provisions of K.S.A. 60-237, and amendments thereto, apply to the award of expenses.

(d) Sequence of discovery. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(1) Methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing disclosures and responses. (1) In general. A party who has made a disclosure under subsection (b)(6), or who has responded to an interrogatory, request for production or request for admission, must supplement or correct its disclosure or response:

(A) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert witness. For an expert to whom the disclosure requirement in subsection (b)(6) applies, the party's duty to supplement extends both to information included in the disclosure and to information given during the expert's deposition. Any additions or changes to this information must be disclosed at least 30 days before trial, unless the court orders otherwise.

(f) Signing of disclosures and discovery requests, responses and objections. (1) Signature required; effect of signature. Every disclosure under subsection (b)(6) and every discovery request, response or objection must be signed by at least one attorney of record in the attorney's own name, or by the party personally, if unrepresented, and must state the signor's address, e-mail address and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information and belief formed after a reasonable inquiry:

(A) With respect to a disclosure, it is complete and correct as of the time it is made;

(B) with respect to a discovery request, response or objection, it is:

(i) Consistent with the rules of civil procedure and warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive considering the needs of the case, prior discovery in the case, the amount in controversy and the importance of the issues at stake in the action.

(2) Failure to sign. Other parties have no duty to act on an unsigned disclosure, request, response or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) Sanction for improper certification. If a certification violates this section without substantial justification, the court, on motion, or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

Sec. 96. K.S.A. 60-227 is hereby amended to read as follows: 60-227. ~~(a) *Deposition before action.* A person who desires to perpetuate his or her own testimony or that of another person regarding any matter that may be cognizable in any court of the state may file a verified petition to the district court in the county of the residence of any expected adverse party, but if the subject matter of the expected action or proceeding is the validity of a will the petition shall be filed in the district court of the county in which the testator resides.~~

~~(1) *Petition.* The petition shall be entitled in the name of the petitioner and shall show: (I) that the petitioner or the petitioner's personal representatives, heirs, beneficiaries, successors or assigns may be parties to an action or proceeding cognizable in a court but are presently unable to bring or defend it, (II) the subject matter of the expected action or proceeding and his or her interest therein and a copy of any written instrument the validity or construction of which may be called in question or which is connected with the subject matter of the deposition, (III) the facts which the petitioner desires to establish by the proposed testimony and his or her reasons for desiring to perpetuate it, (IV) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (V) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order author-~~

~~izing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.~~

~~(2) *Notice and service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. The notice shall be served either within or without the state within the time and in the manner for personal service of summons or by restricted mail, or by any other manner affording actual notice as directed by order of the judge. The judge upon application and showing of extraordinary circumstances may prescribe a hearing on shorter notice.~~

~~(3) *Order and examination.* If satisfied that the petition is not for the purpose of discovery, and that its allowance may prevent future delay or failure of justice, and that the petitioner is unable to bring the contemplated action or cause it to be brought, the court shall order the testimony perpetuated, designating the deponents, the subject matter of their examination, when, where and before whom their deposition shall be taken, and whether orally or upon written interrogatories.~~

~~(4) *Use of deposition.* Subject to the same limitations and objections as though the deponent were testifying at the trial in person, a deposition taken in accordance with this section may be used as evidence in any action subsequently brought in any court, where the deposition is that of a party to the action, or where the issue is such that an interested party in the proceedings in which the deposition was taken had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the deposition is offered. But, except where the deposition is that of a party to the action and is offered against the party, the deposition may not be used as evidence unless the deponent is unavailable as a witness at the trial.~~

~~(b) *Pending appeal.* If an appeal has been taken from a judgment or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court. In such case the party who desires to perpetuate the testimony may make a motion for leave to take the depositions, upon the same notice and service thereof as if the action was pending in that court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he or she expects to elicit from each, (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by K.S.A. 60-234 and 60-235, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this section for depositions taken in actions pending in the district court.~~ *(a) Before an action is filed. (1) Petition. A person who wants to perpetuate testimony about any matter cognizable in a Kansas state court may file a verified petition in the district court in the county where any expected adverse party resides; but if the subject matter of the expected action or proceeding is the validity of a will, the petition must be filed in the district court in the county of the testator's residence. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:*

(A) That the petitioner or the petitioner's personal representatives, heirs, beneficiaries, successors or assigns may be parties to an action or proceeding cognizable in a Kansas state court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action or proceeding and the petitioner's interest, and if the validity or construction of a document may be called in question or if the document is connected with the deposition's subject matter, a copy of the document must be attached to the petition;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address and expected substance of the testimony of each deponent.

(2) Notice and service. At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice must be served either inside or outside the state in the manner for personal service of summons, by restricted mail or by any other method the court orders that affords actual notice. Upon application and showing of extraordinary circumstances, the court may order a hearing on shorter notice.

(3) Order and examination. If satisfied that the petition is not for the purpose of discovery, that perpetuating the testimony may prevent a failure or delay of justice, and that the petitioner is unable to bring the contemplated action or cause it to be brought, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, states when, where and before whom the depositions will be taken, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under the rules of civil procedure, and the court may issue orders like those authorized by K.S.A. 60-234 and 60-235, and amendments thereto. A reference in these rules of civil procedure to the court where an action is pending means, for purposes of this section, the court where the petition for the deposition was filed.

(4) Using the deposition. Subject to the same limitations and objections as though the deponent were testifying at the trial in person, a deposition to perpetuate testimony may be used as evidence in any later-filed action when the deposition is that of a party to the action, or when the issue is such that an interested party in the proceedings in which the deposition was taken had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the deposition is offered. Except for the deposition of a party to the action that is offered against the party, the deposition may not be used as evidence unless the deponent is unavailable as a witness at the trial.

(b) Pending appeal. (1) In general. The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) Motion. The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) The name, address and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) Court order. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by K.S.A. 60-234 and 60-235, and amendments thereto. The depositions may be taken and used as any other deposition taken in a pending district court action.

(c) *Filing.* Depositions taken under this section ~~shall~~ *must* be filed with the court in which the petition is filed or the motion is made.

(d) *Perpetuation by an action.* This section does not limit ~~the power of a court~~ *a court's power* to entertain an action to perpetuate testimony.

(e) *Impeachment.* ~~No provision of this section is intended to~~ *This section does not* limit the use of any deposition ~~for the purpose of impeachment of~~ *to impeach* the deponent when ~~he or she~~ *the deponent* is a witness in ~~any~~ *an* action.

(f) *Reciprocity.* A deposition taken under similar procedure of another jurisdiction is admissible *in an action* in this state to the same extent as a deposition taken under this ~~act~~ *section*.

Sec. 97. K.S.A. 60-228 is hereby amended to read as follows: 60-228. ~~(a) *Within the United States.* (1) Depositions may be taken in this state before any officer or person authorized to administer oaths by the laws of this state.~~

~~(2) Without the state but within the United States, or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the place where the examination is held, or before a person~~

~~appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.~~

~~(3) Any court of record of this state, or any judge thereof, before whom an action or proceeding is pending, is authorized to grant a commission to take depositions within or without the state. The commission may be issued by the clerk to a person or persons therein named, under the seal of the court granting the same.~~

~~(b) *In foreign countries.* Depositions may be taken in a foreign country:~~

~~(1) Pursuant to any applicable treaty or convention;~~

~~(2) pursuant to a letter of request, whether or not captioned a letter rogatory;~~

~~(3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law of the United States or the law of that place;~~

~~(4) before a person appointed by commission. A person appointed by commission has power by virtue of the appointment to administer oaths and take testimony. A commission or letter of request shall be issued on application and notice, and on terms and directions that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other matter is impracticable or inconvenient, and both a commission and letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Judicial Authority in (here name the country)." When a letter of request or any other device is used pursuant to an applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request shall not be excluded on the ground that it is not in the form of questions and answers or is not a verbatim transcript of the testimony.~~

~~(c) *Disqualification.* No deposition shall be taken before a person who is: (1) A relative, employee, attorney or counsel of any of the parties; (2) a relative or employee of such attorney or counsel; (3) financially interested in the action; or (4) not certified as a certified shorthand reporter by the Kansas supreme court.~~

~~(d) *Depositions for use in foreign jurisdictions.* Whenever the deposition of any person is to be taken in this state pursuant to the laws of another state or of the United States or of another country for use in proceedings there, the district court in the county where the deponent resides or is employed or transacts his or her business in person may, upon *ex parte* petition, make an order directing issuance of subpoena as provided in K.S.A. 60-245, and amendments thereto, in aid of the taking of the deposition, and may make any order in accordance with subsection (d) of K.S.A. 60-230, subsection (a) of K.S.A. 60-237 or subsection (b)(1) of K.S.A. 60-237 and amendments thereto.~~ *(a) Within the United States. (1) Inside this state. Depositions in this state must be taken before an officer or person authorized to administer oaths by the laws of this state.*

(2) Outside this state. Outside this state, but within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) An officer authorized to administer oaths by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(3) Granting of commission. A court of this state in which an action is pending may grant a commission to one or more persons to take depositions inside or outside this state. The clerk may issue the commission under the seal of the court.

(b) In a foreign country. (1) In general. A deposition may be taken in a foreign country:

(A) Under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) Issuing a letter of request or a commission. A letter of request, a commission, or both may be issued:

(A) On appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) Form of a request, notice or commission. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in (name of country)." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) Letter of request; admitting evidence. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath or because of any similar departure from the requirements for depositions taken within this state.

(c) Disqualification. A deposition must not be taken before a person who is any party's relative, employee or attorney, who is related to or employed by any party's attorney or who is financially interested in the action.

Sec. 98. K.S.A. 60-229 is hereby amended to read as follows: 60-229. ~~Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in K.S.A. 60-233, 60-234 and 60-236 for responses to discovery may be made only with the approval of the court.~~ *Unless the court orders otherwise, the parties may stipulate that:*

(a) A deposition may be taken before any person, at any time or place, on any notice, and in the manner specified, in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified, but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion or for trial.

Sec. 99. K.S.A. 60-230 is hereby amended to read as follows: 60-230. ~~(a) *When depositions may be taken; when leave required.* (1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in K.S.A. 60-245 and amendments thereto.~~

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

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

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

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

~~(b) *Notice of examination; general requirements; nonstenographic recording; production of documents and things; deposition of organization.* (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the dep-~~

osition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena *duces tecum* is to be served on the person to be examined, a designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subsection (c), any changes made by the witness, the signature identifying the deposition as the signature of the witness or the statement of the officer that is required by subsection (c) if the witness does not sign and the certification of the officer required by subsection (f) shall be set forth in writing to accompany a deposition recorded by nonstenographic means.

(3) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under K.S.A. 60-228 and amendments thereto, and shall begin with a statement on the record by the officer that includes: (A) The officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent, and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters. Any deposition which is to be recorded stenographically may also be recorded on videotape, or a comparable medium, by any party by giving notice to the other parties prior to the deposition.

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

(5) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership, association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, managing agents or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The designated persons shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

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

(c) *Examination and cross-examination; record of examination; oath; objections.* Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of K.S.A. 60-243 and amendments thereto. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by some one acting under the direction and in the presence of the officer, record the testimony of the witness. The testimony shall be taken sten-

ographically or recorded by any other means ordered in accordance with subsection (b)(2). If requested by one of the parties, the testimony shall be transcribed. The judge may order the cost of transcription paid by one or some of, or apportioned among, the parties. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition, but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer who shall propound such questions to the witness and record the answers verbatim.

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

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

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

Documents and things produced for inspection during the examination of the witness, upon the request of a party, shall be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve as originals, if the person affords to all parties an opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to the deposition.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefore, the officer shall

~~furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.~~

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

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

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

~~(h) *Persons to be present.* Unless otherwise ordered by the judge or stipulated by counsel, no person shall be present while a deposition is being taken except the officer before whom it is being taken, the reporter, stenographer or person recording the deposition, the parties to the action, their respective counsel and paralegals or legal assistants of such counsel, and the deponent.~~ *(a) When a deposition may be taken. (1) Without leave. A party may, by oral questions, depose any person including a party, without leave of court except as provided in subsection (a)(2). The deponent's attendance may be compelled by subpoena under K.S.A. 60-245, and amendments thereto.*

(2) With leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with subsection (b)(2) of K.S.A. 60-226, and amendments thereto:

(A) If the parties have not stipulated to the deposition and:

(i) The deponent has already been deposed in the case; or

(ii) the party seeks to take the deposition of a nonparty before the time specified in subsection (b) of K.S.A. 60-216, and amendments thereto, unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave Kansas and be unavailable for examination in Kansas after that time; or

(B) if the deponent is confined in prison.

(b) Notice of the deposition; other formal requirements. (1) Notice in general. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) Producing documents. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under K.S.A. 60-234, and amendments thereto, to produce documents and tangible things at the deposition.

(3) Method of recording. (A) Method stated in a stipulation or order. The parties may stipulate or the court may order that the testimony at a deposition be recorded by other than stenographic means. A party may arrange to have a stenographic record made at the party's own expense.

(B) Additional method. With prior notice to the deponent and other parties, any party may record on videotape, or a comparable medium, any deposition that is to be recorded stenographically. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) By remote means. The parties may stipulate, or the court may on motion order, that a deposition be taken by telephone or other remote means. For the purposes of this section and subsection (c) of K.S.A. 60-226, subsection (a) of K.S.A. 60-228, subsections (a)(1) and (b)(1) of K.S.A. 60-237 and subsection (a)(2) of K.S.A. 60-245, and amendments thereto, the deposition takes place where the deponent answers the questions.

(5) Officer's duties. (A) Before the deposition. Unless the parties stip-

ulate otherwise a deposition must be conducted before an officer appointed or designated under K.S.A. 60-228, and amendments thereto. The officer must begin the deposition with an on-the-record statement that includes:

(i) The officer's name and business address;

(ii) the date, time and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) Conducting the deposition; avoiding distortion. If the deposition is recorded nonstenographically, the officer must repeat the items in subsection (b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) After the deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) Notice or subpoena directed to an organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which the person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This subsection does not preclude a deposition by any other procedure allowed by the rules of civil procedure.

(c) Examination and cross-examination; record of the examination; objections; written questions. (1) Examination and cross-examination. The examination and cross-examination of a deponent proceed as they would at trial under the provisions of K.S.A. 60-243, and amendments thereto. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under subsection (b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer. If requested by one of the parties, the testimony must be transcribed. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.

(2) Objections. An objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition or to any other aspect of the deposition, must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court or to present a motion under subsection (d)(3).

(3) Participating through written questions. Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Motion to terminate or limit. (1) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses or oppresses the deponent or party. The motion may be filed in the court where the action is pending or where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(2) Order. The court may order that the deposition be terminated or may limit its scope and manner as provided in subsection (c) of K.S.A. 60-226, and amendments thereto. If terminated, the deposition may be resumed only by order of the court where the action is pending.

(3) Award of expenses. The provisions of subsection (a) of K.S.A. 60-237, and amendments thereto, apply to the award of expenses.

(e) Review by the witness; changes. (1) Review; statement of changes. Unless waived by the deponent and by the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) To review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes indicated in the officer's certificate. The officer must note in the certificate prescribed by subsection (f)(1) whether the deposition was reviewed and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification and delivery; exhibits; copies of the transcript or recording; notice of delivery or filing; retention of original. (1) Certification and delivery. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of (witness's name)" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering or deterioration.

(2) Documents and tangible things. (A) Originals and copies. Docu ments and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them, but if the person who produced them wants to keep the originals the person may:

(i) Offer copies to be marked, attached to the deposition and then used as originals, after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked, in which event the originals may be used as if attached to the deposition.

(B) Order regarding the originals. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) Copies of the transcript or recording. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) Notice of delivery or filing. The court may order the officer to file the deposition promptly with the court. The officer must serve notice of the sending or filing of the deposition on all parties.

(5) Retention of original. Except when filed with the court, the original of a deposition must be retained by the party to whom it is sent and made available for appropriate use by any party.

(g) Failure to attend a deposition or serve a subpoena; expenses; persons attending. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) Attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(h) Persons attending deposition. Unless otherwise stipulated or ordered by the court, no person may attend a deposition except:

(1) The officer before whom the deposition is being taken;

(2) the reporter, stenographer or person recording the deposition;

(3) the parties to the action;

(4) the parties' attorneys and the attorneys' paralegals or legal assistants; and

(5) the deponent.

Sec. 100. K.S.A. 60-231 is hereby amended to read as follows: 60-231. ~~(a) *Serving questions; notice.* (1) A party may take the testimony of~~

~~any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in K.S.A. 60-245 and amendments thereto.~~

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

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

~~(B) a party seeks to take a deposition of a nonparty before the time specified in subsection (b) of K.S.A. 60-216 and amendments thereto.~~

~~(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (A) the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership, association or governmental agency in accordance with the provisions of subsection (b) of K.S.A. 60-230 and amendments thereto.~~

~~(4) Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 14 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 14 days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may for cause shown enlarge or shorten the time.~~

~~(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the depositions to the officer designated in the notice, who shall proceed promptly, in the manner provided by subsections (c), (e) and (f) of K.S.A. 60-230, and amendments thereto, to take the testimony of the witness in response to the questions and to prepare, certify and either deliver or file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.~~ *(a) When a deposition may be taken. (1) Without leave. A party may, by written questions, depose any person, including a party, without leave of court except as provided in subsection (a)(2). The deponent's attendance may be compelled by subpoena under K.S.A. 60-245, and amendments thereto.*

(2) With leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with subsection (b)(2) of K.S.A. 60-226, and amendments thereto:

(A) If the parties have not stipulated to the deposition and:

(i) The deponent has already been deposed in the case; or

(ii) the party seeks to take the deposition before the time specified in subsection (b) of K.S.A. 60-216, and amendments thereto; or

(B) if the deponent is confined in prison.

(3) Service; required notice. A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) Questions directed to an organization. A public or private corporation, a partnership, an association, a governmental agency or other entity may be deposed by written questions in accordance with subsection (b)(6) of K.S.A. 60-230, and amendments thereto.

(5) Questions from other parties. Any question to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 14 days after being served with cross-questions; and recross-questions, within 14 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the officer; officer's duties. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner pro-

vided in subsections (c), (e) and (f) of K.S.A. 60-230, and amendments thereto, to:

(1) Take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of completion or filing. (1) Completion. The party who noticed the deposition must notify all other parties when it is completed.

(2) Filing. A party who files the deposition must promptly notify all other parties of the filing.

Sec. 101. K.S.A. 60-232 is hereby amended to read as follows: 60-232. ~~(a) *Use of deposition.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:~~

~~(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.~~

~~(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under K.S.A. 60-230 or 60-231, and amendments thereto, to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.~~

~~(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds that:~~

~~(A) The witness is dead;~~

~~(B) the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state of Kansas, unless it appears that the absence of the witness was procured by the party offering the deposition;~~

~~(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;~~

~~(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or~~

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

~~A deposition taken without leave of court pursuant to a notice under subsection (a)(2)(B) or (a)(2)(C)(ii) of K.S.A. 60-230 and amendments thereto, shall not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain counsel to represent such party at the taking of the deposition.~~

~~(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties pursuant to K.S.A. 60-225 and amendments thereto does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used in the latter as if originally taken therefor.~~

~~(b) *Objections to admissibility.* Subject to the provisions of subsection (b) of K.S.A. 60-228 and amendments thereto and subsection (e)(3), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.~~

~~(c) *Form of presentation.* Except as otherwise directed by the court, a party offering deposition testimony under this section may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court and opposing parties with a transcript of the entire deposition from which the portions offered were taken. On request of any party in a case tried before a jury, deposition~~

~~testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.~~

~~(d) *Effect of taking or using depositions.* A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition but this shall not apply to the use by an adverse party of a deposition under subsection (a)(2). At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by the party or by any other party.~~

~~(e) *Effect of errors and irregularities in depositions.* (1) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.~~

~~(2) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.~~

~~(3) *As to taking of deposition.* (A) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.~~

~~(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.~~

~~(C) Objections to the form of written questions submitted under K.S.A. 60-231 and amendments thereto are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.~~

~~(4) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, delivered or otherwise dealt with by the officer under K.S.A. 60-230 or 60-231, and amendments thereto, are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.~~

(a) Using depositions. (1) In general. At a hearing or trial all or part of a deposition may be used against a party on these conditions:

(A) The party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the rules of evidence if the deponent were present and testifying; and

(C) the use is allowed by subsections (a)(2) through (a)(8).

(2) Impeachment and other uses. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the rules of evidence.

(3) Deposition of party, agent or designee. An adverse party may use for any purpose that deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent or designee under subsection (b)(6) of K.S.A. 60-230 or subsection (a)(4) of K.S.A. 60-231, and amendments thereto.

(4) Unavailable witness. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) That the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial, or is outside this state, unless it appears that the witness' absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity or imprisonment;

(D) that the party offering the deposition could not procure the witness' attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable, in the interest of justice and with due regard to the importance of live testimony in open court, to permit the deposition to be used.

(5) Limitations on use. A deposition taken without leave of court pursuant to a notice under subsection (a)(2)(A)(ii) of K.S.A. 60-230, and amendments thereto, must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) Using part of a deposition. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) Substituting a party. Substituting a party under K.S.A. 60-225, and amendments thereto, does not affect the right to use a deposition previously taken.

(8) Deposition taken in an earlier action. A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the rules of evidence.

(b) Objections to admissibility. Subject to subsection (b) of K.S.A. 60-228, and amendments thereto, and subsection (d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of presentation. Unless the court orders otherwise, a party must provide a transcript of the entire deposition from which the offered portions were taken, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court, for good cause, orders otherwise.

(d) Waiver of objections. (1) To the notice. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) To the officer's qualification. An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) Before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) To the taking of the deposition. (A) Objection to competence, relevance or materiality. An objection to a deponent's competence, or to the competence, relevance or materiality of testimony, is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) Objection to an error or irregularity. An objection to an error or irregularity at an oral examination is waived if:

(i) It relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) Objection to a written question. An objection to the form of a written question under K.S.A. 60-231, and amendments thereto, is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, with seven days after being served with it.

(4) To completing and returning the deposition. An objection to how the officer transcribed the testimony, or prepared, signed, certified, sealed, endorsed, sent or otherwise dealt with the deposition, is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Sec. 102. K.S.A. 2009 Supp. 60-233 is hereby amended to read as follows: 60-233. ~~(a) *Availability; procedures for use.* Any party may serve upon any other party written interrogatories to be answered by the party~~

~~served or, if the party served is a public or private corporation or a partnership, association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories, without leave of court, may be served upon the plaintiff after commencement of the action and upon any other party with or after service of process upon that party.~~

~~(b) *Answers and objections.* (1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.~~

~~(2) The answers are to be signed by the person making the answers, and the objections signed by the attorney making the objections.~~

~~(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of process upon that defendant. The court may allow a shorter or longer time.~~

~~(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.~~

~~(5) The party submitting the interrogatories may move for an order under subsection (a) of K.S.A. 60-237, and amendments thereto, with respect to any objection to or other failure to answer an interrogatory.~~

~~(c) *Scope; use at trial.* Interrogatories may relate to any matters which can be inquired into under subsection (b) of K.S.A. 60-226, and amendments thereto, and the answers may be used to the extent permitted by the rules of evidence.~~

~~An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.~~

~~(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.~~

(a) In general. (1) Availability; timing. A party may serve written interrogatories on the plaintiff after commencement of the action and on any other party with or after service of process on that party.

(2) Scope. An interrogatory may relate to any matter that may be inquired into under subsection (b) of K.S.A. 60-226, and amendments thereto. An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answer and objection. (1) Responding party. The interrogatories must be answered:

(A) By the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, a governmental agency or other entity, by any officer or agent, who must furnish the information available to the party.

(2) Time to respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories, except that a defendant may serve answers or objections within 45 days after being served with process. A shorter or longer time may be

stipulated to under K.S.A. 60-229, and amendments thereto, or be ordered by the court.

(3) Answering each interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) Signature. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the rules of evidence.

(d) Option to produce business records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting or summarizing a party's business records, including electronically stored information, and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) Specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts or summaries.

Sec. 103. K.S.A. 2009 Supp. 60-234 is hereby amended to read as follows: 60-234. ~~(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test or sample any designated tangible things which constitute or contain matters within the scope of subsection (b) of K.S.A. 60-226, and amendments thereto, and which are in the possession, custody or control of the party upon whom the request is served, or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of subsection (b) of K.S.A. 60-226, and amendments thereto.~~

~~(b) *Procedure.* The request, without leave of court, may be served upon the plaintiff after commencement of the action and upon any other party with or after service of process upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.~~

~~The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of process upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested unless the request is objected to, including an objection to the requested form or forms producing electronically stored information, stating the reasons for objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information, or if no form was specified in the request, the responding party must state the form or forms the party intends to use. The party submitting the request may move for an order under subsection (a) of K.S.A. 60-237, and amendments thereto, with respect to any objection to~~

~~or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.~~

~~— Unless the parties otherwise agree, or the court otherwise orders:~~

~~— (1) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;~~

~~— (2) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and~~

~~— (3) a party need not produce the same electronically stored information in more than one form.~~

~~— (c) *Persons not parties.* A person not a party to the action may be compelled to produce documents, electronically stored information and things or to submit to an inspection as provided in K.S.A. 60-245 and 60-245a, and amendments thereto.~~ *(a) In general. A party may serve on any other party a request within the scope of subsection (b) of K.S.A. 60-226, and amendments thereto:*

(1) To produce and permit the requesting party, or its representative, to inspect, copy, test or sample the following items in the responding party's possession, custody or control:

(A) Any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test or sample the property or any designated object or operation on it.

(b) Procedure. The request may be served on the plaintiff after commencement of the action and on any other party with or after service of process on that party.

(1) Contents of request. The request:

(A) Must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) Responses and objections. (A) Time to respond. The party to whom the request is directed must respond in writing within 30 days after being served, except that a defendant may serve a response within 45 days after being served with process. A shorter or longer time may be stipulated to under K.S.A. 60-229, and amendments thereto, or be ordered by the court.

(B) Responding to each item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(C) Objections. An objection to part of a request must specify the part and permit inspection of the rest.

(D) Responding to a request for production of electronically stored information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form was specified in the request, the party must state the form or forms it intends to use.

(E) Producing the documents or electronically stored information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) a party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in K.S.A. 60-245 and 60-245a, and amendments thereto, a nonparty may be compelled to produce documents, electronically stored information and tangible things or to permit an inspection.

Sec. 104. K.S.A. 60-235 is hereby amended to read as follows: 60-235. ~~(a) *Order for examination.* When the mental or physical condition, including the blood group, of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. The moving party shall advance the expenses which will necessarily be incurred by the party to be examined.~~

~~(b) *Report of examiner.* (1) If requested by the party against whom an order is made under subsection (a) or by the person examined, the party causing the examination to be made shall deliver to the party or person making the request a copy of a detailed written report of the examiner, setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition.~~

~~(2) This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.~~

~~(c) *Reports of other examinations.* Any party shall be entitled upon request to receive from a party a report of any examination, previously or thereafter made, of the condition in controversy, except that the party shall not be required to provide such a report if the examination is of a person not a party and the party is unable to obtain a report thereof. Reports required to be provided under this subsection shall contain the same information as specified for reports under subsection (b).~~

~~(d) *Order requiring delivery of report.* The court on motion may make an order against a party requiring delivery of a report under subsection (b) or (c) on such terms as are just. If an examiner fails or refuses to make or deliver such a report, the court may exclude the examiner's testimony if offered at the trial.~~ *(a) Order for an examination. (1) In general. The court where the action is pending may order a party whose mental or physical condition, including blood group, is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.*

(2) Motion and notice; contents of the order. The order:

(A) May be made only on motion for good cause and on notice to all parties and the person to be examined;

(B) must specify the time, place, manner, conditions and scope of the examination, as well as the person or persons who will perform it; and

(C) must direct the moving party to advance the expenses that will necessarily be incurred by the party or person to be examined.

(b) Examiner's report. (1) Request by the party or person examined. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) Contents. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions and the results of any tests.

(3) Scope. This subsection applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subsection does not preclude obtaining an examiner's report or deposing an examiner under other law.

(c) Report of other examinations. Any party may request, and is en-

titled to receive, from another party like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them. Reports provided under this subsection must contain the information specified in subsection (b)(2).

(d) Failure to deliver a report. The court on motion may order, on just terms, that a party deliver a report of an examination under subsection (b) or (c). If the report is not provided, the court may exclude the examiner's testimony at trial.

Sec. 105. K.S.A. 60-236 is hereby amended to read as follows: 60-236. ~~(a) *Request for admission.* A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of K.S.A. 60-226, and amendments thereto, set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request, without leave of the judge, may be served upon the plaintiff after commencement of the action and upon any other party with or after service of process upon that party. Each matter of which an admission is requested shall be separately set forth. A matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by such party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of process upon the defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify such party's answer or deny only a part of the matter of which an admission is requested, such party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that such party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request, such party, subject to the provisions of subsection (c) of K.S.A. 60-237, and amendments thereto, may deny the matter or set forth reasons why such party cannot admit or deny it.~~

~~The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the judge determines that an objection is justified, the judge shall order that an answer be served. If the judge determines that an answer does not comply with the requirements of this rule, the judge may order either that the matter is admitted or that an amended answer be served. The judge, in lieu of these orders, may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of subsection (a) of K.S.A. 60-237, and amendments thereto, apply to the award of expenses incurred in relation to the motion.~~

~~(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless the judge on motion permits withdrawal or amendment of the admission. Subject to the provisions of K.S.A. 60-216, and amendments thereto, governing amendment of a pretrial order, the judge may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judge that withdrawal or amendment will prejudice such party in maintaining such party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by such party for any other purpose nor may it be used against such party in any other proceeding.~~ *(a) Availability, scope and procedure. (1) Availability*

and scope. A party may serve on the plaintiff after commencement of the action and on any other party with or after service of process on that party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of K.S.A. 60-226, and amendments thereto, relating to:

(A) Facts, the application of law to fact or opinions about either; and

(B) the genuineness of any described documents.

(2) Form; copy of a document. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) Time to respond; effect of not responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serve on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney, except that a defendant may serve answers or objections within 45 days after being served with process. A shorter or longer time may be stipulated to under K.S.A. 60-229, and amendments thereto, or be ordered by the court.

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter, and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) Motion regarding the sufficiency of an answer or objection. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this section, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. The provisions of subsection (a)(5) of K.S.A. 60-237, and amendments thereto, apply to an award of expenses.

(b) Effective of an admission; withdrawing or amending it. A matter admitted under this section is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to subsection (e) of K.S.A. 60-216, and amendments thereto, the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this section is not an admission for any other purposes and cannot be used against the party in any other proceeding.

Sec. 106. K.S.A. 2009 Supp. 60-237 is hereby amended to read as follows: 60-237. ~~(a) *Motion for order compelling disclosure or discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:~~

~~(1) *Appropriate court.* An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the judge in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the judge in the district where the deposition is being taken.~~

~~(2) *Motion.* (A) If a party fails to make a disclosure required by subsection (b)(6) of K.S.A. 60-226, and amendments thereto, any other party may move to compel disclosure and for appropriate sanctions. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action and shall describe the steps taken by all counsel or unrepresented parties to resolve the issues in dispute.~~

~~(B) If a deponent fails to answer a question propounded or submitted under K.S.A. 60-230 or 60-231, and amendments thereto, or a corporation or other entity fails to make a designation under subsection (b) of K.S.A. 60-230 or subsection (a) of K.S.A. 60-231, and amendments thereto, or a party fails to answer an interrogatory submitted under K.S.A. 60-233, and amendments thereto, or if a party, in response to a request for inspection submitted under K.S.A. 60-234, and amendments thereto, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action and shall describe the steps taken by all counsel or unrepresented parties to resolve the issues in dispute. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.~~

~~(3) *Evasive or incomplete disclosure, answer or response.* For purposes of this subdivision an evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.~~

~~(4) *Expenses and sanctions.* (A) If the disclosure or requested discovery is provided after the motion is filed but before the court rules on the motion, the court, after affording an opportunity to be heard, may require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees. Expenses shall not be awarded under this subparagraph if the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.~~

~~(B) If the motion is granted, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified or that other circumstances make an award of expenses unjust.~~

~~(C) If the motion is denied, the court may enter any protective order authorized under subsection (c) of K.S.A. 60-226, and amendments thereto, and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.~~

~~(D) If the motion is granted in part and denied in part, the court may enter any protective order authorized under subsection (c) of K.S.A. 60-226, and amendments thereto, and, may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.~~

~~(b) *Failure to comply with order.* (1) *Sanctions by judge in district where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the judge in the district in which the deposition is being taken, the failure may be considered a contempt of that court.~~

~~(2) *Sanctions by court in which action is pending.* If a party or an officer, director or managing agent of a party or a person designated under subsection (b) of K.S.A. 60-230 or subsection (a) of K.S.A. 60-231, and amendments thereto, to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this section or under K.S.A. 60-235, and amendments thereto, the judge before whom the action is pending may make such orders in regard to the failure as are just, and among others the following:~~

~~(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;~~

~~(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such disobedient party from introducing designated matters in evidence;~~

~~(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;~~

~~(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;~~

~~(E) Where a party has failed to comply with an order under subsection (a) of K.S.A. 60-235, and amendments thereto, requiring such party to produce another for examination, such orders as are listed in paragraphs (A), (B) and (C) of this subsection, unless the party failing to comply shows that such party is unable to produce such person for examination.~~

~~In lieu of any of the foregoing orders or in addition thereto, the judge shall require the party failing to obey the order or the attorney advising such party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the judge finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.~~

~~(c) *Failure to disclose; false or misleading disclosure; refusal to admit.* (1) A party that without substantial justification fails to disclose information required by subsection (b)(6) or (e)(1) of K.S.A. 60-226, and amendments thereto, shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney fees, caused by the failure, these sanctions may include any of the actions authorized under subparagraphs (A), (B) and (C) of subsection (b)(2) and may include informing the jury of the failure to make the disclosure.~~

~~(2) If a party fails to admit the genuineness of any documents or the truth of any matter, as requested under K.S.A. 60-236, and amendments thereto, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, such party may apply to the judge for an order requiring the other party to pay such party the reasonable expenses incurred in making such proof, including reasonable attorney's fees. The judge shall make the order unless the judge finds that (A) the request was held objectionable to subsection (a) of K.S.A. 60-236, and amendments thereto, or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (D) there was other good reason for the failure to admit.~~

~~(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* If a party or an officer, director, or managing agent of a party or a person designated under subsection (b) of K.S.A. 60-230 or subsection (a) of K.S.A. 60-231, and amendments thereto, to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under K.S.A. 60-233, and amendments thereto, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under K.S.A. 60-234, and amendments thereto, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B) and (C) of subsection (b)(2) of this section. Any motion specifying a failure under clause (2) or (3) of this subsection shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in~~

~~addition thereto, the judge shall require the party failing to act or the attorney advising such party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the judge finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.~~

~~The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by subsection (c) of K.S.A. 60-226, and amendments thereto.~~

~~(e) *Electronically Stored Information.* Absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.~~ *(a) Motion for an order compelling disclosure or discovery. (1) In general. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action and must describe the steps taken by all attorneys or unrepresented parties to resolve the issues in dispute.*

(2) Appropriate court. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the district where the discovery is or will be taken.

(3) Specific motions. (A) To compel disclosure. If a party fails to make a disclosure required by subsection (b)(6) of K.S.A. 60-226, and amendments thereto, any other party may move to compel disclosure and for appropriate sanctions.

(B) To compel a discovery response. A party seeking discovery may move for an order compelling an answer, designation, production or inspection. This motion may be made if:

(i) A deponent fails to answer a question asked under K.S.A. 60-230 or 60-231, and amendments thereto;

(ii) a corporation or other entity fails to make a designation under subsection (b)(6) of K.S.A. 60-226 or subsection (a)(4) of K.S.A. 60-231, and amendments thereto;

(iii) a party fails to answer an interrogatory submitted under K.S.A. 60-233, and amendments thereto; or

(iv) a party fails to respond that inspection will be permitted, or fails to permit inspection, as requested under K.S.A. 60-234, and amendments thereto.

(C) Related to a deposition. When taking an oral deposition the party asking a question may complete or adjourn the examination before moving for an order.

(4) Evasive or incomplete disclosure, answer or response. For purposes of this subsection, an evasive or incomplete disclosure, answer or response must be treated as a failure to disclose, answer or respond.

(5) Payment of expenses; protective orders. (A) If the motion is granted, or disclosure or discovery is provided after filing. If the motion is granted, the court must, and if disclosure occurs before the motion is granted, the court may, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the motion is denied. If the motion is denied, the court may issue any protective order authorized under subsection (c) of K.S.A. 60-226, and amendments thereto, and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under subsection (c) of K.S.A. 60-226, and amendments thereto, and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Failure to comply with a court order. (1) Sanctions in the district where the deposition is taken. If the court in the district where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) Sanctions in the district where the action is pending. (A) For not obeying a discovery order. If a party or a party's officer, director or managing agent, or a witness designated under subsection (b)(6) of K.S.A. 60-230 or subsection (a)(4) of K.S.A. 60-231, and amendments thereto, fails to obey an order to provide or permit discovery, including an order under subsection (a) or under K.S.A. 60-235, and amendments thereto, the court where the action is pending may issue further just orders. They may include the following:

(i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) For not producing a person for examination. If a party fails to comply with an order under subsection (a) of K.S.A. 60-235, and amendments thereto, requiring it to produce another person for examination, the court may issue any of the orders listed in paragraphs (2)(A)(i) through (2)(A)(vi), unless the disobedient party shows that it cannot produce the other person.

(C) Payment of expenses. Instead of, or in addition to, the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to disclose, to supplement an earlier response or to admit. (1) Failure to disclose or supplement. If a party fails to provide information or identify a witness as required by subsection (b)(6) or (e) of K.S.A. 60-226, and amendments thereto, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing or at a trial, unless the failure was substantially justified or is harmless. In addition to, or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) May order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in subsections (b)(2)(A)(i) through (b)(2)(A)(vi).

(2) Failure to admit. If a party fails to admit what is requested under K.S.A. 60-236, and amendments thereto, and if the requesting party later proves the document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) The request was held objectionable under subsection (a) of K.S.A. 60-236, and amendments thereto;

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Party's failure to attend its own deposition, serve answers to interrogatories or respond to a request for inspection. (1) In general. (A)

Motion; grounds for sanctions. The court where the action is pending may, on motion, order sanctions if:

(i) A party or a party's officer, director or managing agent, or a person designated under subsection (b)(6) of K.S.A. 60-230 or subsection (a)(4) of K.S.A. 60-231, and amendments thereto, fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under K.S.A. 60-233, and amendments thereto, or a request for inspection under K.S.A. 60-234, and amendments thereto, fails to serve its answers, objections or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action and must describe the steps taken by all attorneys or unrepresented parties to resolve the issues in dispute.

(2) Unacceptable excuse for failing to act. A failure described in paragraph (1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under subsection (c) of K.S.A. 60-226, and amendments thereto.

(3) Types of sanctions. Sanctions may include any of the orders listed in subsections (b)(2)(A)(i) through (b)(2)(A)(vi). Instead of, or in addition to, these sanctions, the court must require the party failing to act, the attorney advising the party, or both to pay the reasonable expenses, including attorney's fees, cause by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) Failure to provide electronically stored information. Absent exceptional circumstances, a court may not impose sanctions under this article on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Sec. 107. K.S.A. 60-238 is hereby amended to read as follows: 60-238. (a) *Right preserved.* The right of trial by jury as declared by section 5 of the bill of rights in the Kansas constitution, ~~and as given by a statute of the state shall be~~ *or as provided by a state statute, is* preserved to the parties inviolate.

~~(b) *Demand.* Any party may demand a trial by jury of any issue triable of right by a jury by: (1) Serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue; and (2) filing the demand as required by K.S.A. 60-205 and amendments thereto. Such demand may be indorsed upon a pleading of the party.~~

~~(c) *Same; specification of issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.~~

~~(d) *Waiver.* The failure of a party to serve and file a demand as required by this section constitutes a waiver by the party of trial by jury but waiver of a jury trial may be set aside by the judge in the interest of justice or when the waiver inadvertently results without serious negligence of the party. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.~~

(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) Serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with K.S.A. 60-205, and amendments thereto.

(c) Specifying issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has de-

manded a jury trial on only some issues, any other party may, within 14 days after being served with the demand or within a shorter time ordered by the court, serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) Waiver; withdrawal. A party waives a jury trial unless its demand is properly served and filed, but the court may set aside a waiver of a jury trial in the interest of justice or when the waiver inadvertently results. A proper demand may be withdrawn only if the parties consent.

Sec. 108. K.S.A. 60-239 is hereby amended to read as follows: 60-239. ~~(a) *By jury.* When trial by jury has been demanded as provided in K.S.A. 60-238, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes.~~

~~(b) *By the court.* Issues not demanded for trial as provided in K.S.A. 60-238 shall be tried by the court, but, notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the court in its discretion may order a trial by jury of any or all issues.~~

~~(c) *Advisory jury and trial by consent.* In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or (except in actions against the state when a statute of the state provides for trial without a jury) the court, with the consent of all parties, may order a trial with a jury whose verdict shall have the same effect as if trial by jury had been a matter of right.~~

(a) When a demand is made. When a jury trial has been demanded under K.S.A. 60-238, and amendments thereto, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) The parties or their attorneys file a stipulation to a nonjury trial, or so stipulate on the record; or

(2) the court, on motion, or on its own, finds that on some or all of those issues there is no right to a jury trial under the Kansas constitution or statutes.

(b) When no demand is made. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) Advisory jury; jury trial by consent. In an action not triable of right by jury, the court, on motion, or on its own:

(1) May try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the state and a state statute provides for a nonjury trial.

Sec. 109. K.S.A. 60-240 is hereby amended to read as follows: 60-240. ~~(a) *Assignment of cases for trial.* The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the judge deems expedient. Precedence shall be given to actions entitled thereto by any statute of the state.~~

~~(b) *Continuances.* The court may for good cause shown continue an action at any stage of the proceedings upon such terms as may be just. When a continuance is granted on account of the absence of evidence, it shall be at the cost of the party making the application, unless the court otherwise orders.~~

~~(c) *Affidavit in support of motions.* The court need not entertain any motion for a continuance based on the absence of a material witness unless supported by an affidavit which shall state the name of the witness, and, if known, the witness's residence, a statement of the witness's expected testimony and the basis of such expectation, a statement that the affiant believes it to be true, and the efforts which have been made to procure the witness's attendance or deposition. The party objecting to the continuance shall not be allowed to contradict the statement of what~~

~~the absent witness is expected to testify but may disprove any other statement in such affidavit. Such motion may, in the discretion of the court, be denied if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit, and will agree that the same shall be received and considered as evidence at the trial as though the witness were present and so testified. The same rule shall apply, with necessary changes, when the motion is grounded on the want of any material document, thing or other evidence. In all cases, the grant or denial of a continuance shall be discretionary whether the foregoing provisions have been complied with or not.~~

(a) Scheduling cases for trial. Each district court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by law.

(b) Continuances. For good cause, the court may continue an action at any stage of the proceedings on just terms. When a continuance is granted due to the absence of evidence, it must be at the cost of the party requesting the continuance, unless the court orders otherwise.

(c) Motion for continuance based on absence of material witness, document, thing or other evidence; affidavit or declaration. (1) Affidavit or declaration in support of motions. The court need not entertain a motion for a continuance based on the absence of a material witness, document, thing or other evidence unless supported by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto.

(A) An affidavit or declaration in support of a motion for a continuance based on the absence of a material witness must state:

(i) The name of the witness, and, if known, the witness' residence;

(ii) the substance of the witness' expected testimony and the basis for the expectation;

(iii) that the affiant or declarant believes the statements in the affidavit or declaration to be true; and

(iv) the efforts that have been made to procure the witness' attendance or deposition.

(B) An affidavit or declaration in support of a motion for a continuance based on the absence of a material document, thing or other evidence must contain similar statements, with appropriate modifications.

(2) Objections. A party objecting to a continuance may not contradict the statement of the substance of the absent witness' expected testimony or the substance of the absent document, thing or other evidence, but may contradict any other statement in the affidavit or declaration.

(3) Granting or denying the motion. The court may deny the motion if the adverse party admits that the absent witness would, if present, testify as stated in the affidavit or declaration, and agrees that the affidavit or declaration be received as evidence at the trial and considered as though the witness were present and so testified. The granting or denial of a continuance is discretionary in all cases, regardless of compliance with the provisions of this subsection.

Sec. 110. K.S.A. 60-241 is hereby amended to read as follows: 60-241. ~~(a) *Voluntary dismissal, effect thereof.* (1) *By plaintiff, by stipulation.* Subject to the provisions of subsection (c) of K.S.A. 60-223 and amendments thereto and of any statute of the state, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Where the dismissal is by stipulation the clerk of the court shall enter an order of dismissal as a matter of course. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.~~

~~(2) *By order of court.* Except as provided in paragraph (1) of this subsection, an action shall not be dismissed at the plaintiff's instance save upon order of the judge and upon such terms and conditions as the judge deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the~~

~~court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.~~

~~(b) *Involuntary dismissal; effect thereof.* (1) For failure of the plaintiff to prosecute or to comply with these sections or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this section, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under K.S.A. 60-219 and amendments thereto, operates as an adjudication upon the merits.~~

~~(2) The judge may on the judge's own motion cause a case to be dismissed without prejudice for lack of prosecution, but only after directing the clerk to notify counsel of record not less than 10 days in advance of such intended dismissal, that an order of dismissal will be entered unless cause be shown for not doing so.~~

~~(c) *Dismissal of counterclaim, cross-claim, or third-party claim.* The provisions of this section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subsection (a) shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.~~

~~(d) *Costs of previously dismissed action.* If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it deems proper and may stay the proceedings in the action until the plaintiff has complied with the order.~~

(a) Voluntary dismissal. (1) By the plaintiff. (A) Without a court order. Subject to subsection (e) of K.S.A. 60-223, K.S.A. 60-223a and K.S.A. 60-223b, and amendments thereto, and any applicable state statute, the plaintiff may dismiss an action without a court order by filing:

(i) A notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared. When the dismissal is by stipulation, the clerk of the court must enter an order of dismissal as a matter of course.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By court order; effect. Except as provided in paragraph (1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal; effect; notice. (1) If the plaintiff fails to prosecute or to comply with this chapter or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this paragraph and any dismissal not under this section, except one for lack of jurisdiction, improper venue or failure to join a party under K.S.A. 60-219, and amendments thereto, operates as an adjudication on the merits.

(2) On its own, the court may dismiss a case without prejudice for lack of prosecution, but only after notice to counsel of record, not less than 14 days prior to the intended dismissal, that an order of dismissal will be entered unless cause is shown for not doing so.

(c) Dismissing a counterclaim, crossclaim or third-party claim. This section applies to a dismissal of any counterclaim, crossclaim or third-party claim. A claimant's voluntary dismissal under subsection (a)(1)(A)(i) must be made:

(1) Before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a previously dismissed action. If a plaintiff who previ-

ously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) May order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay proceedings until the plaintiff has complied.

Sec. 111. K.S.A. 60-242 is hereby amended to read as follows: 60-242. ~~(a) *Consolidation.* When actions involving a common question of law or fact are pending before the court in the same or different counties in the judicial district, the judge may order a joint hearing or trial of any or all of the matters in issue in the actions, may order all the actions consolidated, and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.~~

~~(b) *Separate trials.* In furtherance of convenience, to avoid prejudice or when separate trials will be conducive to expedition and economy, the judge may order a separate trial in the county where the action is pending, or a different county in the judicial district, of any claim, cross-claim, counterclaim, third-party claim or any separate issue, or any number of claims, cross-claims, counterclaims, third-party claims or issues, always preserving inviolate the right of trial by jury.~~

(a) Consolidation. If actions involving a common question of law or fact are pending before the court in the same or different counties in the judicial district, the court may:

(1) Join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate trials. For convenience, to avoid prejudice or to expedite and economize, the court may order a separate trial in the county where the action is pending, or a different county in the judicial district, of one or more separate issues, claims, counterclaims, crossclaims or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.

(c) *Multidistrict litigation.* (1) When civil actions arising out of the same transaction or occurrence or series of transactions or occurrences are pending in different judicial districts, the supreme court, ~~upon~~ *on* request of a party or of any court in which one of the actions is pending and upon finding that a transfer and consolidation will promote the just and efficient conduct of the actions, may order transfer of the pending actions to one of the counties in which an action is pending. The actions may be consolidated for discovery, pretrial proceedings and possible trial. The supreme court ~~shall assign~~ *must designate a judge to hear* the consolidated actions ~~to a judge designated by the supreme court~~. Actions filed subsequent to the order may be consolidated as provided ~~herein~~ *in this section*.

(2) The assigned judge ~~shall have the power to~~ *may* conduct all pretrial and discovery proceedings, issue *pretrial and discovery* orders ~~therein~~, ~~determine~~ *decide* questions of law ~~submitted to the court~~, including motions for summary judgment and, when the assigned judge conducts a trial, allocate expenses of the trial among counties.

(3) ~~In the assigned judge's discretion, the~~ *The* assigned judge may conduct a joint trial of any or all of the consolidated actions, but all parties to the actions jointly tried must consent to joint trial. ~~Trials by jury~~ *Jury trials* may be conducted in any county ~~which~~ *that* would have had venue of any of the consolidated actions, subject to a change of venue under K.S.A. 60-609, and amendments thereto. If the assigned judge ~~determines~~ *decides* not to conduct the trial of any ~~one~~ of the consolidated actions or if ~~any~~ *a* party to any of the consolidated actions does not consent to joint trial, the assigned judge ~~shall~~ *must* return that action, and the record in that action, to the district court from which it originated. The assigned judge ~~shall~~ *must* notify the supreme court ~~of the return of~~ *that* the action *has been returned*.

Sec. 112. K.S.A. 60-243 is hereby amended to read as follows: 60-243. ~~(a) *Form and admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by this article. All evidence shall be admitted which is admissible under specific statutes or article 4 of this chapter. The competency of a witness to testify shall be determined in like manner.~~

~~(b) *Scope of examination and cross-examination.* A party may inter-~~

~~rogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate such witness by leading questions and contradict such witness and impeach such witness in all respects as if such witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of such witness' examination in chief.~~

~~(c) *Record of excluded evidence.* In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what the examining attorney expects to prove by the answer of the witness. The offer shall be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.~~

~~(d) *Evidence on motions.* When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.~~

~~(e) *Interpreters.* In accordance with K.S.A. 75-4351 through 75-4355d and amendments thereto, the court may appoint an interpreter of its own selection and fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or, subject to the limitations in K.S.A. 75-4352 and 75-4355b and amendments thereto, by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.~~

(a) Form and admissibility. At trial, the witness' testimony must be taken in open court, unless otherwise provided by law. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Scope of examination and cross-examination. A party may examine any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director or managing agent of a public or private corporation, a partnership or an association that is an adverse party, may examine the witness by leading questions and may contradict and impeach the witness as if the witness had been called by the adverse party. The witness may be contradicted and impeached by the adverse party, but may be cross-examined only on the subject matter of the witness' direct examination.

(c) Record of excluded evidence. In a jury trial, if an objection to a question to a witness is sustained, the examining attorney may make a specific offer of what the examining attorney expects to prove by the witness' answer. The offer must be made out of the jury's hearing. The court may add any further statement that clearly shows the character of the evidence, the form in which it was offered, the objection made and the ruling on the objection. In nonjury trials the same procedure may be followed, except that the court on request must take and report the evidence in full unless it clearly appears that the evidence is not admissible or is privileged.

(d) Evidence on a motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or on declarations pursuant to K.S.A. 53-601, and amendments thereto, or may hear it wholly or partly on oral testimony or on depositions.

(e) Interpreter. In accordance with K.S.A. 75-4351 through 75-4355d, and amendments thereto, the court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or, subject to the limitations in K.S.A. 75-4352 and 75-4355b, and amendments thereto, by one or more parties and tax the compensation as costs.

Sec. 113. K.S.A. 60-244 is hereby amended to read as follows: 60-244. ~~Official~~ *Authentication and admissibility of official* records and other

documents ~~shall be evidenced in the manner provided in~~ *are governed by* article 4 of this chapter.

Sec. 114. K.S.A. 2009 Supp. 60-245 is hereby amended to read as follows: 60-245. ~~(a) *Form; issuance.* (1) Every subpoena shall:~~

~~(A) State the name of the court from which it is issued;~~

~~(B) state the title of the action, the name of the court in which it is pending and the file number of the action;~~

~~(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing or sampling of designated books, documents, electronically stored information or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place specified in the subpoena; and~~

~~(D) set forth the text of subsections (c) and (d) of this section.~~

~~A command to produce evidence or to permit inspection, copying, testing or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form in which electronically stored information is to be produced. Subpoena and production of records of a business which is not a party shall be in accordance with K.S.A. 60-245a, and amendments thereto.~~

~~(2) A subpoena commanding attendance at a trial or hearing shall issue from the district court in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the district court in which the action is pending or the officer before whom the deposition is to be taken or, if the deposition is to be taken outside the state, from an officer authorized by the law of the other state to issue the subpoena. If separate from a subpoena commanding the attendance of a person, a subpoena for production, inspection, copying, testing or sampling shall issue from the district court in which the action is pending or, if the production, inspection, copying, testing or sampling is to be made outside the state, an officer authorized by the law of the other state to issue the subpoena.~~

~~(3) Every subpoena issued by the court shall be issued by the clerk under the seal of the court or by a judge. Upon request of a party, the clerk shall issue a blank subpoena. The blank subpoena shall bear the seal of the court, the title and file number of the action and the clerk's signature or a facsimile of the clerk's signature. The party to whom a blank subpoena is issued shall fill it in before service.~~

~~(b) *Service.* Service of a subpoena upon a person named therein may be made anywhere within the state, shall be made in accordance with K.S.A. 60-303, and amendments thereto, and shall, if the person's attendance is commanded, be accompanied by the fees for one day's attendance and the mileage allowed by law. When sought independently of a deposition, prior notice of any commanded production, inspection, copying, testing or sampling of documents or inspection of premises before trial shall be served on each party in the manner prescribed by subsection (b) of K.S.A. 60-205, and amendments thereto.~~

~~(c) *Protection of persons subject to subpoenas.*~~

~~(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, a reasonable attorney fee.~~

~~(2) (A) A person commanded to produce and permit inspection, copying, testing or sampling of designated electronically stored information, books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.~~

~~(B) Subject to subsection (d)(2), a person commanded to produce and permit inspection, copying, testing or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms re-~~

~~quested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing or sampling commanded.~~

~~(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:~~

~~(i) Fails to allow reasonable time for compliance;~~

~~(ii) requires a resident of this state who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person or requires a nonresident who is not a party or an officer of a party to travel to a place more than 100 miles from the place where the nonresident was served with the subpoena, is employed or regularly transacts business, except that, subject to the provisions of subsection (c)(3)(B)(iii), such a nonparty may in order to attend trial be commanded to travel to the place of trial;~~

~~(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or~~

~~(iv) subjects a person to undue burden.~~

~~(B) If a subpoena:~~

~~(i) Requires disclosure of a trade secret or other confidential research, development or commercial information; or~~

~~(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or~~

~~(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

~~(4) A person confined in prison may be required to appear for examination by deposition only in the county where the person is imprisoned.~~

~~(d) *Duties in responding to subpoena.* (1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.~~

~~(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonable usable.~~

~~(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.~~

~~(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(2)(A) of K.S.A. 60-226, and amendments thereto. The court may specify conditions for the discovery.~~

~~(2) (A) When information subject to a subpoena is withheld on a claim that such information is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.~~

~~(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.~~

~~(c) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon the person may be considered a contempt of the court in which the action is pending or the court of the county in which the deposition is to be taken. Punishment for contempt shall be in accordance with K.S.A. 20-1204, and amendments thereto. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by subsection (c)(3)(A)(iii).~~ *(a) In general. (1) Form and contents. (A) Requirements; in general. Every subpoena must:*

(i) State the court from which it is issued;

(ii) state the title of the action, the court in which it is pending and the file number of the action;

(iii) command each person to whom it is directed to do the following at a specified time and place: Attend and testify; produce designated documents, electronically stored information or tangible things in that person's possession, custody or control; or permit the inspection of premises; and

(iv) set out the text of subsections (c) and (d).

(B) Command to attend a deposition; notice of the recording method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) Combining or separating a command to produce or to permit inspection; specifying the form for electronically stored information. A command to produce documents, electronically stored information or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced. Subpoena and production of records of a business that is not a party may be in accordance with K.S.A. 60-245a, and amendments thereto.

(D) Command to produce; included obligations. A command in a subpoena to produce documents, electronically stored information or tangible things requires the responding party to permit inspection, copying, testing or sampling of the materials.

(2) Issued from which court. A subpoena must issue as follows:

(A) For attendance at a hearing or trial, from the court where the hearing or trial is to be held;

(B) for attendance at a deposition, from the court in which the action is pending or from the officer before whom the deposition is to be taken, or, if the deposition is to be taken outside this state, from an officer authorized by the law of the other state to issue the subpoena; and

(C) for production or inspection, if separate from a subpoena commanding a person's attendance, from the court in which the action is pending, or, if the production, inspection, copying, testing or sampling is to be made outside this state, from an officer authorized by the law of the other state to issue the subpoena.

(3) Issued by whom. Every subpoena issued by the court must be issued by the clerk under the seal of the court or by a judge. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. The blank subpoena must bear the seal of the court and the clerk's signature. The party to whom a blank subpoena is issued must fill it in before service.

(b) Service. Service of a subpoena may be made anywhere within this state, must be made in accordance with K.S.A. 60-303, and amendments thereto, and must, if the subpoena requires a person's attendance, be accompanied by the fees for one day's attendance and the mileage allowed by law. If, independently of a deposition, the subpoena commands the

production of documents, electronically stored information or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party in accordance with subsection (b) of K.S.A. 60-205, and amendments thereto.

(c) Protecting a person subject to a subpoena. (1) Avoiding undue burden or expense; sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

(2) Command to produce materials or permit inspection. (A) Appearance not required. A person commanded to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing or trial.

(B) Objections. A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the designated materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection; and

(ii) these acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or modifying a subpoena. (A) When required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) Fails to allow a reasonable time to comply;

(ii) requires a resident of this state who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed or regularly transacts business in person or requires a nonresident who is neither a party nor a party's officer to travel more than 100 miles from where the nonresident was served with the subpoena, is employed or regularly transacts business in person, except that, subject to paragraph (3)(B)(iii), the person may be commanded to travel to the place of trial;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) Disclosing a trade secret or other confidential research development or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying conditions as an alternative. In the circumstances described in subsection (c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions as the serving party:

(i) Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(4) Person in prison. A person confined in prison may be required to appear for examination by deposition only in the county where the person is imprisoned.

(d) Duties in responding to a subpoena. (1) Producing documents or

electronically stored information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for producing electronically stored information not specified. If a subpoena does not specify a form for producing electronically stored information, a person responding to a subpoena must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically stored information produced in only one form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible electronically stored information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(2)(A) of K.S.A. 60-226, and amendments thereto. The court may specify conditions for the discovery.

(2) Claiming privilege or protection. (A) Information withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) Expressly make the claim; and

(ii) describe the nature of the withheld documents, communications or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. Punishment for contempt should be in accordance with K.S.A. 20-1204, and amendments thereto. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of subsection (c)(3)(A)(ii).

Sec. 115. K.S.A. 60-245a is hereby amended to read as follows: 60-245a. (a) *Definitions.* As used in this section:

(1) "Business" means any kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(2) "Business records" means writings *or electronically stored information* made by personnel or staff of a business, or persons acting under their control, which are memoranda or records of acts, conditions or events made in the regular course of business at or about the time of the act, condition or event recorded.

~~(b) A subpoena duces tecum which commands the production of business records in an action in which the business is not a party shall inform the person to whom it is directed that the person may serve upon the attorney designated in the subpoena written objection to production of any or all of the business records designated in the subpoena within 14 days after the service of the subpoena or at or before the time for compliance, if the time is less than 14 days after service. If such objection is made, the business records need not be produced except pursuant to an order of the court upon motion with notice to the person to whom the subpoena was directed.~~

~~—Unless the personal attendance of a custodian of the business records and the production of original business records are required under subsection (d), it is sufficient compliance with a subpoena of business records if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described in the subpoena and mails a copy of the affidavit accompanying the records to the party or attorney requesting them within 14 days after receipt of the subpoena.~~

~~—The records described in the subpoena shall be accompanied by the affidavit of a custodian of the records, stating in substance each of the following: (1) The affiant is a duly authorized custodian of the records and has authority to certify records, (2) the copy is a true copy of all the records described in the subpoena, and (3) the records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.~~

~~—If the business has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit and shall send only those records of which the affiant has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.~~

~~—The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of the subpoena are clearly inscribed. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court. Thirty days after termination of the case, records which are not introduced in evidence or required as part of the record may be destroyed or returned to the custodian of the records who submitted them if return has been requested after notice is given.~~

~~—The reasonable costs of providing the copying of the records may be demanded of the party causing the subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.~~

~~—(c) The subpoena shall be accompanied by an affidavit to be used by the records custodian.~~

~~—(d) Any party may require the personal attendance of a custodian of business records and the production of original business records by causing a subpoena duces tecum to be issued.~~

~~—(e) Notice of intent to request the issuance of a subpoena pursuant to this section where the attendance of the custodian of the business records is not required shall be given to all parties to the action at least 10 days prior to the issuance thereof by the party requesting issuance of the subpoena. A copy of the proposed subpoena shall also be served upon all parties along with such notice. In the event any party objects to the production of the documents sought by such subpoena prior to its issuance, the subpoena shall not be issued until further order of the court in which the action is pending. If receipt of the records makes the taking of a deposition unnecessary, the party who caused the subpoena for the business records to be issued shall cancel the deposition and shall notify the other parties to the action in writing of the receipt of the records and the cancellation of the deposition.~~

~~—After the copy of the record is filed, a party desiring to inspect or copy it shall give reasonable notice to every other party to the action. The notice shall state the time and place of inspection. Thirty days after termination of the case, records which are not introduced in evidence or required as part of the record may be destroyed or returned to the custodian of the records who submitted them if return has been requested after notice has been given.~~

(b) Subpoena for business records only. Any party may request production of business records from a nonparty by causing to be issued a nonparty business records subpoena pursuant to this section. The subpoena must inform the person to whom it is directed that the person may serve on the party or attorney designated in the subpoena written objection to production of any or all of the business records designated in the subpoena within the earlier of the time specified for compliance or 14 days after the subpoena is served. If such an objection is made, the busi-

ness records need not be produced unless ordered by the court on motion, with notice to the person to whom the subpoena was directed.

(1) Duties of requesting party. (A) Must give notice of intent. Not less than 14 days before issuance of a nonparty business records subpoena, the requesting party must give notice to all parties of the intent to request the subpoena. A copy of the proposed subpoena must be served on all parties with the notice. If prior to the issuance of the subpoena any party objects to the production of the records sought, the subpoena must not be issued unless ordered by the court.

(B) Requesting party to provide declaration form. When the subpoena is issued, it must be accompanied by a form of declaration that complies with paragraph (3), to be completed by the records custodian.

(C) Canceling deposition. If receipt of the records makes the taking of a deposition unnecessary, the requesting party must cancel the deposition and give written notice to the parties of the receipt of the records and the cancellation of the deposition.

(2) Appearance not required; producing records; time to respond. Unless the personal attendance of a custodian of the business records or the production of original business records is required under subsection (c), it is sufficient compliance with a nonparty business records subpoena if, within the earlier of the time specified for compliance or 14 days after receipt of the subpoena, a custodian of the business records delivers to the party or attorney requesting them, by mail or otherwise, a true and correct copy of all records described in the subpoena and a completed copy of a declaration or an affidavit that complies with paragraph (3) accompanying the records. The custodian must file the declaration or affidavit with the court. If return of the records is desired, the words "return requested" must be inscribed clearly on the envelope or wrapper.

(3) Declaration or affidavit of a custodian of the records. (A) Contents of declaration or affidavit accompanying documents produced. The records described in the subpoena must be accompanied by a declaration pursuant to K.S.A. 53-601, and amendments thereto, or an affidavit, of a custodian of the records, or, when a declarant or affiant lacks knowledge of all the required facts, more than one declaration or affidavit may be made, stating in substance each of the following:

(i) The declarant or affiant is an authorized custodian of the records and has authority to certify records;

(ii) the copy is a true copy of all the records described in the subpoena that are in the business' possession, custody or control and whether it is all or part of the requested records; and

(iii) the records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

(B) When none of the requested records is produced. If the business has none of the records described in the subpoena, a custodian of the records of the business must submit a declaration pursuant to K.S.A. 53-601, and amendments thereto, or an affidavit, stating that fact.

(4) Costs for copying the records. The person to whom the subpoena is directed may demand the reasonable costs of copying the records. If the costs are demanded, the records need not be produced until the costs are advanced.

(5) Inspecting the record. After the copy of the records is delivered, a party desiring to inspect or copy them must give reasonable notice to the parties. If inspection is requested, the notice must state the time and place of inspection. If copies are requested, the reasonable costs of copying the records may be demanded of the requesting party. If the costs are demanded, the copies need not be provided until the costs are advanced.

(6) Disposal or return of records. Thirty days after termination of the case, records that are not introduced in evidence or required as part of the record may be destroyed, or returned to the records custodian who submitted them if return was requested, after giving notice to the parties.

(c) Subpoena duces tecum for attendance of a custodian and original business records; objections. Any party may require the personal attendance of a business records custodian or the production of original business records in an action in which the business is not a party by causing a subpoena duces tecum to be issued pursuant to K.S.A. 60-245, and amendments thereto.

Sec. 116. K.S.A. 60-246 is hereby amended to read as follows: 60-246. ~~Formal exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he or she desires the court to take or his or her objection to the action of the court and his or her grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.~~ *A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.*

Sec. 117. K.S.A. 60-247 is hereby amended to read as follows: 60-247. ~~(a) In all civil trials, upon the request of a party, the court shall cause enough jurors to be called, examined, and passed for cause before any peremptory challenges are required, so that there will remain sufficient jurors, after the number of peremptory challenges allowed by law for the case on trial shall have been exhausted, to enable the court to cause twelve (12) or sufficient jurors to be sworn to try the case.~~

~~(b) *Voir dire examination of jurors.* Prospective jurors shall be examined under oath as to their qualifications to sit as jurors. The court shall permit the parties or their attorneys to conduct an examination of prospective jurors.~~

~~(c) *Challenges.* In civil cases, each party shall be entitled to three (3) peremptory challenges, except as provided in subsection (h) of section 60-248, as amended, pertaining to alternate jurors. Multiple defendants or multiple plaintiffs shall be considered as a single party for purpose of making challenges except that if the judge finds there is a good faith controversy existing between multiple plaintiffs or multiple defendants, the court in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.~~

~~All challenges for cause, whether to the array or panel or to individual prospective jurors, shall be determined by the court. Peremptory challenges shall be exercised in a manner which will not communicate to the challenged prospective juror the identity of the challenging party or attorney.~~

~~(d) *Oath of jurors. The jurors shall be sworn to try the case conscientiously and return a verdict according to the law and the evidence.*~~

(a) Number of prospective jurors. The court must call enough prospective jurors so that, after challenges for cause and peremptory challenges allowed by law, there will remain 12, or sufficient jurors to be sworn to try the case.

(b) Examining jurors. Prospective jurors must be examined under oath or affirmation regarding their qualifications to sit as jurors. The court must permit the parties or their attorneys to conduct an examination of prospective jurors.

(c) Challenges. (1) Challenges for cause. All challenges for cause, whether to the array or panel or to individual prospective jurors, must be decided by the court.

(2) Peremptory challenges. After the panel has been passed for cause, each party is entitled to three peremptory challenges, except as provided in subsection (h) of K.S.A. 60-248, and amendments thereto, when there are alternate jurors. Multiple plaintiffs or multiple defendants are considered a single party for the purpose of making challenges. However, if the court finds a good faith controversy exists between multiple plaintiffs or multiple defendants, the court may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly. Peremptory challenges must be exercised in a manner that will not communicate to the challenged prospective juror the identity of the challenging party or attorney.

(d) Oath of jurors. The jurors must swear or affirm to try the case conscientiously and return a verdict according to the law and the evidence.

Sec. 118. K.S.A. 60-248 is hereby amended to read as follows: 60-248. (a) *Stipulation as to number.* The parties may stipulate that the jury

~~shall~~ consist of any number less than 12 or, subject to the provisions of subsection (g), that a verdict or a finding of a stated majority of the jurors ~~shall~~ be taken as the verdict or finding of the jury.

~~(b) *View of property or place.* Whenever in the opinion of the court it is proper for the jury to have a view of property which is the subject of litigation or of the place in which any material fact occurred, the court may order the jury to be conducted, as a body, under the charge of an officer to the place, which shall be shown to them by a person or persons appointed by the court for that purpose. While the jury is thus absent, no person other than the person so appointed shall speak to any juror on any subject connected with the trial. A view permitted under this subsection shall not be considered by the court in determining any questions of the sufficiency or insufficiency of evidence admitted in an action.~~

~~(c) *Case submitted, action and conduct of jury.* When the case is finally submitted to the jury, it shall retire for deliberation. The jurors must be kept together in a convenient place under charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night and at their meals. The officer having them under the officer's charge shall not make or allow any communications to be made to them, except the officer may ask them if they are agreed upon their verdict, unless by order of the court. The officer shall not before the verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.~~

~~(d) *Separation of jury, admonition of court.* If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by, any other person on any subject of the trial, that it is their duty to keep an open mind and not to express an opinion on the subject of the trial until the case is finally submitted to them, and that the admonition applies to every separation of the jurors.~~

~~(e) *Jury may request information after retiring.* If, after the jury has retired for deliberation, it desires further information as to any part of the law or evidence pertaining to the case, it may communicate its request through the bailiff to the court in the manner directed by the court, following which the court, after notice to counsel for the parties, may consider and make such provision for a response to the request of the jury as the court finds to be required under the circumstances.~~

~~(f) *Discharge of jury, when.* The jury may be discharged by the court on account of the sickness of a juror, or other necessity to be found by the court or by consent of both parties, or after it has been kept together until it satisfactorily appears that there is no probability of the jurors reaching a verdict.~~

~~(g) *Verdict, number of jurors required; form; correction.* Whenever the jury consists of 12 members, the agreement of 10 jurors shall be sufficient to render a verdict. In all other cases, subject to the stipulation of the parties as provided in subsection (a), the verdict shall be by agreement of all the jurors. The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and the inquiry made whether it is their verdict. If less than the required number of jurors agree, the jury must be sent out again. If agreement of the required number is expressed, and no party requires the jurors to be polled individually, the verdict is complete, and the jury discharged from the case. If the verdict is defective in form only, it may be corrected by the court, with the assent of the jury, before it is discharged.~~

~~(h) *Alternate jurors.* Immediately after the jury is empaneled and sworn, the trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have alternate jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Alternate jurors shall be selected in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath and have the same functions, powers and privileges as the regular jurors. Each party shall be entitled to one peremptory challenge to the alternate jurors. The alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend the trial~~

~~of the cause at all times with the other jurors. The alternate jurors shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, the alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror is discharged prior to the jury's reaching a decision, the court may draw the name of an alternate juror who shall replace the discharged juror and be subject to the same rules and regulations as though the juror had been selected as one of the original jurors.~~

(b) View of property or place. When the court finds it is proper for the jury to view property that is the subject of litigation or the place where any material fact occurred, the court may order the jury to be taken, as a group and under the charge of an officer, to the property or place. The court must appoint a person or persons to conduct the view. While the jury is thus absent, no person other than the appointed person is permitted to speak to any juror on any subject connected with the trial. A view permitted under this subsection must not be considered by the court in determining any questions of the sufficiency or insufficiency of evidence.

(c) Case submitted, action and conduct of jury. When a case is submitted to the jury, the jury must retire for deliberation. The jurors must be kept together in a convenient place under the charge of an officer until they agree on a verdict, or are discharged by the court. The court may permit them to separate temporarily at night and at their meals. Unless the court orders otherwise, the officer having charge of the jurors must not make or allow to be made any communications to them, except the officer may ask them if they are agreed on their verdict. Before the verdict is rendered, the officer must not communicate to any person the state of the jury's deliberations or the verdict agreed on.

(d) Separation of jury; admonition of court. If the jurors are permitted to separate, either during the trial or after the case is submitted to them, the court must admonish them that:

(1) It is their duty not to converse with, or allow themselves to be addressed by, any other person on any subject of the trial;

(2) it is their duty to keep an open mind and not to express an opinion on the subject of the trial until the case is submitted to them; and

(3) the admonition applies to every separation of the jurors.

(e) Jury may request information after retiring. After the jury has retired for deliberation, it may request further information as to any part of the law or evidence pertaining to the case by communicating the request in writing through the bailiff to the court. The court, after notice to counsel for the parties, may consider and respond to the jury's request in writing or on the record.

(f) Discharge of jury, when. The court may discharge the jury:

(1) Because of sickness of a juror, or other necessity found by the court;

(2) by the parties' consent; or

(3) when it satisfactorily appears that there is no probability of the jurors reaching a verdict.

(g) Verdict; number of jurors required; form; correction. When the jury consists of 12 members, the agreement of 10 jurors is sufficient to render a verdict. In all other cases, subject to the stipulation of the parties as provided in subsection (a), the verdict must be by agreement of all the jurors. The verdict must be in writing and signed by the presiding juror. The court or clerk must read the verdict to the jurors and ask whether it is their verdict. The court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of assent by the number of jurors required, the court must either direct the jury to deliberate further or order a new trial. If the required number of jurors agree and no party requires the jurors to be polled individually, the verdict is complete and the court must then discharge the jury. If the verdict is defective in form only, the verdict may be corrected by the court, with the assent of the jury, before the jury is discharged.

(h) Alternate jurors. The court may empanel one or more alternate jurors to replace jurors who, prior to the time the jury retires to consider its verdict, are found to be unable to perform their duties. Alternate jurors

must be selected in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath and have the same functions, powers and privileges as the regular jurors. Each party is entitled to one peremptory challenge to the alternate jurors. The alternate jurors must be seated near the regular jurors, with equal ability to see and hear the proceedings, and they must attend the entire trial. The alternate jurors must obey the orders of and are bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial, the alternate jurors also must be confined with the other jurors. Upon submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the jury reaches its decision. If the alternate jurors are not discharged on submission of the case and if any regular juror is discharged before the jury reaches a decision, the court may draw the name of an alternate juror to replace the discharged juror, subject to the same rules and regulations as though the juror had been selected as one of the original jurors.

Sec. 119. K.S.A. 60-249 is hereby amended to read as follows: 60-249. ~~(a) *Special verdicts.* The judge may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence, or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The judge shall give to the jury such explanation and instruction concerning the matter thus submitted without commenting on the evidence, as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his or her right to a trial by jury of the issue so omitted unless before the jury retires he or she demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accordance with the judgment on the special verdict.~~

~~(b) *General verdict accompanied by answer to interrogatories.* The judge may if requested in writing, submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more substantial questions of disputed facts on which decision is necessary to a verdict. The number and form thereof shall be subject to the control of the judge. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.~~

(a) Special verdict. (1) In general. The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) Submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) Instructions. The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) Issues not submitted. A party waives the right to a jury trial on

any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) General verdict with answers to written questions. (1) In general. The court may on written request, submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) Verdict and answers consistent. When the general verdict and the answers are consistent, the court must approve an appropriate judgment on the verdict and answers.

(3) Answer inconsistent with the verdict. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may:

(A) Approve an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) Answers inconsistent with each other and the verdict. When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

Sec. 120. K.S.A. 60-249a is hereby amended to read as follows: 60-249a. (a) ~~In any action for damages for personal injury, the jury's instructions and the itemized verdict form shall refer only to those items of damage upon which there is evidence introduced at trial.~~

~~(b) In any~~ *Itemizing damages awarded. If the trier of fact finds for the plaintiff in an* action for damages for personal injury, ~~if the jury finds for the plaintiff, the verdict shall be itemized by the trier of fact to reflect~~ *the trier of fact must itemize* the amounts awarded for the following items of damage, subject to the provisions of subsection ~~(a)~~ *(c)*:

(1) Noneconomic injuries and losses, as follows:

(A) Pain and suffering,

(B) disability,

(C) disfigurement, and any accompanying mental anguish;

(2) reasonable expenses of necessary medical care, hospitalization and treatment received; and

(3) economic injuries and losses other than those itemized under subsection (b)(2).

~~(c) Where applicable,~~

(b) Future damages. When applicable, the trier of fact must further itemize the amounts required to be itemized ~~pursuant to subsection (b) shall be further itemized by the trier of fact~~ *under subsection (a)* to reflect those amounts awarded for ~~injuries and losses~~ *damages* sustained to date and those awarded for ~~injuries and losses~~ *damages* reasonably expected to be sustained in the future.

(c) Damages considered by jury. In an action for damages for personal injury, the instructions to the jury and the itemized verdict form must refer only to those items of damage on which evidence has been introduced at trial.

Sec. 121. K.S.A. 60-250 is hereby amended to read as follows: 60-250. ~~(a)~~ *Judgment as a matter of law.* ~~(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.~~

~~(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.~~

~~(3) Decisions on motions for judgment as a matter of law by parties~~

~~joined pursuant to subsection (c) of K.S.A. 60-258a and amendments thereto, shall be reserved by the court until all evidence has been presented by any party alleging the movant's fault.~~

~~(b) *Renewal of motion for judgment after trial; alternative motion for new trial.* Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment or the date the jury was discharged for failing to return a verdict. A motion for a new trial under K.S.A. 60-259 and amendments thereto may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned the court, in disposing of the renewed motion, may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court, in disposing of the renewed motion, may direct the entry of judgment as a matter of law or may order a new trial.~~

(a) Judgment as a matter of law. (1) *In general. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:*

(A) Resolve the issue against the party; and

(B) grant a motion for a judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and the facts that entitle the movant to the judgment.

(3) Comparative fault actions. The court must reserve decision on a motion for judgment as a matter of law by a party joined under subsection (c) of K.S.A. 60-258a, and amendments thereto, until all evidence has been presented by any party alleging the movant's fault.

(b) Renewing the motion after trial; alternative motion for a new trial. If the court does not grant a motion for a judgment as a matter of law made under subsection (a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment, or, if the motion addresses a jury issue not decided by the verdict, no later than 28 days after the jury was discharged, the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under K.S.A. 60-259, and amendments thereto. In ruling on the renewed motion, the court may:

(1) Allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) Granting the renewed motion; conditional ruling on a motion for a new trial. (1) *In general. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.*

(2) Effect of a conditional ruling. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for a losing party's motion for a new trial. Any motion for a new trial under K.S.A. 60-259, and amendments thereto, by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of judgment.

(e) Denying the motion for judgment as a matter of law; reversal on appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may

order a new trial, direct the trial court to determine whether a new trial should be granted or direct the entry of judgment.

Sec. 122. K.S.A. 60-251 is hereby amended to read as follows: 60-251. ~~(a) *When made.* At the close of the evidence or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The judge shall instruct the jury at the close of the evidence before argument and the judge may, in his or her discretion, after the opening statements, instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented. (b) *When waived.* No party may assign as error the giving or failure to give an instruction unless he or she objects thereto before the jury retires to consider its verdict stating distinctly the matter to which he or she objects and the grounds of his or her objection unless the instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.~~

(a) Requests. (1) *Before or at the close of the evidence. At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.*

(2) After the close of the evidence. After the close of the evidence, a party may:

(A) File requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) Instructions. The court:

(1) Must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered;

(3) must instruct the jury at the close of evidence, before argument; and

(4) may instruct the jury at any time before the jury is discharged.

(c) Objections. (1) How to make. A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) When to make. An objection is timely if:

(A) A party objects at the opportunity provided under subsection (b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning error; clearly erroneous. (1) Assigning error. A party may assign as error:

(A) An error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and, unless the court rejected the request in a definitive ruling on the record, also properly objected.

(2) Clearly erroneous instruction. A court may consider an error in the instructions that has not been preserved as required by subsection (d)(1) if the giving or failure to give an instruction is clearly erroneous and the error affects substantial rights.

Sec. 123. K.S.A. 60-252 is hereby amended to read as follows: 60-252. ~~(a) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury or upon entering summary judgment or involuntary dismissal, the judge shall find, and either orally or in writing state, the controlling facts and the judge's conclusions of law thereon. Judgment shall be entered pursuant to K.S.A. 60-258 and amendments thereto. In granting or refusing interlocutory injunctions, except in divorce cases, the judge shall set forth the findings and conclusions of law. Requests for findings are not necessary. Findings of fact shall not be set aside unless clearly~~

~~erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the judge adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.~~

~~(b) *Amendment.* Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to K.S.A. 60-259 and amendments thereto. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.~~

~~(c) *Judgment on partial findings.* If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subsection (a).~~

(a) Findings and conclusions. (1) In general. In an action tried on the facts without a jury or with an advisory jury or upon entering summary judgment, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of evidence, or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under K.S.A. 60-258, and amendments thereto.

(2) For an interlocutory injunction. In granting or refusing an interlocutory injunction, except in divorce cases, the court must similarly state the findings and conclusions that support its action.

(3) Effect of a master's findings. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(4) Questioning the evidentiary support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them or moved for judgment on partial findings.

(5) Setting aside the findings. Findings of fact must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witness' credibility.

(b) Amended or additional findings. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may accompany a motion for a new trial under K.S.A. 60-259, and amendments thereto.

(c) Judgment on partial findings. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by subsection (a).

Sec. 124. K.S.A. 60-252a is hereby amended to read as follows: 60-252a. ~~Whenever any civil action in a district court shall be tried by the court without a jury or with an advisory jury only, and the court is required to render judgment in such action, or when a court is called upon to rule on a motion or objection and such judgment or decision is not entered within ninety (90) days after the trial and final submission of said motion, objection or action, the judge shall be required to file a written report with the supreme court setting forth the reasons why a judgment, ruling or decision has not been entered.~~

When a judgment or decision is not entered within 90 days after the trial and final submission of an action tried by the court without a jury or with an advisory jury, or of a motion or objection, the court must file

a written report with the supreme court stating the reasons why a judgment, ruling or decision has not been entered.

Sec. 125. K.S.A. 60-252b is hereby amended to read as follows: 60-252b. The supreme court is ~~hereby~~ authorized and directed to adopt ~~such~~ rules ~~as are necessary,~~ and to require ~~such~~ reports from the district courts or ~~clerks thereof, to insure~~ *district court clerks to ensure* compliance ~~by such courts~~ with the provisions of K.S.A. 60-252a*, and amendments thereto*.

Sec. 126. K.S.A. 2009 Supp. 60-253 is hereby amended to read as follows: 60-253. ~~(a) *Appointment and compensation.* As used in this chapter the word "master" includes a referee, an auditor, a commissioner and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain such master's report as security for such master's compensation. When the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party. The master must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein, according to the best of the master's understanding. The oath may be administered by any person authorized to take depositions.~~

~~(b) *Reference.* With the consent of the parties, all or any issues of fact or law or both may be referred to a master. Otherwise, the judge may order a reference only on a finding that the ends of justice will be measurably advanced thereby, and, in a case triable to a jury, only on such issues as involve an examination of complex or voluminous accounts.~~

~~(c) *Powers.* The order of reference to the master may specify or limit the master's powers and may direct such master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before such master and to do all acts and take all measures necessary or proper for the efficient performance of such master's duties under the order. The master may require the production before such master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in subsection (c) of K.S.A. 60-243, and amendments thereto, for a court sitting without a jury.~~

~~(d) *Proceedings.* (1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the master's report. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.~~

~~(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in K.S.A. 60-245, and amendments thereto. If without adequate excuse a witness fails to appear or give evidence, he or she may be punished as for a contempt and be subjected to the consequences, penalties, and~~

~~remedies provided in K.S.A. 60-237 and 60-245, and amendments thereto.~~

~~(3) *Statement of accounts.* When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.~~

~~(c) *Report.* (1) *Contents and filing.* The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.~~

~~(2) *In nonjury actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in subsection (c) of K.S.A. 60-206, and amendments thereto. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.~~

~~(3) *In jury actions.* In an action to be tried by a jury the master shall not be directed to report the evidence unless required by the court. If the master is available for cross-examination, the master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.~~

~~(4) *Stipulation as to findings.* The effect of a master's report is the same whether or not the parties have consented to the reference. When the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.~~

~~(5) *Draft report.* Before filing the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.~~

(a) Reference. (1) With the parties' consent, all or any issues of fact or law or both may be referred to a master. Otherwise, the court may order a reference only if it finds that the ends of justice will be measurably advanced, and, in a case triable to a jury, only on issues that involve an examination of complex or voluminous accounts.

(2) As used in this chapter, "master" includes a referee, an auditor, a commissioner and an examiner. A master must not have a relationship to the parties, attorneys, action or court that would require disqualification of a judge under the code of judicial conduct unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(b) Compensation and oath. The court must fix the master's compensation, which must be paid as the court orders by a party or parties or from a fund or subject matter of the action within the court's control. The master may not retain the master's report as security for the master's compensation. When a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time ordered by the court, the master is entitled to a writ of execution against the party. The master must swear or affirm to hear and examine the cause, and to make a just and true report according to the best of the master's understanding. The oath or affirmation may be administered by any person authorized to take depositions.

(c) Powers. The order of reference to the master may specify or limit the master's powers. The order may direct the master to report only on particular issues, to do or perform particular acts or only to receive and report evidence. The order may fix the time and place for beginning and

closing the hearings and for filing the master's report. Subject to the specifications and limitations stated in the order, the master has the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production of evidence on all matters embraced in the reference, including the production of applicable books, papers, vouchers, documents, writings and electronically stored information. The master may rule on the admissibility of evidence unless otherwise directed by the order of reference. The master may put parties and witnesses on oath and may examine them. When a party requests, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as a court sitting without a jury.

(d) Proceedings. (1) Meetings. When a reference is made, the clerk must promptly furnish the master with a copy of the order of reference. Unless the order of reference provides otherwise, the master must promptly set a time and place for the first meeting of the parties or their attorneys, within 21 days after the date of the order of reference, and must notify the parties or their attorneys. The master must proceed with all reasonable diligence. If a party fails to appear at the time and place appointed for a proceeding, the master may proceed ex parte or adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. A party, on notice to the parties and master, may apply to the court for an order requiring the master to complete the proceedings and to make the master's report.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by causing subpoenas to be issued and served as provided in K.S.A. 60-245, and amendments thereto. If, without adequate excuse, a witness fails to appear to give evidence, the witness may be punished for contempt and be subjected to the sanctions provided in K.S.A. 60-237 and 60-245, and amendments thereto.

(3) Statement of accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts must be submitted and may require or receive the testimony and statement of an accountant on the subject. On a party's objection to any of the items submitted or on a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties, on written interrogatories or in another manner as the master directs.

(e) Reports. (1) Contents and filing. The master must prepare a report on the matters submitted to the master by the order of reference, and, if required to make findings of fact and conclusions of law, the master must state them in the report. The master must file the report with the clerk of the court, and, in a nonjury action, unless otherwise directed by the order of reference, must file with it a transcript of the proceedings and the evidence and the original exhibits. The clerk must promptly serve on the parties notice of the filing.

(2) In nonjury actions. In a nonjury action, the court must accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing, a party may serve on the other parties written objections to the report. Application to the court for action on the report and on objections to the report must be by motion and on notice as prescribed in subsection (c) of K.S.A. 60-206, and amendments thereto. The court after hearing may adopt or modify the report, reject the report in whole or in part, receive further evidence or recommit the report with instructions.

(3) In jury actions. In a jury action, the master must not report the evidence unless ordered by the court. If the master is available for cross-examination, the master's findings on the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the court's ruling on objections to the report.

(4) Stipulation as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference. When the parties stipulate that a master's findings of fact are final, only questions of law arising from the report may later be considered.

(5) Draft report. Before filing a report, the master may submit a draft of the report to counsel for all parties to receive their suggestions.

Sec. 127. K.S.A. 60-254 is hereby amended to read as follows: 60-254. (a) *Definition.* A judgment is the final determination of the *parties'* rights ~~of the parties~~ in an action.

~~(b) *Judgment upon multiple claims.* When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim or, when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.~~

~~(c) *Demand for judgment.* A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Before any default judgment is taken in any action in which a pleading contains a demand for money damages in excess of $75,000 as provided in subsection (a) of K.S.A. 60-208 and amendments thereto, the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken. Notice shall be given by certified mail, return receipt requested, or as the court may order, at least 10 days prior to the date judgment is sought. Proof of service shall be filed and submitted to the court. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in such party's pleadings.~~

(b) Judgment on multiple claims or involving multiple parties. When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for judgment; relief to be granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Before a default judgment is taken in an action in which the pleading of the party seeking relief states only that the amount sought as damages is in excess of $75,000, without demanding a specific amount of money, as provided in subsection (a) of K.S.A. 60-208, and amendments thereto, the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken. Notice must be given by return receipt delivery, or as the court orders, at least 14 days before the date judgment is sought. Every other final judgment should grant relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

Sec. 128. K.S.A. 60-255 is hereby amended to read as follows: 60-255. ~~(a) *Entry.* Upon request and proper showing by the party entitled thereto, the judge shall render judgment against a party in default for the remedy to which the party is entitled. But no judgment by default shall be entered against a minor or incapacitated person unless represented in the action by a guardian, conservator or other legally authorized representative who has appeared in the action, or by a guardian *ad litem* appointed by the court. If the party against whom judgment by default is sought has appeared in the action, he or she (or, if appearing by representative, his or her representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may~~

~~conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state.~~

~~(b) *Setting aside default.* For good cause shown the court may set aside a judgment entered by default in accordance with K.S.A. 60-260 (b).~~

~~(c) *Plaintiffs, counterclaimants, cross-claimants.* The provisions of this section apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of K.S.A. 60-254 (c).~~

~~(d) *Judgment against the state.* No judgment by default shall be entered against the state or an officer or agency thereof unless the claimant establishes his or her claim or right to relief by evidence satisfactory to the court.~~

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the party is in default. On request and a showing that a party is entitled to a default judgment, the court must render judgment against the party in default for the remedy to which the requesting party is entitled. But a default judgment may be entered against a minor or incapacitated person only if represented by a guardian, conservator or other legally authorized representative who has appeared in the action, or by a guardian ad litem appointed by the court. If the party against whom a default judgment is sought has appeared personally, or by a representative, that party or its representative must be served with written notice of the request for judgment at least seven days before the hearing. The court may conduct hearings or make referrals, preserving any statutory right to a jury trial, when to enter or effectuate judgment it needs to:

(1) Conduct an accounting;

(2) determine the amount of damages;

(3) establish the truth of any allegation by evidence; or

(4) investigate any other matter.

(b) Setting aside a default judgment. The court may set aside a default judgment under subsection (b) of K.S.A. 60-260 and K.S.A. 60-309, and amendments thereto.

(c) Judgment against the state. A default judgment may be entered against the state, its officers or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Sec. 129. K.S.A. 2009 Supp. 60-256 is hereby amended to read as follows: 60-256. ~~(a) *For claimant.* A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.~~

~~(b) *For defending party.* A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.~~

~~(c) *Motion and proceeding thereon.* The motion shall be served at least 21 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.~~

~~(d) *Case not fully adjudicated on motion.* If on motion under this section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts~~

~~that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the actions as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.~~

~~(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.~~

~~(f) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify such party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.~~

~~(g) *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this section are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.~~

(a) By a claiming party. A party claiming relief may move, with or without supporting affidavits or supporting declarations pursuant to K.S.A. 53-601, and amendments thereto, for summary judgment on all or part of the claim.

(b) By a defending party. A party against whom relief is sought may move, with or without supporting affidavits or supporting declarations pursuant to K.S.A. 53-601, and amendments thereto, for summary judgment on all or part of the claim.

(c) Time for a motion; response and reply; proceedings. (1) These times apply unless a different time is set by local rule or the court orders otherwise:

(A) A party may move for summary judgment at any time until 30 days after the close of all discovery;

(B) a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) Case not fully adjudicated on the motion. (1) Establishing facts. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) Establishing liability. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) Affidavits or declarations; further testimony. (1) In general. A supporting or opposing affidavit or declaration must be made on personal

knowledge, set out facts that would be admissible in evidence and show that the affiant or declarant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit or declaration, a sworn or certified copy must be attached to or served with the affidavit or declaration. The court may permit an affidavit or declaration to be supplemented or opposed by depositions, answers to interrogatories or additional affidavits or declarations.

(2) Opposing party's obligation to respond. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must, by affidavits or by declarations pursuant to K.S.A. 53-601, and amendments thereto, or as otherwise provided in this section, set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) When affidavits or declarations are unavailable. If a party opposing the motion shows by affidavit or by declaration pursuant to K.S.A. 53-601, and amendments thereto, that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) Deny the motion;

(2) order a continuance to enable affidavits or declarations to be obtained, depositions to be taken or other discovery to be undertaken; or

(3) issue any other just order.

(g) Affidavits or declarations submitted in bad faith. If satisfied that an affidavit or declaration under this section is submitted in bad faith or solely for delay, the court must order the submitting party or attorney to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may be held in contempt.

Sec. 130. K.S.A. 60-257 is hereby amended to read as follows: 60-257. ~~The~~ *This article governs the* procedure for obtaining a declaratory judgment ~~pursuant to~~ *under* article 17 of this chapter~~, shall be in accordance with this article, and the right to trial by jury may be demanded under the circumstances and in the manner provided in~~. K.S.A. 60-238 and 60-239*, and amendments thereto, govern a demand for a jury trial*. The existence of another adequate remedy does not preclude a *declaratory* judgment ~~for declaratory relief in cases where it is~~ *that is otherwise* appropriate. The court may order a speedy hearing of ~~an action for~~ a declaratory-judgment ~~and may advance it on the calendar~~ *action*.

Sec. 131. K.S.A. 60-258 is hereby amended to read as follows: 60-258. Entry of judgments ~~shall be~~ *is* subject to ~~the provisions~~ *subsection (b)* of K.S.A. 60-254~~(b)~~*, and amendments thereto*. No judgment ~~shall be~~ *is* effective unless and until a journal entry or judgment form is signed by the ~~trial~~ judge and filed with the clerk ~~of the court~~.

When judgment is entered by judgment form, the clerk ~~shall~~ *must* serve a copy of the judgment form on all attorneys of record within three days*, excluding Saturdays, Sundays and legal holidays*. Service may be made ~~personally or by mail~~ *as authorized by K.S.A. 60-205, and amendments thereto*. Failure of service of a copy of the judgment form ~~shall~~ *does* not affect the *judgment's* validity ~~of the judgment~~.

Sec. 132. K.S.A. 60-258a is hereby amended to read as follows: 60-258a. ~~(a) The contributory negligence of any party in a civil action shall not bar such party or such party's legal representative from recovering damages for negligence resulting in death, personal injury, property damage or economic loss, if such party's negligence was less than the causal negligence of the party or parties against whom claim for recovery is made, but the award of damages to any party in such action shall be diminished in proportion to the amount of negligence attributed to such party. If any such party is claiming damages for a decedent's wrongful death, the negligence of the decedent, if any, shall be imputed to such party.~~

~~(b) Where the comparative negligence of the parties in any such action is an issue, the jury shall return special verdicts, or in the absence of a jury, the court shall make special findings, determining the percentage of negligence attributable to each of the parties, and determining the total amount of damages sustained by each of the claimants, and the entry of~~

~~judgment shall be made by the court. No general verdict shall be returned by the jury.~~

~~(c) On motion of any party against whom a claim is asserted for negligence resulting in death, personal injury, property damage or economic loss, any other person whose causal negligence is claimed to have contributed to such death, personal injury, property damage or economic loss, shall be joined as an additional party to the action.~~

~~(d) Where the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party shall be liable for that portion of the total dollar amount awarded as damages to any claimant in the proportion that the amount of such party's causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed.~~

~~(e) The provisions of this section shall be applicable to actions pursuant to this chapter and to actions commenced pursuant to the code of civil procedure for limited actions.~~

(a) Effect of contributory negligence. The contributory negligence of a party in a civil action does not bar that party or its legal representative from recovering damages for negligence resulting in death, personal injury, property damage or economic loss, if that party's negligence was less than the causal negligence of the party or parties against whom a claim is made, but the award of damages to that party must be reduced in proportion to the amount of negligence attributed to that party. If a party claims damages for a decedent's wrongful death, the negligence of the decedent, if any, must be imputed to that party.

(b) Special verdicts or findings required. When the comparative negligence of the parties is an issue, the jury must return special verdicts, or in the absence of a jury, the court must make special findings, determining the percentage of negligence attributable to each party and the total amount of damages sustained by each claimant. The court must determine the appropriate judgment.

(c) Joining additional parties. On motion of any party against whom a claim is asserted for negligence resulting in death, personal injury, property damage or economic loss, any other person whose causal negligence is claimed to have contributed to the death, personal injury, property damage or economic loss, must be joined as an additional party.

(d) Apportioning liability. When the comparative negligence of the parties is an issue and recovery is permitted against more than one party, each party is liable for that portion of the total dollar amount awarded as damages to a claimant in the proportion that the amount of that party's causal negligence bears to the amount of the causal negligence attributed to all parties against whom recovery is permitted.

(e) Applicability. This section is applicable to actions under this chapter and to actions commenced under the code of civil procedure for limited actions.

Sec. 133. K.S.A. 60-259 is hereby amended to read as follows: 60-259. ~~(a)~~ *Grounds.* ~~A new trial may be granted to all or any of the parties and on all or part of the issues when it appears that the rights of the party are substantially affected:~~

~~*First.* Because of abuse of discretion of the court, misconduct of the jury or party, or accident or surprise which ordinary prudence could not have guarded against, or for any other cause whereby the party was not afforded a reasonable opportunity to present his evidence and be heard on the merits of the case.~~

~~*Second.* Erroneous rulings or instructions of the court.~~

~~*Third.* That the verdict, report or decision was given under the influence of passion or prejudice.~~

~~*Fourth.* That the verdict, report or decision is in whole or in part contrary to the evidence.~~

~~*Fifth.* For newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.~~

~~*Sixth.* That the verdict, report or decision was procured by the corruption of the party obtaining it. In this case the new trial shall be granted as a matter of right, and all the costs made in the case up to the time of granting the new trial shall be charged to the party obtaining the decision, report or verdict.~~

~~—On motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, and direct the entry of a new judgment.~~

~~—(b) *Time for motion.* A motion for a new trial shall be served not later than 10 days after the entry of judgment. After a motion has been thus timely served, the court in its discretion may (1) upon application and notice while the motion is pending, permit the moving party to amend the motion to state different or additional grounds; (2) grant the pending motion upon grounds not stated by the moving party and in that case the court shall specify the grounds in its order.~~

~~—(c) *Definite statement of grounds.* The motion shall not follow the general language of the statute in stating the grounds for a new trial, but shall state specifically the alleged error or other grounds relied on.~~

~~—(d) *Time for serving affidavits.* When a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.~~

~~—(e) *On initiative of court.* Not later than ten (10) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.~~

~~—(f) *Motion to alter or amend a judgment.* A motion to alter or amend the judgment shall be served and filed not later than ten (10) days after entry of the judgment.~~

~~—(g) *Production of evidence.* In all cases where the ground of the motion is error in the exclusion of evidence, want of fair opportunity to produce evidence, or newly discovered evidence, such evidence shall be produced at the hearing of the motion by affidavit, or when authorized by the judge by deposition or oral testimony of the witnesses, and the opposing party may rebut the same in like manner.~~

(a) In general. (1) Grounds for a new trial. The court may, on motion, grant a new trial to all or any of the parties and on all or part of the issues for the following reasons:

(A) Abuse of discretion by the court, misconduct by the jury or an opposing party, accident or surprise that ordinary prudence could not have guarded against, or because the party was not afforded a reasonable opportunity to present its evidence and be heard on the merits of the case;

(B) erroneous rulings or instructions by the court;

(C) the verdict, report or decision was given under the influence of passion or prejudice;

(D) the verdict, report or decision is in whole or in part contrary to the evidence;

(E) newly discovered evidence that is material for the moving party which it could not, with reasonable diligence, have discovered and produced at the trial; or

(F) the verdict, report or decision was procured by corruption of the party obtaining it, and in this case, the new trial must be granted as a matter of right, and all costs incurred up to the time of granting the new trial must be charged to the party obtaining the verdict, report or decision.

(2) Further action after a nonjury trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones and direct the entry of a new judgment.

(b) Time to file a motion for a new trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment. While a timely-filed motion is pending, the court may on motion and notice to the parties, permit the moving party to amend the motion for a new trial to state different or additional reasons.

(c) Definite statement of reasons. The motion should not follow the general language of subsection (a) in stating reasons for a new trial, but rather must state specifically the alleged error or other reasons relied on.

(d) Time to serve affidavits or declarations. When a motion for a new trial is based on affidavits or on declarations pursuant to K.S.A. 53-601, and amendments thereto, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits or declarations. The court may permit reply affidavits or declarations.

(e) New trial on the court's initiative or for reasons not in the motion. No later than 28 days after the entry of judgment, the court, on it own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(f) Motion to alter or amend a judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment.

(g) Production of evidence. In a case in which a reason for the motion is error in the exclusion of evidence, lack of reasonable opportunity to present evidence or newly discovered evidence, the evidence must be presented at the hearing by affidavit or by declaration pursuant to K.S.A. 53-601, and amendments thereto, or, when authorized by the court, by deposition or oral testimony and the opposing party may respond in like manner.

Sec. 134. K.S.A. 60-260 is hereby amended to read as follows: 60-260. ~~(a) *Clerical mistakes.* Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the record on appeal is filed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.~~

~~(b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* On motion and upon such terms as are just, the court may relieve a party or said party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under K.S.A. 60-259 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subsection (b) does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in K.S.A. 60-309 or to set aside a judgment for fraud upon the court. Writs of *coram nobis, coram vobis, audita querela,* and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this article or by an independent action.~~

(a) Corrections based on clerical mistakes; oversight and omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order or other part of the record. The court may do so on motion, or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for relief from a final judgment, order or proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under subsection (b) of K.S.A. 60-259, and amendments thereto;

(3) fraud, whether previously called intrinsic or extrinsic, misrepresentation or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and effect of the motion. (1) Timing. A motion under subsection (b) must be made within a reasonable time, and for reasons under paragraphs (b)(1), (2) and (3) no more than one year after the entry of the judgment or order, or the date of the proceeding.

(2) Effect on finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other powers to grant relief. This section does not limit a court's power to:

(1) Entertain an independent action to relieve a party from a judgment, order or proceeding;

(2) grant relief under K.S.A. 60-309, and amendments thereto, to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and writs abolished. The following bills are abolished: Bills of review; bills in the nature of bills of review; and writs of coram nobis, coram vobis and audita querela.

Sec. 135. K.S.A. 60-261 is hereby amended to read as follows: 60-261. ~~No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.~~

Unless justice requires otherwise, no error in admitting or excluding evidence, or any other error by the court or a party, is ground for granting a new trial, for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Sec. 136. K.S.A. 60-262 is hereby amended to read as follows: 60-262. ~~(a) *Automatic stay; exceptions — injunctions and receiverships.* Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (c) govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.~~

~~(b) *Stay on motion for new trial or for judgment.* In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to K.S.A. 60-259, and amendments thereto, or of a motion for relief from a judgment or order made pursuant to K.S.A. 60-260, and amendments thereto, or of a motion for judgment as a matter of law made pursuant to K.S.A. 60-250, and amendments thereto, or of a motion for amendment to the findings or for additional findings made pursuant to subsection (b) of K.S.A. 60-252.~~

~~(c) *Injunction pending appeal.* When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the judge in such judge's discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.~~

~~(d) *Stay upon appeal.* When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subsection (a). The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.~~

~~(e) *Stay in favor of the state or agency thereof.* When an appeal is taken by the state or an officer or agency thereof or by direction of any department of the state and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.~~

~~(f) *Power of appellate court not limited.* The provisions in this section do not limit any power of the appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the *status quo* or the effectiveness of the judgment subsequently to be entered.~~

~~(g) *Stay of judgment upon multiple claims.* When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in subsection (b) of K.S.A. 60-254, and amendments thereto, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.~~

(a) Automatic stay; exceptions for injunctions and receiverships. Except as stated in this section, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. Unless the court orders otherwise, an interlocutory or final judgment in the following actions are not stayed after being entered, even if an appeal is taken:

(1) For an injunction; or

(2) for a receivership.

(b) Stay pending the disposition of a motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment, or any proceedings to enforce it, pending disposition of any of the following motions:

(1) Under K.S.A. 60-250, and amendments thereto, for judgment as a matter of law;

(2) under subsection (b) of K.S.A. 60-252, and amendments thereto, to amend the findings or for additional findings;

(3) under K.S.A. 60-259, and amendments thereto, for a new trial or to alter or amend a judgment; or

(4) under K.S.A. 60-260, and amendments thereto, for relief from a judgment or order.

(c) Injunction pending appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves or denies an injunction, the court may suspend, modify, restore or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) Stay with bond on appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond except in an action described in subsection (a)(1) or (a)(2). The bond may be given upon or after filing the notice of appeal. The stay takes effect when the court approves the bond.

(e) Stay without bond on an appeal by the state, its officers or its agencies. The court must not require a bond, obligation or other security from the appellant when granting a stay on an appeal by the state, its officers or its agencies or on an appeal directed by a department of the state.

(f) Appellate court's power not limited. This section does not limit the power of the appellate court or one of its judges or justices:

(1) To stay proceedings, or to suspend, modify, restore or grant an injunction, while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(g) Stay with multiple claims or parties. A court may stay the enforcement of a final judgment entered under subsection (b) of K.S.A. 60-254, and amendments thereto, until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Sec. 137. K.S.A. 60-263 is hereby amended to read as follows: 60-263. If ~~by reason of death, sickness or other disability,~~ a judge before whom an action has been tried is unable, *because of sickness, death or other disability,* to perform the *court's* duties ~~to be performed by the court under this article~~ after a verdict is returned or findings of fact and

conclusions of law are filed, ~~then~~ any other judge sitting in or assigned to the court in which the action was tried may perform those duties~~, but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, the judge may in his or her discretion grant a new trial~~. *However, the successor judge may grant a new trial if the judge finds for any reason that the judge cannot perform those duties.*

Sec. 138. K.S.A. 60-264 is hereby amended to read as follows: 60-264. ~~When an order is made in favor of a person who is not a party to the action, he or she may enforce obedience to the order by the same process as if he or she were a party, and, when obedience to an order may be lawfully enforced against a person who is not a party, he or she is liable to the same process for enforcing obedience to the order as if he or she were a party.~~ *When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.*

Sec. 139. K.S.A. 60-265 is hereby amended to read as follows: 60-265. ~~The provisions of this article shall apply only to actions and proceedings in the district courts, other than actions commenced pursuant to the code of civil procedure for limited actions and shall apply to original actions in the supreme court except:~~

~~(1) When made applicable in any other courts, boards, commissions, or other judicial or quasi-judicial bodies by specific statutory provisions referring to this article.~~

~~(2) When any other such court or judicial or quasi-judicial body adopts by an order, which order is consistent with all statutes controlling its procedures, all or a part of this article for its own proceedings, either in a particular matter before it or in any matters generally, or~~

~~(3) When any statute pertaining to any such court or other judicial or quasi-judicial body, which statute was enacted prior to the adoption of this article and which incorporated by reference procedures under the then existing code of civil procedure, then the most nearly comparable provisions of this article shall be applicable to the procedures in such court or body until modified or supplemented by specific statutes or orders in accordance with clauses (1) or (2) of this section.~~

~~In any matter over which the court has jurisdiction but with reference to which no specific provision is included in this article, the court shall proceed in such manner as shall be just and equitable to protect the rights and interests of all parties affected thereby.~~

(a) Generally. The provisions of this article apply to civil actions and proceedings in the district courts, other than actions commenced pursuant to the code of civil procedure for limited actions.

(b) Additional circumstances when this article may be applicable. In actions and proceedings in the district courts, other than civil actions, the codes of procedure adopted for those proceedings must govern. When the codes of procedure adopted for proceedings in the district court other than civil actions, or the codes of procedure for any other court, commission or other judicial or quasi-judicial body, fail to contain a specific provision on a particular procedure, then the provisions of this article may be adopted.

(c) Matters not specifically included in this article. When no provision in this article refers specifically to a matter over which the court has jurisdiction, the court must proceed in a just and equitable manner that protects the rights and interests of all affected parties.

Sec. 140. K.S.A. 60-266 is hereby amended to read as follows: 60-266. This article ~~shall~~ *does* not ~~be construed to~~ extend or limit the jurisdiction of the district courts or the venue of actions ~~therein~~ *in those courts*.

Sec. 141. K.S.A. 60-267 is hereby amended to read as follows: 60-267. ~~Each district court by action of a majority of the judges of the district court may from time to time make and amend rules governing its practice not inconsistent with this article. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the supreme court. In all cases not provided for by this article, the district courts may regulate their practice in any manner not inconsistent with this article and other rules prescribed by the supreme court.~~

(a) Local rules. A district court, acting by a majority of the judges of the district court, may adopt and amend rules governing its practice. A

local rule must be consistent with this article. Copies of rules and amendments must, on their adoption, be furnished to the supreme court.

(b) Procedure when there is no controlling law. In all cases not provided for by this article, the district courts may regulate practice in any manner consistent with this article and rules prescribed by the supreme court.

Sec. 142. K.S.A. 60-268 is hereby amended to read as follows: 60-268. Forms provided by the judicial council ~~are deemed sufficient and are intended to be simple, concise and direct as contemplated by the rules of civil procedure~~ *suffice under this article and illustrate the simplicity and brevity that this article contemplates*.

Sec. 143. K.S.A. 60-270 is hereby amended to read as follows: 60-270. (a) ~~Any~~ *A* party or attorney ~~in possession of~~ *possessing* original deposition transcripts, original responses to interrogatories, original requests for admissions, original requests for production or other original matters produced during discovery ~~shall retain such~~ *must retain those* documents until the case is closed.

(b) Except as provided ~~further~~ *in subsection (c)*, when the case has been closed the party or attorney ~~in possession of~~ *possessing* the original documents *specified in subsection (a)* may destroy or dispose of ~~such documents~~ *them*.

(c) Original discovery documents subject to or covered by a protective order, court rule, statute or written agreement of the parties ~~shall~~ *must* be retained, returned, destroyed or disposed of in accordance with the terms of the order, rule, statute or ~~written~~ agreement.

(d) As used in this section, "closed" means when an order terminating the action or proceeding has been filed and all appeals have been terminated, the time for appeal has expired or when the judgment is either satisfied or barred under ~~the provisions of~~ K.S.A. 60-2403, and amendments thereto.

Sec. 144. K.S.A. 60-271 is hereby amended to read as follows: 60-271. ~~(a) Pursuant to supreme court rule, the clerks of the district and the appellate courts in the state of Kansas shall accept by telefacsimile communication, petitions, pleadings and other papers as specified in K.S.A. 60-205, and amendments thereto.~~

~~(b) The signature on the telefacsimile communication shall be accepted as satisfying the requirements of K.S.A. 60-211, and amendments thereto.~~

~~(c) As used in this section, telefacsimile communication means the use of electronic equipment to send or transmit a copy of a document via telephone line.~~

(a) Generally. (1) To the extent provided by supreme court rule, the clerks of the district and appellate courts must accept documents for filing by electronic means.

(2) As used in this section, "document" means a pleading, motion, exhibit, declaration, affidavit, memorandum, paper, order, notice and any other filing by or to the court.

(b) Signatures and verifications. A document may be signed or verified by electronic means that are consistent with supreme court rules. The signature or verification by electronic means satisfies the requirement for signing or verifying a document in K.S.A. 60-211, and amendments thereto, and in any other section of this code.

Sec. 145. K.S.A. 60-301 is hereby amended to read as follows: 60-301. ~~Upon the filing of the petition the clerk shall forthwith issue a summons for service upon each defendant in accordance with K.S.A. 60-303, and amendments thereto. Upon the written request of the plaintiff separate or additional summonses shall issue for any defendant.~~

On the filing of a petition, the clerk must promptly issue a summons for service on each defendant in accordance with K.S.A. 60-303, and amendments thereto. On written request the clerk must promptly issue a separate or additional summons. A summons must be served with a copy of the petition.

Sec. 146. K.S.A. 60-302 is hereby amended to read as follows: 60-302. The summons ~~shall~~ *must* be signed by the clerk, dated the day it is issued~~, be under the seal of the court and shall be deemed~~ *and bear the court's seal. The summons is* sufficient if in substantial compliance with the form set forth by the judicial council.

Sec. 147. K.S.A. 2009 Supp. 60-303 is hereby amended to read as follows: 60-303. (a) *In general.* Methods of service of process within this state, except service by publication as provided in K.S.A. 60-307, and amendments thereto, are described in this section. Methods of out-of-state service of process are described in K.S.A. 60-308, and amendments thereto.

(b) *Who serves process.* The sheriff of the county in which the action is filed ~~shall~~ *must* serve any process by any method authorized by this section, or as otherwise provided by law, unless a party, either personally or through an attorney, *notifies the clerk that the party* elects to undertake responsibility for service ~~and so notifies the clerk~~.

(c) *Service by return receipt delivery.* (1) Service of process *may be made* by return receipt delivery ~~shall include service~~, *which is* effected by certified mail, priority mail, commercial courier service, overnight delivery service~~,~~ or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, *the* date of delivery, *the* address where delivered~~,~~ and *the* person or entity effecting delivery.

(2) The sheriff, party~~,~~ or party's attorney ~~shall cause~~ *must give to the person or entity effecting delivery* a copy of the process and petition or other document ~~to be placed~~ in a sealed envelope*, with postage or other delivery fees prepaid,* addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto~~, with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery~~.

(3) Service of process ~~shall be considered~~ *is* obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the sealed envelope.

(4) After service and return of the return receipt, the sheriff, party or party's attorney ~~shall execute a return on service stating~~ *must execute and file a return of service. The return of service must state* the nature of the process, to whom delivered, the date of delivery, the address where delivered and the person or entity effecting delivery. ~~The original return of service shall be filed with the clerk, along with~~ *It must include* a copy of the return receipt evidencing ~~such~~ delivery.

(5) If the sealed envelope is returned with an endorsement showing refusal to accept delivery, the sheriff, party or the party's attorney may send a copy of the process and petition or other document by first-class mail*, postage prepaid,* addressed to the party to be served, or may elect other methods of service. If mailed, service ~~shall be considered~~ *is considered to be* obtained three days after the mailing ~~by first-class mail, postage prepaid, which shall~~. *Mailing must* be evidenced by a certificate ~~of service~~ filed with the clerk. If the unopened envelope sent *by* first-class mail is returned as undelivered for any reason, *service is not obtained and* the sheriff, party or party's attorney ~~shall~~ *must* file an amended certificate ~~of service~~ with the clerk indicating nondelivery~~, and service by such mailing shall not be considered obtained~~. Mere failure to claim *the sealed envelope sent by* return receipt delivery is not refusal of service within the meaning of this subsection.

~~(d) *Personal and residence service.* (1) The party may file a written request with the clerk for personal or residence service. Personal service shall be made by delivering or offering to deliver a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein. If service cannot be made upon an individual, other than a minor or a disabled person, by personal or residence service, service may be made by leaving a copy of the process and petition, or other document to be served, at the defendant's dwelling house or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail.~~

~~(2) When process is to be served under this subsection, the clerk of the court shall deliver the process and sufficient copies of the process and petition, or other document to be served, to the sheriff of the county where the process is to be served or, if requested, to a person appointed to serve process or to the plaintiff's attorney.~~

~~(3) Service, levy and execution of all process under this subsection,~~

~~including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas, by a person licensed as a private detective pursuant to K.S.A. 75-7b01 et seq., and amendments thereto, or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. A process server, authorized attorney or licensed private detective may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and such other fees and costs as the court shall allow. All persons authorized under this subsection to serve, levy and execute process shall be considered an "officer" as used in K.S.A. 60-706 and 60-2401, and amendments thereto.~~

~~(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and the refusal, shall be a sufficient service of the process.~~

~~(e) *Acknowledgment or appearance.* An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance.~~

(d) Personal and residence service. (1) A party may file with the clerk a written request for personal service or, in the case of service on an individual, for residence service.

(A) Personal service is effected by delivering or offering to deliver a copy of the process and petition or other document to the person to be served.

(B) Residence service on an individual is effected by leaving a copy of the process and petition or other document at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

(C) If personal or residence service cannot be made on an individual, other than a minor or a disabled person, service is effected by leaving a copy of the process and petition or other document at the individual's dwelling or usual place of abode and mailing to the individual by first-class mail, postage prepaid, a notice that the copy has been left at the individual's dwelling or usual place of abode.

(2) When process is to be served under this subsection, the clerk must deliver sufficient copies of the process and petition or other document to the sheriff or the county where the process is to be served or, if requested, to a person appointed to serve process or to the requesting party's attorney.

(3) Service, levy and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, must be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law in Kansas, by a person licensed as a private detective pursuant to K.S.A. 75-7b01 et seq., and amendments thereto, or by a person appointed as a process server by a judge or clerk of the district court. A subpoena may also be served by any other person who is not a party and is at least 18 years of age. Process servers should be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. An appointed process server, an authorized attorney or a licensed private detective may make the service anywhere in or outside this state and must be allowed the fees prescribed for the sheriff in K.S.A. 28-110, and amendments thereto. The court may allow other fees and costs. A person authorized under this subsection to serve, levy or execute process is considered an "officer" as that term is used in K.S.A. 60-706 and 60-2401, and amendments thereto.

(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive the process, the offer of the duly authorized process server to deliver the process, and the refusal, is sufficient service of process.

(e) Acknowledgment or appearance. An acknowledgment of service

on the summons is equivalent to service. The voluntary appearance by a party is equivalent to service on the date of appearance.

(f) Other service methods for garnishments. In addition to other methods listed in this section, a person serving a garnishment process may serve the process by any of the following methods:

(1) First-class mail. Process may be sent to a person by first-class mail by placing a copy of the process and petition or other document to be served in an envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, at the person's last known address. The envelope used for service must be addressed to the person in accordance with K.S.A. 60-304, and amendments thereto, and must contain adequate postage. The envelope must be sealed and placed in the United States mail. Service by first-class mail is complete when the envelope is placed in the mail unless it is returned undelivered.

(2) Telefacsimile communication. Process may be sent to a garnishee by telefacsimile communication at a telefacsimile number designated by the garnishee. Service is complete upon receipt of a confirmation generated by the transmitting machine.

(3) Internet electronic mail. Process may be sent to a garnishee by internet electronic mail at an internet electronic mail address designated by the garnishee and as provided by supreme court rules. Service is complete upon receipt of an electronic confirmation of delivery.

Sec. 148. K.S.A. 60-304 is hereby amended to read as follows: 60-304. As used in this section, "serving" means making service by any of the methods described in K.S.A. 60-303, and amendments thereto, unless a specific method of making service is prescribed in this section. Except for service by publication under K.S.A. 60-307, and amendments thereto, service of process under this article ~~shall~~ *must* be made as follows:

(a) *Individual.* ~~Upon~~ *On* an individual other than a minor or a disabled person, by serving the individual or by serving an agent authorized by appointment or by law to receive service of process~~, but if~~. *If* the agent is one designated by statute to receive service, such further notice as the statute requires ~~shall~~ *must* be given. Service by return receipt delivery ~~shall~~ *must* be addressed to an individual at the individual's dwelling ~~house~~ or usual place of abode and to an authorized agent at the agent's usual or designated address. If ~~service by return receipt delivery to the individual's dwelling house or usual place of abode is refused or unclaimed,~~ the sheriff, party or party's attorney ~~seeking service may complete service by certified mail, restricted delivery, by serving the individual at a business address after filing a return on~~ *files a return of* service stating *that* the return receipt delivery to the individual at ~~such~~ *the* individual's dwelling ~~house~~ or usual place of abode ~~has been~~ *was* refused or unclaimed and *that* a business address is known for ~~such~~ *the* individual*, the sheriff, party or party's attorney may complete service by return receipt delivery, addressed to the individual at the individual's business address*.

~~(b) *Minor.* Upon a minor, by serving the minor and also either the minor's guardian or conservator if the minor has one within the state or the minor's father or mother or other person having the minor's care or control or with whom such minor resides, or if service cannot be made upon any of them, then as provided by order of the judge. Service by return receipt delivery shall be addressed to an individual at the individual's dwelling house or usual place of abode and to a corporate guardian or conservator at such guardian or conservator's usual place of business.~~

~~(c) *Disabled person.* Upon a disabled person, as defined in K.S.A. 77-201, and amendments thereto, by serving (1) such person's guardian, conservator or a competent adult member of such person's family with whom the person resides, or if such person is living in an institution, then the director or chief executive officer of the institution or, if service cannot be made upon any of them, then as provided by order of the judge, and (2) unless the judge otherwise orders, the disabled person. Service by return receipt delivery shall be addressed to a director or chief executive officer of an institution at the institution, to any other individual at the individual's dwelling house or usual place of abode, and to a corporate guardian or conservator at such guardian or conservator's usual place of business.~~

~~(d) *Governmental bodies.* (1) Upon a county, by serving one of the county commissioners or the county clerk or the county treasurer; (2)~~

upon a township, by serving the clerk or the trustee; (3) upon a city, by serving the clerk or the mayor; (4) upon any other public corporation, body politic, district or authority by serving the clerk or secretary or, if not to be found, to any officer, director or manager thereof; and (5) upon the state or any governmental agency of the state, when subject to suit, by serving the attorney general or an assistant attorney general. Service by return receipt delivery shall be addressed to the appropriate official at the official's governmental office. Income withholding orders for support and orders of garnishment of earnings of state officers and employees shall be served upon the state or governmental agency of the state in the manner provided by K.S.A. 60-723 and amendments thereto.

(e) *Corporations, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership, and partnerships.* Upon a domestic or foreign corporation, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership or upon a partnership or other unincorporated association, when by law it may be sued as such, (1) by serving an officer, manager, partner or a resident, managing or general agent, or (2) by leaving a copy of the summons and petition at any business office of the defendant with the person having charge thereof, or (3) by serving any agent authorized by appointment or required by law to receive service of process, and if the agent is one authorized by law to receive service and the law so requires, by also mailing a copy to the defendant. Service by return receipt delivery on an officer, partner or agent shall be addressed to such person at the person's usual place of business.

(f) *Corporation, limited liability company, limited partnership or limited liability partnership resident agent.* Whenever any domestic corporation, domestic limited liability company, domestic limited partnership, or any foreign corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or transacting business without authority in this state, fails to appoint or maintain in this state a resident agent upon whom service of legal process or service of any such notice or demand may be had, whenever the resident agent of such corporation, limited liability company or limited partnership cannot with reasonable diligence be found at the registered office in this state, the secretary of state shall be irrevocably authorized as the agent and representative of the corporation, limited liability company or limited partnership to accept service of any process or service of any notice or demand required or permitted by law to be served upon the corporation, limited liability company or limited partnership. Service on the secretary of state of any process, notice or demand against the corporation, limited liability company or limited partnership shall be made by delivering to the secretary of state by personal service or by return receipt delivery, the original and two copies of the process and two copies of the petition, notice or demand, or the clerk of the court may send the original process and two copies of both the process and the petition, notice or demand directly to the secretary of state by return receipt delivery. In the event that any process, notice or demand is served on the secretary of state, the secretary shall immediately cause a copy of such process, notice or demand to be forwarded by return receipt delivery, addressed to the corporation, limited liability company or limited partnership at its principal office as it appears in the records of the secretary of state, or to the registered or principal office of the corporation, limited liability company or limited partnership in the state of its incorporation or formation. The secretary of state shall keep a record of all processes, notices and demands served upon the secretary under this subsection, and shall record in the record the time of the service and the action of the secretary with reference to it. A fee of $40 shall be paid to the secretary of state by the party requesting the service of process, to cover the cost of such service of process, except the secretary of state may waive the fee for state agencies. That fee shall not be included within or paid from any deposit as security for any costs or docket fee required by K.S.A. 60-2001 or 61-4001, and amendments thereto.

(g) *Insurance companies or associations.* Service of summons or other process may also be made on any insurance company or association, organized under the laws of the state of Kansas by service on the commissioner of insurance in the same manner as that provided for service on

~~foreign insurance companies. All the requirements of law relating to service on foreign insurance companies so far as applicable shall also apply to domestic insurance companies.~~

~~(h) *Service upon an employee.* If the plaintiff or the plaintiff's agent or attorney files an affidavit that to the best of the affiant's knowledge and belief the defendant is a nonresident who is employed in this state, or that the place of residence of the defendant is unknown, the affiant may direct that the service of summons or other process be made by the sheriff or other duly authorized person by directing an officer, partner, managing or general agent, or the person having charge of the office or place of employment at which the defendant is employed, to make the defendant available for the purpose of permitting the sheriff or other duly authorized person to serve the summons or other process.~~

(b) Minor. On a minor, by serving:

(1) The minor; and

(2) either:

(A) The minor's guardian or conservator, if the minor has one within this state;

(B) the minor's father, mother or other person having the minor's care or control or with whom the minor resides; or

(C) if service cannot be made as specified in paragraphs (A) or (B), as provided by order of the court.

Service by return receipt delivery must be addressed to an individual at the individual's dwelling or usual place of abode and to a corporate guardian or conservator at the guardian's or conservator's usual place of business.

(c) Disabled person. On a disabled person, as defined in K.S.A. 77-201, and amendments thereto, by:

(1) Serving:

(A) The person's guardian, conservator or a competent adult member of the person's family with whom the person resides;

(B) if the person resides in an institution, the director or chief executive officer of the institution; or

(C) if service cannot be made as specified in paragraphs (A) or (B), as provided by order of the court; and

(2) unless the court otherwise orders, serving the disabled person.

Service by return receipt delivery must be addressed to the director or chief executive officer of an institution at the institution, to any other individual at the individual's dwelling or usual place of abode, and to a corporate guardian or conservator at the guardian's or conservator's usual place of business.

(d) Governmental bodies. On:

(1) A county, by serving one of the county commissioners, the county clerk or the county treasurer;

(2) a township, by serving the clerk or a trustee;

(3) a city, by serving the clerk or the mayor;

(4) any other public corporation, body politic, district or authority, by serving the clerk or secretary or, if the clerk or secretary is not found, any officer, director or manager thereof; and

(5) the state or any governmental agency of the state, when subject to suit, by serving the attorney general or an assistant attorney general.

Service by return receipt delivery must be addressed to the appropriate official at the official's governmental office. Income withholding orders for support and orders of garnishment of earnings of state officers and employees must be served on the state or governmental agency of the state in the manner provided by K.S.A. 60-723, and amendments thereto.

(e) Corporations, domestic or foreign limited liability companies, domestic or foreign limited partnerships, domestic or foreign limited liability partnerships and partnerships. On a domestic or foreign corporation, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership or a partnership or other unincorporated association that is subject to suit in a common name, by:

(1) Serving an officer, manager, partner or a resident, managing or general agent;

(2) leaving a copy of the summons and petition or other document at any of its business offices with the person having charge thereof; or

(3) serving any agent authorized by appointment or by law to receive

service of process, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Service by return receipt delivery on an officer, partner or agent must be addressed to the person at the person's usual place of business.

(f) Resident agent for a corporation, limited liability company, limited partnership or limited liability partnership. A domestic corporation, domestic limited liability company or domestic limited partnership, and, if it is authorized to transact business or transacts business without authority in this state, a foreign corporation, foreign limited liability company or foreign limited partnership irrevocably authorizes the secretary of state as its agent to accept on its behalf service of process, or any notice or demand required or permitted by law to be served on it, when: (1) It fails to appoint or maintain in this state a resident agent on whom service may be had; or (2) its resident agent cannot with reasonable diligence be found at the registered office in this state. Service on the secretary of state of any process, notice or demand must be made by delivering to the secretary of state, by personal service or by return receipt delivery, the original and two copies of the process and two copies of the petition, notice or demand. When any process, notice or demand is served on the secretary of state, the secretary must promptly forward a copy of it by return receipt delivery, addressed to the corporation, limited liability company or limited partnership at its principal office as it appears in the records of the secretary of state, or at the registered or principal office of the corporation, limited liability company or limited partnership in the state of its incorporation or formation. The secretary of state must keep a record of all processes, notices and demands served on the secretary under this subsection, and must record the time of the service and the action taken by the secretary. A fee of $40 must be paid to the secretary of state by the party requesting the service of process, to cover the cost of serving process, except the secretary of state may waive the fee for state agencies. The fee must not be included in or paid from any deposit as security for costs or the docket fee required by K.S.A. 60-2001 or 61-4001, and amendments thereto.

(g) Insurance companies or associations. Service of summons or other process on any insurance company or association, organized under the laws of this state, may also be made by serving the commissioner of insurance in the same manner as provided for service on foreign insurance companies or associations.

(h) Service on an employee. If a party or a party's agent or attorney files an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, that to the best of the affiant's or declarant's knowledge and belief the person to be served is employed in this state, and is a nonresident or that the place of residence of the person is unknown, the affiant or declarant may request that the sheriff or other duly authorized person direct an officer, partner, managing or general agent or the individual having charge of the place at which the person to be served is employed, to make the person available to permit the sheriff or other duly authorized person to serve the summons or other process.

Sec. 149. K.S.A. 60-305 is hereby amended to read as follows: 60-305. Every individual, partnership, association or corporation engaged in the business of transmission of communications, or the distribution of electricity, gas, water or petroleum products, which is subject to regulation by the state corporation commission, *and* doing business in this state, ~~shall designate~~ *must appoint*, in accordance with K.S.A. 60-306, and amendments thereto, a resident of ~~the state of Kansas upon~~ *this state on* whom process may be served. ~~Any company~~ *The individual, partnership, association* or corporation may revoke the appointment ~~and designation of such person upon whom process may be served,~~ by appointing any other *qualified* person ~~qualified as above specified and filing an instrument of appointment as provided~~ in *accordance with* K.S.A. 60-306, and amendments thereto. ~~Every~~ *A* second or subsequent appointment ~~shall also designate the person whose place is filled by such appointment~~ *must also state the name of the person who is being replaced by the appointment*.

~~If any such company or corporation~~ *An individual, partnership, association or corporation that* fails to ~~designate and appoint such person,~~ *appoint a person to receive process,* as required by this section, ~~such~~

~~process~~ may be served ~~as provided by~~ *under* the other provisions of this article 3 ~~of chapter 60 of the Kansas Statutes Annotated, and amendments thereto~~.

Sec. 150. K.S.A. 60-305a is hereby amended to read as follows: 60-305a. ~~Every individual, partnership, association or corporation engaged in the business of transportation as a common carrier, which is subject to regulation by the state corporation commission, doing business in this state shall designate some person residing in this state on whom all process and notices issued by any court of record may be served. In every case such individual, partnership, company or corporation shall file a certificate of the appointment and designation of such person in the office of the state corporation commission or as required pursuant to 49 U.S.C. 11506. The service of the process upon the person so designated, in any civil action, shall be deemed and held to be as effectual and complete as if service of such process were made upon the president or other chief officer of such individual, partnership, company or corporation. Any individual, partnership, company or corporation may revoke the appointment and designation of such person upon whom process may be served, by appointing any other person qualified as above specified and filing a certificate of such appointment. Every second or subsequent appointment shall also designate the person whose place is filled by such appointment. If any such individual, partnership, company or corporation fails to designate and appoint such person, as required by this section, such process may be served in any county as provided by provisions of article 3 of chapter 60 of Kansas Statutes Annotated, and amendments thereto.~~

Every individual, partnership, association or corporation engaged in the business of transportation as a common carrier, which is subject to regulation by the state corporation commission, and doing business in this state, must appoint a person residing in this state on whom process may be served. The individual, partnership, association or corporation must file a certificate of the appointment in the office of the state corporation commission or as required by 49 U.S.C. 11506. Service of process on the appointed person has the same effect as service on the president or other chief officer of the individual, partnership, association or corporation. The individual, partnership, association or corporation may revoke the appointment by appointing any other qualified person and filing a certificate of the appointment. A second or subsequent appointment and certificate of appointment must also state the name of the person who is being replaced by the appointment. An individual, partnership, association or corporation that fails to appoint a person to receive process, as required by this section, may be served under the other provisions of this article.

Sec. 151. K.S.A. 60-306 is hereby amended to read as follows: 60-306. ~~(a) *Generally.* Any individual, partnership, association or corporation may file in the office of the secretary of state an instrument appointing a resident of the state of Kansas as agent upon whom process for such person, fiduciary, company or corporation may be served, and consenting without limitation or exception other than as provided in this act that service of process may be issued out of any court upon such service agent as the agent of such individual, partnership, association or corporation. The instrument appointing such service agent shall be acknowledged, shall state the residence or office address of the service agent, and shall be recorded at length upon the register of service agents and shall state that such designation is made pursuant to this section.~~

~~(b) *Change of address.* An appointment shall be amended, in writing, and filed with the secretary of state whenever the name or address of the service agent is no longer accurate.~~

~~(c) *Period of appointment.* The appointment shall remain in effect for a period of three years from the date of its filing unless revoked in writing, executed in the same manner as such appointment, which revocation shall be recorded and indexed in the register of service agents.~~

(a) Generally. An individual, partnership, association or corporation may appoint a resident of this state as service agent and consent that process may be served on the service agent as the agent of the individual, partnership, association or corporation. An instrument appointing the service agent must be acknowledged, must be filed with the office of the secretary of state and must include:

(1) The name and address of the person or entity making the appointment;

(2) the name and residence or office address of the service agent; and

(3) if an entity makes the appointment, the state of its formation.

(b) Change of address. An appointment must be amended, in writing, and filed with the secretary of state whenever the name or address of the service agent changes.

(c) Period of appointment. An appointment remains in effect for a period of three years from the date of its filing unless it is revoked in a writing that is executed in the same manner as the appointment and is filed with the office of the secretary of state.

(d) *Collection of fee.* The fee for filing an appointment, amendment or revocation shall be $20. The secretary of state shall remit all fees received pursuant to this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and ~~copy service~~ *services* fee fund created in K.S.A. 75-438, and amendments thereto.

~~(c) *Effect of service upon agent.* When any person, fiduciary or corporation shall have appointed such a service agent and such appointment remains unexpired and unrevoked, process issued in any action or proceeding against such person, fiduciary or corporation in any court may be served upon such service agent. Service by publication shall be of no force or effect where an appointment of service agent made and filed as herein provided remains in effect, unless process showing upon its face the name and address of such service agent shall have been duly issued to the proper officer of the county of such service agent's residence as shown on the register of service agents and returned by such officer to whom it has been directed, with a notation, that such officer cannot find such service agent in the county. Such notation shall also state the name of the service agent who could not be found.~~

(e) Effect of service on agent. When an individual, partnership, association or corporation has appointed a service agent and the appointment remains unexpired and unrevoked, process issued in any action or proceeding against the individual, partnership, association or corporation in any court may be served on the service agent. Service by publication is of no force or effect when an appointment of service agent made and filed under this section remains in effect unless process showing on its face the name and address of the service agent has been duly issued to the proper officer of the county of the service agent's address and the officer files a return stating that the officer cannot find the service agent in the county.

Sec. 152. K.S.A. 60-307 is hereby amended to read as follows: 60-307. ~~(a) *When permissible.* Service may be made by publication in any of the following cases:~~

~~(1) In actions to obtain a divorce, maintenance or an annulment of the contract of marriage if the defendant resides out of the state or if the party with due diligence is unable to make service of summons upon the defendant within the state.~~

~~(2) In actions brought against a person who is a nonresident of the state or a foreign corporation having in this state property or debts owing to the person sought to be taken by any of provisional remedies or to be appropriated in any way.~~

~~(3) In actions which relate to or the subject of which is real or personal property in this state, if any defendant has or claims a lien or interest, vested or contingent, in the property, or the relief demanded consists wholly or partly in excluding the defendant from any interest in the property, or in actions for partition or for foreclosure of a lien, if the defendant is a nonresident of the state or a foreign corporation or if the party with due diligence is unable to make service of summons upon the defendant within the state.~~

~~(4) In all actions in which the defendant, being a resident of this state, has departed from this state or from the county of the defendant's residence, with the intent to delay or defraud creditors or to avoid the service of a summons, or hides in the state or county with that intent, or in an~~

~~action against a domestic corporation which has not been legally dissolved, if the officers thereof have departed from the state or cannot be found.~~

~~(5) In any of the actions mentioned in this subsection, publication service may be had on any of the following who are made defendants as such: The unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any deceased defendants; the unknown spouses of any defendants, the unknown officers, successors, trustees, creditors and assigns of any defendants that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of any defendants that are or were partners or in partnership; the unknown guardians, conservators and trustees of any defendants that are minors or are under any legal disability; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any person alleged to be deceased.~~

~~(b) *Construction and effect.* The process provisions of this section shall be construed as separate and permissive methods of obtaining service. If the defendant served in accordance with this section does not appear, judgment may be rendered affecting the property, *res* or status within the jurisdiction of the court as to the defendant, but the service shall not warrant a personal judgment against the defendant.~~

~~(c) *Affidavit for service by publication.* Before service by publication as provided in this section can be made, one of the parties or the party's attorney shall file an affidavit stating any of the following facts that are applicable:~~

~~(1) The residences of all named defendants sought to be served, if known, and the names of all defendants whose residences are unknown after reasonable effort to ascertain the same.~~

~~(2) The affiant has made a reasonable but unsuccessful effort to ascertain the names and residences of any defendants sought to be served as unknown parties in accordance with subsection (a)(5).~~

~~(3) The party seeking service by publication is unable to procure service of summons on the defendants in this state.~~

~~(4) The case is one of those mentioned in clauses (1) through (4) of subsection (a).~~

~~The affidavit shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.~~

~~When the affidavit is filed, service may proceed by publication.~~

~~(d) *Publication; form of notice; description of property, when.* The notice shall be published once a week for three consecutive weeks in some newspaper published in the county where the petition is filed and which newspaper is authorized by law to publish legal notices. If there is no newspaper published in the county, the notice may be published in a newspaper having general circulation in the county. The notice must name the defendants to be served and notify them and all other persons who are or may be concerned that the defendants have been sued in a named court and must answer or plead otherwise to the petition, or other pleading, filed in the court, on or before a date to be stated, which date shall be not less than 41 days from the date the notice is first published, or the petition or other pleading filed will be taken as true, and judgment, the nature of which shall be stated, will be rendered accordingly.~~

~~The notice shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.~~

~~Where the action affects property, the notice need not expressly describe the property, unless the description is otherwise required by law, but the property may be identified by reference to the pleading.~~

~~(e) *Mailing copy of notice.* The party seeking to secure service by publication shall, within seven days after the first publication, mail a copy of the publication notice to each defendant whose address is stated in the affidavit for service by publication.~~

~~(f) *When service complete.* Service by publication shall be deemed complete when it has been made in the manner and for the time prescribed in subsections (d) and (e), and the service shall be proved. No judgment by default shall be entered on the service until proof of service is made, approved by the court and filed.~~

(a) When permissible. Service may be made by publication in any of the following cases:

(1) In an action to obtain a divorce, maintenance or an annulment of a marriage if the defendant resides outside this state or if the party with

due diligence is unable to serve summons on the defendant within this state;

(2) in an action brought against a person who is a nonresident of this state or a foreign corporation having in this state property or debts owing to the person or foreign corporation sought to be taken by a provisional remedy or to be appropriated in any way;

(3) in an action, in which the defendant is a nonresident of this state or a foreign corporation or if the party with due diligence is unable to serve summons on the defendant in this state:

(A) Which relates to or the subject of which is real or personal property in this state, if any defendant has or claims a lien or interest, vested or contingent, in the property;

(B) in which the relief demanded consists wholly or partly in excluding the defendant from any interest in the property;

(C) for partition; or

(D) for foreclosure of a lien;

(4) in an action in which the defendant, being a resident of this state, has departed from this state or from the county of the defendant's residence with the intent to delay or defraud creditors or to avoid the service of a summons, or hides in the state or county with that intent, or in an action against a domestic corporation that has not been legally dissolved, if the officers of the corporation have departed from this state or cannot be found; and

(5) in an action specified in this subsection, on any of the following who are made defendants:

(A) Unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of a person alleged to be deceased;

(B) unknown spouse of a defendant;

(C) unknown officers, successors, trustees, creditor and assigns of a defendant that is an existing, dissolved or dormant corporation;

(D) unknown executors, administrators, devisees, trustees, creditors, successors and assigns of a defendant that is or was in partnership; and

(E) unknown guardians, conservators and trustees of a defendant that is a minor or is under any legal disability.

(b) Construction and effect. The provisions of this section are separate and permissive methods of obtaining service. If a defendant served under this section does not appear, judgment may be rendered affecting the property, res or status within the jurisdiction of the court as to the defendant, but judgment may not be rendered against the defendant personally.

(c) Affidavit or declaration for service by publication. Before service by publication under this section can be made, a party or the party's attorney must file an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, stating all of the following facts that apply:

(1) The residences of all named defendants sought to be served, if known, and the names of all defendants whose residences are unknown after reasonable effort to ascertain them and the specific efforts made to ascertain the residence;

(2) the affiant or declarant has made a reasonable but unsuccessful effort to ascertain the names and residence of any defendants sought to be served as unknown parties under subsection (a)(5) and the specific efforts made to ascertain the names and residences;

(3) the party seeking service by publication is unable to obtain service of summons on the defendants in this state; and

(4) the case is one of those mentioned in subsections (a)(1) through (a)(4).

The form of the affidavit or declaration is sufficient if in substantial compliance with the form set forth by the judicial council. When the affidavit or declaration is filed, service may proceed by publication.

(d) Publication; contents and form of notice; actions involving property. (1) Where to publish notice. The notice must be published once a week for three consecutive weeks in a newspaper published in the county where the petition is filed and that is authorized by law to publish legal notices. If there is no newspaper published in the county, the notice may be published in a newspaper having general circulation in the county.

(2) Contents of notice. The notice must name any defendant to be served and notify the defendant and all other persons who are or may be concerned that:

(A) The defendant has been sued in a named court;

(B) the defendant must answer the petition or other pleading or otherwise defend, on or before a specified date not less than 41 days after the date the notice is first published; and

(C) if the defendant does not answer or otherwise defend, the petition or other pleading will be taken as true, and judgment, the nature of which must be stated, will be rendered accordingly.

(3) Form of notice. The notice is sufficient if in substantial compliance with the form set forth by the judicial council.

(4) Property description. When the action affects property, the notice need not expressly describe the property unless the description is otherwise required by law, but the property may be identified by reference to the pleading.

(e) Mailing copy of notice. The party seeking service by publication must, within seven days after the first publication, mail a copy of the publication notice to each defendant whose address is stated in the affidavit or declaration for service by publication.

(f) When service complete. Service by publication is complete when it has been made in the manner and for the time prescribed in subsections (d) and (e). The service must be proved under subsection (c) of K.S.A. 60-312, and amendments thereto. No judgment by default may be entered on the service until proof of service is made, approved by the court and filed.

Sec. 153. K.S.A. 2009 Supp. 60-308 is hereby amended to read as follows: 60-308. ~~(a)~~ *Proof and effect.* ~~(1) Service of process may be made upon any party outside the state. If upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, such service shall provide personal jurisdiction over that party; otherwise it shall provide in rem jurisdiction over specifically identified property that party may have in the state.~~

~~(2) The service of process shall be made (A) in the same manner as service within this state, by any officer authorized to make service of process in this state or in the state where the defendant is served or (B) by sending a copy of the process and of the petition or other document to the person to be served in the manner provided in subsection (d). No order of a court is required. An affidavit, or any other competent proofs, of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.~~

~~(3) No default shall be entered until the expiration of at least 30 days after service. A default judgment rendered on service outside this state may be set aside only on a showing which would be timely and sufficient to set aside a default judgment under subsection (b) of K.S.A. 60-260, and amendments thereto.~~

~~(b) *Submitting to jurisdiction.* (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent or instrumentality does any of the acts hereinafter enumerated, thereby submits the person and, if an individual, the individual's personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of these acts:~~

~~(A) Transaction of any business within this state;~~

~~(B) commission of a tortious act within this state;~~

~~(C) ownership, use or possession of any real estate situated in this state;~~

~~(D) contracting to insure any person, property or risk located within this state at the time of contracting;~~

~~(E) entering into an express or implied contract, by mail or otherwise, with a resident of this state to be performed in whole or in part by either party in this state;~~

~~(F) acting within this state as director, manager, trustee or other officer of any corporation organized under the laws of or having a place of business within this state or acting as executor or administrator of any estate within this state;~~

~~(G) causing to persons or property within this state any injury arising out of an act or omission outside of this state by the defendant if, at the time of the injury either (i) the defendant was engaged in solicitation or service activities within this state; or (ii) products, materials or things~~

processed, serviced or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of trade or use;

(H) living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations arising for maintenance, child support or property settlement under article 16 of this chapter, if the other party to the marital relationship continues to reside in the state;

(I) serving as the insurer of any person at the time of any act by the person which is the subject of an action in a court of competent jurisdiction within the state of Kansas which results in judgment being taken against the person;

(J) performing an act of sexual intercourse within the state, as to an action against a person seeking to adjudge the person to be a parent of a child and as to an action to require the person to provide support for a child as provided by law, if (i) the conception of the child results from the act and (ii) the other party to the act or the child continues to reside in the state; or

(K) entering into an express or implied arrangement, whether by contract, tariff or otherwise, with a corporation or partnership, either general or limited, residing or doing business in this state under which such corporation or partnership has supplied transportation services, or communication services or equipment, including, without limitation, telephonic communication services, for a business or commercial user where the services supplied to such user are managed, operated or monitored within the state of Kansas, provided that such person is put on reasonable notice that arranging or continuing such transportation services or telecommunication services may result in the extension of jurisdiction pursuant to this section.

(2) A person may be considered to have submitted to the jurisdiction of the courts of this state for a cause of action which did not arise in this state if substantial, continuous and systematic contact with this state is established that would support jurisdiction consistent with the constitutions of the United States and of this state.

(c) Nothing contained in this section limits or affects the right to serve any process in any other manner provided by law, including, but not limited to, K.S.A. 17-7301, 17-7307, 40-218 and 50-631, and amendments thereto.

(d) *Service by return receipt delivery.* (1) Service of any out-of-state process by return receipt delivery shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery. (2) The party or party's attorney shall cause a copy of the process and petition or other document to be placed in a sealed envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery. (3) Service of process shall be considered obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the sealed envelope. (4) After service and return of the return receipt, the party or party's attorney shall execute a return on service stating the nature of the process, to whom delivered, the date, the address where delivered and the person or entity effecting delivery. The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery. (5) If the sealed envelope is returned with an endorsement showing refusal to accept delivery, the party or the party's attorney may send a copy of the process and petition or other document by first-class mail addressed to the party to be served, or may elect other methods of service. If mailed, service shall be considered obtained three days after the mailing by first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the party or party's attorney shall file an amended certificate of service with the clerk indicating nondelivery, and service by such mailing shall not be considered obtained. Mere failure to claim return receipt delivery is not refusal of service within the meaning of this subsection.

(a) Proof and effect. (1) Service of process may be made on any party outside this state. If on a party domiciled in this state or on a party that has submitted to the jurisdiction of the courts of this state, such service provides personal jurisdiction over that party; otherwise it provides in rem jurisdiction over specifically identified property that party has in this state.

(2) The service of process must be made: (A) In the same manner as service within this state, by an officer authorized to serve process in this state or in the state where the party is served; or (B) by a party or the party's attorney pursuant to subsection (c) of K.S.A. 60-303, and amendments thereto. No order of a court is required. The server must file an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, or any other competent proof, stating the time, manner and place of service. The court may consider the affidavit, declaration or any other competent proof in determining whether service has been properly made.

(3) No default may be entered until the expiration of at least 30 days after service. A default judgment rendered on service outside this state may be set aside only on a showing that is timely and sufficient under subsection (b) of K.S.A. 60-260, and amendments thereto, to set aside a default judgment.

(b) Submitting to jurisdiction. (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent or instrumentality does any of the following acts, thereby submits the person and, if an individual, the individual's representative, to the jurisdiction of the courts of this state for any claim for relief arising from the act:

(A) Transacting any business in this state;

(B) committing a tortious act in this state;

(C) owning, using or possessing real estate located in this state;

(D) contracting to insure any person, property or risk located in this state at the time of contracting;

(E) entering into an express or implied contract, by mail or otherwise, with a resident of this state to be performed in whole or in part by either party in this state;

(F) acting in this state as director, manager, trustee or other officer of any corporation organized under the laws of or having a place of business in this state or as executor or administrator of any estate in this state;

(G) causing to persons or property in this state an injury arising out of an act or omission outside this state by the defendant if, at the time of the injury, either:

(i) The defendant was engaged in solicitation or service activities in this state; or

(ii) products, materials or things processed, serviced or manufactured by the defendant anywhere were used or consumed in this state in the ordinary course of trade or use;

(H) living in a marital relationship in this state notwithstanding subsequent departure from this state, for all obligations arising for maintenance, child support or property settlement under article 16 of this chapter, if the other party to the marital relationship continues to reside in this state;

(I) serving as insurer of a person at the time of an act by the person which is the subject of an action in a court of competent jurisdiction in this state which results in judgment being taken against the person;

(J) having sexual intercourse in this state, in an action seeking to adjudge the person to be a parent of a child and in an action to require the person to provide support for a child as provided by law, if: (i) The conception of the child results from the act; and (ii) the other party to the act or the child continues to reside in this state;

(K) entering into an express or implied arrangement, whether by contract, tariff or otherwise, with a corporation or partnership residing or doing business in this state under which the corporation or partnership has supplied transportation services or communication service or equipment, including telephonic communication services, for a business or commercial user when the services supplied to the user are managed, operated or monitored in this state, provided that the person is given reasonable notice that arranging or continuing the transportation services or communication services may result in jurisdiction under this section; or

(L) having contact with this state which would support jurisdiction consistent with the constitutions of the United States and of this state.

(2) A person submits to the jurisdiction of the courts of this state for a claim for relief which did not arise in this state if substantial, continuous and systematic contact with this state is established which would support jurisdiction consistent with the constitutions of the United States and of this state.

(c) Section not exclusive. Nothing in this section affects the right to serve process in any other manner provided by law.

Sec. 154. K.S.A. 60-309 is hereby amended to read as follows: 60-309. ~~(a) *Procedure.* A party against whom a judgment has been rendered without other service than publication in a newspaper, may, at any time within two (2) years after the entry of the judgment, have the same opened and be let in to defend. Before the judgment may be opened the applicant shall give notice to the adverse party of his or her intention to make such an application and shall file a full answer to the petition, pay all costs if the court require them to be paid, and make it appear to the satisfaction of the court by affidavit that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The adverse party on the hearing of the application may present counter affidavits.~~

~~(b) *Sale for value after six months.* If no proceedings are commenced under subsection (a) within six (6) months from the date the judgment was entered, any sale of property made to a purchaser for value in reliance upon the judgment, is not affected by any such proceedings.~~

~~(c) *Judicial sales.* If property is sold on order of sale under the judgment sought to be opened, the sale is not affected by any proceedings brought under subsection (a). Unless the court finds from affidavits or other evidence that actual notice has been given before judgment to the defendants served only by publication, the proceeds of the sale shall be impounded by the court and not distributed (1) until three months have elapsed from the time the judgment was entered, or (2) until proceedings under subsection (a), if brought within said three months period, are disposed of and the right to the impounded proceeds determined.~~ *(a) Procedure. A party against which a judgment has been entered on service by publication in a newspaper, may, at any time within two years after its entry, move for relief from the judgment and to be allowed to defend. Before such relief may be granted, the movant must serve the motion on the adverse party, file a full answer to the petition, pay all costs if the court requires them to be paid and satisfy the court by affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, that the movant had no actual notice of the action in time to appear. The adverse party may present counter-affidavits or counter-declarations.*

(b) Sale for value after three months. If no motion is made under subsection (a) within three months after the date the judgment was entered, a sale of property made to a purchaser for value in reliance on the judgment is not affected by a later-filed motion.

(c) Judicial sales. If property is sold on order of sale under the judgment from which relief is sought, the sale is not affected by a motion under subsection (a). Unless the court finds from affidavits, declarations pursuant to K.S.A. 53-601, and amendments thereto, or other evidence that actual notice was given before judgment to the parties served only by publication, the court must impound the proceeds of the sale and not distribute them until: (1) Three months have elapsed after the date the judgment was entered; or (2) a motion under subsection (a), if brought within the three-month period, is disposed of and the right to the impounded proceeds determined.

(d) *Bond in lieu of impounding proceeds.* In lieu of impounding the proceeds of sale as provided in subsection (c), any party having an interest under the judgment may give a bond, to be approved by the court, for the payment of an amount not exceeding the amount of the proceeds of sale~~,~~ to other persons found ~~in such proceedings to be entitled thereto~~ *to be entitled to the proceeds*.

Sec. 155. K.S.A. 60-310 is hereby amended to read as follows: 60-310. ~~(a) *Same.* Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:~~

~~*First.* If the action be against defendants jointly indebted upon contract, the plaintiff may proceed against the defendants served, unless the~~

~~court otherwise direct; and if he or she recover judgment it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served.~~

~~*Second.* If the action be against defendants severally liable, the plaintiff may, without prejudice to his or her rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.~~

~~(b) *Same.* Nothing in this section shall be so construed as to make a judgment against one or more defendants jointly or severally liable a bar to another action against those not served.~~

(a) Generally. In an action against two or more defendants, when one or more, but not all have been served, the plaintiff may proceed as follows:

(1) If the action is against defendants jointly indebted on a contract, the plaintiff may proceed against the defendants served, unless the court orders otherwise; and if the plaintiff recovers judgment, it may be entered against all the defendants jointly indebted and may be enforced only against the joint property of all defendants, and the separate property of the defendants served;

(2) if the action is against defendants severally liable, the plaintiff may, without prejudice to the plaintiff's rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

(b) Actions against defendant not served. Nothing in this section makes a judgment against one or more defendants jointly or severally liable a bar to another action against those not served.

Sec. 156. K.S.A. 60-311 is hereby amended to read as follows: 60-311. All process issued ~~for service from any court within the~~ *in this* state may be served anywhere ~~within the territorial limits of the~~ *in this* state and, when authorized by law, may be served outside this state.

Sec. 157. K.S.A. 60-312 is hereby amended to read as follows: 60-312. ~~Proof of service shall be made as follows:~~

~~(a) *Personal and residence service.* (1) Every officer to whom summons or other process shall be delivered for service within or without the state, shall make a statement subject to penalty of perjury as provided in K.S.A. 21-3805 and amendments thereto as to the time, place and manner of service of such writ.~~

~~(2) If service of such process is directed to and delivered to a person, other than an officer, for service, such person shall make affidavit as to the time, place and manner of such person's service thereof.~~

~~(b) *Service by return receipt delivery.* Service by return receipt delivery shall be proven in the manner provided by subsection (c) of K.S.A. 60-303 or subsection (e) of K.S.A. 60-308, and amendments thereto.~~

~~(c) *Publication service.* Service by publication shall be proven by an affidavit showing the dates upon which and the newspaper in which the notice of publication was published. A copy of the notice shall be attached to the affidavit which shall be filed in the cause. When mailing of copies of the publication notice is required in accordance with subsection (e) of K.S.A. 60-307 and amendments thereto, the proof of such mailing shall be by affidavit of the person who mailed such copies and such affidavit shall be filed with the clerk of the court in which the action has been filed. If such mailing was by certified mail, the return receipt shall be made a part of the affidavit and filed therewith.~~

~~(d) *Time for return.* The officer or other person receiving a summons or other process shall make a return of service promptly and in any event within 10 days after the service is effected. If the process cannot be served it shall be returned to the court within 30 days after the date of issue with a statement of the reason for the failure to serve the same, except the time for service thereof may be extended up to 90 days from the date of issue by order of the court or judge of the court to which it is returnable. Immediately upon receipt of the return upon any summons or other process by the clerk of the court issuing the same, such clerk shall mail a copy of such return to the attorney for the party requesting the issuance of such summons or other process or, if such party has no attorney, then to the requesting party's self.~~

Proof of service must be filed with the court and made as follows:

(a) Personal and residence service. (1) Every officer to whom sum-

mons or other process is delivered for service must make a statement subject to penalty of perjury as provided in K.S.A. 21-3805, and amendments thereto, as to the time, place and manner of service.

(2) If process is delivered to a person, other than an officer, for service, the person must make an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, as to the time, place and manner of service.

(b) Service by return receipt delivery. Service by return receipt delivery must be proved in the manner provided by subsection (c) of K.S.A. 60-303, and amendments thereto.

(c) Publication service. Service by publication must be proved by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, showing the dates on which and the newspaper in which notice was published. A copy of the notice must be filed with the affidavit or declaration. When mailing of copies of the publication notice is required by subsection (e) of K.S.A. 60-307, and amendments thereto, the proof of mailing must be by affidavit or by declaration pursuant to K.S.A. 53-601, and amendments thereto, of the person who mailed the copies. If mailing was by certified mail, the return receipt must be filed with the affidavit or declaration.

(d) Time for return. An officer or other person receiving a summons or other process for service must file a return of service not later than 14 days after the service is effected. If the summons or other process cannot be served it must be returned to the court within 30 days after the date issued with a statement of the reason for the failure to serve it, except the court may extend the time for service up to 90 days after the date issued. Upon receipt of the return on any summons or other process, the clerk must serve a copy of the return on the attorney for the party requesting issuance of the summons or other process or, if the party has no attorney, on the requesting party.

Sec. 158. K.S.A. 60-313 is hereby amended to read as follows: 60-313. ~~At any time in his or her discretion and upon such terms as he or she deems just, the judge~~ *The court* may allow any process, return or proof of service ~~thereof~~ to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Sec. 159. K.S.A. 60-612 is hereby amended to read as follows: 60-612. (a) Without changing venue, a judge may conduct any hearing or nonjury trial in any county agreed upon by all parties who are not in default.

(b) If the court finds on motion of any party, that the county where an action was filed does not have a courtroom or other suitable facility which conforms to section 11 of the Americans with disabilities act accessibility guidelines for buildings and facilities (ADAAG), adopted by 28 CFR 36.406 and incorporated in appendix A thereto, as in effect on July 1, 1999, and that such failure to conform would prohibit or limit the participation of a person material to the proceeding, the judge, without changing venue, may conduct any hearing or trial in any county with an accessible courtroom.

(c) If the court finds, on motion of any person at least ~~20~~ *21* days before the hearing or trial, that the county where an action was filed does not have a courtroom or other suitable facility which conforms to section 11 of the Americans with disabilities act accessibility guidelines for buildings and facilities (ADAAG), adopted by 28 CFR 36.406 and incorporated in appendix A thereto, as in effect on July 1, 1999, and that such failure to conform would prohibit or limit the attendance of any person, the judge, without changing venue, may conduct the hearing or trial in any county with an accessible courtroom. Notice of the change of the location shall be given to the parties at least ~~10~~ *14* days prior to the date of the first proceeding at the alternate location.

Sec. 160. K.S.A. 60-712 is hereby amended to read as follows: 60-712. (a) *Motion to dissolve, how made.* In all cases where property, effects or credits shall be attached, any interested person may file a motion to dissolve the attachment, verified by affidavit, putting in issue the sufficiency of the proceedings, the defendant's or other person's claim of exemption as to any property which has been attached, or the truth of the facts alleged in the affidavit on which the attachment was issued. The

court shall hold a hearing on the motion within ~~five~~ *seven* days after the receipt thereof. The burden of proof shall be on the party seeking the attachment except as to any claim of exemption.

(b) *Amendments.* The judge may in the interest of justice, permit amendments to the petition or the affidavit, including the specification of additional grounds for attachment.

Sec. 161. K.S.A. 60-731 is hereby amended to read as follows: 60-731. (a) As an aid to the collection of a judgment, an order of garnishment may be obtained at any time after ~~10~~ *14* days following judgment. There is no requirement that an execution first be issued and returned unsatisfied.

(b) The party requesting a garnishment shall file a request in an individual case or by a master request covering more than one case asking the court to issue an order of garnishment. The request shall designate whether the order of garnishment is to be issued to attach earnings or to attach other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor to enforce:

(1) An order of any court for the support of any person;

(2) an order of any court of bankruptcy under chapter 13 of the United States bankruptcy code; or

(3) a debt due for any state or federal tax, the direction of the party shall so indicate.

No bond is required for an order of garnishment issued after judgment.

Sec. 162. K.S.A. 60-735 is hereby amended to read as follows: 60-735. (a) Immediately following the time the order of garnishment is served on the garnishee, the party seeking the garnishment shall send a notice to the judgment debtor in any reasonable manner, notifying the judgment debtor:

(1) That a garnishment order has been issued against the judgment debtor and the effect of such order;

(2) of the judgment debtor's right to assert any claim of exemption allowed under the law with respect to a garnishment against property other than earnings or of the judgment debtor's right to object to the calculation of exempt and nonexempt earnings with respect to a garnishment against the earnings of the debtor; and

(3) of the judgment debtor's right to a hearing on such claim or objection. The notice shall be substantially in compliance with the form set forth by the judicial council, and shall contain a description of the exemptions that are applicable to garnishments and the procedure by which the judgment debtor can assert any claim of exemption.

(b) If the judgment debtor requests a hearing to assert any claim of exemption, the request shall be filed no later than ~~10~~ *14* days following the date the notice is served on the judgment debtor. If a hearing is requested, the hearing shall be held by the court no sooner than ~~five~~ *seven* days nor later than ~~10~~ *14* days after the request is filed. At the time the request for hearing is filed, the judgment debtor shall obtain from the clerk or court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the judgment debtor shall hand-deliver to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, or mail to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, by first-class mail at the party seeking the garnishment or such party's attorney's last known address, a copy of the request for hearing.

(c) If a hearing is held, the judgment debtor shall have the burden of proof to show that some or all of the property subject to the garnishment is exempt, and the court shall enter an order determining the exemption and such other order or orders as is appropriate.

Sec. 163. K.S.A. 2009 Supp. 60-736 is hereby amended to read as follows: 60-736. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth by the judicial council.

(b) Within ~~10~~ *14* days after service, other than that required pursuant to K.S.A. 40-218, and amendments thereto, upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with

respect to the demands of the order and file the completed answer with the clerk of the court. The clerk shall cause a copy of the answer to be mailed promptly to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 164. K.S.A. 60-738 is hereby amended to read as follows: 60-738. (a) No later than ~~10~~ *14* days after the garnishee makes the answer and the clerk or the garnishee sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

Sec. 165. K.S.A. 60-739 is hereby amended to read as follows: 60-739. (a) The court shall direct the garnishee to pay to the court such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to property other than earnings of the judgment debtor;

(2) ~~ten~~ *fourteen* days have passed since receipt of the answer of the garnishee by the court; and

(3) no reply to the answer has been filed.

(b) The court shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee may release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the court has been received within 60 days following the receipt of the answer of the garnishee by the court.

Sec. 166. K.S.A. 60-740 is hereby amended to read as follows: 60-740. This section shall apply if the garnishment is to attach earnings of the judgment debtor. If no reply is made to the answer of garnishee within ~~10~~ *14* days following the date the garnishee has completed the answer, the garnishee shall promptly thereafter pay the earnings withheld as indicated on the answer to all judgment creditors designated on the answer in the amount due each as indicated on the answer, unless the garnishee receives prior to such payment an order of the court to the contrary. If any judgment creditor receives more than they are entitled to, that judgment creditor shall promptly pay the excess amount pro-rata to the other judgment creditors designated on the answer, or if no such other judgment creditors are designated, the judgment creditor shall promptly pay the excess amount to the judgment debtor.

Sec. 167. K.S.A. 60-904 is hereby amended to read as follows: 60-904. (a) *Notice.* No restraining order shall be issued growing out of any labor dispute until after reasonable notice to the party or parties to be restrained and an opportunity to be heard, unless the judge finds that irreparable injury is likely to occur to the person or property of the plaintiff before notice could be served or a hearing held, and such order shall not be granted for a period in excess of ~~five (5)~~ *seven* days.

(b) *Bond.* No restraining order issued under subsection (a) of this section shall operate unless the party obtaining the same shall give an undertaking as provided in *subsection (b) of* K.S.A. 60-905 ~~(b) of this article~~ *, and amendments thereto*.

(c) *Restraint prohibited in certain cases.* No restraining order or injunction shall prohibit any person or persons, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means to do so; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose

of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means to do so; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto, or from any activity over which the federal authority is exercising exclusive jurisdiction.

Sec. 168. K.S.A. 60-1005 is hereby amended to read as follows: 60-1005. The plaintiff, in an action to recover possession of specific personal property, may at any time before the judgment is rendered claim immediate possession thereof under the following procedure:

(a) *Affidavit.* The plaintiff shall file an affidavit, unless the plaintiff's petition has been verified, which in either event shall show:

(1) That the plaintiff is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to the possession thereof,

(2) that it is wrongfully detained by the defendant, or if it is held by an officer under legal process, that demand for the same has been made and refused, and

(3) the estimated value thereof.

(b) *Hearing, notice; bond.* Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court for an order for the delivery of the property to the plaintiffs in the manner prescribed by subsection (b) of K.S.A. 60-207, and amendments thereto, and the motion made thereunder shall be served upon the defendant pursuant to K.S.A. 60-205, and amendments thereto. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property to the plaintiff.

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an *ex parte* hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) There is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

In lieu of the foregoing procedure providing for the issuance of an order for the delivery of the property, the plaintiff may apply to the court for a restraining order directed to the defendant, imposing such conditions and restrictions as the court deems necessary to protect the property during the pendency of the action and to protect the court's jurisdiction over such property. Such restraining order may be issued without the requirement that the plaintiff file a bond as required for issuing an order for the delivery of the property.

Prior to the issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the value of the property as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be to the effect that plaintiff shall duly prosecute the action, and pay all costs and damages that may be awarded against the plaintiff, and that if the plaintiff is given possession of the property, the plaintiff will return it to defendant if it be so adjudged. If the bond is found to be sufficient, the judge of the district court shall approve the bond and note the judge's approval thereon. The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(c) *Property in custodia legis.* If the property the possession of which is sought is in the custody of an officer under any legal process it shall nevertheless be subject to replevin under this section, but if the same is

in the custody of any officer under any process issued out of a judicial proceeding, the petition or affidavit and bond shall be filed in the same proceeding out of which such process issued.

(d) *Order for delivery of property.* The order for the delivery of the property to the plaintiff shall be delivered to the sheriff of any county in the state in which the property is located. The order shall state the names of the parties, the description of the property and the value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the sheriff to take immediate possession of the property and deliver it to plaintiff at the expiration of 24 hours unless there is compliance with the requirements of subsection (f) and make return of the order on the day named therein. If the sheriff is a party defendant, then the order shall be served upon the sheriff by the clerk of the court.

(e) *Return and execution of order.* (1) *Obtaining possession.* In the execution of the order the sheriff may break open any building or enclosure in which the property is located, if the sheriff cannot otherwise obtain possession of the property or entrance.

(2) *Execution.* The sheriff shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the unlawful detainer in the same manner as for personal service if the person can be found in the county.

(3) *Return.* The return day of the order of delivery shall be ~~20~~ *21* days after it is issued.

(f) *Redelivery bond.* The defendant, within 24 hours after service of a copy of the order, may deliver to the sheriff a bond to be approved by the sheriff, in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff shall return the property to the defendant. The bond shall be to the effect that the defendant will deliver the property to the plaintiff if it be so adjudged, and will pay all costs and damages that may be adjudged against the defendant. The sheriff shall file the bond with the clerk after noting approval thereon. If the defendant is a public officer, board~~,~~ or government agency, such officer, board or agency, in lieu of giving a redelivery bond, may retain possession of the property seized by filing with the clerk within the time required for giving the redelivery bond a writing certifying that the public health, safety or welfare would be jeopardized or impaired if the plaintiff acquired possession of the property prior to final judgment, in which case hearing may be had on the issue of public interest at the instance of any party.

(g) *Judgment in action.* In an action to recover the possession of personal property, judgment for the plaintiff may be for possession or for the recovery of possession, or the value thereof in case a delivery cannot be had, and for damages for the detention. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

Sec. 169. K.S.A. 60-1006 is hereby amended to read as follows: 60-1006. A secured party may bring an action in the district court to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The secured party, at any time before judgment is rendered, may cause the specified security to be taken into the possession of the appropriate officer to await further order of the court under the following procedure:

(a) *Affidavit or petition.* The plaintiff shall file an affidavit, unless the plaintiff's petition shall have been verified, which in either event shall show: (1) The instrument of indebtedness or the terms thereof; (2) the amount of the indebtedness owed; (3) the security agreement or the terms thereof; (4) a description of the personal property; (5) that plaintiff is lawfully entitled to the foreclosure of the specific personal property; (6) the estimated value of the personal property to the best of plaintiff's knowledge and belief, and when several articles are claimed, the estimated value of each article shall be so stated; and (7) that the personal property is wrongfully detained by the defendant.

(b) *Hearing, notice; bond.* Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court

for an order for the delivery of the property to the plaintiff in the manner prescribed by subsection (b) of K.S.A. 60-207, and amendments thereto, and the motion made thereunder shall be served upon the defendant pursuant to K.S.A. 60-205, and amendments thereto. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property as provided in subsection (c).

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an *ex parte* hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) There is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

In lieu of the foregoing procedure providing for the issuance of an order for the delivery of the property, the plaintiff may apply to the court for a restraining order directed to the defendant, imposing such conditions and restrictions as the court deems necessary to protect the property during the pendency of the action and to protect the court's jurisdiction over such property. Such restraining order may be issued without the requirement that the plaintiff file a bond as required for issuing an order for the delivery of the property.

Prior to issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the estimated value of the property, as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be in favor of the defendant and shall be to the effect that plaintiff shall duly prosecute the action and pay all costs and damages that may be awarded against the plaintiff, and that if plaintiff is given possession of the property the plaintiff will return it to the defendant if it be so adjudged. If the bond shall be found to be sufficient, the judge of the district court shall approve the same and note approval thereon. The defendant may challenge the sufficiency of the bond in the manner provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(c) *Order.* The order shall be delivered to the sheriff of any county in the state in which the property is located. The order shall state the names of the parties, the description of the property and the estimated value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the sheriff to take immediate possession of the property and to keep it until further order of the court, subject to the provisions of subsections (e), (f) and (g), and to make return of the order on the day named therein.

(d) *Return and execution of order.* (1) *Obtaining possession.* In the execution of the order the sheriff may break open any building or enclosure in which the property is located, if the sheriff cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) *Execution.* Such officer shall execute the order by taking possession of the property described therein, and by serving a copy on the person charged with the unlawful detainer. Should the officer be unable to serve the defendant in accordance with the provisions of K.S.A. 60-304, and amendments thereto, but can take possession of the personal property described in the order, the action may proceed to foreclose the security interest once service is made pursuant to K.S.A. 60-307, and amendments thereto.

(3) *Perishable goods.* When there is actually seized property which is likely to perish or to materially depreciate in value or threatens to decline speedily in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, the court may order the same to be sold by the sheriff on such terms and

conditions as the judge may direct, and a return of the proceedings thereon shall be made by the sheriff at a time to be fixed by the judge.

(4) *Return.* The time for return of the order of delivery shall be as prescribed by subsection (d) of K.S.A. 60-312, and amendments thereto.

(e) *Redelivery bond.* The defendant, within 24 hours after service of a copy of the order, may deliver to the sheriff a bond to be approved by the sheriff, in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff shall return the property to the defendant. The bond shall be in favor of the plaintiff and shall be to the effect that the defendant will deliver the property to the sheriff if it be so adjudged, and will pay all costs and damages that may be adjudged against the defendant. The sheriff shall file the bond with the clerk after noting approval thereon. If the defendant does not file a redelivery bond as provided above, then the sheriff shall deliver the property to the custody of the plaintiff, unless the plaintiff directs that the officer retain possession of the property and deposits sufficient security, as determined by the court, to pay the cost of storing such property.

(f) *Possession in third party.* When the sheriff finds the property in possession of a person other than a defendant and deems it advisable to leave such person in possession, the sheriff shall declare to the person in possession that such person shall hold such property in such person's possession, subject to the further order of the court, and shall summon such person as a garnishee by serving upon such person a copy of the order which directs the sheriff to take immediate possession of the property. The sheriff may require of such person in possession an undertaking with good and sufficient sureties in such sum as the sheriff deems sufficient. The undertaking shall be to the effect that such person will deliver the property to the sheriff at the time and place fixed for sale, if such be ordered by the court. The sheriff shall give such person written notice of the time and place fixed for the sale by delivery in person or by restricted mail.

(g) *Property claimed by third person.* If the sheriff, by virtue of the order, shall take possession of, or be requested by the plaintiff to take possession of, personal property claimed by any person other than a defendant, the sheriff, before proceeding, may require the plaintiff to give the sheriff an undertaking with good and sufficient sureties to pay all costs and damages that the sheriff may sustain by reason of the execution of such order.

(h) *Judgment.* Judgment for the plaintiff shall be for a money judgment and foreclosure of the security interest, and the plaintiff may proceed to foreclose the security interest in accordance with the terms of the security agreement covering the property, as governed by the provisions of the uniform commercial code, unless the court otherwise directs. If the court directs the plaintiff to proceed to enforce the judgment other than pursuant to the security agreement, and if the judgment is not satisfied within ~~10~~ *14* days thereafter, then the clerk shall issue an order of special execution directed to the sheriff to sell the property in accordance with K.S.A. 60-1007, and amendments thereto. If the property is not then in the possession of the sheriff, the order also shall direct the person having possession to deliver such property to the sheriff. If the property has been delivered to the sheriff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property and damages for the taking and withholding of same.

Sec. 170. K.S.A. 2009 Supp. 60-1007 is hereby amended to read as follows: 60-1007. (a) Any sale conducted under the provisions of this section shall be subject to the provisions of K.S.A. 60-2406, and amendments thereto, except that the disposition of proceeds after the satisfaction of senior security interests or liens shall be made in accordance with the provisions of K.S.A. 60-1009, and amendments thereto. Before the sheriff proceeds to sell the personal property pursuant to order of the court, the sheriff shall cause public notice to be given of the time and place of sale, for at least ~~10~~ *14* days before the day of sale. The notice shall be given by publication at least once each week for two consecutive weeks in any newspaper published in the county, and which is qualified to carry legal publications, or, in the discretion of the court, by posting notices in five public places in the county, one of which shall be on a bulletin board

established for public notices in the county courthouse. Within ~~five~~ *seven* days of the date of first publication or posting of notice, plaintiff shall send by restricted mail a copy of such notice to the defendant and to those persons known by the plaintiff to have a security interest in the property. Such notice shall be sent to the last known address of the person to whom sent and shall be in compliance with K.S.A. 2009 Supp. 84-1-202(d) and (e), and amendments thereto. If the personal property cannot be sold at the special execution sale for want of bidders, the judgment creditor may direct the sheriff to return the special execution showing that fact or, at the creditor's option, may report the same to the judge and obtain an order permitting a second sale under the same special execution and an extension of the return day of the special execution if necessary.

(b) If the personal property to be sold shall consist of more than one item of property, the sheriff shall sell only so much of the personalty in the sheriff's custody as is necessary to satisfy the judgment, interest and costs, and shall return the balance of any property remaining unsold to the defendant by notifying the defendant of the time and place when same may be obtained.

(c) Neither the sheriff nor any other member of the sheriff's staff may bid at any such sale.

(d) The provisions of K.S.A. 60-2411, and amendments thereto, relating to advancement of printer's fees shall apply to this section.

Sec. 171. K.S.A. 60-1009 is hereby amended to read as follows: 60-1009. Upon the sale of personal property by the sheriff under this act, the clerk of the court shall apply the proceeds of sale in the following priority: (a) To the court costs of the action including the sheriff's expenses and cost of publication;

(b) in accordance with the provisions of K.S.A. 60-2406*, and amendments thereto*;

(c) in satisfaction of all judgments rendered in the action against the defendant or the property in accordance with the priority determined by the court;

(d) any surplus shall be paid to the debtor-defendant, except that if any other security interest holder has, subsequent to the entering of the judgment of foreclosure, filed with the clerk of the court a written notification of demand furnishing reasonable proof of ~~his or her~~ *the security interest holder's* interest, the clerk shall withhold any payment to the debtor-defendant. Such security interest holder must serve the debtor-defendant with notice of ~~his or her~~ *such* demand within ~~ten (10)~~ *14* days after such filing and furnish proof of such notice to the court.

If the debtor-defendant does not notify the clerk in writing within ~~ten (10)~~ *14* days that ~~he or she~~ *the debtor-defendant* takes exception to the demand of said security interest holder, the clerk shall apply said surplus to the said demand and pay any balance to the debtor-defendant.

If the debtor-defendant does notify the clerk in writing within ~~ten (10)~~ *14* days that ~~he or she~~ *the debtor-defendant* takes exception to ~~said~~ *the* demand, the clerk shall withhold all surplus ~~in his or her hands~~ for a period of ~~thirty (30)~~ *30* days. If ~~said~~ *the* security interest holder has not commenced a separate action to recover ~~his or her~~ *the holder's* claim and garnished the clerk within ~~said~~ *such* time, the clerk shall pay ~~said~~ *the* surplus to the debtor-defendant.

Sec. 172. K.S.A. 60-1011 is hereby amended to read as follows: 60-1011. (a) Nothing provided in this act shall prohibit the right of a defendant owner to sell and transfer the rights of the defendant owner to an assignee or transferee pursuant to K.S.A. 60-2414, and amendments thereto.

(b) A defendant owner, the tenant of a person subject to civil action as provided in this act or the holder of the mortgage before a sheriff's sale and holder of the certificate of purchase during the period of redemption, shall each have the right to maintain a civil action under the code of civil procedure against any person, corporation, limited liability company, general partnership, limited partnership or joint venture, referred to hereinafter as a person who engaged in the purchase of one, two, three or four family dwellings, including condominiums and cooperatives, or the acquisitions of any right, title or interest therein, including any equity or redemption interests, which are subject to a loan in default

at time of purchase or in default within one year subsequent to the purchase if: (1) The loan is secured by a mortgage; (2) the person fails to notify the mortgage holder or holder of the certificate of purchase of the interest acquired, in writing, within ~~20~~ *21* days after purchase; and (3) the person fails to apply the rent proceeds from such dwellings to the mortgage as the payments come due, regardless of whether the purchaser is obligated on the loan.

(c) The civil action may allow recovery of all actual damages, court costs and attorney fees in addition to recovery of all rents received by the person.

Sec. 173. K.S.A. 60-1207 is hereby amended to read as follows: 60-1207. Upon application to the court before which the petition for ouster is pending, an officer may be suspended from performing any of the *officer's* duties ~~of his or her office~~, pending a final hearing and determination of the matter; and the authority having the power of appointment to fill vacancies in such office, shall upon such suspension appoint some proper person temporarily to fill said office and to carry on its duties until such matter shall be finally determined or until the successor of the officer so suspended shall be elected and shall have qualified. No person shall be suspended from office under the provisions of this act until at least ~~five (5)~~ *seven* days' notice of the application for the order of suspension shall be served upon such person, which notice shall set forth the time and place of the hearing of ~~said~~ *the* application and ~~said~~ *the* officer shall have the right to appear and make any defense that ~~he or she~~ *the officer* may have and shall be entitled to a full hearing upon the charges contained in the complaint and upon the application for the order. No suspension shall be made except upon finding of good cause therefor. If on the final hearing the officer is not removed from office, the officer shall receive the salary allowed by law during the time of ~~his or her~~ *the officer's* suspension. The officer so temporarily appointed shall receive the same salary as is provided by law to be paid the officer filling such position.

Sec. 174. K.S.A. 60-1305 is hereby amended to read as follows: 60-1305. An aggrieved party may, within ~~ten (10)~~ *14* days, appeal from an order appointing or refusing to appoint a receiver without awaiting final determination of the proceeding. If a receiver has been appointed and the appellant files an appeal bond with such terms and conditions as the judge may direct, the appointment shall be suspended and the property retained in the possession of the appellant pending the final determination of the appeal.

Sec. 175. K.S.A. 2009 Supp. 60-1505 is hereby amended to read as follows: 60-1505. (a) *Summary proceedings.* The judge shall proceed in a summary way to hear and determine the cause and may do so regardless of whether the person restrained is present. If the plaintiff is an inmate in the custody of the secretary of corrections and the motion and the files and records of the case conclusively show that the inmate is entitled to no relief, the writ shall be dissolved at the cost of the inmate.

(b) *Infectious diseases.* When any person is restrained because of an alleged infectious or communicable disease, the judge may appoint at least one competent physician to make an examination of such person and report findings to the judge.

(c) *Temporary orders.* The judge may make an order for the temporary custody of the party and any other temporary orders during the pendency of the proceeding that justice may require.

(d) *Judgment.* If the court determines that the restraint is not wrongful, the writ shall be dissolved at the cost of the plaintiff. If the restraint is found to be wrongful, the judgment shall be either that the person shall be released, or that custody shall be transferred to some other person rightfully entitled thereto, and the court may make such other orders as justice and equity or the welfare of a minor physically present in the state may require. In cases in which the person restrained is a minor, or other incompetent or incapacitated, at the time of rendering judgment at the request of any person adversely affected thereby, the judge shall stay the enforcement of the judgment for a period of not to exceed 48 hours to permit the filing of an appeal, and the judge may provide for the temporary custody of the person during such stay in such manner as the judge sees fit. Enforcement of the judgment after the taking of any appeal may be stayed on such terms and conditions, including such provisions for

custody during pendency of the appeal, as the judge shall prescribe. If the state, in open court, announces its intention to appeal from an order discharging a prisoner, the judge shall stay the enforcement of the judgment for a period not more than 24 hours to permit the filing of an appeal.

(e) (1) *The Record.* In habeas corpus proceedings involving extradition to another state, when written notice of appeal from a judgment or an order is filed, the transcript shall be prepared within ~~20~~ *21* days after the notice of appeal is filed and sent to the appellate court for review. The appellate court may shorten or extend the time for filing the record if there is a reasonable explanation for the need for such action. When the record is received by the appellate court, the court shall set the time for filing of briefs, if briefs are desired, and shall set the appeal for submission.

(2) *Hearing.* Such cases, taken to the court of appeals by appeal, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court shall be reviewed.

(3) *Orders on Appeal.* In such cases, the appellate court shall render such judgment and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no cost at all.

Sec. 176. K.S.A. 2009 Supp. 60-1607 is hereby amended to read as follows: 60-1607. (a) *Permissible orders.* After a petition for divorce, annulment or separate maintenance has been filed, and during the pendency of the action prior to final judgment the judge assigned to hear the action may, without requiring bond, make and enforce by attachment, orders which:

(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the legal custody and residency of and parenting time with the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;

(4) require mediation between the parties on issues, including, but not limited to, child custody, residency, division of property, parenting time and development of a parenting plan;

(5) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case;

(6) require an investigation by court service officers into any issue arising in the action; or

(7) require that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(b) *Ex parte orders.* Orders authorized by subsections (a)(1), (2), (3), (4) and (7) may be entered after *ex parte* hearing upon compliance with rules of the supreme court, except that no *ex parte* order shall have the effect of changing the residency of a minor child from the parent who has had the sole *de facto* residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued *ex parte*, the court shall hear a motion to vacate or modify the order within ~~15~~ *14* days of the date on which a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the action, any other judge of the district court may make any order authorized by this section, including vacation or modification or any order issued by the judge assigned to hear the action.

(c) *Support orders.* (1) An order of support obtained pursuant to this

section may be enforced by an order of garnishment as provided in this section.

(2) No order of garnishment shall be issued under this section unless: (A) ~~Ten~~ *Fourteen* or more days have elapsed since the order of support was served upon the party required to pay the support, and (B) the order of support contained a notice that the order of support may be enforced by garnishment and that the party has a right to request an opportunity for a hearing to contest the issuance of an order of garnishment, if the hearing is requested by motion filed within ~~five~~ *seven* days after service of the order of support upon the party. If a hearing is requested, the court shall hold the hearing within ~~five~~ *seven* days after the motion requesting the hearing is filed with the court or at a later date agreed to by the parties.

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) ~~ten~~ *fourteen* or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the ~~five~~ *seven* days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

(d) If an interlocutory order for legal custody, residency~~,~~ or parenting time is sought, the party seeking such order shall file a proposed temporary parenting plan as provided by K.S.A. 60-1623, and amendments thereto, at the time such order is sought. If any motion is filed to modify any such interlocutory orders, or in opposition to a request for issuance of interlocutory orders, that party shall attach to such motion or opposition a proposed alternative parenting plan.

(e) *Service of process.* Service of process served under subsection (a)(1) and (2) shall be by personal service and not by certified mail return receipt requested.

Sec. 177. K.S.A. 60-1629 is hereby amended to read as follows: 60-1629. (a) A parent entitled to legal custody of, or residency of, or parenting time with a child pursuant to K.S.A. 60-1610, and amendments thereto, shall give written notice to the other parent of one or more of the following events when such parent: (1) Is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; (2) has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto; (3) is residing with an individual who is known by the parent to be subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or (4) is residing with an individual who is known by the parent to have been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent within ~~10~~ *14* days following such event.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) An event described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time.

Sec. 178. K.S.A. 60-2002 is hereby amended to read as follows: 60-2002. (a) *As of course.* Unless otherwise provided by statute, or by order of the judge, the costs shall be allowed to the party in whose favor judg-

ment is rendered. The court shall have the discretion to order that the alternative dispute resolution fees be, in whole or in part, paid by or from any combination of any party or parties, from any fund authorized to pay such fees, or from the proceeds of any settlement or judgment.

(b) *Offer of judgment.* At any time more than ~~15~~ *21* days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against such party for the money or property or to the effect specified in such party's offer, with costs then accrued. If within ~~10~~ *14* days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time prior to the commencement of proceedings to determine the amount or extent of liability.

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

Sec. 179. K.S.A. 2009 Supp. 60-2102 is hereby amended to read as follows: 60-2102. (a) *Appeal to court of appeals as matter of right.* Except for any order or final decision of a district magistrate judge, the appellate jurisdiction of the court of appeals may be invoked by appeal as a matter of right from:

(1) An order that discharges, vacates or modifies a provisional remedy.

(2) An order that grants, continues, modifies, refuses or dissolves an injunction, or an order that grants or refuses relief in the form of mandamus, quo warranto or habeas corpus.

(3) An order that appoints a receiver or refuses to wind up a receivership or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property, or an order involving the tax or revenue laws, the title to real estate, the constitution of this state or the constitution, laws or treaties of the United States.

(4) A final decision in any action, except in an action where a direct appeal to the supreme court is required by law. In any appeal or cross appeal from a final decision, any act or ruling from the beginning of the proceedings shall be reviewable.

(b) *Appeal to supreme court as matter of right.* The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from:

(1) A preliminary or final decision in which a statute of this state has been held unconstitutional as a violation of Article 6 of the Kansas constitution pursuant to K.S.A. 2009 Supp. 72-64b03, and amendments thereto. Any appeal filed pursuant to this subsection (b)(1) shall be filed within 30 days of the date the preliminary or final decision is filed.

(2) A final decision of the district court in any action challenging the constitutionality of or arising out of any provision of the Kansas expanded lottery act, any lottery gaming facility management contract or any racetrack gaming facility management contract entered into pursuant to the Kansas expanded lottery act.

(c) *Other appeals.* When a district judge, in making in a civil action an order not otherwise appealable under this section, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. The court of

appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ~~10~~ *14* days after the entry of the order under such terms and conditions as the supreme court fixes by rule. Application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or an appellate court or a judge thereof so orders.

Sec. 180. K.S.A. 60-2103 is hereby amended to read as follows: 60-2103. (a) *When and how taken.* When an appeal is permitted by law from a district court to an appellate court, the time within which an appeal may be taken shall be 30 days from the entry of the judgment, as provided by K.S.A. 60-258, and amendments thereto, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of judgment the district court in any action may extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed. The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subsection commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: Granting or denying a motion for judgment under subsection (b) of K.S.A. 60-250, and amendments thereto; or granting or denying a motion under subsection (b) of K.S.A. 60-252, and amendments thereto, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; or granting or denying a motion under K.S.A. 60-259, and amendments thereto, to alter or amend the judgment; or denying a motion for new trial under K.S.A. 60-259, and amendments thereto.

A party may appeal from a judgment by filing with the clerk of the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this chapter, or when no remedy is specified, for such action as the appellate court having jurisdiction over the appeal deems appropriate, which may include dismissal of the appeal. If the record on appeal has not been filed with the appellate court, the parties, with the approval of the district court, may dismiss the appeal by stipulation filed in the district court, or that court may dismiss the appeal upon motion and notice by the appellant.

(b) *Notice of appeal.* The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or part thereof appealed from, and shall name the appellate court to which the appeal is taken. The appealing party shall cause notice of the appeal to be served upon all other parties to the judgment as provided in K.S.A. 60-205, and amendments thereto, but such party's failure so to do does not affect the validity of the appeal.

(c) *Security for costs.* Security for the costs on appeal shall be given in such sum and manner as shall be prescribed by a general rule of the supreme court unless the appellate court shall make a different order applicable to a particular case.

(d) *Supersedeas bond.* (1) Whenever an appellant entitled thereto desires a stay on appeal, such appellant may present to the district court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. Subject to paragraph (2), the bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed, or if the judgment is affirmed, and to satisfy in full such modification of the judgment such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed after notice and hearing at such sum only as will secure

the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. When an order is made discharging, vacating, or modifying a provisional remedy, or modifying or dissolving an injunction, a party aggrieved thereby shall be entitled, upon application to the judge, to have the operation of such order suspended for a period of not to exceed ~~10~~ *14* days on condition that, within such period of ~~10~~ *14* days such party shall file a notice of appeal and obtain the approval of such supersedeas bond as is required under this section.

(2) (A) Except as provided in paragraph (B), if an appellant appeals from any form of judgment based on any legal theory and seeks a stay of enforcement during the period of appeal, the supersedeas bond shall be set at the full amount of the judgment. If the appellant proves by a preponderance of the evidence that setting the supersedeas bond at the full amount of the judgment will result in the appellant suffering an undue hardship or a denial of the right to an appeal, then the court may reduce the amount of the supersedeas bond as follows:

(i) If the judgment is less than or equal to $1,000,000 in value, the supersedeas bond shall be set at the full amount of the judgment; or

(ii) if the judgment exceeds $1,000,000 in value, the supersedeas bond shall be set at a total of $1,000,000 plus 25% of any amount in excess of $1,000,000.

(B) The limitations on the amount of a supersedeas bond established by paragraph (A)(i) or (A) (ii) shall not apply if:

(i) The appellee proves by a preponderance of the evidence that the appellant bringing the appeal is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, and in such event, the court may enter such orders as are necessary to stop the dissipation and diversion of assets, including a requirement that the appellant post a bond in the full amount of the judgment; or

(ii) the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets reasonably necessary to satisfy the judgment, and in such event, the court may increase the amount of such bond required not to exceed the full amount of the judgment.

(C) Nothing in this section shall be construed to prohibit a court from setting a supersedeas bond in a lower amount as may be otherwise required by law or for good cause shown.

(D) A bond shall not be found insufficient under any other provision of law due to limits imposed under this subsection.

(e) *Failure to file or insufficiency of bond.* If a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the appellate court.

(f) *Judgment against surety.* By entering into a supersedeas bond given pursuant to subsections (c) and (d), the surety submits such surety's self to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting such surety's liability on the bond may be served. Such surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the judge prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if such surety's address is known.

(g) *Docketing record on appeal.* The record on appeal shall be filed and docketed with the appellate court at such time as the supreme court may prescribe by rule.

(h) *Cross-appeal.* When notice of appeal has been served in a case and the appellee desires to have a review of rulings and decisions of which such appellee complains, the appellee shall, within ~~20~~ *21* days after the notice of appeal has been served upon such appellee and filed with the clerk of the trial court, give notice of such appellee's cross-appeal.

(i) *Intermediate rulings.* When an appeal or cross-appeal has been timely perfected, the fact that some ruling of which the appealing or cross-appealing party complains was made more than 30 days before filing of the notice of appeal shall not prevent a review of the ruling.

Sec. 181. K.S.A. 60-2103a is hereby amended to read as follows: 60-2103a. (a) In actions commenced in the district courts of this state all appeals from orders or final decisions of a district magistrate judge shall be heard by a district judge. Except as otherwise provided by law, such appeals shall be taken by notice of appeal specifying the order or decision complained of and shall be filed with the clerk of the district court within ~~10~~ *14* days after the entry of such order or decision. The notice of appeal shall specify the party or parties taking the appeal; shall designate the order or decision appealed from; and shall state that such appeal is being taken from an order or decision of a district magistrate judge. The appealing party shall cause notice of the appeal to be served upon all of the parties to the action in accordance with the provisions of K.S.A. 60-205, and amendments thereto. Upon filing the notice of appeal, the appeal shall be deemed perfected.

(b) Except as otherwise provided by law or rule of the supreme court, the provisions of subsections (b) through (i) of K.S.A. 60-2103, and amendments thereto, shall be applicable to appeals from orders and decisions of district magistrate judges.

Sec. 182. K.S.A. 2009 Supp. 60-2409 is hereby amended to read as follows: 60-2409. The officer who levies upon personal property, before such officer proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ~~10~~ *14* days before the day of sale. The notice shall be given by publication at least once each week for two consecutive weeks in some newspaper meeting the qualifications prescribed by K.S.A. 64-101, and amendments thereto, or, in the discretion of the court, by putting up advertisements in five public places in the county, one of which shall be on a bulletin board established for public notices in the county courthouse. Within ~~five~~ *seven* days of the date of first publication or posting of notice, plaintiff shall send by restricted mail a copy of such notice to the defendant and to those persons known by the plaintiff to have a security interest in the property. Such notice shall be sent to the last known address of the person to whom sent and shall be in compliance with K.S.A. 2009 Supp. 84-1-202(d) and (e), and amendments thereto. If the personal property levied upon cannot be sold at the execution sale for want of bidders, the judgment creditor may direct the officer to return the execution showing that fact or, at such creditor's option, such creditor may report the same to the judge and obtain an order permitting a second sale under the same execution and an extension of the return day of the execution if that be necessary.

Sec. 183. K.S.A. 60-2414 is hereby amended to read as follows: 60-2414. (a) *Right of redemption by defendant owner.* Except as stated in subsection (m) and as otherwise provided by law, the defendant owner may redeem any real property sold under execution, special execution or order of sale, at any time within 12 months from the day of sale, for the amount paid by the current holder of the certificate of purchase, including expenses incurred by the holder of the certificate of purchase in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. The defendant owner in the meantime shall be entitled to the possession of the property. If the court finds after hearing, either before or after sale, upon not less than 21 days' notice to all parties, that the property has been abandoned, or is not occupied in good faith, the period of redemption for the defendant owner may be shortened or extinguished by the court. The right of redemption shall not apply to oil and gas leaseholds. Except for mortgages covering agricultural lands or single or two-family dwellings owned by or held in trust for natural persons, the mortgagor may agree in the mortgage instrument to a shorter period of redemption than 12 months or may wholly waive the period of redemption.

(b) *Redemption by lien creditor.* Except as provided in subsection (m), for the first three months of the redemption period, if any, the right of the defendant owner or successors and assigns to redeem is exclusive. If no redemption is made by the defendant owner during the time in which the defendant owner has the exclusive right to redeem, any creditor referred to in subsection (c) may redeem the property during the balance of the redemption period remaining. If the defendant owner has waived the right of redemption, a creditor shall have a right to redeem the prop-

erty for a period of three months from the date of the judicial sale. If the defendant owner has agreed to a period of redemption of three months or less, a creditor shall have a right to redeem for a period of three months from the date of expiration of the defendant owner's redemption period. If the court shortens or extinguishes the period of redemption because of abandonment or lack of good faith occupation as provided in subsection (a), the court shall specify in the order a time not to exceed three months during which a creditor may redeem. The first creditor redeeming must pay only the amount of the successful sale bid, the expenses incurred by the holder of the certificate in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. After redemption by a creditor, no further redemption shall be allowed except by the defendant owner or such owner's successors and assigns. If a creditor redeems during the period of redemption for the defendant owner, the defendant owner shall have the balance of such period, but in no event less than ~~10~~ *14* days from the filing of the affidavit required in subsection (f), to redeem from the creditor. When the defendant owner or such owner's successors and assigns redeem subsequent to redemption by a creditor, the defendant owner or such owner's successors and assigns shall pay an amount equal to the redemption amount paid by such creditor, plus the amount required by subsection (f), and expenses incurred by the creditor in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption.

(c) *Creditors who may redeem.* Any creditor whose claim is or becomes a lien prior to the expiration of the time allowed by law for the redemption by creditors may redeem. A mortgagee may redeem upon the terms prescribed by this section before or after the debt secured by the mortgage falls due.

(d) *Terms of redemption; rights of parties.* During the period allowed for redemption, the holder of the certificate of purchase or the creditor who has redeemed may pay the taxes on the lands sold, insurance premiums on the improvements thereon, other sums necessary to prevent waste, and interest or sums due, upon any prior lien or encumbrance on the real property. Upon the redemption of the property, the holder of the certificate or the creditor who has redeemed shall be entitled to repayment of all sums thus paid, together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto. All expenses incurred by the holder of the certificate or the creditor who has redeemed shall be as shown by receipts or vouchers filed in the office of the clerk of the district court.

(e) *Effect of failure of debtor to redeem; deficiency.* If the defendant owner or such owner's successors or assigns fail to redeem as provided in this section, the holder of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period will hold the property absolutely. If it is held by a redeeming creditor, the lien and the claim out of which it arose will be held to be extinguished, unless the redeeming creditor is unwilling to hold the property and credit the defendant owner with the full amount of the redeeming creditor's lien and, at the time of redemption, files with the clerk of the district court a statement of the amount that the redeeming creditor is willing to credit on the claim. If the redeeming creditor files such a statement and the defendant owner or such owner's successors and assigns fail to redeem, the creditor's claim shall be extinguished by the amount in the statement. The sheriff, at the end of the redemption period, shall execute a deed to the current owner of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period.

(f) *Mode of redemption.* The party redeeming shall pay the money into the office of the clerk of the district court for the use of the persons entitled to it. The clerk shall give a receipt for the money, stating the purpose for which it is paid. The clerk shall also enter the transaction on the appearance docket of the case, showing the amount paid. A redeeming creditor, or agent of the creditor, shall also file an affidavit stating as nearly as practicable the amount still unpaid due on the claim of that creditor and any lesser amount the creditor is willing to credit on the claim in accordance with subsection (e). The creditor's claim, or such lesser amount as the creditor is willing to credit on the claim in accord-

ance with subsection (e), shall be added to the redemption amount to be paid by the defendant owner or such owner's successors and assigns.

(g) *Redemption of property sold in parcels, or undivided portions.* Whenever the property has been sold in parcels, any distinct portion of that property may be redeemed by itself. If a creditor has redeemed, the amount of the creditor's claim or such lesser amount as the creditor is willing to credit on the claim as stated in the affidavit under subsection (f) shall be added to each parcel sold pro rata in proportion to the amount for which it was originally sold. When the interests of several tenants in common have been sold on execution the undivided portion of any or either of them may be redeemed separately.

(h) *Transfer of right of redemption.* The rights of the defendant owner in relation to redemption may be assigned or transferred, and the assignee or transferee shall have the same right of redemption as the defendant owner. The assigned or transferred right of redemption shall not be subject to levy or sale on execution.

(i) *Holder of legal title.* The holder of the legal title at the time of issuance of execution or order of sale shall have the same right of redemption upon the same terms and conditions as the defendant in execution and shall be entitled to the possession of the property the same as the defendant in execution.

(j) *Injury or waste after sale.* After the sheriff makes the deed to the purchaser or party entitled to a deed under sale as provided in this section, the purchaser or party may assert a claim for damages against any person committing or permitting any injury or waste upon the property purchased after the sale and before possession is delivered under the conveyance.

(k) *Second sale not permitted.* Real estate once sold upon order of sale, special execution or general execution shall not again be liable for sale for any balance due upon the judgment or decree under which it is sold, or any judgment or lien inferior thereto, including unadjudicated junior liens filed after the petition is filed in the district court to foreclose the senior lien against the real estate.

(l) *Injunction or receiver to protect property.* The holder of the certificate of purchase shall be entitled to prevent any waste or destruction of the premises purchased. For that purpose the court, on proper showing, may issue an injunction or, when required to protect the premises against waste, appoint a receiver who shall hold the premises until the purchaser is entitled to a deed. The receiver may rent, control and manage the premises but the income during that time, except the fees and expenses of the receiver and the amount that is necessary to keep up repairs, prevent waste and pay real estate taxes and insurance premiums, shall go to the person who otherwise would be entitled to possession during the period of redemption.

(m) *Owners reduced redemption period.* In the event a default occurs in the conditions of the mortgage or instrument of the most senior lien foreclosed before ⅓ of the original indebtedness secured by the mortgage or lien has been paid, the court shall order a redemption period of three months. If, after proper showing, the court finds that the total outstanding amount of all mortgages or liens is less than ⅓ of the market value of the property, the court shall order a redemption period of 12 months. If the court finds after a hearing with not less than 21 days' notice to all parties, that the defendant owner has involuntarily lost such owner's primary source of income after the date of the foreclosure sale and prior to expiration of a three-month period of redemption, the court may extend the three-month period of redemption an additional three months. If the court orders a redemption period of six months or less, the right of the defendant owner or successors and assigns to redeem is exclusive for the first two months of the redemption period. This subsection shall not apply in the event redemption rights have been shortened, waived or terminated pursuant to subsection (a).

Sec. 184. K.S.A. 60-2604 is hereby amended to read as follows: 60-2604. If any clerk of the district court, sheriff, or other officer willfully refuses, or fails without clearly excusing cause, to discharge or perform a duty imposed upon ~~him or her~~ *such clerk, sheriff or other officer* under this chapter, or fails to account promptly for any funds or property coming into ~~his or her~~ *such clerk, sheriff or other officer's* possession in any pro-

ceeding under this chapter the court may, on the motion of any injured party and with not less than ~~ten (10)~~ *14* days' notice, cause such officer to be amerced for the benefit of the injured party in an amount equal to the loss sustained plus ~~ten percent (10%)~~ *10%* and plus reasonable attorneys' fees. Such liability shall also extend to the official bond of the officer.

Sec. 185. K.S.A. 60-2801 is hereby amended to read as follows: 60-2801. (a) Within ~~fifteen (15)~~ *14* days of the date of the occurrence causing injury to any person, who either is under the care of a person licensed to practice the healing arts, or is confined to a hospital or sanitarium as a patient, no person whose interest is or may become adverse to the injured person shall:

(1) Negotiate or attempt to negotiate a settlement with the injured patient; or

(2) obtain or attempt to obtain a general release of liability from the injured patient.

(b) Any settlement agreement entered into, any general release of liability or any written statement made by any person who is under the care of a person licensed to practice the healing arts or is confined in a hospital or sanitarium after he or she incurs a personal injury, which is not obtained in accordance with the provisions of K.S.A. 60-2802, *and amendments thereto,* may be disavowed by the injured person within ~~fifteen (15)~~ *14* days after discharge from the care of any person licensed to practice the healing arts or after release from the hospital or sanitarium, whichever occurs first, and such statement, release or settlement shall not be received in evidence in any court action relating to the injury.

Sec. 186. K.S.A. 60-2802 is hereby amended to read as follows: 60-2802. The provisions of this act relating to settlements, releases and statements obtained from a patient confined in a hospital or sanitarium or being treated by a person licensed to practice the healing arts, shall not apply, if such patient is released from a hospital or sanitarium or released by a person licensed to practice the healing arts, within ~~fifteen (15)~~ *14* days of the date of the occurrence causing injury, or if at least ~~five (5)~~ *seven* days prior to obtaining the settlement, release or statement, the injured party has signified in writing ~~his or her~~ *the injured party's* willingness that a settlement, release or statement be given.

Sec. 187. K.S.A. 60-2803 is hereby amended to read as follows: 60-2803. (a) When a money judgment rendered in a civil action in a court of this state is satisfied, the judgment creditor or the assignee of the judgment creditor shall file satisfaction and release of the judgment within ~~twenty~~ *21* days after receipt of written demand therefor, sent by restricted mail as defined by K.S.A. 60-103, and amendments thereto. Such satisfaction and release shall be filed with the clerk of the court in which the judgment was entered and with the clerk of any other court in which the judgment was filed.

(b) If a judgment creditor or the assignee of a judgment creditor refuses or neglects to enter satisfaction and release of a judgment when required by this section, such judgment creditor or assignee shall be liable to the judgment debtor, or other interested person demanding the satisfaction or release, in damages in the amount of ~~one hundred dollars~~ *$100*, together with a reasonable attorney's fee for preparing and prosecuting the action to recover such damages.

(c) The provisions of this section shall not apply if the judgment is satisfied by payment through the office of the clerk of the district court, the district court trustee or any central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto.

Sec. 188. K.S.A. 60-3106 is hereby amended to read as follows: 60-3106. (a) Within ~~20~~ *21* days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant shall have an opportunity to present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing. At the hearing, the court shall advise the parties of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A.

60-3107, and amendments thereto, or any combination thereof, as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted *ex parte*. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section. No temporary order shall have the effect of modifying an existing order granting legal custody, residency, visitation or parenting time unless there is sworn testimony at a hearing to support a showing of good cause.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

Sec. 189. K.S.A. 60-31a05 is hereby amended to read as follows: 60-31a05. (a) Within ~~20~~ *21* days of the filing of a petition under the protection from stalking act a hearing shall be held at which the plaintiff must prove the allegation of stalking by a preponderance of the evidence and the defendant shall have an opportunity to present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing. At the hearing, the court shall advise the parties of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with K.S.A. 60-31a06*,* and amendments thereto, or any combination thereof, as it deems necessary to protect the victim from being stalked. Temporary orders may be granted *ex parte* on presentation of a verified petition by the victim supporting a *prima facie* case of stalking.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

Sec. 190. K.S.A. 2009 Supp. 60-3503 is hereby amended to read as follows: 60-3503. The district judge or the chief judge of such court shall notify the parties to the action that a screening panel has been convened. The plaintiff or claimant and the defendant or respondent shall each designate a person licensed in the same profession as the defendant or respondent within ~~20~~ *21* days of such party's receipt of notice of the convening of the screening panel. The parties shall jointly designate a person licensed in the same profession as the defendant or respondent within ~~10~~ *14* days after the individual designations have been made. If the parties are unable to jointly select a professional licensee within such ~~10~~ *14* days, the judge of the district court or the chief judge of such court shall select such professional licensee.

Sec. 191. K.S.A. 2009 Supp. 60-4107 is hereby amended to read as follows: 60-4107. (a) Property may be seized for forfeiture by a law enforcement officer upon process issued by the district court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for the property's forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The court may order that the property be seized on such terms and conditions as are reasonable in the discretion of the court. The order may be made on or in connection with a search warrant. All real property is to be seized constructively or pursuant to a preseizure adversarial judicial determination of probable cause, except that this determination may be done ex parte when the attorney for the state has demonstrated exigent circumstances to the court.

(b) Property may be seized for forfeiture by a law enforcement officer without process on probable cause to believe the property is subject to forfeiture under this act.

(c) Property may be seized constructively by:

(1) Posting notice of seizure for forfeiture or notice of pending forfeiture on the property.

(2) Giving notice pursuant to K.S.A. 60-4109, and amendments thereto.

(3) Filing or recording in the public records relating to that type of property notice of seizure for forfeiture, notice of pending forfeiture, a forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to this act are not subject to a filing fee or other charge.

(d) The seizing agency shall make reasonable effort to provide notice

of the seizure to the person from whose possession or control the property was seized and any interest holder of record within 30 days of seizing the property. If no person is in possession or control, the seizing agency may attach the notice to the property or to the place of the property's seizure or may make a reasonable effort to deliver the notice to the owner of the property. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency and the address and telephone number of the seizing officer or other person or agency from whom information about the seizure may be obtained.

(e) A person who acts in good faith and in a reasonable manner to comply with an order of the court or a request of a law enforcement officer is not liable to any person on account of acts done in reasonable compliance with the order or request. No liability may attach from the fact that a person declines a law enforcement officer's request to deliver property.

(f) A possessory lien of a person from whose possession property is seized is not affected by the seizure.

(g) When property is seized for forfeiture under this act, the seizing agency shall, within 45 days of such seizure, forward to the county or district attorney in whose jurisdiction the seizure occurred, a written request for forfeiture which shall include a statement of facts and circumstances of the seizure, the estimated value of the property, the owner and lienholder of the property, the amount of any lien, and a summary of the facts relied on for forfeiture.

(h) Upon receipt of a written request for forfeiture from a local law enforcement agency, the county or district attorney shall have ~~15~~ *14* days to accept the request. Should such county or district attorney decline such request, or fail to answer, the seizing agency may:

(1) Request a state law enforcement agency which enforces this act to adopt the forfeiture; or

(2) engage an attorney, approved by the county or district attorney, to represent the agency in the forfeiture proceeding.

(i) Upon receipt of a written request for forfeiture from a state law enforcement agency, the county or district attorney shall have ~~15~~ *14* days to accept the request. Should such county or district attorney decline such request, or fail to answer, the seizing agency may engage an assistant attorney general or other attorney approved by the attorney general's office to represent the agency in the forfeiture proceeding.

(j) Nothing in this act shall prevent the attorney general, an employee of the attorney general or an authorized representative of the attorney general from conducting forfeiture proceedings under this act.

(k) Nothing in this act shall prevent a seizing agency from requesting federal adoption of a seizure. It shall not be necessary to obtain any order pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized property to a federal agency should the county or district attorney approve of such transfer.

(l) Nothing in this act shall prevent a seizing agency, or the plaintiff's attorney on behalf of the seizing agency, from settling any alleged forfeiture claim against property before or during forfeiture proceedings. Such settlement shall be in writing and shall be approved, if a local agency, by the county or district attorney or, if a state agency, by the attorney general's office and a district court judge. No hearing or other proceeding shall be necessary. The records of settlements occurring prior to commencement of judicial forfeiture proceedings in the district court shall be retained by the county or district attorney for not less than five years.

(m) Settlements under this act shall not be conditioned upon any disposition of criminal charges.

Sec. 192. K.S.A. 60-4109 is hereby amended to read as follows: 60-4109. (a) Forfeiture proceedings shall be commenced by filing a notice of pending forfeiture or a judicial forfeiture action:

(1) If the plaintiff's attorney fails to initiate forfeiture proceedings by notice of pending forfeiture within 90 days against property seized for forfeiture or if the seizing agency fails to pursue forfeiture of the property upon which a proper claim has been timely filed by filing a judicial forfeiture proceeding within 90 days after notice of pending forfeiture, the property shall be released on the request of an owner or interest holder to such owner's or interest holder's custody, as custodian for the court,

pending further proceedings pursuant to this act. Such custodianship shall not exceed 90 days following the release to the owner or interest holder unless an extension is authorized by the court for good cause shown.

(2) If, after notice of pending forfeiture, a claimant files a petition for recognition of exemption pursuant to K.S.A. 60-4110*, and amendments thereto*, the plaintiff's attorney may delay filing the judicial forfeiture proceeding for a total of 180 days after the notice of pending forfeiture except that if an interest holder timely files a proper petition documenting the complete nature and extent of such holder's interest, including all of the contractual terms and current status, the plaintiff's attorney may delay filing a judicial forfeiture proceeding only if such attorney provides each such petitioner with a written recognition of exemption within 60 days after the effective date of the notice of pending forfeiture, recognizing the interest of such petitioner to the extent of documented outstanding principal plus interest at the contract rate until paid and any attorney fees ordered by a court pursuant to such contract.

(3) Whenever notice of pending forfeiture or service of an *in rem* complaint or notice of a recognition of exemption and statement of nonexempt interests is required under this act, notice or service shall be given in accordance with one of the following:

(A) If the owner's or interest holder's name and current address are known, by either personal service by any person qualified to serve process or by any law enforcement officer or by mailing a copy of the notice by certified mail, return receipt requested, to the known address;

(B) if the owner's or interest holder's name and address are required by law to be on record with a municipal, county, state, or federal agency to perfect an interest in the property, and the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail, return receipt requested, to any address of record with any of the described agencies; or

(C) if the owner's or interest holder's address is not known and is not on record as provided in paragraph (B), or the owner's or interest holder's interest is not known, by publication in one issue of the official county newspaper, as defined by K.S.A. 64-101, and amendments thereto, in the county in which the seizure occurred.

(4) Notice is effective upon personal service, publication, or the mailing of a written notice, whichever is earlier, except that notice of pending forfeiture of real property is not effective until it is recorded. Notice of pending forfeiture shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

(b) The plaintiff's attorney, without a filing fee, may file a lien for the forfeiture of property upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under this act or upon seizure for forfeiture. A plaintiff's attorney may also file a forfeiture lien in this state in connection with a proceeding or seizure for forfeiture in any other state under a state or federal statute substantially similar to the relevant provisions of this act. The filing constitutes notice to any person claiming an interest in the seized property or in property owned by the named person.

(1) The lien notice shall set forth the following:

(A) The name of the person and, in the discretion of the lienor, any alias, or the name of any corporation, partnership, trust, or other entity, including nominees, that are owned entirely or in part, or controlled by the person; and

(B) the description of the seized property, the criminal or civil proceeding that has been brought relating to conduct giving rise to forfeiture under this act, the amount claimed by the lienor, the name of the district court where the proceeding or action has been brought, and the case number of the proceeding or action if known at the time of filing.

(2) A lien filed pursuant to this subsection applies to the described seized property or to one named person, any aliases, fictitious names, or other names, including the names of any corporation, partnership, trust, or other entity, owned entirely or in part, or controlled by the named person, and any interest in real property owned or controlled by the named person. A separate forfeiture lien shall be filed for each named person.

(3) The notice of lien creates, upon filing, a lien in favor of the lienor as it relates to the seized property or the named person or related entities. The lien secures the amount of potential liability for civil judgment, and if applicable, the fair market value of seized property relating to all proceedings under this act enforcing the lien. The notice of forfeiture lien referred to in this subsection shall be filed in accordance with the provisions of the laws of this state relating to the type of property that is subject to the lien. The validity and priority of the forfeiture lien shall be determined in accordance with applicable law pertaining to liens. The lienor may amend or release, in whole or in part, a lien filed under this subsection at any time by filing, without a filing fee, an amended lien in accordance with this subsection which identifies the lien amended. The lienor, as soon as practical after filing the lien, shall furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection shall not invalidate or otherwise affect the lien.

(4) Upon entry of judgment in the seizing agency's favor, the seizing agency may proceed to execute on the lien as provided by law.

(5) A trustee, constructive or otherwise, who has notice that a notice of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as record owner, shall furnish within ~~15~~ *14* days, to the seizing agency or the plaintiff's attorney all of the following information, unless all of the information is of record in the public records giving notice of liens on that type of property:

(A) The name and address of each person or entity for whom the property is held;

(B) the description of all other property whose legal title is held for the benefit of the named person; and

(C) a copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as record owner of the property.

(6) A trustee with notice who knowingly fails to comply with the provisions of this subsection shall be guilty of a class B nonperson misdemeanor.

(7) A trustee with notice who fails to comply with paragraph (5) is subject to a civil penalty of $100 for each day of noncompliance. The court shall enter judgment ordering payment of $100 for each day of noncompliance from the effective date of the notice until the required information is furnished or the seizing agency executes the seizing agency's judgment lien under this section.

(8) To the extent permitted by the constitutions of the United States and the state of Kansas, the duty to comply with paragraph (5) shall not be excused by any privilege or provision of law of this state or any other state or country which authorizes or directs that testimony or records required to be furnished pursuant to paragraph (5) are privileged, confidential and otherwise may not be disclosed.

(9) A trustee who furnishes information pursuant to paragraph (5) is immune from civil liability for the release of the information.

(10) An employee of the seizing agency or the plaintiff's attorney who releases the information obtained pursuant to paragraph (5), except in the proper discharge of official duties, is guilty of a class B nonperson misdemeanor.

(11) If any information furnished pursuant to paragraph (5) is offered in evidence, the court may seal that portion of the record or may order that the information be disclosed in a designated way.

(12) A judgment or an order of payment entered pursuant to this section becomes a judgment lien against the property alleged to be subject to forfeiture.

Sec. 193. K.S.A. 60-4112 is hereby amended to read as follows: 60-4112. (a) A judicial forfeiture proceeding under this act is subject to the provisions of this section.

(b) The court, on application of the plaintiff's attorney, may enter any restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants~~,~~ or trustees, or take any other action to seize, secure, maintain~~,~~ or preserve the availability of property subject to for-

feiture under this act, including a writ of attachment or a warrant for such property's seizure, whether before or after the filing of a notice of pending forfeiture or complaint.

(c) If property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause or order of forfeiture or a hearing under subsection (c) of K.S.A. 60-4114*, and amendments thereto*, the court, on an application filed by an owner of or interest holder in the property within ~~10~~ *14* days after notice of the property's seizure for forfeiture or lien, or actual knowledge of it, whichever is earlier, and after complying with the requirements for claims in K.S.A. 60-4109*, and amendments thereto*, after ~~five~~ *seven* days' notice to the plaintiff's attorney, may issue an order to show cause to the seizing agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. The hearing shall be held within 30 days of the order to show cause unless continued for good cause on motion of either party. If the court finds that there is no probable cause for forfeiture of the property, or if the seizing agency elects not to contest the issue, the property shall be released to the custody of the applicant, as custodian for the court, or from the lien pending the outcome of a judicial proceeding pursuant to this act. If the court finds that probable cause for the forfeiture of the property exists, the court shall not order the property released.

(d) All applications filed within the ~~10-day~~ *14-day* period prescribed by subsection (c) shall be consolidated for a single hearing relating to each applicant's interest in the property seized for forfeiture.

(e) A person charged with a criminal offense may apply at any time before final judgment to the court where the forfeiture proceeding is pending for the release of property seized for forfeiture, that is necessary for the defense of the person's criminal charge. The application shall satisfy the requirements under subsection (b) of K.S.A. 60-4111*, and amendments thereto*. The court shall hold a probable cause hearing if the applicant establishes that:

(1) The person has not had an opportunity to participate in a previous adversarial judicial determination of probable cause.

(2) The person has no access to other moneys adequate for the payment of criminal counsel.

(3) The interest in property to be released is not subject to any claim other than the forfeiture.

(f) If the court finds that there is no probable cause for forfeiture of the property, the court shall order the property released pursuant to subsection (c). If the seizing agency does not contest the hearing, the court may release a reasonable amount of property for the payment of the applicant's criminal defense costs. Property that has been released by the court and that has been paid for criminal defense services actually rendered is exempt under this act.

(g) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pursuant to this section. For the purposes of this section, a conviction results from a verdict or plea of guilty, including a plea of no contest or nolo contendere.

(h) In any proceeding under this act, if a claim is based on any exemption provided for in this act, the burden of proving the existence of the exemption is on the claimant, and is not necessary for the seizing agency or plaintiff's attorney to negate the exemption in any application or complaint.

(i) In hearings and determinations pursuant to this section, the court may receive and consider, in making any determination of probable cause or reasonable cause, all evidence admissible in determining probable cause at a preliminary hearing or in the issuance of a search warrant, together with inferences therefrom.

(j) The fact that money, negotiable instruments, precious metals, communication devices, and weapons were found in close proximity to contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to the rebuttable presumption, in the manner provided in subsection (a) of K.S.A. 60-414, and amendments thereto, that such item was the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct.

(k) There shall be a rebuttable presumption, in the manner provided

in subsection (a) K.S.A. 60-414, and amendments thereto, that any property of a person is subject to forfeiture under this act if the seizing agency establishes, by the standard of proof applicable to that proceeding, all of the following:

(1) The person has engaged in conduct giving rise to forfeiture;

(2) the property was acquired by the person during that period of the conduct giving rise to forfeiture or within a reasonable time after the period; and

(3) there was no likely source for the property other than the conduct giving rise to forfeiture.

(l) A finding that property is the proceeds of conduct giving rise to forfeiture does not require proof the property is the proceeds of any particular exchange or transaction.

(m) A person who acquires any property subject to forfeiture is a constructive trustee of the property, and such property's fruits, for the benefit of the seizing agency, to the extent that such agency's interest is not exempt from forfeiture. If property subject to forfeiture has been commingled with other property, the court shall order the forfeiture of the mingled property and of any fruits of the mingled property, to the extent of the property subject to forfeiture, unless an owner or interest holder proves that specified property does not contain property subject to forfeiture, or that such owner's or interest holder's interest in specified property is exempt from forfeiture.

(n) All property declared forfeited under this act vests in the law enforcement agency seeking forfeiture on the date of commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee acquired the property in good faith, for value, and was not knowingly taking part in an illegal transaction, and the transferee's interest is exempt under K.S.A. 60-4106*, and amendments thereto*.

(o) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this act, nor give rise to any presumption adverse or contrary to any fact alleged by the seizing agency.

(p) On motion by the plaintiff's attorney, the court shall stay discovery against the criminal defendant and against the seizing agency in civil proceedings during a related criminal proceeding alleging the same conduct, after making provision to prevent loss to any party resulting from the delay. Such a stay shall not be available pending any appeal by a defendant.

(q) Except as otherwise provided by this act, all proceedings hereunder shall be governed by the rules of civil procedure pursuant to K.S.A. 60-101 et seq., and amendments thereto.

(r) An action pursuant to this act shall be consolidated with any other action or proceeding pursuant to this act or to such other foreclosure or trustee sale proceedings relating to the same property on motion of the plaintiff's attorney, and may be consolidated on motion of an owner or interest holder.

(s) There shall be a rebuttable presumption, in the manner provided in subsection (a) of K.S.A. 60-414, and amendments thereto, that any property in or upon which controlled substances are located at the time of seizure, was being used or intended for use to facilitate an act giving rise to forfeiture.

Sec. 194. K.S.A. 60-4113 is hereby amended to read as follows: 60-4113. (a) A judicial *in rem* forfeiture proceeding brought by the plaintiff's attorney pursuant to a notice of pending forfeiture or verified petition for forfeiture is also subject to the provisions of this section. If a forfeiture is authorized by this act, it shall be ordered by the court in the *in rem* action.

(b) An action *in rem* may be brought by the plaintiff's attorney in addition to, or in lieu of, civil *in personam* forfeiture procedures. The seizing agency may serve the complaint in the manner provided by subsection (a)(3) of K.S.A. 60-4109*, and amendments thereto*, or as provided by the rules of civil procedure.

(c) Only an owner of or an interest holder in the property who has timely filed a proper claim may file an answer in an action *in rem*. For

the purposes of this section, an owner of or interest holder in property who has filed a claim and answer shall be referred to as a claimant.

(d) The answer shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury, K.S.A. 21-3805, and amendments thereto, or making a false writing, K.S.A. 21-3711, and amendments thereto, and shall otherwise be in accordance with the rules of civil procedure on answers and shall also set forth all of the following:

(1) The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant.

(2) The address where the claimant will accept mail.

(3) The nature and extent of the claimant's interest in the property.

(4) The date, the identity of the transferor, and the detailed description of the circumstances of the claimant's acquisition of the interest in the property.

(5) The specific provision of this act relied on in asserting that such property is not subject to forfeiture.

(6) All essential facts supporting each assertion.

(7) The specific relief sought.

(e) The answer shall be filed within ~~20~~ *21* days after service of the civil *in rem* complaint.

(f) The seizing agency and any claimant who has timely answered the complaint, at the time of filing such agency's pleadings, or at any other time not less than 30 days prior to the hearing, may serve discovery requests on any other party, the answers or response to which shall be due within ~~20~~ *21* days of service. Discovery may include deposition of any person at any time after the expiration of ~~15~~ *14* days after the filing and service of the complaint. Any party may move for a summary judgment at any time after an answer or responsive pleading is served and not less than 30 days prior to the hearing.

(g) The issue shall be determined by the court alone, and the hearing on the claim shall be held within 60 days after service of the petition unless continued for good cause. The plaintiff's attorney shall have the initial burden of proving the interest in the property is subject to forfeiture by a preponderance of the evidence. If the state proves the interest in the property is subject to forfeiture, the claimant has the burden of showing by a preponderance of the evidence that the claimant has an interest in the property which is not subject to forfeiture.

(h) If the plaintiff's attorney fails to meet the burden of proof for forfeiture, or a claimant establishes by a preponderance of the evidence that the claimant has an interest that is exempt under the provisions of K.S.A. 60-4106*, and amendments thereto*, the court shall order the interest in the property returned or conveyed to the claimant. The court shall order all other property forfeited to the seizing agency and conduct further proceedings pursuant to the provision of K.S.A. 60-4116 and 60-4117*, and amendments thereto*.

Sec. 195. K.S.A. 60-4116 is hereby amended to read as follows: 60-4116. (a) If no proper claims are timely filed in an action *in rem*, or if no proper answer is timely filed in response to a complaint, the plaintiff's attorney may apply for an order of forfeiture and allocation of forfeited property pursuant to K.S.A. 60-4117, and amendments thereto. Upon a determination by the court that the seizing agency's written application established the court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture, the court shall order the property forfeited to the seizing agency.

(b) After final disposition of all claims timely filed in an action *in rem*, or after final judgment and disposition of all claims timely filed in an action *in personam*, the court shall enter an order that the seizing agency has clear title to the forfeited property interest. Title to the forfeited property interest and such property's proceeds shall be deemed to have vested in the seizing agency on the commission of the conduct giving rise to forfeiture under this act.

(c) If, in the discretion of the plaintiff's attorney, such plaintiff's attorney has recognized in writing that an interest holder has an interest that is exempt from forfeiture, the court, on application of the plaintiff's

attorney, may release or convey forfeited personal property to a regulated interest holder on all of the following conditions:

(1) The interest holder has an interest which was acquired in the regular course of business as an interest holder.

(2) The amount of the interest holder's encumbrance is readily determinable and the amount has been reasonably established by proof made available by the plaintiff's attorney to the court.

(3) The encumbrance held by the interest holder seeking possession is the only interest exempted from forfeiture and the order forfeiting the property to the seizing agency transferred all of the rights of the owner prior to forfeiture, including rights of redemption to the seizing agency.

(4) After the court's release or conveyance, the interest holder shall dispose of the property by a commercially reasonable public sale, and within ~~10~~ *14* days of disposition shall tender to the seizing agency the amount received at disposition less the amount of the interest holder's encumbrance and reasonable expense incurred by the interest holder in connection with the sale or disposal.

(d) On order of the court forfeiting the subject property, the seizing agency may transfer good and sufficient title to any subsequent purchaser or transferee, unless satisfied and released earlier, subject to all mortgages, deeds of trust, financing statements or security agreements of record prior to the forfeiture held by an interest holder and the title shall be recognized by all courts, by this state, and by all agencies of and any political subdivision. Likewise on entry of judgment in favor of a person claiming an interest in the property that is subject to proceedings to forfeit property under this act, the court shall enter an order that the property or interest in property shall be released or delivered promptly to that person free of liens and encumbrances under this act and the person's cost bond shall be discharged.

(e) Upon motion by the plaintiff's attorney, if it appears after a hearing there was reasonable cause for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall cause a finding to be entered that reasonable cause existed, or that any such action was taken under a reasonable good faith belief that it was proper, and the claimant is not entitled to costs or damages, and the person or seizing agency who made the seizure, and the plaintiff's attorney, are not liable to suit or judgment on account of the seizure, suit or prosecution.

(f) The court shall order a claimant who fails to establish that a substantial portion of the claimant's interest is exempt from forfeiture under K.S.A. 60-4105, and amendments thereto, to pay the reasonable costs and expenses of any claimant who established such claimant's interest is exempt from forfeiture under K.S.A. 60-4105*, and amendments thereto,* and to pay the reasonable costs and expenses of the seizing agency for the investigation and litigation of the matter, including reasonable attorney fees, in connection with that claimant.

(g) If more than one law enforcement agency is substantially involved in effecting a forfeiture pursuant to this act, and no interagency agreement exists, the court shall equitably distribute the proceeds among such agencies.

(h) Notwithstanding any other provision of law, upon the request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition.

Sec. 196. K.S.A. 2009 Supp. 61-2707 is hereby amended to read as follows: 61-2707. (a) The trial of all actions shall be to the court, and except as provided in K.S.A. 61-2714, and amendments thereto, no party in any such action shall be represented by an attorney prior to judgment. A party may appear by a full-time employee or officer or any person in a representative capacity so long as such person is not an attorney. Discovery methods or proceedings shall not be allowed nor shall the taking of depositions for any purpose be permitted. No order of attachment or garnishment shall be issued in any action commenced under this act prior to judgment in such action.

(b) When entering judgment in the action, the judge shall include as

a part of the judgment form or order a requirement that, unless the judgment has been paid, the judgment debtor shall submit to the clerk of the district court, within 30 days after receipt of the form therefor, a verified statement describing the location and nature of property and assets which the person owns, including the person's place of employment, account numbers and names of financial institutions holding assets of such person and a description of real property owned by such person. The court shall also include as a part of the judgment form or order a requirement that, within ~~15~~ *14* days of the date judgment is entered, unless judgment has been paid, the judgment creditor shall mail a copy of the judgment form or order to the judgment debtor, together with the form for providing the information required to be submitted under this subsection, and that the judgment creditor shall file with the court proof of the mailing thereof. When the form containing the required information is submitted to the clerk as required by this subsection, the clerk shall note in the record of the proceeding that it was received and then shall mail the form to the judgment creditor. No copy of such form shall be retained in the court records nor shall it be made available to other persons. Upon motion of the judgment creditor, the court may punish for contempt any person failing to submit information as required by this subsection.

(c) Any judgment entered under this act on a claim which is not a small claim, as defined in K.S.A. 61-2703, and amendments thereto, or which has been filed with the court in contravention of the limitation prescribed by K.S.A. 61-2704, and amendments thereto, on the number of claims which may be filed by any person, shall be void and unenforceable.

Sec. 197. K.S.A. 61-2709 is hereby amended to read as follows: 61-2709. (a) An appeal may be taken from any judgment under the small claims procedure act. All appeals shall be by notice of appeal specifying the party or parties taking the appeal and the order, ruling, decision or judgment complained of and shall be filed with the clerk of the district court within ~~10~~ *14* days after entry of judgment. All appeals shall be tried and determined *de novo* before a district judge, other than the judge from which the appeal is taken. The provisions of K.S.A. 60-2001 and 61-1716, and amendments thereto, shall be applicable to actions appealed pursuant to this subsection. The appealing party shall cause notice of the appeal to be served upon all other parties to the action in accordance with the provisions of K.S.A. 60-205, and amendments thereto. An appeal shall be perfected upon the filing of the notice of appeal. When the appeal is perfected, the clerk of the court or the judge from which the appeal is taken shall refer the case to the chief judge for assignment in accordance with this section. All proceedings for the enforcement of any judgment under the small claims procedure act shall be stayed during the time within which an appeal may be taken and during the pendency of an appeal, without the necessity of the appellant filing a supersedeas bond. If the appellee is successful on an appeal pursuant to this subsection, the court shall award to the appellee, as part of the costs, reasonable attorney fees incurred by the appellee on appeal.

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

Sec. 198. K.S.A. 61-2904 is hereby amended to read as follows: 61-2904. (a) A defendant shall either appear, in person or by counsel, at the time and date set forth in the summons or file on or before such date a written answer. If the defendant appears and disputes the petition, the defendant shall file an answer not later than ~~10~~ *14* days after the appearance date. The defendant shall promptly send a copy of the answer after filing to the plaintiff's attorney or the plaintiff, if no attorney. If the defendant is not represented by an attorney, the answer shall be signed by the defendant.

(b) The answer when filed shall state the following:

(1) What the dispute is;

(2) any affirmative defenses the defendant has to the claim; and

(3) the current address, phone number, fax phone number and electronic mail address for the defendant.

(c) If the defendant asserts a counterclaim against the plaintiff in the answer, the plaintiff may file a reply disputing the defendant's counterclaim not later than ~~10~~ *14* days after service of the defendant's answer. The plaintiff's reply shall comply with the requirements set forth in subsection (b). If the plaintiff does not file a reply, the plaintiff waives the right to present any dispute to the defendant's counterclaim.

(d) Affirmative defenses are those listed in subsection (c) of K.S.A. 60-208, and amendments thereto.

(e) The date the defendant is required to appear as set forth in the summons may be continued by the court upon request of either party in such manner as the court shall prescribe.

Sec. 199. K.S.A. 61-2912 is hereby amended to read as follows: 61-2912. The following provisions of article 2 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, are hereby adopted by reference and made a part of this act as if fully set forth herein, insofar as such provisions are not inconsistent or in conflict with the provisions of this act:

(a) K.S.A. 60-215, and amendments thereto, relating to amended and supplemental pleadings, except that the time for filing amended pleadings and for responding thereto shall be ~~10~~ *14* instead of ~~20~~ *21* days;

(b) K.S.A. 60-217, and amendments thereto, relating to capacity of parties;

(c) K.S.A. 60-218, and amendments thereto, providing for joinder of claims and remedies, K.S.A. 60-219 and 60-220, and amendments thereto, providing for joinder of parties, and K.S.A. 60-221, and amendments thereto, relating to misjoinder of parties and claims;

(d) K.S.A. 60-224, and amendments thereto, relating to intervention, and K.S.A. 60-225, and amendments thereto, providing for substitution of parties;

(e) K.S.A. 60-234, and amendments thereto, relating to production of documents and things for inspection;

(f) K.S.A. 60-241, and amendments thereto, providing for dismissal of actions;

(g) K.S.A. 60-244, and amendments thereto, providing for proof of records;

(h) K.S.A. 60-252, and amendments thereto, concerning findings and conclusions by the court, except that when the findings and conclusions are made by a district magistrate judge, the time to file a motion for amended or additional findings is 14 instead of 28 days;

~~(h)~~ *(i)* K.S.A. 60-256, and amendments thereto, relating to summary judgment;

~~(i)~~ *(j)* K.S.A. 60-259 ~~and 60-260~~, and amendments thereto, concerning new trial ~~and relief from judgment or order, respectively~~*, except that the time to file a motion for new trial or to alter or amend judgment when a judgment is rendered by a district magistrate judge is 14 instead of 28 days;*

(k) K.S.A. 60-260, and amendments thereto, concerning relief from judgment or order;

~~(j)~~ *(l)* K.S.A. 60-261 and 60-263, and amendments thereto, relating respectively to harmless error and disability of a judge; and

~~(k)~~ *(m)* K.S.A. 60-264, and amendments thereto, relating to process in behalf of and against persons not parties.

Sec. 200. K.S.A. 61-3002 is hereby amended to read as follows: 61-3002. (a) The summons shall be issued by the clerk and dated the day it is issued. The summons shall state the time when the law requires the defendant to appear or file an answer in response to the petition, and shall notify such defendant that in case of such defendant's failure to appear or file an answer, judgment by default will be rendered against such defendant for the relief demanded in the petition.

(b) The time stated in the summons requiring the defendant to appear in response to the petition shall be determined by the court. Such time shall be not less than ~~11~~ *14* nor more than 50 days after the date the summons is issued.

Sec. 201. K.S.A. 61-3006 is hereby amended to read as follows: 61-3006. (a) (1) Service of process may be made upon any party outside the state. If upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the

force and effect of service of process within this state; otherwise it shall have the force and effect of service by publication.

(2) The service of process shall be made in the same manner as service within this state, by any officer authorized to make service of process in this state or in the state where the defendant is served. No order of a court is required. An affidavit, or any other competent proofs, of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

(3) The time stated in the summons requiring the defendant to appear in response to the petition shall be determined by the court. Such time shall be not less than ~~11~~ *14* nor more than 50 days after the date the summons is issued, except as provided in subsection (a)(3) of K.S.A. 60-308, and amendments thereto.

(b) The provisions of subsection (b) of K.S.A. 60-308, and amendments thereto, shall be used to determine whether a person has submitted to the jurisdiction of this state.

(c) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in subsection (b), may be made by serving the process upon the defendant outside this state, as provided in subsection (a)(2), with the same force and effect as though process had been served within this state, but only causes of action arising from acts enumerated in subsection (b) may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this subsection.

(d) Nothing contained in this section limits or affects the right to serve any process in any other manner provided by law.

Sec. 202. K.S.A. 61-3101 is hereby amended to read as follows: 61-3101. (a) When an answer has been filed in an action or if the defendant appears and disputes the claims in the petition commenced pursuant to the provisions of the code of civil procedure for limited actions, any party may submit to any other party a written request for that party to admit:

(1) The genuineness of any relevant document described in and attached to the request; or

(2) the truth of any relevant matter of fact set forth in the request. The request shall be in a form which will permit the party to whom it is submitted to answer the questions on the request form under oath. A request for admissions may not contain more than 10 requests unless permission of the court is obtained to increase the number.

(b) Each of the matters requested shall be deemed to be admitted for purposes of the pending lawsuit, unless within ~~15~~ *14* days after the request is served, the party to whom the request is directed submits to the party propounding the request either:

(1) A sworn statement denying specifically the matters requested; or

(2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) If the answering party cannot truthfully admit or deny a request, the party shall set forth in detail the reasons why. If the answering party denies a request, the denial shall be in good faith and shall fairly address the substance of the request. If in good faith the answering party can deny only a part of the request or qualify a request, the party shall specify which part is admitted and qualify or deny the remaining part. If the answering party objects to a request, the party shall notify the court and the party propounding the request and schedule a hearing on the objection to be held within ~~10~~ *14* days after making the objection.

(d) The judge may permit withdrawal or amendment of any admission made by nonresponse when the party to whom the admissions were sent shows good cause for failure to respond and shows evidence that the admission is not true and the party who obtained the admission fails to satisfy the judge that withdrawal or amendment will prejudice such party in maintaining such party's action or defense on the merits. In the event such withdrawal or amendment is made by the party to whom the admissions were sent at trial, the party who obtained the admissions shall be allowed a continuance of the trial setting. Any admission made by a party under this section is for the purpose of the pending action only and

is not an admission by such party for any other purpose nor may it be used against such party in any other proceeding.

Sec. 203. K.S.A. 61-3103 is hereby amended to read as follows: 61-3103. (a) Any party may submit to any other party up to 10 interrogatories. The party receiving the interrogatories shall submit answers or objections, if any, to the party submitting the same within ~~15~~ *14* days after the interrogatories are submitted to the receiving party. On motion, the court may allow a longer time to answer or may permit a greater number of interrogatories to be submitted.

(b) The provisions of K.S.A. 60-233, and amendments thereto, shall be applicable to interrogatories pursuant to this section, except that the provisions of this section relating to the time when interrogatories are to be answered shall be applicable. The general discovery provisions of subsections (b), (c) and (e) of K.S.A. 60-226, and amendments thereto, and the sanction provisions of K.S.A. 60-237, and amendments thereto, as such sections relate to interrogatories, shall be applicable to interrogatories pursuant to this section.

Sec. 204. K.S.A. 61-3105 is hereby amended to read as follows: 61-3105. (a) Any party to an action pursuant to the code of civil procedure for limited actions may take the testimony of any person, including a party, either within or without the state, by deposition upon oral examination or written questions but only for use as evidence in the action. Unless the court orders otherwise, the parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. The taking of such depositions shall be governed by the provisions of K.S.A. 60-228, subsections (b) through (h) of K.S.A. 60-230, K.S.A. 60-231 and subsection (d) of K.S.A. 60-232, and amendments thereto, except that any party desiring to take a deposition shall first file with the court, and serve on all other parties to the action, a motion that the taking of such deposition be allowed due to the existence of at least one of the conditions prescribed in subsection (b) for the use of depositions as evidence. Within ~~five~~ *seven* days after any such motion has been made, any other party to the action may file an objection to such motion, and in such event, the court shall hold a hearing within ~~five~~ *seven* days thereof to determine the issue. No deposition shall be taken unless and until the court shall have granted the motion requesting permission therefor.

(b) At the trial, or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition of a witness, whether or not a party, so far as it is admissible under the rules of evidence, may be used for any purpose against any party who was present or represented at the taking of the deposition, or who had due notice thereof, if the court finds that:

(1) The witness is dead;

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

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

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

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

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

Sec. 205. K.S.A. 61-3201 is hereby amended to read as follows: 61-3201. (a) If the defendant appears on the date specified in the summons and disputes the petition, or on or before such date files an answer, the court may set the case for a pretrial hearing. Such hearing shall be held at least ~~10~~ *14* days after the date of the defendant's appearance. All parties shall be notified of the date, time and place for the pretrial hearing.

(b) After a case has been set for pretrial, each of the parties shall submit to the other party before the date scheduled for the pretrial hearing, copies of all documents which support the petition or answer and an identification of all witnesses who will testify at trial to support the same.

(c) If the defendant fails to appear at the pretrial hearing, the court may enter default judgment against the defendant for the relief demanded in the petition without further notice. If the plaintiff fails to appear at the pretrial hearing, the court may dismiss the lawsuit upon such terms and conditions as the court deems proper.

(d) If both parties appear at the pretrial hearing, the court shall conduct a conference with the parties to clarify the issues for trial and explore the possibilities of settlement. If the defendant does not have a legal defense to the petition, the court may enter judgment against the defendant for the relief demanded in the petition or for such other relief that the court believes is fair and just. If the plaintiff has not stated a claim upon which relief can be granted, the court may dismiss the petition.

Sec. 206. K.S.A. 61-3301 is hereby amended to read as follows: 61-3301. (a) The court may enter a default judgment in the following situations:

(1) If a defendant fails to either appear or file a written answer on or before the time specified in the summons, judgment may be entered against the defendant upon proof of service and at such time as the plaintiff requests same, without further notice to the defendant.

(2) If a defendant fails to appear at the time set for a pretrial or trial hereunder, judgment may be entered against the defendant at the request of the plaintiff without further notice to the defendant.

(3) If the defendant has filed a counterclaim against the plaintiff and the plaintiff fails to appear at the time set for a pretrial or trial hereunder, judgment may be entered against the plaintiff at the request of the defendant without further notice to the plaintiff.

(b) A default judgment shall not be different in kind from or exceed the amount of the relief sought in the demand for judgment.

(c) If a defendant seeks to set aside a default judgment for failure to appear at the time specified in the summons, the defendant shall file a motion not more than ~~10~~ *14* days from the date of such judgment in a lawsuit where the defendant was personally served with summons within the state, or not more than 45 days where service of summons was by other than personal service within the state. If any party seeks to set aside any other default judgment, that party shall file a motion not more than ~~10~~ *14* days from the date of such judgment. Any motion to set aside a default judgment, except for the time limits set forth above, shall be in accordance with the applicable provisions of subsection (b) of K.S.A. 60-260, and amendments thereto.

(d) In cases where no service is had, for good cause shown, the court may set aside a default judgment pursuant to the applicable provisions of subsection (b) of K.S.A. 60-260, and amendments thereto.

Sec. 207. K.S.A. 61-3304 is hereby amended to read as follows: 61-3304. *Except as modified by subsections (h) and (j) of K.S.A. 61-2912, and amendments thereto,* the provisions of K.S.A. 60-252, 60-259 and 60-260, and amendments thereto, shall apply to judgments entered under the code of civil procedure for limited actions where such provisions are not inconsistent with other provisions of the code.

Sec. 208. K.S.A. 61-3504 is hereby amended to read as follows: 61-3504. (a) As an aid to the collection of a judgment, an order of garnishment may be obtained at any time after ~~10~~ *14* days following judgment. There is no requirement that an execution first be issued and returned unsatisfied.

(b) The party requesting a garnishment shall file a request in an individual case or by a master request covering more than one case asking the court to issue an order of garnishment. The request shall designate whether the order of garnishment is to be issued to attach earnings or to attach other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor to enforce:

(1) An order of any court for the support of any person;

(2) an order of any court of bankruptcy under chapter 13 of the United States bankruptcy code; or

(3) a debt due for any state or federal tax, the direction of the party shall so indicate. No bond is required for an order of garnishment issued after judgment.

Sec. 209. K.S.A. 61-3508 is hereby amended to read as follows: 61-3508. (a) Immediately following the time the order of garnishment is served on the garnishee, the party seeking the garnishment shall send a notice to the judgment debtor in any reasonable manner, notifying the judgment debtor:

(1) That a garnishment order has been issued against the judgment debtor and the effect of such order;

(2) of the judgment debtor's right to assert any claim of exemption allowed under the law with respect to a garnishment against property other than earnings or of the judgment debtor's right to object to the calculation of exempt and nonexempt earnings with respect to a garnishment against the earnings of the debtor; and

(3) of the judgment debtor's right to a hearing on such claim or objection. The notice shall contain a description of the exemptions that are applicable to garnishments and the procedure by which the judgment debtor can assert any claim of exemption.

(b) If the judgment debtor requests a hearing to assert any claim of exemption, the request shall be filed no later than ~~10~~ *14* days following the date the notice is served on the judgment debtor. If a hearing is requested, the hearing shall be held by the court no sooner than ~~five~~ *seven* days nor later than ~~10~~ *14* days after the request is filed. At the time the request for hearing is filed, the judgment debtor shall obtain from the clerk or court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the judgment debtor shall hand-deliver to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, or mail to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, by first-class mail at the party seeking the garnishment or such party's attorney's last known address, a copy of the request for hearing.

(c) If a hearing is held, the judgment debtor shall have the burden of proof to show that some or all of the property subject to the garnishment is exempt, and the court shall enter an order determining the exemption and such other order or orders as is appropriate.

Sec. 210. K.S.A. 61-3509 is hereby amended to read as follows: 61-3509. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

Within ~~10~~ *14* days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and file the completed answer with the clerk of the court. The clerk shall cause a copy of the answer to be mailed promptly to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 211. K.S.A. 61-3511 is hereby amended to read as follows: 61-3511. (a) No later than ~~10~~ *14* days after the garnishee makes the answer and the clerk or the garnishee sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

Sec. 212. K.S.A. 61-3512 is hereby amended to read as follows: 61-3512. (a) The court shall direct the garnishee to pay to the court such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to property other than earnings of the judgment debtor;

(2) ~~ten~~ *fourteen* days have passed since receipt of the answer of the garnishee by the court; and

(3) no reply to the answer has been filed.

(b) The court shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee may release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the court has been received within 60 days following the receipt of the answer of the garnishee by the court.

Sec. 213. K.S.A. 61-3513 is hereby amended to read as follows: 61-3513. This section shall apply if the garnishment is to attach earnings of the judgment debtor. If no reply is made to the answer of garnishee within ~~10~~ *14* days following the date the garnishee has sent the completed answer to the judgment creditor and judgment debtor, the garnishee shall promptly thereafter pay the earnings withheld as indicated on the answer to all judgment creditors designated on the answer in the amount due each as indicated on the answer, unless the garnishee receives prior to such payment an order of the court to the contrary. If any judgment creditor receives more than they are entitled to, that judgment creditor shall promptly pay the excess amount pro-rata to the other judgment creditors designated on the answer, or if no such other judgment creditors are designated, the judgment creditor shall promptly pay the excess amount to the judgment debtor.

Sec. 214. K.S.A. 61-3604 is hereby amended to read as follows: 61-3604. (a) As an aid to the collection of a judgment, the judgment creditor is entitled to have an order for a hearing in aid of execution issued by the court at any time after ~~10~~ *14* days after judgment. There is no requirement that an execution first be issued and returned unsatisfied. No application for such order needs to be filed except as specially required in this section.

(b) An order for a hearing in aid of execution may be issued at the request of a judgment creditor in an individual case or by a master request covering more than one case, and shall require the judgment debtor to either: (1) Contact the judgment creditor or attorney prior to the date set for the hearing to furnish information under oath or penalty of perjury concerning the judgment debtor's property and income; or (2) appear and furnish information under oath or penalty of perjury when required by the court concerning the debtor's property and income before the court at a time and place specified in the order within the county where the court is situated. The court may cancel the hearing if the judgment debtor has furnished to the judgment creditor satisfactory information concerning the debtor's property and income prior to the date and time for the hearing. Witnesses may also be subpoenaed to testify at the hearing.

(c) If the judgment debtor resides in another county in this state or outside of this state, the court can order such judgment debtor to appear if the court finds that it will not cause undue hardship on the judgment debtor to appear.

(d) It shall be the duty of the judge to assist in the enforcement of the judgments of the court. To this end, at any hearing in aid of execution, when the existence of any nonexempt property of the judgment debtor is disclosed, the court shall order the judgment debtor to deliver the property to the sheriff or a duly appointed process server. If the property is other than currency, the property shall be sold in the same manner as other property taken under execution is sold and the proceeds from the sale shall be applied to the judgment and costs.

Sec. 215. K.S.A. 61-3701 is hereby amended to read as follows: 61-3701. Upon the commencement of an action, the plaintiff may recover possession of specific personal property before or after judgment.

(a) Claim for possession of property. A plaintiff may seek an order to obtain possession of specific personal property as follows: Petition. The plaintiff shall file a petition stating:

(1) Plaintiff is the owner or the person lawfully entitled to the possession, the specific property and the factual basis for the claim;

(2) a description of the property;

(3) the property is wrongfully detained by the defendant, or is held by an officer under legal process who has refused delivery on demand; and

(4) the estimated value of the property.

(b) Prejudgment possession of property. A plaintiff may seek an order to obtain immediate possession of specific personal property, before judgment as follows: Petition. The plaintiff shall file a petition signed under penalty of perjury stating:

(1) Plaintiff is the owner or the person lawfully entitled to the possession, the specific property, and the factual basis for the claim;

(2) a description of the property;

(3) the property is wrongfully detained by the defendant, or is held by an officer under legal process who has refused delivery on demand; and

(4) the estimated value of the property.

(c) Hearing; notice, bond. After filing the petition, the plaintiff may apply to the court for an order for the delivery of the property prior to judgment on the merits of the case.

(1) The application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, state with particularity the grounds therefor and set forth the relief or order sought.

(2) The petition and application shall be served upon the defendant pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.

(3) After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property to the plaintiff.

(4) Prior to the issuance of the order for delivery of the property, the plaintiff shall file a bond with the clerk of the court.

(d) Bond; contents, insufficiency.

(1) The bond shall be executed by the plaintiff and one or more sufficient sureties in a sum double the amount of the fair market value of the property, as determined by the judge, or such lesser amount as shall be approved by an order of the judge.

(2) The bond shall be to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages that may be awarded against the plaintiff, and that if the plaintiff is given possession of the property the plaintiff will return it to the defendant if it be so adjudged. If the bond shall be found to be sufficient, the judge shall approve the same and note approval thereon.

(3) The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(4) The court shall release the bond, if the plaintiff abandons the right to take possession of the property, prior to taking possession of the property.

(e) Replevin; without hearing, notice. Notwithstanding the foregoing provisions of this section, the judge may enter or cause to be entered the order for delivery of property after an ex parte hearing and without notice to and the opportunity for a hearing by the defendant, if the judge is satisfied as to the probable validity of the following additional allegations to be contained in plaintiff's petition:

(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) there is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

(f) Property in custodia legis. If the property is in the custody of an officer under any legal process, it shall nevertheless be subject to replevin under this section, but if the same is in the custody of any officer under any process issued out of a judicial proceeding, the petition and bond shall be filed in the same proceeding out of which such process issued.

(g) Order for delivery of property. The order for the delivery of the property to the plaintiff shall be delivered to the appropriate officer or person authorized to serve process of any county in the state in which the

property is located. The order shall state the names of the parties, the description of the property and the value as set out in plaintiff's petition, or as found by the court at the hearing on plaintiff's application pursuant to subsection (c). The order shall command the appropriate officer to take immediate possession of the property and deliver it to the plaintiff and make return of the order on the day named therein.

(h) Execution of order, return. (1) In the execution of the order the officer may break open any building or enclosure in which the property is located, if the officer cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) The appropriate officer shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the order of delivery in the same manner as for personal or resident service if the person can be found in the county.

(3) The return day of the order of delivery shall be ~~10~~ *14* days after it is issued, if the order is executed within the county where the court is situated. In all other cases, the return day shall be ~~20~~ *21* days after the order is issued.

(4) The plaintiff shall have the right to attend execution of the order. Upon inspection of the property the plaintiff may abandon their right to prejudgment possession and shall so advise the appropriate officer and the court.

(i) Perishable goods. When property shall be actually seized which is likely to perish or to materially depreciate in value or threatens to decline speedily in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, the court may order the same to be sold on such terms and conditions as the judge may direct, by the person having charge of the property, and a return of the proceedings thereon shall be made by the person at a time to be fixed by the judge.

(j) Redelivery, bond. The defendant, after service of a copy of the delivery order, may apply to the court for redelivery of the property. The court shall order return of the property to the defendant when the defendant files a bond with the clerk of the court, in an amount equal to the plaintiff's bond, executed by the defendant with one or more sufficient sureties. The bond shall be to the effect that the defendant will deliver the property to the plaintiff if so adjudged, and will pay all costs and damages that may be adjudged against the defendant. If the bond shall be found to be sufficient, the judge shall approve the same and note approval thereon. If the defendant is a public officer, board or government agency, such officer, board or agency, in lieu of giving a redelivery bond, may retain possession of the property seized by filing with the clerk a response certifying that the public health, safety or welfare would be jeopardized or impaired if the plaintiff acquired possession of the property prior to final judgment, in which case hearing may be had on the issue of public interest at the instance of any party.

(k) Judgment in action. (1) In an action to recover the possession of personal property, judgment for the plaintiff may be for possession or for the recovery of possession, or the value thereof in case a delivery cannot be had, and for damages for the detention. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

(2) In addition to other orders, the court may direct an appropriate officer to put the party entitled to possession in possession of the property.

Sec. 216. K.S.A. 61-3702 is hereby amended to read as follows: 61-3702. A plaintiff may bring an action to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The plaintiff, at any time before judgment is rendered, may obtain immediate possession of the specified property as follows:

(a) Petition. The plaintiff shall file a petition signed under penalty of perjury stating:

(1) The plaintiff is the secured creditor of the defendant;

(2) the instrument of indebtedness or the terms thereof;

(3) the amount of the indebtedness owed;

(4) the security agreement or the terms thereof;

(5) a description of the personal property;

(6) that plaintiff is lawfully entitled to the foreclosure of the specific personal property;

(7) the estimated value of each item of personal property; and

(8) the defendant is no longer entitled to possess the property.

(b) Prejudgment possession; hearing, notice, bond. After filing the petition, the plaintiff may apply to the court for an order for the delivery of the property before judgment.

(1) The application to the court for an order of delivery shall be by motion which, unless made during a hearing or trial, shall be made in writing, state with particularity the grounds therefor and set forth the relief or order sought.

(2) The petition and application shall be served upon the defendant pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.

(3) After a hearing and presentation of evidence on the plaintiff's motion, if the judge is satisfied as to the probable validity of the plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property to the plaintiff.

(4) Prior to the issuance of the order for delivery of the property, the plaintiff shall file a bond with the clerk of the court.

(c) Bond, contents, insufficiency. (1) The bond shall be executed by the plaintiff and one or more sufficient sureties in a sum double the amount of the fair market value of the property, as determined by the judge, or such lesser amount as shall be approved by an order of the judge.

(2) The bond shall be to the effect that plaintiff shall duly prosecute the action, and pay all costs and damages that may be awarded against the plaintiff, and that if the plaintiff is given possession of the property the plaintiff will return it to the defendant if it be so adjudged. If the bond shall be found to be sufficient, the judge shall approve the same and note approval thereon.

(3) The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(4) The court shall release the bond, if the plaintiff abandons the right to take possession of the property, prior to taking possession of the property.

(d) Execution of order, return. (1) In the execution of the order the officer may break open any building or enclosure in which the property is located, if the officer cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) The appropriate officer shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the order of delivery in the same manner as for personal or resident service if the person can be found in the county.

(3) The return day of the order of delivery shall be ~~10~~ *14* days after it is issued, if the order is executed within the county where the court is situated. In all other cases, the return day shall be ~~20~~ *21* days after the order is issued.

(4) The plaintiff shall have the right to attend execution of the order. Upon inspection of the property the plaintiff may abandon their right to prejudgment possession and shall so advise the appropriate officer and the court.

(e) Perishable goods. When property shall be actually seized which is likely to perish or to materially depreciate in value or threatens to decline speedily in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, the court may order the same to be sold on such terms and conditions as the judge may direct, by the person having charge of the property, and a return of the proceedings thereon shall be made by the person at a time to be fixed by the judge.

(f) Redelivery, bond. The defendant, after service of a copy of the delivery order, may apply to the court for redelivery of the property. The court shall order return of the property to the defendant when the defendant files a bond with the clerk of the court, in an amount equal to the plaintiff's bond, executed by the defendant with one or more sufficient

sureties. The bond shall be to the effect that the defendant will deliver the property to the plaintiff if so adjudged, and will pay all costs and damages that may be adjudged against the defendant. If the bond shall be found to be sufficient, the judge shall approve the same and note approval thereon. If the defendant is a public officer, board or government agency, such officer, board or agency, in lieu of giving a redelivery bond, may retain possession of the property seized by filing with the clerk a response certifying that the public health, safety or welfare would be jeopardized or impaired if the plaintiff acquired possession of the property prior to final judgment, in which case a hearing may be had on the issue of public interest at the instance of any party.

(g) Possession in third party. When the officer finds the property in possession of a person other than a defendant and deems it advisable to leave such person in possession, the officer shall declare to the person in possession that such person shall hold such property in such person's possession, subject to the further order of the court, and shall summon such person as a garnishee by serving upon such person a copy of the order which directs the officer to take immediate possession of the property. The court may require of such person in possession an undertaking with good and sufficient sureties in such sum as the court deems sufficient. The undertaking shall be to the effect that such person will deliver the property to the officer at the time and place fixed for sale, if such be ordered by the court. The officer shall give such person written notice of the time and place fixed for the sale by delivery in person or by restricted mail.

(h) Property claimed by third person. If the officer, before proceeding, may require the possession of, or be requested by the plaintiff to take possession of, personal property claimed by any person other than a defendant, the court may require the plaintiff to give the court an undertaking with good and sufficient sureties to pay all costs and damages that the officer may sustain by reason of the execution of such order.

(i) Judgment. Judgment for the plaintiff shall be for a money judgment and foreclosure of the security interest, and the plaintiff may proceed to foreclose the security interest in accordance with the terms of the security agreement covering the property, as governed by the provisions of the uniform commercial code, unless the court otherwise directs. If the court directs the plaintiff to proceed to enforce such plaintiff's judgment other than pursuant to the security agreement, and if the judgment is not satisfied within ~~10~~ *14* days thereafter, then the clerk shall issue an order of special execution directed to the appropriate officer to sell the property in accordance with K.S.A. 61-3703, and amendments thereto. If the property is not then in the possession of the officer, the order shall also direct the person having possession to deliver such property to the officer. If the property has been delivered to the officer, and the defendant claims a return thereof, judgment shall be for the defendant or a return of the property and damages for the taking and withholding of same.

Sec. 217. K.S.A. 2009 Supp. 61-3703 is hereby amended to read as follows: 61-3703. (a) Any sale conducted under the provisions of this section shall be subject to the provisions of K.S.A. 60-2406, and amendments thereto, except that the disposition of proceeds after the satisfaction of senior security interests or liens shall be made in accordance with the provisions of K.S.A. 61-3705, and amendments thereto. The officer who shall be directed to sell the personal property, before the officer proceeds to sell the same, shall cause public notice to be given of the time and place of sale, at least ~~10~~ *14* days before the day of sale. The notice shall be given by publication at least once each week for two consecutive weeks in any newspaper published in the county, and which is qualified to carry legal publications, or, in the discretion of the court, by posting notices in five public places in the county, one of which shall be on a bulletin board established for public notices in the county courthouse. Within ~~five~~ *seven* days of the date of first publication or posting of notice, plaintiff shall send by restricted mail a copy of such notice to the defendant and to those persons known by the plaintiff to have a security interest in the property. Such notice shall be sent to the last known address of the person to whom sent and shall be in compliance with K.S.A. 2009 Supp. 84-1-202(d) and (e), and amendments thereto. If the personal property cannot

be sold at the special execution sale for want of bidders, the plaintiff may direct the officer to return the special execution showing that fact or, at the plaintiff's option, may report the same to the judge and obtain an order permitting a second sale under the same special execution and an extension of the return day of the special execution if that be necessary.

(b) If the personal property to be sold shall consist of more than one item of property, the appropriate officer conducting such sale shall sell only so much of the personal property in the officer's custody as is necessary to satisfy the judgment, interest and costs, and shall return the balance of any property remaining unsold to the defendant by notifying the defendant of the time and place when same may be obtained.

(c) Neither the officer conducting the sale nor any other member of the officer's staff may bid at any such sale.

(d) The provisions of K.S.A. 60-2411, and amendments thereto, relating to advancement of printer's fees shall apply to this section.

Sec. 218. K.S.A. 61-3705 is hereby amended to read as follows: 61-3705. (a) Upon the sale of personal property by the appropriate officer, the clerk of the court shall apply the proceeds of sale in the following priority:

(1) To the court costs of the action including the officer's expenses and cost of publication;

(2) in accordance with the provisions of K.S.A. 60-2406, and amendments thereto;

(3) in satisfaction of all judgments rendered in the action against the defendant or the property in accordance with the priority determined by the court;

(4) any surplus shall be paid to the defendant, except that if any other security interest holder, subsequent to the entering of the judgment of foreclosure, files with the clerk of the court a written notification of demand furnishing reasonable proof of the security interest holder's interest, the clerk shall withhold any payment to the defendant. Such security interest holder shall serve the defendant with notice of the demand within ~~10~~ *14* days after such filing and furnish proof of such notice to the court.

(b) If the defendant does not, within ~~10~~ *14* days, notify the clerk in writing that the defendant takes exception to the demand of such security interest holder, the clerk shall apply the surplus to the demand and pay any balance to the defendant.

(c) If the defendant, within ~~10~~ *14* days, notifies the clerk in writing that the defendant takes exception to the demand, the clerk shall withhold all surplus in the clerk's possession for a period of 30 days. If the security interest holder has not commenced a separate action to recover the security interest holder's claim and garnished the clerk within the time, the clerk shall pay the surplus to the defendant.

Sec. 219. K.S.A. 61-3807 is hereby amended to read as follows: 61-3807. (a) If a trial is necessary, the trial shall be conducted within ~~eight~~ *14* days after the appearance date stated in the summons.

(b) No continuance shall be granted unless the defendant requesting a continuance shall file a bond with good and sufficient security approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment is entered against the defendant.

Sec. 220. K.S.A. 61-3808 is hereby amended to read as follows: 61-3808. (a) If judgment is entered against the defendant for possession of the subject premises, the court shall issue, at the request of the plaintiff, a writ of restitution which shall direct anyone who is authorized to serve process and who is named in the writ to place the plaintiff in possession of the premises described in the writ.

(b) The writ of restitution shall be executed within ~~10~~ *14* days after the person named in the writ receives it, and that person shall file a return as with other writs under the code of civil procedure for limited actions. The person serving the writ may use such reasonable force as is necessary to execute the writ.

(c) If the person named in the writ receives a notice from the court that the proceedings have been stayed by appeal, that person shall immediately delay all further proceedings upon the execution. If the premises have been restored to the plaintiff, the person named in the writ shall immediately place the defendant in the possession thereof.

Sec. 221. K.S.A. 61-3902 is hereby amended to read as follows: 61-3902. (a) All appeals from orders, rulings, decisions or judgments of district magistrate judges under the code of civil procedure for limited actions shall be taken in the manner provided in subsection (a) of K.S.A. 60-2103a, and amendments thereto. All appeals from orders, rulings, decisions or judgments of district judges under the code of civil procedure for limited actions shall be taken in the manner provided in subsections (a) and (b) of K.S.A. 60-2103, and amendments thereto. Notwithstanding the foregoing provisions of this subsection, if judgment has been rendered in an action for forcible detainer and the defendant desires to appeal from that portion of the judgment granting restitution of the premises, notice of appeal shall be filed within ~~five~~ *seven* days after entry of judgment. The notice of appeal shall specify the party or parties taking the appeal; the order, ruling, decision or judgment appealed from; and the court to which the appeal is taken.

(b) The provisions of K.S.A. 60-2001, and amendments thereto, shall apply to appeals pursuant to this section.

(c) An appeal from an action heard by a district magistrate judge shall be taken to a district judge of the county. An appeal from an action heard by a district judge shall be taken to the court of appeals.

Sec. 222. K.S.A. 61-3904 is hereby amended to read as follows: 61-3904. No execution shall issue upon a judgment, nor shall proceedings be taken for its enforcement, until the expiration of ~~10~~ *14* days after its entry. If an appellant does not file a supersedeas bond as provided in the code of civil procedure for limited actions, the taking of an appeal shall not operate to stay proceedings for the enforcement of a final judgment or to take execution thereon. Nothing in this section shall be construed as limiting any power of a judge hearing such appeal to stay proceedings during the pendency of an appeal, to grant an injunction during the pendency of such appeal or to make any other appropriate order to preserve the status quo or the effectiveness of the judgment subsequently to be rendered.

Sec. 223. K.S.A. 61-3905 is hereby amended to read as follows: 61-3905. (a) Whenever an appellant entitled thereto desires a stay on appeal from an action pursuant to the code of civil procedure for limited actions, such appellant may present to the judge from which the appeal is taken, for the judge's approval, a supersedeas bond which shall have such surety or sureties as the judge requires. The bond may be given at or after the time of filing the notice of appeal, and the stay is effective when the supersedeas bond is approved by the judge. Such bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest and damages for delay, if for any reason the appeal is dismissed, or if the judgment is affirmed; and to satisfy in full any modification of the judgment and such costs, interests and damages as the appellate court may adjudge and award.

(b) When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in replevin, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed after notice and hearing at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest and damages for delay. When an order is made discharging, vacating or modifying a provisional remedy, a party aggrieved thereby shall be entitled, upon application to the judge, to have the operation of such order suspended for a period of not to exceed ~~10~~ *14* days on condition that, within the period of ~~10~~ *14* days, such party shall file notice of appeal and obtain the approval of such supersedeas bond as is required under this section.

(c) In lieu of a supersedeas bond, the court may condition a stay of proceedings pending appeal upon the timely payment into court of the periodic rent otherwise due from the defendant to the plaintiff under the rental agreement pertaining to the real property in issue.

Sec. 224. K.S.A. 2009 Supp. 77-503 is hereby amended to read as follows: 77-503. (a) This act applies only to the extent that other statutes expressly provide that the provisions of this act govern proceedings under those statutes.

(b) This act creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(c) In computing any period of time prescribed by this act, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. As used in this act, unless otherwise specified, "day" means calendar day and not business day; therefore, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. As used in this act, "business day" means any day that is not a Saturday, Sunday or legal holiday. "Legal holiday" includes any day designated as a holiday by any statute or regulation of this state. *If a state agency is inaccessible on the last day of any period of time prescribed by this act, the time period shall be extended until the next business day on which the agency is open for business.*

Sec. 225. K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-701, 23-4,107, 26-503, 26-510, 59-807, 59-2947, 59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-29a14, 59-29b47, 59-3052, 59-3052, as amended by section 12 of 2010 House Bill No. 2364, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241, 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-248a, 60-249, 60-249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-257, 60-258, 60-258a, 60-258b, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264, 60-265, 60-266, 60-267, 60-268, 60-270, 60-271, 60-301, 60-302, 60-304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312, 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629, 60-2002, 60-2103, 60-2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105, 61-3201, 61-3301, 61-3304, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902, 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-2229, 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, 38-2350, 38-2362, 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-206, as amended by section 14 of 2010 House Bill No. 2364, 60-216, 60-226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-308, 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-4107, 61-2707, 61-3703 and 77-503 are hereby repealed.

Sec. 226. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

_____

HOUSE adopted
Conference Committee Report _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.