

House Substitute for SENATE BILL No. 63

AN ACT concerning civil procedure; relating to electronic filing; relating to forfeiture; amending K.S.A. 60-426, 60-2601 and 60-2601a and K.S.A. 2010 Supp. 60-3003, 60-4107 and 60-4109 and repealing the existing sections.

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

New Section 1. The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) *Disclosure made in a court or agency proceeding; scope of waiver.* When the disclosure is made in a court or agency proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in any proceeding only if:

- (1) The waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness be considered together.

(b) *Inadvertent disclosure.* When made in a court or agency proceeding, the disclosure does not operate as a waiver in any proceeding if:

- (1) The disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including, if applicable, following subsection (b)(7)(B) of K.S.A. 60-226, and amendments thereto.

(c) *Disclosure made in a non-Kansas proceeding.* When the disclosure is made in a non-Kansas proceeding and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in a Kansas proceeding if the disclosure:

- (1) Would not be a waiver under this section if it had been made in a Kansas proceeding; or
- (2) is not a waiver under the law of the jurisdiction where the disclosure occurred.

(d) *Controlling effect of a court order.* A court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court, in which event the disclosure is also not a waiver in any other proceeding.

(e) *Controlling effect of a party agreement.* An agreement on the effect of disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) *Definitions.* As used in this section:

- (1) “Attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications.
- (2) “Work-product protection” means the protection that applicable law provides for tangible material, or its intangible equivalent, prepared in anticipation of litigation or for trial.

Sec. 2. K.S.A. 60-426 is hereby amended to read as follows: 60-426.

(a) *General rule.* Subject to K.S.A. 60-437, and amendments thereto, and except as otherwise provided by subsection (b), of this section communications found by the judge to have been between lawyer an attorney and his or her such attorney’s client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege: (1) If he or she such client is the witness, to refuse to disclose any such communication, and; (2) to prevent his or her lawyer such client’s attorney from disclosing it; and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer attorney, or (ii) in a manner not reasonably to be anticipated by the client; or (iii) as a result of a breach of the lawyer-client attorney-client relationship. The privilege may be claimed by the client in person or by his or her lawyer such client’s attorney, or if an incapacitated person, by either his or her such person’s guardian or conservator, or if deceased, by his or her such person’s personal representative.

(b) *Exceptions.* Such privileges shall not extend to a communication:

- (1) to a communication If the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or; (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by

~~inter vivos transaction, or; (3) to a communication relevant to an issue of breach of duty by the lawyer attorney to his or her such attorney's client, or by the client to his or her lawyer, or such client's attorney; (4) to a communication relevant to an issue concerning an attested document of which the lawyer attorney is an attesting witness; or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer an attorney whom they have retained in common when offered in an action between any of such clients.~~

(c) *Definitions.* As used in this section:

(1) "Client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer an attorney or lawyer's attorney's representative for the purpose of retaining the lawyer attorney or securing legal service or advice from the lawyer attorney in his or her a professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person, so consults the lawyer attorney or the lawyer's attorney's representative in behalf of the incapacitated person;

(2) "Communication" includes advice given by the lawyer attorney in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer attorney incidental to the professional relationship;

(3) "lawyer Attorney" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer attorney.

Sec. 3. K.S.A. 60-2601 is hereby amended to read as follows: 60-2601.

(a) *General powers and duties.* In the performance of their duties all clerks of record shall be under the direction of the court.

(b) *Dockets.* Subject to the provisions of K.S.A. 60-2601a, and amendments thereto, the clerk of the court shall keep the following dockets or other records which may be ordered by the court in the following manner:

(1) *Appearance docket.* The clerk shall keep one or more appearance dockets and enter each civil action in the docket. Actions within each appearance docket shall be assigned consecutive file numbers. The file number of each action shall be noted on the docket on which the first entry of the action is made. All papers filed with the clerk, all process issued and returns made and, all appearances, orders, verdicts and judgments shall be noted chronologically on the appearance docket. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process.

(2) *General index.* The general index shall be kept in a form in which names are arranged in alphabetical order. Plaintiffs, petitioners, defendants and respondents shall be listed as well as the case file number.

(c) *Issuance of writs and orders.* All writs and orders for provisional remedies shall be issued by the clerks of the several courts, upon praecipes filed with the clerk, demanding the writs and orders.

(d) *Filing and preservation of papers.* Except as otherwise provided by law, it is the duty of the clerk of each of the courts to file together and carefully preserve in the office of the clerk all papers delivered to the clerk for that purpose, in every action or special proceeding. ~~The clerk shall keep the papers separate in each case, carefully enveloped in a wrapper or folder labeled with the title of the cause. Orders and journal entries requiring the signature of the judge shall have the date and time of day stamped on them by the clerk immediately upon receipt of the signed order or journal entry and the clerk or deputy shall initial the stamp. The clerk shall stamp on all other filed papers, the date and time of day of receiving them and initial the stamp. The date and time of receipt of filings received by the clerk shall be recorded.~~

Sec. 4. K.S.A. 60-2601a is hereby amended to read as follows: 60-2601a. In any county which has a computer information storage and retrieval system for the use of the clerk of the district court of such county, the records and information required to be maintained in the dockets and journals under the provisions of ~~subsections~~ subsection (b) (1), (2), (3), and (4) of K.S.A. 60-2601, and amendments thereto, may, upon order of the ~~chief judge of such~~ supreme court, be maintained in such computer information storage and retrieval system. The clerk of the district court of such

county shall be charged with the responsibility of making such records and information maintained in such computer information storage and retrieval system accessible to the public during normal working hours.

Sec. 5. K.S.A. 2010 Supp. 60-3003 is hereby amended to read as follows: 60-3003. (a) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's ~~lawyer~~ attorney shall make and file with the clerk of the district court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the judgment creditor or the judgment creditor's ~~lawyer~~ attorney shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's ~~lawyer~~ attorney, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the clerk of the district court and may file proof of mailing with the clerk of the district court.

Sec. 6. K.S.A. 2010 Supp. 60-4107 is hereby amended to read as follows: 60-4107. (a) Property may be seized for forfeiture by a law enforcement officer upon process issued by the district court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for the property's forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The court may order that the property be seized on such terms and conditions as are reasonable in the discretion of the court. The order may be made on or in connection with a search warrant. All real property is to be seized constructively or pursuant to a pre-seizure adversarial judicial determination of probable cause, except that this determination may be done ex parte when the attorney for the state has demonstrated exigent circumstances to the court.

(b) Property may be seized for forfeiture by a law enforcement officer without process on probable cause to believe the property is subject to forfeiture under this act.

(c) Property may be seized constructively by:

(1) Posting notice of seizure for forfeiture or notice of pending forfeiture on the property.

(2) Giving notice pursuant to K.S.A. 60-4109, and amendments thereto.

(3) Filing or recording in the public records relating to that type of property notice of seizure for forfeiture, notice of pending forfeiture, a forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to this act are not subject to a filing fee or other charge, *except that court costs may be assessed and, if assessed, shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and any additional court costs accrued in the action.*

(d) The seizing agency shall make reasonable effort to provide notice of the seizure to the person from whose possession or control the property was seized and any interest holder of record within 30 days of seizing the property. If no person is in possession or control, the seizing agency may attach the notice to the property or to the place of the property's seizure or may make a reasonable effort to deliver the notice to the owner of the property. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency and the address and telephone number of the seizing officer or other person or agency from whom information about the seizure may be obtained.

(e) A person who acts in good faith and in a reasonable manner to comply with an order of the court or a request of a law enforcement officer is not liable to any person on account of acts done in reasonable compliance with the order or request. No liability may attach from the fact that a person declines a law enforcement officer's request to deliver property.

(f) A possessory lien of a person from whose possession property is seized is not affected by the seizure.

(g) When property is seized for forfeiture under this act, the seizing agency shall, within 45 days of such seizure, forward to the county or district attorney in whose jurisdiction the seizure occurred, a written request for forfeiture which shall include a statement of facts and circumstances of the seizure, the estimated value of the property, the owner and lienholder

of the property, the amount of any lien, and a summary of the facts relied on for forfeiture.

(h) Upon receipt of a written request for forfeiture from a local law enforcement agency, the county or district attorney shall have 14 days to accept the request. Should such county or district attorney decline such request, or fail to answer, the seizing agency may:

(1) Request a state law enforcement agency which enforces this act to adopt the forfeiture; or

(2) engage an attorney, approved by the county or district attorney, to represent the agency in the forfeiture proceeding.

(i) Upon receipt of a written request for forfeiture from a state law enforcement agency, the county or district attorney shall have 14 days to accept the request. Should such county or district attorney decline such request, or fail to answer, the seizing agency may engage an assistant attorney general or other attorney approved by the attorney general's office to represent the agency in the forfeiture proceeding.

(j) Nothing in this act shall prevent the attorney general, an employee of the attorney general or an authorized representative of the attorney general from conducting forfeiture proceedings under this act.

(k) Nothing in this act shall prevent a seizing agency from requesting federal adoption of a seizure. It shall not be necessary to obtain any order pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized property to a federal agency should the county or district attorney approve of such transfer.

(l) Nothing in this act shall prevent a seizing agency, or the plaintiff's attorney on behalf of the seizing agency, from settling any alleged forfeiture claim against property before or during forfeiture proceedings. Such settlement shall be in writing and shall be approved, if a local agency, by the county or district attorney or, if a state agency, by the attorney general's office and a district court judge. No hearing or other proceeding shall be necessary. The records of settlements occurring prior to commencement of judicial forfeiture proceedings in the district court shall be retained by the county or district attorney for not less than five years.

(m) Settlements under this act shall not be conditioned upon any disposition of criminal charges.

Sec. 7. K.S.A. 2010 Supp. 60-4109 is hereby amended to read as follows: 60-4109. (a) Forfeiture proceedings shall be commenced by filing a notice of pending forfeiture or a judicial forfeiture action:

(1) If the plaintiff's attorney fails to initiate forfeiture proceedings by notice of pending forfeiture within 90 days against property seized for forfeiture or if the seizing agency fails to pursue forfeiture of the property upon which a proper claim has been timely filed by filing a judicial forfeiture proceeding within 90 days after notice of pending forfeiture, the property shall be released on the request of an owner or interest holder to such owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to this act. Such custodianship shall not exceed 90 days following the release to the owner or interest holder unless an extension is authorized by the court for good cause shown.

(2) If, after notice of pending forfeiture, a claimant files a petition for recognition of exemption pursuant to K.S.A. 60-4110, and amendments thereto, the plaintiff's attorney may delay filing the judicial forfeiture proceeding for a total of 180 days after the notice of pending forfeiture except that if an interest holder timely files a proper petition documenting the complete nature and extent of such holder's interest, including all of the contractual terms and current status, the plaintiff's attorney may delay filing a judicial forfeiture proceeding only if such attorney provides each such petitioner with a written recognition of exemption within 60 days after the effective date of the notice of pending forfeiture, recognizing the interest of such petitioner to the extent of documented outstanding principal plus interest at the contract rate until paid and any attorney fees ordered by a court pursuant to such contract.

(3) Whenever notice of pending forfeiture or service of an in rem complaint or notice of a recognition of exemption and statement of nonexempt interests is required under this act, notice or service shall be given in accordance with one of the following:

(A) If the owner's or interest holder's name and current address are known, by either personal service by any person qualified to serve process

or by any law enforcement officer or by mailing a copy of the notice by certified mail, return receipt requested, to the known address;

(B) if the owner's or interest holder's name and address are required by law to be on record with a municipal, county, state or federal agency to perfect an interest in the property, and the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail, return receipt requested, to any address of record with any of the described agencies; or

(C) if the owner's or interest holder's address is not known and is not on record as provided in paragraph (B), or the owner's or interest holder's interest is not known, by publication in one issue of the official county newspaper, as defined by K.S.A. 64-101, and amendments thereto, in the county in which the seizure occurred.

(4) Notice is effective upon personal service, publication or the mailing of a written notice, whichever is earlier, except that notice of pending forfeiture of real property is not effective until it is recorded. Notice of pending forfeiture shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged and a summary of procedures and procedural rights applicable to the forfeiture action.

(b) The plaintiff's attorney, without a filing fee, may file a lien for the forfeiture of property upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under this act or upon seizure for forfeiture. *Court costs may be assessed and, if assessed, shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and any additional court costs accrued in the action.* A plaintiff's attorney may also file a forfeiture lien in this state in connection with a proceeding or seizure for forfeiture in any other state under a state or federal statute substantially similar to the relevant provisions of this act. The filing constitutes notice to any person claiming an interest in the seized property or in property owned by the named person.

(1) The lien notice shall set forth the following:

(A) The name of the person and, in the discretion of the lienor, any alias, or the name of any corporation, partnership, trust or other entity, including nominees, that are owned entirely or in part or controlled by the person; and

(B) the description of the seized property, the criminal or civil proceeding that has been brought relating to conduct giving rise to forfeiture under this act, the amount claimed by the lienor, the name of the district court where the proceeding or action has been brought, and the case number of the proceeding or action if known at the time of filing.

(2) A lien filed pursuant to this subsection applies to the described seized property or to one named person, any aliases, fictitious names, or other names, including the names of any corporation, partnership, trust, or other entity, owned entirely or in part, or controlled by the named person, and any interest in real property owned or controlled by the named person. A separate forfeiture lien shall be filed for each named person.

(3) The notice of lien creates, upon filing, a lien in favor of the lienor as it relates to the seized property or the named person or related entities. The lien secures the amount of potential liability for civil judgment, and if applicable, the fair market value of seized property relating to all proceedings under this act enforcing the lien. The notice of forfeiture lien referred to in this subsection shall be filed in accordance with the provisions of the laws of this state relating to the type of property that is subject to the lien. The validity and priority of the forfeiture lien shall be determined in accordance with applicable law pertaining to liens. The lienor may amend or release, in whole or in part, a lien filed under this subsection at any time by filing, without a filing fee, an amended lien in accordance with this subsection which identifies the lien amended. The lienor, as soon as practical after filing the lien, shall furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection shall not invalidate or otherwise affect the lien.

(4) Upon entry of judgment in the seizing agency's favor, the seizing agency may proceed to execute on the lien as provided by law.

(5) A trustee, constructive or otherwise, who has notice that a notice of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as record owner, shall

furnish within 14 days, to the seizing agency or the plaintiff's attorney all of the following information, unless all of the information is of record in the public records giving notice of liens on that type of property:

(A) The name and address of each person or entity for whom the property is held;

(B) the description of all other property whose legal title is held for the benefit of the named person; and

(C) a copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as record owner of the property.

(6) A trustee with notice who knowingly fails to comply with the provisions of this subsection shall be guilty of a class B nonperson misdemeanor.

(7) A trustee with notice who fails to comply with paragraph (5) is subject to a civil penalty of \$100 for each day of noncompliance. The court shall enter judgment ordering payment of \$100 for each day of noncompliance from the effective date of the notice until the required information is furnished or the seizing agency executes the seizing agency's judgment lien under this section.

(8) To the extent permitted by the constitutions of the United States and the state of Kansas, the duty to comply with paragraph (5) shall not be excused by any privilege or provision of law of this state or any other state or country which authorizes or directs that testimony or records required to be furnished pursuant to paragraph (5) are privileged, confidential and otherwise may not be disclosed.

(9) A trustee who furnishes information pursuant to paragraph (5) is immune from civil liability for the release of the information.

(10) An employee of the seizing agency or the plaintiff's attorney who releases the information obtained pursuant to paragraph (5), except in the proper discharge of official duties, is guilty of a class B nonperson misdemeanor.

(11) If any information furnished pursuant to paragraph (5) is offered in evidence, the court may seal that portion of the record or may order that the information be disclosed in a designated way.

(12) A judgment or an order of payment entered pursuant to this section becomes a judgment lien against the property alleged to be subject to forfeiture.

Sec. 8. K.S.A. 60-426, 60-2601 and 60-2601a and K.S.A. 2010 Supp. 60-3003, 60-4107 and 60-4109 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.