

2021 Kansas Statutes

60-467. Original document required as evidence; exceptions. (a) An original writing, recording or photograph is required in order to prove its content unless these rules or a statute provide otherwise.

(b) A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

(c) If a writing is a telefacsimile communication and is used by the proponent or opponent as the writing itself, such telefacsimile communication shall be considered as an original.

(d) An original is not required and other evidence of the content of a writing, recording or photograph is admissible if:

(1) The writing, recording or photograph is lost or has been destroyed without fraudulent intent on the part of the proponent;

(2) the writing, recording or photograph is outside the reach of the court's process and not procurable by the proponent;

(3) the opponent, at a time when the writing, recording or photograph was under the opponent's control, has been notified, expressly or by implication from the pleadings, that it would be needed at the hearing, and on request at the hearing has failed to produce it;

(4) the writing, recording or photograph is not closely related to the controlling issues and it would be inexpedient to require its production;

(5) the writing is an official record, or is a writing affecting property authorized to be recorded and actually recorded in the public records as described in K.S.A. 60-460(s), and amendments thereto; or

(6) calculations or summaries of content are called for as a result of an examination by a qualified witness of multiple or voluminous writings, and such writings cannot be conveniently examined in court, but the adverse party shall have had a reasonable opportunity to examine such records before trial, and such writings are present in court for use in cross-examination, or the adverse party has waived their production, or the judge finds that their production is unnecessary.

(e) The proponent may prove the content of a writing, recording or photograph by the testimony, deposition or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

(f) Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording or photograph under subsection (d). But in a jury trial, the jury determines any issue about whether:

(1) An asserted writing, recording or photograph ever existed;

(2) another one produced at the trial or hearing is the original; or

(3) other evidence of content accurately reflects the content.

(g) If the procedure specified by K.S.A. 60-245a(b), and amendments thereto, for providing business records has been complied with and no party has required the personal attendance of a custodian of the records or the production of the original records, the copy of the records produced shall not be excluded under subsection (a).

(h) The following definitions apply to this section:

(1) "Telefacsimile communication" means the use of electronic equipment to send or transfer a copy of an original document via telephone lines.

(2) "Photograph" means a photographic image or its equivalent stored in any form.

(3) "Original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For

electronically stored information, "original" means any printout, or other output readable by sight, if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

(4) "Duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic or other equivalent process or technique that accurately reproduces the original.

History: L. 1963, ch. 303, 60-467; L. 1985, ch. 196, § 4; L. 1989, ch. 177, § 1; L. 2021, ch. 65, § 4; July 1.