

Approved March 4, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

7:30 a.m./~~p.m.~~ on February 23, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Adam, Jenkins, Kennard, Peterson, Roy, Sebelius, Solbach and Shriver, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

The Committee considered S.B. 258, (see Attachment I, and House Substitute for S.B. 258, (see Attachment II, regarding the periodic payments of judgments act.

Representative Wagnon moved to adopt House Substitute for S.B. 258. Representative Douville seconded the motion.

After Committee discussion, the motion was withdrawn.

Representative Snowbarger moved to strike line 221 "(5) any other satisfactory form of security", strike January 1, 1988 from the effective date of the act, and the adopt S.B. 258, as amended. Representative Walker seconded and the motion passed.

A conceptual motion was made by Representative O'Neal to amend S.B. 258 to reflect that the bill require an election by motion to invoke this act by one of the parties. Representative Vancrum seconded and the motion passed.

Representative O'Neal moved to amend Sec. 11, (b) and (c) to reflect that the surviving issue of a deceased beneficiary receive any remaining proceeds. The motion was seconded by Representative Bideau. The motion passed.

A conceptual motion was made by Representative Vancrum that Sec. 11 (a) reflect that if there are unpaid expenses when death occurs the payment of the unpaid debts would be allowed, and then the benefits would terminate. Representative Whiteman seconded the motion. The motion failed.

Representative Snowbarger moved and Representative Bideau seconded to report S.B. 258 favorably, as amended. The motion passed.

The Committee meeting adjourned at 8:30 a.m.

SENATE BILL No. 258

By Committee on Judiciary

2-16

0018 AN ACT enacting the Kansas periodic payment of judgments act; amending K.S.A. 40-3003, 60-262, 60-2103 and K.S.A. 1987 Supp. 60-249a and 60-1903 and repealing the existing sections.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. The purposes of this act are to: New

0021 (a) Alleviate some of the practical problems incident to un-
0022 predictability of large future losses;

0023 (b) effectuate more precise awards of damages for actual
0024 losses;

0025 (c) pay damages as the trier of fact finds the losses will
0026 accrue; and

0027 (d) assure that payments of damages more nearly serve the
0028 purposes for which they are awarded.

0029 Sec. 2. In this act: New

0030 (a) "Bodily injury" means bodily harm, sickness, disease or
0031 death.

0032 (b) "Economic loss" means pecuniary harm for which dam-
0033 ages are recoverable.

0034 (c) "Future damages" means damages arising from bodily
0035 injury which the trier of fact finds will accrue after the damages
0036 findings are made.

0037 (d) "Noneconomic loss" means nonpecuniary harm for which
0038 damages are recoverable, but the term does not include punitive
0039 or exemplary damages.

0040 (e) "Past damages" means damages that have accrued when
0041 the damages findings are made, including any punitive or ex-
0042 emplary damages allowed by law.

0043 (f) "Qualified insurer" means an insurer, self-insurer, plan or 16

0044 arrangement approved pursuant to section 17.

0045 Sec. 3. (a) In order to invoke this act, a party to an action for New

Attachment I

~~3 bodily injury must make an effective election in accordance with
7 this section.~~

0048 (b) The election must be made by motion directed to the
0049 court with notice to all parties not less than 60 days before
0050 commencement of a trial involving issues of future damages
0051 unless leave of court is obtained. Any objection to the election
0052 must be made by motion directed to the court with notice to all
0053 parties not less than 30 days after notice of the election.

0054 (c) An election is effective if:

0055 (1) All parties have consented;

0056 (2) no timely objection is filed by any party; or

0057 (3) a timely objection is filed but:

0058 (A) The electing party is a claimant and shows there is a good
0059 faith claim that future damages will exceed \$100,000; or

0060 (B) the electing party is a party responding to a claim for
0061 future damages in excess of \$100,000 and shows that security in
0062 the amount of the claim for past and future damages or \$500,000,
0063 whichever is less, can be provided under this act.

0064 (d) If an objecting party shows that the purposes of this act
0065 would not be served by conducting the trial of the claim affecting
0066 such party under this act, the court may determine not to try the
0067 claim under this act even though the conditions of (A) or (B) of
0068 subsection (c)(3) are satisfied. Such determination must be made
0069 by the court at least 30 days prior to trial.

0070 (e) If an effective election is on file at the commencement of
0071 trial, all actions, including third-party claims, counterclaims and
0072 actions consolidated for trial, must be tried under this act unless
0073 the court finds that the purposes of this act would not be served
0074 by doing so or in the interest of justice a separate trial or
0075 proceeding should be held on some or all the claims that are not
0076 the subject of the election.

0077 (f) An effective election can be withdrawn only by consent of
0078 ~~all parties to the claim to which the election relates.~~

0079 Sec. 4. (a) If liability is found in a trial under this act, the trier
0080 of fact, in addition to other appropriate findings, shall make
0081 separate findings for each claimant specifying the amount of:

0082 (1) Any past damages; and

At the request of any party to such action made prior to trial,
the court shall include in the judgment a requirement that future
damages be paid in periodic payments.

New

0083 (2) any future damages and the periods over which they will
0084 accrue, on an annual basis, for each of the following types:

0085 (A) ~~Medical and other costs of health care;~~

Expenses, including

0086 (B) ~~other economic loss;~~ and

loss of income

0087 (C) noneconomic loss.

0088 (b) the calculation of future damages for types (A) and (B)
0089 described in subsection (a)(2) must ~~be based on the costs and~~

itemize

0090 losses during the period of time the claimant will sustain those
0091 costs and losses and the calculation for type (C) must ~~be based on~~

itemize

0092 the losses during the period of time the claimant would have
0093 lived but for the injury upon which the claim is based.

0094 ~~Sec. 5. (a) In all trials under this act, evidence of future~~

New

0095 damages must be expressed in current values and those damages
0096 must be calculated by the trier of fact without regard to future
0097 changes in the earning power or purchasing power of the dollar.

0098 (b) In all jury trials in which special damages findings are
0099 required under this act, the jury must be informed that with
0100 respect to future damages:

0101 (1) The law provides for adjustments to be made later to take
0102 account of future changes in the purchasing power of the dollar;

0103 (2) the law takes into account the fact that those payments
0104 may be made in the future rather than in one lump-sum now; and

0105 (3) the jury will make their findings on the assumption that
0106 appropriate adjustments for future changes in the purchasing
0107 power of the dollar will be made later.

0108 ~~Sec. 6. In order to determine what judgment is to be entered~~
0109 ~~on a verdict requiring findings of special damages under this act,~~
0110 ~~the court shall proceed as follows:~~

0111 (a) ~~The court shall apply to the findings of past and future~~
0112 ~~damages any applicable rules of law, including setoffs, credits,~~
0113 ~~comparative negligence, additurs and remittiturs, in calculating~~
0114 ~~the respective amounts of past and future damages each claimant~~
0115 ~~is entitled to recover and each party is obligated to pay.~~

0116 (b) ~~If the total amount of future damages recoverable by a~~
0117 ~~claimant in an action for bodily injury or by all of the benefi-~~
0118 ~~ciaries in an action for wrongful death is less than \$100,000, the~~
0119 ~~court, unless the claimant or beneficiaries elect to receive a~~

011 ~~gment for periodic installments, shall reduce the amounts~~
0121 payable for future damages in accordance with section 10 to
0122 determine the equivalent lump-sum value and enter judgment
0123 for that amount plus the amounts found for past damages.

0124 (c) If the total amount of future damages recoverable by a
0125 claimant in an action for bodily injury or by all of the benefi-
0126 ciaries in an action for wrongful death is \$100,000 or more, or the
0127 claimant or beneficiaries so elect, the court shall enter judgment
0128 as follows:

0129 (1) If a judgment for periodic installments is entered, it must
0130 specify payment of attorney fees and litigation expenses in a
0131 manner separate from the periodic installments payable to the
0132 claimant, either in lump sum or by periodic installments, pursu-
0133 ant to any agreement entered into between the claimant or
0134 beneficiary and such claimant's or beneficiary's attorney. If any
0135 portion of future damages is payable in advance of the period to
0136 which it applies in satisfaction of the agreement, the amount of
0137 the damages is subject to discount in accordance with section 10.

0138 (2) Upon election of a subrogee, including an employer or
0139 insurer who provides workers' compensation, filed within 10
0140 days after verdict, any part of future damages allocable to reim-
0141 bursement of payments previously made by the subrogee is
0142 payable in lump sum to the subrogee and the appropriate re-
0143 duction of future damages must be calculated in accordance with
0144 section 10.

0145 (3) The court shall enter judgment in lump sum for past
0146 damages and for any damages payable in lump sum or otherwise
0147 under (1) and (2). Any lump-sum payments for future damages
0148 reduce proportionately all periodic installments for future dam-
0149 ages.

0150 (4) After making any adjustments prescribed by the preced-
0151 ing subparagraphs, the court shall reduce the remaining amounts
0152 for future damages to present value in accordance with section
0153 10 to determine the equivalent lump-sum value. If the equiva-
0154 lent lump-sum value is more than \$50,000 or the claimant or
0155 beneficiaries elect to receive a judgment for periodic install-
0156 ~~ments, the court shall enter a judgment for the payment of the~~

0157 ~~remaining amounts of future damages, without reduction, in~~
 0158 periodic installments in accordance with section 7; otherwise,
 0159 the court shall enter a judgment for the equivalent lump-sum
 0160 value.

0161 (5) In an action for wrongful death, the calculation of the
 0162 equivalent lump-sum value under subparagraph (4) of the re-
 0163 maining amounts for future damages must be based on the total
 0164 recovery for all beneficiaries of the action. If the lump-sum
 0165 equivalent of the total is more than \$50,000, each beneficiary
 0166 must be paid in periodic installments in accordance with section
 0167 7.

0168 (d) Upon petition of a party before entry of judgment and a
 0169 finding of incapacity to post the required security, the court, at
 0170 the election of the claimant or beneficiaries in an action for
 0171 wrongful death, shall:

0172 (1) Enter a judgment in accordance with subsection (c); or
 0173 (2) reduce the amounts payable for future damages in ac-
 0174 cordance with section 10, unless subsection (c)(1) of section 9
 0175 applies, to determine the equivalent lump-sum value and enter
 0176 judgment for that amount plus the amounts found for past dam-
 0177 ages.

New Sec. 6. In any personal injury action past damages shall be paid in lump sum.

0178 ~~Sec. 7. (a) A judgment for periodic installments must set out:~~

New

0179 (1) The findings of the future damages for each calendar year;
 0180 and

0181 (2) a schedule of the base figure for each calendar year to be
 0182 used in calculating future payments. The base figure is deter-
 0183 mined by discounting the findings for each calendar year in
 0184 accordance with section 10.

0185 (b) As of the first day of each calendar year after a judgment
 0186 for periodic installments is entered, the schedule of all install-
 0187 ments not previously due must be adjusted by adding to the base
 0188 figure for each installment, in the most recently modified
 0189 schedule, a sum determined by multiplying the base figure by
 0190 the index factor defined in subsection (c).

0191 (c) If a judgment for periodic installments has been in effect
 0192 for:

0193 (1) One year or more at the time of adjustment, the index

0194 factor is the rate of discount per annum for the last issue of
 0195 52-week United States treasury bills in the year before the year
 0196 immediately preceding the year of adjustment;

0197 (2) less than one year but more than six months at the time of
 0198 adjustment, the index factor is $\frac{1}{2}$ of the index factor as provided
 0199 in paragraph (1); and

0200 (3) less than six months but more than three months at the
 0201 time of adjustment, the index factor is $\frac{1}{4}$ of the index factor as
 0202 provided in paragraph (1).

0203 The secretary of state shall publish notice of such index factor
 0204 provided by this section not later than the second issue of the
 0205 Kansas register published in July of each year.

0206 (d) In all other cases, no adjustment may be made.

0207 (e) Unless the court directs otherwise or the parties other-
 0208 wise agree, payments must be scheduled at one-month intervals.
 0209 Payments for damages accruing during the scheduled intervals
 0210 are due at the beginning of the intervals.

0211 Sec. 8. (a) Security authorized or required for payment of a
 0212 judgment for periodic installments entered in accordance with
 0213 this act must be in one or more of the following forms and
 0214 approved by the court:

0215 (1) Bond executed by a qualified insurer;

0216 (2) annuity contract executed by a qualified insurer;

0217 (3) evidence of applicable and collectible liability insurance
 0218 with one or more qualified insurers;

0219 (4) an agreement by one or more qualified insurers to guar-
 0220 antee payment of the judgment; or

0221 (5) any other satisfactory form of security.

0222 (b) Security complying with this section serves also as a
 0223 required supersedeas bond.

0224 Sec. 9. (a) If the court enters a judgment for periodic install-
 0225 ments, each party liable for all or a portion of the judgment,
 0226 ~~unless found to be incapable of doing so under subsection (d) of~~

0227 ~~section 6,~~ shall separately or jointly with one or more others post
 0228 security in an amount equal to the present lump-sum equivalent
 0229 of the unpaid judgment, including past damages, in a form
 0230 prescribed in section 8, within 30 days after the date the judg-

New

New

0231 ment is subject to execution. A liability insurer having a con-
0232 tractual obligation and any other person adjudged to have an
0233 obligation to pay all or part of a judgment for periodic install-
0234 ments on behalf of a judgment debtor is obligated to post security
0235 to the extent of its contractual or adjudged obligation if the
0236 judgment debtor has not done so.

0237 (b) A judgment creditor or successor in interest and any party
0238 having rights under subsection (e) may move that the court find
0239 that security has not been posted and maintained with regard to a
0240 judgment obligation owing to the moving party. Upon so finding,
0241 the court shall order that security complying with this act be
0242 posted within 30 days. If security is not posted within that time
0243 and subsection (c) does not apply, the court shall calculate the
0244 lump-sum equivalent of the obligation under section 10 and
0245 enter a judgment for that amount in favor of the moving party.

0246 (c) Upon motion by the claimant, or the beneficiaries in an
0247 action for wrongful death, the court, in the absence of a showing
0248 of good cause, shall enter a lump-sum judgment without apply-
0249 ing the discount factor in section 10 if:

0250 (1) A responding party elects to have this act apply ~~and makes~~
0251 ~~the required showing as to security under subsection (e)(3)(B) of~~
0252 ~~section 3~~, but thereafter fails to post security; or

0253 (2) a party fails to maintain security.

0254 (d) If a judgment debtor who is the only person liable for a
0255 portion of a judgment for periodic installments fails to post and
0256 maintain security, the right to lump-sum payment described in
0257 subsection (b) applies only against that judgment debtor and the
0258 portion of the judgment so owed.

0259 (e) If more than one party is liable for all or a portion of a
0260 judgment requiring security under this act and the required
0261 security is posted by one or more but fewer than all of the parties
0262 liable, the security requirements are satisfied and those posting
0263 security may proceed under subsection (b) to enforce rights for
0264 security or lump-sum payment to satisfy or protect rights of
0265 reimbursement from a party not posting security.

0266 ~~Sec. 10. If (a) future damages are determined in accordance~~
0267 ~~with section 5 but are ordered to be paid in advance of the period~~

New

0268 to which they apply ~~or (b) base figures are required under~~
0269 ~~section 7~~, the court shall apply a discount factor of ~~3%~~ 1.6%,
0270 compounded annually.

0271 Sec. 11. (a) In all cases covered by this act in which future
0272 damages are payable in periodic installments, the liability for
0273 payment of any installments for medical or other costs of health
0274 care or noneconomic loss not yet due at the death of a person
0275 entitled to receive these benefits terminates upon the death of
0276 that person. The liability for payment of any other installments or
0277 portions thereof not yet due at the death of the person entitled to
0278 receive them likewise terminates except as provided in subsec-
0279 tions (b) and (c).

New

0280 (b) If, in an action for wrongful death, a judgment for periodic
0281 installments provides payments to more than one person entitled
0282 to receive benefits for losses that do not terminate under sub-
0283 section (a) and one or more but fewer than all of them die, the
0284 surviving beneficiaries succeed to the shares of the deceased
0285 beneficiaries. The surviving beneficiaries are entitled to shares
0286 proportionate to their shares in the periodic installments not yet
0287 paid, but they are not entitled to receive payments beyond the
0288 respective periods specified for them in the judgment.

0289 (c) If, in an action other than one for wrongful death, a
0290 judgment for periodic installments is entered and a person en-
0291 titled to receive benefits for losses that do not terminate under
0292 subsection (a) under the judgment dies and is survived by one or
0293 more qualifying survivors, any periodic installments not yet due
0294 at the death must be shared equitably by those survivors.
0295 Amounts due each survivor may not exceed the survivor's eco-
0296 nomic loss resulting from the death.

0297 (d) "Qualifying survivor" means a person who, had the death
0298 been caused under circumstances giving rise to a cause of action
0299 for wrongful death, would have qualified as a beneficiary at the
0300 time of the death according to the law that would be applied in
0301 an action for wrongful death by the jurisdiction under which the
0302 issue of liability was resolved in entering the judgment for
0303 periodic installments.

0304 ~~Sec. 12. (a) In determining whether or to what extent a~~

0305 ~~judgment for periodic installments exceeds limits under a liability~~
 0306 ~~insurance policy, the total of the base figures calculated in~~
 0307 ~~accordance with subsection (a)(2) of section 7 must be added to~~
 0308 ~~the lump-sum damages in the judgment. The sum so calculated~~
 0309 ~~must be compared to applicable limits under the policy.~~

0310 (b) If the sum calculated under subsection (a) does not ex-
 0311 ceed applicable policy limits when the judgment is entered,
 0312 amounts due by reason of the adjustments required under sec-
 0313 ~~tion 7 are entirely within those limits.~~

0314 (c) If the sum calculated under subsection (a) exceeds appli-
 0315 cable policy limits when the judgment is entered, the adjust-
 0316 ments required under section 7 must be allocated proportion-
 0317 ~~ately to amounts within and amounts in excess of those limits.~~

0318 Sec. 13. An assignment of or an agreement to assign any right
 0319 to periodic installments for future damages contained in a judg-
 0320 ment entered under this act is enforceable only as to amounts:
 0321 (a) To secure payment of alimony, maintenance or child
 0322 support;

0323 (b) for the costs of products, services or accommodations
 0324 provided or to be provided by the assignee for medical or other
 0325 health care; or

0326 (c) for attorney fees and other expenses of litigation incurred
 0327 in securing the judgment.

0328 Sec. 14. Periodic installments for future damages contained
 0329 in a judgment entered under this act for loss of earnings are
 0330 exempt from garnishment, attachment, execution and any other
 0331 process or claim to the extent that wages or earnings are exempt
 0332 under any applicable law. Except to the extent that they may be
 0333 assigned under section 13, periodic installments for all other
 0334 future damages are exempt from garnishment, attachment, exe-
 0335 cution and any other process or claim.

0336 Sec. 15. (a) Parties to an action on a claim for bodily injury
 0337 may file with the clerk of the court in which the action is pending
 0338 or, if none is pending, with the clerk of a court of competent
 0339 jurisdiction over the claim, a settlement agreement for future
 0340 damages payable in periodic installments. The settlement
 0341 agreement may provide that one or more sections of this act

New Sec. 12. If a judgment for periodic installments is entered,
 it must specify payment of any attorney fees and litigation
 expenses either in lump sum or by periodic installments, pursuant
 to the terms of any agreement entered into by the claimant or
 beneficiary and such claimant or beneficiary's attorney. Such
attorney fees and litigation expenses shall be paid from, not
in addition to, any such judgment.

New

New

New

0342 apply to such agreement.

0343 (b) Upon petition of the parties, a court of competent juris-
0344 diction may enter a consent judgment adopting one or more of
0345 the sections of this act.

0346 ~~Sec. 16. If security is posted in accordance with section 9~~
0347 ~~and approved under a final judgment entered under this act, the~~
0348 ~~judgment is satisfied and the judgment debtor on whose behalf~~
0349 ~~the security is posted is discharged.~~

New Sec. 16.

0350 ~~Sec. 17. The commissioner of insurance shall establish rules~~
0351 ~~and regulations and procedures.~~

0352 ~~(a) For determining which insurers, self-insurers, plans or~~
0353 ~~arrangements are financially qualified to provide the security~~
0354 ~~required under this act and to be designated as qualified in-~~
0355 ~~surers; and~~

0356 ~~(b) to require insurers to post security under section 9 if~~
0357 ~~found by the court to be obligated and capable of posting secur-~~
0358 ~~ity.~~

New Sec. 17. (a) Except as provided in subsection (b),

0359 ~~Sec. 18. If any provision of this act or its application to any~~
0360 ~~person or circumstance is held invalid, the invalidity does not~~
0361 ~~affect other provisions or applications of this act which can be~~
0362 ~~given effect without the invalid provision or application, and to~~
0363 ~~this end the provisions of this act are severable.~~

(b) Sections 5, 7 and 10 shall be construed together and shall not be considered severable.

0364 ~~Sec. 19. (a) This act applies to actions commenced on or after~~
0365 ~~January 1, 1988.~~

0366 ~~(b) The provisions of this act may apply to medical malprac-~~
0367 ~~tice liability actions, as defined by K.S.A. 1986 Supp. 60-3401~~
0368 ~~and amendments thereto, if agreed upon by the defendant in a~~
0369 ~~medical malpractice liability action.~~

Sec. 18, K.S.A. 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 ~~thirty (30)~~ 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 ~~thirty (30)~~ 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: (1) Granting or denying a motion for judgment under subsection (b) of K.S.A. 60-250; ~~or~~, *and amendments thereto*; or (2) 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~~ (3) granting or denying a motion under K.S.A. 60-259, *and amendments thereto*, to alter or amend the judgment; or (4) 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 ~~his or her~~ *such appealing 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.* Whenever an appellant entitled thereto desires a stay on appeal, ~~he or she~~ *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. 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. *If the periodic payment of personal injury judgment act applies to the judgment, the amount of the bond shall be fixed at such sum as will cover the whole amount of past*

damages, the amount the district court finds to reasonably represent the cost of an annuity which would be sufficient to satisfy the portion of the judgment for future damages, interest and the costs on appeal, 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 ~~ten (10)~~ 10 days on condition that, within ~~such~~ ~~such~~ period of ~~ten (10)~~ 10 days such party shall file a notice of appeal and obtain the approval of such supersedeas bond as is required under this section.

(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) of this section, the surety submits himself or herself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his or her such surety's agent upon whom any papers affecting his or her such surety's liability on the bond may be served. His or her The 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 his or her 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 he or she such appellee complains, the appellee shall within ~~twenty (20)~~ 20 days after the notice of appeal has been served upon him or her such appellee's and filed with the clerk of the trial court, give notice of his or her the 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 ~~thirty (30)~~ 30 days before filing of the notice of appeal shall not prevent a review of the ruling.

Sec. 19. K.S.A. 60-262 is hereby amended to read as follows:
 60-262. (a) *Automatic stay; exceptions — injunctions and receiverships.* Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ~~ten (10)~~ 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (c) ~~of this section~~ govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) *Stay on motion for new trial or for judgment.* In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to K.S.A. 60-259, *and amendments thereto*, or of a motion for relief from a judgment or order made pursuant to K.S.A. 60-260, *and amendments thereto*, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to K.S.A. 60-250, *and amendments thereto*, or of a motion for amendment to the findings or for additional findings made pursuant to K.S.A. 60-252(b), *and amendments thereto*, for such time as may be required to comply with the periodic

payment of personal injury judgments act.

(c) *Injunction pending appeal.* When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the judge in ~~said~~ *such* judge's discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) *Stay upon appeal.* When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subsection (a) ~~of this section~~. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(e) *Stay in favor of the state or agency thereof.* When an appeal is taken by the state or an officer or agency thereof or by direction of any department of the state and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) *Power of appellate court not limited.* The provisions in this section do not limit any power of the appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the *status quo* or the effectiveness of the judgment subsequently to be entered.

(g) *Stay of judgment upon multiple claims.* When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in K.S.A. 60-254(b), *and amendments thereto*, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

17.
Sec. 20. K.S.A. 40-3003 is hereby amended to read as follows: 40-3003. (a) This act shall provide coverage, for the policies and contracts specified in subsection (b), for:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons covered under paragraph (2); and

(2) persons who are owners of or certificate holders under such policies or contracts, and who:

(A) Are residents;

(B) are not residents, but only with respect to an annuity contract awarded pursuant to K.S.A. ~~1986~~ 1987 Supp. 60-3407 or 60-3409, *and amendments thereto, or the Kansas periodic payment of personal injury judgments act* or an annuity contract for future economic loss procured pursuant to a settlement agreement in a medical malpractice liability action, as defined by K.S.A. ~~1985~~ 1987 Supp. 60-3401 and amendments thereto, *or the Kansas periodic payment of personal injury judgments act*; or

(C) are not residents, but only under all of the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) such insurers never had a license or certificate of authority in the states in which such persons reside;

(iii) such states have associations similar to the association created by this act; and

(iv) such persons are not eligible for coverage by such associations.

(b) This act shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, annuity and supplemental policies or contracts, and for certificates under direct group policies and contracts issued by member insurers, except as limited by this act.

Sec. 21. K.S.A. 1987 Supp. 60-249a is hereby amended to read as follows: 60-249a. (a) In any action for damages for personal injury, the verdict shall be itemized by the trier of fact to reflect the amounts, if any, awarded for:

(1) Noneconomic injuries and losses, as follows:

(A) Pain and suffering,

(B) disability,

- (C) disfigurement, and any accompanying mental anguish;
- (2) reasonable expenses ~~of necessary medical care, hospitalization and treatment received~~ to be incurred, including medical care and related benefits; and
- (3) economic injuries and losses other than those itemized under subsection (a)(2).

(b) Where applicable, the amounts required to be itemized pursuant to subsection (a) shall be further itemized by the trier of fact to reflect those amounts awarded for injuries and losses sustained to date and those awarded for injuries and losses reasonably expected to be sustained in the future.

(c) the trier of fact shall state the anticipated period of time in years over which payment of damages is necessary.

(e) (d) In any action for damages for personal injury, the trial court shall instruct the jury only on those items of damage upon which there is some evidence to base an award.

Sec. 22. K.S.A. 1987 Supp. 60-1903 is hereby amended to read as follows: 60-1903. (a) In any wrongful death action, the court or jury may award such damages as are found to be fair and just under all the facts and circumstances, but the damages, other than pecuniary loss sustained by an heir at law, cannot exceed in the aggregate the sum of \$100,000 and costs.

(b) If a wrongful death action is to a jury, the court shall not instruct the jury on the monetary limitation imposed by subsection (a) upon recovery of damages for nonpecuniary loss. If the jury verdict results in an award of damages for nonpecuniary loss which, after deduction of any amounts pursuant to K.S.A. 60-258a and amendments thereto, exceeds the limitation of subsection (a), the court shall enter judgment for damages of \$100,000 for nonpecuniary loss.

(c) In any wrongful death action, the verdict shall be itemized by the trier of fact to reflect the amounts, if any, awarded for:

- (1) Nonpecuniary damages;
- (2) expenses for the care of the deceased caused by the injury; and
- (3) pecuniary damages other than those itemized under subsection (c)(2).

(d) Where applicable, the amounts required to be itemized pursuant to subsections (c)(1) and (c)(3) shall be further itemized by the trier of fact to reflect those amounts awarded for injuries and losses sustained to date and those awarded for injuries and losses reasonably expected to be sustained in the future *and shall state the period of time in years over which payment of damages is necessary.*

(e) In any wrongful death action, the trial court shall instruct the jury only on those items of damage upon which there is some evidence to base an award.

0370 ~~Sec. 20.~~ This act shall be known and may be cited as the
0371 Kansas periodic payment of judgments act. New Sec. 23.

Sec. 24. K.S.A. 40-3003, 60-262, ~~and~~ 60-2103 and K.S.A. 1987
Supp. 60-249a and 60-1903 are hereby repealed.

0372 Sec. ~~21.~~ This act shall take effect and be in force from and
0373 after January 1, 1988, and its publication in the statute book. 25.

HOUSE Substitute for SENATE BILL No. 258

By Committee on Judiciary

1-22

0017 AN ACT concerning the periodic payment of damages in per-
0018 sonal injury actions; enacting the periodic payment of per-
0019 sonal injury judgments act; amending K.S.A. 40-3003, 60-262
0020 and 60-2103 and K.S.A. 1987 Supp. 60-249a and 60-1903 and
0021 repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. (a) The purposes of this act are to: (1) Alle-
0024 viate some of the practical problems incident to unpredictability
0025 of large future losses; (2) effectuate more precise awards of
0026 damages for actual losses; (3) pay damages as the trier of fact
0027 finds the losses will accrue; and (4) assure that payments of
0028 damages more nearly serve the purposes for which they are
0029 awarded.

0030 (b) This act shall be known as the periodic payment of
0031 personal injury judgments act.

0032 New Sec. 2. As used in this act:

0033 (a) "Economic loss" means: (1) Reasonable expenses of nec-
0034 essary medical care and related benefits; (2) lost wages, time or
0035 income by reason of any disability; (3) aggravation of a preexist-
0036 ing ailment or condition because of the bodily injury; and (4)
0037 other harm for which money damages can be measured. In
0038 actions for wrongful death, the term means damages allowable
0039 pursuant to K.S.A. 60-1904 and amendments thereto.

0040 (b) "Future damages" means damages arising from personal
0041 injury or death which the trier of fact finds will be incurred after
0042 the damages findings are made.

0043 (c) "Medical care and related benefits" means reasonable
0044 expenses of necessary medical care, hospitalization and treat-
0045 ment.

Attachment II

046 (d) "Noneconomic loss" means pain and suffering, disability,
0047 disfigurement and any accompanying mental anguish. In actions
0048 for wrongful death, the term means damages allowable pursuant
0049 to K.S.A. 60-1904 and amendments thereto.

0050 (e) "Past damages" means damages that have been incurred
0051 when the damages findings are made, including any punitive or
0052 exemplary damages allowed by law.

0053 (f) "Personal injury action" means any action seeking dam-
0054 ages for personal injury or death. Personal injury action includes
0055 medical malpractice liability actions.

0056 New Sec. 3. In any personal injury action past damages shall
0057 be paid in lump sum.

0058 New Sec. 4. ~~At the request of any party to such action made~~
0059 ~~prior to trial, the court shall include in the judgment a require-~~
0060 ~~ment that future damages be paid in periodic payments. In any~~
0061 ~~trial in which a party has elected to proceed under this act, the~~
0062 ~~finder of fact shall not reduce the damages awarded to present~~
0063 ~~value. Judgment shall be entered for past damages and judgment~~
0064 ~~shall be entered for future damages prorated over the number of~~
0065 ~~years specified by the finder of fact.~~

0066 New Sec. 5. Upon the death of the party for whom the
0067 damages have been awarded in any personal injury action, that
0068 portion of the periodic payments awarded for ~~medical care and~~
0069 ~~related benefits~~ and for noneconomic loss which are due in the
0070 future shall terminate and abate. However, if a judgment in an
0071 action for wrongful death provides for periodic payments to be
0072 made to more than one individual, the surviving beneficiaries
0073 shall succeed to the shares of the deceased beneficiaries in
0074 proportion to their shares in the judgment.

0075 New Sec. 6. ~~As a condition of approving periodic payments~~
0076 ~~of future damages under this act, the court shall require a party~~
0077 ~~against whom damages have been assessed, or that party's rep-~~
0078 ~~resentative, to purchase an annuity or annuities from a company~~
0079 ~~satisfactory to the court to assure full payment of such damages~~
0080 ~~and to make a qualified assignment as described in section 130 of~~
0081 ~~the Internal Revenue Code of 1986. In the event such an as-~~
0082 ~~ignment is not made or such an annuity or annuities is not~~

(a) In all trials under this act, evidence of future damages must be expressed in current values and those damages must be calculated by the trier of fact without regard to future changes in the earning power or purchasing power of the dollar.

(b) In all jury trials in which special damages findings are required under this act, the jury must be informed that with respect to future damages:

- (1) The law provides for adjustments to be made later to take account of future changes in the purchasing power of the dollar;
- (2) the law takes into account the fact that those payments may be made in the future rather than in one lump-sum now; and
- (3) the jury will make their findings on the assumption that appropriate adjustments for future changes in the purchasing power of the dollar will be made later.

expenses

0083 ~~purchased, the court shall reduce the damages to present value,~~
 0084 ~~after receiving evidence of the appropriate discount rate, and~~
 0085 ~~shall enter judgment for a lump sum. When an assignment is~~
 0086 ~~made and when an annuity or annuities is purchased as the~~
 0087 ~~method of making periodic payments, the judgment shall be~~
 0088 ~~deemed satisfied upon the payment of past damages, purchase of~~
 0089 ~~the annuity or annuities, the making of a qualified assignment~~
 0090 ~~and approval by the court.~~

0091 Sec. 7. K.S.A. 60-2103 is hereby amended to read as follows:
 0092 60-2103. (a) *When and how taken.* When an appeal is permitted
 0093 by law from a district court to an appellate court, the time within
 0094 which an appeal may be taken shall be ~~thirty (30)~~ 30 days from
 0095 the entry of the judgment, as provided by K.S.A. 60-258, *and*
 0096 *amendments thereto*, except that upon a showing of excusable
 0097 neglect based on a failure of a party to learn of the entry of
 0098 judgment the district court in any action may extend the time for
 0099 appeal not exceeding ~~thirty (30)~~ 30 days from the expiration of
 0100 the original time herein prescribed. The running of the time for
 0101 appeal is terminated by a timely motion made pursuant to any of
 0102 the rules hereinafter enumerated, and the full time for appeal
 0103 fixed in this subsection commences to run and is to be computed
 0104 from the entry of any of the following orders made upon a timely
 0105 motion under such rules: (1) Granting or denying a motion for
 0106 judgment under subsection (b) of K.S.A. 60-250; ~~or~~, *and amend-*
 0107 *ments thereto*; or (2) granting or denying a motion under sub-
 0108 section (b) of K.S.A. 60-252, *and amendments thereto*, to amend
 0109 or make additional findings of fact, whether or not an alteration
 0110 of the judgment would be required if the motion is granted; ~~or~~ (3)
 0111 granting or denying a motion under K.S.A. 60-259, *and amend-*
 0112 *ments thereto*, to alter or amend the judgment; or (4) denying a
 0113 motion for new trial under K.S.A. 60-259, *and amendments*
 0114 *thereto*.

0115 A party may appeal from a judgment by filing with the clerk of
 0116 the district court a notice of appeal. Failure of the appellant to
 0117 take any of the further steps to secure the review of the judgment
 0118 appealed from does not affect the validity of the appeal, but is
 0119 ground only for such remedies as are specified in this chapter, or

(a) A judgment for periodic installments must set out:

- (1) The findings of the future damages for each calendar year; and
- (2) a schedule of the base figure for each calendar year to be used in calculating future payments. The base figure is determined by discounting the findings for each calendar year in accordance with section ~~17~~ 17c.

(b) As of the first day of each calendar year after a judgment for periodic installments is entered, the schedule of all installments not previously due must be adjusted by adding to the base figure for each installment, in the most recently modified schedule, a sum determined by multiplying the base figure by the index factor defined in subsection (c).

(c) If a judgment for periodic installments has been in effect for:

- (1) One year or more at the time of adjustment, the index factor is the rate of discount per annum for the last issue of

52-week United States treasury bills in the year before the year immediately preceding the year of adjustment;

- (2) less than one year but more than six months at the time of adjustment, the index factor is $\frac{1}{2}$ of the index factor as provided in paragraph (1); and

- (3) less than six months but more than three months at the time of adjustment, the index factor is $\frac{1}{4}$ of the index factor as provided in paragraph (1).

The secretary of state shall publish notice of such index factor provided by this section not later than the second issue of the Kansas register published in July of each year.

(d) In all other cases, no adjustment may be made.

(e) Unless the court directs otherwise or the parties otherwise agree, payments must be scheduled at one-month intervals. Payments for damages accruing during the scheduled intervals are due at the beginning of the intervals.

20 when no remedy is specified, for such action as the appellate
0121 court having jurisdiction over the appeal deems appropriate,
0122 which may include dismissal of the appeal. If the record on
0123 appeal has not been filed with the appellate court, the parties,
0124 with the approval of the district court, may dismiss the appeal by
0125 stipulation filed in the district court, or that court may dismiss
0126 the appeal upon motion and notice by the appellant.

0127 (b) *Notice of appeal.* The notice of appeal shall specify the
0128 parties taking the appeal; shall designate the judgment or part
0129 thereof appealed from, and shall name the appellate court to
0130 which the appeal is taken. The appealing party shall cause notice
0131 of the appeal to be served upon all other parties to the judgment
0132 as provided in K.S.A. 60-205, *and amendments thereto*, but ~~his or~~
0133 ~~her~~ *such appealing party's* failure so to do does not affect the
0134 validity of the appeal.

0135 (c) *Security for costs.* Security for the costs on appeal shall be
0136 given in such sum and manner as shall be prescribed by a
0137 general rule of the supreme court unless the appellate court shall
0138 make a different order applicable to a particular case.

0139 (d) *Supersedeas bond.* Whenever an appellant entitled
0140 thereto desires a stay on appeal, ~~he or she~~ *such appellant* may
0141 present to the district court for its approval a supersedeas bond
0142 which shall have such surety or sureties as the court requires.
0143 The bond shall be conditioned for the satisfaction of the judg-
0144 ment in full together with costs, interest, and damages for delay,
0145 if for any reason the appeal is dismissed, or if the judgment is
0146 affirmed, and to satisfy in full such modification of the judgment
0147 such costs, interest, and damages as the appellate court may
0148 adjudge and award. When the judgment is for the recovery of
0149 money not otherwise secured, the amount of the bond shall be
0150 fixed at such sum as will cover the whole amount of the judgment
0151 remaining unsatisfied, costs on the appeal, interest, and damages
0152 for delay, unless the court after notice and hearing and for good
0153 cause shown fixes a different amount or orders security other
0154 than the bond. *If the periodic payment of personal injury judg-*
0155 *ment act applies to the judgment, the amount of the bond shall*
0156 *be fixed at such sum as will cover the whole amount of past*

0157 damages, the amount the district court finds to reasonably rep-
0158 resent the cost of an annuity which would be sufficient to satisfy
0159 the portion of the judgment for future damages, interest and the
0160 costs on appeal, unless the court, after notice and hearing and
0161 for good cause shown, fixes a different amount or orders secur-
0162 ity other than the bond. When the judgment determines the
0163 disposition of the property in controversy as in real actions,
0164 replevin, and actions to foreclose mortgages or when such prop-
0165 erty is in the custody of the sheriff or when the proceeds of such
0166 property or a bond for its value is in the custody or control of the
0167 court, the amount of the supersedeas bond shall be fixed after
0168 notice and hearing at such sum only as will secure the amount
0169 recovered for the use and detention of the property, the costs of
0170 the action, costs on appeal, interest, and damages for delay.
0171 When an order is made discharging, vacating, or modifying a
0172 provisional remedy, or modifying or dissolving an injunction, a
0173 party aggrieved thereby shall be entitled, upon application to the
0174 judge, to have the operation of such order suspended for a period
0175 of not to exceed ~~ten (10)~~ 10 days on condition that, within ~~said~~
0176 such period of ~~ten (10)~~ 10 days such party shall file a notice of
0177 appeal and obtain the approval of such supersedeas bond as is
0178 required under this section.

0179 (e) *Failure to file or insufficiency of bond.* If a supersedeas
0180 bond is not filed within the time specified, or if the bond filed is
0181 found insufficient, and if the action is not yet docketed with the
0182 appellate court, a bond may be filed at such time before the
0183 action is so docketed as may be fixed by the district court. After
0184 the action is so docketed, application for leave to file a bond may
0185 be made only in the appellate court.

0186 (f) *Judgment against surety.* By entering into a supersedeas
0187 bond given pursuant to subsections (c) and (d) of this section, the
0188 surety submits himself or herself to the jurisdiction of the court
0189 and irrevocably appoints the clerk of the court as his or her such
0190 surety's agent upon whom any papers affecting his or her such
0191 surety's liability on the bond may be served. His or her The
0192 surety's liability may be enforced on motion without the neces-
0193 sity of an independent action. The motion and such notice of the

A motion as the judge prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his or her 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 he or she such appellee complains, the appellee shall within ~~twenty (20)~~ 20 days after the notice of appeal has been served upon him or her such appellee's and filed with the clerk of the trial court, give notice of his or her the 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 ~~thirty (30)~~ 30 days before filing of the notice of appeal shall not prevent a review of the ruling.

New Sec. 8. ~~If a party for whom damages have been awarded and attorney have agreed that attorney fees be paid from the award pursuant to a contingency fee arrangement, the portion of the fee attributable to past damages shall be paid in lump sum and the portion of the fee attributable to future damages shall be paid periodically. The foregoing notwithstanding, the claimant and the claimant's attorney may elect to apply a portion, not to exceed 1/3 of the total cost of the annuity or annuities specified in section 6 in satisfaction of the claimant's attorney fees. The balance of such cost shall be utilized to purchase the annuity or annuities, which shall be deemed to fully satisfy the requirements of section 6 even though it provides a level of payments below that found by the trier of fact for future damages.~~

New Sec. 9. If an annuity is purchased pursuant to this act by the party against whom damages have been assessed or by the party's insurer, neither the claimant nor the claimant's attorney shall own, receive by assignment or otherwise have any interest in the ownership or purchase of the annuity and periodic payments made through such annuity shall not be accelerated,

If a judgment for periodic installments is entered, it must specify payment of any attorney fees and litigation expenses either in lump sum or by periodic installments, pursuant to the terms of any agreement entered into by the claimant or beneficiary and such claimant or beneficiary's attorney. Such attorney fees and litigation expenses shall be paid from, not in addition to, any such judgment.

0231 deferred, increased or decreased by the claimant or the claim-
0232 ant's attorney. If the party against whom damages have been
0233 assessed or such party's insurer assigns the obligation to pay, the
0234 assignee shall not provide to the claimant or to the claimant's
0235 attorney rights against the assignee which are greater than those
0236 of a general creditor and the assignee's obligation shall be no
0237 greater than the obligation of the assignor.

0238 New Sec. 10. Benefits under an annuity contract awarded
0239 pursuant to this act shall not be assignable or subject to levy,
0240 execution, attachment, garnishment or any other remedy or pro-
0241 cedure for the recovery or collection of a debt until payment is
0242 accrued, and this exemption cannot be waived.

0243 Sec. 11. K.S.A. 60-262 is hereby amended to read as follows:
0244 60-262. (a) *Automatic stay; exceptions — injunctions and re-*
0245 *ceiverships.* Except as stated herein, no execution shall issue
0246 upon a judgment nor shall proceedings be taken for its enforce-
0247 ment until the expiration of ~~ten (10)~~ 10 days after its entry.
0248 Unless otherwise ordered by the court, an interlocutory or final
0249 judgment in an action for an injunction or in a receivership
0250 action, shall not be stayed during the period after its entry and
0251 until an appeal is taken or during the pendency of an appeal. The
0252 provisions of subsection (c) of this section govern the suspend-
0253 ing, modifying, restoring, or granting of an injunction during the
0254 pendency of an appeal.

0255 (b) *Stay on motion for new trial or for judgment.* In its
0256 discretion and on such conditions for the security of the adverse
0257 party as are proper, the court may stay the execution of or any
0258 proceedings to enforce a judgment pending the disposition of a
0259 motion for a new trial or to alter or amend a judgment made
0260 pursuant to K.S.A. 60-259, *and amendments thereto*, or of a
0261 motion for relief from a judgment or order made pursuant to
0262 K.S.A. 60-260, *and amendments thereto*, or of a motion for
0263 judgment in accordance with a motion for a directed verdict
0264 made pursuant to K.S.A. 60-250, *and amendments thereto*, or of a
0265 motion for amendment to the findings or for additional findings
0266 made pursuant to K.S.A. 60-252(b), *and amendments thereto*, for
0267 *such time as may be required to comply with the periodic*

0268 *payment of personal injury judgments act.*

0269 (c) *Injunction pending appeal.* When an appeal is taken from
0270 an interlocutory or final judgment granting, dissolving, or deny-
0271 ing an injunction, the judge in said *such* judge's discretion may
0272 suspend, modify, restore, or grant an injunction during the pen-
0273 dency of the appeal upon such terms as to bond or otherwise as it
0274 considers proper for the security of the rights of the adverse
0275 party.

0276 (d) *Stay upon appeal.* When an appeal is taken the appellant
0277 by giving a supersedeas bond may obtain a stay subject to the
0278 exceptions contained in subsection (a) of this section. The bond
0279 may be given at or after the time of filing the notice of appeal.
0280 The stay is effective when the supersedeas bond is approved by
0281 the court.

0282 (e) *Stay in favor of the state or agency thereof.* When an
0283 appeal is taken by the state or an officer or agency thereof or by
0284 direction of any department of the state and the operation or
0285 enforcement of the judgment is stayed, no bond, obligation, or
0286 other security shall be required from the appellant.

0287 (f) *Power of appellate court not limited.* The provisions in
0288 this section do not limit any power of the appellate court or of a
0289 judge or justice thereof to stay proceedings during the pendency
0290 of an appeal or to suspend, modify, restore, or grant an injunction
0291 during the pendency of an appeal or to make any order appro-
0292 priate to preserve the *status quo* or the effectiveness of the
0293 judgment subsequently to be entered.

0294 (g) *Stay of judgment upon multiple claims.* When a court has
0295 ordered a final judgment on some but not all of the claims
0296 presented in the action under the conditions stated in K.S.A.
0297 60-254(b), and amendments thereto, the court may stay enforce-
0298 ment of that judgment until the entering of a subsequent judg-
0299 ment or judgments and may prescribe such conditions as are
0300 necessary to secure the benefit thereof to the party in whose
0301 favor the judgment is entered.

0302 Sec. 12. K.S.A. 40-3003 is hereby amended to read as fol-
0303 lows: 40-3003. (a) This act shall provide coverage, for the policies
0304 and contracts specified in subsection (b), for:

0305 (1) Persons who, regardless of where they reside, except for
0306 nonresident certificate holders under group policies or contracts,
0307 are the beneficiaries, assignees or payees of the persons covered
0308 under paragraph (2); and

0309 (2) persons who are owners of or certificate holders under
0310 such policies or contracts, and who:

0311 (A) Are residents;

0312 (B) are not residents, but only with respect to an annuity
0313 contract awarded pursuant to K.S.A. ~~1986~~ 1987 Supp. 60-3407 or
0314 60-3409, and amendments thereto, or the Kansas periodic pay-
0315 ment of personal injury judgments act or an annuity contract for
0316 future economic loss procured pursuant to a settlement agree-
0317 ment in a medical malpractice liability action, as defined by
0318 K.S.A. ~~1985~~ 1987 Supp. 60-3401 and amendments thereto, or the
0319 Kansas periodic payment of personal injury judgments act; or

0320 (C) are not residents, but only under all of the following
0321 conditions:

0322 (i) The insurers which issued such policies or contracts are
0323 domiciled in this state;

0324 (ii) such insurers never had a license or certificate of author-
0325 ity in the states in which such persons reside;

0326 (iii) such states have associations similar to the association
0327 created by this act; and

0328 (iv) such persons are not eligible for coverage by such asso-
0329 ciations.

0330 (b) This act shall provide coverage to the persons specified in
0331 subsection (a) for direct, nongroup life, health, annuity and
0332 supplemental policies or contracts, and for certificates under
0333 direct group policies and contracts issued by member insurers,
0334 except as limited by this act.

0335 Sec. 13. K.S.A. 1987 Supp. 60-249a is hereby amended to
0336 read as follows: 60-249a. (a) In any action for damages for
0337 personal injury, the verdict shall be itemized by the trier of fact
0338 to reflect the amounts, if any, awarded for:

0339 (1) Noneconomic injuries and losses, as follows:

0340 (A) Pain and suffering,

0341 (B) disability,

0342 (C) disfigurement, and any accompanying mental anguish;
0343 (2) reasonable expenses of ~~necessary medical care; hospital-~~
0344 ~~ization and treatment received~~ *medical care and related ben-*
0345 *efits*; and

to be incurred, including

0346 (3) economic injuries and losses other than those itemized
0347 under subsection (a)(2).

0348 (b) Where applicable, the amounts required to be itemized
0349 pursuant to subsection (a) shall be further itemized by the trier of
0350 fact to reflect those amounts awarded for injuries and losses
0351 sustained to date and those awarded for injuries and losses
0352 reasonably expected to be sustained in the future.

0353 (c) *the trier of fact shall state the anticipated period of time*
0354 *in years over which payment of damages is necessary.*

0355 (e) (d) In any action for damages for personal injury, the trial
0356 court shall instruct the jury only on those items of damage upon
0357 which there is some evidence to base an award.

0358 Sec. 14. K.S.A. 1987 Supp. 60-1903 is hereby amended to
0359 read as follows: 60-1903. (a) In any wrongful death action, the
0360 court or jury may award such damages as are found to be fair and
0361 just under all the facts and circumstances, but the damages, other
0362 than pecuniary loss sustained by an heir at law, cannot exceed in
0363 the aggregate the sum of \$100,000 and costs.

0364 (b) If a wrongful death action is to a jury, the court shall not
0365 instruct the jury on the monetary limitation imposed by subsec-
0366 tion (a) upon recovery of damages for nonpecuniary loss. If the
0367 jury verdict results in an award of damages for nonpecuniary loss
0368 which, after deduction of any amounts pursuant to K.S.A. 60-258a
0369 and amendments thereto, exceeds the limitation of subsection
0370 (a), the court shall enter judgment for damages of \$100,000 for
0371 nonpecuniary loss.

0372 (c) In any wrongful death action, the verdict shall be item-
0373 ized by the trier of fact to reflect the amounts, if any, awarded for:

0374 (1) Nonpecuniary damages;

0375 (2) expenses for the care of the deceased caused by the
0376 injury; and

0377 (3) pecuniary damages other than those itemized under sub-
0378 section (c)(2).

0379 (d) Where applicable, the amounts required to be itemized
 0380 pursuant to subsections (c)(1) and (c)(3) shall be further itemized
 0381 by the trier of fact to reflect those amounts awarded for injuries
 0382 and losses sustained to date and those awarded for injuries and
 0383 losses reasonably expected to be sustained in the future *and*
 0384 *shall state the period of time in years over which payment of*
 0385 *damages is necessary.*

0386 (e) In any wrongful death action, the trial court shall instruct
 0387 the jury only on those items of damage upon which there is some
 0388 evidence to base an award.

New Sec. 15. (a) Security authorized or required for payment of a judgment for periodic installments entered in accordance with this act must be in one or more of the following forms and approved by the court:

- (1) Bond executed by a qualified insurer;
- (2) annuity contract executed by a qualified insurer;
- (3) evidence of applicable and collectible liability insurance with one or more qualified insurers;
- (4) an agreement by one or more qualified insurers to guarantee payment of the judgment.

(b) Security complying with this section serves also as a required supersedeas bond.

New Sec. 16. (a) If the court enters a judgment for periodic installments, each party liable for all or a portion of the judgment, unless found to be incapable of doing so,

shall separately or jointly with one or more others post security in an amount equal to the present lump-sum equivalent of the unpaid judgment, including past damages, in a form prescribed in section ~~15~~, within 30 days after the date the judgment is subject to execution.

(b) A judgment creditor or successor in interest and any party having rights under subsection (e) may move that the court find that security has not been posted and maintained with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that security complying with this act be posted within 30 days. If security is not posted within that time and subsection (c) does not apply, the court shall calculate the lump-sum equivalent of the obligation under section 10 and enter a judgment for that amount in favor of the moving party.

(c) If a judgment debtor who is the only person liable for a portion of a judgment for periodic installments fails to post *OR* maintain security, the right to lump-sum payment described in subsection (b) applies only against that judgment debtor and the portion of the judgment so owed.

12.
New Sec. 17. If future damages are ordered to be paid in advance of the period to which they apply, the court shall apply a discount factor of 1.6%, compounded annually.

New Sec. 18. (a) Parties to an action on a claim for bodily injury may file with the clerk of the court in which the action is pending or, if none is pending, with the clerk of a court of competent jurisdiction over the claim, a settlement agreement for future damages payable in periodic installments. The settlement agreement may provide that one or more sections of this act apply to such agreement.

(b) Upon petition of the parties, a court of competent jurisdiction may enter a consent judgment adopting one or more of the sections of this act.

New Sec. 19. The commissioner of insurance shall establish rules and regulations and procedures for determining which insurers, self-insurers, plans or arrangements are financially qualified to provide the security required under this act and to be designated as qualified insurers.

~~Sec. 15. K.S.A. 40-3003, 60-262 and 60-2103 and K.S.A. 1987 Supp. 60-249a and 60-1903 are hereby repealed.~~

20.

~~Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.~~

21.