

HOUSE BILL No. 2222

By Representative T. Powell

1-30

AN ACT relating to placing limitations on supersedeas bonds; amending K.S.A. 60-3004 and K.S.A. 2000 Supp. 60-2103 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 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 stipu-

1 lation filed in the district court, or that court may dismiss the appeal upon
2 motion and notice by the appellant.

3 (b) *Notice of appeal.* The notice of appeal shall specify the parties
4 taking the appeal; shall designate the judgment or part thereof appealed
5 from, and shall name the appellate court to which the appeal is taken.
6 The appealing party shall cause notice of the appeal to be served upon
7 all other parties to the judgment as provided in K.S.A. 60-205, and
8 amendments thereto, but such party's failure so to do does not affect the
9 validity of the appeal.

10 (c) *Security for costs.* Security for the costs on appeal shall be given
11 in such sum and manner as shall be prescribed by a general rule of the
12 supreme court unless the appellate court shall make a different order
13 applicable to a particular case.

14 (d) *Supersedeas bond.* (1) Whenever an appellant entitled thereto
15 desires a stay on appeal, such appellant may present to the district court
16 for its approval a supersedeas bond which shall have such surety or sur-
17 eties as the court requires. *Subject to paragraph (2)*, the bond shall be
18 conditioned for the satisfaction of the judgment in full together with costs,
19 interest, and damages for delay, if for any reason the appeal is dismissed,
20 or if the judgment is affirmed, and to satisfy in full such modification of
21 the judgment such costs, interest, and damages as the appellate court may
22 adjudge and award. When the judgment is for the recovery of money not
23 otherwise secured, the amount of the bond shall be fixed at such sum as
24 will cover the whole amount of the judgment remaining unsatisfied, costs
25 on the appeal, interest, and damages for delay, unless the court after
26 notice and hearing and for good cause shown fixes a different amount or
27 orders security other than the bond. When the judgment determines the
28 disposition of the property in controversy as in real actions, replevin, and
29 actions to foreclose mortgages or when such property is in the custody of
30 the sheriff or when the proceeds of such property or a bond for its value
31 is in the custody or control of the court, the amount of the supersedeas
32 bond shall be fixed after notice and hearing at such sum only as will secure
33 the amount recovered for the use and detention of the property, the costs
34 of the action, costs on appeal, interest, and damages for delay. When an
35 order is made discharging, vacating, or modifying a provisional remedy,
36 or modifying or dissolving an injunction, a party aggrieved thereby shall
37 be entitled, upon application to the judge, to have the operation of such
38 order suspended for a period of not to exceed 10 days on condition that,
39 within such period of 10 days such party shall file a notice of appeal and
40 obtain the approval of such supersedeas bond as is required under this
41 section.

42 (2) (A) *If an appellant appeals from any form of judgment based on*
43 *any legal theory and seeks a stay of enforcement during the period of*

1 *appeal, and:*

2 (i) *The judgment exceeds \$1,000,000 in value but is less than*
3 *\$100,000,000 in value, the supersedeas bond shall not exceed \$1,000,000.*

4 (ii) *The judgment equals or exceeds \$100,000,000 in value, the su-*
5 *persedeas bond shall not exceed \$25,000,000.*

6 (B) *If the appellee proves by a preponderance of the evidence that*
7 *the appellant bringing the appeal is purposefully dissipating or diverting*
8 *assets outside of the ordinary course of its business for the purpose of*
9 *avoiding ultimate payment of the judgment, the court may enter such*
10 *orders as are necessary to stop the dissipation and diversion of assets,*
11 *including a requirement that the appellant post a bond in the full amount*
12 *of the judgment.*

13 (C) *A bond shall not be found insufficient under any other provision*
14 *of law due to limits imposed under this subsection.*

15 (D) *Nothing in this section shall be construed to prohibit a court from*
16 *setting a supersedeas bond in a lower amount as may be otherwise re-*
17 *quired by law or for good cause shown.*

18 (e) *Failure to file or insufficiency of bond.* If a supersedeas bond is
19 not filed within the time specified, or if the bond filed is found insuffi-
20 cient, and if the action is not yet docketed with the appellate court, a
21 bond may be filed at such time before the action is so docketed as may
22 be fixed by the district court. After the action is so docketed, application
23 for leave to file a bond may be made only in the appellate court.

24 (f) *Judgment against surety.* By entering into a supersedeas bond
25 given pursuant to subsections (c) and (d), the surety submits such surety's
26 self to the jurisdiction of the court and irrevocably appoints the clerk of
27 the court as such surety's agent upon whom any papers affecting such
28 surety's liability on the bond may be served. Such surety's liability may
29 be enforced on motion without the necessity of an independent action.
30 The motion and such notice of the motion as the judge prescribes may
31 be served on the clerk of the court who shall forthwith mail copies to the
32 surety if such surety's address is known.

33 (g) *Docketing record on appeal.* The record on appeal shall be filed
34 and docketed with the appellate court at such time as the supreme court
35 may prescribe by rule.

36 (h) *Cross-appeal.* When notice of appeal has been served in a case
37 and the appellee desires to have a review of rulings and decisions of which
38 such appellee complains, the appellee shall, within 20 days after the notice
39 of appeal has been served upon such appellee and filed with the clerk of
40 the trial court, give notice of such appellee's cross-appeal.

41 (i) *Intermediate rulings.* When an appeal or cross-appeal has been
42 timely perfected, the fact that some ruling of which the appealing or cross-
43 appealing party complains was made more than 30 days before filing of

1 the notice of appeal shall not prevent a review of the ruling.

2 Sec. 2. K.S.A. 60-3004 is hereby amended to read as follows: 60-
3 3004. (a) If the judgment debtor shows the district court that an appeal
4 from the foreign judgment is pending or will be taken, or that a stay of
5 execution has been granted, the court shall stay enforcement of the for-
6 eign judgment until the appeal is concluded, the time for appeal expires,
7 or the stay of execution expires or is vacated, upon proof that the judg-
8 ment debtor has furnished the security for the satisfaction of the judg-
9 ment required by the state in which it was rendered.

10 (b) If the judgment debtor shows the district court any ground upon
11 which enforcement of a judgment of any district court of this state would
12 be stayed, *including the ground that an appeal will be taken, is pending*
13 *or the time for taking appeals is not yet expired*, the court shall stay
14 enforcement of the foreign judgment for an appropriate period, upon
15 requiring the same security for satisfaction of the judgment which is re-
16 quired in this state *subject to the provisions of subsection (d) of K.S.A.*
17 *60-2103, and amendments thereto.*

18 Sec. 3. K.S.A. 60-3004 and K.S.A. 2000 Supp. 60-2103 are hereby
19 repealed.

20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.

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