

## HOUSE BILL No. 2619

By Special Committee on Judiciary

1-10

---

9 AN ACT concerning civil procedure; relating to the change of judge in  
10 civil cases; amending K.S.A. 20-311d and repealing the existing section.

11

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

13 Section 1. K.S.A. 20-311d is hereby amended to read as follows: 20-  
14 311d. (a) If a party or a party's attorney ~~believes that the judge to whom~~  
15 ~~an action is assigned cannot afford that party a fair trial in the action seeks~~  
16 *to change the judge to whom an action is assigned*, the party or attorney  
17 may file a motion for change of judge. The motion shall not state ~~the~~  
18 ~~grounds for the party's or attorney's belief~~ *any basis for disqualification*.  
19 The judge shall promptly hear the motion informally upon reasonable  
20 notice to all parties who have appeared in the case. If the judge disqual-  
21 ifies the judge's self, the action shall be assigned to another judge by the  
22 chief judge. If the judge refuses to disqualify the judge's self *and the*  
23 *party or attorney seeking a change of judge believes that the judge cannot*  
24 *afford the party a fair trial in the action*, the party ~~seeking a change of~~  
25 ~~judge or attorney~~ may file the affidavit provided for in subsection (b). If  
26 an affidavit is to be filed it shall be filed immediately.

27 (b) If a party or a party's attorney files an affidavit *in support of a*  
28 *motion for change of judge*, alleging any of the ~~grounds~~ *bases for dis-*  
29 *qualification* specified in subsection (c), the chief judge shall at once de-  
30 termine, or refer the *motion and* affidavit to another district judge for  
31 prompt determination of, the ~~legal sufficiency of the merits of the basis~~  
32 *for disqualification raised by the motion and* affidavit. If the *motion and*  
33 affidavit ~~is are~~ filed in a district court in which there is no other judge  
34 who is qualified to hear the matter, the chief judge shall at once notify  
35 the departmental justice for the district and request the appointment of  
36 another district judge to determine the ~~legal sufficiency of the affidavit~~  
37 *merits of the basis for disqualification raised by the motion and affidavit*.  
38 If the ~~affidavit~~ *basis for disqualification* is found to be ~~legally sufficient,~~  
39 *meritorious, the motion shall be granted and* the case shall be assigned  
40 to another judge.

41 (c) ~~Grounds~~ *Bases for disqualification* which may be alleged as pro-  
42 vided in subsection (b) for change of judge are that:

43 (1) The judge has been engaged as counsel in the action prior to the

1 appointment or election as judge.

2 (2) The judge is otherwise interested in the action.

3 (3) The judge is related to either party to the action.

4 (4) The judge is a material witness in the action.

5 (5) The party or the party's attorney filing the affidavit has cause to  
6 believe and does believe that on account of the personal bias, prejudice  
7 or interest of the judge such party cannot obtain a fair and impartial trial  
8 or fair and impartial enforcement of post-judgment remedies. Such affi-  
9 davit shall state the facts and the reasons for the belief that bias, prejudice  
10 or an interest exists.

11 (d) In any affidavit filed pursuant to this section, ~~the a~~ recital of pre-  
12 vious rulings or decisions by the judge ~~on legal issues or concerning the~~  
13 ~~legal sufficiency of any prior affidavits filed by counsel for a party in any~~  
14 ~~judicial proceeding, or filed by such counsel's law firm, pursuant to this~~  
15 ~~section, shall not be deemed legally sufficient for any belief that bias or~~  
16 ~~prejudice exists shall not be sufficient to establish a basis for~~  
17 ~~disqualification.~~

18 Sec. 2. K.S.A. 20-311d is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its  
20 publication in the statute book.