

As Amended by House Committee

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 9

By Committee on Judiciary

1-13

1 AN ACT concerning the code of civil procedure; amending K.S.A. 20-3017 and
2 60-2003 and K.S.A. 2010 Supp. 38-2305, 60-203, 60-206, 60-209, 60-211, 60-
3 214, 60-226, 60-228a, 60-235, 60-249, 60-260, 60-270, **60-304**, 60-310, 60-460
4 and 65-4902 and repealing the existing sections; also repealing K.S.A. 2010
5 Supp. 38-2305a.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 20-3017 is hereby amended to read as follows: 20-
9 3017. Within ~~twenty (20)~~ 30 days after the date the notice of appeal has
10 been served on the appellee in any case appealed to the court of appeals,
11 any party to such case may file a motion with the clerk of the court of
12 appeals, requesting that such case be transferred to the supreme court for
13 review and final determination by such court. Such motion shall be made
14 in the manner and form prescribed by rules of the supreme court, and it
15 shall allege the existence of one (+) or more of the conditions described in
16 subsection (a) of K.S.A. 20-3016, *and amendments thereto*. The clerk of
17 the court of appeals promptly shall submit any motion made pursuant to
18 this section to the supreme court. The supreme court shall consider such
19 motion and may accept the case for review and final determination or may
20 decline jurisdiction and order that the case be determined by the court of
21 appeals. A party's failure to file a motion in accordance with this section
22 shall be deemed a waiver of any objection by such party to the jurisdiction
23 of the court of appeals.

24 Sec. 2. K.S.A. 2010 Supp. 38-2305 is hereby amended to read as
25 follows: 38-2305. (a) Venue for proceedings in any case involving a
26 juvenile shall be in any county where any act of the alleged offense was
27 committed.

28 (b) Except as provided in subsection (c), venue for sentencing
29 proceedings shall be in the county of the juvenile offender's residence or, if
30 the juvenile offender is not a resident of this state, in the county where the
31 adjudication occurred. When the sentencing hearing is to be held in a
32 county other than where the adjudication occurred, upon adjudication, the
33 judge shall contact the sentencing court and advise the judge of the
34 transfer. The adjudicating court shall send immediately to the sentencing

1 court a facsimile or electronic copy of the complaint, the adjudication
2 journal entry or judge's minutes, if available, and any recommendations in
3 regard to sentencing. The adjudicating court shall also send to the
4 sentencing court a complete copy of the official and social files in the case
5 by mail or electronic means within ~~five working~~ seven days of the
6 adjudication.

7 (c) If the juvenile offender is adjudicated in a county other than the
8 county of the juvenile offender's residence, the sentencing hearing may be
9 held in the county in which the adjudication was made or, if there are not
10 any ongoing proceedings under the Kansas code for care of children, in the
11 county of the residence of the custodial parent, parents, guardian or
12 conservator if the adjudicating judge, upon motion, finds that it is in the
13 interest of justice. If there are ongoing proceedings under the revised
14 Kansas code for care of children, then the sentencing hearing shall be held
15 in the county in which the proceedings under the revised Kansas code for
16 care of children are being held.

17 Sec. 3. K.S.A. 2010 Supp. 60-203 is hereby amended to read as
18 follows: 60-203. (a) *Time of commencement.* A civil action is commenced
19 at the time of: (1) Filing a petition with the court, if service of process is
20 obtained or the first publication is made for service by publication within
21 90 days after the petition is filed, except that the court may extend that
22 time an additional 30 days upon a showing of good cause by the plaintiff;
23 or (2) service of process or first publication, if service of process or first
24 publication is not made within the time specified by paragraph (1).

25 (b) *Curing invalid service.* If service of process or first publication
26 purports to have been made but is later adjudicated to have been invalid
27 due to an irregularity in form or procedure or a defect in making service,
28 the action is considered to have been commenced at the applicable time
29 under subsection (a) if valid service is obtained or first publication is made
30 within 90 days after that adjudication, except that the court may extend
31 that time an additional 30 days upon a showing of good cause by the
32 plaintiff.

33 (c) *Entry of appearance.* The filing of an entry of appearance has the
34 same effect as service. Written contact with the court by a defendant, or an
35 attorney for the defendant invoking protection for the defendant under the
36 servicemembers civil relief act (50 U.S.C. § 501 et seq.), and amendments
37 thereto, is not an entry of appearance.

38 (d) *Electronic filing.* As used in this section, filing a petition with the
39 court includes receipt by the court of a petition by electronic means
40 complying with supreme court rules.

41 Sec. 4. K.S.A. 2010 Supp. 60-206 is hereby amended to read as
42 follows: 60-206. (a) *Computing time.* The following provisions apply in
43 computing any time period specified in this chapter, in any local rule or

1 court order or in any statute or administrative rule or regulation that does
2 not specify a method of computing time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (A) With or without motion or notice if the court acts, or if a request

1 is made, before the original time or its extension expires; or

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

4 (2) *Exceptions.* A court must not extend the time to act under
5 subsection (b) of K.S.A. 60-250, subsection (b) of K.S.A. 60-252,
6 subsections (b), (e) and (f) of K.S.A. 60-259 and subsection (b) of K.S.A.
7 60-260, and amendments thereto.

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

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

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

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

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

22 (d) *Additional time after certain kinds of service by mail.* When a
23 party may or must act within a specified time after service and service is
24 ~~by mail~~ made under subsections (b)(2)(C), (D), (E) or (F) of K.S.A. 60-
25 205, and amendments thereto, three days are added after the period would
26 otherwise expire under subsection (a).

27 Sec. 5. K.S.A. 2010 Supp. 60-209 is hereby amended to read as
28 follows: 60-209. (a) *Capacity or authority to sue; legal existence.* (1) *In*
29 *general.* A pleading need not allege:

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

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

32 or

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

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

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

42 (c) *Conditions precedent.* In pleading conditions precedent, it suffices
43 to allege generally that all conditions precedent have occurred or have

1 been performed. But when denying that a condition precedent has occurred
2 or been performed, a party must do so with particularity.

3 (d) *Official document or act.* In pleading an official document or
4 official act, it suffices to allege that the document was legally issued or the
5 act legally done.

6 (e) *Judgment.* In pleading a judgment or decision of a domestic or
7 foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it
8 suffices to plead the judgment or decision without showing jurisdiction to
9 render it.

10 (f) *Time and place.* An allegation of time or place is material when
11 testing the sufficiency of a pleading.

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

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

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

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

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

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

26 (j) *Libel and slander.* In an action for libel or slander, it suffices to
27 allege generally that defamatory matter was published or spoken
28 concerning the plaintiff, and if that allegation is not denied in the answer, it
29 need not be proved at trial. The defendant's answer may allege both the
30 truth of the matter charged as defamatory and any mitigating
31 circumstances that reduce the amount of damages. Whether the defendant
32 proves justification, the defendant may introduce evidence of any
33 mitigating circumstances.

34 Sec. 6. K.S.A. 2010 Supp. 60-211 is hereby amended to read as
35 follows: 60-211. (a) *Signature.* Every pleading, written motion and other
36 paper must be signed by at least one attorney of record in the attorney's
37 name, or by a party personally if the party is unrepresented. The paper
38 must state the signer's address, e-mail address, ~~and~~ telephone number *and*
39 *fax number.* Unless a rule or statute specifically states otherwise, a
40 pleading need not be verified or accompanied by an affidavit or a
41 declaration pursuant to K.S.A. 53-601, and amendments thereto. The
42 court must strike an unsigned paper unless the omission is promptly
43 corrected after being called to the attorney's or party's attention.

1 (b) *Representations to the court.* By presenting to the court a
2 pleading, written motion or other paper, whether by signing, filing,
3 submitting or later advocating it, an attorney or unrepresented party
4 certifies that to the best of the person's knowledge, information and belief
5 formed after an inquiry reasonable under the circumstances:

6 (1) It is not being presented for any improper purpose, such as to
7 harass, cause unnecessary delay or needlessly increase the cost of
8 litigation;

9 (2) the claims, defenses and other legal contentions are warranted by
10 existing law or by a nonfrivolous argument for extending, modifying or
11 reversing existing law or for establishing new law;

12 (3) the factual contentions have evidentiary support or, if specifically
13 so identified, will likely have evidentiary support after a reasonable
14 opportunity for further investigation or discovery; and

15 (4) the denials of factual contentions are warranted on the evidence
16 or, if specifically so identified, are reasonably based on belief or a lack of
17 information.

18 (c) *Sanctions.* If, after notice and a reasonable opportunity to respond,
19 the court determines that subsection (b) has been violated, the court may
20 impose an appropriate sanction on any attorney, law firm or party that
21 violated the statute or is responsible for a violation committed by its
22 partner, associate or employee. The sanction may include an order to pay
23 to the other party or parties that reasonable expenses, including attorney's
24 fees, incurred because of the filing of the pleading, motion or other paper.
25 A motion for sanctions under this section may be served and filed at any
26 time during pendency of the action, but must be filed not later than 14 days
27 after the entry of judgment.

28 (d) *Inapplicability to discovery.* Subsections (a) through (c) do not
29 apply to disclosures and discovery requests, responses, objections and
30 motions that are subject to the provisions of K.S.A. 60-226 through 60-
31 237, and amendments thereto.

32 (e) *Applicability to the state.* The state of Kansas, including an
33 agency or political subdivision thereof, is subject to this section.

34 (f) *Monetary sanctions against inmate.* If the court imposes monetary
35 sanctions on an inmate in the custody of the secretary of corrections, the
36 secretary is authorized to disburse any money in the inmate's account to
37 pay the sanctions.

38 Sec. 7. K.S.A. 2010 Supp. 60-214 is hereby amended to read as
39 follows: 60-214. (a) *When defending party may bring in a ~~third-party-~~*
40 *third party.* (1) *Timing of the summons and complaint.* A defending party
41 may, as a third-party plaintiff, serve a summons and petition on a nonparty
42 who is or may be liable to it for all or part of the claim against it. But the
43 third-party plaintiff must, by motion, obtain the court's leave if it files the

1 third-party complaint more than 14 days after serving its original answer.

2 (2) *Third-party defendant's claims and defenses.* The person served
3 with the summons and third-party petition, the "third-party defendant":

4 (A) Must assert any defenses against the third-party plaintiff's claim
5 under K.S.A. 60-212, and amendments thereto;

6 (B) must assert any counterclaim against the third-party plaintiff
7 under subsection (a) of K.S.A. 60-213, and amendments thereto, or any
8 crossclaim against another third-party defendant under subsection (f) of
9 K.S.A. 60-213, and amendments thereto, and may assert any counterclaim
10 against the third-party plaintiff under subsection (b) of K.S.A. 60-213, and
11 amendments thereto, or any crossclaims against another third-party
12 defendant under subsection (g) of K.S.A. 60-213, and amendments thereto;

13 (C) may assert against the plaintiff any defense that the third-party
14 plaintiff has to the plaintiff's claim; and

15 (D) may also assert against the plaintiff any claim arising out of the
16 transaction or occurrence that is the subject matter of the plaintiff's claim
17 against the third-party plaintiff.

18 (3) *Plaintiff's claims against a third-party defendant.* The plaintiff
19 may assert against the third-party defendant any claim arising out of the
20 transaction or occurrence that is the subject matter of the plaintiff's claim
21 against the third-party plaintiff. The third-party defendant must then assert
22 any defense under K.S.A. 60-212, and amendments thereto, and any
23 counterclaim under subsection (a) of K.S.A. 60-213, and amendments
24 thereto, or crossclaim under subsection (f) of K.S.A. 60-213, and
25 amendments thereto, and may assert any counterclaim under subsection
26 (b) of K.S.A. 60-213, and amendments thereto, or any crossclaim under
27 subsection (g) of K.S.A. 60-213, and amendments thereto.

28 (4) *Motion to strike, sever or try separately.* Any party may move to
29 strike the third-party claim, to sever it or to try it separately.

30 (5) *Third-party defendant's claim against a nonparty.* A third-party
31 defendant may proceed under this section against a nonparty who is or
32 may be liable to the third-party defendant for all or part of any claim
33 against it.

34 (b) *When a plaintiff may bring in a third-party.* When a claim is
35 asserted against a plaintiff, the plaintiff may bring in a third-party if this
36 section would allow a defendant to do so.

37 (c) *Execution by third-party plaintiff; limitation.* Where a third-party
38 defendant is liable to the plaintiff, or to anyone holding a similar position
39 under subsections (a) and (b), on the claim on which a third-party plaintiff
40 has been sued, execution by the third-party plaintiff on a judgment against
41 such third-party defendant shall be permitted only to the extent that the
42 third-party plaintiff has paid any judgment obtained against the third-party
43 plaintiff by the obligee.

1 Sec. 8. K.S.A. 2010 Supp. 60-226 is hereby amended to read as
2 follows: 60-226. (a) *Discovery methods*. Parties may obtain discovery by
3 one or more of the following methods: Depositions on oral examination or
4 written questions; written interrogatories; production of documents or
5 things or permission to enter onto land or other property under K.S.A. 60-
6 234, subsection (a)(1)(A)(iii) of K.S.A. 60-245 or K.S.A. 60-245a, and
7 amendments thereto; physical and mental examinations; and requests for
8 admission.

9 (b) *Discovery scope and limits*. (1) *Scope in general*. Unless
10 otherwise limited by court order, the scope of discovery is as follows:
11 Parties may obtain discovery regarding any nonprivileged matter that is
12 relevant to the subject matter involved in the action, whether it relates to
13 any party's claim or defense, including the existence, description, nature,
14 custody, condition and location of any documents or other tangible things
15 and the identity and location of persons who know of any discoverable
16 matter. Relevant information need not be admissible at the trial if the
17 discovery appears reasonably calculated to lead to the discovery of
18 admissible evidence.

19 (2) *Limitations on frequency and extent*. (A) On motion, or on its
20 own, the court may limit the frequency or extent of discovery methods
21 otherwise allowed by the rules of civil procedure and must do so if it
22 determines that:

23 (i) The discovery sought is unreasonably cumulative or duplicative,
24 or can be obtained from some other source that is more convenient, less
25 burdensome or less expensive;

26 (ii) the party seeking discovery has had ample opportunity to obtain
27 the information by discovery in the action; or

28 (iii) the burden or expense of the proposed discovery outweighs its
29 likely benefit, considering the needs of the case, the amount in
30 controversy, the parties' resources, the importance of the issues at stake in
31 the action and the importance of the proposed discovery in resolving the
32 issues.

33 (B) A party need not provide discovery of electronically stored
34 information from sources that the party identifies as not reasonably
35 accessible because of undue burden or cost. On motion to compel
36 discovery or for a protective order, the party from whom discovery is
37 sought must show that the information is not reasonably accessible
38 because of undue burden or cost. If that showing is made, the court may
39 nonetheless order discovery from such sources if the requesting party
40 shows good cause, considering the limitations of subsection (b)(2)(A).
41 The court may specify conditions for the discovery.

42 (3) *Insurance agreements*. A party may obtain discovery of the
43 existence and contents of any insurance agreement under which an

1 insurance business may be liable to satisfy part or all of a possible
2 judgment in the action or to indemnify or reimburse for payments made to
3 satisfy the judgment. Information concerning the insurance agreement is
4 not by reason of disclosure admissible in evidence at trial. For purposes of
5 this paragraph, an application for insurance is not a part of an insurance
6 agreement.

7 (4) *Trial preparation; materials.* (A) *Documents and tangible things.*
8 Ordinarily, a party may not discover documents and tangible things that
9 are prepared in anticipation of litigation or for trial by or for another party
10 or its representative, including the other party's attorney, consultant, surety,
11 indemnitor, insurer or agent. But, subject to subsection (b)(5), those
12 materials may be discovered if:

13 (i) They are otherwise discoverable under paragraph (1); and
14 (ii) the party shows that it has substantial need for the materials to
15 prepare its case and cannot, without undue hardship, obtain their
16 substantial equivalent by other means.

17 (B) *Protection against disclosure.* If the court orders discovery of
18 those materials, it must protect against disclosure of the mental
19 impressions, conclusions, opinions or legal theories of a party's attorney or
20 other representative concerning the litigation.

21 (C) *Previous statement.* Any party or other person may, on request
22 and without the required showing, obtain the person's own previous
23 statement about the action or its subject matter. If the request is refused,
24 the person may move for a court order, and K.S.A. 60-237, and
25 amendments thereto, applies to the award of expenses. A previous
26 statement is either:

27 (i) A written statement that the person has signed or otherwise
28 adopted or approved; or
29 (ii) a contemporaneous stenographic, mechanical, electrical or other
30 recording, or a transcription of it, that recites substantially verbatim the
31 person's oral statement.

32 (5) *Trial preparation; experts.*

33 (A) *Expert who may testify.* A party may depose any person who has
34 been identified as an expert whose opinions may be presented at trial. If a
35 disclosure is required under subsection (b)(6), the deposition may be
36 conducted only after the disclosure is provided.

37 (B) *Expert employed only for trial preparation.* Ordinarily, a party
38 may not, by interrogatories or deposition, discover facts known or
39 opinions held by an expert who has been retained or specially employed
40 by another party in anticipation of litigation or to prepare for trial and who
41 is not expected to be called as a witness at trial. But a party may do so
42 only:

43 (i) As provided in subsection (b) of K.S.A. 60-235, and amendments

1 thereto; or

2 (ii) on showing exceptional circumstances under which it is
3 impracticable for the party to obtain facts or opinions on the same subject
4 by other means.

5 (C) *Payment.* Unless manifest injustice would result, the court must
6 require that the party seeking discovery:

7 (i) Pay the expert a reasonable fee for time spent in responding to
8 discovery under subsection (b)(5)(A) or (b)(5)(B); and

9 (ii) for discovery under subsection (b)(5)(B), also pay the other party
10 a fair portion of the fees and expenses it reasonably incurred in obtaining
11 the expert's facts and opinions.

12 (6) *Disclosure of expert testimony.* (A) *In general.* A party must
13 disclose to other parties the identity of any witness it may use at trial to
14 present expert testimony.

15 (B) *Required disclosures.* Unless otherwise stipulated or ordered by
16 the court, if the witness is retained or specially employed to provide expert
17 testimony in the case, or is one whose duties as the party's employee
18 regularly involve giving expert testimony, the disclosure must state:

19 (i) The subject matter on which the expert is expected to testify;

20 (ii) the substance of the facts and opinions to which the expert is
21 expected to testify; and

22 (iii) a summary of the grounds for each opinion.

23 (C) *Time to disclose expert testimony.* A party must make these
24 disclosures at the times and in the sequence that the court orders. Absent a
25 stipulation or court order, the disclosures must be made:

26 (i) At least 90 days before the date set for trial or for the case to be
27 ready for trial; or

28 (ii) if the evidence is intended solely to contradict or rebut evidence
29 on the same subject matter identified by another party under subsection (b)
30 (6)(B), within 30 days after the other party's disclosure.

31 (D) *Supplementing the disclosure.* The parties must supplement these
32 disclosures when required under subsection (e).

33 (E) *Form of disclosures.* Unless otherwise ordered by the court, all
34 disclosures under this subsection must be:

35 (i) In writing, signed and served; and

36 (ii) filed with the court in accordance with subsection (d) of K.S.A.
37 60-205, and amendments thereto.

38 (7) *Claiming privilege or protecting trial preparation materials.* (A)
39 *Information withheld.* When a party withholds information otherwise
40 discoverable by claiming that the information is privileged or subject to
41 protection as trial preparation material, the party must:

42 (i) Expressly make the claim; and

43 (ii) describe the nature of the documents, communications or things

1 not produced or disclosed, and do so in a manner that, without revealing
2 information itself privileged or protected, will enable other parties to
3 assess the claim.

4 (B) *Information produced.* If information produced in discovery is
5 subject to a claim of privilege or of protection as trial preparation material,
6 the party making the claim may notify any party that received the
7 information of the claim and the basis for it. After being notified, a party
8 must promptly return, sequester or destroy the specified information and
9 any copies it has; must not use or disclose the information until the claim
10 is resolved; must take reasonable steps to retrieve the information if the
11 party disclosed it before being notified; and may promptly present the
12 information to the court under seal for a determination of the claim. The
13 producing party must preserve the information until the claim is resolved.

14 (c) *Protective orders.* (1) *In general.* A party or any person from
15 whom discovery is sought may move for a protective order in the court
16 where the action is pending, as an alternative on matters relating to a
17 deposition, in the district court where the deposition will be taken. The
18 motion must include a certification that the movant has in good faith
19 conferred or attempted to confer with other affected parties in an effort to
20 resolve the dispute without court action and must describe the steps taken
21 by all attorneys or unrepresented parties to resolve the issues in dispute.
22 The court may, for good cause, issue an order to protect a party or person
23 from annoyance, embarrassment, oppression or undue burden or expense,
24 including one or more of the following:

25 (A) Forbidding the disclosure or discovery;

26 (B) specifying terms, including time and place, for the disclosure or
27 discovery;

28 (C) prescribing a discovery method other than the one selected by the
29 party seeking discovery;

30 (D) forbidding inquiry into certain matters, or limiting the scope of
31 disclosure or discovery to certain matters;

32 (E) designating the persons who may be present while the discovery
33 is conducted;

34 (F) requiring that a deposition be sealed and opened only on court
35 order;

36 (G) requiring that a trade secret or other confidential research,
37 development or commercial information not be revealed or be revealed
38 only in a specified way; and

39 (H) requiring that the parties simultaneously file specified documents
40 or information in sealed envelopes, to be opened as the court orders.

41 (2) *Ordering discovery.* If a motion for a protective order is wholly or
42 partly denied the court may, on just terms, order that any party or person
43 provide or permit discovery.

1 (3) *Awarding expenses.* The provisions of K.S.A. 60-237, and
2 amendments thereto, apply to the award of expenses.

3 (d) *Sequence of discovery.* Unless, on motion, the court orders
4 otherwise for the parties' and witnesses' convenience and in the interests of
5 justice:

6 (1) Methods of discovery may be used in any sequence; and

7 (2) discovery by one party does not require any other party to delay
8 its discovery.

9 (e) *Supplementing disclosures and responses.* (1) *In general.* A party
10 who has made a disclosure under subsection (b)(6), or who has responded
11 to an interrogatory, request for production or request for admission, must
12 supplement or correct its disclosure or response:

13 (A) In a timely manner if the party learns that in some material
14 respect the disclosure or response is incomplete or incorrect, and if the
15 additional or corrective information has not otherwise been made known
16 to the other parties during the discovery process or in writing; or

17 (B) as ordered by the court.

18 (2) *Expert witness.* For an expert to whom the disclosure requirement
19 in subsection (b)(6) applies, the party's duty to supplement extends both to
20 information included in the disclosure and to information given during the
21 expert's deposition. Any additions or changes to this information must be
22 disclosed at least 30 days before trial, unless the court orders otherwise.

23 (f) *Signing of disclosures and discovery requests, responses and*
24 *objections.* (1) *Signature required; effect of signature.* Every disclosure
25 under subsection (b)(6) and every discovery request, response or objection
26 must be signed by at least one attorney of record in the attorney's own
27 name, or by the party personally, if unrepresented, and must state the
28 signor's address, e-mail address and telephone number. By signing, an
29 attorney or party certifies that to the best of the person's knowledge,
30 information and belief formed after a reasonable inquiry:

31 (A) With respect to a disclosure, it is complete and correct as of the
32 time it is made;

33 (B) with respect to a discovery request, response or objection, it is:

34 (i) Consistent with the rules of civil procedure and warranted by
35 existing law or by a nonfrivolous argument for extending, modifying or
36 reversing existing law or for establishing new law;

37 (ii) not interposed for any improper purpose, such as to harass, cause
38 unnecessary delay or needlessly increase the cost of litigation; and

39 (iii) neither unreasonable nor unduly burdensome or expensive
40 considering the needs of the case, prior discovery in the case, the amount
41 in controversy and the importance of the issues at stake in the action.

42 (2) *Failure to sign.* Other parties have no duty to act on an unsigned
43 disclosure, request, response or objection until it is signed, and the court

1 must strike it unless a signature is promptly supplied after the omission is
2 called to the attorney's or party's attention.

3 (3) *Sanction for improper certification.* If a certification violates this
4 section without substantial justification, the court, on motion, or on its
5 own, must impose an appropriate sanction on the signer, the party on
6 whose behalf the signer was acting, or both. The sanction may include an
7 order to pay the reasonable expenses, including attorney's fees, caused by
8 the violation.

9 *Sec. 9. K.S.A. 2010 Supp. 60-228a is hereby amended to read as*
10 *follows: 60-228a. (a) Citation of section. This section may be cited as the*
11 *uniform interstate depositions and discovery act.*

12 (b) *Definitions. In this section:*

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

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

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

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

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

27 (A) *Attend and give testimony at a deposition;*

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

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

32 (c) *Issuance of subpoena. (1) To request issuance of a subpoena*
33 *under this section, a party must submit a foreign subpoena to a clerk of*
34 *court in the county in which discovery is sought to be conducted in this*
35 *state and pay the docket fee as required by K.S.A. 60-2001, and*
36 *amendments thereto. A request for the issuance of a subpoena in this*
37 *state under this section act does not constitute an appearance in the*
38 *courts of this state.*

39 (2) *When a party submits a foreign subpoena to a clerk of court in*
40 *this state, the clerk, in accordance with that court's procedure, must:*

41 (A) *Promptly issue a subpoena for service on the person to which*
42 *the foreign subpoena is directed; and*

43 (B) *assign the subpoena a case file number and enter it on the docket*

1 *as a civil action pursuant to K.S.A. 60-2601, and amendments thereto.*

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

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

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

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

10 **(e) Deposition, production and inspection. K.S.A. 60-245 and 60-**
11 **245a, and amendments thereto, apply applies to subpoenas issued under**
12 **subsection (c).**

13 **(f) Application to court. An application to the court for a protective**
14 **order or to enforce, quash or modify a subpoena issued by a clerk of**
15 **court under subsection (c) must comply with the statutes of this state and**
16 **be submitted to the court in the county in which discovery is to be**
17 **conducted.**

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

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

24 **Sec.-9: 10. K.S.A. 2010 Supp. 60-235 is hereby amended to read as**
25 **follows: 60-235. (a) Order for an examination. (1) In general. The court**
26 **where the action is pending may order a party whose mental or physical**
27 **condition, including blood group, is in controversy to submit to a physical**
28 **or mental examination by a suitably licensed or certified examiner. The**
29 **court has the same authority to order a party to produce for examination a**
30 **person who is in its custody or under its legal control.**

31 **(2) Motion and notice; contents of the order. The order:**

32 **(A) May be made only on motion for good cause and on notice to all**
33 **parties and the person to be examined;**

34 **(B) must specify the time, place, manner, conditions and scope of the**
35 **examination, as well as the person or persons who will perform it; and**

36 **(C) must direct the moving party to advance the expenses that will**
37 **necessarily be incurred by the party or person to be examined.**

38 **(b) Examiner's report. (1) Request by the party or person examined.**
39 **The party who moved for the examination must, on request, deliver to the**
40 **requester a copy of the examiner's report, together with like reports of all**
41 **earlier examinations of the same condition. The request may be made by**
42 **the party against whom the examination order was issued or by the person**
43 **examined.**

1 (2) *Contents.* The examiner's report must be in writing and must set
2 out in detail the examiner's findings, including diagnoses, conclusions and
3 the results of any tests.

4 (3) *Scope.* This subsection applies also to an examination made by the
5 parties' agreement, unless the agreement states otherwise. This subsection
6 does not preclude obtaining an examiner's report or deposing an examiner
7 under other law.

8 (c) ~~Report~~ *Reports of other examinations.* Any party may request, and
9 is entitled to receive, from another party like reports of all earlier or later
10 examinations of the same condition. But those reports need not be
11 delivered by the party with custody or control of the person examined if
12 the party shows that it could not obtain them. Reports provided under this
13 subsection must contain the information specified in subsection (b)(2).

14 (d) *Failure to deliver a report.* The court on motion may order, on
15 just terms, that a party deliver a report of an examination under subsection
16 (b) or (c). If the report is not provided, the court may exclude the
17 examiner's testimony at trial.

18 ~~Sec. 10.~~ *II.* K.S.A. 2010 Supp. 60-249 is hereby amended to read as
19 follows: 60-249. (a) *Special verdict.* (1) *In general.* The court may require
20 a jury to return only a special verdict in the form of a special written
21 finding on each issue of fact. The court may do so by:

22 (A) Submitting written questions susceptible of a categorical or other
23 brief answer;

24 (B) submitting written forms of the special findings that might
25 properly be made under the pleadings and evidence; or

26 (C) using any other method that the court considers appropriate.

27 (2) *Instructions.* The court must give the instructions and
28 explanations necessary to enable the jury to make its findings on each
29 submitted issue.

30 (3) *Issues not submitted.* A party waives the right to a jury trial on
31 any issue of fact raised by the pleadings or evidence but not submitted to
32 the jury unless, before the jury retires, the party demands its submission to
33 the jury. If the party does not demand submission, the court may make a
34 finding on the issue. If the court makes no finding, it is considered to have
35 made a finding consistent with its judgment on the special verdict.

36 (b) *General verdict with answers to written questions.* (1) *In general.*
37 The court may on written request, submit to the jury forms for a general
38 verdict, together with written questions on one or more issues of fact that
39 the jury must decide. The court must give the instructions and
40 explanations necessary to enable the jury to render a general verdict and
41 answer the questions in writing, and must direct the jury to do both.

42 (2) *Verdict and answers consistent.* When the general verdict and the
43 answers are consistent, the court must approve an appropriate judgment on

1 the verdict and answers.

2 (3) ~~Answer~~ *Answers inconsistent with the verdict.* When the answers
3 are consistent with each other, but one or more is inconsistent with the
4 general verdict, the court may:

5 (A) Approve an appropriate judgment according to the answers,
6 notwithstanding the general verdict;

7 (B) direct the jury to further consider its answers and verdict; or

8 (C) order a new trial.

9 (4) *Answers inconsistent with each other and the verdict.* When the
10 answers are inconsistent with each other and one or more is also
11 inconsistent with the general verdict, judgment must not be entered;
12 instead, the court must direct the jury to further consider its answers and
13 verdict, or must order a new trial.

14 Sec. ~~H.~~ **12.** K.S.A. 2010 Supp. 60-260 is hereby amended to read as
15 follows: 60-260. (a) *Corrections based on clerical mistakes; ~~oversight~~*
16 *oversights and omissions.* The court may correct a clerical mistake or a
17 mistake arising from oversight or omission whenever one is found in a
18 judgment, order or other part of the record. The court may do so on
19 motion, or on its own, with or without notice. But after an appeal has been
20 docketed in the appellate court and while it is pending, such a mistake may
21 be corrected only with the appellate court's leave.

22 (b) *Grounds for relief from a final judgment, order or proceeding.* On
23 motion and just terms, the court may relieve a party or its legal
24 representative from a final judgment, order or proceeding for the following
25 reasons:

26 (1) Mistake, inadvertence, surprise or excusable neglect;

27 (2) newly discovered evidence that, with reasonable diligence, could
28 not have been discovered in time to move for a new trial under subsection
29 (b) of K.S.A. 60-259, and amendments thereto;

30 (3) fraud, whether previously called intrinsic or extrinsic,
31 misrepresentation or misconduct by an opposing party;

32 (4) the judgment is void;

33 (5) the judgment has been satisfied, released or discharged; it is based
34 on an earlier judgment that has been reversed or vacated; or applying it
35 prospectively is no longer equitable; or

36 (6) any other reason that justifies relief.

37 (c) *Timing and effect of the motion.* (1) *Timing.* A motion under
38 subsection (b) must be made within a reasonable time, and for reasons
39 under paragraphs (b)(1), (2) and (3) no more than one year after the entry
40 of the judgment or order, or the date of the proceeding.

41 (2) *Effect on finality.* The motion does not affect the judgment's
42 finality or suspend its operation.

43 (d) *Other powers to grant relief.* This section does not limit a court's

1 power to:

2 (1) Entertain an independent action to relieve a party from a
3 judgment, order or proceeding;

4 (2) grant relief under K.S.A. 60-309, and amendments thereto, to a
5 defendant who was not personally notified of the action; or

6 (3) set aside a judgment for fraud on the court.

7 (e) *Bills and writs abolished.* The following bills are abolished: Bills
8 of review; bills in the nature of bills of review; and writs of coram nobis,
9 coram vobis and audita querela.

10 ~~Sec. 12.~~ **13.** K.S.A. 2010 Supp. 60-270 is hereby amended to read as
11 follows: 60-270. (a) *Retention of original discovery documents.* A party or
12 attorney possessing original deposition transcripts, original responses to
13 interrogatories, original requests for admissions, original requests for
14 production or other original matters produced during discovery must retain
15 those documents until the case is closed.

16 (b) *Destruction or disposition of original discovery documents.*
17 Except as provided in subsection (c), when the case has been closed the
18 party or attorney possessing the original documents specified in subsection
19 (a) may destroy or dispose of them.

20 (c) *Original discovery documents subject to order, rule, statute or*
21 *agreement.* Original discovery documents subject to or covered by a
22 protective order, court rule, statute or written agreement of the parties must
23 be retained, returned, destroyed or disposed of in accordance with the
24 terms of the order, rule, statute or agreement.

25 (d) *Definition of "closed."* As used in this section, "closed" means
26 when an order terminating the action or proceeding has been filed and all
27 appeals have been terminated, the time for appeal has expired or when the
28 judgment is either satisfied or barred under K.S.A. 60-2403, and
29 amendments thereto.

30 **Sec. 14.** K.S.A. 2010 Supp. 60-304 is hereby amended to read as
31 follows: **60-304.** As used in this section, "serving" means making
32 service by any of the methods described in K.S.A. 60-303, and
33 amendments thereto, unless a specific method of making service is
34 prescribed in this section. Except for service by publication under
35 K.S.A. 60-307, and amendments thereto, service of process under this
36 article must be made as follows:

37 (a) *Individual.* On an individual other than a minor or a disabled
38 person, by serving the individual or by serving an agent authorized by
39 appointment or by law to receive service of process. If the agent is one
40 designated by statute to receive service, such further notice as the
41 statute requires must be given. Service by return receipt delivery must
42 be addressed to an individual at the individual's dwelling or usual
43 place of abode and to an authorized agent at the agent's usual or

1 designated address. If the sheriff, party or party's attorney files a
2 return of service stating that the return receipt delivery to the
3 individual at the individual's dwelling or usual place of abode was
4 refused or unclaimed and that a business address is known for the
5 individual, the sheriff, party or party's attorney may complete service
6 by return receipt delivery, addressed to the individual at the
7 individual's business address.

8 (b) *Minor*. On a minor, by serving:

9 (1) The minor; and

10 (2) either:

11 (A) The minor's guardian or conservator, if the minor has one
12 within this state;

13 (B) the minor's father, mother or other person having the minor's
14 care or control or with whom the minor resides; or

15 (C) if service cannot be made as specified in paragraphs (A) or
16 (B), as provided by order of the court.

17 Service by return receipt delivery must be addressed to an
18 individual at the individual's dwelling or usual place of abode and to a
19 corporate guardian or conservator at the guardian's or conservator's
20 usual place of business.

21 (c) *Disabled person*. On a disabled person, as defined in K.S.A.
22 77-201, and amendments thereto, by:

23 (1) Serving:

24 (A) The person's guardian, conservator or a competent adult
25 member of the person's family with whom the person resides;

26 (B) if the person resides in an institution, the director or chief
27 executive officer of the institution; or

28 (C) if service cannot be made as specified in paragraphs (A) or
29 (B), as provided by order of the court; and

30 (2) unless the court otherwise orders, serving the disabled person.

31 Service by return receipt delivery must be addressed to the director
32 or chief executive officer of an institution at the institution, to any
33 other individual at the individual's dwelling or usual place of abode,
34 and to a corporate guardian or conservator at the guardian's or
35 conservator's usual place of business.

36 (d) *Governmental bodies*. On:

37 (1) A county, by serving one of the county commissioners, the
38 county clerk or the county treasurer;

39 (2) a township, by serving the clerk or a trustee;

40 (3) a city, by serving the clerk or the mayor;

41 (4) any other public corporation, body politic, district or
42 authority, by serving the clerk or secretary or, if the clerk or secretary
43 is not found, any officer, director or manager thereof; and

1 (5) the state or any governmental agency of the state, when
2 subject to suit, by serving the attorney general or an assistant attorney
3 general.

4 Service by return receipt delivery must be addressed to the
5 appropriate official at the official's governmental office. Income
6 withholding orders for support and orders of garnishment of earnings
7 of state officers and employees must be served on the state or
8 governmental agency of the state in the manner provided by K.S.A.
9 60-723, and amendments thereto.

10 (e) *Corporations, domestic or foreign limited liability companies,*
11 *domestic or foreign limited partnerships, domestic or foreign limited*
12 *liability partnerships and partnerships.* On a domestic or foreign
13 corporation, domestic or foreign limited liability company, domestic
14 or foreign limited partnership, domestic or foreign limited liability
15 partnership or a partnership or other unincorporated association that
16 is subject to suit in a common name, by:

17 (1) Serving an officer, manager, partner or a resident, managing
18 or general agent;

19 (2) leaving a copy of the summons and petition or other document
20 at any of its business offices with the person having charge thereof; or

21 (3) serving any agent authorized by appointment or by law to
22 receive service of process, *and* if the agent is one authorized by statute
23 to receive service and the statute so requires, by also mailing a copy to
24 the defendant.

25 Service by return receipt delivery on an officer, partner or agent
26 must be addressed to the person at the person's usual place of
27 business.

28 (f) *Resident agent for a corporation, limited liability company,*
29 *limited partnership or limited liability partnership.* A domestic
30 corporation, domestic limited liability company or domestic limited
31 partnership, and, if it is authorized to transact business or transacts
32 business without authority in this state, a foreign corporation, foreign
33 limited liability company or foreign limited partnership irrevocably
34 authorizes the secretary of state as its agent to accept on its behalf
35 service of process, or any notice or demand required or permitted by
36 law to be served on it, when: (1) It fails to appoint or maintain in this
37 state a resident agent on whom service may be had; or (2) its resident
38 agent cannot with reasonable diligence be found at the registered
39 office in this state. Service on the secretary of state of any process,
40 notice or demand must be made by delivering to the secretary of state,
41 by personal service or by return receipt delivery, the original and two
42 copies of the process and two copies of the petition, notice or demand.
43 When any process, notice or demand is served on the secretary of

1 state, the secretary must promptly forward a copy of it by return
2 receipt delivery, addressed to the corporation, limited liability
3 company or limited partnership at its principal office as it appears in
4 the records of the secretary of state, or at the registered or principal
5 office of the corporation, limited liability company or limited
6 partnership in the state of its incorporation or formation. The
7 secretary of state must keep a record of all processes, notices and
8 demands served on the secretary under this subsection, and must
9 record the time of the service and the action taken by the secretary. A
10 fee of \$40 must be paid to the secretary of state by the party
11 requesting the service of process, to cover the cost of serving process,
12 except the secretary of state may waive the fee for state agencies. The
13 fee must not be included in or paid from any deposit as security for
14 costs or the docket fee required by K.S.A. 60-2001 or 61-4001, and
15 amendments thereto.

16 (g) *Insurance companies or associations.* Service of summons or
17 other process on any insurance company or association, organized
18 under the laws of this state, may also be made by serving the
19 commissioner of insurance in the same manner as provided for service
20 on foreign insurance companies or associations.

21 (h) *Service on an employee.* If a party or a party's agent or
22 attorney files an affidavit or a declaration pursuant to K.S.A. 53-601,
23 and amendments thereto, that to the best of the affiant's or declarant's
24 knowledge and belief the person to be served is employed in this state,
25 and is a nonresident or that the place of residence of the person is
26 unknown, the affiant or declarant may request that the sheriff or
27 other duly authorized person direct an officer, partner, managing or
28 general agent or the individual having charge of the place at which the
29 person to be served is employed, to make the person available to
30 permit the sheriff or other duly authorized person to serve the
31 summons or other process.

32 ~~Sec. 13-14.~~ 15. K.S.A. 2010 Supp. 60-310 is hereby amended to read
33 as follows: 60-310. (a) *Generally.* In an action against two or more
34 defendants, when one or more, but not all have been served, the plaintiff
35 may proceed as follows:

36 (1) If the action is against defendants jointly indebted on a contract,
37 the plaintiff may proceed against the defendants served, unless the court
38 orders otherwise; and if the plaintiff recovers judgment, it may be entered
39 against all the defendants jointly indebted and may be enforced only
40 against the joint property of all defendants, and the separate property of the
41 defendants served;

42 (2) if the action is against defendants severally liable, the plaintiff
43 may, without prejudice to the plaintiff's rights against those not served,

1 proceed against the defendants served in the same manner as if they were
2 the only defendants.

3 (b) ~~Actions~~ *Action against defendant not served.* Nothing in this
4 section makes a judgment against one or more defendants jointly or
5 severally liable a bar to another action against those not served.

6 Sec. ~~14-15~~ 16. K.S.A. 2010 Supp. 60-460 is hereby amended to read
7 as follows: 60-460. Evidence of a statement which is made other than by a
8 witness while testifying at the hearing, offered to prove the truth of the
9 matter stated, is hearsay evidence and inadmissible except:

10 (a) *Previous statements of persons present.* A statement previously
11 made by a person who is present at the hearing and available for cross-
12 examination with respect to the statement and its subject matter, provided
13 the statement would be admissible if made by declarant while testifying as
14 a witness.

15 (b) *Affidavits.* Affidavits, to the extent admissible by the statutes of
16 this state.

17 (c) *Depositions and prior testimony.* Subject to the same limitations
18 and objections as though the declarant were testifying in person, (1)
19 testimony in the form of a deposition taken in compliance with the law of
20 this state for use as testimony in the trial of the action in which offered or
21 (2) if the judge finds that the declarant is unavailable as a witness at the
22 hearing, testimony given as a witness in another action or in a preliminary
23 hearing or former trial in the same action, or in a deposition taken in
24 compliance with law for use as testimony in the trial of another action,
25 when (A) the testimony is offered against a party who offered it in the
26 party's own behalf on the former occasion or against the successor in
27 interest of such party or (B) the issue is such that the adverse party on the
28 former occasion had the right and opportunity for cross-examination with
29 an interest and motive similar to that which the adverse party has in the
30 action in which the testimony is offered, but the provisions of this
31 subsection (c) shall not apply in criminal actions if it denies to the accused
32 the right to meet the witness face to face.

33 (d) *Contemporaneous statements and statements admissible on*
34 *ground of necessity generally.* A statement which the judge finds was made
35 (1) while the declarant was perceiving the event or condition which the
36 statement narrates, describes or explains, (2) while the declarant was under
37 the stress of a nervous excitement caused by such perception or (3) if the
38 declarant is unavailable as a witness, by the declarant at a time when the
39 matter had been recently perceived by the declarant and while the
40 declarant's recollection was clear and was made in good faith prior to the
41 commencement of the action and with no incentive to falsify or to distort.

42 (e) *Dying declarations.* A statement by a person unavailable as a
43 witness because of the person's death if the judge finds that it was made

1 (1) voluntarily and in good faith and (2) while the declarant was conscious
2 of the declarant's impending death and believed that there was no hope of
3 recovery.

4 (f) *Confessions*. In a criminal proceeding as against the accused, a
5 previous statement by the accused relative to the offense charged, but only
6 if the judge finds that the accused (1) when making the statement was
7 conscious and was capable of understanding what the accused said and did
8 and (2) was not induced to make the statement (A) under compulsion or by
9 infliction or threats of infliction of suffering upon the accused or another,
10 or by prolonged interrogation under such circumstances as to render the
11 statement involuntary or (B) by threats or promises concerning action to be
12 taken by a public official with reference to the crime, likely to cause the
13 accused to make such a statement falsely, and made by a person whom the
14 accused reasonably believed to have the power or authority to execute the
15 same.

16 (g) *Admissions by parties*. As against a party, a statement by the
17 person who is the party to the action in the person's individual or a
18 representative capacity and, if the latter, who was acting in such
19 representative capacity in making the statement.

20 (h) *Authorized and adoptive admissions*. As against a party, a
21 statement (1) by a person authorized by the party to make a statement or
22 statements for the party concerning the subject of the statement or (2) of
23 which the party with knowledge of the content thereof has, by words or
24 other conduct, manifested the party's adoption or belief in its truth.

25 (i) *Vicarious admissions*. As against a party, a statement which would
26 be admissible if made by the declarant at the hearing if (1) the statement
27 concerned a matter within the scope of an agency or employment of the
28 declarant for the party and was made before the termination of such
29 relationship, (2) the party and the declarant were participating in a plan to
30 commit a crime or a civil wrong and the statement was relevant to the plan
31 or its subject matter and was made while the plan was in existence and
32 before its complete execution or other termination or (3) one of the issues
33 between the party and the proponent of the evidence of the statement is a
34 legal liability of the declarant, and the statement tends to establish that
35 liability.

36 (j) *Declarations against interest*. Subject to the limitations of
37 exception (f), a statement which the judge finds was at the time of the
38 assertion so far contrary to the declarant's pecuniary or proprietary interest
39 or so far subjected the declarant to civil or criminal liability or so far
40 rendered invalid a claim by the declarant against another or created such
41 risk of making the declarant an object of hatred, ridicule or social
42 disapproval in the community that a reasonable person in the declarant's
43 position would not have made the statement unless the person believed it

1 to be true.

2 (k) *Voter's statements.* A statement by a voter concerning the voter's
3 qualifications to vote or the fact or content of the voter's vote.

4 (l) *Statements of physical or mental condition of declarant.* Unless
5 the judge finds it was made in bad faith, a statement of the declarant's (1)
6 then existing state of mind, emotion or physical sensation, including
7 statements of intent, plan, motive, design, mental feeling, pain and bodily
8 health, but not including memory or belief to prove the fact remembered or
9 believed, when such a mental or physical condition is in issue or is
10 relevant to prove or explain acts or conduct of the declarant or (2) previous
11 symptoms, pain or physical sensation, made to a physician consulted for
12 treatment or for diagnosis with a view to treatment, and relevant to an
13 issue of declarant's bodily condition.

14 (m) *Business entries and the like.* Writings offered as memoranda or
15 records of acts, conditions or events to prove the facts stated therein, if the
16 judge finds that (1) they were made in the regular course of a business at
17 or about the time of the act, condition or event recorded and (2) the
18 sources of information from which made and the method and
19 circumstances of their preparation were such as to indicate their
20 trustworthiness.

21 If the procedure specified by subsection (b) of K.S.A. 60-245a for
22 providing business records has been complied with and no party has
23 required the personal attendance of a custodian of the records or the
24 production of the original records, the affidavit *or declaration* of the
25 custodian shall be prima facie evidence that the records satisfy the
26 requirements of this subsection.

27 (n) *Absence of entry in business records.* Evidence of the absence of a
28 memorandum or record from the memoranda or records of a business of an
29 asserted act, event or condition, to prove the nonoccurrence of the act or
30 event, or the nonexistence of the condition, if the judge finds that it was
31 the regular course of that business to make such memoranda of all such
32 acts, events or conditions at the time thereof or within a reasonable time
33 thereafter and to preserve them.

34 (o) *Content of official record.* Subject to K.S.A. 60-461 and
35 amendments thereto, (1) if meeting the requirements of authentication
36 under K.S.A. 60-465 and amendments thereto, to prove the content of the
37 record, a writing purporting to be a copy of an official record or of an entry
38 therein or (2) to prove the absence of a record in a specified office, a
39 writing made by the official custodian of the official records of the office,
40 reciting diligent search and failure to find such record.

41 (p) *Certificate of marriage.* Subject to K.S.A. 60-461 and
42 amendments thereto, certificates that the maker thereof performed
43 marriage ceremonies, to prove the truth of the recitals thereof, if the judge

1 finds that (1) the maker of the certificates, at the time and place certified as
2 the times and places of the marriages, was authorized by law to perform
3 marriage ceremonies and (2) the certificate was issued at that time or
4 within a reasonable time thereafter.

5 (q) *Records of documents affecting an interest in property.* Subject to
6 K.S.A. 60-461 and amendments thereto, the official record of a document
7 purporting to establish or affect an interest in property, to prove the content
8 of the original recorded document and its execution and delivery by each
9 person by whom it purports to have been executed, if the judge finds that
10 (1) the record is in fact a record of an office of a state or nation or of any
11 governmental subdivision thereof and (2) an applicable statute authorized
12 such a document to be recorded in that office.

13 (r) *Judgment of previous conviction.* Evidence of a final judgment
14 adjudging a person guilty of a felony, to prove any fact essential to sustain
15 the judgment.

16 (s) *Judgment against persons entitled to indemnity.* To prove the
17 wrong of the adverse party and the amount of damages sustained by the
18 judgment creditor, evidence of a final judgment if offered by a judgment
19 debtor in an action in which the debtor seeks to recover partial or total
20 indemnity or exoneration for money paid or liability incurred by the debtor
21 because of the judgment, provided the judge finds that the judgment was
22 rendered for damages sustained by the judgment creditor as a result of the
23 wrong of the adverse party to the present action.

24 (t) *Judgment determining public interest in land.* To prove any fact
25 which was essential to the judgment, evidence of a final judgment
26 determining the interest or lack of interest of the public or of a state or
27 nation or governmental division thereof in land, if offered by a party in an
28 action in which any such fact or such interest or lack of interest is a
29 material matter.

30 (u) *Statement concerning one's own family history.* A statement of a
31 matter concerning a declarant's own birth, marriage, divorce, legitimacy,
32 relationship by blood or marriage, race-ancestry or other similar fact of the
33 declarant's family history, even though the declarant had no means of
34 acquiring personal knowledge of the matter declared, if the judge finds
35 that the declarant is unavailable.

36 (v) *Statement concerning family history of another.* A statement
37 concerning the birth, marriage, divorce, death, legitimacy, race-ancestry,
38 relationship by blood or marriage or other similar fact of the family history
39 of a person other than the declarant if the judge finds that the declarant (1)
40 was related to the other by blood or marriage, or was otherwise so
41 intimately associated with the other's family as to be likely to have
42 accurate information concerning the matter declared, and made the
43 statement as upon information received from the other or from a person

1 related by blood or marriage to the other or as upon repute in the other's
2 family and (2) is unavailable as a witness.

3 (w) *Statement concerning family history based on statement of*
4 *another declarant.* A statement of a declarant that a statement admissible
5 under exceptions (u) or (v) was made by another declarant, offered as
6 tending to prove the truth of the matter declared by both declarants, if the
7 judge finds that both declarants are unavailable as witnesses.

8 (x) *Reputation in family concerning family history.* Evidence of
9 reputation among members of a family, if the reputation concerns the birth,
10 marriage, divorce, death, legitimacy, race-ancestry or other fact of the
11 family history of a member of the family by blood or marriage.

12 (y) *Reputation—boundaries, general history, family history.* Evidence
13 of reputation in a community as tending to prove the truth of the matter
14 reputed, if the reputation concerns (1) boundaries of or customs affecting,
15 land in the community and the judge finds that the reputation, if any, arose
16 before controversy, (2) an event of general history of the community or of
17 the state or nation of which the community is a part and the judge finds
18 that the event was of importance to the community or (3) the birth,
19 marriage, divorce, death, legitimacy, relationship by blood or marriage, or
20 race-ancestry of a person resident in the community at the time of the
21 reputation, or some other similar fact of the person's family history or of
22 the person's personal status or condition which the judge finds likely to
23 have been the subject of a reliable reputation in that community.

24 (z) *Reputation as to character.* If a trait of a person's character at a
25 specified time is material, evidence of the person's reputation with
26 reference thereto at a relevant time in the community in which the person
27 then resided or in a group with which the person then habitually
28 associated, to prove the truth of the matter reputed.

29 (aa) *Recitals in documents affecting property.* Evidence of a statement
30 relevant to a material matter, contained in a deed of conveyance or a will
31 or other document purporting to affect an interest in property, offered as
32 tending to prove the truth of the matter stated, if the judge finds that (1) the
33 matter stated would be relevant upon an issue as to an interest in the
34 property and (2) the dealings with the property since the statement was
35 made have not been inconsistent with the truth of the statement.

36 (bb) *Commercial lists and the like.* Evidence of statements of matters
37 of interest to persons engaged in an occupation contained in a list, register,
38 periodical or other published compilation, to prove the truth of any
39 relevant matter so stated, if the judge finds that the compilation is
40 published for use by persons engaged in that occupation and is generally
41 used and relied upon by them.

42 (cc) *Learned treatises.* A published treatise, periodical or pamphlet on
43 a subject of history, science or art, to prove the truth of a matter stated

1 therein, if the judge takes judicial notice, or a witness expert in the subject
2 testifies, that the treatise, periodical or pamphlet is a reliable authority in
3 the subject.

4 (dd) *Actions involving children.* In a criminal proceeding or a
5 proceeding pursuant to the revised Kansas juvenile justice code or in a
6 proceeding to determine if a child is a child in need of care under the
7 revised Kansas code for care of children, a statement made by a child, to
8 prove the crime or that a child is a juvenile offender or a child in need of
9 care, if:

10 (1) The child is alleged to be a victim of the crime or offense or a
11 child in need of care; and

12 (2) the trial judge finds, after a hearing on the matter, that the child is
13 disqualified or unavailable as a witness, the statement is apparently
14 reliable and the child was not induced to make the statement falsely by use
15 of threats or promises.

16 If a statement is admitted pursuant to this subsection in a trial to a jury,
17 the trial judge shall instruct the jury that it is for the jury to determine the
18 weight and credit to be given the statement and that, in making the
19 determination, it shall consider the age and maturity of the child, the
20 nature of the statement, the circumstances under which the statement was
21 made, any possible threats or promises that might have been made to the
22 child to obtain the statement and any other relevant factor.

23 (ee) *Certified motor vehicle certificate of title history.* Subject to
24 K.S.A. 60-461, and amendments thereto, a certified motor vehicle
25 certificate of title history prepared by the division of vehicles of the
26 Kansas department of revenue.

27 ~~Sec. 15-16.~~ **17.** K.S.A. 60-2003 is hereby amended to read as
28 follows: 60-2003. Items which may be included in the taxation of costs
29 are:

30 (1) The docket fee as provided for by K.S.A. 60-2001, and
31 amendments thereto.

32 (2) The mileage, fees, and other allowable expenses of the sheriff,
33 other officer or private process server incurred in the service of process or
34 in effecting any of the provisional remedies authorized by this chapter.

35 (3) Publisher's charges in effecting any publication of notices
36 authorized by law.

37 (4) Statutory fees and mileage of witnesses attending court or the
38 taking of depositions used as evidence.

39 (5) Reporter's or stenographic charges for the taking of depositions
40 used as evidence.

41 (6) The postage fees incurred pursuant to K.S.A. 60-303 ~~or~~
42 ~~subsection (e) of K.S.A. 60-308,~~ and amendments thereto.

43 (7) Alternative dispute resolution fees shall include fees, expenses

1 and other costs arising from mediation, conciliation, arbitration, settlement
2 conferences or other alternative dispute resolution means, whether or not
3 such means were successful in resolving the matter or matters in dispute,
4 which the court shall have ordered or to which the parties have agreed.

5 (8) Such other charges as are by statute authorized to be taxed as
6 costs.

7 ~~Sec. 16-17~~ **18.** K.S.A. 2010 Supp. 65-4902 is hereby amended to
8 read as follows: 65-4902. The district judge or, if the district court has
9 more than one division, the chief judge of such court shall notify the
10 parties to the action that a screening panel has been convened. The
11 plaintiff or claimant and the defendant or respondent shall each designate a
12 health care provider licensed in the same profession as the defendant or
13 respondent within ~~20~~ 21 days of such party's receipt of notice of the
14 convening of the screening panel. The parties shall jointly designate a
15 health care provider licensed in the same profession as the defendant or
16 respondent within ~~10~~ 14 days after the individual designations have been
17 made. If the parties are unable to jointly select a health care provider
18 within such ~~10~~ 14 days, the judge of the district court or, if the district
19 court has more than one division, the chief judge of such court shall select
20 such health care provider.

21 ~~Sec. 17-18~~ **19.** K.S.A. 20-3017 and 60-2003 and K.S.A. 2010 Supp.
22 38-2305, 38-2305a, 60-203, 60-206, 60-209, 60-211, 60-214, 60-226, 60-
23 228a, 60-235, 60-249, 60-260, 60-270, **60-304**, 60-310, 60-460 and 65-
24 4902 are hereby repealed.

25 ~~Sec. 18-19~~ **20.** This act shall take effect and be in force from and
26 after its publication in the statute book.