

## SENATE BILL No. 537

By Committee on Judiciary

2-4

---

9 AN ACT relating to civil procedure; concerning certain privileges; relat-  
10 ing to certain costs; amending K.S.A. 60-427, 60-2003 and 60-2006  
11 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 60-427 is hereby amended to read as follows: 60-  
15 427. (a) As used in this section:

16 (1) "Patient" means a person who, for the sole purpose of securing  
17 preventive, palliative, or curative treatment, or a diagnosis preliminary to  
18 such treatment, of such person's physical or mental condition, consults a  
19 physician, or submits to an examination by a physician.

20 (2) "Physician" means a person licensed or reasonably believed by  
21 the patient to be licensed to practice medicine or one of the healing arts  
22 as defined in K.S.A. 65-2802, and amendments thereto, in the state or  
23 jurisdiction in which the consultation or examination takes place.

24 (3) "Holder of the privilege" means the patient while alive and not  
25 under guardianship or conservatorship or the guardian or conservator of  
26 the patient, or the personal representative of a deceased patient.

27 (4) "Confidential communication between physician and patient"  
28 means such information transmitted between physician and patient, in-  
29 cluding information obtained by an examination of the patient, as is trans-  
30 mitted in confidence and by a means which, so far as the patient is aware,  
31 discloses the information to no third persons other than those reasonably  
32 necessary for the transmission of the information or the accomplishment  
33 of the purpose for which it is transmitted.

34 (b) Except as provided by subsections (c), (d), (e) and (f), a person,  
35 whether or not a party, has a privilege in a civil action or in a prosecution  
36 for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-  
37 1567, and amendments thereto, or an ordinance which prohibits the acts  
38 prohibited by that statute, to refuse to disclose, and to prevent a witness  
39 from disclosing, a communication, if the person claims the privilege and  
40 the judge finds that: (1) The communication was a confidential commu-  
41 nication between patient and physician; (2) the patient or the physician  
42 reasonably believed the communication necessary or helpful to enable  
43 the physician to make a diagnosis of the condition of the patient or to

1 prescribe or render treatment therefor; (3) the witness (i) is the holder  
2 of the privilege, (ii) at the time of the communication was the physician  
3 or a person to whom disclosure was made because reasonably necessary  
4 for the transmission of the communication or for the accomplishment of  
5 the purpose for which it was transmitted or (iii) is any other person who  
6 obtained knowledge or possession of the communication as the result of  
7 an intentional breach of the physician's duty of nondisclosure by the phy-  
8 sician or the physician's agent or servant; and (4) the claimant is the holder  
9 of the privilege or a person authorized to claim the privilege for the holder  
10 of the privilege.

11 (c) There is no privilege under this section as to any relevant com-  
12 munication between the patient and the patient's physician: (1) Upon an  
13 issue of the patient's condition in an action to commit the patient or  
14 otherwise place the patient under the control of another or others because  
15 of alleged incapacity or mental illness, in an action in which the patient  
16 seeks to establish the patient's competence or in an action to recover  
17 damages on account of conduct of the patient which constitutes a criminal  
18 offense other than a misdemeanor; (2) upon an issue as to the validity of  
19 a document as a will of the patient; or (3) upon an issue between parties  
20 claiming by testate or intestate succession from a deceased patient.

21 (d) *Except for opinions dealing with medical standard of care and*  
22 *causation*, there is no privilege under this section in an action in which  
23 the condition of the patient is an element or factor of the claim or defense  
24 of the patient or of any party claiming through or under the patient or  
25 claiming as a beneficiary of the patient through a contract to which the  
26 patient is or was a party.

27 (e) There is no privilege under this section: (1) As to blood drawn at  
28 the request of a law enforcement officer pursuant to K.S.A. 8-1001, and  
29 amendments thereto; and (2) as to information which the physician or  
30 the patient is required to report to a public official or as to information  
31 required to be recorded in a public office, unless the statute requiring  
32 the report or record specifically provides that the information shall not  
33 be disclosed.

34 (f) No person has a privilege under this section if the judge finds that  
35 sufficient evidence, aside from the communication has been introduced  
36 to warrant a finding that the services of the physician were sought or  
37 obtained to enable or aid anyone to commit or to plan to commit a crime  
38 or a tort, or to escape detection or apprehension after the commission of  
39 a crime or a tort.

40 (g) A privilege under this section as to a communication is terminated  
41 if the judge finds that any person while a holder of the privilege has caused  
42 the physician or any agent or servant of the physician to testify in any  
43 action to any matter of which the physician or the physician's agent or

1 servant gained knowledge through the communication.

2 (h) Providing false information to a physician for the purpose of ob-  
3 taining a prescription-only drug shall not be a confidential communication  
4 between physician and patient and no person shall have a privilege in any  
5 prosecution for obtaining a prescription-only drug by fraudulent means  
6 under K.S.A. 21-4214, and amendments thereto.

7 Sec. 2. K.S.A. 60-2003 is hereby amended to read as follows: 60-  
8 2003. Items which may be included in the taxation of costs are:

9 (1) The docket fee as provided for by K.S.A. 60-2001, and amend-  
10 ments thereto.

11 (2) The mileage, fees, and other allowable expenses of the sheriff,  
12 other officer or private process server incurred in the service of process  
13 or in effecting any of the provisional remedies authorized by this chapter.

14 (3) Publisher's charges in effecting any publication of notices author-  
15 ized by law.

16 (4) Statutory fees and mileage of witnesses attending court or the  
17 taking of depositions used as evidence.

18 (5) Reporter's or stenographic charges for the taking *and transcribing*  
19 *original and copies* of depositions used ~~as evidence, in whole or in part,~~  
20 *at any stage of a civil proceeding.*

21 (6) The postage fees incurred pursuant to K.S.A. 60-303 or subsec-  
22 tion (e) of K.S.A. 60-308, and amendments thereto.

23 (7) Alternative dispute resolution fees shall include fees, expenses  
24 and other costs arising from mediation, conciliation, arbitration, settle-  
25 ment conferences or other alternative dispute resolution means, whether  
26 or not such means were successful in resolving the matter or matters in  
27 dispute, which the court shall have ordered or to which the parties have  
28 agreed.

29 (8) Such other charges as are by statute authorized to be taxed as  
30 costs.

31 Sec. 3. K.S.A. 60-2006 is hereby amended to read as follows: 60-  
32 2006. (a) ~~In actions brought for the recovery of property damages only~~  
33 ~~of less than \$7,500 sustained and caused by the negligent operation of a~~  
34 ~~motor vehicle. Subject to the provisions of K.S.A. 40-3117, and amend-~~  
35 ~~ments thereto, in all actions brought for damages arising from the negli-~~  
36 ~~gent operation of a motor vehicle, where the amount claimed is less than~~  
37 ~~the minimum coverages required by K.S.A. 40-3107, and amendments~~  
38 ~~thereto, the prevailing party shall be allowed reasonable attorney fees~~  
39 which shall be taxed as part of the costs of the action unless:

40 (1) The prevailing party recovers no damages; or

41 (2) a tender equal to or in excess of the amount recovered was made  
42 by the adverse party before the commencement of the action in which  
43 judgment is rendered.

- 1 (b) For the plaintiff to be awarded attorney fees for the prosecution  
2 of such action, a written demand for the settlement of such claim con-  
3 taining all of the claimed elements of property damage and the total  
4 monetary amount demanded in the action shall have been made on the  
5 adverse party at such party's last known address not less than 30 days  
6 before the commencement of the action. For the defendant to be  
7 awarded attorney fees, a written offer of settlement of such claim shall  
8 have been made to the plaintiff at such plaintiff's last known address not  
9 more than 30 days after the defendant filed the answer in the action.
- 10 (c) This section shall apply to actions brought pursuant to the code  
11 of civil procedure and actions brought pursuant to the code of civil pro-  
12 cedure for limited actions.
- 13 Sec. 4. K.S.A. 60-427, 60-2003 and 60-2006 are hereby repealed.
- 14 Sec. 5. This act shall take effect and be in force from and after its  
15 publication in the statute book.