

SENATE BILL No. 72

By Committee on Judiciary

1-19

1 AN ACT concerning civil procedure; relating to the rules of evidence;
2 creating a hearsay evidence exception for statements made to
3 translators; amending K.S.A. 2022 Supp. 60-460 and repealing the
4 existing section.

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

7 Section 1. K.S.A. 2022 Supp. 60-460 is hereby amended to read as
8 follows: 60-460. Evidence of a statement which is made other than by a
9 witness while testifying at the hearing, offered to prove the truth of the
10 matter stated, is hearsay evidence and inadmissible except:

11 (a) *Previous statements of persons present.* A statement previously
12 made by a person who is present at the hearing and available for cross-
13 examination with respect to the statement and its subject matter, provided
14 the statement would be admissible if made by the declarant while
15 testifying as a witness.

16 (b) *Affidavits.* Affidavits, to the extent admissible by the statutes of
17 this state.

18 (c) *Depositions and prior testimony.* Subject to the same limitations
19 and objections as though the declarant were testifying in person: (1)
20 Testimony in the form of a deposition taken in compliance with the law of
21 this state for use as testimony in the trial of the action in which offered; or
22 (2) if the judge finds that the declarant is unavailable as a witness at the
23 hearing, testimony given as a witness in another action or in a preliminary
24 hearing or former trial in the same action, or in a deposition taken in
25 compliance with law for use as testimony in the trial of another action,
26 when: (A) The testimony is offered against a party who offered it in the
27 party's own behalf on the former occasion or against the successor in
28 interest of such party; or (B) the issue is such that the adverse party on the
29 former occasion had the right and opportunity for cross-examination with
30 an interest and motive similar to that which the adverse party has in the
31 action in which the testimony is offered, but the provisions of this
32 subsection shall not apply in criminal actions if it denies to the accused the
33 right to meet the witness face to face.

34 (d) *Contemporaneous statements and statements admissible on*
35 *ground of necessity generally.* A statement which the judge finds was
36 made: (1) While the declarant was perceiving the event or condition which

1 the statement narrates, describes or explains; (2) while the declarant was
2 under the stress of a nervous excitement caused by such perception; or (3)
3 if the declarant is unavailable as a witness, by the declarant at a time when
4 the matter had been recently perceived by the declarant and while the
5 declarant's recollection was clear and was made in good faith prior to the
6 commencement of the action and with no incentive to falsify or to distort.

7 (e) *Dying declarations*. A statement by a person unavailable as a
8 witness because of the person's death if the judge finds that it was made:
9 (1) Voluntarily and in good faith; and (2) while the declarant was
10 conscious of the declarant's impending death and believed that there was
11 no hope of recovery.

12 (f) *Confessions*. In a criminal proceeding as against the accused, a
13 previous statement by the accused relative to the offense charged, but only
14 if the judge finds that the accused: (1) When making the statement was
15 conscious and was capable of understanding what the accused said and
16 did; and (2) was not induced to make the statement: (A) Under compulsion
17 or by infliction or threats of infliction of suffering upon the accused or
18 another, or by prolonged interrogation under such circumstances as to
19 render the statement involuntary; or (B) by threats or promises concerning
20 action to be taken by a public official with reference to the crime, likely to
21 cause the accused to make such a statement falsely, and made by a person
22 whom the accused reasonably believed to have the power or authority to
23 execute the same.

24 (g) *Admissions by parties*. As against a party, a statement by the
25 person who is the party to the action in the person's individual or a
26 representative capacity and, if the latter, who was acting in such
27 representative capacity in making the statement.

28 (h) *Authorized and adoptive admissions*. As against a party, a
29 statement: (1) By a person authorized by the party to make a statement or
30 statements for the party concerning the subject of the statement; or (2) of
31 which the party with knowledge of the content thereof has, by words or
32 other conduct, manifested the party's adoption or belief in its truth.

33 (i) *Vicarious admissions*. As against a party, a statement which would
34 be admissible if made by the declarant at the hearing if: (1) The statement
35 concerned a matter within the scope of an agency or employment of the
36 declarant for the party and was made before the termination of such
37 relationship; (2) the party and the declarant were participating in a plan to
38 commit a crime or a civil wrong and the statement was relevant to the plan
39 or its subject matter and was made while the plan was in existence and
40 before its complete execution or other termination; or (3) one of the issues
41 between the party and the proponent of the evidence of the statement is a
42 legal liability of the declarant, and the statement tends to establish that
43 liability.

1 (j) *Declarations against interest.* Subject to the limitations of the
2 exception in subsection (f), a statement which the judge finds was at the
3 time of the assertion so far contrary to the declarant's pecuniary or
4 proprietary interest or so far subjected the declarant to civil or criminal
5 liability or so far rendered invalid a claim by the declarant against another
6 or created such risk of making the declarant an object of hatred, ridicule or
7 social disapproval in the community that a reasonable person in the
8 declarant's position would not have made the statement unless the person
9 believed it to be true.

10 (k) *Voter's statements.* A statement by a voter concerning the voter's
11 qualifications to vote or the fact or content of the voter's vote.

12 (l) *Statements of physical or mental condition of declarant.* Unless
13 the judge finds it was made in bad faith, a statement of the declarant's: (1)
14 Then existing state of mind, emotion or physical sensation, including
15 statements of intent, plan, motive, design, mental feeling, pain and bodily
16 health, but not including memory or belief to prove the fact remembered or
17 believed, when such a mental or physical condition is in issue or is
18 relevant to prove or explain acts or conduct of the declarant; or (2)
19 previous symptoms, pain or physical sensation, made to a physician
20 consulted for treatment or for diagnosis with a view to treatment, and
21 relevant to an issue of declarant's bodily condition.

22 (m) *Business entries and the like.* Writings offered as memoranda or
23 records of acts, conditions or events to prove the facts stated therein, if the
24 following conditions are shown by the testimony of the custodian or other
25 qualified witness, or by a certification that complies with K.S.A. 60-465(b)
26 (7) or (8), and amendments thereto: (1) They were made in the regular
27 course of a business at or about the time of the act, condition or event
28 recorded; and (2) the sources of information from which made and the
29 method and circumstances of their preparation were such as to indicate
30 their trustworthiness.

31 If the procedure specified by K.S.A. 60-245a(b), and amendments
32 thereto, for providing business records has been complied with and no
33 party has required the personal attendance of a custodian of the records or
34 the production of the original records, the affidavit or declaration of the
35 custodian shall be prima facie evidence that the records satisfy the
36 requirements of this subsection.

37 (n) *Absence of entry in business records.* Evidence of the absence of a
38 memorandum or record from the memoranda or records of a business of an
39 asserted act, event or condition, to prove the nonoccurrence of the act or
40 event, or the nonexistence of the condition, if the judge finds that it was
41 the regular course of that business to make such memoranda of all such
42 acts, events or conditions at the time thereof or within a reasonable time
43 thereafter and to preserve them.

1 (o) *Content of official record.* Subject to K.S.A. 60-461, and
2 amendments thereto: (1) If meeting the requirements of authentication
3 under K.S.A. 60-465, and amendments thereto, to prove the content of the
4 record, a writing purporting to be a copy of an official record or of an entry
5 therein; (2) to prove the absence of a record in a specified office, a writing
6 made by the official custodian of the official records of the office, reciting
7 diligent search and failure to find such record; or (3) to prove the absence
8 of a record in the criminal justice information system central repository
9 maintained by the Kansas bureau of investigation pursuant to K.S.A. 22-
10 4705, and amendments thereto, a writing made by a person purporting to
11 be an official custodian of the records of the Kansas bureau of
12 investigation, reciting diligent search of criminal history record
13 information and electronically stored information, as defined in K.S.A. 22-
14 4701, and amendments thereto, and failure to find such record.

15 (p) *Certificate of marriage.* Subject to K.S.A. 60-461, and
16 amendments thereto, certificates that the maker thereof performed
17 marriage ceremonies, to prove the truth of the recitals thereof, if the judge
18 finds that: (1) The maker of the certificates, at the time and place certified
19 as the times and places of the marriages, was authorized by law to perform
20 marriage ceremonies; and (2) the certificate was issued at that time or
21 within a reasonable time thereafter.

22 (q) *Records of documents affecting an interest in property.* Subject to
23 K.S.A. 60-461, and amendments thereto, the official record of a document
24 purporting to establish or affect an interest in property, to prove the content
25 of the original recorded document and its execution and delivery by each
26 person by whom it purports to have been executed, if the judge finds that:
27 (1) The record is in fact a record of an office of a state or nation or of any
28 governmental subdivision thereof; and (2) an applicable statute authorized
29 such a document to be recorded in that office.

30 (r) *Judgment of previous conviction.* Evidence of a final judgment
31 adjudging a person guilty of a felony, to prove any fact essential to sustain
32 the judgment.

33 (s) *Judgment against persons entitled to indemnity.* To prove the
34 wrong of the adverse party and the amount of damages sustained by the
35 judgment creditor, evidence of a final judgment if offered by a judgment
36 debtor in an action in which the debtor seeks to recover partial or total
37 indemnity or exoneration for money paid or liability incurred by the debtor
38 because of the judgment, provided the judge finds that the judgment was
39 rendered for damages sustained by the judgment creditor as a result of the
40 wrong of the adverse party to the present action.

41 (t) *Judgment determining public interest in land.* To prove any fact
42 which was essential to the judgment, evidence of a final judgment
43 determining the interest or lack of interest of the public or of a state or

1 nation or governmental division thereof in land, if offered by a party in an
2 action in which any such fact or such interest or lack of interest is a
3 material matter.

4 (u) *Statement concerning one's own family history.* A statement of a
5 matter concerning a declarant's own birth, marriage, divorce, legitimacy,
6 relationship by blood or marriage, race-ancestry or other similar fact of the
7 declarant's family history, even though the declarant had no means of
8 acquiring personal knowledge of the matter declared, if the judge finds
9 that the declarant is unavailable.

10 (v) *Statement concerning family history of another.* A statement
11 concerning the birth, marriage, divorce, death, legitimacy, race-ancestry,
12 relationship by blood or marriage or other similar fact of the family history
13 of a person other than the declarant if the judge finds that the declarant: (1)
14 Was related to the other by blood or marriage, or was otherwise so
15 intimately associated with the other's family as to be likely to have
16 accurate information concerning the matter declared, and made the
17 statement as upon information received from the other or from a person
18 related by blood or marriage to the other or as upon repute in the other's
19 family; and (2) is unavailable as a witness.

20 (w) *Statement concerning family history based on statement of*
21 *another declarant.* A statement of a declarant that a statement admissible
22 under the exceptions in subsections (u) or (v) was made by another
23 declarant, offered as tending to prove the truth of the matter declared by
24 both declarants, if the judge finds that both declarants are unavailable as
25 witnesses.

26 (x) *Reputation in family concerning family history.* Evidence of
27 reputation among members of a family, if the reputation concerns the birth,
28 marriage, divorce, death, legitimacy, race-ancestry or other fact of the
29 family history of a member of the family by blood or marriage.

30 (y) *Reputation—boundaries, general history, family history.* Evidence
31 of reputation in a community as tending to prove the truth of the matter
32 reputed, if the reputation concerns: (1) Boundaries of or customs affecting,
33 land in the community and the judge finds that the reputation, if any, arose
34 before controversy; (2) an event of general history of the community or of
35 the state or nation of which the community is a part and the judge finds
36 that the event was of importance to the community; or (3) the birth,
37 marriage, divorce, death, legitimacy, relationship by blood or marriage, or
38 race-ancestry of a person resident in the community at the time of the
39 reputation, or some other similar fact of the person's family history or of
40 the person's personal status or condition which the judge finds likely to
41 have been the subject of a reliable reputation in that community.

42 (z) *Reputation as to character.* If a trait of a person's character at a
43 specified time is material, evidence of the person's reputation with

1 reference thereto at a relevant time in the community in which the person
2 then resided or in a group with which the person then habitually
3 associated, to prove the truth of the matter reputed.

4 (aa) *Recitals in documents affecting property.* Evidence of a statement
5 relevant to a material matter, contained in a deed of conveyance or a will
6 or other document purporting to affect an interest in property, offered as
7 tending to prove the truth of the matter stated, if the judge finds that: (1)
8 The matter stated would be relevant upon an issue as to an interest in the
9 property; and (2) the dealings with the property since the statement was
10 made have not been inconsistent with the truth of the statement.

11 (bb) *Commercial lists and the like.* Evidence of statements of matters
12 of interest to persons engaged in an occupation contained in a list, register,
13 periodical or other published compilation, to prove the truth of any
14 relevant matter so stated, if the judge finds that the compilation is
15 published for use by persons engaged in that occupation and is generally
16 used and relied upon by them.

17 (cc) *Learned treatises.* A published treatise, periodical or pamphlet on
18 a subject of history, science or art, to prove the truth of a matter stated
19 therein, if the judge takes judicial notice, or a witness expert in the subject
20 testifies, that the treatise, periodical or pamphlet is a reliable authority in
21 the subject.

22 (dd) *Actions involving children.* In a criminal proceeding or a
23 proceeding pursuant to the revised Kansas juvenile justice code or in a
24 proceeding to determine if a child is a child in need of care under the
25 revised Kansas code for care of children, a statement made by a child, to
26 prove the crime or that a child is a juvenile offender or a child in need of
27 care, if:

28 (1) The child is alleged to be a victim of the crime or offense or a
29 child in need of care; and

30 (2) the trial judge finds, after a hearing on the matter, that the child is
31 disqualified or unavailable as a witness, the statement is apparently
32 reliable and the child was not induced to make the statement falsely by use
33 of threats or promises.

34 If a statement is admitted pursuant to this subsection in a trial to a jury,
35 the trial judge shall instruct the jury that it is for the jury to determine the
36 weight and credit to be given the statement and that, in making the
37 determination, it shall consider the age and maturity of the child, the
38 nature of the statement, the circumstances under which the statement was
39 made, any possible threats or promises that might have been made to the
40 child to obtain the statement and any other relevant factor.

41 (ee) *Certified motor vehicle certificate of title history.* Subject to
42 K.S.A. 60-461, and amendments thereto, a certified motor vehicle
43 certificate of title history prepared by the division of vehicles of the

1 Kansas department of revenue.

2 *(ff) Language conduit rule. A statement made by a party to a*
3 *translator without the testimony of the translator unless the judge finds*
4 *that the translator had a motive to mislead or distort the statement or that*
5 *the translation was substantially inaccurate.*

6 Sec. 2. K.S.A. 2022 Supp. 60-460 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.