

SENATE BILL No. 258

AN ACT concerning form of statutory and legal documents; prescribing certain duties on the judicial council; amending K.S.A. 59-2124, 59-2129, 59-2143, 59-2210, 60-258, 60-268, 60-302, 60-307, 60-706 and 61-2705 and K.S.A. 2004 Supp. 58-4301, 59-1507b, 60-201, 60-1102, 60-1103, 60-1103b, 60-2420 and 61-2713 and repealing the existing sections; also repealing K.S.A. 60-269 and the appendix of forms following K.S.A. 60-269.

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

Section 1. K.S.A. 2004 Supp. 58-4301 is hereby amended to read as follows: 58-4301. (a) (1) Any person who owns real or personal property or an interest in real or personal property or who is the purported debtor or obligor and who has reason to believe that any document or instrument purporting to create a lien or claim against the real or personal property or an interest in real or personal property previously filed or submitted for filing and recording is fraudulent as defined in subsection (e) may complete and file, at any time without any time limitation, with the district court of the county in which such lien or claim has been filed or submitted for filing, or with the district court of the county in which the property or the rights appertaining thereto is situated, a motion for judicial review of the status of documentation or instrument purporting to create a lien or claim as provided in this section. Such motion shall be supported by the affidavit of the movant or the movant's attorney setting forth a concise statement of the facts upon which the claim for relief is based. Such motion shall be ~~in substantially the following form:~~ *deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

MISC. DOCKET No. \_\_\_\_\_  
In Re: A Purported Lien In the \_\_\_\_\_ Judicial District  
or Claim Against In and For \_\_\_\_\_  
(Name of Purported Debtor) County, Kansas  
Motion for Judicial Review of Documentation or Instrument  
Purporting to Create a Lien or Claim

Now Comes \_\_\_\_\_  
(name)  
and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the \_\_\_\_\_  
(filing office and location thereof)  
and in support of the motion would show the court as follows:

I:  
\_\_\_\_\_  
(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation or instrument.

II:  
On \_\_\_\_\_ (date), in the exercise of the filing officer's official duties as \_\_\_\_\_  
(filing officer's position)  
the filing officer received and filed and recorded the documentation or instrument attached hereto and containing \_\_\_\_\_ pages. Such documentation or instrument purports to have created a lien on real or personal property or an interest in real or personal property against \_\_\_\_\_, the purported debtor.

III:  
Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by subsection (e) of K.S.A. 2004 Supp. 58-4301 and amendments thereto, and that the documentation or instrument should therefore not be accorded lien status.

IV:  
Movant attests that assertions herein are true and correct.

V:  
Movant does not request the court to make findings as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions if this motion is determined to be frivolous.

PRAYER  
Movant requests the court to review the attached documentation or instrument and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate, including an order setting aside the lien and directing the filing officer to nullify the lien instrument or, if the lien or claim was filed pursuant to the uniform commercial code, an order acting as a termination statement filed pursuant to such code.

Respectfully submitted,  
\_\_\_\_\_  
(Signature and typed name and address)

(2) The completed form for ordinary certificate of acknowledgment ~~must be as follows:~~ *shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.*







(2) the child sought to be adopted, if over 14 years of age and of sound intellect.

(c) The provisions of subsection (a) shall apply to consent in a step-parent adoption, except that subsections (a)(3) and (4) shall not apply.

(d) A consent given by a parent, legal guardian or agency shall be ~~in substantial conformity~~ deemed sufficient if in substantial compliance with the form for consent contained in the appendix of forms following K.S.A. ~~59-2143~~ set forth by the judicial council.

(e) A consent given by a legal guardian, judge or agency shall set forth the authority to execute the consent and shall be accompanied by documents supporting that authority.

Sec. 5. K.S.A. 59-2143 is hereby amended to read as follows: 59-2143. ~~The forms contained in the appendix of forms are sufficient under K.S.A. 59-2111 through 59-2143. The form for consent and relinquishment to be utilized under the Kansas adoption and relinquishment act shall be set forth by the judicial council.~~

~~APPENDIX OF FORMS  
RELINQUISHMENT OF MINOR CHILD TO AGENCY~~

~~NOTICE TO PARENT OR PERSON IN LOCO PARENTIS:~~

~~—This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein. You are to receive a copy of this document.~~

~~—I, \_\_\_\_\_, (mother, father, person in loco parentis) of \_\_\_\_\_, a minor child, state:~~

~~—The child was born on \_\_\_\_\_ at (place of birth) at \_\_\_\_\_ .m.~~

~~—I reside at \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_.~~

~~—(If the relinquishment is by a person in loco parentis the relinquishment shall have attached documents supporting the person's authority to execute the relinquishment.)~~

~~—I am of the age of \_\_\_\_\_ years and was born on \_\_\_\_\_.~~

~~—(If the relinquishing person is a minor, the relinquishment should set forth that, prior to signing the relinquishment, the person has received legal advice as to the relinquishment, from an attorney who does not represent the agency.)~~

~~—I do hereby relinquish the child to (name of agency), which I understand will have full power and all the rights of a birth parent or legal guardian over the child, including the power to place the child for adoption and give consent thereto.~~

~~—I wish to and understand that by signing this relinquishment I do permanently give up all custody and other parental rights I have to such child, including the right to receive notice of any subsequent adoption proceedings involving the child.~~

~~—I have read and understand the above and I am signing it as my free and voluntary act.~~

~~—Dated this \_\_\_\_\_, at \_\_\_\_\_ .m.~~

~~\_\_\_\_\_  
(Parent or Person in loco parentis)~~

~~Certificate of Attorney for Relinquishing Minor Parent~~

~~—I have fully explained that by signing this relinquishment \_\_\_\_\_ is permanently giving up all parental rights to the child and (she) (he) has stated that such is (her) (his) intention and desire.~~

~~—Dated \_\_\_\_\_~~

~~\_\_\_\_\_  
(Attorney)~~

~~ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT~~

~~STATE OF \_\_\_\_\_ )  
\_\_\_\_\_ ) SS:  
COUNTY OF \_\_\_\_\_ )~~

~~—I, \_\_\_\_\_,  
Judge of \_\_\_\_\_, (name and location of court), certify that \_\_\_\_\_~~

known to me to be the same person whose name is subscribed to the foregoing relinquishment, appeared before me this day in person and acknowledged that (she) (he) signed for such relinquishment as (her) (his) free and voluntary act, for the specified purpose.

—I have fully explained that by signing such relinquishment (she) (he) is permanently giving up all parental rights to such child and (she) (he) has stated that such is (her) (his) intention and desire.

—Dated \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_  
JUDGE

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) SS:  
COUNTY OF \_\_\_\_\_ )

—I, a notarial officer in and for the county and state aforesaid, certify that \_\_\_\_\_ known to me to be the same person whose name is subscribed to the foregoing relinquishment, appeared before me in person and acknowledged that the statements made in the foregoing relinquishment are true.

—Dated \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_  
(Signature of Notarial Officer)

(SEAL, if any)

\_\_\_\_\_  
Title (and Rank)

[My Appointment Expires: \_\_\_\_\_]

ACCEPTANCE OF CHILD BY AGENCY:

—I, the undersigned, on behalf of \_\_\_\_\_ (name of agency), do hereby accept custody of \_\_\_\_\_, the above relinquished minor child.

\_\_\_\_\_  
(Date) (Name and Title)

CONSENT TO ADOPTION OF MINOR CHILD

NOTICE TO PARENT OR LEGAL GUARDIAN:

—This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein, so as to permit the child's adoption. You are to receive a copy of this document.

—I, \_\_\_\_\_, (mother, father, legal guardian) of \_\_\_\_\_, a minor child, state:

—The child was born on \_\_\_\_\_ at \_\_\_\_\_ (place of birth) at \_\_\_\_\_, m.

—I reside at \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_.

—(If the consent is by a legal guardian, the consent shall have attached documents supporting the guardian's appointment and the authority of the guardian to execute the consent.)

—I am of the age of \_\_\_\_\_ years and was born on \_\_\_\_\_, \_\_\_\_\_.

—(If the consenting person is a minor, the consent should set forth that, prior to signing the consent, the person has received legal advice as to the consent, from an attorney who does not represent the petitioner for adoption.)

—I do hereby consent and agree to the adoption of the child [(by \_\_\_\_\_) or (and I do not require disclosure of the name or other identification of the adopting parent or parents)].

—I wish to and understand that by signing this consent I do permanently give up all custody and other parental rights I have to such child.

—I have read and understand the above and I am signing it as my free and voluntary act.

—Dated this \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_  
(Parent or Legal Guardian)

Certificate of Attorney for Consenting Minor Parent

—I have fully explained that by signing this consent \_\_\_\_\_ is permanently giving up all parental rights to the child and (she) (he) has stated that such is (her) (his) intention and desire.

—Dated \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Attorney

ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ ) SS:

COUNTY OF \_\_\_\_\_ )

—I, \_\_\_\_\_, Judge of \_\_\_\_\_ (name and location of court), certify that \_\_\_\_\_, known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me this day in person and acknowledged that (she) (he) signed such consent as (her) (his) free and voluntary act, for the specified purpose.

—I have fully explained that by signing such consent (she) (he) is permanently giving up all parental rights to such child and (she) (he) has stated that such is (her) (his) intention and desire.

—Dated \_\_\_\_\_, at \_\_\_\_\_, m.

JUDGE

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ ) SS:

COUNTY OF \_\_\_\_\_ )

—I, a notarial officer in and for the county and state aforesaid, certify that \_\_\_\_\_, known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me in person and acknowledged that the statements made in the foregoing consent are true.

—Dated \_\_\_\_\_, at \_\_\_\_\_, m.

(Signature of Notarial Officer)

(SEAL, if any)

\_\_\_\_\_  
\_\_\_\_\_  
Title (and Rank)

[My Appointment Expires: \_\_\_\_\_]

AGENCY CONSENT TO ADOPTION OF MINOR CHILD

\_\_\_\_\_ (Name of Agency), a (public)(private) entity having for its purpose the care and maintenance of children, is located in and authorized under the laws of the state of \_\_\_\_\_ to place children for adoption, consent to the adoption and to stand *in loco parentis* to such children until they are adopted or reach majority.

\_\_\_\_\_ (Name of Agency) is vested with the right to consent to the adoption of \_\_\_\_\_ (Name of Child), a minor child born \_\_\_\_\_ (Date of Birth) at \_\_\_\_\_ (Place of Birth) pursuant to [a relinquishment executed by (the parents of the child)(the person *in loco parentis* to the child)][an order or judgment of the \_\_\_\_\_ court of \_\_\_\_\_ county, \_\_\_\_\_, a court of competent jurisdiction]. Documents supporting the authority to execute this consent are attached hereto.

\_\_\_\_\_ (Name of Agency) does hereby consent to the adoption of \_\_\_\_\_ (Name of Child) by \_\_\_\_\_ resident(s) of \_\_\_\_\_ and does hereby surrender said child to said person(s) for the purpose of adoption.

\_\_\_\_\_ (Name of Agency) has authorized \_\_\_\_\_ (Name of Authorized Representative) the undersigned, as the authorized representative to execute consents to adoption on behalf of said agency.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Title of Authorized Representative)

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ ) SS:

COUNTY OF \_\_\_\_\_ )

—I, a notarial officer in and for the county and state aforesaid certify that \_\_\_\_\_, known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me in person and acknowledged that the statements made in the foregoing consent are true.

—Dated \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Notarial Officer)

(SEAL, if any)

\_\_\_\_\_  
\_\_\_\_\_  
Title (and Rank)

[My Appointment Expires: \_\_\_\_\_]

Sec. 6. K.S.A. 59-2210 is hereby amended to read as follows: 59-2210. Notice of any hearing, if such is required, shall be ~~in substantially the following form:~~ *deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

State of Kansas, \_\_\_\_\_ County, ss. In the district court of said county and state: In the matter of the estate of (name of decedent or person under disability, with a specific designation which it is). Notice of Hearing. The state of Kansas to all persons concerned. — You are hereby notified that a petition has been filed in said court by (name of petitioner and capacity in which said petitioner appears), praying for (state nature of petition and the nature of the judgment, order or other relief sought), and you are hereby required to file your written defenses thereto on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ m. of said day, in said court, in the city of \_\_\_\_\_, at which time and place said cause will be heard. Should you fail therein, judgment and decree will be entered in due course upon said petition. \_\_\_\_\_, petitioner.

Sec. 7. K.S.A. 2004 Supp. 60-201 is hereby amended to read as follows: 60-201. (a) *The provisions of article 2 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, shall be known and cited as the rules of civil procedure.*

(b) This article governs the procedure in the district courts of Kansas, other than actions commenced pursuant to the code of civil procedure for limited actions and governs the procedure in all original proceedings in the supreme court in all suits of a civil nature whether cognizable as cases at law or in equity, except as provided in K.S.A. 60-265, and amendments thereto.

Sec. 8. K.S.A. 60-258 is hereby amended to read as follows: 60-258. Entry of judgments shall be subject to the provisions of section 60-254(b). No judgment shall be effective unless and until a journal entry or judgment form is signed by the trial judge and filed with the clerk of the court. ~~Where a judgment form is used it shall be substantially as follows:~~

\_\_\_\_\_, Plaintiff;  
vs. \_\_\_\_\_ No. \_\_\_\_\_  
\_\_\_\_\_, Defendant.

**JUDGMENT FORM**

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, judgment is entered as follows:  
(Include here the judgment entered)

\_\_\_\_\_  
\_\_\_\_\_  
Judge

When judgment is entered by judgment form the clerk shall serve a copy of the judgment form on all attorneys of record within three days. Service may be made personally or by mail. Failure of service of a copy of the judgment form shall not affect the validity of the judgment.

Sec. 9. K.S.A. 60-268 is hereby amended to read as follows: 60-268. ~~The forms contained in the appendix of forms are sufficient under this article and are intended to indicate the simplicity and brevity of statement which this article contemplates.~~ *Forms provided by the judicial council are deemed sufficient and are intended to be simple, concise and direct as contemplated by the rules of civil procedure.*

Sec. 10. K.S.A. 60-302 is hereby amended to read as follows: 60-302. The summons shall be signed by the clerk, dated the day it is issued, be under the seal of the court and shall be ~~in substantial conformity with the forms for summons contained in the appendix of forms following K.S.A. 60-269~~ *deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

Sec. 11. K.S.A. 60-307 is hereby amended to read as follows: 60-307. (a) *When permissible.* Service may be made by publication in any of the following cases:

(1) In actions to obtain a divorce, maintenance or an annulment of the contract of marriage if the defendant resides out of the state or if the party with due diligence is unable to make service of summons upon the defendant within the state.

(2) In actions brought against a person who is a nonresident of the state or a foreign corporation having in this state property or debts owing to the person sought to be taken by any of provisional remedies or to be appropriated in any way.

(3) In actions which relate to or the subject of which is real or personal property in this state, if any defendant has or claims a lien or interest, vested or contingent, in the property, or the relief demanded consists wholly or partly in excluding the defendant from any interest in the property, or in actions for partition or for foreclosure of a lien, if the defendant is a nonresident of the state or a foreign corporation or if the party with due diligence is unable to make service of summons upon the defendant within the state.

(4) In all actions in which the defendant, being a resident of this state, has departed from this state or from the county of the defendant's residence, with the intent to delay or defraud creditors or to avoid the service of a summons, or hides in the state or county with that intent, or in an action against a domestic corporation which has not been legally dissolved, if the officers thereof have departed from the state or cannot be found.

(5) In any of the actions mentioned in this subsection, publication service may be had on any of the following who are made defendants as such: The unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any deceased defendants; the unknown spouses of any defendants; the unknown officers, successors, trustees, creditors and assigns of any defendants that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of any defendants that are or were partners or in partnership; the unknown guardians, conservators and trustees of any defendants that are minors or are under any legal disability; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any person alleged to be deceased.

(b) *Construction and effect.* The process provisions of this section shall be construed as separate and permissive methods of obtaining service. If the defendant served in accordance with this section does not appear, judgment may be rendered affecting the property, *res* or status within the jurisdiction of the court as to the defendant, but the service shall not warrant a personal judgment against the defendant.

(c) *Affidavit for service by publication.* Before service by publication as provided in this section can be made, one of the parties or the party's attorney shall file an affidavit stating any of the following facts that are applicable:

(1) The residences of all named defendants sought to be served, if known, and the names of all defendants whose residences are unknown after reasonable effort to ascertain the same.

(2) The affiant has made a reasonable but unsuccessful effort to ascertain the names and residences of any defendants sought to be served as unknown parties in accordance with subsection (a)(5).

(3) The party seeking service by publication is unable to procure service of summons on the defendants in this state.

(4) The case is one of those mentioned in clauses (1) through (4) of subsection (a).

The affidavit shall be ~~in substantially the following form:~~ *deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

(Name of Court)  
 \_\_\_\_\_, Plaintiff,

vs.

(Name of first defendant), *et al.* Defendants.  
 (affidavit)

State of Kansas, \_\_\_\_\_ County, ss:

\_\_\_\_\_, of lawful age, being first duly sworn, states that

—1. The affiant is (the plaintiff or defendant, or an attorney for the plaintiff or defendant) in the above action and makes this affidavit for the purpose of obtaining service by publication upon the parties named herein.

—2. The defendants on whom service by publication is sought and whose names and addresses are known are as follows: (Names and addresses):

—3. The defendants on whom service by publication is sought whose names are known but whose residences are unknown notwithstanding reasonable effort of the affiant to ascertain the same are as follows: (Names):

—4. The affiant does not know and with reasonable diligence is unable to ascertain the names or residences of any of those classes of unknown persons who are or may be concerned in the subject of this litigation, as mentioned in subsection (a)(5) of K.S.A. 60-307, and amendments thereto, but that the affiant desires to include all such in the affiant's constructive service.

—5. The affiant is unable to procure service of summons on any of the specified defendants within this state.

~~6. This action is one of those mentioned in K.S.A. subsections (a)(1) through (4) of 60-307, and amendments thereto.~~

~~(Jurat) \_\_\_\_\_ (Signature)~~

When the affidavit is filed, service may proceed by publication.

(d) *Publication; form of notice; description of property, when.* The notice shall be published once a week for three consecutive weeks in some newspaper published in the county where the petition is filed and which newspaper is authorized by law to publish legal notices. If there is no newspaper published in the county, the notice may be published in a newspaper having general circulation in the county. The notice must name the defendants to be served and notify them and all other persons who are or may be concerned that the defendants have been sued in a named court and must answer or plead otherwise to the petition, or other pleading, filed in the court, on or before a date to be stated, which date shall be not less than 41 days from the date the notice is first published, or the petition or other pleading filed will be taken as true, and judgment, the nature of which shall be stated, will be rendered accordingly.

The notice shall be ~~in substantially the following form:~~ *deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

**Notice of Suit**

~~The state of Kansas to (names of defendants to whom notice is given) and all other persons who are or may be concerned:~~

~~You are hereby notified that a (petition or other pleading) has been filed in (name of court) by (name of pleader) praying for (state briefly the nature of the pleading and the judgment or other relief sought); and you are hereby required to plead to the (petition or other pleading) on or before \_\_\_\_\_, 19\_\_\_\_, in the court at \_\_\_\_\_, Kansas. If you fail to plead, judgment and decree will be entered in due course upon the (petition or other pleading).~~

~~\_\_\_\_\_  
(Name of plaintiff or other party.)~~

Where the action affects property, the notice need not expressly describe the property, unless the description is otherwise required by law, but the property may be identified by reference to the pleading.

(e) *Mailing copy of notice.* The party seeking to secure service by publication shall, within seven days after the first publication, mail a copy of the publication notice to each defendant whose address is stated in the affidavit for service by publication.

(f) *When service complete.* Service by publication shall be deemed complete when it has been made in the manner and for the time prescribed in subsections (d) and (e), and the service shall be proved. No judgment by default shall be entered on the service until proof of service is made, approved by the court and filed.

Sec. 12. K.S.A. 60-706 is hereby amended to read as follows: 60-706.

(a) *Issuance and contents.* The order of attachment shall be delivered to the sheriff of any county or other officer authorized by law to serve the same, and shall command such sheriff or officer to attach the property of the defendant or so much thereof as will be sufficient to satisfy the plaintiff's claim, as sworn to, with interest and costs, or such specific property as shall be directed in writing by the plaintiff or the plaintiff's attorney, and to summon as garnishees all persons in whose possession any personal property or money of the defendant may be, or who may be named by the plaintiff or the plaintiff's attorney as garnishees. An order ~~or~~ of attachment ~~in substantially the following form is declared to be sufficient:~~ *shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

**(TITLE OF CASE)**

~~The State of Kansas to the Sheriff of \_\_\_\_\_ County, in the State of Kansas—  
Greeting:~~

~~You are commanded to attach all real and personal property of the above named defendant in the above named county or so much thereof as will satisfy said plaintiff's claim in the sum of \$\_\_\_\_\_, and the further sum of \$\_\_\_\_\_ as the probable court costs of the above entitled action; and you will return this writ to the undersigned on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.~~

~~If the real or personal property sought to be attached by you is in the hands of some person other than the defendant, you shall serve a copy of this order on such third party and declare to such party that you attach the same and that such third party is made a garnishee in accordance with the following directions to such third party:~~

~~If the officer serving this order of attachment upon you declares to you that the officer~~

attaches any funds or property in your hands, you are hereby made a garnishee in the above entitled matter.

—“You are hereby ordered as a garnishee to file with the clerk of the above named court, within twenty (20) days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you file your answer, indebted to the defendant, or have in your possession or control any property belonging to the defendant, and stating the amount of any such indebtedness and description of any such property. You are hereby further ordered to withhold the payment of any such indebtedness, or the delivery away from yourself of any such property, until further order of the court.

—“Failure to file your answer as aforesaid shall entitle the plaintiff to judgment against you for the full amount of the claim and costs.”

—Witness my hand and the seal of said court at my office in \_\_\_\_\_ in said county, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

(Signature) \_\_\_\_\_

Judge of the District Court.

(b) *Manner of serving order.* The attachment order shall be served as follows:

(1) *Service of attachment.* In addition to the process required under article 3 of this chapter, the order of attachment shall be served upon the defendant, if the defendant can be found, in the same manner as an ordinary summons, and a return made thereof.

(2) *Manner of executing order, inventory.* The order of attachment shall be executed by the officer without delay. The officer shall go to the place where the defendant’s property may be found and declare that by virtue of said order such officer attaches said property. In attaching personal property, the officer and two disinterested appraisers who are residents of the county shall make a true inventory and appraisal of the same under oath and said inventory and appraisal shall be signed by the officer and the appraisers and returned with the order. Compensation for the two persons assisting with the appraisal and inventory shall be fixed by the court and assessed as additional court costs.

(3) *Possession of attached property.* If the property is tangible personal property, the officer shall take the same into possession if the officer can reasonably do so. If the officer does not take into possession any tangible personal property which is in the possession of some person other than the defendant, the officer shall declare to the person in possession thereof that such officer attaches the same and shall summon such person as garnishee by serving upon the person a copy of the order of attachment.

(4) *Execution of order against realty.* When the property attached is real property, the officer shall leave with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the order. The officer shall include in his or her return the name of such occupant, if any.

(5) *Attaching credits.* When the credits of the defendant are to be attached, the officer shall declare to the debtor of the defendant that the officer attaches all debts due from such debtor to the defendant, or so much thereof as shall be sufficient to satisfy the debt and interest, or damages and costs, and summon such debtor as garnishee by serving upon the debtor a copy of the order of attachment.

Sec. 13. K.S.A. 2004 Supp. 60-1102 is hereby amended to read as follows: 60-1102. (a) *Filing.* Any person claiming a lien on real property, under the provisions of K.S.A. 60-1101, and amendments thereto, shall file with the clerk of the district court of the county in which property is located, within four months after the date material, equipment or supplies, used or consumed was last furnished or last labor performed under the contract a verified statement showing:

- (1) The name of the owner,
- (2) the name and address sufficient for service of process of the claimant,
- (3) a description of the real property,
- (4) a reasonably itemized statement and the amount of the claim, but if the amount of the claim is evidenced by a written instrument, or if a promissory note has been given for the same, a copy thereof may be attached to the claim in lieu of the itemized statement.

(b) *Recording.* Immediately upon the receipt of such statement the clerk of the court shall index the lien in the general index by party names and file number.

(c) Notwithstanding subsection (a), a lien for the furnishing of labor, equipment, materials or supplies on property other than residential prop-

erty may be claimed pursuant to this section within five months only if the claimant has filed a notice of extension within four months since last furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the district court of the county where such property is located and shall be mailed by certified and regular mail to the owner. The notice of extension shall ~~contain substantially the following statement:~~ *be deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

~~Notice of Extension to File Contractor Lien~~

~~\_\_\_\_\_  
Name of Contractor  
\_\_\_\_\_~~

~~\_\_\_\_\_  
Address of Contractor  
\_\_\_\_\_~~

~~\_\_\_\_\_  
Telephone Number of Contractor  
\_\_\_\_\_~~

~~\_\_\_\_\_  
Name and/or Number of Job  
\_\_\_\_\_~~

~~\_\_\_\_\_  
Address of Job Site  
\_\_\_\_\_~~

~~Filing of such notice extends the time for filing a lien to five months for the above contractor providing materials or labor on property owned by:~~

(d) As used in this section and K.S.A. 60-1103, and amendments thereto, “residential property” means a structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families.

Sec. 14. K.S.A. 2004 Supp. 60-1103 is hereby amended to read as follows: 60-1103. (a) *Procedure.* Any supplier, subcontractor or other person furnishing labor, equipment, material or supplies, used or consumed at the site of the property subject to the lien, under an agreement with the contractor, subcontractor or owner contractor may obtain a lien for the amount due in the same manner and to the same extent as the original contractor except that:

(1) The lien statement must state the name of the contractor and be filed within three months after the date supplies, material or equipment was last furnished or labor performed by the claimant;

(2) if a warning statement is required to be given pursuant to K.S.A. 60-1103a, and amendments thereto, there shall be attached to the lien statement the affidavit of the supplier or subcontractor that such warning statement was properly given; and

(3) a notice of intent to perform, if required pursuant to K.S.A. 60-1103b, and amendments thereto, must have been filed as provided by that section.

(b) Owner contractor is defined as any person, firm or corporation who:

(1) Is the fee title owner of the real estate subject to the lien; and

(2) enters into contracts with more than one person, firm or corporation for labor, equipment, material or supplies used or consumed for the improvement of such real property.

(c) *Recording and notice.* When a lien is filed pursuant to this section, the clerk of the district court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien statement to be served personally upon any one owner, any holder of a recorded equitable interest and any party obligated to pay the lien in the manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of the lien statement to any one owner of the property, any holder of a recorded equitable interest and to any party obligated to pay the same by restricted mail or (3) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises. The provisions of this subsection requiring that the claimant serve a copy of the lien statement shall be deemed to have been complied with, if it is proven that the person to be served actually received a copy of the lien statement. No action to foreclose any lien may proceed or be entered against residential real property in this state unless

the holder of a recorded equitable interest was served with notice in accordance with the provisions of this subsection.

(d) *Rights and liability of owner.* The owner of the real property shall not become liable for a greater amount than the owner has contracted to pay the original contractor, except for any payments to the contractor made:

(1) Prior to the expiration of the three-month period for filing lien claims, if no warning statement is required by K.S.A. 60-1103a, and amendments thereto; or

(2) subsequent to the date the owner received the warning statement, if a warning statement is required by K.S.A. 60-1103a, and amendments thereto.

The owner may discharge any lien filed under this section which the contractor fails to discharge and credit such payment against the amount due the contractor.

(e) Notwithstanding subsection (a)(1), a lien for the furnishing of labor, equipment, materials or supplies on property other than residential property may be claimed pursuant to this section, and amendments thereto, within five months only if the claimant has filed a notice of extension within three months since last furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the clerk of the district court of the county where such property is located and shall be mailed by certified and regular mail to the general contractor or construction manager and a copy to the owner by regular mail, if known. The notice of extension shall ~~contain substantially the following statement:~~ *be deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

~~Notice of Extension to File Lien~~

~~Name of Subcontractor or Supplier~~

~~Address of Subcontractor or Supplier~~

~~Telephone Number of Subcontractor or Supplier~~

~~Name and/or Number of Job~~

~~Address of Job Site~~

~~Filing of such notice extends the time for filing a lien to five months for the above subcontractor, supplier, or other person providing materials and labor on property owned by:~~

~~Owner's Name (if known)~~

~~Owner's Address (if known)~~

Sec. 15. K.S.A. 2004 Supp. 60-1103b is hereby amended to read as follows: 60-1103b. (a) As used in this section, “new residential property” means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. “New residential property” does not include any improvement of a preexisting structure or construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.

(c) The notice of intent to perform and release thereof provided for in this section, to be effective, shall ~~contain substantially the following statement, whichever is applicable:~~ *be deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

~~NOTICE OF INTENT TO PERFORM~~

~~“I~~

~~(name of supplier, subcontractor or contractor)~~

(address of supplier, subcontractor or contractor)  
do hereby give public notice that I am a supplier, subcontractor or contractor or other  
person providing materials or labor on property owned by \_\_\_\_\_

(name of property owner)  
and having the legal description as follows: \_\_\_\_\_

RELEASE OF NOTICE OF INTENT TO PERFORM  
NO. \_\_\_\_\_ AND WAIVER OF LIEN

"I \_\_\_\_\_  
(name of supplier, subcontractor or contractor)  
of \_\_\_\_\_

(address of supplier, subcontractor or contractor)  
do hereby acknowledge that I filed notice of intent to perform no. \_\_\_\_\_, covering  
property owned by \_\_\_\_\_

(name of property owner)  
and having the legal description as follows: \_\_\_\_\_

In consideration of the sum of \$ \_\_\_\_\_, the receipt of which is hereby acknowledged,  
I hereby direct the clerk of the district court of \_\_\_\_\_, Kansas to release the subject  
notice of intent to perform and do hereby waive and relinquish any statutory right to a lien  
for the furnishing of labor, equipment, materials or supplies to the above-described real  
estate under the statutes of the state of Kansas."

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103, and amendments thereto, shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d), unless the same has expired by virtue of the provisions set forth in subsection (f).

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103, and amendments thereto.

Sec. 16. K.S.A. 2004 Supp. 60-2420 is hereby amended to read as follows: 60-2420. If a general execution is issued, a notice shall be served on the defendant along with the writ of execution, notifying the defendant of the following:

- (a) That a general execution has been issued directing an officer to seize any nonexempt property of the defendant to be sold in satisfaction of the judgment against the defendant;
- (b) of the defendant's right to assert any claim of exemption allowed under the law with respect to the property seized; and
- (c) of the defendant's right to a hearing on such claim.

The notice shall be substantially in the form or forms prescribed in the appendix to this act, and shall contain a description of the exemptions that are applicable to general executions and the procedure by which the defendant can assert any claim of exemption and shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council. The return filed with the writ of execution shall indicate that a copy of the notice was served on the defendant along with the writ.

Sec. 17. K.S.A. 61-2705 is hereby amended to read as follows: 61-2705. It is the purpose of this act to provide and maintain simplicity of pleading, and the court shall supply the forms prescribed by this act to assist the parties in preparing their pleadings. The only pleading required in an action commenced under this act shall be the statement of plaintiff's claim, which shall be on the form prescribed by this act and be on the

form set forth by the judicial council and be denominated a petition; ~~except that~~ A defendant who has a claim against the plaintiff, which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim, shall file a statement of the defendant's claim on the form ~~prescribed by this act~~ set forth by the judicial council if the claim does not exceed the amount specified in subsection (a) of K.S.A. 61-2703, and amendments thereto. If the defendant's claim exceeds the amount specified in subsection (a) of K.S.A. 61-2703, and amendments thereto, the defendant may file a statement of the defendant's claim on the form ~~prescribed by this act~~ set forth by the judicial council. The court shall not have any jurisdiction under this act to hear or determine any claim by a defendant which does not arise out of the transaction or occurrence which is the subject matter of plaintiff's claim.

No pleadings other than those provided for herein shall be allowed. It shall be sufficient that each pleading set forth a short and plain statement of the claim, showing that the pleader is entitled to relief, and contain a demand for judgment for the relief to which the pleader deems entitled.

Sec. 18. K.S.A. 2004 Supp. 61-2713 is hereby amended to read as follows: 61-2713. ~~(a) The petition shall be in substantially the following form:~~

~~—In the District Court of \_\_\_\_\_ County, Kansas:  
—Plaintiff \_\_\_\_\_  
vs. \_\_\_\_\_ No. \_\_\_\_\_  
—Defendant \_\_\_\_\_~~

~~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 \$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 \_\_\_\_\_, (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. \_\_\_\_\_~~

~~\_\_\_\_\_~~

~~—Defendant~~

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

~~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 \_\_\_\_\_, (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 \$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 \$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. \_\_\_\_\_, (year) \_\_\_\_\_, (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. \_\_\_\_\_, (year) \_\_\_\_\_, (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 \$4,000, you must state your claim in the space provided below. If your claim against the plaintiff exceeds \$4,000, you may state your claim in the space provided below. In determining whether or not your claim against the plaintiff exceeds \$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 \$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 \$4,000.

—4. If your claim exceeds \$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 \$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 \$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 \_\_\_\_\_, (year) \_\_\_\_\_  
{Signature} \_\_\_\_\_

Judge (clerk or notary)

The forms to be utilized under the small claims procedure act shall be set forth by the judicial council.

Sec. 19. K.S.A. 59-2124, 59-2129, 59-2143, 59-2210, 60-258, 60-268, 60-269, the appendix of forms following K.S.A. 60-269, 60-302, 60-307,

60-706 and 61-2705 and K.S.A. 2004 Supp. 58-4301, 59-1507b, 60-201, 60-1102, 60-1103, 60-1103b, 60-2420 and 61-2713 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the  
SENATE, and passed that body

\_\_\_\_\_

SENATE concurred in  
HOUSE amendments \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*