

HOUSE BILL No. 2971

By Committee on Judiciary

2-15

AN ACT concerning civil procedure for limited actions; relating to service of process; amending K.S.A. 2001 Supp. 61-3003 and 61-3005 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 61-3003 is hereby amended to read as follows: 61-3003. (a) Methods of service of process within this state, except service by publication, are described in this section. Service of process outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308, and amendments thereto.

(b) Who serves process. The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

(c) Service by return receipt delivery.

(1) Service of process by return receipt delivery shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery.

(2) The sheriff, party or party's attorney shall cause a copy of the process and petition or other document to be placed in a sealed envelope addressed to the person to be served in accordance with K.S.A. 2001 Supp. 61-3004, and amendments thereto, with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery.

(3) Service of process shall be considered obtained under K.S.A. 2001 Supp. 61-2902, and amendments thereto, upon the delivery of the sealed envelope.

(4) After service and return of the receipt, the sheriff, party, or party's attorney shall execute a return on service stating the nature of the process, to whom delivered, the date of delivery, the address where delivered, and the person or entity effecting delivery. The original return of service shall

1 be filed with the clerk, along with a copy of the return receipt evidencing
2 such delivery.

3 (5) If the sealed envelope is returned with an endorsement showing
4 refusal to accept delivery, the sheriff, party or the party's attorney may
5 send a copy of the process and petition or other document by first-class
6 mail addressed to the party to be served, or may elect other methods of
7 service. If mailed, service shall be considered obtained three days after
8 the mailing by first-class mail, postage prepaid, which shall be evidenced
9 by a certificate of service filed with the clerk. If the unopened envelope
10 sent first-class mail is returned as undelivered for any reason, the sheriff,
11 party or party's attorney shall file an amended certificate of service with
12 the clerk indicating nondelivery, and service by such mailing shall not be
13 considered obtained. Mere failure to claim return receipt delivery is not
14 refusal of service within the meaning of this subsection.

15 (d) Personal and residence service.

16 (1) The party may file a written request with the clerk for personal
17 or residence service. Personal service shall be made by delivering or of-
18 fering to deliver a copy of the process and accompanying documents to
19 the person to be served. Residence service shall be made by leaving a
20 copy of the process and petition, or other document to be served, at the
21 dwelling house or usual place of abode of the person to be served with
22 some person of suitable age and discretion residing therein. If service
23 cannot be made upon an individual, other than a minor or a disabled
24 person, by personal or residence service, service may be made by leaving
25 a copy of the process and petition, or other document to be served, at
26 the defendant's dwelling house or usual place of abode and mailing a
27 notice that such copy has been left at such house or place of abode to the
28 individual by first-class mail.

29 (2) When process is to be served under this subsection, the clerk of
30 the court shall deliver the process and sufficient copies of the process and
31 petition, or other document to be served, to the sheriff of the county
32 where the process is to be served or, if requested, to a person appointed
33 to serve process or to the plaintiff's attorney.

34 (3) Service, levy and execution of all process under this subsection,
35 including, but not limited to, writs of execution, orders of attachment,
36 replevin orders, orders for delivery, writs of restitution and writs of assis-
37 tance, shall be made by a sheriff within the sheriff's county, by the sheriff's
38 deputy, by an attorney admitted to the practice of law before the supreme
39 court of Kansas or by some person appointed as a process server by a
40 judge or clerk of the district court, except that a subpoena may also be
41 served by any other person who is not a party and is not less than 18 years
42 of age. Process servers shall be appointed freely and may be authorized
43 either to serve process in a single case or in cases generally during a fixed

1 period of time. A process server or an authorized attorney may make the
2 service anywhere in or out of the state and shall be allowed the fees
3 prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and
4 such other fees and costs as the court shall allow. All persons authorized
5 under this subsection to serve, levy and execute process shall be consid-
6 ered an “officer” as used in K.S.A. 60-706 and 60-2401, and amendments
7 thereto.

8 (4) In all cases when the person to be served, or an agent authorized
9 by the person to accept service of process, refuses to receive copies
10 thereof, the offer of the duly authorized process server to deliver copies
11 thereof, and the refusal, shall be a sufficient service of the process.

12 (e) Publication service. Service of process by publication may be
13 made pursuant to the provisions of K.S.A. 60-307, and amendments
14 thereto, which are not inconsistent or in conflict with this act.

15 (f) Acknowledgment or appearance. An acknowledgment of service
16 on the summons is equivalent to service. The voluntary appearance by a
17 defendant is equivalent to service as of the date of appearance.

18 (g) The person serving process ~~may~~ *shall* serve a garnishment process
19 in any of the following methods:

20 ~~—(1) First class mail. Process may be sent to a person by first class mail~~
21 ~~by placing a copy of the process and petition or other document to be~~
22 ~~served in an envelope addressed to the person to be served in accordance~~
23 ~~with K.S.A. 2001 Supp. 61-3004, and amendments thereto, at such per-~~
24 ~~son’s last known address. The envelope used for such service shall be~~
25 ~~addressed to the person in accordance with K.S.A. 2001 Supp. 61-3004,~~
26 ~~and amendments thereto, and shall contain adequate postage. Such en-~~
27 ~~velope shall be sealed and placed in the United States mail. Service by~~
28 ~~first class mail shall be complete when the envelope is placed in the mail~~
29 ~~unless returned undelivered. Service shall be considered obtained upon~~
30 ~~the mailing by first class mail unless returned undelivered.~~

31 ~~—(2) Telefacsimile communication. Process may be sent to a person by~~
32 ~~telefacsimile communication. Service is complete upon receipt of a con-~~
33 ~~firmation generated by the transmitting machine.~~

34 ~~—(3) Internet electronic mail. Process may be sent to a person by in-~~
35 ~~ternet electronic mail as provided in the rules to be adopted hereunder~~
36 ~~by the supreme court by return receipt delivery pursuant to subsection~~
37 ~~(c) or personal service pursuant to subsection (d).~~

38 Sec. 2. K.S.A. 2001 Supp. 61-3005 is hereby amended to read as
39 follows: 61-3005. Proof of service shall be made as follows:

40 (a) Personal and residence service. (1) Every officer to whom sum-
41 mons or other process shall be delivered for service within or without the
42 state, shall make return thereof in writing stating the time, place and
43 manner of service of such writ, and shall sign such officer’s name to such

1 return.

2 (2) If such process is directed to and delivered to a person other than
3 by an officer for service, such person shall make affidavit as to the time,
4 place and manner of such person's service thereof.

5 (b) Service by return receipt delivery. Service by return receipt de-
6 livery shall be proven in the manner provided by subsection (e) of K.S.A.
7 60-308 or subsection (c) of K.S.A. 2001 Supp. 61-3003, and amendments
8 thereto.

9 (c) Publication service. Service by publication shall be proven by an
10 affidavit showing the dates upon, and the newspaper in which the notice
11 of publication was published. A copy of the notice shall be attached to
12 the affidavit which shall be filed in the cause. When mailing of copies of
13 the publication notice is required in accordance with subsection (e) of
14 K.S.A. 60-307, and amendments thereto, the proof of such mailing shall
15 be by affidavit of the person who mailed such copies and such affidavit
16 shall be filed with the clerk of the court in which the action has been
17 filed. Any return receipt shall be made a part of the affidavit and filed
18 therewith.

19 (d) Time for return. The officer or other person receiving a summons
20 or other process in forcible detainer cases shall make return of service
21 promptly and, in any event, no later than three days before the date stated
22 in the summons for the defendant to either appear or plead to the peti-
23 tion. In all other cases return of service shall be made promptly and, in
24 any event, no later than five days before the date stated in the summons
25 for the defendant to either appear or plead to the petition. If the process
26 cannot be served as directed, it shall be returned to the court forthwith
27 with a statement of the reason for the failure to serve the same.

28 (e) Amendment of return. At any time in the judge's discretion and
29 upon such terms as the judge deems just, the judge may allow any process,
30 return or proof of service thereof to be amended, unless it clearly appears
31 that material prejudice would result to the substantial rights of the party
32 against whom the process issued.

33 (f) Garnishment service of process. ~~(1) First class mail. The return~~
34 ~~shall show the nature of the process, the date on which the process was~~
35 ~~mailed and the name and address on the envelope containing the process.~~
36 ~~—(2) Telefacsimile communication. The return shall show the nature~~
37 ~~of the process, the time and date on which the process was transmitted~~
38 ~~by telefacsimile, the telephone number of the transmitting machine and~~
39 ~~the telephone number of the receiving machine.~~
40 ~~—(3) Internet electronic mail. The return shall show the nature of the~~
41 ~~process, the time and date on which the process was transmitted by in-~~
42 ~~ternet electronic mail, the internet electronic mail address of the trans-~~
43 ~~mitting person and the internet electronic mail address of the receiving~~

1 ~~person.~~ *Personal service pursuant to subsection (a) or service by return*
2 *receipt delivery pursuant to subsection (b).*

3 Sec. 3. K.S.A. 2001 Supp. 61-3003 and 61-3005 are hereby repealed.

4 Sec. 4. This act shall take effect and be in force from and after its
5 publication in the statute book.

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