

SENATE BILL No. 86

By Committee on Judiciary

1-16

9 AN ACT concerning civil procedure; relating to the application to change
10 a judge in civil cases; amending K.S.A. 20-311e and 20-311f and K.S.A.
11 2006 Supp. 20-311d and repealing the existing section.
12

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

14 Section 1. K.S.A. 2006 Supp. 20-311d is hereby amended to read as
15 follows: 20-311d. (a) (1) *A change of judge shall be ordered in any civil*
16 *action upon the timely filing of a written application therefor by a party.*
17 *The application need not allege or prove any cause for such change of*
18 *judge and need not be verified.*

19 (2) *The application must be filed within 60 days from service of pro-*
20 *cess or 30 days from the designation of the trial judge, whichever time is*
21 *longer. If the designation of the trial judge occurs less than 30 days before*
22 *trial, the application must be filed prior to any appearance before the trial*
23 *judge.*

24 *In the case of intervenors, the application must be filed within 30 days*
25 *of intervention or designation of the trial judge, whichever is later, but in*
26 *no event may any intervening party obtain a change of judge unless the*
27 *application is filed within 180 days of the designation of the trial judge.*

28 (3) *A copy of the application and notice of the time when it will be*
29 *presented to the court shall be served on all parties.*

30 (4) *Application for change of judge may be made by one or more*
31 *parties in any of the following classes: (A) Plaintiffs; (B) defendants; (C)*
32 *third-party plaintiffs (where separate trial has been ordered); (D) third-*
33 *party defendants; or (E) intervenors. Each of the foregoing classes is lim-*
34 *ited to one change of judge, and any such change granted any one or more*
35 *members of a class exhausts the right of all members of the class to a*
36 *change of judge. However, no party shall be precluded from later re-*
37 *questing any change of judge for cause. Further, in eminent domain cases*
38 *involving multiple defendants, as to which separate appeals are to be held,*
39 *each separate appeal to determine damages shall be treated as a separate*
40 *case for purposes of change of judge.*

41 (5) *The judge promptly shall sustain a timely application for change*
42 *of judge upon its presentation. The disqualified judge shall transfer the*
43 *case to a judge stipulated to by the parties if the new judge agrees to take*

1 *the case. If the case is not so transferred, the disqualified judge shall notify*
2 *the chief judge:*

3 (A) *If the chief judge is not disqualified in the case, the chief judge*
4 *shall assign a judge of the district who is not disqualified; or*

5 (B) *if the chief judge is disqualified in the case, a judge of the district*
6 *shall be assigned in accordance with local court rules, so long as the local*
7 *court rules do not permit the disqualified judge to make the assignment.*

8 (6) *If after a change of judge has been granted the action shall be*
9 *removed on application of another party to some other county in the same*
10 *district, the transferred judge shall continue as the judge therein.*

11 (b) (1) *If a party or a party's attorney believes that the judge to whom*
12 *an action is assigned cannot afford that party a fair trial in the action, the*
13 *party or attorney may file a motion for change of judge. The motion shall*
14 *not state the grounds for the party's or attorney's belief. The judge shall*
15 *promptly hear the motion informally upon reasonable notice to all parties*
16 *who have appeared in the case. If the judge disqualifies the judge's self,*
17 *the action shall be assigned to another judge by the chief judge. If the*
18 *judge refuses to disqualify the judge's self, the party seeking a change of*
19 *judge may file the affidavit provided for in ~~subsection (b)~~ paragraph (2).*
20 *If an affidavit is to be filed it shall be filed immediately.*

21 ~~(b)~~ (2) *If a party or a party's attorney files an affidavit alleging any of*
22 *the grounds specified in ~~subsection (c)~~ paragraph (3), the chief judge*
23 *shall at once determine, or refer the affidavit to another district judge for*
24 *prompt determination of, the legal sufficiency of the affidavit. If the af-*
25 *fidavit is filed in a district court in which there is no other judge who is*
26 *qualified to hear the matter, the chief judge shall at once notify the de-*
27 *partmental justice for the district and request the appointment of another*
28 *district judge to determine the legal sufficiency of the affidavit. If the*
29 *affidavit is found to be legally sufficient, the case shall be assigned to*
30 *another judge.*

31 ~~(c)~~ (3) *Grounds which may be alleged as provided in ~~subsection (b)~~*
32 *paragraph (2) for change of judge are that:*

33 ~~(1)~~ (A) *The judge has been engaged as counsel in the action prior to*
34 *the appointment or election as judge.*

35 ~~(2)~~ (B) *The judge is otherwise interested in the action.*

36 ~~(3)~~ (C) *The judge is related to either party to the action.*

37 ~~(4)~~ (D) *The judge is a material witness in the action.*

38 ~~(5)~~ (E) *The party or the party's attorney filing the affidavit has cause*
39 *to believe and does believe that on account of the personal bias, prejudice*
40 *or interest of the judge such party cannot obtain a fair and impartial trial*
41 *or fair and impartial enforcement of post-judgment remedies. Such affi-*
42 *davit shall state the facts and the reasons for the belief that bias, prejudice*
43 *or an interest exists.*

1 ~~(4)~~ (4) In any affidavit filed pursuant to this section, the recital of
2 previous rulings or decisions by the judge on legal issues or concerning
3 the legal sufficiency of any prior affidavits filed by counsel for a party in
4 any judicial proceeding, or filed by such counsel's law firm, pursuant to
5 this section, shall not be deemed legally sufficient for any belief that bias
6 or prejudice exists.

7 Sec. 2. K.S.A. 20-311e is hereby amended to read as follows: 20-
8 311e. No judge or court shall punish for contempt anyone making, filing
9 or presenting the *application or the* affidavit provided for by K.S.A. 20-
10 311d or any motion founded thereon.

11 Sec. 3. K.S.A. 20-311f is hereby amended to read as follows: 20-311f.
12 No party shall be granted more than one change of judge in any action,
13 but each party shall be heard to urge such party's objections to a judge
14 in the first instance, except that in prejudgment matters a party may *apply*
15 *or* move for a change of judge in accordance with K.S.A. 20-311d, and
16 amendments thereto, within seven days after pretrial, or after receiving
17 written notice of the judge before whom the case is to be heard, which-
18 ever is later. In post judgment proceedings the motion may be filed at
19 any time.

20 Sec. 4. K.S.A. 20-311e and 20-311f and K.S.A. 2006 Supp. 20-311d
21 are hereby repealed.

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