

SENATE BILL No. 20

By Committee on Judiciary

1-15

SB 20 - Balloon Amendment #2
Committee on Judiciary
Prepared by: K. McBride, Office of Revisor of Statutes

1 AN ACT concerning civil procedure; relating to docket fees and costs;
2 poverty affidavit; amending K.S.A. 2012 Supp. 60-2001 and repealing
3 the existing section.
4

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

6 Section 1. K.S.A. 2012 Supp. 60-2001 is hereby amended to read as
7 follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no
8 case shall be filed or docketed in the district court, whether original or
9 appealed, without payment of a docket fee in the amount of \$156 on and
10 after July 1, 2009 through June 30, 2013, and \$154 on and after July 1,
11 2013, to the clerk of the district court. Except as provided further, the
12 docket fee established in this subsection shall be the only fee collected or
13 moneys in the nature of a fee collected for the docket fee. Such fee shall
14 only be established by an act of the legislature and no other authority is
15 established by law or otherwise to collect a fee. On and after the effective
16 date of this act through June 30, 2013, the supreme court may impose an
17 additional charge, not to exceed \$22 per docket fee, to fund the costs of
18 non-judicial personnel.

19 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case
20 where a plaintiff by reason of poverty is unable to pay a docket fee, and an
21 affidavit so stating is filed, ~~no fee will be required~~ *the court may issue an*
22 ~~order authorizing the filing of a petition and establishing the amount of~~
23 ~~the filing fee to be paid.~~ An inmate in the custody of the secretary of
24 corrections may file a poverty affidavit only if the inmate attaches a
25 statement disclosing the average account balance, or the total deposits,
26 whichever is less, in the inmate's trust fund for each month in: (A) The six-
27 month period preceding the filing of the action; or (B) the current period of
28 incarceration, whichever is shorter. Such statement shall be certified by the
29 secretary. On receipt of the affidavit and attached statement, the court shall
30 determine the initial fee to be assessed for filing the action and in no event
31 shall the court require an inmate to pay less than \$3. The secretary of
32 corrections is hereby authorized to disburse money from the inmate's
33 account to pay the costs as determined by the court. If the inmate has a
34 zero balance in such inmate's account, the secretary shall debit such
35 account in the amount of \$3 per filing fee as established by the court until
36 money is credited to the account to pay such docket fee. Any initial filing

Strike language on lines 21
and 22; insert "no fee will be
required"

1 fees assessed pursuant to this subsection shall not prevent the court,
2 pursuant to subsection (d), from taxing that individual for the remainder of
3 the amount required under subsection (a) or this subsection.

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

6 State of Kansas, _____ County.

7 In the district court of the county, I do solemnly swear that the claim
8 set forth in the petition herein is just, and I do further swear that, by reason
9 of my poverty, I am unable to pay a docket fee. set forth a facinal basis
10 upon which the plaintiff alleges by reason of poverty an inability to pay a
11 docket fee, including, but not limited to, the source and amount of the
12 plaintiff's weekly income. Such affidavit shall be signed and sworn to by
13 the plaintiff under oath, before one who has authority to administer the
14 oath, under penalty of perjury, K.S.A. 2012 Supp. 21-5903, and
15 amendments thereto. The form of the affidavit shall be deemed sufficient if
16 in substantial compliance with the form set forth by the judicial council.

17 (3) *Court review; grounds for dismissal; service of process.* The court
18 shall review any petition authorized for filing under this subsection. Upon
19 such review, the petition shall be dismissed by the court if the court finds
20 that the plaintiff's allegation of poverty is untrue or the petition is
21 frivolous, malicious or brought in bad faith, fails to state a claim on which
22 relief may be granted or seeks monetary relief against a defendant who is
23 immune from such relief. Notwithstanding K.S.A. 60-301, and
24 amendments thereto, service of process shall not issue unless the court
25 grants leave following its review.

26 (c) *Disposition of fees.* The docket fees and the fees for service of
27 process shall be the only costs assessed in each case for services of the
28 clerk of the district court and the sheriff. For every person to be served by
29 the sheriff, the persons requesting service of process shall provide proper
30 payment to the clerk and the clerk of the district court shall forward the
31 service of process fee to the sheriff in accordance with K.S.A. 28-1110, and
32 amendments thereto. The service of process fee, if paid by check or money
33 order, shall be made payable to the sheriff. Such service of process fee
34 shall be submitted by the sheriff at least monthly to the county treasurer
35 for deposit in the county treasury and credited to the county general fund.
36 The docket fee shall be disbursed in accordance with K.S.A. 20-362, and
37 amendments thereto.

38 (d) *Additional court costs.* Other fees and expenses to be assessed as
39 additional court costs shall be approved by the court, unless specifically
40 fixed by statute. Other fees shall include, but not be limited to, witness
41 fees, appraiser fees, fees for service of process, fees for depositions,
42 alternative dispute resolution fees, transcripts and publication, attorney
43 fees, court costs from other courts and any other fees and expenses

Strike language in lines 18 through 23 and insert:
"Upon such review, if the court finds that the
plaintiff's allegation of poverty is untrue, the court
shall direct the plaintiff to pay the docket fee or
dismiss the petition without prejudice."