

Substitute for HOUSE BILL No. 2457

AN ACT concerning civil procedure; relating to service of process; amending K.S.A. 60-3004 and K.S.A. 2004 Supp. 60-304 and 60-2103 and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 60-304 is hereby amended to read as follows: 60-304. As used in this section, “serving” means making service by any of the methods described in K.S.A. 60-303, and amendments thereto, unless a specific method of making service is prescribed in this section. Except for service by publication under K.S.A. 60-307, and amendments thereto, service of process under this article shall be made as follows:

(a) *Individual.* Upon an individual other than a minor or a disabled person, by serving the individual or by serving an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. Service by ~~certified mail return receipt delivery~~ shall be addressed to an individual at the individual’s dwelling house or usual place of abode and to an authorized agent at the agent’s usual or designated address. If service by ~~certified mail return receipt delivery~~ to the individual’s dwelling house or usual place of abode is refused or unclaimed, the sheriff, party or party’s attorney seeking service may complete service by certified mail, restricted delivery, by serving the individual at a business address after filing a return on service stating the ~~certified mailing return receipt delivery~~ to the individual at such individual’s dwelling house or usual place of abode has been refused or unclaimed and a business address is known for such individual.

(b) *Minor.* Upon a minor, by serving the minor and also either the minor’s guardian or conservator if the minor has one within the state or the minor’s father or mother or other person having the minor’s care or control or with whom such minor resides, or if service cannot be made upon any of them, then as provided by order of the judge. Service by ~~certified mail return receipt delivery~~ shall be addressed to an individual at the individual’s dwelling house or usual place of abode and to a corporate guardian or conservator at such guardian or conservator’s usual place of business.

(c) *Disabled person.* Upon a disabled person, as defined in K.S.A. 77-201, and amendments thereto, by serving (1) such person’s guardian, conservator or a competent adult member of such person’s family with whom the person resides, or if such person is living in an institution, then the director or chief executive officer of the institution or, if service cannot be made upon any of them, then as provided by order of the judge, and (2) unless the judge otherwise orders, the disabled person. Service by ~~certified mail return receipt delivery~~ shall be addressed to a director or chief executive officer of an institution at the institution, to any other individual at the individual’s dwelling house or usual place of abode, and to a corporate guardian or conservator at such guardian or conservator’s usual place of business.

(d) *Governmental bodies.* (1) Upon a county, by serving one of the county commissioners or the county clerk or the county treasurer; (2) upon a township, by serving the clerk or the trustee; (3) upon a city, by serving the clerk or the mayor; (4) upon any other public corporation, body politic, district or authority by serving the clerk or secretary or, if not to be found, to any officer, director or manager thereof; and (5) upon the state or any governmental agency of the state, when subject to suit, by serving the attorney general or an assistant attorney general. Service by ~~certified mail return receipt delivery~~ shall be addressed to the appropriate official at the official’s governmental office. Income withholding orders for support and orders of garnishment of earnings of state officers and employees shall be served upon the state or governmental agency of the state in the manner provided by K.S.A. 60-723 and amendments thereto.

(e) *Corporations, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership, and partnerships.* Upon a domestic or foreign corporation, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership or upon a partnership or other unincorporated association, when by law it may be sued as such, (1) by serving an officer, manager, partner or a resident, managing or general agent, or (2) by leaving a copy of the summons and

petition at any business office of the defendant with the person having charge thereof, or (3) by serving any agent authorized by appointment or required by law to receive service of process, and if the agent is one authorized by law to receive service and the law so requires, by also mailing a copy to the defendant. Service by ~~certified mail~~ *return receipt delivery* on an officer, partner or agent shall be addressed to such person at the person's usual place of business.

(f) *Corporation, limited liability company, limited partnership or limited liability partnership resident agent.* Whenever any domestic corporation, domestic limited liability company, domestic limited partnership, or any foreign corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or transacting business without authority in this state, fails to appoint or maintain in this state a resident agent upon whom service of legal process or service of any such notice or demand may be had, whenever the resident agent of such corporation, limited liability company or limited partnership cannot with reasonable diligence be found at the registered office in this state, the secretary of state shall be irrevocably authorized as the agent and representative of the corporation, limited liability company or limited partnership to accept service of any process or service of any notice or demand required or permitted by law to be served upon the corporation, limited liability company or limited partnership. Service on the secretary of state of any process, notice or demand against the corporation, limited liability company or limited partnership shall be made by delivering to the secretary of state by personal service or by ~~certified mail~~ *return receipt delivery*, the original and two copies of the process and two copies of the petition, notice or demand, or the clerk of the court may send the original process and two copies of both the process and the petition, notice or demand directly to the secretary of state by ~~certified mail~~ *return receipt delivery*. In the event that any process, notice or demand is served on the secretary of state, the secretary shall immediately cause a copy of such process, notice or demand to be forwarded by ~~certified mail~~ *return receipt delivery*, addressed to the corporation, limited liability company or limited partnership at its principal office as it appears in the records of the secretary of state, or to the registered or principal office of the corporation, limited liability company or limited partnership in the state of its incorporation or formation. The secretary of state shall keep a record of all processes, notices and demands served upon the secretary under this subsection, and shall record in the record the time of the service and the action of the secretary with reference to it. A fee of \$40 shall be paid to the secretary of state by the party requesting the service of process, to cover the cost of such service of process, except the secretary of state may waive the fee for state agencies. That fee shall not be included within or paid from any deposit as security for any costs or docket fee required by K.S.A. 60-2001 or K.S.A. 2004 Supp. 61-4001, and amendments thereto.

(g) *Insurance companies or associations.* Service of summons or other process may also be made on any insurance company or association, organized under the laws of the state of Kansas by service on the commissioner of insurance in the same manner as that provided for service on foreign insurance companies. All the requirements of law relating to service on foreign insurance companies so far as applicable shall also apply to domestic insurance companies.

(h) *Service upon an employee.* If the plaintiff or the plaintiff's agent or attorney files an affidavit that to the best of the affiant's knowledge and belief the defendant is a nonresident who is employed in this state, or that the place of residence of the defendant is unknown, the affiant may direct that the service of summons or other process be made by the sheriff or other duly authorized person by directing an officer, partner, managing or general agent, or the person having charge of the office or place of employment at which the defendant is employed, to make the defendant available for the purpose of permitting the sheriff or other duly authorized person to serve the summons or other process.

Sec. 2. K.S.A. 2004 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 stipulation filed in the district court, or that court may dismiss the appeal upon motion and notice by the appellant.

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

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

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

(2) (A) *Except as provided in paragraph (B), if an appellant appeals from any form of judgment based on any legal theory and seeks a stay of*

enforcement during the period of appeal, the supersedeas bond shall be set at the full amount of the judgment. If the appellant proves by a preponderance of the evidence that setting the supersedeas bond at the full amount of the judgment will result in the appellant suffering an undue hardship or a denial of the right to an appeal, then the court may reduce the amount of the supersedeas bond as follows:

(i) If the judgment is less than or equal to \$1,000,000 in value, the supersedeas bond shall be set at the full amount of the judgment; or

(ii) if the judgment exceeds \$1,000,000 in value, the supersedeas bond shall be set at a total of \$1,000,000 plus 25% of any amount in excess of \$1,000,000.

(B) The limitations on the amount of a supersedeas bond established by paragraph (A)(i) or (A) (ii) shall not apply if:

(i) The appellee proves by a preponderance of the evidence that the appellant bringing the appeal is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, and in such event, the court may enter such orders as are necessary to stop the dissipation and diversion of assets, including a requirement that the appellant post a bond in the full amount of the judgment; or

(ii) the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets reasonably necessary to satisfy the judgment, and in such event, the court may increase the amount of such bond required not to exceed the full amount of the judgment.

(C) Nothing in this section shall be construed to prohibit a court from setting a supersedeas bond in a lower amount as may be otherwise required by law or for good cause shown.

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

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

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

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

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

(i) Intermediate rulings. When an appeal or cross-appeal has been timely perfected, the fact that some ruling of which the appealing or cross-appealing party complains was made more than 30 days before filing of the notice of appeal shall not prevent a review of the ruling.

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

(b) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for

an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state *subject to the provisions of subsection (d) of K.S.A. 60-2103, and amendments thereto.*

Sec. 4. K.S.A. 60-3004 and K.S.A. 2004 Supp. 60-304 and 60-2103 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.