HOouse Bill No. 2612

By Committee on Judiciary

1-12

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

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

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

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

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

(c) As used in this section:

(1) “Lawyer” means an attorney registered as active pursuant to supreme court rule.

(2) “Judge” means a current or retired Kansas district court judge and a current or retired judge of the Kansas court of appeals.

(3) “Justice” means a current or retired justice of the Kansas supreme court.

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

(a) To improve the judicial performance of individual judges and justices and thereby improve the judiciary as a whole;
(b) where judges and justices are subject to retention elections, to disseminate the results from the judicial performance evaluation process to enable voters to make informed decisions about continuing judges and justices in office; and
(c) to protect judicial independence while promoting public accountability of the judiciary.

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

(a) Create surveys of court users who have directly observed the judge’s or justice’s performance or interacted with the judge or justice, including attorneys, litigants, jurors and other persons the commission deems appropriate. The surveys shall be dispersed, collected and tabulated by an independent organization or in any other manner that insures confidentiality. The surveys shall ask those surveyed to evaluate the judges and justices on such judge’s or justice’s ability, integrity, impartiality, communication skills, professionalism, temperament and administrative capacity suitable to the jurisdiction and level of court;
(b) develop clear, measurable performance standards upon which the survey questions are based;
(c) develop dissemination plans that:
(1) Protect confidentiality when the judicial performance evaluation is used only for self-improvement;
(2) make the judicial performance evaluation results widely available when they are to be used to assist voters in evaluating the performance of judges and justices subject to retention elections; and
(3) make public recommendations regarding whether or not to retain judges and justices subject to retention elections;
(d) develop a procedure for judges and justices to receive and respond to survey results before such results are made public;
(e) establish a mechanism to incorporate evaluation results in designing judicial education programs; and
(f) adopt rules for implementation of the judicial performance evaluation process, subject to approval by the Kansas supreme court.

New Sec. 5. The surveys of court users, survey results and judicial performance evaluation results are confidential and shall not be disclosed except in accordance with the rules of the commission or the Kansas supreme court. The evaluation of judges subject to political elections shall be used solely for self-improvement. A judge subject to political elections shall not reveal data from any portion of the survey or the results of the survey.
New Sec. 6. Upon certification by the commission to the judicial council that: (a) Funding is not adequate to support a judicial evaluation program of high quality; (b) the Kansas supreme court has failed to adopt appropriate rules as set forth in this act; or (c) in the opinion of the commission the program is no longer of appropriate value, then the program may be reduced in scope or discontinued as determined by the judicial council.

New Sec. 7. There is hereby established in the state treasury the judicial performance fund. All moneys credited to the fund shall be used for the judicial performance evaluation process. All expenditures from the judicial performance fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the chairperson of the Kansas judicial council or by the person or persons designated by the chairperson of the Kansas judicial council.

Sec. 8. K.S.A. 2005 Supp. 20-367 is hereby amended to read as follows: 20-367. Of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the judicial performance fund, a sum equal to 3.84%; to the access to justice fund, a sum equal to 5.90% of the remittances of docket fees; to the juvenile detention facilities fund, a sum equal to 3.15% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 2.42% of the remittances of docket fees; to the crime victims assistance fund, the state treasurer shall deposit and credit a sum equal to 64% of the remittances of the docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to 3.10% of the remittances of the docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 4.91% of the remittances of docket fees; to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to 0.39% of the remittances of docket fees; to the Kansas juvenile delinquency prevention trust fund, the state treasurer shall deposit and credit a sum equal to 1.43% of the remittances of docket fees; to the permanent families account in the family and children investment fund, the state treasurer shall deposit and credit a sum equal to 21.41% of the remittance of docket fees; to the trauma fund, a sum equal to 1.77% of the remittance of docket fees; to the judicial council fund, a sum equal to 1.28% of the remittance of docket fees; and to the judicial branch nonjudicial salary initiative fund, the state treasurer shall deposit and credit a sum equal to 20.59% of the remittance of docket fees. The balance remaining of the remittances of docket fees shall be
deposited and credited to the state general fund.

Sec. 9. K.S.A. 2005 Supp. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in any county, a docket fee shall be taxed as follows:

<table>
<thead>
<tr>
<th>Offense</th>
<th>Docket Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder or manslaughter</td>
<td>$164.50</td>
</tr>
<tr>
<td>Other felony</td>
<td>$147.00</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>$112.00</td>
</tr>
<tr>
<td>Forfeited recognizance</td>
<td>$62.50</td>
</tr>
<tr>
<td>Appeals from other courts</td>
<td>$62.50</td>
</tr>
</tbody>
</table>

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of $55 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be $57.

(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of $55 shall be charged. When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be $55.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically
fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors’ fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

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

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

59-104.

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

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatment of mentally ill</td>
<td>$27.50</td>
</tr>
<tr>
<td>Treatment of alcoholism or drug abuse</td>
<td>$27.50</td>
</tr>
<tr>
<td>Determination of descent of property</td>
<td>$42.50</td>
</tr>
<tr>
<td>Termination of life estate</td>
<td>$41.50</td>
</tr>
<tr>
<td>Termination of joint tenancy</td>
<td>$41.50</td>
</tr>
<tr>
<td>Refusal to grant letters of administration</td>
<td>$41.50</td>
</tr>
<tr>
<td>Adoption</td>
<td>$41.50</td>
</tr>
<tr>
<td>Filing a will and affidavit under K.S.A. 59-618a.</td>
<td>$41.50</td>
</tr>
<tr>
<td>Guardianship</td>
<td>$62.50</td>
</tr>
<tr>
<td>Conservatorship</td>
<td>$62.50</td>
</tr>
<tr>
<td>Trusteeship</td>
<td>$62.50</td>
</tr>
<tr>
<td>Combined guardianship and conservatorship</td>
<td>$62.50</td>
</tr>
<tr>
<td>Certified probate proceedings under K.S.A. 59-213, and amendments thereto</td>
<td>$16.50</td>
</tr>
<tr>
<td>Decrees in probate from another state</td>
<td>$101.50</td>
</tr>
<tr>
<td>Probate of an estate or of a will</td>
<td>$102.50</td>
</tr>
<tr>
<td>Civil commitment under K.S.A. 59-29a01 et seq.</td>
<td>$26.50</td>
</tr>
</tbody>
</table>
(b) Poverty affidavit in lieu of docket fee and exemptions. The provisions of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and amendments thereto, shall apply to probate docket fees prescribed by this section.

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

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

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

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

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

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

(b) Poverty affidavit in lieu of docket fee. (1) Effect. In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate’s trust fund for each month in (A) the six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and
attached statement, the court shall determine the initial fee to be assessed
for filing the action and in no event shall the court require an inmate to
pay less than $3. The secretary of corrections is hereby authorized to
disburse money from the inmate’s account to pay the costs as determined
by the court. If the inmate has a zero balance in such inmate’s account,
the secretary shall debit such account in the amount of $3 per filing fee
as established by the court until money is credited to the account to pay
such docket fee. Any initial filing fees assessed pursuant to this subsection
shall not prevent the court, pursuant to subsection (d), from taxing that
individual for the remainder of the amount required under subsection (a)
or this subsection.

(2) Form of affidavit. The affidavit provided for in this subsection
shall be in the following form and attached to the petition:
State of Kansas, ____________ County.
In the district court of the county: I do solemnly swear that the claim set forth in the
petition herein is just, and I do further swear that, by reason of my poverty, I am unable to
pay a docket fee.
(c) Disposition of fees. The docket fees and the fees for service of
process shall be the only costs assessed in each case for services of the
clerk of the district court and the sheriff. For every person to be served
by the sheriff, the persons requesting service of process shall provide
proper payment to the clerk and the clerk of the district court shall for-
ward the service of process fee to the sheriff in accordance with K.S.A.
28-110, and amendments thereto. The service of process fee, if paid by
check or money order, shall be made payable to the sheriff. Such service
of process fee shall be submitted by the sheriff at least monthly to the
county treasurer for deposit in the county treasury and credited to the
county general fund. The docket fee shall be disbursed in accordance
with K.S.A. 20-362 and amendments thereto.
(d) Additional court costs. Other fees and expenses to be assessed as
additional court costs shall be approved by the court, unless specifically
fixed by statute. Other fees shall include, but not be limited to, witness
fees, appraiser fees, fees for service of process, fees for depositions, al-
ternative dispute resolution fees, transcripts and publication, attorney
fees, court costs from other courts and any other fees and expenses re-
quired by statute. All additional court costs shall be taxed and billed
against the parties as directed by the court. No sheriff in this state shall
charge any mileage for serving any papers or process.
Sec. 13. K.S.A. 61-2704 is hereby amended to read as follows: 61-
2704. (a) An action seeking the recovery of a small claim shall be consid-
ered to have been commenced at the time a person files a written state-
ment of the person’s small claim with the clerk of the court if, within 90
days after the small claim is filed, service of process is obtained or the
first publication is made for service by publication. Otherwise, the action is deemed commenced at the time of service of process or first publication. An entry of appearance shall have the same effect as service.

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

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

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


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