

## HOUSE BILL No. 2612

By Committee on Judiciary

1-12

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9 AN ACT concerning judges and justices; evaluating the performance  
10 thereof; establishing the commission on judicial performance; funding  
11 for the commission; amending K.S.A. 59-104, 60-1621, 60-2001, 61-  
12 2704 and 61-4001 and K.S.A. 2005 Supp. 20-367 and 28-172a and  
13 repealing the existing sections.

14

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

16 New Section 1. The commission on judicial performance is hereby  
17 established as an independent committee of the Kansas judicial council.  
18 The budget of the commission shall be a part of the budget of the judicial  
19 council. The judicial council shall provide administrative assistance to the  
20 commission. The commission on judicial qualifications and the office of  
21 judicial administration shall assist the commission, if requested by the  
22 commission.

23 New Sec. 2. (a) The commission shall consist of thirteen members  
24 appointed by the judicial council. The council shall appoint commission  
25 members of outstanding competence and reputation. Six members of the  
26 commission shall be non-lawyers and six members of the commission shall  
27 be lawyers, justices or judges. The judicial council shall appoint the chair  
28 of the commission, who shall be a lawyer, justice or judge. At least one  
29 non-lawyer commission member and at least one lawyer, justice or judge  
30 commission member shall reside in each congressional district. The rules  
31 of the commission shall provide that the terms of the commission mem-  
32 bers are staggered.

33 (b) For the purposes of this act, the commission shall not be subject  
34 to the Kansas open meetings act as provided in K.S.A. 75-4317 et seq.,  
35 and amendments thereto.

36 (c) As used in this section:

37 (1) "Lawyer" means an attorney registered as active pursuant to su-  
38 preme court rule.

39 (2) "Judge" means a current or retired Kansas district court judge  
40 and a current or retired judge of the Kansas court of appeals.

41 (3) "Justice" means a current or retired justice of the Kansas supreme  
42 court.

43 New Sec. 3. The goals of the judicial performance evaluation process

1 are:

2 (a) To improve the judicial performance of individual judges and jus-  
3 tices and thereby improve the judiciary as a whole;

4 (b) where judges and justices are subject to retention elections, to  
5 disseminate the results from the judicial performance evaluation process  
6 to enable voters to make informed decisions about continuing judges and  
7 justices in office; and

8 (c) to protect judicial independence while promoting public account-  
9 ability of the judiciary.

10 New Sec. 4. The commission shall, with the aid of professionals  
11 where appropriate:

12 (a) Create surveys of court users who have directly observed the  
13 judge's or justice's performance or interacted with the judge or justice,  
14 including attorneys, litigants, jurors and other persons the commission  
15 deems appropriate. The surveys shall be dispersed, collected and tabu-  
16 lated by an independent organization or in any other manner that insures  
17 confidentiality. The surveys shall ask those surveyed to evaluate the judges  
18 and justices on such judge's or justice's ability, integrity, impartiality, com-  
19 munication skills, professionalism, temperament and administrative capa-  
20 city suitable to the jurisdiction and level of court;

21 (b) develop clear, measurable performance standards upon which the  
22 survey questions are based;

23 (c) develop dissemination plans that:

24 (1) Protect confidentiality when the judicial performance evaluation  
25 is used only for self-improvement;

26 (2) make the judicial performance evaluation results widely available  
27 when they are to be used to assist voters in evaluating the performance  
28 of judges and justices subject to retention elections; and

29 (3) make public recommendations regarding whether or not to retain  
30 judges and justices subject to retention elections;

31 (d) develop a procedure for judges and justices to receive and re-  
32 spond to survey results before such results are made public;

33 (e) establish a mechanism to incorporate evaluation results in design-  
34 ing judicial education programs; and

35 (f) adopt rules for implementation of the judicial performance eval-  
36 uation process, subject to approval by the Kansas supreme court.

37 New Sec. 5. The surveys of court users, survey results and judicial  
38 performance evaluation results are confidential and shall not be disclosed  
39 except in accordance with the rules of the commission or the Kansas  
40 supreme court. The evaluation of judges subject to political elections shall  
41 be used solely for self-improvement. A judge subject to political elections  
42 shall not reveal data from any portion of the survey or the results of the  
43 survey.

1 New Sec. 6. Upon certification by the commission to the judicial  
2 council that: (a) Funding is not adequate to support a judicial evaluation  
3 program of high quality; (b) the Kansas supreme court has failed to adopt  
4 appropriate rules as set forth in this act; or (c) in the opinion of the  
5 commission the program is no longer of appropriate value, then the pro-  
6 gram may be reduced in scope or discontinued as determined by the  
7 judicial council.

8 New Sec. 7. There is hereby established in the state treasury the  
9 judicial performance fund. All moneys credited to the fund shall be used  
10 for the judicial performance evaluation process. All expenditures from  
11 the judicial performance fund shall be made in accordance with appro-  
12 priation acts and upon warrants of the director of accounts and reports  
13 issued pursuant to expenditures approved by the chairperson of the Kan-  
14 sas judicial council or by the person or persons designated by the chair-  
15 person of the Kansas judicial council.

16 Sec. 8. K.S.A. 2005 Supp. 20-367 is hereby amended to read as fol-  
17 lows: 20-367. Of the remittance of the balance of docket fees received by  
18 the state treasurer from clerks of the district court pursuant to subsection  
19 (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall  
20 deposit and credit to the *judicial performance fund*, a sum equal to 3.84%;  
21 to the access to justice fund, a sum equal to ~~5.00%~~ 5.67% of the remit-  
22 tances of docket fees; to the juvenile detention facilities fund, a sum equal  
23 to ~~3.27%~~ 3.15% of the remittances of docket fees; to the judicial branch  
24 education fund, the state treasurer shall deposit and credit a sum equal  
25 to ~~2.52%~~ 2.42% of the remittances of docket fees; to the crime victims  
26 assistance fund, the state treasurer shall deposit and credit a sum equal  
27 to ~~.67%~~ .64% of the remittances of the docket fees; to the protection from  
28 abuse fund, the state treasurer shall deposit and credit a sum equal to  
29 ~~3.22%~~ 3.10% of the remittances of the docket fees; to the judiciary tech-  
30 nology fund, the state treasurer shall deposit and credit a sum equal to  
31 ~~5.10%~~ 4.91% of the remittances of docket fees; to the dispute resolution  
32 fund, the state treasurer shall deposit and credit a sum equal to ~~.41%~~  
33 .39% of the remittances of docket fees; to the Kansas juvenile delinquency  
34 prevention trust fund, the state treasurer shall deposit and credit a sum  
35 equal to ~~1.49%~~ 1.43% of the remittances of docket fees; to the permanent  
36 families account in the family and children investment fund, the state  
37 treasurer shall deposit and credit a sum equal to ~~.25%~~ .24% of the re-  
38 mittances of docket fees; to the trauma fund, a sum equal to ~~1.77%~~ 1.70%  
39 of the remittance of docket fees; to the judicial council fund, a sum equal  
40 to ~~1.33%~~ 1.28% of the remittance of docket fees; and to the judicial  
41 branch nonjudicial salary initiative fund, the state treasurer shall deposit  
42 and credit a sum equal to ~~21.41%~~ 20.59% of the remittance of docket  
43 fees. The balance remaining of the remittances of docket fees shall be

1 deposited and credited to the state general fund.

2 Sec. 9. K.S.A. 2005 Supp. 28-172a is hereby amended to read as

3 follows: 28-172a. (a) Except as otherwise provided in this section, when-

4 ever the prosecuting witness or defendant is adjudged to pay the costs in

5 a criminal proceeding in any county, a docket fee shall be taxed as follows:

6 Murder or manslaughter.....	<del>\$164.50</del> 166.50
7 Other felony.....	<del>147.00</del> 149.00
8 Misdemeanor.....	<del>112.00</del> 114.00
9 Forfeited recognizance .....	<del>62.50</del> 64.50
10 Appeals from other courts.....	<del>62.50</del> 64.50

11 (b) (1) Except as provided in paragraph (2), in actions involving the

12 violation of any of the laws of this state regulating traffic on highways

13 (including those listed in subsection (c) of K.S.A. 8-2118, and amend-

14 ments thereto), a cigarette or tobacco infraction, any act declared a crime

15 pursuant to the statutes contained in chapter 32 of Kansas Statutes An-

16 notated and amendments thereto or any act declared a crime pursuant

17 to the statutes contained in article 8 of chapter 82a of the Kansas Statutes

18 Annotated, and amendments thereto, whenever the prosecuting witness

19 or defendant is adjudged to pay the costs in the action, a docket fee of

20 ~~\$55~~ \$57 shall be charged. When an action is disposed of under subsections

21 (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and

22 amendments thereto, whether by mail or in person, the docket fee to be

23 paid as court costs shall be ~~\$55~~ \$57.

24 (2) In actions involving the violation of a moving traffic violation un-

25 der K.S.A. 8-2118, and amendments thereto, as defined by rules and

26 regulations adopted under K.S.A. 8-249, and amendments thereto, when-

27 ever the prosecuting witness or defendant is adjudged to pay the costs in

28 the action, a docket fee of ~~\$55~~ \$57 shall be charged. When an action is

29 disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amend-

30 ments thereto, whether by mail or in person, the docket fee to be paid

31 as court costs shall be ~~\$55~~ \$57.

32 (c) If a conviction is on more than one count, the docket fee shall be

33 the highest one applicable to any one of the counts. The prosecuting

34 witness or defendant, if assessed the costs, shall pay only one fee. Multiple

35 defendants shall each pay one fee.

36 (d) Statutory charges for law library funds, the law enforcement train-

37 ing center fund, the prosecuting attorneys' training fund, the juvenile

38 detention facilities fund, the judicial branch education fund, the emer-

39 gency medical services operating fund and the judiciary technology fund

40 shall be paid from the docket fee; the family violence and child abuse and

41 neglect assistance and prevention fund fee shall be paid from criminal

42 proceedings docket fees. All other fees and expenses to be assessed as

43 additional court costs shall be approved by the court, unless specifically

1 fixed by statute. Additional fees shall include, but are not limited to, fees  
 2 for Kansas bureau of investigation forensic or laboratory analyses, fees for  
 3 detention facility processing pursuant to K.S.A. 12-16,119, and amend-  
 4 ments thereto, fees for the sexual assault evidence collection kit, fees for  
 5 conducting an examination of a sexual assault victim, fees for service of  
 6 process outside the state, witness fees, fees for transcripts and deposi-  
 7 tions, costs from other courts, doctors' fees and examination and evalu-  
 8 ation fees. No sheriff in this state shall charge any district court of this  
 9 state a fee or mileage for serving any paper or process.

10 (e) In each case charging a violation of the laws relating to parking  
 11 of motor vehicles on the statehouse grounds or other state-owned or  
 12 operated property in Shawnee county, Kansas, as specified in K.S.A. 75-  
 13 4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and  
 14 amendments thereto, the clerk shall tax a fee of \$2 which shall constitute  
 15 the entire costs in the case, except that witness fees, mileage and expenses  
 16 incurred in serving a warrant shall be in addition to the fee. Appearance  
 17 bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amend-  
 18 ments thereto, shall be \$3, unless a warrant is issued. The judge may  
 19 order the bond forfeited upon the defendant's failure to appear, and \$2  
 20 of any bond so forfeited shall be regarded as court costs.

21 Sec. 10. K.S.A. 59-104 is hereby amended to read as follows: 59-104.

22 (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed  
 23 or docketed in the district court under the provisions of chapter 59 of the  
 24 Kansas Statutes Annotated or of articles 40 and 52 of chapter 65 of the  
 25 Kansas Statutes Annotated without payment of an appropriate docket fee  
 26 as follows:

27	Treatment of mentally ill .....	<del>\$25.50</del> 27.50
28	Treatment of alcoholism or drug abuse.....	<del>25.50</del> 27.50
29	Determination of descent of property .....	<del>40.50</del> 42.50
30	Termination of life estate .....	<del>39.50</del> 41.50
31	Termination of joint tenancy .....	<del>39.50</del> 41.50
32	Refusal to grant letters of administration .....	<del>39.50</del> 41.50
33	Adoption.....	<del>39.50</del> 41.50
34	Filing a will and affidavit under K.S.A. 59-618a.....	<del>39.50</del> 41.50
35	Guardianship .....	<del>60.50</del> 62.50
36	Conservatorship .....	<del>60.50</del> 62.50
37	Trusteeship .....	<del>60.50</del> 62.50
38	Combined guardianship and conservatorship.....	<del>60.50</del> 62.50
39	Certified probate proceedings under K.S.A. 59-213, and amendments	
40	thereto .....	<del>14.50</del> 16.50
41	Decrees in probate from another state .....	<del>99.50</del> 101.50
42	Probate of an estate or of a will.....	<del>100.50</del> 102.50
43	Civil commitment under K.S.A. 59-29a01 et seq.....	<del>24.50</del> 26.50

1 (b) *Poverty affidavit in lieu of docket fee and exemptions.* The pro-  
2 visions of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and  
3 amendments thereto, shall apply to probate docket fees prescribed by  
4 this section.

5 (c) *Disposition of docket fee.* Statutory charges for the law library and  
6 for the prosecuting attorneys' training fund shall be paid from the docket  
7 fee. The remainder of the docket fee shall be paid to the state treasurer  
8 in accordance with K.S.A. 20-362, and amendments thereto.

9 (d) *Additional court costs.* Other fees and expenses to be assessed as  
10 additional court costs shall be approved by the court, unless specifically  
11 fixed by statute. Other fees shall include, but not be limited to, witness  
12 fees, appraiser fees, fees for service of process outside the state, fees for  
13 depositions, transcripts and publication of legal notice, executor or ad-  
14 ministrators fees, attorney fees, court costs from other courts and any other  
15 fees and expenses required by statute. All additional court costs shall be  
16 taxed and billed against the parties or estate as directed by the court. No  
17 sheriff in this state shall charge any district court in this state a fee or  
18 mileage for serving any paper or process.

19 Sec. 11. K.S.A. 60-1621 is hereby amended to read as follows: 60-  
20 1621. (a) No post-decree motion petitioning for a change in legal custody,  
21 residency, visitation rights or parenting time, or for a modification of child  
22 support shall be filed or docketed in the district court without payment  
23 of a docket fee in the amount of ~~\$21~~ \$23 to the clerk of the district court.

24 (b) A poverty affidavit may be filed in lieu of a docket fee as estab-  
25 lished in K.S.A. 60-2001, and amendments thereto.

26 (c) The docket fee shall be the only costs assessed in each case for  
27 services of the clerk of the district court and the sheriff. The docket fee  
28 shall be disbursed in accordance with subsection (f) of K.S.A. 20-362, and  
29 amendments thereto.

30 Sec. 12. K.S.A. 60-2001 is hereby amended to read as follows: 60-  
31 2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall  
32 be filed or docketed in the district court, whether original or appealed,  
33 without payment of a docket fee in the amount of ~~\$106~~ \$108 to the clerk  
34 of the district court.

35 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where  
36 a plaintiff by reason of poverty is unable to pay a docket fee, and an  
37 affidavit so stating is filed, no fee will be required. An inmate in the  
38 custody of the secretary of corrections may file a poverty affidavit only if  
39 the inmate attaches a statement disclosing the average account balance,  
40 or the total deposits, whichever is less, in the inmate's trust fund for each  
41 month in (A) the six-month period preceding the filing of the action; or  
42 (B) the current period of incarceration, whichever is shorter. Such state-  
43 ment shall be certified by the secretary. On receipt of the affidavit and

1 attached statement, the court shall determine the initial fee to be assessed  
2 for filing the action and in no event shall the court require an inmate to  
3 pay less than \$3. The secretary of corrections is hereby authorized to  
4 disburse money from the inmate's account to pay the costs as determined  
5 by the court. If the inmate has a zero balance in such inmate's account,  
6 the secretary shall debit such account in the amount of \$3 per filing fee  
7 as established by the court until money is credited to the account to pay  
8 such docket fee. Any initial filing fees assessed pursuant to this subsection  
9 shall not prevent the court, pursuant to subsection (d), from taxing that  
10 individual for the remainder of the amount required under subsection (a)  
11 or this subsection.

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

14 State of Kansas, \_\_\_\_\_ County.

15 In the district court of the county: I do solemnly swear that the claim set forth in the  
16 petition herein is just, and I do further swear that, by reason of my poverty, I am unable to  
17 pay a docket fee.

18 (c) *Disposition of fees.* The docket fees and the fees for service of  
19 process shall be the only costs assessed in each case for services of the  
20 clerk of the district court and the sheriff. For every person to be served  
21 by the sheriff, the persons requesting service of process shall provide  
22 proper payment to the clerk and the clerk of the district court shall for-  
23 ward the service of process fee to the sheriff in accordance with K.S.A.  
24 28-110, and amendments thereto. The service of process fee, if paid by  
25 check or money order, shall be made payable to the sheriff. Such service  
26 of process fee shall be submitted by the sheriff at least monthly to the  
27 county treasurer for deposit in the county treasury and credited to the  
28 county general fund. The docket fee shall be disbursed in accordance  
29 with K.S.A. 20-362 and amendments thereto.

30 (d) *Additional court costs.* Other fees and expenses to be assessed as  
31 additional court costs shall be approved by the court, unless specifically  
32 fixed by statute. Other fees shall include, but not be limited to, witness  
33 fees, appraiser fees, fees for service of process, fees for depositions, al-  
34 ternative dispute resolution fees, transcripts and publication, attorney  
35 fees, court costs from other courts and any other fees and expenses re-  
36 quired by statute. All additional court costs shall be taxed and billed  
37 against the parties as directed by the court. No sheriff in this state shall  
38 charge any mileage for serving any papers or process.

39 Sec. 13. K.S.A. 61-2704 is hereby amended to read as follows: 61-  
40 2704. (a) An action seeking the recovery of a small claim shall be consid-  
41 ered to have been commenced at the time a person files a written state-  
42 ment of the person's small claim with the clerk of the court if, within 90  
43 days after the small claim is filed, service of process is obtained or the

1 first publication is made for service by publication. Otherwise, the action  
2 is deemed commenced at the time of service of process or first publica-  
3 tion. An entry of appearance shall have the same effect as service.

4 (b) Upon the filing of a plaintiff's small claim, the clerk of the court  
5 shall require from the plaintiff a docket fee of ~~\$26~~ \$28, if the claim does  
6 not exceed \$500; or ~~\$46~~ \$48, if the claim exceeds \$500; unless for good  
7 cause shown the judge waives the fee. The docket fee shall be the only  
8 costs required in an action seeking recovery of a small claim. No person  
9 may file more than 10 small claims under this act in the same court during  
10 any calendar year.

11 Sec. 14. K.S.A. 61-4001 is hereby amended to read as follows: 61-  
12 4001. (a) Docket fee. No case shall be filed or docketed pursuant to the  
13 code of civil procedure for limited actions without the payment of a  
14 docket fee in the amount of ~~\$26~~ \$28, if the amount in controversy or  
15 claimed does not exceed \$500; ~~\$46~~ \$48, if the amount in controversy or  
16 claimed exceeds \$500 but does not exceed \$5,000; or ~~\$76~~ \$78, if the  
17 amount in controversy or claimed exceeds \$5,000. If judgment is ren-  
18 dered for the plaintiff, the court also may enter judgment for the plaintiff  
19 for the amount of the docket fee paid by the plaintiff.

20 (b) Poverty affidavit; additional court costs. The provisions of subsec-  
21 tions (b), (c) and (d) of K.S.A. 60-2001, and amendments thereto, shall  
22 be applicable to lawsuits brought under the code of civil procedure for  
23 limited actions.

24 Sec. 15. K.S.A. 59-104, 60-1621, 60-2001, 61-2704 and 61-4001 and  
25 K.S.A. 2005 Supp. 20-367 and 28-172a are hereby repealed.

26 Sec. 16. This act shall take effect and be in force from and after its  
27 publication in the statute book.