

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 437

By Committee on Judiciary

2-4

12 AN ACT concerning civil procedure; relating to small claims; amending
13 K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703 ~~and 61-2713~~ and re-
14 pealing the existing sections; **also repealing K.S.A. 2003 Supp. 61-**
15 **2713.**

16
17 *Be it enacted by the Legislature of the State of Kansas:*

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

20 (a) "Small claim" means a claim for the recovery of money or personal
21 property, where the amount claimed or the value of the property sought
22 does not exceed ~~\$1,800~~ \$5,000, exclusive of interest, costs and any dam-
23 ages awarded pursuant to K.S.A. 60-2610 and amendments thereto. ~~On~~
24 ~~January July 1, 2007, and every three years thereafter, the amount of the~~
25 ~~claim or the value of property sought as set forth in the previous sentence~~
26 ~~shall be increased by the judicial administrator of the courts by a per-~~
27 ~~centage equal to the previous three year average increase in the all-items~~
28 ~~consumer price index published by the United States department of labor.~~
29 ~~This amount shall be rounded to the nearest \$100.~~ In actions of re-
30 plevin, the verified petition fixing the value of the property shall be de-
31 terminative of the value of the property for jurisdictional purposes. A
32 small claim shall not include:

- 33 (1) An assigned claim;
34 (2) a claim based on an obligation or indebtedness allegedly owed to
35 a person other than the person filing the claim, where the person filing
36 the claim is not a full-time employee or officer of the person to whom
37 the obligation or indebtedness is allegedly owed; or
38 (3) a claim obtained through subrogation.
- 39 (b) "Person" means an individual, partnership, limited liability com-
40 pany, corporation, fiduciary, joint venture, society, organization or other
41 association of persons.

42 Sec. 2. K.S.A. 61-2706 is hereby amended to read as follows: 61-
43 2706. (a) Whenever a plaintiff demands judgment beyond the scope of

1 the small claims jurisdiction of the court, the court shall either: (1) Dis-
 2 miss the action without prejudice at the cost of the plaintiff; (2) allow the
 3 plaintiff to amend the plaintiff's pleadings and service of process to bring
 4 the demand for judgment within the scope of the court's small claims
 5 jurisdiction and thereby waive the right to recover any excess, assessing
 6 the costs accrued to the plaintiff; or (3) if the plaintiff's demand for judg-
 7 ment is within the scope of the court's general jurisdiction, allow the
 8 plaintiff to amend the plaintiff's pleadings and service of process so as to
 9 commence an action in such court in compliance with K.S.A. 61-1703
 10 and amendments thereto, assessing the costs accrued to the plaintiff.

11 (b) Whenever a defendant asserts a claim beyond the scope of the
 12 court's small claims jurisdiction, but within the scope of the court's gen-
 13 eral jurisdiction, the court may determine the validity of defendant's en-
 14 tire claim. If the court refuses to determine the entirety of any such claim,
 15 the court must allow the defendant to: (1) Make no demand for judgment
 16 and reserve the right to pursue the defendant's entire claim in a court of
 17 competent jurisdiction; (2) make demand for judgment of that portion of
 18 the claim not exceeding ~~\$1,800 the amount established in K.S.A. 61-2703,~~
 19 ~~and amendments thereto~~ [**\$5,000**], plus interest, costs and any damages
 20 awarded pursuant to K.S.A. 60-2610 and amendments thereto, and re-
 21 serve the right to bring an action in a court of competent jurisdiction for
 22 any amount in excess thereof; or (3) make demand for judgment of that
 23 portion of the claim not exceeding ~~\$1,800 the amount established in~~
 24 ~~K.S.A. 61-2703, and amendments thereto~~ [**\$5,000**], plus interest, costs
 25 and any damages awarded pursuant to K.S.A. 60-2610 and amendments
 26 thereto, and waive the right to recover any excess.

27 ~~Sec. 3. K.S.A. 2003 Supp. 61-2713 is hereby amended to read as~~
 28 ~~follows: 61-2713. (a) The petition shall be in substantially the following~~
 29 ~~form:~~

30 ~~In the District Court of _____ County, Kansas.~~
 31 _____
 32 **Plaintiff**
 33 vs. _____ No. _____
 34 _____
 35 **Defendant**

36 **PETITION PURSUANT TO CHAPTER 61 OF THE KANSAS STATUTES ANNOTATED**

37 ~~—Statement of claim.~~
 38 ~~I, _____, having read the instruction below, hereby assert the following claim~~
 39 ~~against _____, defendant.~~
 40 ~~—Demand for judgment.~~
 41 ~~—Based on the claim stated above, judgment is demanded against defendant as follows:~~
 42 ~~—1. Payment of \$ _____, plus interest, costs and any damages awarded under~~
 43 ~~K.S.A. 60-2610 and amendments thereto.~~

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

3 ~~—Instructions to plaintiff:~~

4 ~~—1. State the claim you have against the defendant in the space provided. Be clear and~~
5 ~~concise:~~

6 ~~—2. Your total claim against defendant may not exceed \$1,500, _____(the amount estab-~~
7 ~~lished in K.S.A. 61-2703, and amendments thereto)_____, not including interest, costs and~~
8 ~~any damages awarded under K.S.A. 60-2610 and amendments thereto. If you are seeking~~
9 ~~the recovery of personal property, the value of that property shall be based on your estimate~~
10 ~~of its value under oath.~~

11 ~~—3. You must be present in person at the hearing in order to avoid default judgment~~
12 ~~against you on any claim defendant may have which arises out of the transaction or occur-~~
13 ~~rence which is the subject to your claim against the defendant.~~

14 ~~—4. You must make demand for judgment in one or both of the spaces provided above.~~

15 ~~—5. Except as provided by law, neither you nor the defendant is permitted to appear with~~
16 ~~an attorney at the hearing.~~

17 ~~—6. You may not file more than 10 small claims under the small claims procedure act in~~
18 ~~this court during any calendar year.~~

19 ~~—7. After completing this form, you must subscribe to the following oath:~~

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

24 [Signature] _____

25 Plaintiff _____

26 ~~—Subscribed and sworn to before me this _____ day of _____, 19 _____(year)_____~~

27 [Signature] _____

28 Judge (clerk or notary)

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

30 ~~—In the District Court of _____ County, Kansas:~~

31 _____

32 Plaintiff

33 vs.

33 No. _____

34 _____

35 Defendant

36 SUMMONS

37 (Small Claims Procedure)

38 ~~—To the above-named defendant:~~

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

43 ~~—A trial will be held on this matter at _____ o'clock _____ m. on the _____ day of _____~~

1 ~~19~~ (year), at _____
 2 _____ (Place of hearing and address)
 3 —You must be present in person at the trial or a judgment by default will be entered against
 4 you. Except as otherwise provided by law, neither you nor the plaintiff is permitted to appear
 5 with an attorney.
 6 —If your defense is supported by witnesses, books, receipts or other papers, you should
 7 bring them with you at the time of the hearing. If you wish to have witnesses summoned,
 8 see the judge or clerk of the court at once for assistance.
 9 —If you admit the claim, but desire additional time to satisfy plaintiff's demands, you must
 10 be present at the trial and explain the circumstances to the court.
 11 —If you have a claim against the plaintiff, which arises out of the transaction or occurrence
 12 which is the subject of plaintiff's claim and your claim does not exceed \$1,800 _____ *(the*
 13 *amount established in K.S.A. 61-2703, and amendments thereto)* _____, you must complete
 14 the form for "Defendant's Claim," which accompanies this summons, and return it to the
 15 judge or clerk of the court on or before the time set for the trial. If your claim against
 16 plaintiff exceeds \$1,800 _____ *(the amount established in K.S.A. 61-2703, and amendments*
 17 *thereto)* _____, you may complete and return the form for "Defendant's Claim" on or
 18 before the time set for trial.

19 **RETURN ON SERVICE OF SUMMONS**

20 —I hereby certify that I have served this summons:
 21 —(1) *Personal service.* By delivering a copy of the summons and a copy of the petition to
 22 each of the following defendants on the dates indicated:
 23 _____, 19 (year) _____, 19 (year)
 24 —(2) *Residence service.* By leaving a copy of the summons and a copy of the petition at
 25 the usual place of residence of each of the following defendants on the dates indicated:
 26 _____, 19 (year) _____, 19 (year)
 27 —(3) *No service.* The following defendants were not found in this county:
 28 Dated: _____

29 _____
 30 _____
 (Signature and Title of Officer)

31 —(c) The defendant's claim shall be in substantially the following form:
 32 —In the District Court of _____ County, Kansas:

33 _____
 34 **Plaintiff**
 35 vs. _____ No. _____
 36 _____
 37 **Defendant**

38 **DEFENDANT'S CLAIM**

39 *Instructions:*
 40 —1. As stated in the summons, if you have a claim against the plaintiff which arises out
 41 of the transaction or occurrence which is the subject of plaintiff's claim and your claim does
 42 not exceed \$1,800 _____ *(the amount established in K.S.A. 61-2703, and amendments*
 43 *thereto)* _____, you must state your claim in the space provided below. If your claim against

1 the plaintiff exceeds \$1,800 _____(*the amount established in K.S.A. 61-2703, and amend-*
2 *ments thereto*)_____, you may state your claim in the space provided below. In determining
3 whether or not your claim against the plaintiff exceeds \$1,800 _____(*the amount estab-*
4 *lished in K.S.A. 61-2703, and amendments thereto*)_____, do not include interest, costs
5 and any damages under K.S.A. 60-2610 and amendments thereto, but do include the value
6 of any personal property sought to be recovered as determined by your estimate of its value
7 under oath.

8 —2. Be clear and concise in stating your claim:

9 —3. If the value of your claim exceeds \$1,800 _____(*the amount established in K.S.A.*
10 *61-2703, and amendments thereto*)_____, (not including interest, costs and any damages
11 awarded under K.S.A. 60-2610 and amendments thereto, but including the value of any
12 personal property sought to be recovered, as determined by your estimate of its value under
13 oath), the court must decide whether you may pursue your entire claim or only that portion
14 not exceeding \$1,800 _____(*the amount established in K.S.A. 61-2703, and amendments*
15 *thereto*)_____

16 —4. If your claim exceeds \$1,800 _____(*the amount established in K.S.A. 61-2703, and*
17 *amendments thereto*)_____, and the court determines that you may not pursue the entire
18 claim at the hearing, you have three alternatives. (1) Make no demand for judgment and
19 reserve the right to pursue your entire claim in a court of competent jurisdiction; (2) make
20 demand for judgment of that portion of your claim which does not exceed \$1,800 _____
21 (*the amount established in K.S.A. 61-2703, and amendments thereto*)_____, and reserve
22 the right to bring an action in a court of competent jurisdiction for any amount in excess
23 thereof, or (3) make demand for judgment of that portion of your claim which does not
24 exceed \$1,800 _____(*the amount established in K.S.A. 61-2703, and amendments thereto*)_____,
25 _____, and waive your right to recover any excess.

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

28 —*Statement of claim:*

29 —I, _____, having read the instructions above, assert the following claim against
30 _____, plaintiff.

31 —*Demand for judgment:*

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

33 —1. Payment of \$_____, plus interest, costs and any damages awarded under K.S.A. 60-
34 2610 and amendments thereto:

35 —2. Recovery of the following described personal property, plus costs. This property has
36 an estimated value of \$_____.

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

40 [Signature] _____

41 Plaintiff _____

42 —Subscribed and sworn to before me this _____ day of _____, 10 _____(*year*)_____

43 [Signature] _____

1
2 Sec. ~~43~~. K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703 and 61-2713
3 are hereby repealed. ~~judge (clerk or notary)~~
4 Sec. ~~54~~. This act shall take effect and be in force from and after its
5 publication in the statute book.