

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 16, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative John Grange- excused
Representative Jim Ward- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.

HB 2656 - Amendments to the Kansas code of civil procedure.

Representative Brookens made the motion to report HB 2656 favorably for passage.

Representative Pauls seconded the motion.

Jason Long, Revisor of Statutes, gave an explanation of balloon # 1, consisting of various technical amendments. (Attachment 1)

Representative Whitham made the substitute motion to amend the bill with revisors technical (balloon # 1) amendments.

Representative Brookens seconded the motion. Motion carried.

Jason Long, Revisor of Statutes, gave an explanation of a balloon # 2, second technical amendment, Section 223, page 324, Line 33, is simply changing the language of "when a state agency is closed for business" to "inaccessible" to be compatible with that used earlier in the bill. (Attachment 2)

Representative Whitham made the motion to amend the bill with revisors (balloon #2) technical amendment.

Representative Pauls seconded the motion. Motion carried.

Representative Whitham introduced a balloon # 3 to add a new Section to K.S.A. 60-219 in Civil Procedure. He further explained that in **HB 2613**, concerning joinder of parties, a problem was perceived by some conferees in the Title Insurance and Real Estate business that would determine that Electronic Systems Inc. would not fit the definition of a necessary party to be joined. He also advised the committee this balloon concept and language was approved by Professor Concannon and was also presented to and received the affirmation of the Presiding Officer of the Civil Code Recodification. (Attachment 3)

Representative Whitham made a motion to amend the bill to adopt the balloon #3 amendment.

Representative Jack seconded the motion. Motion carried.

Jason Long, Revisor of Statutes, presented another technical balloon # 4, and explained three changes on page 243 of the bill. Under current law that was enacted last session, a licensed private detective was allowed to be a process server under the Service Process Statutes and was inadvertently stricken in the rewrite. This balloon will add it back as it currently exists in the law today. (Attachment 4)

Representative Pauls made a motion to amend the bill to adopt technical (balloon #4) amendment.

Representative Brookens seconded the motion. Motion carried.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 16, 2010, in Room 346-S of the Capitol.

Representative Brookens made a motion to add, on page 95, Line 22, "note the filing date and time". Representative King seconded the motion. Motion carried.

A suggestion was made by Chairman Kinzer and after further discussion, it was the consensus of the committee, in order to avoid the cost of reprinting of this enormous bill with the above amendments, the amendments could be consolidated and offered as a floor amendment.

Representative Pauls made a substitute motion to report **HB 2656** favorably for passage unamended. Representative Tietz seconded the motion. Motion carried.

HB 2613 - Concerning joinder of persons.

As originator of the bill, Representative Whitham concurred it was no longer necessary to proceed any further with this bill since the issue of "joinder of persons" was amended into **HB 2656**.

Chairman Kinzer, for the record, formally withdrew a request for a new bill that was presented at the committee meeting on January 21, 2010. The request was originated by Represented Kleeb to enact the electronic home detention act. After further research into the matter, it was determined that a bill was unnecessary at this time and the request withdrawn.

HB 2529 - Continuation of certain exceptions to disclosure under the open records act.

Jill Wolters presented the committee with an overview of the bill. She also reviewed the joint memorandum dated February 9, 2010, from Gordon Self, First Assistant Revisor (who works tax issues) and herself, Senior Assistant Revisor in response to a request from Chairman Kinzer at the hearing on **HB 2529** on February 4, 2010. (Attachment 5)

Jill Wolters also presented a technical amendment to amend the correct a statute in the revised juvenile offender code, K.S.A. 2009 Supp. 38-2309, not K.S.A. 2009 Supp.38 1664. (Attachment 6)

Representative Brookens made the motion to report **HB 2529** favorably for passage. Representative Kleeb seconded the motion.

Representative Pauls made the motion to amend the bill with the revisors technical amendment. Representative Talia seconded the motion. Motion carried.

Representative Brookens made the motion to amend the bill to strike the reference to K.S.A. 79-1437f on Page 1, line 12; page 4, line 8 and page 9, Line 11. He explained this is a sales validation questioner and should continue not to be disclosed. Representative Kinzer reminded everyone the Department of Revenue no longer wanted this to be an item not to be disclosed however the Real Estate industry wanted the exemption to be continued and presented a copy of the validation questioner so one could see what the form looks like and the information that should not be disclosed.

Representative Keither seconded the motion. Motion carried.

Representative Brookens made the motion to report **HB 2529** favorable for passage as amended. Representative Keither seconded the motion. Motion carried.

HB 2429 - Allowing the supreme court to eliminate and reassign district magistrate judge and district judge positions based on caseloads.

Representative Crow made the motion to report **HB 2429** favorably for passage. Representative Kleeb seconded the motion.

Representative Colloton made a substitute motion, balloon attached, that basically would require all magistrate judges be attorneys and provisions to grandfather in all current appointed and elected magistrate judges. (Attachment 7)

Representative Goyle seconded the motion.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 16, 2010, in Room 346-S of the Capitol.

Representative Goyle asked permission to withdraw his second.
Representative Crow seconded the motion. Motion failed.

Representative Brookens made a motion to table HB 2429.
Representative Pauls seconded the motion. Motion failed.

Representative Kleeb made a motion to change Line 42, page 1, from "less than 600 cases" to "less than 900 cases".
Representative Colloton seconded the motion. Motion failed.

Representative Crow closed on her motion to report **HB 2429** favorably for passage.
Motion carried.

HCR 5026 - Requesting the supreme court to conduct a survey and study of the Kansas court system; judicial study advisory committee.

Representative Talia made the motion to report **HCR 5026** favorably for passage.
Representative Brookens seconded the motion.

Representative Whitham made the substitute motion to amend the language with a balloon, that would strike the current language identified on page 1, line 21 thru 24 for items 2, 3 4 and 5 and insert "(2) workload of judicial and non-judicial personnel; (3) court record retention; (4) centralized court data network; (5) use of video conferencing and other methods for court hearings;" (Attachment 8)
Representative Talia seconded the motion. Motion carries.

Representative Colloton made the motion to add an item on to Representative Whitham's amendment of specific items to be included in the study as follows, "the jurisdictions, qualifications and compensations of district court magistrate judges".
Representative Crow seconded the motion. Motion carried.

Representative Whitham made the motion to report **HCR 5026** favorably for passage as amended.
Representative Kleeb seconded the motion. Motion carried.

HB 2525 - Open meetings; recording of executive sessions.

Representative King made a motion to report **HB 2525** favorably for passage.

Chairman Kinzer made a substitute motion to add language on page 2, line 40, after the comma, "upon such objection if the public body or agency desires to continue to discuss the matter objected to,"
Representative Jack seconded the motion. Motion carries.

Representative King made the motion to report **HB 2525** favorably for passage as amended.
Representative Brookens seconded the motion. Motion failed.

HB 2531 - Courts; for fiscal year 2011, docket fee percentage from judicial performance fund to go to judicial branch non-judicial salary initiative fund.

Jill Wolters, Revisors Staff, gave a brief overview of the bill.

Representative Patton made a motion to report **HB 2531** favorably for passage as amended.
Chairman Kinzer seconded the motion. Motion failed.

The next meeting is possibly scheduled for February 17, 2010.

The meeting was adjourned at 5:55 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 2-16-10

NAME	REPRESENTING
Joseph Mahino	KS BAR ASSN.
Matt Casey	GBA
Ashley Sherard	Lenexa Chamber
Daniel Rowner	Keamey & Assoc.
Doug Smith	Pinger, Smith & Associates
R J Wilson	KSAJ
Jeff Bottenberg	Polsinelli, Shyer & P.C.
Loren Snell	KSAG
Joe Ewers	KAHSA
Sean Miller	CAPITOL STRATEGIES
Natalie Adson	KS Judicial Council
Nancy Strouse	" " "
Ed Klump	KACP / KSA / KP OA
Mark Tallman	KASB
Sandy Burden	Hallmark

HOUSE BILL No. 2656

By Committee on Judiciary

2-4

House Judiciary
Cross-reference balloon amendments
Prepared by: J. Long

Balloon # 1

House Judiciary
Date 2-16-10
Attachment # 1

9 AN ACT concerning the code of civil procedure; amending K.S.A. 8-
10 113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516,
11 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-
12 3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-
13 3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-
14 4107, 23-701, 26-503, 26-510, 59-807, 59-2947, 59-29a14, 59-29b47,
15 59-3052, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-
16 204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213,
17 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-
18 223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-
19 230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241,
20 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-249, 60-
21 249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-
22 257, 60-258, 60-258a, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264,
23 60-265, 60-266, 60-267, 60-268, 60-270, 60-271, 60-301, 60-302, 60-
24 304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312,
25 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-
26 904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629,
27 60-2002, 60-2103, 60-2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-
28 2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-
29 2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105,
30 61-3201, 61-3301, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-
31 3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902,
32 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-
33 1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-
34 2229, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2350, 38-2362,
35 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-216, 60-
36 226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-305,
37 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-
38 4107, 61-2707, 61-3703 and 77-503 and repealing the existing sections;
39 also repealing K.S.A. 60-248a and 60-258b.

40
41 *Be it enacted by the Legislature of the State of Kansas:*
42 New Section 1. (a) *Citation of section.* This section may be cited as
43 the uniform interstate depositions and discovery act.

1-2

1 to respond to the original pleading or within 21 days after service of the
2 amended pleading, whichever is later.

3 (b) Amendments during and after trial. (1) Based on an objection at
4 trial. If, at trial, a party objects that evidence is not within the issues
5 raised in the pleadings, the court may permit the pleadings to be amended.
6 The court should freely permit an amendment when doing so will aid in
7 presenting the merits and the objecting party fails to satisfy the court that
8 the evidence would prejudice that party's action or defense on the merits.
9 The court may grant a continuance to enable the objecting party to meet
10 the evidence.

11 (2) For issues tried by consent. When an issue not raised by the plead-
12 ings is tried by the parties' express or implied consent, it must be treated
13 in all respects as if raised in the pleadings. A party may move, at any
14 time, even after judgment, to amend the pleadings to conform them to the
15 evidence and to raise an unpleaded issue. But failure to amend does not
16 affect the result of the trial of that issue.

17 (c) Relation back of amendments. An amendment to a pleading relates
18 back to the date of the original pleading when:

19 (1) The law that provides the applicable statute of limitations allows
20 relation back;

21 (2) the amendment asserts a claim or defense that arose out of the
22 conduct, transaction or occurrence set out, or attempted to be set out, in
23 the original pleading; or

24 (3) the amendment changes the party or the naming of the party
25 against whom a claim is asserted, if paragraph (2) is satisfied and if,
26 within the period provided by law for commencing the action against the
27 party, including the period for service of process under K.S.A. 60-203,
28 and amendments thereto, the party to be brought in by amendment:

29 (A) Received such notice of the action that it will not be prejudiced
30 in defending on the merits; and

31 (B) knew or should have known that the action would have been
32 brought against it, but for a mistake concerning the proper party's
33 identity.

34 (d) Supplemental pleadings. On motion and reasonable notice, the
35 court may, on just terms, permit a party to serve a supplemental pleading
36 setting out any transaction, occurrence or event that happened after the
37 date of the pleading to be supplemented. The court may permit supple-
38 mentation even though the original pleading is defective in stating a claim
39 or defense. The court may order that the opposing party plead to the
40 supplemental pleading within a specified time.

41 Sec. 83. K.S.A. 2009 Supp. 60-216 is hereby amended to read as
42 follows: 60-216. (a) ~~Pretrial conferences, objectives~~ Purposes of a pretrial
43 conference. In any action, the court shall must on the request of either

1 on the request of any party, or may without a request, conduct a final
 2 pretrial conference in accordance with procedures established by rule of
 3 the supreme court. The court may modify the order issued after a final
 4 pretrial conference only to prevent manifest injustice.

5 (f) Sanctions. (1) In general. On motion or on its own, and after op-
 6 portunity to be heard, the court may issue any just orders, including those
 7 authorized by subsections (b)(2) ~~(B), (C) and (D)~~ of K.S.A. 60- 237, and
 8 amendments thereto, if a party or its attorney:

- 9 (A) Fails to appear at a case management or other pretrial conference;
- 10 (B) is substantially unprepared to participate, or does not participate
- 11 in good faith, in the conference; or
- 12 (C) fails to obey a scheduling or other pretrial order.

13 (2) Imposing fees and costs. Instead of, or in addition to any other
 14 sanction, the court must order the party, its attorney, or both to pay the
 15 reasonable expenses, including attorney's fees, incurred because of any
 16 noncompliance with this section, unless the noncompliance was substan-
 17 tially justified or other circumstances make an award of expenses unjust.

18 Sec. 84. K.S.A. 60-217 is hereby amended to read as follows: 60-217.

19 ~~(a) Real party in interest. Every action shall be prosecuted in the name~~
 20 ~~of the real party in interest, but an executor, administrator, guardian,~~
 21 ~~conservator, trustee of an express trust, receiver, a party with whom or~~
 22 ~~in whose name a contract has been made for the benefit of another, or a~~
 23 ~~party authorized by statute may sue in the party's own name without~~
 24 ~~joining the party for whose benefit the action is brought. When a statute~~
 25 ~~so provides, an action for the use or benefit of another shall be brought~~
 26 ~~in the name of the state of Kansas. No action shall be dismissed on the~~
 27 ~~ground that it is not prosecuted in the name of the real party in interest~~
 28 ~~until a reasonable time has been allowed after objection for ratification~~
 29 ~~of commencement of the action by, or joinder or substitution of, the real~~
 30 ~~party in interest, and such ratification, joinder or substitution shall have~~
 31 ~~the same effect as if the action had been commenced in the name of the~~
 32 ~~real party in interest.~~

33 ~~—(b) Claim accruing under law of another state. Whenever a cause of~~
 34 ~~action has accrued under or by virtue of the laws of any other state or~~
 35 ~~territory, such cause of action may be sued upon in any of the courts of~~
 36 ~~this state by the person or persons who are authorized to bring and main-~~
 37 ~~tain an action thereon in the state or territory where the same arose.~~
 38 ~~When the law of the state or territory where a cause of action for death~~
 39 ~~arose authorizes said action to be prosecuted by an administrator or ex-~~
 40 ~~ecutor, then said action may also be maintained in any of the courts of~~
 41 ~~this state by an administrator or executor appointed under the laws of the~~
 42 ~~state of Kansas.~~

43 ~~—(c) Minors or incapacitated persons. Whenever a minor or incapaci-~~

(A)(ii) through (vii)

Change in reference

1-4

1 (C) *Payment of expenses. Instead of, or in addition to, the orders*
2 *above, the court must order the disobedient party, the attorney advising*
3 *that party, or both to pay the reasonable expenses, including attorney's*
4 *fees, caused by the failure, unless the failure was substantially justified or*
5 *other circumstances make an award of expenses unjust.*

6 (c) *Failure to disclose, to supplement an earlier response or to admit.*
7 (1) *Failure to disclose or supplement. If a party fails to provide infor-*
8 *mation or identify a witness as required by subsection (b)(6) or (e) of*
9 *K.S.A. 60-226, and amendments thereto, the party is not allowed to use*
10 *that information or witness to supply evidence on a motion, at a hearing*
11 *or at a trial, unless the failure was substantially justified or is harmless.*
12 *In addition to, or instead of this sanction, the court, on motion and after*
13 *giving an opportunity to be heard:*

14 (A) *May order payment of the reasonable expenses, including attor-*
15 *ney's fees, caused by the failure;*

16 (B) *may inform the jury of the party's failure; and*

17 (C) *may impose other appropriate sanctions, including any of the*
18 *orders listed in subsections (b)(2)(A)(i) through (b)(2)(A)(vi).*

19 (2) *Failure to admit. If a party fails to admit what is requested under*
20 *K.S.A. 60-236, and amendments thereto, and if the requesting party later*
21 *proves the document to be genuine or the matter true, the requesting party*
22 *may move that the party who failed to admit pay the reasonable expenses,*
23 *including attorney's fees, incurred in making that proof. The court must*
24 *so order unless:*

25 (A) *The request was held objectionable under subsection (a) of K.S.A.*
26 *60-236, and amendments thereto;*

27 (B) *the admission sought was of no substantial importance;*

28 (C) *the party failing to admit had a reasonable ground to believe that*
29 *it might prevail on the matter; or*

30 (D) *there was other good reason for the failure to admit.*

31 (d) *Party's failure to attend its own deposition, serve answers to in-*
32 *terrogatories or respond to a request for inspection. (1) In general. (A)*
33 *Motion; grounds for sanctions. The court where the action is pending may,*
34 *on motion, order sanctions if:*

35 (i) *A party or a party's officer, director or managing agent, or a per-*
36 *son designated under subsection (b)(6) of K.S.A. ~~60-236~~ or subsection*
37 *(a)(4) of K.S.A. 60-231, and amendments thereto, fails, after being served*
38 *with proper notice, to appear for that person's deposition; or*

60-230

39 (ii) *a party, after being properly served with interrogatories under*
40 *K.S.A. 60-233, and amendments thereto, or a request for inspection under*
41 *K.S.A. 60-234, and amendments thereto, fails to serve its answers, objec-*
42 *tions or written response.*

43 (B) *Certification. A motion for sanctions for failing to answer or re-*

9-1

1 ~~—(d) Evidence on motions. When a motion is based on facts not ap-~~
2 ~~pearing of record the court may hear the matter on affidavits presented~~
3 ~~by the respective parties, but the court may direct that the matter be~~
4 ~~heard wholly or partly on oral testimony or depositions.~~

5 ~~—(c) Interpreters. In accordance with K.S.A. 75-4351 through 75-~~
6 ~~4355d and amendments thereto, the court may appoint an interpreter of~~
7 ~~its own selection and fix the interpreter's reasonable compensation. The~~
8 ~~compensation shall be paid out of funds provided by law or, subject to~~
9 ~~the limitations in K.S.A. 75-4352 and 75-4355b and amendments thereto,~~
10 ~~by one or more of the parties as the court may direct, and may be taxed~~
11 ~~ultimately as costs, in the discretion of the court.~~

12 (a) *Form and admissibility.* At trial, the witness' testimony must be
13 taken in open court, unless otherwise provided by law. For good cause in
14 compelling circumstances and with appropriate safeguards, the court may
15 permit testimony in open court by contemporaneous transmission from a
16 different location.

17 (b) *Scope of examination and cross-examination.* A party may ex-
18 amine any unwilling or hostile witness by leading questions. A party may
19 call an adverse party or an officer, director or managing agent of a public
20 or private corporation, a partnership or an association that is an adverse
21 party, may examine the witness by leading questions and may contradict
22 and impeach the witness as if the witness had been called by the adverse
23 party. The witness may be contradicted and impeached by the adverse
24 party, but may be cross-examined only on the subject matter of the wit-
25 ness' direct examination.

26 (c) *Record of excluded evidence.* In a jury trial, if an objection to a
27 question to a witness is sustained, the examining attorney may make a
28 specific offer of what the examining attorney expects to prove by the wit-
29 ness' answer. The offer must be made out of the jury's hearing. The court
30 may add any further statement that clearly shows the character of the
31 evidence, the form in which it was offered, the objection made and the
32 ruling on the objection. In nonjury trials the same procedure may be
33 followed, except that the court on request must take and report the evi-
34 dence in full unless it clearly appears that the evidence is not admissible
35 or is privileged.

36 (d) *Evidence on a motion.* When a motion relies on facts outside the
37 record, the court may hear the matter on affidavits or on depositions
38 pursuant to K.S.A. 53-601, and amendments thereto, or may hear it
39 wholly or partly on oral testimony or on depositions.

40 (e) *Interpreter.* In accordance with K.S.A. ~~[75-4351 through 75-]~~
41 4355d, and amendments thereto, the court may appoint an interpreter at
42 its choosing; fix reasonable compensation to be paid from funds provided
43 by law or, subject to the limitations in K.S.A. 75-4352 and 75-4355b, and

75-4351 through 75-

1 ~~—(c) *Plaintiffs, counterclaimants, cross-claimants.* The provisions of~~
 2 ~~this section apply whether the party entitled to the judgment by default~~
 3 ~~is a plaintiff, a third party plaintiff, or a party who has pleaded a cross-~~
 4 ~~claim or counterclaim. In all cases a judgment by default is subject to the~~
 5 ~~limitations of K.S.A. 60-254 (c).~~

6 ~~—(d) *Judgment against the state.* No judgment by default shall be en-~~
 7 ~~tered against the state or an officer or agency thereof unless the claimant~~
 8 ~~establishes his or her claim or right to relief by evidence satisfactory to~~
 9 ~~the court.~~

10 *(a) Entry. When a party against whom a judgment for affirmative*
 11 *relief is sought has failed to plead or otherwise defend, the party is in*
 12 *default. On request and a showing that a party is entitled to a default*
 13 *judgment, the court must render judgment against the party in default*
 14 *for the remedy to which the requesting party is entitled. But a default*
 15 *judgment may be entered against a minor or incapacitated person only if*
 16 *represented by a guardian, conservator or other legally authorized rep-*
 17 *resentative who has appeared in the action, or by a guardian ad litem*
 18 *appointed by the court. If the party against whom a default judgment is*
 19 *sought has appeared personally, or by a representative, that party or its*
 20 *representative must be served with written notice of the request for judg-*
 21 *ment at least seven days before the hearing. The court may conduct hear-*
 22 *ings or make referrals, preserving any statutory right to a jury trial, when,*
 23 *to enter or effectuate judgment it needs to:*

- 24 *(1) Conduct an accounting;*
- 25 *(2) determine the amount of damages;*
- 26 *(3) establish the truth of any allegation by evidence; or*
- 27 *(4) investigate any other matter.*

28 *(b) Setting aside a default judgment. The court may set aside a default*
 29 *judgment under subsection (b) of K.S.A. 60-260 and K.S.A. 60-309, and*
 30 *amendments thereto.*

31 *(c) Judgment against the state. A default judgment may be entered*
 32 *against the state, its officers or its agencies only if the claimant establishes*
 33 *a claim or right to relief by evidence that satisfies the court.*

34 *Sec. 129. K.S.A. 2009 Supp. 60-256 is hereby amended to read as*
 35 *follows: 60-256. (a) For claimant. A party seeking to recover upon a claim,*
 36 *counterclaim or cross-claim or to obtain a declaratory judgment may, at*
 37 *any time after the expiration of 20 days from the commencement of the*
 38 *action or after service of a motion for summary judgment by the adverse*
 39 *party, move with or without supporting affidavits for a summary judgment*
 40 *in the party's favor as to all or any part thereof.*

41 ~~—(b) *For defending party.* A party against whom a claim, counterclaim~~
 42 ~~or cross-claim is asserted or a declaratory judgment is sought may, at any~~
 43 ~~time, move with or without supporting affidavits for a summary judgment~~

1-7

1 as the agent of such individual, partnership, association or corporation.
 2 The instrument appointing such service agent shall be acknowledged,
 3 shall state the residence or office address of the service agent, and shall
 4 be recorded at length upon the register of service agents and shall state
 5 that such designation is made pursuant to this section.

6 ~~—(b) *Change of address.* An appointment shall be amended, in writing,
 7 and filed with the secretary of state whenever the name or address of the
 8 service agent is no longer accurate.~~

9 ~~—(c) *Period of appointment.* The appointment shall remain in effect for
 10 a period of three years from the date of its filing unless revoked in writing,
 11 executed in the same manner as such appointment, which revocation shall
 12 be recorded and indexed in the register of service agents.~~

13 (a) *Generally.* An individual, partnership, association or corporation
 14 may appoint a resident of this state as service agent and consent that
 15 process may be served on the service agent as the agent of the individual,
 16 partnership, association or corporation. An instrument appointing the
 17 service agent must be acknowledged, must be filed with the office of the
 18 secretary of state and must include:

19 (1) The name and address of the person or entity making the
 20 appointment;

21 (2) the name and residence or office address of the service agent; and

22 (3) if an entity makes the appointment, the state of its formation.

23 (b) *Change of address.* An appointment must be amended, in writing,
 24 and filed with the secretary of state whenever the name or address of the
 25 service agent changes.

26 (c) *Period of appointment.* An appointment remains in effect for a
 27 period of three years from the date of its filing unless it is revoked in a
 28 writing that is executed in the same manner as the appointment and is
 29 filed with the office of the secretary of state.

30 (d) *Collection of fee.* The fee for filing an appointment, amendment
 31 or revocation shall be \$20. The secretary of state shall remit all fees re-
 32 ceived pursuant to this section to the state treasurer in accordance with
 33 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
 34 of each such remittance, the state treasurer shall deposit the entire
 35 amount in the state treasury to the credit of the information and ~~copy~~
 36 ~~service~~ fee fund created in K.S.A. 75-438, and amendments thereto.

services

37 ~~(e) *Effect of service upon agent.* When any person, fiduciary or cor-
 38 poration shall have appointed such a service agent and such appointment
 39 remains unexpired and unrevoked, process issued in any action or pro-
 40 ceeding against such person, fiduciary or corporation in any court may be
 41 served upon such service agent. Service by publication shall be of no force
 42 or effect where an appointment of service agent made and filed as herein
 43 provided remains in effect, unless process showing upon its face the name~~

1 of the supersedeas bond shall be fixed after notice and hearing at such
2 sum only as will secure the amount recovered for the use and detention
3 of the property, the costs of the action, costs on appeal, interest and
4 damages for delay. When an order is made discharging, vacating or mod-
5 ifying a provisional remedy, a party aggrieved thereby shall be entitled,
6 upon application to the judge, to have the operation of such order sus-
7 pended for a period of not to exceed ~~10~~ 14 days on condition that, within
8 the period of ~~10~~ 14 days, such party shall file notice of appeal and obtain
9 the approval of such supersedeas bond as is required under this section.

10 (c) In lieu of a supersedeas bond, the court may condition a stay of
11 proceedings pending appeal upon the timely payment into court of the
12 periodic rent otherwise due from the defendant to the plaintiff under the
13 rental agreement pertaining to the real property in issue.

14 Sec. 223. K.S.A. 2009 Supp. 77-503 is hereby amended to read as
15 follows: 77-503. (a) This act applies only to the extent that other statutes
16 expressly provide that the provisions of this act govern proceedings under
17 those statutes.

18 (b) This act creates only procedural rights and imposes only proce-
19 dural duties. They are in addition to those created and imposed by other
20 statutes.

21 (c) In computing any period of time prescribed by this act, the day
22 of the act, event or default from which the designated period of time
23 begins to run shall not be included. The last day of the period so com-
24 puted is to be included, unless it is a Saturday, Sunday or a legal holiday,
25 in which event the period runs until the end of the next day which is not
26 a Saturday, a Sunday or a legal holiday. As used in this act, unless oth-
27 erwise specified, "day" means calendar day and not business day; there-
28 fore, intermediate Saturdays, Sundays and legal holidays shall be included
29 in the computation. As used in this act, "business day" means any day
30 that is not a Saturday, Sunday or legal holiday. "Legal holiday" includes
31 any day designated as a holiday by any statute or regulation of this state.

32 ~~If by reason of inclement weather, emergency or other unforeseen circum-~~
33 ~~stance, a state agency is closed for business on the last day of any period~~
34 ~~of time prescribed by this act, the time period shall be extended until the~~
35 ~~next business day on which the agency is open for business.~~

inaccessible

36 Sec. 224. K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-
37 4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212,
38 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-
39 3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905,
40 22-4907, 23-701, 23-4,107, 26-503, 26-510, 59-807, 59-2947, 59-29a14,
41 59-29b47, 59-3052, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-
42 203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-
43 213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-

House Committee on Judiciary

Balloon Amendment for KSA 60-219

Requested by: Rep. Whitham

Prepared by: J. Long

Balloon #3

House Judiciary
Date 2-16-10
Attachment # 3

1 case, an involuntary plaintiff.
 2 (3) Venue. If a joined party objects to venue and the joinder would
 3 make venue improper, the court must dismiss the party.
 4 (b) When joinder is not feasible. If a person who is required to be
 5 joined if feasible cannot be joined, the court must determine whether, in
 6 equity and good conscience, the action should proceed among the existing
 7 parties or should be dismissed. The factors for the court to consider
 8 include:
 9 (1) The extent to which a judgment rendered in the person's absence
 10 might prejudice that person or the existing parties;
 11 (2) the extent to which any prejudice could be lessened or avoided by:
 12 (A) Protective provisions in the judgment;
 13 (B) shaping the relief; or
 14 (C) other measures;
 15 (3) whether a judgment rendered in the person's absence would be
 16 adequate; and
 17 (4) whether the plaintiff would have an adequate remedy if the action
 18 were dismissed for nonjoinder.
 19 (c) Pleading the reasons for nonjoinder. When asserting a claim for
 20 relief, a party must state:
 21 (1) The name, if known of any person who is required to be joined if
 22 feasible, but is not joined; and
 23 (2) the reasons for not joining that person.
 24 (d) Exception for class actions. This section is subject to the provisions
 25 of K.S.A. 60-223, and amendments thereto.
 26 Sec. 87. K.S.A. 60-220 is hereby amended to read as follows: 60-220.
 27 ~~(a) Permissive joinder. All persons may join in one action as plaintiffs if~~
 28 ~~they assert any right to relief jointly, severally, or in the alternative in~~
 29 ~~respect of or arising out of the same transaction, occurrence, or series of~~
 30 ~~transactions or occurrences and if any question of law or fact common to~~
 31 ~~all these persons will arise in the action. All persons may be joined in one~~
 32 ~~action as defendants if there is asserted against them jointly, severally, or~~
 33 ~~in the alternative, any right to relief in respect of or arising out of the~~
 34 ~~same transaction, occurrence, or series of transactions or occurrences and~~
 35 ~~if any question of law or fact common to all these persons will arise in~~
 36 ~~the action. A plaintiff or defendant need not be interested in obtaining~~
 37 ~~or defending against all the relief demanded. Judgment may be given for~~
 38 ~~one or more of the plaintiffs according to their respective rights to relief,~~
 39 ~~and against one or more defendants according to their respective~~
 40 ~~liabilities.~~
 41 ~~(b) Separate trials. The court may make such orders as will prevent~~
 42 ~~a party from being embarrassed, delayed, or put to expense by the inclu-~~
 43 ~~sion of a party against whom he asserts no claim and who asserts no claim~~

(e) *Nominee*. In an action in which any relief sought would determine title or affect a security interest in real property, a person who is subject to service of process must be joined as a party if the person is a nominee of record on behalf of a beneficial owner of a claimed interest in the property that is the subject of the action. The nominee need not be a party required to be joined under subsection (a)(1).

1 deliver sufficient copies of the process and petition or other document to
2 the sheriff or the county where the process is to be served or, if requested,
3 to a person appointed to serve process or to the requesting party's
4 attorney.

5 (3) Service, levy and execution of all process under this subsection,
6 including, but not limited to, writs of execution, orders of attachment,
7 replevin orders, orders for delivery, writs of restitution and writs of as-
8 sistance, must be made by a sheriff within the sheriff's county, by the
9 sheriff's deputy, by an attorney admitted to the practice of law in Kansas ←
10 or by a person appointed as a process server by a judge or clerk of the
11 district court. A subpoena may also be served by any other person who
12 is not a party and is at least 18 years of age. Process servers should be
13 appointed freely and may be authorized either to serve process in a single
14 case or in cases generally during a fixed period of time. An appointed
15 process server ~~or~~ an authorized attorney may make the service anywhere
16 in or outside this state and must be allowed the fees prescribed for the
17 sheriff in K.S.A. 28-110, and amendments thereto. The court may allow
18 other fees and costs. A person authorized under this subsection to serve,
19 levy or execute process is considered an "officer" as that term is used in
20 K.S.A. 60-706 and 60-2401, and amendments thereto.

21 (4) In all cases when the person to be served, or an agent authorized
22 by the person to accept service of process, refuses to receive the process,
23 the offer of the duly authorized process server to deliver the process, and
24 the refusal, is sufficient service of process.

25 (e) Acknowledgment or appearance. An acknowledgment of service
26 on the summons is equivalent to service. The voluntary appearance by a
27 party is equivalent to service on the date of appearance.

28 (f) Other service methods for garnishments. In addition to other
29 methods listed in this section, a person serving a garnishment process may
30 serve the process by any of the following methods:

31 (1) First-class mail. Process may be sent to a person by first-class mail
32 by placing a copy of the process and petition or other document to be
33 served in an envelope addressed to the person to be served in accordance
34 with K.S.A. 60-304, and amendments thereto, at the person's last known
35 address. The envelope used for service must be addressed to the person
36 in accordance with K.S.A. 60-304, and amendments thereto, and must
37 contain adequate postage. The envelope must be sealed and placed in the
38 United States mail. Service by first-class mail is complete when the en-
39 velope is placed in the mail unless it is returned undelivered.

40 (2) Telefacsimile communication. Process may be sent to a garnishee
41 by telefacsimile communication at a telefacsimile number designated by
42 the garnishee. Service is complete upon receipt of a confirmation gener-
43 ated by the transmitting machine.

insert comma,
strike "or"

or a licensed private
detective

by a person
licensed as a private
detective pursuant
to K.S.A. 75-7b01
et seq., and
amendments
thereto.

Office of Revisor of Statutes
300 S.W. 10th Avenue
Suite 010-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Chairman Lance Kinzer, House Judiciary Committee
From: Gordon L. Sell, First Assistant Revisor and Jill A. Wolters, Senior Assistant Revisor
Date: February 9, 2010
Subject: HB 2529

HB 2529 amends the Kansas open records act, K.S.A. 45-229, in subsection (i), eliminating the references to K.S.A. 17-7503 (domestic corporations), 17-7505 (foreign corporations), 56-1a606 (domestic limited partnerships), 56-1a607 (foreign limited partnerships), 56a-1201 (domestic limited liability partnerships) and 56a-1202 (foreign limited liability partnerships).

During the 2004 session, in House Substitute for Senate Bill No. 147 (Chapter 171, 2004 Session Laws of Kansas), the Legislature eliminated the annual franchise tax based on shareholder's equity, as administered by the secretary of state, and adopted an annual franchise fee of \$40. Prior to 2004, the secretary of state was prohibited from disclosing the amount of franchise tax paid by a business entity. When the franchise fee was enacted to be \$40 for every business entity, the prohibition was no longer necessary. When the administration and imposition of the franchise tax was transferred to the secretary of revenue pursuant to K.S.A. 79-5401, the Legislature enacted a law that provided that all tax records, including prior tax records are not open records and are not to be disclosed by the secretary of state nor the secretary of revenue, pursuant to subsection (a)(44) of K.S.A. 45-221. Further, K.S.A. 79-3234 and 79-5401 provide that the amount of franchise tax paid and such tax records are not to be disclosed by the secretary of revenue.

House Judiciary
Date 2-16-10
Attachment # 5

HOUSE BILL No. 2529

By Special Committee on Judiciary

1-25

38-2309

9 AN ACT concerning open records; relating to exceptions to disclosure;
10 amending K.S.A. 60-3351 and K.S.A. 2009 Supp. ~~38-1664~~ and 45-229
11 and repealing the existing sections; also repealing K.S.A. 74-7405a and
12 K.S.A. 2009 Supp. 79-1437f.
13

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

15 Section 1. K.S.A. 2009 Supp. 45-229 is hereby amended to read as
16 follows: 45-229. (a) It is the intent of the legislature that exceptions to
17 disclosure under the open records act shall be created or maintained only
18 if:

- 19 (1) The public record is of a sensitive or personal nature concerning
20 individuals;
- 21 (2) the public record is necessary for the effective and efficient ad-
22 ministration of a governmental program; or
- 23 (3) the public record affects confidential information.

24 The maintenance or creation of an exception to disclosure must be
25 compelled as measured by these criteria. Further, the legislature finds
26 that the public has a right to have access to public records unless the
27 criteria in this section for restricting such access to a public record are
28 met and the criteria are considered during legislative review in connection
29 with the particular exception to disclosure to be significant enough to
30 override the strong public policy of open government. To strengthen the
31 policy of open government, the legislature shall consider the criteria in
32 this section before enacting an exception to disclosure.

33 (b) Subject to the provisions of subsection (h), all exceptions to dis-
34 closure in existence on July 1, 2000, shall expire on July 1, 2005, and any
35 new exception to disclosure or substantial amendment of an existing ex-
36 ception shall expire on July 1 of the fifth year after enactment of the new
37 exception or substantial amendment, unless the legislature acts to con-
38 tinue the exception. A law that enacts a new exception or substantially
39 amends an existing exception shall state that the exception expires at the
40 end of five years and that the exception shall be reviewed by the legis-
41 lature before the scheduled date.

42 (c) For purposes of this section, an exception is substantially amended
43 if the amendment expands the scope of the exception to include more

House Judiciary
Date 2-16-10
Attachment # 6

6-2

1 records or information. An exception is not substantially amended if the
2 amendment narrows the scope of the exception.

3 (d) This section is not intended to repeal an exception that has been
4 amended following legislative review before the scheduled repeal of the
5 exception if the exception is not substantially amended as a result of the
6 review.

7 (e) In the year before the expiration of an exception, the revisor of
8 statutes shall certify to the president of the senate and the speaker of the
9 house of representatives, by July 15, the language and statutory citation
10 of each exception which will expire in the following year which meets the
11 criteria of an exception as defined in this section. Any exception that is
12 not identified and certified to the president of the senate and the speaker
13 of the house of representatives is not subject to legislative review and
14 shall not expire. If the revisor of statutes fails to certify an exception that
15 the revisor subsequently determines should have been certified, the re-
16 visor shall include the exception in the following year's certification after
17 that determination.

18 (f) "Exception" means any provision of law which creates an excep-
19 tion to disclosure or limits disclosure under the open records act pursuant
20 to K.S.A. 45-221, and amendments thereto, or pursuant to any other
21 provision of law.

22 (g) A provision of law which creates or amends an exception to dis-
23 closure under the open records law shall not be subject to review and
24 expiration under this act if such provision:

25 (1) Is required by federal law;

26 (2) applies solely to the legislature or to the state court system.

27 (h) (1) The legislature shall review the exception before its scheduled
28 expiration and consider as part of the review process the following:

29 (A) What specific records are affected by the exception;

30 (B) whom does the exception uniquely affect, as opposed to the gen-
31 eral public;

32 (C) what is the identifiable public purpose or goal of the exception;

33 (D) whether the information contained in the records may be ob-
34 tained readily by alternative means and how it may be obtained;

35 (2) An exception may be created or maintained only if it serves an
36 identifiable public purpose and may be no broader than is necessary to
37 meet the public purpose it serves. An identifiable public purpose is served
38 if the legislature finds that the purpose is sufficiently compelling to over-
39 ride the strong public policy of open government and cannot be accom-
40 plished without the exception and if the exception:

41 (A) Allows the effective and efficient administration of a govern-
42 mental program, which administration would be significantly impaired
43 without the exception;

6-3

1 (B) protects information of a sensitive personal nature concerning
 2 individuals, the release of which information would be defamatory to such
 3 individuals or cause unwarranted damage to the good name or reputation
 4 of such individuals or would jeopardize the safety of such individuals.
 5 Only information that would identify the individuals may be excepted
 6 under this paragraph; or

7 (C) protects information of a confidential nature concerning entities,
 8 including, but not limited to, a formula, pattern, device, combination of
 9 devices, or compilation of information which is used to protect or further
 10 a business advantage over those who do not know or use it, the disclosure
 11 of which information would injure the affected entity in the marketplace.

12 (3) Records made before the date of the expiration of an exception
 13 shall be subject to disclosure as otherwise provided by law. In deciding
 14 whether the records shall be made public, the legislature shall consider
 15 whether the damage or loss to persons or entities uniquely affected by
 16 the exception of the type specified in paragraph (2)(B) or (2)(C) of this
 17 subsection (h) would occur if the records were made public.

18 (i) Exceptions contained in the following statutes *as continued in ex-*
 19 *istence in section 2 of chapter 126 of the 2005 Session Laws of Kansas*
 20 *and exceptions contained in the following statutes* as certified by the re-
 21 visor of statutes to the president of the senate and the speaker of the
 22 house of representatives pursuant to subsection (e) of this section ~~on June~~
 23 ~~1, 2004, during 2009~~ are hereby continued in existence until July 1, ~~2010~~
 24 ~~2015~~, at which time such exceptions shall expire: 1-401, 2-1202, 5-512,
 25 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-
 26 1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, ~~17-2036~~, 17-2227,
 27 17-5832, ~~17-7503~~, ~~17-7505~~, 17-7511, 17-7514, 17-76,139, 19-4321, 21-
 28 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-
 29 4161, 25-4165, 31-405, 34-251, ~~38-1508~~, ~~38-1520~~, ~~38-1565~~, ~~38-1600~~, ~~38-~~
 30 ~~1610~~, ~~38-1618~~, 38-1664, 38-2212, 39-709b, 39-719e, 39-934, 39-1434,
 31 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409,
 32 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-
 33 3421, 40-3613, 40-3805, 40-4205, ~~40-5301~~, 44-510j, 44-550b, 44-594, 44-
 34 635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (13),
 35 (a)(45) and (a)(46) of 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844
 36 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, ~~56-1,600~~, ~~56-1,607~~,
 37 ~~56a-1201~~, ~~56a-1202~~, 58-4114, 59-2135, 59-2502, 59-2979, 59-29b79, 60-
 38 3333, 60-3336, ~~60-3351~~, 65-102b, 65-115, 65-119, 65-153i, 65-170g, 65-
 39 177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-
 40 1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525,
 41 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2122d, 65-2438,
 42 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126,
 43 65-4019, ~~65-4608~~, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-

6-4

1 6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117,
2 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-972a, 72-996, 72-4311,
3 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-
4 2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, ~~74-~~
5 ~~7405a~~, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 74-99d05, 75-104,
6 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266,
7 75-53,105, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11,
8 76-3305, 79-1119, ~~79-1437f~~, ~~79-15,118~~, 79-3234, 79-3395, 79-3420, 79-
9 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

10 (j) Exceptions contained in the following statutes as certified by the
11 revisor of statutes to the president of the senate and the speaker of the
12 house of representatives pursuant to subsection (e) of this section on June
13 1, 2005, are hereby continued in existence until July 1, 2011, at which
14 time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 39-
15 970, 40-4913, 65-525, 65-5117, 65-6016, 65-6017 and 74-7508.

16 (k) Exceptions contained in the following statutes as certified by the
17 revisor of statutes to the president of the senate and the speaker of the
18 house of representatives pursuant to subsection (e) during 2006, 2007
19 and 2008 are hereby continued in existence until July 1, 2014, at which
20 time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325,
21 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-
22 5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46)
23 and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-
24 50,184, 74-8134, 74-99b06 and 82a-2210.

25 Sec. 2. ~~K.S.A. 2009 Supp. 38 1664 is hereby amended to read as~~
26 ~~follows: 38 1664. (a) Prior to placing a juvenile offender in the custody~~
27 ~~of the commissioner and recommending out of home placement, the~~
28 ~~court shall consider and determine that, where consistent with the need~~
29 ~~for protection of the community:~~

30 (1) ~~Reasonable efforts have been made to maintain the family unit~~
31 ~~and prevent unnecessary removal of a juvenile offender from the juvenile~~
32 ~~offender's home, as long as the juvenile offender's safety is assured, or~~
33 ~~an emergency exists which threatens the safety of the juvenile offender.~~
34 ~~If the juvenile offender is in the custody of the secretary of social and~~
35 ~~rehabilitation services under the Kansas code for the care of children, the~~
36 ~~secretary shall prepare a report for the court documenting such reason-~~
37 ~~able efforts. If the juvenile offender is in the custody of the commissioner,~~
38 ~~the commissioner shall prepare a report for the court documenting such~~
39 ~~reasonable efforts. Otherwise, the predisposition investigation writer shall~~
40 ~~prepare a report to the court documenting such reasonable efforts. Reason-~~
41 ~~able efforts are not required prior to removal if the court finds:~~

42 (A) ~~A court of competent jurisdiction has determined that the parent~~
43 ~~has subjected the juvenile offender to aggravated circumstances;~~

1 (B) a court of competent jurisdiction has determined that the parent
2 has been convicted of a murder of another child of the parent, voluntary
3 manslaughter of another child of the parent, aiding or abetting, attempt-
4 ing, conspiring or soliciting to commit such a murder of such a voluntary
5 manslaughter, or a felony assault that results in serious bodily injury to
6 the juvenile offender or another child of the parent; or

7 (C) the parental rights of the parent with respect to a sibling have
8 been terminated involuntarily.

9 Such findings must be included in the court's order.

10 (2) The juvenile offender's removal from the home must be the result
11 of a judicial determination to the effect that continuation of residence in
12 the home would be contrary to the welfare, or that placement would be
13 in the best interests, of the juvenile offender. The contrary to the welfare
14 determination must be made in the first court ruling that sanctions the
15 removal of a juvenile offender from the home.

16 (3) A permanency plan must be presented at disposition or within 30
17 days thereafter. If a permanency plan is in place under a child in need of
18 care proceeding, the court may adopt the plan under the present pro-
19 ceeding. If the juvenile offender is placed in the custody of the commis-
20 sioner, the commissioner shall prepare the plan. The plan must comply
21 with the requirements of K.S.A. 2009 Supp. 38-2263, and amendments
22 thereto. The court shall have the authority to require any person or entity
23 agreeing to participate in the plan to perform as set out in the plan.

24 (4) The court must determine that reasonable efforts have been made
25 and what progress has been made to finalize the permanency plan that is
26 in effect within 12 months of the date the juvenile offender is considered
27 to have entered foster care and at least once every 12 months thereafter
28 while the juvenile offender is in foster care.

29 (5) The court must reflect reasonable efforts and contrary to the wel-
30 fare findings in orders awarding custody to the commissioner temporarily,
31 at sentencing and at modification hearings. If the juvenile offender is
32 placed in the custody of the commissioner, the court shall provide the
33 commissioner with a written copy of any orders entered upon making the
34 order for the purpose of documenting the orders.

35 (6) If the juvenile offender is placed in the commissioner's custody,
36 the commissioner shall document in writing the reasonable efforts that
37 have been made and the progress made to finalize the permanency plan,
38 before each hearing reviewing the plan.

39 (b) When a juvenile offender has been placed in the custody of the
40 commissioner, the commissioner shall notify the court in writing of the
41 initial placement of the juvenile offender as soon as the placement has
42 been accomplished. The court shall have no power to direct a specific
43 placement by the commissioner, but may make recommendations to the

1 commissioner. The commissioner may place the juvenile offender in an
 2 institution operated by the commissioner, a youth residential facility or a
 3 community mental health center. If the court has recommended an out-
 4 of home placement, the commissioner may not return the juvenile of-
 5 fender to the home from which removed without first notifying the court
 6 of the plan.

7 (c) During the time a juvenile offender remains in the custody of the
 8 commissioner, the commissioner shall report to the court at least each six
 9 months as to the current living arrangement and social and mental de-
 10 velopment of the juvenile offender and document in writing the reason-
 11 able efforts that have been made and the progress made to finalize the
 12 permanency plan.

13 (d) If the juvenile offender is placed outside the juvenile offender's
 14 home, a permanency hearing shall be held not more than 12 months after
 15 the juvenile offender is placed outside the juvenile offender's home and,
 16 if reintegration is a viable alternative, every 12 months thereafter. The
 17 court may appoint a guardian ad litem to represent the juvenile offender
 18 at the permanency hearing. Juvenile offenders who have been in extended
 19 out of home placement shall be provided a permanency hearing within
 20 30 days of a request from the commissioner. If reintegration is not a viable
 21 alternative and either adoption or permanent guardianship might be in
 22 the best interests of the juvenile offender the county or district attorney
 23 shall file a petition alleging the juvenile is a child in need of care and
 24 requesting termination of parental rights or the appointment of a per-
 25 manent custodian pursuant to the revised Kansas code for care of chil-
 26 dren. If the juvenile offender is placed in foster care, the foster parent
 27 or parents shall submit to the court, at least every six months, a report in
 28 regard to the juvenile offender's adjustment, progress and condition. The
 29 juvenile justice authority shall notify the foster parent or parents of the
 30 foster parents' or parent's duty to submit such report, on a form provided
 31 by the juvenile justice authority, at least two weeks prior to the date when
 32 the report is due, and the name of the judge and the address of the court
 33 to which the report is to be submitted. Such report shall be confidential
 34 and shall only be reviewed by the court, the child's guardian ad litem
 35 and the child's attorney, if any.

36 (e) The report made by foster parents and provided by the commis-
 37 sioner of juvenile justice, pursuant to this section, shall be in substantially
 38 the following form:

39 REPORT FROM FOSTER PARENTS

40 CONFIDENTIAL

41 _____
 42 Child's Name

41 _____
 42 Current Address

1 _____
 2 Parent's Name Foster Parents
 3 _____
 4 Primary Social Worker
 5 Please circle the word which best describes the child's progress
 6 1. Child's adjustment in the home
 7 excellent good satisfactory needs improvement
 8 2. Child's interaction with foster parents and family members
 9 excellent good satisfactory needs improvement
 10 3. Child's interaction with others
 11 excellent good satisfactory needs improvement
 12 4. Child's respect for property
 13 excellent good satisfactory needs improvement
 14 5. Physical and emotional condition of the child
 15 excellent good satisfactory needs improvement
 16 6. Social worker's interaction with the child and foster family
 17 excellent good satisfactory needs improvement
 18 7. School status of child:

19 _____
 20 School Grade
 21 Grades Good _____ Fair _____ Poor _____
 22 Attendance Good _____ Fair _____ Poor _____
 23 Behavior Good _____ Fair _____ Poor _____

24 8. If visitation with parents has occurred, describe the frequency of visits, with whom,
 25 supervised or unsupervised, and any significant events which have occurred. _____
 26 _____
 27 9. Your opinion regarding the overall adjustment, progress and condition of the child:
 28 _____
 29 _____
 30 10. Do you have any special concerns or comments with regard to the child not addressed
 31 by this form? Please specify. _____
 32 _____

K.S.A. 2009 Supp. 38-2309 [see attached]

33 Sec. 3. K.S.A. 60-3351 is hereby amended to read as follows: 60-
 34 3351. (a) Except as provided in K.S.A. 60-3352 and 60-3353, and amend-
 35 ments thereto, an insurance compliance self-evaluative audit document
 36 is privileged information and is not discoverable, or admissible as evi-
 37 dence in any legal action in any civil, criminal or administrative proceed-
 38 ing. The privilege created herein is a matter of substantive law of this
 39 state and is not merely a procedural matter governing civil or criminal
 40 procedures in the courts of this state.
 41 (b) If any insurance company, person, or entity performs or directs
 42 the performance of an insurance compliance audit, an officer, employee
 43 or agent involved with the insurance compliance audit, or any consultant

1 who is hired for the purpose of performing the insurance compliance
2 audit, may not be examined in any civil, criminal or administrative pro-
3 ceeding as to the insurance compliance audit or any insurance compliance
4 self-evaluative audit document, as defined in this section. This subsection
5 (b) shall not apply if the privilege set forth in subsection (a) of this section
6 is determined under K.S.A. 60-3352 and 60-3353, and amendments
7 thereto, not to apply.

8 (c) Any insurance company may voluntarily submit, in connection
9 with any examination conducted under chapter 40 of the Kansas Statutes
10 Annotated, and amendments thereto, an insurance compliance self-ev-
11 aluative audit document to the commissioner as a confidential document
12 in the same manner as provided in chapter 40 of the Kansas Statutes
13 Annotated, and amendments thereto, for documents required to be pro-
14 vided to the commissioner in the course of an examination by the com-
15 missioner without waiving the privilege set forth in this section to which
16 the insurance company would otherwise be entitled. Any provision in
17 chapter 40 of the Kansas Statutes Annotated, and amendments thereto,
18 permitting the commissioner to make confidential documents public or
19 to grant the national association of insurance commissioners access to
20 confidential documents shall not apply to the insurance compliance self-
21 evaluative audit document voluntarily submitted by an insurance com-
22 pany. To the extent that the commissioner has the authority to compel
23 the disclosure of an insurance compliance self-evaluative audit document
24 under other provisions of applicable law, any such report furnished to the
25 commissioner shall not be provided to any other persons or entities and
26 shall be accorded the same confidentiality and other protections as pro-
27 vided above for voluntarily submitted documents. Any use of an insurance
28 compliance self-evaluative audit document furnished as a result of a re-
29 quest of the commissioner under a claim of authority to compel disclosure
30 shall be limited to determining whether or not any disclosed defects in
31 an insurers' policies and procedures or inappropriate treatment of cus-
32 tomers has been remedied or that an appropriate plan for their remedy
33 is in place.

34 (1) Any insurance company's insurance compliance self-evaluative
35 audit document submitted to the commissioner shall remain subject to
36 all applicable statutory or common law privileges including, but not lim-
37 ited to, the work product doctrine, attorney-client privilege, or the sub-
38 sequent remedial measures exclusion.

39 (2) Any compliance self-evaluative audit document so submitted and
40 in the possession of the commissioner shall remain the property of the
41 insurance company and shall not be subject to any disclosure or produc-
42 tion under the Kansas open records act. The provision of this paragraph
43 shall expire on July 1, ~~2010~~ 2015, unless the legislature reenacts such

6-9

1 provision. The provision of this paragraph shall be reviewed by the leg-
2 islature prior to July 1, ~~2010~~ 2015.

3 (d) Disclosure of an insurance compliance self-evaluative audit doc-
4 ument to a governmental agency, whether voluntary or pursuant to com-
5 pulsion of law, shall not constitute a waiver of the privilege set forth in
6 subsection (a) with respect to any other persons or any other govern-
7 mental agencies. Nothing in this act shall prohibit the division of post
8 audit from having access to all insurance compliance self-evaluative audit
9 documents in the custody of the commissioner.

38-2309

10 Sec. 4. K.S.A. 60-3351 and 74-7405a and K.S.A. 2009 Supp. ~~38-1664,~~
11 45-229 and 79-1437f are hereby repealed.

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

K.S.A. 2009 Supp. 38-2309. (a) Official file. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

- (1) A judge of the district court and members of the staff of the court designated by the judge;
- (2) parties to the proceedings and their attorneys;
- (3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;
- (4) the juvenile's court appointed special advocate;
- (5) any placement provider or potential placement provider as determined by the commissioner or court services officer;
- (6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;
- (7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;
- (8) juvenile intake and assessment workers;
- (9) the commissioner;
- (10) any other person when authorized by a court order, subject to any conditions imposed by the order; and
- (11) the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

(c) Social file. Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates ~~and~~ juvenile community corrections officers, the juvenile's guardian ad litem, if any, or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) Preservation of records. The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

HOUSE BILL No. 2429

By Committee on Vision 2020

1-12

9 AN ACT concerning judges of the district court; relating to the reassign-
10 ment of positions; amending K.S.A. 20-327, 20-333, 20-336, 20-348,
11 20-354 and 20-2908 and repealing the existing sections; also repealing
12 K.S.A. 20-301b, 20-338 and 20-354a.

20-334,

, 20-2908, 20-2914 and 20-2915

20-337,

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

15 Section 1. K.S.A. 20-327 is hereby amended to read as follows: 20-
16 327. All judges of district courts elected under the provisions of this act
17 shall be elected for terms of four years and until their successors are
18 elected and qualified *unless otherwise provided pursuant to K.S.A. 20-*
19 *354, and amendments thereto.*

20 Sec. 2. K.S.A. 20-333 is hereby amended to read as follows: 20-333.
21 Whenever under the provisions of this act provision is made for the abol-
22 ishment of the office of district judge *or district magistrate judge* in any
23 judicial district, and the district judge *or district magistrate judge* holding
24 any such office shall die, resign or retire during the four (4) years next
25 preceding the date fixed for the abolishment of such office, such office
26 shall be and is hereby abolished at the time of such death, resignation or
27 retirement.

28 Sec. 3. K.S.A. 20-336 is hereby amended to read as follows: 20-336.
29 In any judicial district which has not approved the proposition of non-
30 partisan selection of district court judges, election laws applicable to the
31 election of ~~county officers~~ *district judges* shall govern every election of
32 district magistrate judges. Each district magistrate judge shall be elected
33 by the electors of the county *or counties* where the judge's position is
34 located *and assigned by the chief judge of the judicial district.*

35 Sec. 4. K.S.A. 20-354 is hereby amended to read as follows: 20-
36 354. (a) ~~If, upon the death, resignation, retirement or removal of a dis-~~
37 ~~trict magistrate judge of a county in which there are two or more district~~
38 ~~magistrate judge positions or in which there also is at least one district~~
39 ~~judge position,~~ the supreme court determines that the continuation of
40 ~~the vacant~~ a district magistrate judge position is unnecessary, due to the
41 *yearly average caseload of the district magistrate judge being less than*
42 *600 cases and the ability of the remaining judges of the district court in*
43 ~~the county~~ *judicial district* to assume the entire judicial workload of the

House Judiciary
Date 2-16-10
Attachment # 7

17-2

1 county, the supreme court shall certify the elimination *and reassignment*
2 of the district magistrate judge position to the secretary of state. Where
3 the position to be eliminated is in a judicial district in which the propo-
4 sition of nonpartisan selection of district court judges has been approved,
5 such certification also shall be made to the chairperson of the district
6 judicial nominating commission of the judicial district. *The terms of office*
7 *of district magistrate judges determined to be unnecessary and reassigned*
8 *for district magistrate judges holding office in January of the year follow-*
9 *ing the determination, shall expire on the last day of the term for which*
10 *the district magistrate judge is currently holding office. The supreme court*
11 *shall designate any district magistrate positions to be abolished no later*
12 *than one year prior to the end of the term for which the current district*
13 *magistrate judge is serving.*

14 (b) *In counties where district magistrate judge positions are elimi-*
15 *nated, the chief judge of such judicial district shall assign a district mag-*
16 *istrate judge from another county in the judicial district to be the district*
17 *magistrate judge for such county. If a district magistrate judge is assigned*
18 *to more than one county in a judicial district in which the proposition of*
19 *nonpartisan selection of district court judges has been approved, the dis-*
20 *trict magistrate judge shall be subject to retention by the electors of the*
21 *counties to which such district magistrate judge has been assigned. If a*
22 *district magistrate judge is assigned to more than one county in a judicial*
23 *district in which the proposition of nonpartisan selection of district court*
24 *judges has not been approved, the district magistrate judge shall be elected*
25 *at the next general election held in November by the electors of the coun-*
26 *ties to which such district magistrate judge has been assigned.*

27 (c) *In counties where district magistrate judge positions are elimi-*
28 *nated or from which district magistrate judge positions are reassigned,*
29 *the county commission may elect to retain the position and pay the salary*
30 *of the current district magistrate judge. Any such district magistrate judge*
31 *shall have the same power and authority as a district magistrate judge*
32 *position established by the supreme court. Such judge shall receive the*
33 *salary and other compensation set by resolution of the board of county*
34 *commissioners which shall be paid from the revenues of the county general*
35 *fund or other fund established for the purpose of financing such position.*
36 *The chief judge of each judicial district with a district magistrate judge*
37 *position being funded by a county shall report to the judicial administra-*
38 *tor of the courts: (1) The dates on which such judge served in such district,*
39 *(2) the compensation paid to such judge, and (3) such other information*
40 *as the judicial administrator may request with regard to the district mag-*
41 *istrate judge position being funded by a county. The reports shall be sub-*
42 *mitted annually on or before January 15 on forms provided by the judicial*
43 *administrator.*

1 (d) *As used in this section, the yearly average caseload shall not in-*
 2 *clude those cases which are traffic infractions or violations and shall in-*
 3 *clude those cases which are filed pursuant to the revised Kansas code for*
 4 *the care of children, article 22 of chapter 38 of the Kansas Statutes An-*
 5 *notated, and amendments thereto; the revised Kansas juvenile justice code,*
 6 *article 23 of chapter 38 of the Kansas Statutes Annotated, and amend-*
 7 *ments thereto; and the probate code, chapter 59 of the Kansas Statutes*
 8 *Annotated, and amendments thereto.*

9 Sec. 5. K.S.A. 20-2908 is hereby amended to read as follows: 20-
 10 2908. Following the approval of nonpartisan selection of judges of the
 11 district court in a judicial district as provided in K.S.A. 20-2901 and
 12 amendments thereto, there shall not be an election or reelection of a
 13 judge of the district court at any succeeding general election, but any
 14 judge of the district court in the judicial district whose term of office
 15 expires on the second Monday in January next following any such suc-
 16 ceeding general election shall be eligible for retention in office as pro-
 17 vided in this section. No later than 12:00 noon on the Monday preceding
 18 the first Tuesday of August preceding the expiration of the judge's term
 19 of office, the judge may file in the office of the secretary of state a dec-
 20 laration of candidacy for retention in office. Such declaration shall be
 21 prescribed by the secretary of state. If a declaration is not so filed, the
 22 position held by the judge shall be vacant upon the expiration of the
 23 judge's term of office. If a declaration is filed, the judge's name shall be
 24 submitted at the next general election to the electors of the judicial dis-
 25 trict, if the judge is a district judge, or to the electors of the county or
 26 counties, if the judge is a district magistrate judge *and assigned to such*
 27 *counties*. The name shall be submitted on a separate judicial ballot, with-
 28 out party designation, reading substantially as follows:

29 "Shall _____

30 (Here insert name of judge.)

31 _____

32 (Here insert the title of the court.)

33 be retained in office?"

34 If a majority of those voting on the question vote against retaining the
 35 person in office, the position or office which the person holds shall be
 36 vacant upon the expiration of the person's term of office; otherwise, unless
 37 removed for cause, the person shall remain in office for the regular term
 38 of four years from the second Monday in January following the election.
 39 At the expiration of each term, unless by law the person is compelled to
 40 retire, the person shall be eligible for retention in office by election in
 41 the manner prescribed in this section.

42 Wherever a majority of those voting on the question of retaining any
 43 judge in office vote against retention, the secretary of state, following the

1 final canvass of votes on the question, shall certify the results to the chief
2 justice of the supreme court. Any judge who has not been retained in
3 office pursuant to this section shall not be eligible for nomination or
4 appointment to the office of judge of the district court in the judicial
5 district prior to the expiration of four years after the expiration of the
6 judge's term of office.

7 Election laws applicable to the general elections of other state officers
8 shall apply to elections upon the question of retention of judges of the
9 district court pursuant to this section, to the extent that they are consistent
10 with the provisions of this act.

11 Sec. 6. K.S.A. 20-348 is hereby amended to read as follows: 20-348.
12 Except for expenses required by law to be paid by the state, the board of
13 county commissioners of each have an obligation to adequately fund the
14 operation of the district court in the county and shall be responsible for
15 all expenses incurred for the operation of the district court in the county.
16 *Counties from which district magistrate judge positions have been elim-*
17 *inated pursuant to K.S.A. 20-333 or 20-354, and amendments thereto,*
18 *shall remain responsible for all expenses incurred as that county's share*
19 *of the operations of the district court within the judicial district, as de-*
20 *termined by the chief judge of the judicial district.*

21 New Sec. 7. If the supreme court determines that, in order to effec-
22 tively expedite the business of the district court in any judicial district,
23 the district judge position should be eliminated and that an additional
24 position or positions of district magistrate judge should be created in any
25 judicial district, the supreme court shall certify to the secretary of state
26 the elimination of the district judge position and the creation of the ad-
27 ditional position or positions of district magistrate judge. If the position
28 or positions are to be created in a judicial district in which the proposition
29 of nonpartisan selection of district court judges has been approved, cer-
30 tification also shall be made to the chairperson of the district judicial
31 nominating commission of the judicial district. When the certification has
32 been made, the position or division shall be deemed created and the
33 judgeship therefor shall be deemed vacant, to be filled in the manner
34 provided by law for filling vacancies in judgeships in the judicial district.
35 If the position or positions are to be created in a judicial district in which
36 the proposition of nonpartisan selection of district court judges has not
37 been approved, the district magistrate judge shall be selected at the next
38 general election held in November by the electors of the county to which
39 such district magistrate judge has been assigned.

40 Sec. 8. K.S.A. 20-301b, 20-327, 20-333, 20-336, 20-338, 20-348, 20-
41 354, 20-354a and 20-2908 are hereby repealed.

42 Sec. 9. This act shall take effect and be in force from and after its
43 publication in the statute book.

Sec. 8, 9, and 10, see attached.
Renumber remaining sections accordingly.

20 -337,

20-334,

, 20-2908, 20-2914 and 20-2915

Sec. 8. K.S.A. 20-334 is hereby amended to read as follows: 20-334. (a) Subject to the provisions of K.S.A. 20-2909, and amendments thereto, any person who is elected, retained in office or appointed as a district judge or district magistrate judge shall:

(1) Have been regularly admitted to practice law in the state of Kansas;

(2) (A) for a district judge, be a resident of the judicial district for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the judicial district while holding office; or

(B) for a district magistrate judge, be a resident of the county for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the county while holding office; and

(3) for a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school or any combination thereof.

~~(b) Any person who is elected, retained in office or appointed as a district magistrate judge shall:~~

~~(1) Be a graduate of a high school or secondary school or the equivalent thereof;~~

~~(2) be a resident of the county for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the county while holding office; and~~

~~(3) if not regularly admitted to practice law in Kansas, be certified by the supreme court, in the manner prescribed by K.S.A. 20-337 and amendments thereto, as qualified to serve as a district magistrate judge.~~

(b) Any person who is a district magistrate who does not meet the requirements of subsection (a)(1) on the effective date of this act shall be allowed to retain such person's office until such person resigns, retires or is removed from office. Such person shall be subject to the election or retention requirements of all other district magistrate judges.

Sec. 9. K.S.A. 20-2914 is hereby amended to read as follows: 20-2914. (a) Whenever a vacancy shall occur in the office of district magistrate judge in any judicial district which has approved the proposition of nonpartisan selection of district court judges, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court promptly shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district. The chairperson, in consultation with members of the commission, within five days after receipt of such notice, shall set a schedule for accepting nominations and ~~conducting~~ conducting interviews for the purpose of selecting a person to fill such vacancy. Any person so selected shall have the qualifications prescribed by ~~subsection (c) of~~ K.S.A. 20-334, and in order to obtain the best qualified person as a district magistrate judge, the commission shall not limit its consideration of potential appointees to those persons whose names have been submitted to the commission or who have expressed a willingness to serve. The commission may authorize one or more members of the commission to tender an appointment to any qualified person in order to ascertain such person's willingness to serve if appointed. Any such tender of appointment shall be subject to final action of the commission under the conditions prescribed by subsection (b) of K.S.A. 20-2907, and amendments thereto.

(b) Any appointment made pursuant to subsection (a) shall be contingent upon the acceptance of such appointment by the person so appointed and, ~~if such person is not regularly admitted to practice law in Kansas, the appointment shall be made on a temporary basis until such person has been certified by the supreme court as qualified to hold such office, in the manner provided by K.S.A. 20-337, and amendments thereto.~~

Sec. 10. K.S.A. 20-2915 is hereby amended to read as follows: 20-2915. (a) Whenever a vacancy in the office of district magistrate judge exists at the time the appointment to fill such vacancy is made as provided in K.S.A. 20-2914, and amendments thereto, the appointment shall be effective as of the official appointment date set by the supreme court.

(b) Any person appointed to the office of district magistrate judge as provided in K.S.A. 20-2914, and amendments thereto, shall commence upon the duties of office on the date such appointment takes effect, and any such person appointed shall have all the rights, privileges, powers and jurisdiction prescribed by law for the office of district magistrate judge. ~~Except as otherwise provided in K.S.A. 20-337 and amendments thereto,~~ Any such judge shall be eligible for retention in office in the same manner and under the same conditions prescribed by law for the retention of district judges in judicial districts which have approved the proposition of nonpartisan selection of district court judges.

House Concurrent Resolution No. 5026

By Committee on Vision 2020

1-12

9 A CONCURRENT RESOLUTION requesting the Kansas supreme
10 court, in cooperation with the judicial council, to make a survey and
11 study of the Kansas court system; authorizing appointment of an ad-
12 visory committee; providing and requiring a report thereon to the ju-
13 diciary and the legislature.

14
15 *Be it resolved by the House of Representatives of the State of Kansas,*
16 *the Senate concurring therein:* That the Kansas legislature is hereby re-
17 questing the Kansas supreme court, in cooperation with the judicial coun-
18 cil, to make a survey and study of the Kansas court system including
19 municipal courts;

20 *Be it further resolved:* That such study and survey shall include: (1)
21 Unification and restructuring of the courts; ~~(2) administrative supervision~~
22 ~~of the courts; (3) selection, tenure, compensation and retirement of~~
23 ~~judges and court personnel; (4) appellate review; (5) financing of courts;~~
24 and (6) such other areas assigned to it by the chief justice;

(2) workload of judicial and nonjudicial personnel; (3) court record retention; (4) centralized court data network; (5) use of video conferencing and other methods for court hearings;

25 *Be it further resolved:* That the chief justice shall report to the judiciary
26 and the 2011 legislature on the study and survey;

27 *Be it further resolved:* That the supreme court may appoint a judicial
28 study advisory committee to assist in conducting the judicial study and
29 survey and to make recommendations to the judiciary and the legislature;

30 *Be it further resolved:* That the judicial study advisory committee shall
31 be considered a regular committee of the judicial council for the purpose
32 of receiving per diem allowances;

33 *Be it further resolved:* That the Secretary of State be directed to send
34 an enrolled copy of this resolution to the Chief Justice of the Kansas
35 Supreme Court.

House Judiciary
Date 2-16-10
Attachment # 8