

HOUSE BILL No. 2846

By Committee on Judiciary

2-11

9 AN ACT concerning jury service; amending K.S.A. 43-155, 43-158, 43-
10 159, 43-165 and 43-173 and repealing the existing sections.

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

13 New Section 1. Service of prospective jurors shall be for not more
14 than one court day in actual attendance unless a prospective juror is se-
15 lected to serve in a trial or is under consideration to serve on a trial and
16 such consideration covers a period of two or more days. Once selected,
17 a juror shall serve on the jury for the duration of the trial unless excused
18 by the presiding judge.

19 New Sec. 2. (a) Individuals scheduled to appear for jury service have
20 the right to postpone the date of their initial appearance for jury service
21 one time only. When requested, postponements shall be granted, pro-
22 vided that:

23 (1) The juror has not been previously granted a postponement;

24 (2) the prospective juror appears in person or contacts the clerk by
25 telephone, electronic mail or in writing to request a postponement; and

26 (3) prior to the grant of a postponement, with the concurrence of the
27 clerk, the prospective juror fixes a date certain on which the prospective
28 juror will appear for jury service that is not more than six months after
29 the date on which the prospective juror originally was called to serve and
30 a date on which the court will be in session.

31 (b) A subsequent request to postpone jury service may be approved
32 by a judicial officer only in the event of an extreme emergency, such as
33 a death in the family, sudden grave illness, or a natural disaster or a
34 national emergency in which the prospective juror is personally involved,
35 that could not have been anticipated at the time the initial postponement
36 was granted. Prior to the grant of a second postponement, the prospective
37 juror must fix a date certain on which the prospective juror will appear
38 for jury service that is not more than six months after the first postpone-
39 ment and a date on which the court will be in session.

40 (c) A prospective juror who fails to appear in person on the date
41 scheduled for jury service and who has failed to obtain a postponement
42 in compliance with the provisions for requesting a postponement or who
43 fails to appear on the date set pursuant to subsections (a)(3) or (b) of this

1 section shall be punished by the imposition of a fine not exceeding \$200
2 for each day or unexcused absence.

3 New Sec. 3. (a) The Kansas judicial council shall promulgate rules
4 to establish a lengthy trial fund that shall be used to provide full or partial
5 wage replacement or supplementation to jurors who serve as petit jurors
6 in civil trials for more than five days. The court rules shall provide for the
7 following:

- 8 (1) The selection and appointment of an administrator of the fund;
- 9 (2) procedures for the administration of the fund, including payment
10 of salaries of the administrator and other necessary personnel;
- 11 (3) procedures for the accounting, auditing and investment of money
12 in the lengthy trial fund; and
- 13 (4) a report to the supreme court on the administration of the lengthy
14 trial fund in its annual report on the judicial branch that sets forth the
15 money collection for and disbursed from the fund.

16 (b) Notwithstanding any other fees required under state law, each
17 trial court in the state shall collect from each attorney who files a civil
18 case, unless otherwise exempted under this section, a fee of \$5 per case
19 to be paid into the lengthy trial fund. A lawyer will be deemed to have
20 filed a case at the time the first pleading or other filing on which an
21 individual's name appears is submitted to the court for filing and opens
22 a new case. All such fees shall be forwarded to the administrator of the
23 lengthy trial fund for deposit.

24 (c) When the period of jury service lasts more than five days, the
25 administrator shall use the fees deposited in the lengthy trial fund to pay
26 full or partial wage replacement or supplementation to jurors whose em-
27 ployers pay less than full regular wages.

28 (d) The court may pay replacement or supplemental wages:

- 29 (1) To any juror otherwise eligible to be excused from service pur-
30 suant to subsection (d) (2) of K.S.A. 43-159, and amendments thereto,
31 beginning on the sixth day of jury service. The amount paid from the fund
32 under this subsection shall be no more than is needed to relieve a juror's
33 financial hardship and may not exceed \$100 per day, per juror; and
- 34 (2) to any juror, beginning on the 11th day of service, but not to
35 exceed \$300 per day, per juror.

36 (e) In its discretion, the court may limit the amount of disbursements
37 under subsection (d) based on the availability of financial resources.

38 (f) Any juror who is serving or has served on a jury who qualifies for
39 payment from the lengthy trial fund, provided the service commenced
40 on or after the effective date of this act, may submit a request for payment
41 from the lengthy trial fund on a form provided by the administrator.
42 Payment shall be limited to the difference between the state paid jury
43 fee and the actual amount of wages a juror earns, up to the maximum

1 level payable, minus any amount the juror actually receives from the juror's employer during the same time period.

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3 (1) The form shall describe the juror's regular wages, the amount the juror's employer will pay during the term of jury service starting on the sixth day and thereafter, the amount of replacement or supplemental wages requested and any other information the administrator deems necessary for proper payment.

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8 (2) The juror shall be required to submit verification from the juror's employer as to the wage information provided to the administrator prior to initiation of payment from the lengthy trial fund. An acceptable form of verification includes, but is not limited to, the employee's most recent earnings statement.

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13 (3) If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to the juror's approximate gross weekly income, together with such other information as the administrator may require in order to verify weekly income.

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17 (g) The following attorneys and causes of action are exempt from payment of the lengthy trial fund fee:

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19 (1) Government attorneys entering appearances in the course of their official duties;

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21 (2) *pro se* litigants;

22 (3) cases in small claims court or the state equivalent thereof; or

23 (4) claims seeking social security disability determinations or individual veterans compensation or disability determinations, recoupment actions for government-backed educational loans or mortgages, child custody and support cases, actions brought *in forma pauperis* and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial by jury.

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29 New Sec. 4. The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of any part of this act to any person or circumstance is held invalid, the remaining portions of the act and their applicability to any person or circumstance shall remain valid and enforceable.

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34 Sec. 5. K.S.A. 43-155 is hereby amended to read as follows: 43-155. The public policy of this state is declared to be that jury service is the solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted by the judges of the courts of this state only for reasons of ~~compelling personal hardship or because requiring service would be contrary to the public welfare, health or safety~~
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40 *undue or extreme hardship or because the juror suffers from a mental or physical condition that causes the juror to be incapable of performing jury service*; that all litigants entitled to trial by jury shall have the right to
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43 juries selected at random from a fair cross section of the community in

1 the district wherein the court convenes; and that all citizens shall have
2 the opportunity to be considered for service on juries in the district courts
3 of Kansas.

4 Sec. 6. K.S.A. 43-158 is hereby amended to read as follows: 43-158.
5 The following persons shall be excused from jury service: (a) Persons
6 unable to understand the English language with a degree of proficiency
7 sufficient to respond to a jury questionnaire form prepared by the
8 commissioner;

9 (b) persons under adjudication of incompetency;

10 (c) persons who within 10 years immediately preceding have been
11 convicted of or pleaded guilty, or *nolo contendere*, to an indictment or
12 information charging a felony; and

13 (d) persons who have served as jurors in the county within ~~one year~~
14 *the two years* immediately preceding.

15 Sec. 7. K.S.A. 43-159 is hereby amended to read as follows: 43-159.

16 ~~In addition to the persons excused from jury service in K.S.A. 43-158,~~
17 ~~and amendments thereto, the following persons may be excused from~~
18 ~~jury service by the court: (a) Persons so physically or mentally infirm as~~
19 ~~to be unequal to the task of ordinary jury duty;~~

20 ~~— (b) persons whose presence elsewhere is required for the public wel-~~
21 ~~fare, health or safety;~~

22 ~~— (c) persons for whom jury service would cause extraordinary or com-~~
23 ~~pelling personal hardship; and~~

24 ~~— (d) persons whose personal relationship to the parties or whose in-~~
25 ~~formation or interest in the case to be tried is such that there is a prob-~~
26 ~~ability such persons would find it difficult to be impartial. (a) An individ-~~
27 ~~ual may apply to be excused from jury service for a period of up to 24~~
28 ~~months, instead of seeking a postponement, when either:~~

29 (1) *The prospective juror has a mental or physical condition that*
30 *causes the juror to be incapable of performing jury service. The juror, or*
31 *the juror's personal representative, must provide the court with docu-*
32 *mentation from a person licensed to practice medicine and surgery veri-*
33 *fying that a mental or physical condition renders the person unfit for jury*
34 *service for a period of up to 24 months; or*

35 (2) *jury service would cause undue or extreme hardship to the pro-*
36 *spective juror or a person under the prospective juror's care or*
37 *supervision.*

38 (b) *A judge of the court for which the individual was called to jury*
39 *service shall make an undue or extreme hardship determination. The au-*
40 *thority to make these determinations is delegable only to court officials or*
41 *personnel who are authorized by the laws of this state to function as*
42 *members of the judiciary.*

43 (c) *A person asking to be excused based on a finding of undue or*

1 *extreme hardship must take all actions necessary to have obtained a ruling*
2 *on that request by no later than the date on which the individual is sched-*
3 *uled to appear for jury duty.*

4 *(d) For purposes of this act, a finding of undue or extreme hardship*
5 *is limited to circumstances in which an individual would:*

6 *(1) Be required to abandon a person under such individual's personal*
7 *care or supervision due to the impossibility of obtaining an appropriate*
8 *substitute caregiver during the period of participation in the jury pool or*
9 *on the jury;*

10 *(2) incur costs that would have a substantial adverse impact on the*
11 *payment of the individual's necessary daily living expenses or on those*
12 *for whom such individual provides the principle means of support; or*

13 *(3) suffer physical hardship that would result in illness or disease.*

14 *(e) Undue or extreme hardship does not exist solely based on the fact*
15 *that a prospective juror will be required to be absent from the prospective*
16 *juror's place of employment.*

17 *(f) A person asking a judge to grant an excuse based on undue or*
18 *extreme hardship shall be required to provide the judge with documen-*
19 *tation that the judge finds to clearly support the request to be excused,*
20 *such as, but not limited to, federal and state income tax returns, medical*
21 *statements from a person licensed to practice medicine and surgery, proof*
22 *of dependency or guardianship or similar documents. Failure to provide*
23 *satisfactory documentation shall result in a denial of the request to be*
24 *excused.*

25 *(g) After 24 months, a person excused from jury service shall become*
26 *eligible once again for qualification as a juror unless the person was per-*
27 *manently excused from service. A person is excused from jury service*
28 *permanently only when the deciding judge determines that the underlying*
29 *grounds for being excused are of a permanent nature.*

30 *Sec. 8. K.S.A. 43-165 is hereby amended to read as follows: 43-165.*

31 *(a) Each judicial district of the district court may direct from time to time,*
32 *the number of jurors to be summoned for said that court, and how long*
33 *they shall be summoned before their attendance shall be required, and*
34 *may make such rules and orders as it may deem deems proper, touching*
35 *the jury service of the court, not inconsistent with the provisions hereof,*
36 *and may enforce the same by attachment and fine not exceeding one*
37 *hundred dollars (\$100) \$200. Unexcused, nonattendance of a person sum-*
38 *moned unless reasonable cause for such nonattendance be shown to the*
39 *satisfaction of the court shall be punished by the imposition of a fine not*
40 *exceeding one hundred dollars (\$100) \$200 for each day of unexcused*
41 *absence.*

42 *(b) In addition to or in lieu of the fine provided by subsection (a), the*
43 *court may order that the prospective juror complete a period of com-*

1 *munity service for a period no less than if the prospective juror would*
2 *have completed jury service and provide proof of completion of this com-*
3 *munity service to the court.*

4 Sec. 9. K.S.A. 43-173 is hereby amended to read as follows: 43-173.

5 (a) No employer shall discharge or threaten to discharge any permanent
6 employee by reason of such employee's jury service, or the attendance or
7 scheduled attendance in connection with such service, in any court of
8 Kansas.

9 (b) Any employer who violates the provisions of this section:

10 (1) Shall be liable for damages for any loss of wages, actual damages
11 and other benefits suffered by an employee by reason of such violation;

12 (2) shall be ordered to reinstate any employee discharged by reason
13 of such employee's jury service; and

14 (3) may be enjoined from further violations of this section and or-
15 dered to provide other appropriate relief.

16 (c) *An employee may not be required or requested to use annual,*
17 *vacation or sick leave for time spent responding to a summons for jury*
18 *duty, participating in the jury selection process or actually serving on a*
19 *jury. Nothing in this provision shall be construed to require an employer*
20 *to provide annual, vacation or sick leave to employees under the provi-*
21 *sions of this statute who otherwise are not entitled to such benefits under*
22 *company policies.*

23 ~~(e)~~ (d) Any individual who is reinstated to a position of employment
24 in accordance with the provisions of this section shall be considered as
25 having been on furlough or leave of absence during such period of jury
26 service, shall be reinstated to employee's position of employment without
27 loss of seniority, and shall be entitled to participate in insurance or other
28 benefits offered by the employer pursuant to established rules and prac-
29 tices relating to employees on furlough or leave of absence in effect with
30 the employer at the time such individual entered upon jury service.

31 ~~(d)~~ (e) In any action or proceeding under this section, the court may
32 award a prevailing employee who brings such action by retained counsel
33 reasonable attorney fees as part of the costs. The court may award a
34 prevailing employer reasonable attorney fees as part of the costs only if
35 the court finds that the action is frivolous or brought in bad faith.

36 (f) *A court shall automatically postpone and reschedule the service of*
37 *a summoned juror of an employer with five or fewer full-time employees,*
38 *or their equivalent, if another employee of that employer has previously*
39 *been summoned to appear during the same period. Such postponement*
40 *will not effect an individual's right to one automatic postponement under*
41 *section 2, and amendments thereto.*

42 Sec. 10. K.S.A. 43-155, 43-158, 43-159, 43-165 and 43-173 are
43 hereby repealed.

1 Sec. 11. This act shall take effect and be in force from and after its
2 publication in the statute book.