

**As Amended by House Committee**

*Session of 2004*

**HOUSE BILL No. 2678**

By Representatives Campbell, Beggs, Boyer, Brunk, Burgess, Carlin, Cox, Feuerborn, Henry, Huff, Jack, D. Johnson, Kassebaum, Mason, McCreary, Judy Morrison, Novascone, O'Malley, Owens, Patterson, Reitz, S. Sharp, Siegfried, Sloan, Vickrey, Wilk, D. Williams and Yonally

2-2

14 AN ACT concerning civil procedure; relating to small claims; amending  
15 K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703, ~~61-2704~~ and 61-2713  
16 and repealing the existing sections.  
17

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

19 Section 1. K.S.A. 2003 Supp. 61-2703 is hereby amended to read as  
20 follows: 61-2703. As used in this act:

21 (a) "Small claim" means a claim for the recovery of money or personal  
22 property, where the amount claimed or the value of the property sought  
23 does not exceed ~~\$1,800~~ \$4,000, exclusive of interest, costs and any dam-  
24 ages awarded pursuant to K.S.A. 60-2610 and amendments thereto. In  
25 actions of replevin, the verified petition fixing the value of the property  
26 shall be determinative of the value of the property for jurisdictional pur-  
27 poses. A small claim shall not include:

28 (1) An assigned claim;

29 (2) a claim based on an obligation or indebtedness allegedly owed to  
30 a person other than the person filing the claim, where the person filing  
31 the claim is not a full-time employee or officer of the person to whom  
32 the obligation or indebtedness is allegedly owed; or

33 (3) a claim obtained through subrogation.

34 (b) "Person" means an individual, partnership, limited liability com-  
35 pany, corporation, fiduciary, joint venture, society, organization or other  
36 association of persons.

37 ~~Sec. 2. K.S.A. 2003 Supp. 61-2704 is hereby amended to read as~~  
38 ~~follows: 61-2704. (a) An action seeking the recovery of a small claim shall~~  
39 ~~be considered to have been commenced at the time a person files a writ-~~  
40 ~~ten statement of the person's small claim with the clerk of the court if,~~  
41 ~~within 90 days after the small claim is filed, service of process is obtained~~  
42 ~~or the first publication is made for service by publication. Otherwise, the~~  
43 ~~action is deemed commenced at the time of service of process or first~~

1 publication. An entry of appearance shall have the same effect as service.  
 2 — (b) — Upon the filing of a plaintiff's small claim, the clerk of the court  
 3 shall require from the plaintiff a docket fee of \$26, if the claim does not  
 4 exceed \$500 ~~\$2,500~~, or \$46, if the claim exceeds \$500 ~~\$2,500~~, unless for  
 5 good cause shown the judge waives the fee. The docket fee shall be the  
 6 only costs required in an action seeking recovery of a small claim. No  
 7 person may file more than 10 small claims under this act in the same  
 8 court during any calendar year.

9 Sec. ~~3~~ **2**. K.S.A. 61-2706 is hereby amended to read as follows: 61-  
 10 2706. (a) Whenever a plaintiff demands judgment beyond the scope of  
 11 the small claims jurisdiction of the court, the court shall either: (1) Dis-  
 12 miss the action without prejudice at the cost of the plaintiff; (2) allow the  
 13 plaintiff to amend the plaintiff's pleadings and service of process to bring  
 14 the demand for judgment within the scope of the court's small claims  
 15 jurisdiction and thereby waive the right to recover any excess, assessing  
 16 the costs accrued to the plaintiff; or (3) if the plaintiff's demand for judg-  
 17 ment is within the scope of the court's general jurisdiction, allow the  
 18 plaintiff to amend the plaintiff's pleadings and service of process so as to  
 19 commence an action in such court in compliance with K.S.A. 61-1703  
 20 and amendments thereto, assessing the costs accrued to the plaintiff.

21 (b) Whenever a defendant asserts a claim beyond the scope of the  
 22 court's small claims jurisdiction, but within the scope of the court's gen-  
 23 eral jurisdiction, the court may determine the validity of defendant's en-  
 24 tire claim. If the court refuses to determine the entirety of any such claim,  
 25 the court must allow the defendant to: (1) Make no demand for judgment  
 26 and reserve the right to pursue the defendant's entire claim in a court of  
 27 competent jurisdiction; (2) make demand for judgment of that portion of  
 28 the claim not exceeding ~~\$1,800~~ \$4,000, plus interest, costs and any dam-  
 29 ages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and  
 30 reserve the right to bring an action in a court of competent jurisdiction  
 31 for any amount in excess thereof; or (3) make demand for judgment of  
 32 that portion of the claim not exceeding ~~\$1,800~~ \$4,000, plus interest, costs  
 33 and any damages awarded pursuant to K.S.A. 60-2610 and amendments  
 34 thereto, and waive the right to recover any excess.

35 Sec. **4 3**. K.S.A. 2003 Supp. 61-2713 is hereby amended to read as  
 36 follows: 61-2713. (a) The petition shall be in substantially the following  
 37 form:

38 In the District Court of \_\_\_\_\_ County, Kansas.  
 39 \_\_\_\_\_  
 40 Plaintiff  
 41 vs. No. \_\_\_\_\_  
 42 \_\_\_\_\_  
 43 Defendant

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PETITION PURSUANT TO CHAPTER 61  
OF THE KANSAS STATUTES ANNOTATED

*Statement of claim:*

I, \_\_\_\_\_, having read the instruction below, hereby assert the following claim  
against \_\_\_\_\_, defendant:

*Demand for judgment:*

Based on the claim stated above, judgment is demanded against defendant as follows:

- 1. Payment of \$\_\_\_\_\_, plus interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto.
- 2. Recovery of the following described personal property, plus costs: \_\_\_\_\_  
This property has an estimated value of \$\_\_\_\_\_.

*Instructions to plaintiff:*

- 1. State the claim you have against the defendant in the space provided. Be clear and concise.
- 2. Your total claim against defendant may not exceed ~~\$1,500~~ \$4,000, not including interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto. If you are seeking the recovery of personal property, the value of that property shall be based on your estimate of its value under oath.
- 3. You must be present in person at the hearing in order to avoid default judgment against you on any claim defendant may have which arises out of the transaction or occurrence which is the subject to your claim against the defendant.
- 4. You must make demand for judgment in one or both of the spaces provided above.
- 5. Except as provided by law, neither you nor the defendant is permitted to appear with an attorney at the hearing.
- 6. You may not file more than 10 small claims under the small claims procedure act in this court during any calendar year.
- 7. After completing this form, you must subscribe to the following oath:

I, \_\_\_\_\_, hereby swear that, to the best of my knowledge and belief, the foregoing claim asserted against the defendant (including the estimate of value of any property sought to be recovered) is a just and true statement, exclusive of any valid claim or defense which defendant may have.

[Signature] \_\_\_\_\_

Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ *(year)*.

[Signature] \_\_\_\_\_

Judge (clerk or notary)

(b) The summons shall be in substantially the following form:

In the District Court of \_\_\_\_\_ County, Kansas.

\_\_\_\_\_

Plaintiff

vs.

No. \_\_\_\_\_

\_\_\_\_\_

Defendant

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SUMMONS  
(Small Claims Procedure)

To the above-named defendant:

You are hereby notified that the above-named plaintiff has filed a claim against you under the small claims procedure of this court. The statement of plaintiff's claim and demand for judgment against you are set forth in the petition which is served upon you with this summons.

A trial will be held on this matter at \_\_\_\_ o'clock \_\_\_\_m. on the \_\_\_\_ day of \_\_\_\_\_, ~~19~~ (year), at \_\_\_\_\_.

(Place of hearing and address)

You must be present in person at the trial or a judgment by default will be entered against you. Except as otherwise provided by law, neither you nor the plaintiff is permitted to appear with an attorney.

If your defense is supported by witnesses, books, receipts or other papers, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the judge or clerk of the court at once for assistance.

If you admit the claim, but desire additional time to satisfy plaintiff's demands, you must be present at the trial and explain the circumstances to the court.

If you have a claim against the plaintiff, which arises out of the transaction or occurrence which is the subject of plaintiff's claim and your claim does not exceed ~~\$1,500~~ \$4,000, you must complete the form for "Defendant's Claim," which accompanies this summons, and return it to the judge or clerk of the court on or before the time set for the trial. If your claim against plaintiff exceeds ~~\$1,500~~ \$4,000, you may complete and return the form for "Defendant's Claim" on or before the time set for trial.

RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served this summons:

(1) Personal service. By delivering a copy of the summons and a copy of the petition to each of the following defendants on the dates indicated:

\_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_, ~~19~~ (year)

(2) Residence service. By leaving a copy of the summons and a copy of the petition at the usual place of residence of each of the following defendants on the dates indicated:

\_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_, ~~19~~ (year)

(3) No service. The following defendants were not found in this county:

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature and Title of Officer)

(c) The defendant's claim shall be in substantially the following form:

In the District Court of \_\_\_\_\_ County, Kansas.

\_\_\_\_\_

Plaintiff

vs.

No. \_\_\_\_\_

\_\_\_\_\_

Defendant

DEFENDANT'S CLAIM

Instructions:

1. As stated in the summons, if you have a claim against the plaintiff which arises out of the transaction or occurrence which is the subject of plaintiff's claim and your claim does not exceed \$1,500 \$4,000, you must state your claim in the space provided below. If your claim against the plaintiff exceeds \$1,500 \$4,000, you may state your claim in the space provided below. In determining whether or not your claim against the plaintiff exceeds \$1,500 \$4,000, do not include interest, costs and any damages under K.S.A. 60-2610 and amendments thereto, but do include the value of any personal property sought to be recovered as determined by your estimate of its value under oath.

2. Be clear and concise in stating your claim.

3. If the value of your claim exceeds \$1,500 \$4,000 (not including interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto, but including the value of any personal property sought to be recovered, as determined by your estimate of its value under oath), the court must decide whether you may pursue your entire claim or only that portion not exceeding \$1,500 \$4,000.

4. If your claim exceeds \$1,500 \$4,000 and the court determines that you may not pursue the entire claim at the hearing, you have three alternatives: (1) Make no demand for judgment and reserve the right to pursue your entire claim in a court of competent jurisdiction; (2) make demand for judgment of that portion of your claim which does not exceed \$1,500 \$4,000 and reserve the right to bring an action in a court of competent jurisdiction for any amount in excess thereof; or (3) make demand for judgment of that portion of your claim which does not exceed \$1,500 \$4,000 and waive your right to recover any excess.

5. When completed, this form must be filed with the judge or the clerk of the court on or before the time stated in the summons for the trial.

Statement of claim:

I, \_\_\_\_\_, having read the instructions above, assert the following claim against \_\_\_\_\_, plaintiff:

Demand for judgment:

Based on the claim stated above, judgment is demanded against plaintiff as follows:

1. Payment of \$\_\_\_\_\_, plus interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto.

2. Recovery of the following described personal property, plus costs: This property has an estimated value of \$\_\_\_\_\_.

I, \_\_\_\_\_, hereby swear that, to the best of my knowledge and belief, the above claim asserted against the plaintiff (including the estimate of value of any property sought to be recovered) is a just and true statement.

[Signature] \_\_\_\_\_

Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ (year).

[Signature] \_\_\_\_\_

Judge (clerk or notary)

Sec. ~~5~~ 4. K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703, ~~61-2704~~

- 1 and 61-2713 are hereby repealed.
- 2 Sec. ~~6~~ **5**. This act shall take effect and be in force from and after its
- 3 publication in the statute book.