

SENATE BILL No. 15

By Committee on Judiciary

1-13

1 AN ACT concerning civil procedure; relating to dispositive motions;
2 amending K.S.A. 2014 Supp. 60-256 and repealing the existing section.
3

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

5 New Section 1. (a) On and after the effective date of this act, any
6 party filing a dispositive motion shall pay a fee in the amount of \$195 to
7 the clerk of the district court. A poverty affidavit may be filed in lieu of
8 payment of such fee, as established in K.S.A. 60-2001, and amendments
9 thereto. The fee shall be disbursed in accordance with K.S.A. 20-362, and
10 amendments thereto. The fee shall only be established by an act of the
11 legislature and no other authority is established by law or otherwise to
12 collect such fee. Such fee shall be an item allowable as a cost pursuant to
13 K.S.A. 60-2003, and amendments thereto.

14 (b) As used in this section, "dispositive motion" means a motion to
15 dismiss, a motion for judgment on the pleadings, a motion for summary
16 judgment or partial summary judgment or a motion for judgment as a
17 matter of law.

18 (c) The state of Kansas and all municipalities in this state, as defined
19 in K.S.A. 12-105a, and amendments thereto, shall be exempt from paying
20 such fee.

21 (d) The provisions of this section shall not apply to an action pursuant
22 to the code of civil procedure for limited actions.

23 (e) This section shall be part of and supplemental to the code of civil
24 procedure.

25 Sec. 2. K.S.A. 2014 Supp. 60-256 is hereby amended to read as
26 follows: 60-256. (a) *By a claiming party.* A party claiming relief may
27 move, with or without supporting affidavits or supporting declarations
28 pursuant to K.S.A. 53-601, and amendments thereto, for summary
29 judgment on all or part of the claim.

30 (b) *By a defending party.* A party against whom relief is sought may
31 move, with or without supporting affidavits or supporting declarations
32 pursuant to K.S.A. 53-601, and amendments thereto, for summary
33 judgment on all or part of the claim.

34 (c) *Time for a motion; response and reply; proceedings.* (1) These
35 times apply unless a different time is set by local rule or the court orders
36 otherwise:

1 (A) A party may move for summary judgment at any time until 30
2 days after the close of all discovery;

3 (B) a party opposing the motion must file a response within 21 days
4 after the motion is served or a responsive pleading is due, whichever is
5 later; and

6 (C) the movant may file a reply within 14 days after the response is
7 served.

8 (2) The judgment sought should be rendered if the pleadings, the
9 discovery and disclosure materials on file, and any affidavits or
10 declarations show that there is no genuine issue as to any material fact and
11 that the movant is entitled to judgment as a matter of law.

12 (d) *Case not fully adjudicated on the motion. (1) Establishing facts.* If
13 summary judgment is not rendered on the whole action, the court should,
14 to the extent practicable, determine what material facts are not genuinely
15 at issue. The court should so determine by examining the pleadings and
16 evidence before it and by interrogating the attorneys. It should then issue
17 an order specifying what facts, including items of damages or other relief,
18 are not genuinely at issue. The facts so specified must be treated as
19 established in the action.

20 (2) *Establishing liability.* An interlocutory summary judgment may be
21 rendered on liability alone, even if there is a genuine issue on the amount
22 of damages.

23 (e) *Affidavits or declarations; further testimony. (1) In general.* A
24 supporting or opposing affidavit or declaration must be made on personal
25 knowledge, set out facts that would be admissible in evidence and show
26 that the affiant or declarant is competent to testify on the matters stated. If
27 a paper or part of a paper is referred to in an affidavit or declaration, a
28 sworn or certified copy must be attached to or served with the affidavit or
29 declaration. The court may permit an affidavit or declaration to be
30 supplemented or opposed by depositions, answers to interrogatories or
31 additional affidavits or declarations.

32 (2) *Opposing party's obligation to respond.* When a motion for
33 summary judgment is properly made and supported, an opposing party
34 may not rely merely on allegations or denials in its own pleading; rather,
35 its response must, by affidavits or by declarations pursuant to K.S.A. 53-
36 601, and amendments thereto, or as otherwise provided in this section, set
37 out specific facts showing a genuine issue for trial. If the opposing party
38 does not so respond, summary judgment should, if appropriate, be entered
39 against that party.

40 (f) *When affidavits or declarations are unavailable.* If a party
41 opposing the motion shows by affidavit or by declaration pursuant to
42 K.S.A. 53-601, and amendments thereto, that, for specified reasons, it
43 cannot present facts essential to justify its opposition, the court may:

1 (1) Deny the motion;

2 (2) order a continuance to enable affidavits or declarations to be
3 obtained, depositions to be taken or other discovery to be undertaken; or

4 (3) issue any other just order.

5 (g) *Affidavits or declarations submitted in bad faith.* If satisfied that
6 an affidavit or declaration under this section is submitted in bad faith or
7 solely for delay, the court must order the submitting party or attorney to
8 pay the other party the reasonable expenses, including attorney's fees, it
9 incurred as a result. An offending party or attorney may be held in
10 contempt.

11 ~~(h) *Fee for filing a motion for summary judgment.* (1) On and after~~
12 ~~July 1, 2014, any party filing a motion for summary judgment shall pay a~~
13 ~~fee in the amount of \$195 to the clerk of the district court.~~

14 ~~(2) A poverty affidavit may be filed in lieu of a fee as established in~~
15 ~~K.S.A. 60-2001, and amendments thereto.~~

16 ~~(3) The fee shall be disbursed in accordance with K.S.A. 20-362, and~~
17 ~~amendments thereto.~~

18 ~~(4) Such fee shall only be established by an act of the legislature and~~
19 ~~no other authority is established by law or otherwise to collect a fee.~~

20 ~~(5) The state of Kansas and all municipalities in this state, as defined~~
21 ~~in K.S.A. 12-105a, and amendments thereto, shall be exempt from paying~~
22 ~~such fee.~~

23 ~~(6) The provisions of this subsection shall not apply to an action~~
24 ~~pursuant to the code of civil procedure for limited actions.~~

25 Sec. 3. K.S.A. 2014 Supp. 60-256 is hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its
27 publication in the Kansas register.