

HOUSE BILL No. 2166

By Committee on Judiciary

1-26

9 AN ACT concerning civil procedure; relating to appeal bonds; amending
10 K.S.A. 60-3004 and K.S.A. 2004 Supp. 50-6a05 and 60-2103 and re-
11 pealing the existing sections.
12

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

14 Section 1. K.S.A. 2004 Supp. 50-6a05 is hereby amended to read as
15 follows: 50-6a05. (a) The appeal bond that an appellant in civil litigation
16 under any legal theory, involving a signatory or a successor to a signatory
17 ~~of~~ the master settlement agreement, as defined in K.S.A. 2004 Supp. 50-
18 6a02, and amendments thereto, may be required to post to stay execution
19 on a judgment during an appeal or discretionary review shall be set in
20 accordance with existing law and court rules, except that in no case shall
21 an appeal bond exceed \$25,000,000, regardless of the total value of the
22 judgment.

23 (b) If it is proved by a preponderance of the evidence that the ap-
24 pellant for whom the bond has been limited pursuant to this section is
25 intentionally dissipating or diverting assets outside of the ordinary course
26 of its business for the purpose of avoiding payment of the judgment, the
27 court shall enter such orders as are necessary to prevent the dissipation
28 or diversion of assets.

29 (c) *The amendment to this section shall apply to all cases pending or*
30 *filed on and after July 1, 2005.*

31 Sec. 2. K.S.A. 2004 Supp. 60-2103 is hereby amended to read as
32 follows: 60-2103. (a) *When and how taken.* When an appeal is permitted
33 by law from a district court to an appellate court, the time within which
34 an appeal may be taken shall be 30 days from the entry of the judgment,
35 as provided by K.S.A. 60-258, and amendments thereto, except that upon
36 a showing of excusable neglect based on a failure of a party to learn of
37 the entry of judgment the district court in any action may extend the time
38 for appeal not exceeding 30 days from the expiration of the original time
39 herein prescribed. The running of the time for appeal is terminated by a
40 timely motion made pursuant to any of the rules hereinafter enumerated,
41 and the full time for appeal fixed in this subsection commences to run
42 and is to be computed from the entry of any of the following orders made
43 upon a timely motion under such rules: Granting or denying a motion for

1 judgment under subsection (b) of K.S.A. 60-250, and amendments
2 thereto; or granting or denying a motion under subsection (b) of K.S.A.
3 60-252, and amendments thereto, to amend or make additional findings
4 of fact, whether or not an alteration of the judgment would be required
5 if the motion is granted; or granting or denying a motion under K.S.A.
6 60-259, and amendments thereto, to alter or amend the judgment; or
7 denying a motion for new trial under K.S.A. 60-259, and amendments
8 thereto.

9 A party may appeal from a judgment by filing with the clerk of the
10 district court a notice of appeal. Failure of the appellant to take any of
11 the further steps to secure the review of the judgment appealed from
12 does not affect the validity of the appeal, but is ground only for such
13 remedies as are specified in this chapter, or when no remedy is specified,
14 for such action as the appellate court having jurisdiction over the appeal
15 deems appropriate, which may include dismissal of the appeal. If the
16 record on appeal has not been filed with the appellate court, the parties,
17 with the approval of the district court, may dismiss the appeal by stipu-
18 lation filed in the district court, or that court may dismiss the appeal upon
19 motion and notice by the appellant.

20 (b) *Notice of appeal.* The notice of appeal shall specify the parties
21 taking the appeal; shall designate the judgment or part thereof appealed
22 from, and shall name the appellate court to which the appeal is taken.
23 The appealing party shall cause notice of the appeal to be served upon
24 all other parties to the judgment as provided in K.S.A. 60-205, and
25 amendments thereto, but such party's failure so to do does not affect the
26 validity of the appeal.

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

31 (d) *Supersedeas bond.* (1) Whenever an appellant entitled thereto
32 desires a stay on appeal, such appellant may present to the district court
33 for its approval a supersedeas bond which shall have such surety or sur-
34 eties as the court requires. *Subject to paragraph (2)*, the bond shall be
35 conditioned for the satisfaction of the judgment in full together with costs,
36 interest, and damages for delay, if for any reason the appeal is dismissed,
37 or if the judgment is affirmed, and to satisfy in full such modification of
38 the judgment such costs, interest, and damages as the appellate court may
39 adjudge and award. When the judgment is for the recovery of money not
40 otherwise secured, the amount of the bond shall be fixed at such sum as
41 will cover the whole amount of the judgment remaining unsatisfied, costs
42 on the appeal, interest, and damages for delay, unless the court after
43 notice and hearing and for good cause shown fixes a different amount or

1 orders security other than the bond. When the judgment determines the
2 disposition of the property in controversy as in real actions, replevin, and
3 actions to foreclose mortgages or when such property is in the custody of
4 the sheriff or when the proceeds of such property or a bond for its value
5 is in the custody or control of the court, the amount of the supersedeas
6 bond shall be fixed after notice and hearing at such sum only as will secure
7 the amount recovered for the use and detention of the property, the costs
8 of the action, costs on appeal, interest, and damages for delay. When an
9 order is made discharging, vacating, or modifying a provisional remedy,
10 or modifying or dissolving an injunction, a party aggrieved thereby shall
11 be entitled, upon application to the judge, to have the operation of such
12 order suspended for a period of not to exceed 10 days on condition that,
13 within such period of 10 days such party shall file a notice of appeal and
14 obtain the approval of such supersedeas bond as is required under this
15 section.

16 (2) (A) *Except as provided in subparagraph (B), the appeal bond that*
17 *an appellant in civil litigation under any legal theory may be required to*
18 *post to stay execution on a judgment during an appeal or discretionary*
19 *review shall not exceed \$25,000,000, regardless of the total value of the*
20 *judgment.*

21 (B) *If it is proved by a preponderance of the evidence that the ap-*
22 *pellant is intentionally dissipating or diverting assets outside of the or-*
23 *inary course of its business for the purpose of avoiding payment of the*
24 *judgment, the court shall enter such orders as are necessary to prevent*
25 *the dissipation or diversion of assets.*

26 (e) *Failure to file or insufficiency of bond.* If a supersedeas bond is
27 not filed within the time specified, or if the bond filed is found insuffi-
28 cient, and if the action is not yet docketed with the appellate court, a
29 bond may be filed at such time before the action is so docketed as may
30 be fixed by the district court. After the action is so docketed, application
31 for leave to file a bond may be made only in the appellate court.

32 (f) *Judgment against surety.* By entering into a supersedeas bond
33 given pursuant to subsections (c) and (d), the surety submits such surety's
34 self to the jurisdiction of the court and irrevocably appoints the clerk of
35 the court as such surety's agent upon whom any papers affecting such
36 surety's liability on the bond may be served. Such surety's liability may
37 be enforced on motion without the necessity of an independent action.
38 The motion and such notice of the motion as the judge prescribes may
39 be served on the clerk of the court who shall forthwith mail copies to the
40 surety if such surety's address is known.

41 (g) *Docketing record on appeal.* The record on appeal shall be filed
42 and docketed with the appellate court at such time as the supreme court
43 may prescribe by rule.

1 (h) *Cross-appeal*. When notice of appeal has been served in a case
2 and the appellee desires to have a review of rulings and decisions of which
3 such appellee complains, the appellee shall, within 20 days after the notice
4 of appeal has been served upon such appellee and filed with the clerk of
5 the trial court, give notice of such appellee's cross-appeal.

6 (i) *Intermediate rulings*. When an appeal or cross-appeal has been
7 timely perfected, the fact that some ruling of which the appealing or cross-
8 appealing party complains was made more than 30 days before filing of
9 the notice of appeal shall not prevent a review of the ruling.

10 (j) *The amendment to this section shall apply to all cases pending or*
11 *filed on and after July 1, 2005.*

12 Sec. 3. K.S.A. 60-3004 is hereby amended to read as follows: 60-
13 3004. (a) If the judgment debtor shows the district court that an appeal
14 from the foreign judgment is pending or will be taken, or that a stay of
15 execution has been granted, the court shall stay enforcement of the for-
16 eign judgment until the appeal is concluded, the time for appeal expires,
17 or the stay of execution expires or is vacated, upon proof that the judg-
18 ment debtor has furnished the security for the satisfaction of the judg-
19 ment required by the state in which it was rendered.

20 (b) If the judgment debtor shows the district court any ground upon
21 which enforcement of a judgment of any district court of this state would
22 be stayed, the court shall stay enforcement of the foreign judgment for
23 an appropriate period, upon requiring the same security for satisfaction
24 of the judgment which is required in this state *subject to the provisions*
25 *of subsection (d) of K.S.A. 60-2103, and amendments thereto.*

26 (c) *The amendment to this section shall apply to all cases pending or*
27 *filed on and after July 1, 2005.*

28 Sec. 4. K.S.A. 60-3004 and K.S.A. 2004 Supp. 50-6a05 and 60-2103
29 are hereby repealed.

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