

SENATE BILL No. 20

By Committee on Judiciary

1-15

1 AN ACT concerning civil procedure; relating to **temporary restraining**
2 **orders**; docket fees and costs; poverty affidavit; amending K.S.A. **60-**
3 **903 and K.S.A. 2012 Supp. 60-2001** and repealing the existing section
4 sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **Section 1. K.S.A. 60-903 is hereby amended to read as follows: 60-**
8 **903.** (a) ~~No notice or bond required. A restraining order may issue without~~
9 ~~notice or bond, except as provided in subsection (b) of K.S.A. 60-904, and~~
10 ~~amendments thereto, but if it appears to the judge that a restraining order~~
11 ~~may result in damage to the party restrained, a bond to secure payment of~~
12 ~~any damages sustained may be required. An application for a restraining~~
13 ~~order shall also be considered as an application for a temporary injunction~~
14 ~~and either party may give notice of hearing thereon. The order shall remain~~
15 ~~in foree until the hearing on the application for a temporary injunction.~~

16 *(a) Temporary restraining order; issuing without notice. Except as*
17 *provided in subsection (b) of K.S.A. 60-904, and amendments thereto, the*
18 *court may issue a temporary restraining order without notice or bond to*
19 *the adverse party or its attorney only if:*

20 *(1) Specific facts in an affidavit or a verified complaint clearly show*
21 *that immediate and irreparable injury, loss or damage will result to the*
22 *movant before the adverse party can be heard in opposition;*

23 *(2) the movant's attorney certifies in writing any efforts made to give*
24 *notice and the reasons why it should not be required; and*

25 *(3) notice of the issuance of a temporary restraining order is*
26 *provided to the attorney general of the state of Kansas if the adverse party*
27 *is the state of Kansas or an agency, officer or employee thereof, or to the*
28 *appropriate city clerk or county clerk if the adverse party is a city or*
29 *county or an agency, officer or employee thereof.*

30 *(b) Contents; expiration. Every temporary restraining order issued*
31 *without notice must state the date and hour it was issued, describe the*
32 *injury and state why it is irreparable, state why the order was issued*
33 *without notice and be promptly filed in the clerk's office and entered in the*
34 *record. The order expires at the time after entry, not to exceed 14 days,*
35 *that the court sets, unless before that time the court, for good cause,*
36 *extends it for a like period or the adverse party consents to a longer*

1 extension. The reasons for an extension must be entered in the record.

2 (c) *Expediting the temporary injunction hearing.* If the temporary
3 restraining order is issued without notice, the motion for a temporary
4 injunction must be set for hearing at the earliest possible time, taking
5 precedence over all other matters except hearings on older matters of the
6 same character. At the hearing, the party who obtained the order must
7 proceed with the motion, and if the party does not, the court must dissolve
8 the order.

9 (d) **Service.** Where a temporary restraining order is issued without
10 notice, it shall be served upon each party restrained in the manner
11 prescribed for personal service of a summons.

12 (e) *Motion to Dissolve.* On two days' notice to the party who obtained
13 the temporary restraining order without notice, or on shorter notice set by
14 the court, the adverse party may appear and move to dissolve or modify
15 the order. The court must then hear and decide the motion as promptly as
16 justice requires.

17 (f) *Security.* Unless otherwise provided by statute or this section, no
18 temporary restraining order shall operate unless the party obtaining the
19 same shall give an undertaking with one or more sufficient sureties in an
20 amount fixed and approved by the judge of the court, securing to the party
21 injured the damages such injured party may sustain including attorney fees
22 if it be finally determined that the state nor any of its agencies shall be
23 required to give an undertaking with one or more sufficient sureties in
24 order to be granted a temporary restraining order. For any other party, at
25 the discretion of the judge, the undertaking required by this subsection
26 may be waived.

27 **Sec. 2.** K.S.A. 2012 Supp. 60-2001 is hereby amended to read as
28 follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no
29 case shall be filed or docketed in the district court, whether original or
30 appealed, without payment of a docket fee in the amount of \$156 on and
31 after July 1, 2009 through June 30, 2013, and \$154 on and after July 1,
32 2013, to the clerk of the district court. Except as provided further, the
33 docket fee established in this subsection shall be the only fee collected or
34 moneys in the nature of a fee collected for the docket fee. Such fee shall
35 only be established by an act of the legislature and no other authority is
36 established by law or otherwise to collect a fee. On and after the effective
37 date of this act through June 30, 2013, the supreme court may impose an
38 additional charge, not to exceed \$22 per docket fee, to fund the costs of
39 non-judicial personnel.

40 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case
41 where a plaintiff by reason of poverty is unable to pay a docket fee, and an
42 affidavit so stating is filed, ~~no fee will be required the court may issue an~~
43 ~~order authorizing the filing of a petition and establishing the amount of~~

1 ~~the filing fee to be paid~~ **no fee will be required.** An inmate in the custody
2 of the secretary of corrections may file a poverty affidavit only if the
3 inmate attaches a statement disclosing the average account balance, or the
4 total deposits, whichever is less, in the inmate's trust fund for each month
5 in: (A) The six-month period preceding the filing of the action; or (B) the
6 current period of incarceration, whichever is shorter. Such statement shall
7 be certified by the secretary. On receipt of the affidavit and attached
8 statement, the court shall determine the initial fee to be assessed for filing
9 the action and in no event shall the court require an inmate to pay less than
10 \$3. The secretary of corrections is hereby authorized to disburse money
11 from the inmate's account to pay the costs as determined by the court. If
12 the inmate has a zero balance in such inmate's account, the secretary shall
13 debit such account in the amount of \$3 per filing fee as established by the
14 court until money is credited to the account to pay such docket fee. Any
15 initial filing fees assessed pursuant to this subsection shall not prevent the
16 court, pursuant to subsection (d), from taxing that individual for the
17 remainder of the amount required under subsection (a) or this subsection.

18 (2) *Form of affidavit.* The affidavit provided for in this subsection
19 shall be in the following form and attached to the petition:

20 State of Kansas, _____ County.

21 ~~In the district court of the county: I do solemnly swear that the claim~~
22 ~~set forth in the petition herein is just, and I do further swear that, by reason~~
23 ~~of my poverty, I am unable to pay a docket fee. set forth a factual basis~~
24 ~~upon which the plaintiff alleges by reason of poverty an inability to pay a~~
25 ~~docket fee, including, but not limited to, the source and amount of the~~
26 ~~plaintiff's weekly income. Such affidavit shall be signed and sworn to by~~
27 ~~the plaintiff under oath, before one who has authority to administer the~~
28 ~~oath, under penalty of perjury, K.S.A. 2012 Supp. 21-5903, and~~
29 ~~amendments thereto. The form of the affidavit shall be deemed sufficient if~~
30 ~~in substantial compliance with the form set forth by the judicial council.~~

31 (3) *Court review; grounds for dismissal; service of process.* ~~The court~~
32 ~~shall review any petition authorized for filing under this subsection. Upon~~
33 ~~such review, the petition shall be dismissed by the court if the court finds~~
34 ~~that the plaintiff's allegation of poverty is untrue or the petition is~~
35 ~~frivolous, malicious or brought in bad faith, fails to state a claim on which~~
36 ~~relief may be granted or seeks monetary relief against a defendant who is~~
37 ~~immune from such relief. Upon such review, if the court finds that the~~
38 ~~plaintiff's allegation of poverty is untrue, the court shall direct the~~
39 ~~plaintiff to pay the docket fee or dismiss the petition without~~
40 ~~prejudice. Notwithstanding K.S.A. 60-301, and amendments thereto,~~
41 ~~service of process shall not issue unless the court grants leave following~~
42 ~~its review.~~

43 (c) *Disposition of fees.* The docket fees and the fees for service of

1 process shall be the only costs assessed in each case for services of the
2 clerk of the district court and the sheriff. For every person to be served by
3 the sheriff, the persons requesting service of process shall provide proper
4 payment to the clerk and the clerk of the district court shall forward the
5 service of process fee to the sheriff in accordance with K.S.A. 28-110, and
6 amendments thereto. The service of process fee, if paid by check or money
7 order, shall be made payable to the sheriff. Such service of process fee
8 shall be submitted by the sheriff at least monthly to the county treasurer
9 for deposit in the county treasury and credited to the county general fund.
10 The docket fee shall be disbursed in accordance with K.S.A. 20-362, and
11 amendments thereto.

12 (d) *Additional court costs.* Other fees and expenses to be assessed as
13 additional court costs shall be approved by the court, unless specifically
14 fixed by statute. Other fees shall include, but not be limited to, witness
15 fees, appraiser fees, fees for service of process, fees for depositions,
16 alternative dispute resolution fees, transcripts and publication, attorney
17 fees, court costs from other courts and any other fees and expenses
18 required by statute. All additional court costs shall be taxed and billed
19 against the parties as directed by the court. No sheriff in this state shall
20 charge any mileage for serving any papers or process.

21 ~~Sec. 2.~~ **3.** K.S.A. **60-903** and K.S.A. 2012 Supp. 60-2001 ~~is~~ **are**
22 hereby repealed.

23 ~~Sec. 3.~~ **4.** This act shall take effect and be in force from and after its
24 publication in the statute book.