

HOUSE BILL No. 2363

AN ACT concerning civil procedure; relating to summary judgment; terms of court; probate code; amending K.S.A. 19-812a, 19-812b, 22-3013, 24-602, 24-603, 24-654, 24-709, 28-139, 41-209, 43-107, 43-112a, 43-112b, 59-2222, 59-2247, 59-3086, 60-206, 60-253 and 60-256 and repealing the existing sections; also repealing K.S.A. 20-325, 20-1036 and 20-3111.

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

Section 1. K.S.A. 19-812a is hereby amended to read as follows: 19-812a. The sheriff of Montgomery county, Kansas, either ~~by himself~~ *the sheriff* or a deputy, shall attend ~~all terms of~~ *as requested by a judge of the district court* the district court held in Montgomery county, Kansas, and shall serve all process, execute all orders issued therefrom, returning the same to the place from which they were issued.

Sec. 2. K.S.A. 19-812b is hereby amended to read as follows: 19-812b. The sheriff of Neosho county, Kansas, either ~~by himself~~ *the sheriff* or a deputy, shall attend ~~all terms of~~ *as requested by a judge of the district court* the district court held in Neosho county, Kansas, and shall serve all process, execute all orders issued therefrom, returning the same to the place from which they were issued.

Sec. 3. K.S.A. 22-3013 is hereby amended to read as follows: 22-3013. (1) A grand jury shall serve until it shall advise the court in writing that it has completed its investigation, but no grand jury shall serve for more than three months unless extended by order of the district court. The district court may, before the expiration of the tenure of a grand jury, make an order extending such grand jury for an additional period of not to exceed three months if the court finds that an investigation begun by the grand jury cannot be completed within the initial three months period and that the public interest requires the continuation of the grand jury. ~~The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court.~~

(2) At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

Sec. 4. K.S.A. 24-602 is hereby amended to read as follows: 24-602. Immediately after such articles of association shall have been filed, the clerk of the district court of the county in which the proposed district is located and in case the drainage district be composed of territory situated in the different counties, the clerk of the district court of the county in which the greater portion of the land of the proposed district shall be situated, shall issue a summons as now provided by law, ~~returnable at the next term of the district court~~ *such summons shall be directed to the several owners of real estate in said such proposed district who may be averred to be benefited thereby, but have not signed said such articles of association, which shall be served as summons in civil cases, and* In case any owner or owners of real estate in ~~said such~~ *said such* proposed district are unknown, or are nonresidents, they will be notified in the manner as nonresident defendants are now by law notified, that the articles of association as aforesaid have been filed, and the purpose thereof, and that the real estate of such owner or owners situated in ~~said such~~ *said such* district, fully describing the same, will be affected thereby, and rendered liable to taxation, or assessment for the purposes of draining ~~said such~~ *said such* district, and that application will be made to have ~~said such~~ *said such* district declared a drainage district for the purpose of draining and reclaiming the same.

Sec. 5. K.S.A. 24-603 is hereby amended to read as follows: 24-603. (a) All owners of real estate in the district who have not signed the articles of association and who may object to the organization of the drainage district, after having been duly summoned, on or before the ~~second day of the term of court to which~~ *second day* they have been summoned to appear, shall file their objections, in writing, to the organization of the drainage district and why their land will not be benefited by drainage and should not be embraced in the the drainage district, and liable for taxation for the draining of the same. All such objections shall be heard by the court in a summary manner, without any unnecessary delay, and in case such objections are overruled, the district court shall, by its order duly entered of record, duly declare the drainage district a public corporation of this state with perpetual succession.

(b) The fact that the district contains 160 acres or more of wet, overflowed or submerged lands shall be sufficient cause for declaring the

public utility of the improvements, and shall be sufficient grounds for declaring the organization a public corporation of this state. If any owner of real estate satisfies the court that the owner's real estate, or any part thereof, has been wrongfully included in the district, and will not be benefited thereby, then the court may exclude such real estate as will not be benefited and declare the remainder a district ~~as prayed for~~.

Sec. 6. K.S.A. 24-654 is hereby amended to read as follows: 24-654. (a) The owners of a majority in interest of the acres of real estate within the boundaries of any drainage district organized under K.S.A. 24-601 to 24-640, *and amendments thereto*, which district has constructed a drainage system, may at any time before or after the expiration of the number of years the same was to continue as stated in the articles of association, file their written petition with the clerk of the district court of the county in which the same is located and in the case in which the decree incorporating the district was rendered, asking for the renewal, extension and restoration of the articles of association of such drainage district for a number of years to be stated in such petition.

(b) Such petition shall stand for hearing ~~on the first day of the next term of the court~~ following the filing of such petition, and upon finding that such petition is sufficient, the district court ~~shall~~, by its order duly entered of record, *shall* duly declare ~~said such~~ drainage district renewed, extended and restored with the same force and effect as if its articles of association had not become inoperative and void, or would not or had not expired by limitation. Within ~~twenty~~ 20 days after the district court shall enter any such decree, the clerk thereof shall transmit to the secretary of state a certified copy of the record relating thereto, and the same shall be filed in ~~his~~ *the office of the secretary of state* in the same manner as the articles of association of such drainage district were originally filed in ~~said such~~ office.

Sec. 7. K.S.A. 24-709 is hereby amended to read as follows: 24-709.

(a) The commissioners of drainage appointed in ~~said such~~ proceeding shall be superintendents of construction of the work of drainage, and shall have authority to employ labor and to make contracts for the performance of such work and for the purchase of material therefor, ~~but~~ *The drainage commissioners* shall not enter into any contract for labor or purchase of material for the construction of ~~said such~~ work until a sufficient amount of money ~~shall have~~ *has* been paid to the clerk of the court, by the persons against whom benefits are assessed, to pay for all labor and material covered by such contract. The drainage commissioners shall keep a record of the work and the progress thereof, and it shall be their duty to file with the clerk of the court and present to the court, ~~on the first day of each term thereof~~ *September 1 of each year*, a report of their acts and doings as such drainage commissioners up to the day of the filing of such report. Such report shall set forth all contracts entered into and the amount of the same, and what work has been performed thereunder, and the expense thereof, and also all work done by such commissioners through labor employed directly by them, and the cost thereof, ~~and~~ *The report* shall set out, specifically, each day on which each of such commissioners ~~shall have~~ *has* been employed in the superintendence or construction of ~~said such~~ work, which report shall be verified by both of such commissioners.

(b) Such commissioners shall at all times be under the control and direction of the court, and for any failure to obey the orders of the court on the part of such drainage commissioners the court shall have the authority to deny either or both of such commissioners any compensation for their services as such commissioners, or to deduct a part of their compensation for their services, and power and authority to punish such commissioners summarily as for contempt if they shall in any manner fail to obey the orders of the court made in said proceeding. Suit may also be brought upon the bond of such commissioners in the name of the state for any failure of duty, and the amount recovered shall be applied in payment of the costs and expenses of the construction of the work. The court may at any time discharge such commissioners and appoint others in their place.

(c) It shall be the duty of the commissioners to keep an accurate account of all labor performed in the work of construction, and to furnish to each person performing labor under their employment, and to each

person to whom any contract may be let by them for such construction, a statement signed by both of such commissioners, showing what amount is due such person for labor or to any contractor for contract work performed in the construction of such drain, and to any person who shall furnish material for the construction of such drain, ~~but~~. Such commissioners shall not furnish any voucher to any laborer ~~or~~, contractor or materialman until the labor ~~shall have~~ *has* been performed or material furnished and received on the work of such commissioners. The clerk of the court shall not pay to any contractor, materialman or laborer any sum for work, labor or material performed or furnished in the construction of such drain, except upon a certificate signed by both of such drainage commissioners, showing the amount due for labor or material.

Sec. 8. K.S.A. 28-139 is hereby amended to read as follows: 28-139. ~~Within ten days after the close of each term of a court of record~~ *On a monthly basis*, the clerk ~~thereof of the court~~ shall return to the board of county commissioners a statement of the attendance of jurors ~~at such term~~ and their mileage ~~as taken by him~~, together with a statement of the attendance and mileage of witnesses in all criminal cases, claimed, and for which the county is liable.

Sec. 9. K.S.A. 41-209 is hereby amended to read as follows: 41-209. The director shall have the following powers, functions and duties:

(a) To receive applications for, and to issue and revoke licenses to manufacturers, distributors, nonbeverage users and retailers in accordance with the provisions of this act;

(b) to call upon other administrative departments of the state, county and city governments, sheriffs, city police departments, city marshals, law enforcement officers and upon prosecuting officers for such information and assistance as the director deems necessary in the performance of the duties imposed upon the director by this act;

(c) to inspect or cause to be inspected, any premises where alcoholic liquors are manufactured, distributed or sold;

(d) in the conduct of any hearing authorized to be held by the director to examine, or cause to be examined, under oath, any person, and to examine or cause to be examined books and records of any licensee; to hear testimony and take proof material for the information of the director in the discharge of such duties hereunder; to administer or cause to be administered oaths; and for any such purposes to issue subpoenas to require the attendance of witnesses and the production of books which shall be effective in any part of this state; and any district court or any judge of the district court, ~~either in term time or vacation~~, may by order duly entered, require the attendance of witnesses and the production of relevant books subpoenaed by the director, and the court or judge may compel obedience to the order by proceedings for contempt;

(e) to collect, receive, account for and turn over to the secretary of revenue all registration and license fees and taxes provided for in this act and all other moneys received by the director by virtue of the director's office; and

(f) such other powers, functions and duties as are or may be imposed or conferred upon the director by law.

Sec. 10. K.S.A. 43-107 is hereby amended to read as follows: 43-107. At least ~~thirty~~ 30 days before ~~any term of the court at which a petit jury shall be required by law, or a grand jury ordered by the court~~ *service is required*, the clerk of the county where such court is to be held shall draw from the jury box the names of ~~thirty~~ 30 persons to serve as grand jurors and the names of ~~twenty-four~~ 24 persons to serve as petit jurors. In the event that a county has appropriate base information programmed as a part of its computer operations so that it might comply with the spirit of the jury selection laws of Kansas, the jury commissioners may by local rule provide alternate methods for securing jury panels directly from the computer without the necessity of drawing names or cards from a wheel manually.

Sec. 11. K.S.A. 43-112a is hereby amended to read as follows: 43-112a. ~~That~~ All jurors drawn for service in the district court, either at Independence or Coffeyville, shall be eligible to serve both at Independence or Coffeyville for and during the term for which they are drawn ~~and also at the next term of said court to be held at the other place from which they were drawn~~, if ordered to do so by the court or the judge,

and during the time they serve as jurors, as herein provided, they shall appear for jury service in either such place as may be so ordered.

Sec. 12. K.S.A. 43-112b is hereby amended to read as follows: 43-112b. All jurors drawn for service in the district court of Neosho county, either at Chanute or Erie, shall be eligible to serve both at Chanute and Erie for and during the terms for which they are drawn, ~~and also at the next term of said court to be held at the other place from which they were drawn,~~ if ordered to do so by the court or the judge, and during the time they serve as jurors, as herein provided, they shall appear for jury service in either such place as may be ordered.

Sec. 13. K.S.A. 59-2222 is hereby amended to read as follows: 59-2222. (a) When a petition is filed for the probate of a will, for the determination that the consent of a spouse to a will is a valid and binding consent, for administration or for refusal to grant letters of administration, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall be given pursuant to K.S.A. 59-2209, *and amendments thereto*, unless the court makes an order to the contrary. If notice is by order of the court not required to be given pursuant to K.S.A. 59-2209, *and amendments thereto*, the court shall order notice of the hearing to be given, unless waived, in such manner as the court directs.

(b) When the petition seeks simplified administration, the notice shall advise all persons that under provisions for simplified administration the court need not supervise administration of the estate, and no notice of any action of the executor or administrator or other proceedings in the administration will be given, except for notice of final settlement of decedent's estate. The notice shall further advise all persons that if written objections to simplified administration are filed with the court, the court may order that supervised administration ensue.

(c) When a petition has been filed for the refusal of letters of administration, pursuant to K.S.A. 59-2287, *and amendments thereto*, the notice given shall advise all persons that at such hearing exempt property and a reasonable allowance will be set aside to the surviving spouse and minor children, or both, and that no further notice of the proceeding will be given.

(d) When the state is a ~~proper~~ party, the notice shall be served upon the attorney general and the county or district attorney of the county.

(e) *If the decedent or a predeceased spouse of the decedent received medical assistance payment under subsection (e) of K.S.A. 39-709, and amendments thereto, or the laws of any other state, the state or states providing such payment or payments shall be entitled to notice. Such notice shall be given to the agency or department responsible for the recovery of medical assistance in Kansas or, if a state other than Kansas, to the attorney general of such state or states.*

Sec. 14. K.S.A. 59-2247 is hereby amended to read as follows: 59-2247. (a) The petition of an executor or an administrator for a final settlement and accounting, and a determination of the persons entitled to the estate of a decedent, shall, in addition to other requirements, contain:

- (1) A statement of the account;
- (2) the names, residences, and addresses of the heirs, devisees, and legatees;
- (3) a description of the real estate and the interest of the decedent therein at the time of the decedent's death; ~~and~~
- (4) the nature and character of the respective claims of the heirs, devisees, and legatees of the decedent; *and*
- (5) *a statement that neither the decedent nor a predeceased spouse of the decedent were paid medical assistance under subsection (e) of K.S.A. 39-709, and amendments thereto, or the laws of any other state, or, in the event that such assistance was paid for or to the decedent or a predeceased spouse of the decedent under subsection (e) of K.S.A. 39-709, and amendments thereto, or the laws of any other state, that the state making such payments was duly notified of the filing of the petition as required by K.S.A. 59-2222, and amendments thereto.*

Notice of the hearing on a petition of an executor or administrator for a final settlement and accounting in which title to real estate is to be assigned by the court shall be given pursuant to K.S.A. 59-2209, and amendments thereto. In all other cases, notice shall be given or waived as provided in K.S.A. 59-2208, and amendments thereto.

Sec. 15. K.S.A. 59-3086 is hereby amended to read as follows: 59-3086. (a) At the time of or at any time after the filing of an accounting by the conservator, the conservator may file with the court a verified petition requesting a hearing on that accounting for the purposes of allowance and settlement. The petition shall include:

(1) The conservator's name and address, and if the conservator is also the guardian, that fact;

(2) the conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the conservatee's permanent residence;

(3) the name and address of the court appointed guardian, if different from the conservator;

(4) the names and addresses of any spouse, adult children and adult grandchildren of the conservatee, and those of any parent and adult siblings of the conservatee, or if no such names or addresses are known to the petitioner, the name and address of at least one adult who is nearest in kinship to the conservatee, or if none, that fact. If no such names or addresses are known to the conservator, but the conservator has reason to believe that such persons exist, then the petition shall state that fact and that the conservator has made diligent inquiry to learn those names and addresses;

(5) the names and addresses of other persons, if any, whom the conservator knows to have an interest in the matter, or a statement that the petitioner knows of no other persons having an interest in the matter;

(6) designation of the accounting period for which allowance and settlement is sought; and

(7) a request that this accounting be accepted and that the court issue an order providing that all matters related thereto are finally allowed and settled.

(b) Upon the filing of such a petition, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing may be held forthwith and without further notice if those persons named within the petition pursuant to the requirement of subsections (a)(3), (a)(4) and (a)(5), as applicable, have entered their appearances, waived notice, and agreed to the court's accepting the accounting and issuing an order of final allowance and settlement. Otherwise, the court shall require the conservator to give notice of this hearing to such persons in such manner as the court may specify, including therewith a copy of the conservator's petition and a copy or copies of the accounting or accountings for which the conservator requests an order of final allowance and settlement. This notice shall advise such persons that if they have any objections to the accounting or accountings for which final allowance and settlement is sought that they must file their written objections with the court prior to the scheduled hearing or that they must appear at the hearing to present those objections. The court may appoint an attorney to represent the conservatee in this matter similarly as provided for in subsection (a)(3) of K.S.A. 59-3063, and amendments thereto, and in such event, the court shall require the conservator to also give this notice to that attorney.

(c) In the absence of a petition having been filed by the conservator pursuant to this section, the court may set a hearing to determine whether an order of final allowance and settlement should be issued with regard to any accounting which has been previously filed by the conservator, and may require the conservator or some other person to give notice thereof as provided for herein.

(d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall have the authority to receive all relevant and material evidence which may be offered, including the testimony or written report, findings or recommendations of any professional or other person who has familiarity with the conservatee or the conservatee's estate. The court may review the court's prior orders, any conservatorship plan which has been filed pursuant to K.S.A. 59-3079, and amendments thereto, and any reports and accountings which have been filed by the guardian or conservator, or both, even if previously approved or allowed, to determine whether the current accounting seems reasonable in light of the past reports or accountings, and to determine whether any further proceedings under this act may be appropriate. The court shall give to the conservator, to the conservatee, and to other interested persons, the opportunity to present evidence to the court con-

cerning the actions of the conservator, the conservatee's estate and the recommendations of such persons.

(e) At the conclusion of the hearing, if the court finds, by a preponderance of the evidence, that the accounting accurately accounts for the conservatee's estate, shows appropriate administration on the part of the conservator, that any fees of the conservator are reasonable, and that due notice and an opportunity to be heard has been provided to any interested parties, the court shall approve the accounting and order that it is allowed and settled. Such allowance and settlement shall relieve the conservator and the conservator's sureties from liability for all acts and omissions which are fully and accurately described in the accounting, including the investments of the assets of the conservatee's estate.

(f) If the court finds by a preponderance of the evidence that the conservator has innocently misused any funds or assets of the conservatee's estate, the court shall order the conservator to repay such funds or return such assets to the conservatee's estate. If the court finds that the conservator has embezzled or converted for the conservator's own personal use any funds or assets of the conservatee's estate, the court shall find the conservator liable for double the value of those funds or assets, as provided for in K.S.A. 59-1704, and amendments thereto. In either case, the court may order the forfeiture of the conservator's bond, or such portion thereof as equals the value of such funds or assets, including any lost earnings and the costs of recovering those funds or assets, including reasonable attorney fees, as the court may allow, and may require of the surety satisfaction thereof. Neither the conservator, nor the conservator's estate or surety, shall be finally released from such bond until the satisfaction thereof.

(g) At no time shall the conservator, or the conservator's estate or surety, be finally released from the bond required by the court pursuant to K.S.A. 59-3069, and amendments thereto until a final accounting has been filed, allowed and settled as provided for herein.

~~(h) Upon the filing of a final accounting, delivery of any remaining funds and assets of the conservatee's estate to the person entitled thereto, and presentation to the court of a receipt for such, the court may issue a final order of allowance and settlement as provided for herein, and only thereby finally shall release the conservator, the conservator's estate and the conservator's surety. The court may issue a final order of allowance and settlement upon the filing of a final accounting and a finding by the court that the following have occurred:~~

~~(1) Reimbursement to the appropriate agency for any medical assistance payments, if any, received under subsection (e) of K.S.A. 39-709, and amendment thereto, or any similar laws of any other state for or on behalf of a conservatee or a predeceased spouse of the conservatee, but only to the extent allowed by law;~~

~~(2) delivery of any remaining funds and assets of the conservatee's estate to the person or persons entitled to such funds or assets; and~~

~~(3) presentation to the court of receipts for subsections (1) and (2).~~

~~The conservator, the conservator's estate and the conservator's surety shall be released upon the issuance of the court's final order of allowance and settlement.~~

Sec. 16. K.S.A. 60-206 is hereby amended to read as follows: 60-206. The following provisions shall govern the computation and extension of time:

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

any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply.

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

(c) ~~*Unaffected by expiration of term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action pending before it.~~

(d) *For motions—affidavits.* A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the judge. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in subsection (d) of K.S.A. 60-259, and amendments thereto, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at the time of hearing.

(e) (d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period.

Sec. 17. K.S.A. 60-253 is hereby amended to read as follows: 60-253.

(a) *Appointment and compensation.* As used in this chapter the word "master" includes a referee, an auditor, a commissioner and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain ~~his or her such~~ *master's* report as security for ~~his or her such~~ *master's* compensation, ~~but~~. When the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party. The master must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein, according to the best of the master's understanding. The oath may be administered by any person authorized to take depositions.

(b) *Reference.* With the consent of the parties, all or any issues of fact or law or both may be referred to a master. Otherwise, the judge may order a reference only on a finding that the ends of justice will be measurably advanced thereby, and, in a case triable to a jury, only on such issues as involve an examination of complex or voluminous accounts.

(c) *Powers.* The order of reference to the master may specify or limit the master's powers and may direct ~~him or her such~~ *master* to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before ~~him or her such~~ *master* and to do all acts and take all measures necessary or proper for the efficient performance of ~~his or her such~~ *master's* duties under the order. The master may require the production before ~~him or her such~~ *master* of evidence upon all matters embraced in

the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in *subsection (c) of K.S.A. 60-243* ~~(e)~~, *and amendments thereto*, for a court sitting without a jury.

(d) *Proceedings. (1) Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within ~~twenty (20)~~ 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make ~~his or her~~ *the master's* report. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in K.S.A. 60-245, *and amendments thereto*. If without adequate excuse a witness fails to appear or give evidence, he or she may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in K.S.A. 60-237 and 60-245, *and amendments thereto*.

(3) *Statement of accounts.* When matters of accounting are in issue before the master, ~~he or she~~ *the master* may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as ~~he or she~~ *the master* directs.

(e) *Report. (1) Contents and filing.* The master shall prepare a report upon the matters submitted to ~~him or her~~ *the master* by the order of reference and, if required to make findings of fact and conclusions of law, ~~he or she~~ *the master* shall set them forth in the report. The master shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) *In nonjury actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within ~~ten (10)~~ 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in *subsection (c) of K.S.A. 60-206* ~~(d)~~, *and amendments thereto*. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) *In jury actions.* In an action to be tried by a jury the master shall not be directed to report the evidence unless required by the court. If the master is available for cross-examination ~~his or her~~, *the master's* findings upon the issues submitted to ~~him or her~~ *the master* are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) *Stipulation as to findings.* The effect of a master's report is the same whether or not the parties have consented to the reference, ~~but~~. When the parties stipulate that a master's findings of fact shall be final,

only questions of law arising upon the report shall thereafter be considered.

(5) *Draft report.* Before filing ~~his or her~~ the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Sec. 18. K.S.A. 60-256 is hereby amended to read as follows: 60-256.

(a) *For claimant.* A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(b) *For defending party.* A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) *Motion and proceeding thereon.* The motion shall be served at least ~~10~~ 21 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) *Case not fully adjudicated on motion.* If on motion under this section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the actions as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify such party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this section are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

Sec. 19. K.S.A. 19-812a, 19-812b, 20-325, 20-1036, 20-3111, 22-3013, 24-602, 24-603, 24-654, 24-709, 28-139, 41-209, 43-107, 43-112a, 43-112b, 59-2222, 59-2247, 59-3086, 60-206, 60-253 and 60-256 are hereby repealed.

Sec. 20. 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.