

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 10, 2000 in Room 313-S of the Capitol.

All members were present except:

- Representative John Edmonds - Excused
- Representative Phill Kline - Excused
- Representative Tony Powell - Excused
- Representative Candy Ruff - Excused
- Representative Clark Shultz - Excused

Committee staff present:

- Jerry Ann Donaldson, Legislative Research Department
- Jill Wolters, Office of Revisor of Statutes
- Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

- Bruce Ward, Kansas Judicial Council, Subcommittee of the Civil Code Advisory Committee

Hearing on **HB 2697 - Recodification of Chapter 61, civil procedure for limited actions**, was opened.

Bruce Ward, Kansas Judicial Council, Subcommittee of the Civil Code Advisory Committee, provided the committee with a markup of the bill showing the text on the right side and comments approved by the Judicial Council on the left (Attachment 1). He proceeded to talk about each change and specifically addressed the following areas:

- ◆ Service of Process - the provisions do not allow for the plaintiff to request a particular form of service. The discretion is left with the sheriff or process server.
- ◆ Wage Garnishment Order - provides that the garnishment order on wages remain in effect until the judgement is paid or the order is released. He suggested an amendment that the orders should be release in the event the employee terminates.
- ◆ Garnishment Notice - the language should conform with current law except who serves the notice and when it is served.
- ◆ Payment under Garnishments - The Kansas Bankers Association has requested additional language in the bill to protect the banks who pay garnished funds directly to the plaintiff without benefit of a court order.
- ◆ Liens Against Real Estate - Chapter 61 judgements should not be liens against real estate and executions against real estate should not be allowed under Chapter 61.
- ◆ Small Claims - proposed this section be removed from the bill.

Paul Davis, Kansas Bar Association, did not appear before the committee but requested that his written testimony be included in the minutes. (Attachment 2)

Hearing on **HB 2697** was closed.

Committee minutes from January 27 & 31, February 1, 2, 3, 7 & 8 were distributed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 14, 2000.

HOUSE BILL No. 2697

By Committee on Judiciary

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AN ACT concerning civil procedure for limited actions; relating to small claims procedure; amending K.S.A. 58-227, 58-2542, 58-25,102, 60-201, 60-213, 60-265, 60-304, 60-725, 60-2418, 60-3331 and 75-6103 and K.S.A. 1999 Supp. 19-4737, 20-302b, 20-310a, 20-362, 58-2565 and 60-2202 and repealing the existing sections; also repealing K.S.A. 61-1601, 61-1603 through 61-1605, 61-1608, 61-1701 through 61-1703, 61-1703a, 61-1704 through 61-1709, 61-1711 through 61-1719, 61-1721 through 61-1723, 61-1725a, 61-1726, 61-1728, 61-1801 through 61-1803, 61-1805 through 61-1807, 61-1901 through 61-1909, 61-2001 through 61-2012, 61-2101, 61-2102, 61-2104 through 61-2109, 61-2201 through 61-2204, 61-2301 through 61-2304, 61-2306 through 61-2311, 61-2402 through 61-2405, 61-2502, 61-2503, 61-2601 through 61-2605, 61-2701, 61-2702, 61-2705, 61-2706, 61-2708, 61-2710, 61-2712 and 61-2714 and K.S.A. 1999 Supp. 61-1710, 61-1720, 61-1724, 61-1725, 61-1729, 61-2013, 61-2014, 61-2103, 61-2305, 61-2401, 61-2501, 61-2703, 61-2704, 61-2707, 61-2709 and 61-2713.

Be it enacted by the Legislature of the State of Kansas:
New Section 1. This act shall be known and may be cited as the code of civil procedure for limited actions.

New Sec. 2. (a) This act may be used to govern the procedure for a civil lawsuit filed in the district court which:

- (1) Seeks judgment for a debt which is not secured by a lien and arises out of a contract for the providing of goods, services or money, without limitation as to the amount claimed in the lawsuit;
- (2) seeks judgment for a debt which is secured by a lien and arises out of a contract for the providing of goods, services or money, where the amount claimed in the lawsuit, not counting costs, interest and fees, does not exceed \$25,000; or
- (3) seeks judgment where the claim does not arise out of a contract and the amount claimed in the lawsuit, not counting costs, interest and fees, does not exceed \$25,000.

(b) The following types of lawsuits may not be filed under this act:

- (1) Actions against any officers of the state, or any subdivisions thereof, for misconduct in office, except as authorized by the Kansas tort

This is essentially the same as K.S.A. 61-1601.

The jurisdictional limits under Chapter 61 will be increased to \$25,000 for tort cases and secured claims. This change was felt necessary to reflect increases caused by inflation. There is no dollar limit on unsecured contract cases which is the same as present law. Otherwise this section is identical to K.S.A. 61-1603.

- 1 claims act, K.S.A. 75-6101 et seq., and amendments thereto;
- 2 (2) actions for specific performance of contracts for real estate;
- 3 (3) actions in which title to real estate is sought to be recovered or
- 4 in which an interest in real estate, either legal or equitable, is sought to
- 5 be established, except that nothing in this paragraph shall be construed
- 6 as limiting the right to bring an action for forcible detainer as provided
- 7 in article 23 of chapter 61 of the Kansas Statutes Annotated, and amend-
- 8 ments thereto;
- 9 (4) actions to foreclose real estate mortgages or to establish and fore-
- 10 close liens on real estate as provided in article 11 of chapter 60 of the
- 11 Kansas Statutes Annotated, and amendments thereto;
- 12 (5) actions for divorce, separate maintenance or custody of minor
- 13 children;
- 14 (6) habeas corpus;
- 15 (7) receiverships;
- 16 (8) change of name;
- 17 (9) declaratory judgments;
- 18 (10) mandamus and quo warranto;
- 19 (11) injunctions;
- 20 (12) class actions;
- 21 (13) rights of majority; and
- 22 (14) any appeal from an order or ruling of an administrative officer
- 23 or body.

There is no comparable section under existing law.

Courts may chose to accept cases for filing under an electronic filing procedure, or the traditional method, or a combination of both. There is no comparable section under existing law.

This is the same as K.S.A. 61-1605 except the new section will allow court to be conducted at such other place as is designated by the judge. This would allow courts to conduct court business in places other than a traditional court room or courthouse, such as is now being done in Shawnee County at the limited actions docket which is held in a building on the fair grounds in Topeka.

This is identical to K.S.A. 61-1608.

24 New Sec. 3. The supreme court of this state shall adopt rules to govern the electronic filing of court matters and the storage of and access by the public to the same, to govern the form of pleadings, other documents to be filed and such other matters as is necessary under the code of civil procedure for limited actions.

29 New Sec. 4. Judicial districts in this state may accept for filing under this act lawsuits filed in the same method in which lawsuits are filed prior to the adoption of this act, or filed pursuant to an electronic filing procedure, or a combination of the two, as long as any such filings comply with the rules of the supreme court of this state.

34 New Sec. 5. Without regard to whether the word "court" or the word "judge" is used in any provisions of this act, all trials upon the merits shall be conducted in open court and in a regular courtroom if reasonably possible. All other acts or proceedings, including the entry of a ruling or judgment, may be done or conducted by a judge or judge pro tem in chambers, or at such other place as is designated by the judge for the conduct of court business, without the attendance of the clerk or other court officials.

42 New Sec. 6. The provisions of this act shall be liberally construed to secure the just, speedy and inexpensive determination of every action or

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proceeding.
New Sec. 7. The party who files a lawsuit shall be called the plaintiff and the adverse party shall be called the defendant.
New Sec. 8. (a) A lawsuit filed under this act shall be deemed to be commenced at the time a petition is filed with the clerk of the district court if service of process is obtained within 120 days after the petition is filed, otherwise the lawsuit shall be deemed to be commenced at the time service of process is obtained.
(b) If the plaintiff seeks to obtain service of process by publication, service of process shall be obtained at the time of first publication.
(c) If service of process or first publication purports to have been made but is later determined by a court to have been invalid due to any irregularity in form or procedure or any defect in making service, the lawsuit shall nevertheless be deemed to have been commenced when filed if valid service is obtained within the next 120 days after such determination.
(d) An entry of appearance by the defendant shall have the same effect as service of process on the defendant.
(e) The limitation of time for commencing lawsuits pursuant to the code of civil procedure for limited actions shall be as provided in article 5 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, except where a different limitation is specifically provided by statute.
New Sec. 9. (a) Pleadings. Only the pleadings set forth in K.S.A. 60-207, and amendments thereto, shall be allowed in an action commenced pursuant to the code of civil procedure for limited actions, but the only pleadings required are a petition and an answer. Third-party practice in the manner prescribed by K.S.A. 60-214, and amendments thereto, shall be permitted.
(b) Petitions. A petition shall state the claim or claims which the plaintiff has against the defendant. It shall set forth the current address, phone number, fax phone number and electronic mail address for the plaintiff. If the plaintiff is not represented by an attorney, the petition shall be signed by the plaintiff under penalty of perjury.
(c) Motions and other papers. An application to the court or judge for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state the particular grounds for the motion, shall set forth the relief or order sought, and shall contain a notice of when the motion is to be heard by the court.
New Sec. 10. (a) A defendant shall either appear, in person or by counsel, at the time and date set forth in the summons or file on or before such date a written answer. If the defendant appears and disputes the petition, the defendant shall file an answer not later than 10 days after

This section is nearly the same as K.S.A. 61-1702.

This is essentially the same as K.S.A. 61-1703 except the time limit specified in the new section is 120 days whereas under existing law it is 90 days with the right to apply for an additional 30 days. The new section will eliminate the need to file a motion to apply for additional time.

The only required pleadings shall be a petition and an answer. The answer is designed to be a simple statement by the defendant to inform the plaintiff what disputes the defendant has to the petition. This section is essentially identical to K.S.A. 61-1706.

Under existing law (K.S.A. 61-1708), the defendant may either appear or file an answer in response to the petition. If the defendant appears, he/she need not, but may, file an answer. Under the new section, the defendant must file a written answer or waive any

defendant to the petition. It is hoped that this requirement will expedite the petition process and eliminate the need for court time when in fact there is no bonafide defense to a petition.

1 the appearance date. The defendant shall promptly send a copy of the
2 answer after filing to the plaintiff's attorney or the plaintiff, if no attorney.
3 If the defendant is not represented by an attorney, the answer shall be
4 signed by the defendant under penalty of perjury.

5 (b) The answer shall state the following:

6 (1) What the dispute is;

7 (2) any affirmative defenses the defendant has to the claim; and

8 (3) the current address, phone number, fax phone number and elec-
9 tronic mail address for the defendant.

10 (c) If the defendant does not file an answer, the defendant waives
11 the right to present: (1) Any dispute to the claim or claims set forth in
12 the petition or (2) any affirmative defenses to the same, and judgment
13 may be taken against the defendant upon oral or written motion for judg-
14 ment by the plaintiff.

15 (d) If the defendant asserts a counterclaim against the plaintiff in the
16 answer, the plaintiff may file a reply disputing the defendant's counter-
17 claim not later than 10 days after service of the defendant's answer. The
18 plaintiff's reply shall comply with the requirements set forth in subsection
19 (b). If the plaintiff does not file a reply, the plaintiff waives the right to
20 present any dispute to the defendant's counterclaim.

21 (e) Affirmative defenses are those listed in subsection (c) of K.S.A.
22 60-208, and amendments thereto.

23 (f) The date the defendant is required to appear as set forth in the
24 summons may be continued by the court upon request of either party in
25 such manner as the court shall prescribe.

26 New Sec. 11. (a) (1) Upon timely application of the plaintiff and in
27 the discretion of the court, a defendant may be required to plead any
28 counterclaim which such party has against the plaintiff, if it arises out of
29 the transaction or occurrence that is the subject matter of the plaintiff's
30 claim and does not require for its adjudication the presence of third par-
31 ties of whom the court cannot acquire jurisdiction, except that the de-
32 fendant shall not be required to plead any such claim if: (A) At the time
33 the action was commenced the claim was the subject of another pending
34 action; or (B) the plaintiff brought suit upon such plaintiff's claim by
35 attachment or other process by which the court did not acquire jurisdic-
36 tion to render a personal judgment on that claim, and the defendant is
37 not pleading any other counterclaim.

38 (2) A defendant shall not be estopped from asserting in a subsequent
39 action any claim which such defendant may have against the plaintiff, if
40 such defendant is not required to plead such claim pursuant to this sec-
41 tion. Except as provided in subsections (a) and (k), the provisions of K.S.A.
42 60-213, and amendments thereto, relating to counterclaims and cross-
43 claims, shall apply to proceedings pursuant to the code of civil procedure

This is essentially the same as K.S.A. 61-1709.

1 for limited actions, subject to the provisions of K.S.A. 61-1720, and
2 amendments thereto.

3 (b) Notwithstanding the provisions of subsection (a), in an action in-
4 volving a claim governed by K.S.A. 60-258a, and amendments thereto, a
5 party shall state as a counterclaim any claim that party has against any
6 opposing party arising out of the transaction or occurrence that is the
7 subject matter of the claim governed by K.S.A. 60-258a, and amendments
8 thereto.

9 New Sec. 12. The content and form of all pleadings and other papers
10 filed shall be set forth by rule of the supreme court of this state.

11 New Sec. 13. (a) The petition shall be served on the defendant in
12 accordance with the provisions of sections 19 through 24, and amend-
13 ments thereto.

14 (b) All pleadings other than the petition, motions which cannot be
15 heard ex-parte, notices, and orders which are required by their terms to
16 be served, shall be served upon the party's attorney of record, if the party
17 is represented by an attorney, or upon the party if not represented by an
18 attorney, in the following manner:

19 (1) By delivering a copy;

20 (2) by mailing a copy by first class mail, certified mail or registered
21 mail to the last known address;

22 (3) by sending or transmitting a copy by telefacsimile communication;

23 (4) by sending a copy by internet electronic mail; or

24 (5) if no address is known, by leaving a copy with the clerk of the
25 court. For the purposes of this subsection, delivering a copy means: Hand-
26 ing it to the attorney or to the party; leaving it at the attorney's or party's
27 office with the clerk or other person in charge thereof or, if there is no
28 one in charge, leaving it in a conspicuous place therein; or, if the attorney's
29 or party's office is closed or the person to be served has no office, leaving
30 it at the attorney's or party's dwelling house or usual place of abode with
31 some person of suitable age and discretion then residing therein. Service
32 by mail is complete upon mailing. Service by telefacsimile communication
33 is complete upon receipt of a confirmation generated by the transmitting
34 machine. Service by internet electronic mail shall be as provided by rule
35 of the supreme court of this state. All such pleadings, motions, notices
36 and orders covered by this subsection shall be filed with the court either
37 before service or within a reasonable time thereafter.

38 (c) The filing of pleadings and other papers with the court as required
39 or permitted by this act shall be done in accordance with rules of the
40 supreme court.

41 New Sec. 14. The provisions of K.S.A. 60-209, 60-210 and 60-211,
42 and amendments thereto, shall apply to pleadings filed under sections 7
43 through 18, and amendments thereto.

(New Sec. 12)

This is new. The comparable section under existing law is K.S.A. 61-1705. With the rapid development of technology in those areas which affect electronic filing, it was thought that the supreme court would prefer to have the content of forms within a rule which could be amended more quickly than the statute.

This section deals with the service of court papers subsequent to service of the petition and summons. Current law is found in K.S.A. 61-1705. The new section adds first class mail, fax communication and electronic mail as permissible forms of service.

This is presently covered in K.S.A. 61-1707 and there is no change.

This is the same as K.S.A. 61-1705.

1 New Sec. 15. The provisions of K.S.A. 60-206, and amendments
2 thereto, governing the computation and extension of time, shall govern
3 actions pursuant to the code of civil procedure for limited actions, except
4 where provisions to the contrary are specifically included in the code.

This is the same as K.S.A. 61-1725.

5 New Sec. 16. Upon motion of any party, the court shall order that
6 an action filed under the code of civil procedure for limited actions, except
7 an action filed pursuant to the small claims procedure act, sections 102
8 through 114, and amendments thereto, shall thereafter be governed by
9 the provisions of chapter 60 of the Kansas Statutes Annotated, and
10 amendments thereto. The party obtaining an order under this section
11 shall pay any additional docket fee required had the action been filed
12 under chapter 60 of the Kansas Statutes Annotated, and amendments
13 thereto.

This is the same as K.S.A. 61-1720.

14 New Sec. 17. (a) By plaintiff. Whenever a plaintiff demands judg-
15 ment beyond the scope of actions authorized by the provisions of section
16 2, and amendments thereto, the court shall either:

17 (1) Transfer the action to the chief judge of the judicial district for
18 assignment and hearing pursuant to chapter 60 of the Kansas Statutes
19 Annotated, and amendments thereto, assessing the increased docket fee
20 to the plaintiff; or (2) allow the plaintiff to amend the pleadings and
21 service of process to bring the demand for judgment within the scope of
22 actions authorized by the provisions of section 2, and amendments
23 thereto, assessing the costs accrued to the plaintiff.

24 (b) By defendant. If a defendant asserts a counterclaim or cross-claim
25 beyond the scope of the code of civil procedure for limited actions, the
26 case shall be referred by the chief judge for assignment and hearing pur-
27 suant to chapter 60 of the Kansas Statutes Annotated, and amendments
28 thereto, assessing the increased docket fee to the defendant.

This is identical to K.S.A. 61-1725.

29 New Sec. 18. The following provisions of article 2 of chapter 60 of
30 the Kansas Statutes Annotated, and amendments thereto, are hereby
31 adopted by reference and made a part of this act as if fully set forth herein,
32 insofar as such provisions are not inconsistent or in conflict with the pro-
33 visions of this act:

34 (a) K.S.A. 60-215, and amendments thereto, relating to amended and
35 supplemental pleadings, except that the time for filing amended pleadings
36 and for responding thereto shall be 10 instead of 20 days;

37 (b) K.S.A. 60-217, and amendments thereto, relating to capacity of
38 parties;

39 (c) K.S.A. 60-218, and amendments thereto, providing for joinder of
40 claims and remedies, K.S.A. 60-219 and 60-220, and amendments
41 thereto, providing for joinder of parties, and K.S.A. 60-221, and amend-
42 ments thereto, relating to misjoinder of parties and claims;

43 (d) K.S.A. 60-224, and amendments thereto, relating to intervention,

- 1 and K.S.A. 60-225, and amendments thereto, providing for substitution
- 2 of parties;
- 3 (e) K.S.A. 60-234, and amendments thereto, relating to production
- 4 of documents and things for inspection;
- 5 (f) K.S.A. 60-241, and amendments thereto, providing for dismissal
- 6 of actions;
- 7 (g) K.S.A. 60-244, and amendments thereto, providing for proof of
- 8 records;
- 9 (h) K.S.A. 60-256, and amendments thereto, relating to summary
- 10 judgment;
- 11 (i) K.S.A. 60-259 and 60-260, and amendments thereto, concerning
- 12 new trial and relief from judgment or order, respectively;
- 13 (j) K.S.A. 60-261 and 60-263, and amendments thereto, relating re-
- 14 spectively to harmless error and disability of a judge; and
- 15 (k) K.S.A. 60-264, and amendments thereto, relating to process in
- 16 behalf of and against persons not parties.

17 New Sec. 19. Upon the filing of the petition pursuant to the code of
 18 civil procedure for limited actions, the clerk of the district court shall
 19 issue a summons for service upon each defendant in accordance with this
 20 act. Additional summonses may be issued as requested.

21 New Sec. 20. (a) The summons shall be issued by the clerk, dated
 22 the day it is issued and contain the information set forth in the rules to
 23 be adopted by the supreme court of this state. The summons shall state
 24 the time when the law requires the defendant to appear or file an answer
 25 in response to the petition, and shall notify such defendant that in case
 26 of such defendant's failure to appear or file an answer, judgment by de-
 27 fault will be rendered against such defendant for the relief demanded in
 28 the petition. The summons shall be in substantially the form set forth in
 29 the rules to be adopted hereunder by the supreme court.

30 (b) The time stated in the summons requiring the defendant to ap-
 31 pear in response to the petition shall be determined by the court. Such
 32 time shall be not less than 11 nor more than 50 days after the date the
 33 summons is issued.

34 New Sec. 21. (a) Service, levy and execution of all process under this
 35 act shall be made by a sheriff or deputy within the sheriff's county, by an
 36 attorney admitted to the practice of law before the supreme court of
 37 Kansas, by a party to a lawsuit, or by some person appointed as a process
 38 server by a judge, except that a subpoena may also be served by any
 39 person who is not a party and is not less than 18 years of age. An appointed
 40 process server may be an individual, corporation, partnership, court em-
 41 ployee or other legal entity. An authorized attorney and appointed process
 42 server shall have the same authority as the sheriff or deputy to serve, levy
 43 and execute all process under this act, including, but not limited to, writs

This is essentially identical to K.S.A. 61-1801

Present law (K.S.A. 61-1802) dictates what information is to be set forth in the summons. Under the new section, the form of the summons and the manner of issuance will be set forth in a supreme court rule. This will allow, among other things, for something other than a signature on the summons by the clerk.

The time for appearance by the defendant under a summons is not less than 11 nor more than 50 days after issuance of summons. Current law is not less than 11 nor more than 35 days.

Service of process and all other papers required to be served on a party may be served by first class mail, certified mail, registered mail, telefacsimile communication, Internet electronic mail, as well as delivery by the Sheriff or a process server. Experience in Shawnee County has shown that service by first class mail is highly effective in notifying defendants of the pendency of the lawsuit. The subcommittee also believes that service by electronic mail and fax is reliable and is appropriate in certain circumstances. These methods of service will drastically cut down on the expense and personnel needed to serve process.

To allay fears that service of process by first class mail, electronic mail, and fax may not be constitutional, the article on judgments does not allow the entry of a default judgment when service is one of these three methods.

1 of execution, orders of attachment, replevin orders, orders for delivery,
2 writs of restitution and writs of assistance. All persons authorized under
3 this subsection to serve, levy and execute process shall be considered an
4 ``officer'' as used in K.S.A. 60-706 and 60-2401, and amendments thereto.

5 (b) Process servers shall be appointed freely and may be authorized
6 either to serve process in a single case or in cases generally during a fixed
7 period of time. A process server or an authorized attorney may make the
8 service anywhere in or out of the state and shall be allowed the fees
9 prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and
10 such other fees and costs as the court shall allow. The mileage and fees
11 of a appointed process server incurred in the service of process shall upon
12 order of the court be allowed as court costs in the lawsuit.

13 (c) The sheriff of the county where the lawsuit is filed shall serve all
14 process unless request is made by the party requesting issuance of pro-
15 cess, or the court enters an order, for someone else to serve the process.
16 The clerk of the court shall deliver, electronically or otherwise, the pro-
17 cess and petition or other document to be served.

18 (d) The person serving process may serve the process in any of the
19 methods set forth below in this subsection.

20 (1) First class mail, certified mail or registered mail. Process may be
21 sent to a person by first class mail, certified mail or registered mail, by
22 placing a copy of the process and petition or other document to be served
23 in an envelope addressed to the person to be served in accordance with
24 section 22, and amendments thereto, at such person's last known address.
25 The envelope used for such service shall be addressed to the person in
26 accordance with section 22, and amendments thereto, shall contain ade-
27 quate postage for the type of mail used, and shall contain such additional
28 endorsements or receipts as is required for the type of mail used. Such
29 envelope shall be sealed and placed in the United States mail. Service by
30 first class mail shall be complete when the envelope is placed in the mail
31 unless returned undelivered. Service by certified mail or registered mail
32 shall be complete upon delivery of the envelope by the post office. If the
33 certified mail or registered mail envelope is returned with an endorse-
34 ment showing refusal of delivery, the person serving the same shall send
35 a copy of the process and petition or other document to be served to the
36 defendant by first-class mail. Service shall be considered obtained upon
37 the mailing by first-class mail unless returned undelivered. Failure to
38 claim certified mail or registered mail service is not refusal of service
39 within the meaning of this subsection.

40 (2) Personal and residence service. Personal service shall be made by
41 delivering or offering to deliver a copy of the process and accompanying
42 documents to the person to be served. Residence service shall be made
43 by leaving a copy of the process and petition, or other document to be

1 served, at the dwelling house or usual place of abode of the person to be
 2 served with some person of suitable age and discretion residing therein.
 3 If service cannot be made upon an individual, other than a minor or a
 4 disabled person, by personal or residence service, service may be made
 5 by leaving a copy of the process and petition, or other document to be
 6 served, at the dwelling house or usual place of abode of the person to be
 7 served and mailing a notice to the individual by first-class mail that such
 8 copy has been left at such house or place of abode.

9 (3) Telefacsimile communication. Process may be sent to a person by
 10 telefacsimile communication. Service is complete upon receipt of a con-
 11 firmation generated by the transmitting machine.

12 (4) Internet electronic mail. Process may be sent to a person by in-
 13 ternet electronic mail as provided in the rules to be adopted hereunder
 14 by the supreme court.

15 (5) Publication. Service of process by publication may be made pur-
 16 suant to the provisions of K.S.A. 60-307, and amendments thereto, which
 17 are not inconsistent or in conflict with this act.

18 (e) When the person to be served, or an agent authorized by the
 19 person to accept service of process, refuses to accept or receive copies of
 20 the process, the offer of the process server to deliver copies thereof, and
 21 the refusal, shall be a sufficient service of the process.

22 (f) An acknowledgment of service on the summons is equivalent to
 23 service. The voluntary appearance by a defendant is equivalent to service
 24 as of the date of appearance.

25 New Sec. 22. (a) Service shall be made promptly and, in any event,
 26 in time to make a timely return of service as required by section 23, and
 27 amendments thereto.

28 (b) If the defendant is a nonresident who is employed in this state,
 29 or if the place of residence of the defendant is unknown, the plaintiff may
 30 direct that the service of summons or other process shall be made by
 31 directing an officer, partner, managing or general agent, or the person
 32 having charge of the office or place of employment at which the defendant
 33 is employed, to make the defendant available for the purpose of permit-
 34 ting the summons or other process to be served on the defendant at the
 35 defendant's place of employment.

36 (c) As used in this section, ``serving'' means making service by any of
 37 the methods described in section 21, and amendments thereto, unless a
 38 specific method of making service is prescribed in this section. Except
 39 for service by publication, service of process shall be made as follows:

40 (1) Service upon an individual other than a minor or disabled person
 41 shall be made by serving the individual or by serving an agent authorized
 42 by appointment or by law to receive service of process, but if the agent
 43 is one designated by statute to receive service, such further notice as the

This is identical to existing law (K.S.A. 61-1805) except under subsection (c) the plaintiff does not have to first file an affidavit as is required under existing law.

1 statute requires shall be given. Service by certified mail or first-class mail
2 shall be addressed to an individual at the individual's dwelling house or
3 usual place of abode and to an authorized agent at the agent's usual or
4 designated address.

5 (2) Service upon a minor, disabled person, as defined by K.S.A. 59-
6 3002, and amendments thereto, foreign or domestic corporations, part-
7 nerships, insurance companies or associations shall be made in accord-
8 ance with the applicable provisions of K.S.A. 60-304, and amendments
9 thereto.

10 (3) Service upon a governmental entity shall be made in accordance
11 with the applicable provisions of K.S.A. 60-304, and amendments thereto.

12 New Sec. 23. (a) The person serving process shall file a return show-
13 ing proof of service as follows:

14 (1) Mail service. The return shall show the nature of the process, the
15 date on which the process was mailed, the name and address on the
16 envelope containing the process, the type of mail service and the return
17 receipt, if any.

18 (2) Personal and residence service. The return shall show the time,
19 place and manner of service of such process.

20 (3) Telefacsimile communication. The return shall show the nature
21 of the process, the time and date on which the process was transmitted
22 by telefacsimile, the telephone number of the transmitting machine and
23 the telephone number of the receiving machine.

24 (4) Internet electronic mail. The return shall show the nature of the
25 process, the time and date on which the process was transmitted by in-
26 ternet electronic mail, the internet electronic mail address of the trans-
27 mitting person and the internet electronic mail address of the receiving
28 person.

29 (5) Publication. The return shall show the dates upon, and the news-
30 paper in which the notice of publication was published. When mailing of
31 copies of the publication notice is required in accordance with subsection
32 (e) of K.S.A. 60-307, and amendments thereto, the proof of such mailing
33 shall include the person to whom such notice was mailed and any return
34 receipt.

35 (b) The person receiving a summons or other process in forcible de-
36 tainer cases shall file a return of service no later than three days before
37 the date stated in the summons for the defendant to appear. In all other
38 cases, return of service shall be filed no later than five days before the
39 date stated in the summons for the defendant to appear. If the process
40 cannot be served as directed it shall be returned to the court forthwith
41 with a statement of the reason for the failure to serve the same.

42 (c) At any time in the judge's discretion and upon such terms as the
43 judge deems just, the judge may allow any process, return or proof of

This is the same as K.S.A. 61-1807 except new sections are added
for service by electronic mail and fax.

1 service thereof to be amended, unless it clearly appears that material
2 prejudice would result to the substantial rights of the party against whom
3 the process issued.

4 New Sec. 24. (a) (1) Service of process may be made upon any party
5 outside the state. If upon a person domiciled in this state or upon a person
6 who has submitted to the jurisdiction of the courts of this state, it shall
7 have the force and effect of service of process within this state; otherwise
8 it shall have the force and effect of service by publication.

9 (2) The service of process shall be made in the same manner as serv-
10 ice within this state, by any officer authorized to make service of process
11 in this state or in the state where the defendant is served. No order of a
12 court is required. An affidavit, or any other competent proofs, of the
13 server shall be filed stating the time, manner and place of service. The
14 court may consider the affidavit, or any other competent proofs, in de-
15 termining whether service has been properly made.

16 (3) The time stated in the summons requiring the defendant to ap-
17 pear in response to the petition shall be determined by the court. Such
18 time shall be not less than 11 nor more than 50 days after the date the
19 summons is issued, except as provided in subsection (a)(3) of K.S.A. 60-
20 308, and amendments thereto.

21 (b) The provisions of subsection (b) of K.S.A. 60-308, and amend-
22 ments thereto, shall be used to determine whether a person has submitted
23 to the jurisdiction of this state.

24 (c) Service of process upon any person who is subject to the jurisdic-
25 tion of the courts of this state, as provided in subsection (b), may be made
26 by serving the process upon the defendant outside this state, as provided
27 in subsection (a)(2), with the same force and effect as though process had
28 been served within this state, but only causes of action arising from acts
29 enumerated in subsection (b) may be asserted against a defendant in an
30 action in which jurisdiction over the defendant is based upon this
31 subsection.

32 (d) Nothing contained in this section limits or affects the right to
33 serve any process in any other manner provided by law.

34 New Sec. 25. (a) When an answer has been filed in an action com-
35 menced pursuant to the provisions of the code of civil procedure for
36 limited actions, any party may submit to any other party a written request
37 for that party to admit:

38 (1) The genuineness of any relevant document described in and at-
39 tached to the request; or

40 (2) the truth of any relevant matter of fact set forth in the request.
41 The request shall be in a form which will permit the party to whom it is
42 submitted to answer the questions on the request form under oath. A
43 request for admissions may not contain more than 10 requests unless

This section sets forth the substance of K.S.A. 60-308 except with
the increased time limits for service to 50 days.

Sections 25, 26, 27, 28, 29 and 30 are identical to current law except
both parties may use requests for admissions instead of just the
plaintiff as under current law (K.S.A. 61-1712), and either party may
submit interrogatories without the need for court order (61-1725a).

1 permission of the court is obtained to increase the number.

2 (b) Each of the matters requested shall be deemed to be admitted
3 for purposes of the pending lawsuit, unless within 15 days after the re-
4 quest is served, the party to whom the request is directed submits to the
5 party propounding the request either:

6 (1) A sworn statement denying specifically the matters requested; or

7 (2) written objections on the ground that some or all of the requested
8 admissions are privileged or irrelevant or that the request is otherwise
9 improper in whole or in part.

10 (c) If the answering party cannot truthfully admit or deny a request,
11 the party shall set forth in detail the reasons why. If the answering party
12 denies a request, the denial shall be in good faith and shall fairly address
13 the substance of the request. If in good faith the answering party can
14 deny only a part of the request or qualify a request, the party shall specify
15 which part is admitted and qualify or deny the remaining part. If the
16 answering party objects to a request, the party shall notify the court and
17 the party propounding the request and schedule a hearing on the objec-
18 tion to be held within 10 days after making the objection.

19 New Sec. 26. If a party to whom a request for admission has been
20 submitted denies under oath any matter requested, and the party sub-
21 mitting the request later proves the genuineness of any document or the
22 truth of any matter of fact denied by the answering party, the party sub-
23 mitting the request may ask the court for an order requiring the answering
24 party to pay the reasonable expenses incurred in making such proof, in-
25 cluding reasonable attorney fees. The court shall enter the order unless
26 the court finds that there were good reasons for the denial or that the
27 admissions sought were of no substantial importance.

28 New Sec. 27. (a) Any party may submit to any other party up to 10
29 interrogatories. The party receiving the interrogatories shall submit an-
30 swers or objections, if any, to the party submitting the same within 15
31 days after the interrogatories are submitted to the receiving party. On
32 motion, the court may allow a longer time to answer or may permit a
33 greater number of interrogatories to be submitted.

34 (b) The provisions of K.S.A. 60-233, and amendments thereto, shall
35 be applicable to interrogatories pursuant to this section, except that the
36 provisions of this section relating to the time when interrogatories are to
37 be answered shall be applicable. The general discovery provisions of sub-
38 sections (b), (c) and (e) of K.S.A. 60-226, and amendments thereto, and
39 the sanction provisions of K.S.A. 60-237, and amendments thereto, as
40 such sections relate to interrogatories, shall be applicable to interroga-
41 tories pursuant to this section.

42 New Sec. 28. Subpoenas may be issued by the clerk of the district
43 court under the seal of such court or by the judge to compel the attend-

1 ance of witnesses or for the production of documentary evidence in the
2 manner provided in K.S.A. 60-245, and K.S.A. 60-245a, and amendments
3 thereto. Subpoenas shall be served in accordance with sections 19 through
4 24, and amendments thereto, and shall be accompanied by the fees for
5 one day's attendance and the mileage allowed by law.

6 New Sec. 29. (a) Any party to an action pursuant to the code of civil
7 procedure for limited actions may take the testimony of any person, in-
8 cluding a party, either within or without the state, by deposition upon
9 oral examination or written questions but only for use as evidence in the
10 action. Unless the court orders otherwise, the parties may by written
11 stipulation provide that depositions may be taken before any person, at
12 any time or place, upon any notice, and in any manner and when so taken
13 may be used like other depositions. The taking of such depositions shall
14 be governed by the provisions of K.S.A. 60-228, subsections (b) through
15 (h) of K.S.A. 60-230, K.S.A. 60-231 and subsection (d) of K.S.A. 60-232,
16 and amendments thereto, except that any party desiring to take a depo-
17 sition shall first file with the court, and serve on all other parties to the
18 action, a motion that the taking of such deposition be allowed due to the
19 existence of at least one of the conditions prescribed in subsection (b) for
20 the use of depositions as evidence. Within five days after any such motion
21 has been made, any other party to the action may file an objection to such
22 motion, and in such event, the court shall hold a hearing within five days
23 thereof to determine the issue. No deposition shall be taken unless and
24 until the court shall have granted the motion requesting permission
25 therefor.

26 (b) At the trial, or upon the hearing of a motion or an interlocutory
27 proceeding, any part or all of a deposition of a witness, whether or not a
28 party, so far as it is admissible under the rules of evidence, may be used
29 for any purpose against any party who was present or represented at the
30 taking of the deposition, or who had due notice thereof, if the court finds
31 that:

32 (1) The witness is dead;

33 (2) the witness is outside of the county of the place of trial or hearing,
34 unless it appears that the absence of the witness was procured by the
35 party offering the deposition;

36 (3) the witness is unable to attend or testify because of age, sickness,
37 infirmity or imprisonment;

38 (4) the party offering the deposition has been unable to procure the
39 attendance of the witness by subpoena; or

40 (5) upon application and notice, that such exceptional circumstances
41 exist as to make it desirable, in the interest of justice and with due regard
42 to the importance of presenting the testimony of witnesses orally in open
43 court, to allow the deposition to be used.

1 (c) In addition to the uses of depositions enumerated in subsection
 2 (b), the court on motion may permit the use of depositions as provided
 3 in subsections (b)(1), (2) and (4) of K.S.A. 60-232, and amendments
 4 thereto, in the interest of justice and on such terms and conditions as will
 5 fairly protect the parties.

6 New Sec. 30. Production of documents and things for inspection
 7 shall be allowed in accordance with K.S.A. 60-234, and amendments
 8 thereto.

9 New Sec. 31. (a) If the defendant appears on the date specified in
 10 the summons and disputes the petition, the court may set the case for a
 11 pretrial hearing which shall be held as soon as is reasonably practical. All
 12 parties shall be notified of the date, time and place for the pretrial hearing.

13 (b) After a case has been set for pretrial, each of the parties shall
 14 submit to the other party before the date scheduled for the pretrial hear-
 15 ing, copies of all documents which support the petition or answer and an
 16 identification of all witnesses who will testify at trial to support the same.

17 (c) If the defendant fails to appear at the pretrial hearing, the court
 18 may enter default judgment against the defendant for the relief de-
 19 manded in the petition without further notice. If the plaintiff fails to
 20 appear at the pretrial hearing, the court may dismiss the lawsuit.

21 (d) If both parties appear at the pretrial hearing, the court shall con-
 22 duct a conference with the parties to clarify the issues for trial and explore
 23 the possibilities of settlement. If the defendant does not have a legal
 24 defense to the petition, or if judgment would be entered against the
 25 defendant as a matter of law if the matter were to proceed to trial, the
 26 court may enter judgment against the defendant for the relief demanded
 27 in the petition or for such other relief that the court believes is fair and
 28 just. If the plaintiff has not stated a claim upon which relief can be
 29 granted, the court may dismiss the petition.

30 New Sec. 32. (a) If a case is not settled or otherwise disposed of at
 31 the pretrial hearing, the case shall be set for trial by the court.

32 (b) All lawsuits filed under this act shall be tried by the court, unless
 33 a trial by jury is demanded by one of the parties. Demand for jury trial
 34 shall be filed as a part of the petition or answer.

35 (c) A lawsuit tried by jury pursuant to the code of civil procedure for
 36 limited actions shall be tried to a jury composed of six persons having the
 37 same qualifications of jurors as other jurors in district court, unless the
 38 parties agree on a lesser number. The court shall summon not less than
 39 12 prospective jurors from the source and in the manner provided for
 40 the summoning of petit jurors in the district court. When there is more
 41 than one plaintiff or more than one defendant in such action, the court
 42 shall summon three additional prospective jurors for each such additional
 43 plaintiff or defendant. Each juror shall be paid as specified in K.S.A. 43-

Current law does not provide a pretrial procedure. K.S.A. 61-1714 allows for a settlement conference. An optional pretrial procedure has been added to allow the court to conduct a conference with the parties to clarify the issues for trial and explore the possibilities of settlement. If the defendant does not appear at the pretrial or appears but does not have a valid legal defense, the court may enter judgment against the defendant. If the plaintiff does not appear at the pretrial or appears but has not stated a claim upon which relief can be granted, the court may dismiss the petition.

This is the same as K.S.A. 61-1716 and 61-1718.

1 171, and amendments thereto, for each day of attendance and shall re-
 2 ceive mileage at the rate prescribed in K.S.A. 75-3203, and amendments
 3 thereto. Such jury fees shall be paid by the county. The provisions of
 4 K.S.A. 60-247, subsections (b) through (h) of K.S.A. 60-248, K.S.A. 60-
 5 250 and 60-251, and amendments thereto, shall be applicable to actions
 6 pursuant to the code of civil procedure for limited actions insofar as they
 7 are not inconsistent with the provisions of this act.

8 (d) In all trials pursuant to the code of civil procedure for limited
 9 actions, the testimony of witnesses shall be taken orally in open court,
 10 unless otherwise provided by this act. All matters relating to witnesses
 11 and the admission of evidence shall be governed by article 4 of chapter
 12 60 of the Kansas Statutes Annotated, and amendments thereto.

13 New Sec. 33. (a) The court may enter a default judgment in the
 14 following situations:

15 (1) If a defendant fails to either appear or file a written answer on or
 16 before the time specified in the summons, judgment may be entered
 17 against the defendant upon proof of service and at such time as the plain-
 18 tiff requests same, without further notice to the defendant, except that
 19 no default judgment may be taken against a defendant where service was
 20 by first class mail, telefacsimile communication or internet electronic
 21 mail.

22 (2) If a defendant fails to appear at the time set for a pretrial or trial
 23 hereunder, judgment may be entered against the defendant at the request
 24 of the plaintiff without further notice to the defendant.

25 (3) If the defendant has filed a counterclaim against the plaintiff and
 26 the plaintiff fails to appear at the time set for a pretrial or trial hereunder,
 27 judgment may be entered against the plaintiff at the request of the de-
 28 fendant without further notice to the plaintiff.

29 (b) A default judgment shall not be different in kind from or exceed
 30 the amount of the relief sought in the demand for judgment.

31 (c) If a defendant seeks to set aside a default judgment for failure to
 32 appear at the time specified in the summons, the defendant shall file a
 33 motion not more than 10 days from the date of such judgment in a lawsuit
 34 where the defendant was personally served with summons within the
 35 state, or not more than 45 days where service of summons was by other
 36 than personal service within the state. If any party seeks to set aside any
 37 other default judgment, that party shall file a motion not more than 10
 38 days from the date of such judgment. Any motion to set aside a default
 39 judgment, except for the time limits set forth above, shall be in accord-
 40 ance with the applicable provisions of subsection (b) of K.S.A. 60-260,
 41 and amendments thereto.

42 (d) In cases where no service is had, for good cause shown, the court
 43 may set aside a default judgment pursuant to the applicable provisions of

This section clarifies and consolidates in one section when default judgment may be taken and how and when a default judgment may be set aside. No default judgment may be taken in a case where service was by first class mail, electronic mail or telefacsimile transmission. This is to allay fears of those who think that the use of regular mail or electronic mail for service of process will lead to widespread abuse.

1 subsection (b) of K.S.A. 60-260, and amendments thereto.

2 New Sec. 34. (a) A judgment may be entered by master or other
3 journal entry or judgment form approved by a judge. The judgment shall
4 be effective from the date the journal entry or judgment form is filed
5 with the clerk of the court. The form of the journal entry or judgment
6 form shall be set forth in the rules of the supreme court of this state.

7 (b) One or more cases may be shown on a journal entry or judgment
8 form as set forth in the rules of the supreme court of this state.

9 (c) When more than one claim for relief is presented in a lawsuit, the
10 court may direct the entry of a final judgment upon one or more but less
11 than all of the claims upon such terms and conditions as set forth in the
12 judgment of the court.

13 (d) Except as to a party against whom a judgment is entered by de-
14 fault, every final judgment shall grant the relief to which the party in
15 whose favor it is rendered is entitled, regardless of whether the party has
16 demanded such relief in such party's pleadings. Upon entry of such judg-
17 ment, the party in whose favor judgment is entered shall be deemed to
18 have waived such party's right to recover any amount due in excess of
19 such judgment, and such party may not recover in a subsequent lawsuit
20 any amount in excess of such judgment.

21 (e) Whenever a party has commenced postjudgment proceedings for
22 the enforcement of a judgment, and such judgment is subsequently set
23 aside, reversed on appeal or otherwise nullified, such party shall not be
24 liable for damages as a result of such postjudgment proceedings, unless
25 it can be proven that the judgment upon which such proceedings were
26 based was fraudulently obtained.

27 New Sec. 35. The provisions of K.S.A. 16-201, 16-204 and 16-205,
28 and amendments thereto, shall apply to judgments entered under the
29 code of civil procedure for limited actions.

30 New Sec. 36. The provisions of K.S.A. 60-252, 60-259 and 60-260,
31 and amendments thereto, shall apply to judgments entered under the
32 code of civil procedure for limited actions where such provisions are not
33 inconsistent with other provisions of the code.

34 New Sec. 37. Actions for the recovery of a fine, forfeiture or penalty,
35 other than against public utilities or common carriers, must be brought
36 in the county in which the cause arose, except if the act was committed
37 on a road or river which forms the boundary of two or more counties the
38 action may be brought in any one of the bordering counties opposite the
39 place where the act was committed.

40 New Sec. 38. An action against a resident of this state, other than an
41 action for which venue is otherwise specifically prescribed by law, may
42 be brought in the county in which:

43 (a) The defendant resides;

Judgments can be entered by a single journal entry or by a master journal entry covering several cases. This will facilitate cases filed electronically. Otherwise, the section is the same as existing law (K.S.A. 61-1722).

This is to make clear that all of the provisions of Article 16 of K.S.A. which apply to judgments apply under this chapter.

It is not clear under existing law how you seek to modify a judgment. This section attempts to clarify this.

Sections 37 through 45 are the venue provisions and there is no change in this article from present law (K.S.A. 16-1901, et. seq.) .

- 1 (b) the plaintiff resides if the defendant is served therein;
- 2 (c) the cause of action arose;
- 3 (d) the defendant has a place of business or of employment if the
- 4 defendant is served therein;
- 5 (e) the estate of a deceased person is being probated if such deceased
- 6 person was jointly liable with the defendant and a demand to enforce
- 7 such liability has been duly exhibited in the probate proceedings of such
- 8 decedent's estate; or
- 9 (f) there is located tangible personal property which is the subject of
- 10 an action for the possession thereof if immediate possession is sought in
- 11 accordance with section 74, and amendments thereto, at the time of the
- 12 filing of the action.

13 New Sec. 39. An action against a domestic corporation, or against a
 14 foreign corporation which is qualified to do business in this state, other
 15 than an action for which venue is otherwise specifically prescribed by law,
 16 may be brought in the county in which:

- 17 (a) Its registered office is located;
- 18 (b) the cause of action arose;
- 19 (c) the defendant is transacting business at the time of the filing of
- 20 the petition; or
- 21 (d) there is located tangible personal property which is the subject of
- 22 an action for the possession thereof if immediate possession is sought in
- 23 accordance with section 74, and amendments thereto, at the time of the
- 24 filing of the action.

25 New Sec. 40. An action against a nonresident of this state, or against
 26 a corporation which is not qualified to do business in this state, other than
 27 an action for which venue is otherwise specifically prescribed by law, may
 28 be brought in the county in which:

- 29 (a) The plaintiff resides, or if the plaintiff is a corporation, in the
- 30 county of its registered office or in which it maintains a place of business;
- 31 (b) the defendant is served;
- 32 (c) the cause of action arose;
- 33 (d) the defendant is transacting business at the time of the filing of
- 34 the petition;
- 35 (e) there is property of the defendant, or debts owing to the defend-
- 36 ant; or
- 37 (f) there is located tangible personal property which is the subject of
- 38 an action for the possession thereof if immediate possession is sought in
- 39 accordance with section 74, and amendments thereto, at the time of the
- 40 filing of the action.

41 New Sec. 41. Any action brought against a public utility, common
 42 carrier or transportation system for any liability or penalty or forfeiture,
 43 may be brought in any county into or through which such public utility,

1 common carrier or transportation system operates regularly.

2 New Sec. 42. If there are several plaintiffs properly joined and venue
3 is determined by the residence of one of them, it shall be necessary that
4 such plaintiff's claim is a substantial part of the action. If there are several
5 defendants properly joined, venue of the action may be determined at
6 the election of the plaintiff as to any one of the defendants against whom
7 a substantial claim exists. If, before trial of an action on the merits is
8 commenced, a party with reference to whom venue was determined
9 ceases to be a party and venue would no longer be proper as to the
10 remaining parties, on the application of any remaining party promptly
11 made, the cause shall be transferred to a court of a county of proper
12 jurisdiction and venue. If there is more than one such county, the transfer
13 shall be to a county selected by the plaintiff.

14 New Sec. 43. In all cases pursuant to the provisions of the code of
15 civil procedure for limited actions in which it shall be made to appear
16 that a fair and impartial trial cannot be had in the county where the suit
17 is pending, for reasons other than the disqualification of the judge, the
18 court, upon application of either party, may change the place of trial to
19 the district court of some county where the objection does not exist.

20 New Sec. 44. Objection to the venue of an action shall not be allowed
21 except on timely motion made and for grounds established before trial of
22 the action is commenced on the merits.

23 New Sec. 45. If an action is commenced in good faith and a subse-
24 quent timely objection to the venue is sustained, or if before trial on the
25 merit commences, it is found that no cause of action exists in favor of or
26 against a party upon whom venue was dependent, the action shall be
27 transferred to a court of proper jurisdiction of any county of proper venue.
28 If there is more than one such county, the transfer shall be to the court
29 of a county selected by the plaintiff. In accordance with section 96, and
30 amendments thereto, the receiving district court shall require the pay-
31 ment of an appropriate docket fee from the movant.

32 New Sec. 46. The provisions of article 7 of chapter 60 of the Kansas
33 Statutes Annotated, and amendments thereto, relating to attachment shall
34 govern attachment proceedings for actions pursuant to the code of civil
35 procedure for limited actions, except the provisions of K.S.A. 60-711, and
36 amendments thereto, relating to the appointment of a receiver, shall not
37 be applicable in lawsuits filed under the code of civil procedure for limited
38 actions.

39 New Sec. 47. Garnishment is a procedure whereby the wages,
40 money or property of a person can be seized or attached pursuant to an
41 order of garnishment issued by the court under the conditions set forth
42 in the order.

43 New Sec. 48. An order of garnishment before judgment may be ob-

Attachment and execution against real estate will be allowed under
Chapter 61. Otherwise this is the same as K.S.A. 61-2001.

This is a clearer definition than under current law at K.S.A. 61-2002.

This is similar to K.S.A. 61-2003

1 tained only upon order of a judge of the district court pursuant to the
2 procedure to obtain an order of attachment. No order of garnishment
3 may be obtained before judgment where the property sought to be at-
4 tached is wages earned by the person being garnished.

5 New Sec. 49. (a) As an aid to the collection of a judgment, an order
6 of garnishment may be obtained at any time after 10 days following judg-
7 ment. There is no requirement that an execution first be issued and re-
8 turned unsatisfied.

9 (b) The party requesting a garnishment shall file a request in an in-
10 dividual case or by a master request covering more than one case asking
11 the court to issue an order of garnishment. The request shall designate
12 whether the order of garnishment is to be issued to attach earnings or to
13 attach other property of the judgment debtor. If such party seeks to attach
14 earnings of the judgment debtor to enforce:

15 (1) An order of any court for the support of any person;

16 (2) an order of any court of bankruptcy under chapter XIII of the
17 federal bankruptcy act; or

18 (3) a debt due for any state or federal tax, the direction of the party
19 shall so indicate. No bond is required for an order of garnishment issued
20 after judgment.

21 New Sec. 50. This section shall apply if the garnishment is to attach
22 property other than earnings of the judgment debtor.

23 (a) The order of garnishment shall be substantially in compliance with
24 the forms set forth in the rules of the supreme court of this state.

25 (b) The order of garnishment and the appropriate form for the gar-
26 nishee's answer shall be served on the garnishee in the same manner as
27 process is to be served pursuant to sections 19 through 24, and amend-
28 ments thereto, except that the garnishee may be served by any means
29 provided under sections 19 through 24, and amendments thereto, at the
30 garnishee's business or office location and this shall be considered proper
31 service. Two copies of the answer form shall be served if the garnishment
32 order is not served electronically. If the order is served prior to a judg-
33 ment, the order shall also be served on the judgment debtor, if the judg-
34 ment debtor can be found, except that the order shall not be served on
35 the judgment debtor until after service has been made on the garnishee.
36 Failure to serve the judgment debtor shall not relieve the garnishee from
37 liability under the order.

38 (c) The order of garnishment shall have the effect of attaching:

39 (1) All property, funds, credits or other indebtedness belonging to or
40 owing the judgment debtor, other than earnings, which is in the posses-
41 sion or under the control of the garnishee, and all such credits and in-
42 debtedness due from the garnishee to the judgment debtor at the time
43 of service of the order; and

This is similar to K.S.A. 61-2004 except under the new section a
judgment creditor can request a garnishment be issued in one or
several cases with one request. This is to facilitate electronic filing
and to cut down on the amount of paper filed with the clerk.

This is derived in part from K.S.A. 61-2005. Non-wage and wage
garnishments are covered under separate sections because they are
treated in a slightly different manner.

Garnishment orders can be served in the same manner as
summons. Garnishees should readily support service by electronic
mail and fax as they are already using these forms of communication
in their business. This section also allows service on the garnishee
at the garnishee's business office which is not always allowed under
current law.

1 (2) all such personal property coming into the possession or control
 2 of the garnishee and belonging to the judgment debtor, and all such
 3 credits and indebtedness becoming due to the judgment debtor between
 4 the time the order is served on the garnishee and the time the garnishee
 5 makes the answer of the garnishee. Where the garnishee is an executor
 6 or administrator of an estate in which the judgment debtor is or may
 7 become a legatee or distributee thereof, the order of garnishment shall
 8 have the effect of attaching and creating a first and prior lien upon any
 9 property or funds of such estate to which the judgment debtor is entitled
 10 upon distribution of the estate, and such garnishee shall be prohibited
 11 from paying over to the judgment debtor any of such property or funds
 12 until so ordered by the court from which the order of garnishment was
 13 issued.

14 (d) The garnishee, without prior agreement, may withhold and retain
 15 to defray the garnishee's costs, an administrative fee of \$10 for each order
 16 of garnishment that attaches funds, credits or indebtedness. Such admin-
 17 istrative fee shall be in addition to the amount required to be withheld
 18 under the order for garnishment, except that if the amount required to
 19 be withheld under the order for garnishment is greater than the amount
 20 of the funds, credits or indebtedness held by the garnishee, the fee shall
 21 be deducted from the amount withheld.

22 New Sec. 51. (a) The written direction of a party seeking an order
 23 of garnishment attaching funds, credits or indebtedness held by a bank,
 24 savings and loan association, credit union or finance company shall state
 25 the amount to be withheld, which shall be 110% of the amount of the
 26 judgment creditor's claim, in the case of prejudgment garnishment, or
 27 110% of the amount of the current balance due under the judgment, in
 28 the case of postjudgment garnishment. The garnishee, without prior
 29 agreement, may withhold and retain to defray the garnishee's costs, an
 30 administrative fee of \$10 for each order of garnishment that attaches
 31 funds, credits or indebtedness. Such administrative fee shall be in addi-
 32 tion to the amount required to be withheld under the order for garnish-
 33 ment, except that if the amount required to be withheld under the order
 34 for garnishment is greater than the amount of the funds, credits or in-
 35 debtedness held by a bank, savings and loan association, credit union or
 36 finance company, the fee shall be deducted from the amount withheld.

37 (b) All orders of garnishment issued in this state for the purpose of
 38 attaching funds, credits or indebtedness held by a bank, savings and loan
 39 association, credit union or finance company shall include the judgment
 40 debtor's address and tax identification number, if known, and shall specify
 41 the amount of funds, credits or indebtedness to be withheld by the gar-
 42 nishee, which shall be 110% of the amount of the judgment creditor's
 43 claim or 110% of the amount of the current balance due under the judg-

Bank garnishments will be streamlined. The answer goes directly to the judgment creditor. In response, the judgment creditor sends the bank a direction to pay. The bank then makes payment direct to the judgment creditor. The clerk is taken out of the loop. The percentage of a bank account tied up by a garnishment is reduced from 150% of the judgment balance under current law to 110%.

1 ment, as stated in the written direction of the party seeking the order.

2 (c) The forms provided by law for an order of garnishment attaching
3 funds, credits or indebtedness held by a bank, savings and loan associa-
4 tion, credit union or finance company shall include the following
5 statement:

6 ``If you hold any funds, credits or indebtedness belonging to or owing
7 the judgment debtor, the amount to be withheld by you pursuant to this
8 order of garnishment is not to exceed \$ _____ .''

9 (amount stated in direction)

10 (d) (1) The forms provided by law for the answer to an order of
11 garnishment attaching funds, credits or indebtedness held by a bank, sav-
12 ings and loan association, credit union or finance company shall include
13 the following statement:

14 ``The amount of the funds, credits or indebtedness belonging to or
15 owing the judgment debtor which I shall hold shall not exceed
16 \$ _____ .''

17 (amount stated in order)

18 (2) The answer shall further include information that such account is
19 owned in joint tenancy with one or more individuals who are not subject
20 to the garnishment, if applicable.

21 (e) If an order of garnishment attaches funds, credits or indebtedness
22 held by a bank, savings and loan association, credit union or finance com-
23 pany and the garnishee holds funds or credits or is indebted to the judg-
24 ment debtor in two or more accounts, the garnishee may withhold pay-
25 ment of the amount attached from any one or more of such accounts.

26 (f) If an order of garnishment attaches funds, credits or indebtedness
27 held by a bank, savings and loan association, credit union or finance com-
28 pany and the garnishee holds funds or credits or is indebted to the judg-
29 ment debtor in an account which judgment debtor owns in joint tenancy
30 with one or more individuals who are not subject to the garnishment, the
31 garnishee shall withhold the entire amount sought by the garnishment.
32 Neither the garnishor nor the garnishee shall be liable to the joint owners
33 if the ownership of the funds is later proven not to be the judgment
34 debtor's.

35 (g) No party shall seek an order of garnishment attaching funds, cred-
36 its or indebtedness held by a bank, savings and loan association, savings
37 bank, credit union or finance company except on good faith belief of the
38 party seeking garnishment that the party to be served with the garnish-
39 ment order has, or will have, assets of the judgment debtor. Except as
40 provided further, not more than two garnishments shall be issued by a
41 party seeking an order of garnishment applicable to the same claim or
42 claims and against the same judgment debtor in any 30-day period. A
43 judge may order an exception to this subsection in any case in which the

1 party seeking the garnishment shall in person or by attorney: (1) Certify
 2 that the garnishment is not for the purpose of harassment of the debtor,
 3 and (2) state facts demonstrating to the satisfaction of the judge that there
 4 is reason to believe that the garnishee has property or credits of the debtor
 5 which are not exempt from execution.

6 New Sec. 52. This section shall apply if the garnishment is to attach
 7 earnings of the judgment debtor.

8 (a) The order of garnishment shall be substantially in compliance with
 9 the forms set forth in the rules of the supreme court of this state.

10 (b) The order of garnishment and the appropriate form for the gar-
 11 nishee's answer shall be served on the garnishee in the same manner as
 12 process is to be served pursuant to sections 19 through 24, and amend-
 13 ments thereto, except that the garnishee may be served by any means
 14 provided under sections 19 through 24, and amendments thereto, at the
 15 garnishee's business or office location and this shall be considered proper
 16 service. Two copies of the answer form shall be served if the garnishment
 17 order is not served electronically.

18 (c) The order of garnishment shall have the effect of attaching the
 19 nonexempt portion of the judgment debtor's earnings for all pay periods
 20 which end while the order is in effect. The order shall remain in effect
 21 until either of the following occur, whichever is sooner: (1) The judgment
 22 is paid; or (2) the garnishment is released. Nonexempt earnings are earn-
 23 ings which are not exempt from wage garnishment pursuant to K.S.A. 60-
 24 2310, and amendments thereto. Computation of the nonexempt portion
 25 of the judgment debtor's wages for the pay period or periods covered by
 26 the order shall be made in accordance with the directions accompanying
 27 the garnishee's answer form, and a written explanation of the garnishee's
 28 computations shall be furnished to the judgment debtor with each pay-
 29 check from which earnings are withheld pursuant to the order of gar-
 30 nishment. The order of garnishment shall also constitute an order of the
 31 court directing the garnishee to pay to the judgment creditor all earnings
 32 which are to be withheld by the garnishee under the order of garnishment
 33 as more particularly provided in the answer of the garnishee.

34 (d) From income due the judgment debtor, the garnishee may with-
 35 hold and retain to defray the garnishee's costs, an administrative fee of
 36 \$10 for each pay period for which income is withheld, not to exceed \$20
 37 for each 30 day period for which income is withheld, whichever is less.
 38 Such administrative fee shall be in addition to the amount required to be
 39 withheld under the order for garnishment. If the addition of this fee
 40 causes the total amount withheld to exceed the restrictions imposed by
 41 subsection (b) of K.S.A. 60-2310, and amendments thereto, the fee shall
 42 be deducted from the amount withheld.

43 New Sec. 53. Immediately following the time the order of garnish-

W garnishments will be continuing and will remain in effect until
 the judgment is paid or the garnishment is released, whichever
 occurs sooner. This will greatly reduce the number of garnishments
 filed.

notice to the defendant in case of garnishment (wage and non-wage) by Chapter 131 of 1999 Session Laws (SB 306). Current law provides that the notice is to be sent to the defendant by the clerk after a garnishee's answer is filed. The new section provides that the notice will be sent by the garnishee immediately after the order is served and before the answer is made.

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ment is served on the garnishee and before the answer of garnishee is made, the garnishee shall send a notice to the judgment debtor in any reasonable manner, notifying the judgment debtor:

(a) That a garnishment order has been issued against the judgment debtor and the effect of such order;

(b) of the judgment debtor's right to assert any claim of exemption allowed under the law with respect to a garnishment against property other than earnings or of the judgment debtor's right to object to the calculation of exempt and nonexempt earnings with respect to a garnishment against the earnings of the debtor; and

(c) of the judgment debtor's right to a hearing on such claim or objection. The notice shall be substantially in compliance with the form set forth in the rules of the supreme court of this state, and shall contain a description of the exemptions that are applicable to garnishments and the procedure by which the judgment debtor can assert any claim of exemption. A copy of the notice form shall be served on the garnishee with the order of garnishment. If the garnishee does not have possession of any property, funds, credits, indebtedness or wages belonging to or owing the judgment debtor, the garnishee does not need to send the notice to the judgment debtor.

New Sec. 54. This section shall apply if the garnishment is to attach property other than earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth in the rules of the supreme court of this state.

(b) Within 10 days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and send the completed answer to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

New Sec. 55. This section shall apply if the garnishment is to attach earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth in the rules of the supreme court of this state.

(b) Within 15 days following the end of each month, the garnishee shall complete the answer in accordance with the instructions accompanying the answer form for all pay periods ending during the month and send the completed answer to each judgment creditor and judgment debtor at the addresses listed on the answer form. The garnishee shall designate on the answer in the space provided on the answer form the name and case number for each judgment creditor who has a garnishment order in effect for the same debtor at the end of each month and the

K.S.A. 61-2006 governs the answer now. Under the new section the answer will not be filed with the clerk but instead when completed will be sent by the garnishee to the judgment creditor and judgment debtor. This will further reduce the amount of paper filed with the clerk.

The garnishee will prepare an answer on the 15th day of each month covering wages withheld during the prior month. If more than one garnishment is served on an employer against the same judgment debtor, all judgment creditors will share pro-rata in the funds withheld. The answer will not be filed with the clerk but will be sent directly by the garnishee to the judgment creditor and debtor. This will further reduce the amount of paper filed with the clerk.

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1 amount that is due each judgment creditor under the garnishment in
 2 accordance with the instructions accompanying the answer form. Only
 3 one answer needs to be completed for each judgment debtor by the gar-
 4 nishee and the garnishee make duplicate the completed answer in any
 5 manner the garnishee desires for distribution to each judgment creditor
 6 and judgment debtor. The answer shall be supported by unsworn dec-
 7 laration in the manner set forth on the answer form.

8 (c) If there are other liens against the judgment debtor's earnings
 9 which by law have priority over garnishments, the garnishee shall so in-
 10 dicate on the answer. In such event, the garnishment shall remain in
 11 effect but no earnings of the debtor shall be withheld under the garnish-
 12 ment order unless and until all of the other liens having priority are re-
 13 leased or satisfied or the earnings being withheld under all of such liens
 14 are less than the amount which is exempt under K.S.A. 60-2310, and
 15 amendments thereto.

16 New Sec. 56. (a) No later than 10 days after the garnishee makes the
 17 answer and sends it to the judgment creditor and judgment debtor, the
 18 judgment creditor or judgment debtor, or both, may file a reply disputing
 19 any statement in the answer of the garnishee. A copy of the reply shall
 20 be sent by the party filing same to the other party, to any other judgment
 21 creditors affected and to the garnishee. The party filing the reply shall
 22 notify the court and schedule a hearing on the reply to be held within 30
 23 days after filing of the reply.

24 (b) At the hearing, the court shall determine and rule on all issues
 25 related to the reply. The burden of proof shall be upon the party filing
 26 the reply to disprove the statements of the answer, except that the gar-
 27 nishee shall have the burden of proving offsets or indebtedness claimed
 28 to be due from the judgment debtor to the garnishee, or liens asserted
 29 by the garnishee against personal property of the judgment debtor. The
 30 provisions of K.S.A. 60-719, and amendments thereto, relating to offsets
 31 claimed by the garnishee shall be applicable to lawsuits filed pursuant to
 32 the code of civil procedure for limited actions.

33 New Sec. 57. If the garnishment is to attach property other than
 34 earnings of the judgment debtor, after 10 days following receipt of the
 35 answer of the garnishee by the judgment creditor, and no reply to the
 36 answer has been filed, the judgment creditor shall direct the garnishee
 37 to pay to the judgment creditor such amount that the garnishee is holding
 38 as indicated by the answer, or such lesser amount if the circumstances
 39 warrant. If the garnishee is holding property other than money, the judg-
 40 ment creditor shall direct the garnishee to deliver the property to the
 41 judgment creditor. If through garnishment, the claim is overpaid to the
 42 judgment creditor, the judgment creditor shall promptly refund to the
 43 judgment debtor any such overpayment.

This is similar to K.S.A. 61-2006 & 2007.

This replaces the pay-in order which is not really covered under existing law. Instead of obtaining an order, the judgment creditor simply sends a written direction to pay the garnishee. Payment is to be made directly to the judgment creditor rather than first going to the clerk. This will eliminate a great deal of paper and the need for the clerk to handle a great deal of money now handled by most clerks. The Judicial Council subcommittee was convinced that the clerk did not need to keep track of payments made on judgments. Most judgments are paid voluntarily directly from the debtor to the creditor with no record of payment kept by the clerk.

Payment due under a wage garnishment will automatically be sent by the garnishee to all judgment creditors entitled thereto each month without the need for a pay-in order.

This is covered in part under K.S.A. 61-2006. The new section will allow the court to award judgment for an amount other than the amount of the judgment and for attorney fees and expenses.

This is not covered under present law. This section gives the court a number of remedies which may be imposed.

These are presently covered by K.S.A. 61-2009 and 2010.

It is not clear under present law whether a stay applies to judgments under Chapter 61.

Under the new section, executions may be levied upon real

1 New Sec. 58. This section shall apply if the garnishment is to attach
2 earnings of the judgment debtor. If no reply is made to the answer of
3 garnishee within 10 days following the date the garnishee has completed
4 the answer, the garnishee shall promptly thereafter pay the earnings with-
5 held as indicated on the answer to all judgment creditors designated on
6 the answer in the amount due each as indicated on the answer, unless
7 the garnishee receives prior to such payment an order of the court to the
8 contrary. If any judgment creditor receives more than they are entitled
9 to, that judgment creditor shall promptly pay the excess amount pro-rata
10 to the other judgment creditors designated on the answer, or if no such
11 other judgment creditors are designated, the judgment creditor shall
12 promptly pay the excess amount to the judgement debtor.

13 New Sec. 59. If the garnishee fails to answer within the time and
14 manner specified in the order of garnishment, the judgment creditor may
15 file a motion and shall send a copy of the motion to the garnishee and
16 the judgment debtor in the manner allowed under sections 7 through 18,
17 and amendments thereto. At the hearing on the motion, the court may
18 grant judgment against the garnishee for the amount of the judgment
19 creditor's judgment or claim against the judgment debtor or for such
20 other amount as the court deems reasonable and proper, and for the
21 expenses and attorney fees of the judgment creditor. If the claim of the
22 plaintiff has not been reduced to judgment, the liability of the garnishee
23 shall be limited to the judgment ultimately rendered against the judgment
24 debtor.

25 New Sec. 60. If after the time the garnishee is to make payment of
26 funds or property held under a garnishment, the garnishee fails or refuses
27 to pay or deliver property to the judgment creditor, the judgment creditor
28 may file a motion and shall send a copy of the motion to the garnishee
29 and the judgment debtor in the manner allowed under sections 7 through
30 18, and amendments thereto. At the hearing on the motion, the court
31 may find the garnishee in contempt and punish the garnishee by a fine
32 or imprisonment in the county jail or both, or may enter judgment against
33 the garnishee for such amount as the court deems reasonable and proper,
34 including the expenses and attorney fees of the judgment creditor.

35 New Sec. 61. The provisions of K.S.A. 60-721, 60-722, 60-723 and
36 60-724, and amendment thereto, shall be applicable to lawsuits filed pur-
37 suant to the code of civil procedure for limited actions.

38 New Sec. 62. The provisions of K.S.A. 60-262, and amendments
39 thereto, shall apply to judgments entered under the code of civil proce-
40 dure for limited actions, except as to judgments entered in eviction law-
41 suits under sections 79 through 86, and amendments thereto. A judgment
42 entered in an eviction lawsuit may be enforced as soon as it is entered.

43 New Sec. 63. General and special executions or orders of sale upon

presently, they may not be.

1 judgments entered under the code of civil procedure for limited actions
2 shall be taken in the manner provided in article 24 of chapter 60 of the
3 Kansas Statutes Annotated, and amendments thereto. Executions and or-
4 ders of sale issued hereunder may be levied upon real property as pro-
5 vided under the appropriate provisions of chapter 60 of the Kansas Stat-
6 utes Annotated, and amendments thereto.

Under present law, Chapter 61 judgments do not operate as liens on
real estate. To effect this, the judgment must be transcribed to
Chapter 60. Under the new section, judgments under Chapter 61 will
operate as liens on real estate and executions against real estate will
be allowed under Chapter 61. The Judicial Council subcommittee
thought this would simplify matters.

7 New Sec. 64. (a) Judgments rendered under the code of civil pro-
8 cedure for limited actions shall be a lien on the real estate of the judgment
9 debtor within the county in which the judgment is rendered. Except as
10 modified herein, the provisions of K.S.A. 60-2201, subsection (a) of K.S.A.
11 60-2202 and 60-2203a, and amendments thereto, shall apply to actions
12 and judgments filed under the code of civil procedure for limited actions.

13 (b) Judgments previously rendered under chapter 61 of the Kansas
14 Statutes Annotated and amendments thereto may be made a lien upon
15 real estate if a party in whose favor a judgment is rendered under chapter
16 61 of the Kansas Statutes Annotated, shall file a notice with the clerk to
17 have such judgment be made a lien against the real estate of the judgment
18 debtor within the county in which the judgment was rendered. The form
19 of the notice shall be prescribed by rule of the supreme court of this state.
20 Thereafter, such judgment shall be a lien on the real estate of the judg-
21 ment debtor within the county in which the judgment is rendered just as
22 if the judgment had been rendered under this act, and the provisions of
23 K.S.A. 60-2201, subsection (a) of K.S.A. 60-2202 and 60-2203a, and
24 amendments thereto, shall thereafter apply to such judgment.

This is the same as present law (K.S.A. 61-2203).

25 New Sec. 65. The provisions of article 23 of chapter 60 of the Kansas
26 Statutes Annotated, and amendments thereto, relating to exemptions
27 from seizure and sale, shall apply to attachments, executions and other
28 process issued from any court in this state pursuant to the code of civil
29 procedure for limited actions.

This is essentially the same as K.S.A. 61-2204. Under the new
section the hearing may be held anywhere in the county wherever the
creditor may be located, the judgment creditor may request a hearing in
more than one case with a single request, and the court may cancel
the hearing if the debtor furnishes the creditor certain information
prior to the hearing. All of these things streamline the procedure
without adversely affecting the rights of the parties.

30 New Sec. 66. (a) As an aid to the collection of a judgment, the judg-
31 ment creditor is entitled to have an order for a hearing in aid of execution
32 issued by the court at any time after 10 days after judgment. There is no
33 requirement that an execution first be issued and returned unsatisfied.
34 No application for such order needs to be filed except as specially re-
35 quired in this section.

36 (b) An order for a hearing in aid of execution may be issued at the
37 request of a judgment creditor in an individual case or by a master request
38 covering more than one case, and shall require the judgment debtor to
39 appear and furnish information under oath or penalty of perjury when
40 required by the court concerning the debtor's property and income be-
41 fore the court at a time and place specified in the order within the county
42 where the court is situated. The form of the order shall be set forth in
43 rules of the supreme court of this state. The court may cancel the hearing

1 if the judgment debtor has furnished to the judgment creditor satisfactory
2 information concerning the debtor's property and income prior to the
3 date and time for the hearing. Witnesses may also be subpoenaed to
4 testify at the hearing.

5 (c) If the judgment debtor resides in another county in this state or
6 outside of this state, the court can order such judgment debtor to appear
7 if the court finds that it will not cause undue hardship on the judgment
8 debtor to appear.

9 (d) It shall be the duty of the judge to assist in the enforcement of
10 the judgments of the court. To this end, at any hearing in aid of execution,
11 when the existence of any nonexempt property of the judgment debtor
12 is disclosed, the court shall order the judgment debtor to deliver the
13 property to the sheriff or a duly appointed process server. If the property
14 is other than currency, the property shall be sold in the same manner as
15 other property taken under execution is sold and the proceeds from the
16 sale shall be applied to the judgment and costs.

17 New Sec. 67. If a judgment debtor appears pursuant to an order for
18 a hearing in aid of execution, the court may order the debtor to return
19 to court from time to time to furnish current information under the pro-
20 cedure set forth in section 66, and amendments thereto. To avoid un-
21 necessary filings, the court shall adopt a policy limiting the frequency
22 with which the judgment debtor may be ordered to return to court. Such
23 policy shall provide that a judgment debtor who has made regular pay-
24 ments as agreed between the parties, or who is found to be disabled and
25 otherwise unable to pay, shall not be required to return to court more
26 frequently than yearly.

27 New Sec. 68. If a person fails to appear in response to an order for
28 a hearing in aid of execution, or if a person who has been subpoenaed to
29 testify at the hearing fails to appear or to testify concerning anything about
30 which the person can lawfully be questioned, the court shall issue a ci-
31 tation for contempt to that person providing that the person must either:

32 (a) Contact the judgment creditor or attorney within 10 days to fur-
33 nish information under oath or penalty of perjury concerning the judg-
34 ment debtor's property and income; or

35 (b) appear in court at a date and time specified to show cause why
36 the debtor should not be held in contempt and punished for con-
37 tempt. The form of the citation for contempt shall be set forth in rules of
38 the supreme court of this state. The citation for contempt does not need
39 to be supported by affidavit or other verification.

40 New Sec. 69. If on hearing, the court determines that a judgment
41 debtor is guilty of contempt, the court may punish the person by a fine
42 in an amount to be set by the court or by imprisonment in the county jail
43 for a period of not to exceed 30 days, or both. The court may also order

An order back procedure has been adopted for orders to appear with provisions to avoid abuse. A variant of this is allowed now under K.S.A. 61-2204.

The new procedure on Contempt citations will allow the judgment debtor to either appear in court or contact the judgment creditor prior to the hearing and furnish the requested information. A contempt citation or bench warrant may be issued without supporting affidavit or other verification. The records of the court will indicate whether the substance of this is supported so there is no need to require further verification. This is also to clarify a possible conflict between two separate sections of current law on contempts (K.S.A. 61-2204 and 20-1204a).

The current procedure is set forth in K.S.A. 61-2204. The new section will allow the court to award attorney fees.

1 the person guilty of contempt to pay the reasonable attorney fees incurred
2 by the judgment creditor at the hearing.

3 New Sec. 70. (a) If a person fails to comply with the either of the
4 requirements of section 68, and amendments thereto, or if it appears to
5 the court that the person is hiding to avoid the process of the court or is
6 about to leave the county for that purpose, the court may issue a bench
7 warrant commanding the sheriff to whom it is directed to bring such
8 person before the court to answer for contempt. The bench warrant does
9 not need to be supported by affidavit or other verification. The court may
10 make such orders concerning the release of the person pending the hear-
11 ing as the court deems proper.

12 (b) When such person is brought before the court, a hearing shall be
13 held to determine if the person should be punished for contempt. If the
14 court determines that the person is guilty of contempt, the court may
15 punish the person by a fine in an amount to be set by the court or by
16 imprisonment in the county jail for a period of not to exceed 30 days, or
17 both. The court may also order the person guilty of contempt to pay the
18 reasonable attorney fees incurred by the judgment creditor in the filing
19 of the bench warrant and the hearing thereon.

20 New Sec. 71. If the judgment debtor is employed in this state and
21 either the debtor is a nonresident of this state or the place of residence
22 is unknown, the order for a hearing in aid of execution and citation for
23 contempt may be served on the judgment debtor at the place of employ-
24 ment. The order or citation may direct that an officer, partner, managing
25 or general agent, or the person having charge of the office or place of
26 employment at which the judgment debtor is employed shall make the
27 judgment debtor available for the purpose of permitting the order or
28 citation to be served on the judgment debtor at the place of employment.

29 New Sec. 72. The provisions of K.S.A. 60-2403 and 60-2404, and
30 amendments thereto, shall apply to judgments entered under the code
31 of civil procedure for limited actions.

32 New Sec. 73. Any person who claims to have succeeded to the in-
33 terest of the holder of a judgment by appointment as personal represen-
34 tative for a ~~deceased or incompetent~~ judgment holder, by assignment, by
35 operation of law, or otherwise, shall file a notice setting forth the basis
36 for their claim, and thereafter such successor in interest shall be entitled
37 to all the rights and remedies available to such successor's predecessor
38 and may proceed to enforce the same in such successor's own name as
39 such successor. It shall not be necessary to file with the clerk the docu-
40 ments which form the basis for the claim. If the validity of any such
41 transfer is disputed by any party affected thereby, the court shall on rea-
42 sonable notice to all interested parties whose whereabouts are known,
43 determine the respective rights and liabilities of all the parties.

This is essentially the same as K.S.A. 61-2204 except the court will now have authority to award attorney fees.

Service of process at the defendant's place of residence is the preferred manner. However, there are times when the place of residence is not known. Current law only allows the service of summons at the place of employment. Creditors now are forced to file a motion and obtain a court order to do this on an order to appear or contempt citation. This new section will allow this without the need to obtain an order.

(New Sec. 72)
Under current law, it is unclear whether judgments under Chapter 61 become dormant. The new section makes it clear that they do and what the procedure is to keep such judgments alive and to revive them. This is important since it is now proposed that Chapter 61 judgments will become liens on real property.

(New Sec. 73)
The current procedure is covered under K.S.A. 60-2405. The new procedure eliminates the need to file anything with the clerk. This will further cut down on the amount of paper filed with the clerk.

Sections 74 through 78 govern the procedure for replevin and foreclosure of security interests. Current law is found at K.S.A. 61-2401 through 2405. Changes were made to create a more useful statute and to change many of the legal phrases to "plain English" terminology. There were few substantive changes to the statute and the statute was amended to reflect the common practices observed by judges, clerks of courts, and sheriffs.

The replevin section has been changed to distinguish between prejudgment replevins which require additional Constitutional safeguards, and post judgment replevins which proceed as normal litigated controversies. The elements required in the petition are specifically delineated to assist in electronic filing. The most substantive change is changing the bond amount from "the amount of plaintiff's claim" to double the fair market value of the property in dispute. This reduces the bond significantly in the event the property has little value in comparison to the plaintiff's overall claim. For example, a lessor seeking return of his leased property may have a claim for the remainder of the lease term, but the actual fair market value of the leased property has diminished considerably over time.

The clerk of the court and sheriff have been relieved of "quasi-judicial" rulings. A judge determines the sufficiency of bonds and approves bonds, rather than the clerk. In the case of redelivery bonds, the judge determines the sufficiency of and approves bonds rather than the sheriff.

1 New Sec. 74. Upon the commencement of an action, the plaintiff
 2 may recover possession of specific personal property before or after
 3 judgment.
 4 (a) Claim for possession of property. A plaintiff may seek an order to
 5 obtain possession of specific personal property as follows: Petition. The
 6 plaintiff shall file a petition stating:
 7 (1) Plaintiff is the owner or the person lawfully entitled to the pos-
 8 session, the specific property and the factual basis for the claim;
 9 (2) a description of the property;
 10 (3) the property is wrongfully detained by the defendant, or is held
 11 by an officer under legal process who has refused delivery on demand;
 12 and
 13 (4) the estimated value of the property.
 14 (b) Prejudgment possession of property. A plaintiff may seek an order
 15 to obtain immediate possession of specific personal property, before judg-
 16 ment as follows: Petition. The plaintiff shall file a petition signed under
 17 penalty of perjury stating:
 18 (1) Plaintiff is the owner or the person lawfully entitled to the pos-
 19 session, the specific property, and the factual basis for the claim;
 20 (2) a description of the property;
 21 (3) the property is wrongfully detained by the defendant, or is held
 22 by an officer under legal process who has refused delivery on demand;
 23 and
 24 (4) the estimated value of the property.
 25 (c) Hearing; notice, bond. After filing the petition, the plaintiff may
 26 apply to the court for an order for the delivery of the property prior to
 27 judgment on the merits of the case.
 28 (1) The application to the court for an order shall be by motion which,
 29 unless made during a hearing or trial, shall be made in writing, state with
 30 particularity the grounds therefor and set forth the relief or order sought.
 31 (2) The petition and application shall be served upon the defendant
 32 pursuant to sections 19 through 24, and amendments thereto.
 33 (3) After a hearing and presentation of evidence on plaintiff's motion,
 34 and if the judge is satisfied as to the probable validity of plaintiff's claim
 35 and that delivery of the property to the plaintiff is in the interest of justice
 36 and will properly protect the interests of all the parties, the judge may
 37 enter or cause to be entered an order for the delivery of the property to
 38 the plaintiff.
 39 (4) Prior to the issuance of the order for delivery of the property, the
 40 plaintiff shall file a bond with the clerk of the court.
 41 (d) Bond; contents, insufficiency.
 42 (1) The bond shall be executed by the plaintiff and one or more suf-
 43 ficient sureties in a sum double the amount of the fair market value of

1 the property, as determined by the judge, or such lesser amount as shall
2 be approved by an order of the judge.

3 (2) The bond shall be to the effect that the plaintiff shall duly pros-
4 ecute the action, and pay all costs and damages that may be awarded
5 against the plaintiff, and that if the plaintiff is given possession of the
6 property the plaintiff will return it to the defendant if it be so adjudged.
7 If the bond shall be found to be sufficient, the judge shall approve the
8 same and note approval thereon.

9 (3) The defendant may challenge the sufficiency of the bond as pro-
10 vided in subsection (b) of K.S.A. 60-705, and amendments thereto.

11 (4) The court shall release the bond, if the plaintiff abandons the right
12 to take possession of the property, prior to taking possession of the
13 property.

14 (e) Replevin; without hearing, notice. Notwithstanding the foregoing
15 provisions of this section, the judge may enter or cause to be entered the
16 order for delivery of property after an ex parte hearing and without notice
17 to and the opportunity for a hearing by the defendant, if the judge is
18 satisfied as to the probable validity of the following additional allegations
19 to be contained in plaintiff's petition:

20 (1) Possession of the property by the plaintiff is directly necessary to
21 secure an important governmental or general public interest; and

22 (2) there is a special need for very prompt action due to the imme-
23 diate danger that the defendant will destroy or conceal the property.

24 (f) Property in custodia legis. If the property is in the custody of an
25 officer under any legal process, it shall nevertheless be subject to replevin
26 under this section, but if the same is in the custody of any officer under
27 any process issued out of a judicial proceeding, the petition and bond
28 shall be filed in the same proceeding out of which such process issued.

29 (g) Order for delivery of property. The order for the delivery of the
30 property to the plaintiff shall be delivered to the appropriate officer or
31 person authorized to serve process of any county in the state in which the
32 property is located. The order shall state the names of the parties, the
33 description of the property and the value as set out in plaintiff's petition,
34 or as found by the court at the hearing on plaintiff's application pursuant
35 to subsection (c). The order shall command the appropriate officer to
36 take immediate possession of the property and deliver it to the plaintiff
37 and make return of the order on the day named therein.

38 (h) Execution of order, return. (1) In the execution of the order the
39 officer may break open any building or enclosure in which the property
40 is located, if the officer cannot otherwise obtain possession of the property
41 or entrance to the building on demand.

42 (2) The appropriate officer shall execute the order by taking posses-
43 sion of the property described therein, and serving a copy on the person

1 charged with the order of delivery in the same manner as for personal or
2 resident service if the person can be found in the county.

3 (3) The return day of the order of delivery shall be 10 days after it is
4 issued, if the order is executed within the county where the court is sit-
5 uated. In all other cases, the return day shall be 20 days after the order
6 is issued.

7 (4) The plaintiff shall have the right to attend execution of the order.
8 Upon inspection of the property the plaintiff may abandon their right to
9 prejudgment possession and shall so advise the appropriate officer and
10 the court.

11 (i) Perishable goods. When property shall be actually seized which is
12 likely to perish or to materially depreciate in value or threatens to decline
13 speedily in value before the probable termination of the suit, or the keep-
14 ing of which would be attended with unreasonable loss or expense, the
15 court may order the same to be sold on such terms and conditions as the
16 judge may direct, by the person having charge of the property, and a
17 return of the proceedings thereon shall be made by the person at a time
18 to be fixed by the judge.

19 (j) Redelivery, bond. The defendant, after service of a copy of the
20 delivery order, may apply to the court for redelivery of the property. The
21 court shall order return of the property to the defendant when the de-
22 fendant files a bond with the clerk of the court, in an amount equal to
23 the plaintiff's bond, executed by the defendant with one or more sufficient
24 sureties. The bond shall be to the effect that the defendant will deliver
25 the property to the plaintiff if so adjudged, and will pay all costs and
26 damages that may be adjudged against the defendant. If the bond shall
27 be found to be sufficient, the judge shall approve the same and note
28 approval thereon. If the defendant is a public officer, board or govern-
29 ment agency, such officer, board or agency, in lieu of giving a redelivery
30 bond, may retain possession of the property seized by filing with the clerk
31 a response certifying that the public health, safety or welfare would be
32 jeopardized or impaired if the plaintiff acquired possession of the prop-
33 erty prior to final judgment, in which case hearing may be had on the
34 issue of public interest at the instance of any party.

35 (k) Judgment in action. (1) In an action to recover the possession of
36 personal property, judgment for the plaintiff may be for possession or for
37 the recovery of possession, or the value thereof in case a delivery cannot
38 be had, and for damages for the detention. If the property has been
39 delivered to the plaintiff and the defendant claims a return thereof, judg-
40 ment for the defendant may be for a return of the property, or the value
41 thereof in case a return cannot be had, and damages for taking and with-
42 holding the same.

43 (2) In addition to other orders, the court may direct an appropriate

A plaintiff has the right to inspect the property and abandon its claim for replevin at which time the bond is canceled and the plaintiff and his surety are relieved of responsibility. There seems to be no good reason to hold the plaintiff or the surety to the bond if no prejudgment remedy is actually obtained.

1 officer to put the party entitled to possession in possession of the property.

2 New Sec. 75. A plaintiff may bring an action to reduce an indebted-
3 edness to a money judgment and to foreclose the security interest in
4 specific personal property given to secure such indebtedness. The plain-
5 tiff, at any time before judgment is rendered, may obtain immediate pos-
6 session of the specified property as follows:

7 (a) Petition. The plaintiff shall file a petition signed under penalty of
8 perjury stating:

9 (1) The plaintiff is the secured creditor of the defendant;

10 (2) the instrument of indebtedness or the terms thereof;

11 (3) the amount of the indebtedness owed;

12 (4) the security agreement or the terms thereof;

13 (5) a description of the personal property;

14 (6) that plaintiff is lawfully entitled to the foreclosure of the specific
15 personal property;

16 (7) the estimated value of each item of personal property; and

17 (8) the defendant is no longer entitled to possess the property.

18 (b) Prejudgment possession; hearing, notice, bond. After filing the
19 petition, the plaintiff may apply to the court for an order for the delivery
20 of the property before judgment.

21 (1) The application to the court for an order of delivery shall be by
22 motion which, unless made during a hearing or trial, shall be made in
23 writing, state with particularity the grounds therefor and set forth the
24 relief or order sought.

25 (2) The petition and application shall be served upon the defendant
26 pursuant to sections 19 through 24, and amendments thereto.

27 (3) After a hearing and presentation of evidence on the plaintiff's
28 motion, if the judge is satisfied as to the probable validity of the plaintiff's
29 claim and that delivery of the property to the plaintiff is in the interest
30 of justice and will properly protect the interests of all the parties, the
31 judge may enter or cause to be entered an order for the delivery of the
32 property to the plaintiff.

33 (4) Prior to the issuance of the order for delivery of the property, the
34 plaintiff shall file a bond with the clerk of the court.

35 (c) Bond, contents, insufficiency. (1) The bond shall be executed by
36 the plaintiff and one or more sufficient sureties in a sum double the
37 amount of the fair market value of the property, as determined by the
38 judge, or such lesser amount as shall be approved by an order of the
39 judge.

40 (2) The bond shall be to the effect that plaintiff shall duly prosecute
41 the action, and pay all costs and damages that may be awarded against
42 the plaintiff, and that if the plaintiff is given possession of the property
43 the plaintiff will return it to the defendant if it be so adjudged. If the

1 bond shall be found to be sufficient, the judge shall approve the same
2 and note approval thereon.

3 (3) The defendant may challenge the sufficiency of the bond as pro-
4 vided in subsection (b) of K.S.A. 60-705, and amendments thereto.

5 (4) The court shall release the bond, if the plaintiff abandons the right
6 to take possession of the property, prior to taking possession of the
7 property.

8 (d) Execution of order, return. (1) In the execution of the order the
9 officer may break open any building or enclosure in which the property
10 is located, if the officer cannot otherwise obtain possession of the property
11 or entrance to the building on demand.

12 (2) The appropriate officer shall execute the order by taking posses-
13 sion of the property described therein, and serving a copy on the person
14 charged with the order of delivery in the same manner as for personal or
15 resident service if the person can be found in the county.

16 (3) The return day of the order of delivery shall be 10 days after it is
17 issued, if the order is executed within the county where the court is sit-
18 uated. In all other cases, the return day shall be 20 days after the order
19 is issued.

20 (4) The plaintiff shall have the right to attend execution of the order.
21 Upon inspection of the property the plaintiff may abandon their right to
22 prejudgment possession and shall so advise the appropriate officer and
23 the court.

24 (e) Perishable goods. When property shall be actually seized which
25 is likely to perish or to materially depreciate in value or threatens to
26 decline speedily in value before the probable termination of the suit, or
27 the keeping of which would be attended with unreasonable loss or ex-
28 pense, the court may order the same to be sold on such terms and con-
29 ditions as the judge may direct, by the person having charge of the prop-
30 erty, and a return of the proceedings thereon shall be made by the person
31 at a time to be fixed by the judge.

32 (f) Redelivery, bond. The defendant, after service of a copy of the
33 delivery order, may apply to the court for redelivery of the property. The
34 court shall order return of the property to the defendant when the de-
35 fendant files a bond with the clerk of the court, in an amount equal to
36 the plaintiff's bond, executed by the defendant with one or more sufficient
37 sureties. The bond shall be to the effect that the defendant will deliver
38 the property to the plaintiff if so adjudged, and will pay all costs and
39 damages that may be adjudged against the defendant. If the bond shall
40 be found to be sufficient, the judge shall approve the same and note
41 approval thereon. If the defendant is a public officer, board or govern-
42 ment agency, such officer, board or agency, in lieu of giving a redelivery
43 bond, may retain possession of the property seized by filing with the clerk

1 a response certifying that the public health, safety or welfare would be
2 jeopardized or impaired if the plaintiff acquired possession of the prop-
3 erty prior to final judgment, in which case a hearing may be had on the
4 issue of public interest at the instance of any party.

5 (g) Possession in third party. When the officer finds the property in
6 possession of a person other than a defendant and deems it advisable to
7 leave such person in possession, the officer shall declare to the person in
8 possession that such person shall hold such property in such person's
9 possession, subject to the further order of the court, and shall summon
10 such person as a garnishee by serving upon such person a copy of the
11 order which directs the officer to take immediate possession of the prop-
12 erty. The court may require of such person in possession an undertaking
13 with good and sufficient sureties in such sum as the court deems suffi-
14 cient. The undertaking shall be to the effect that such person will deliver
15 the property to the officer at the time and place fixed for sale, if such be
16 ordered by the court. The officer shall give such person written notice of
17 the time and place fixed for the sale by delivery in person or by restricted
18 mail.

19 (g) Property claimed by third person. If the officer, before proceed-
20 ing, may require the possession of, or be requested by the plaintiff to take
21 possession of, personal property claimed by any person other than a de-
22 fendant, the court may require the plaintiff to give the court an under-
23 taking with good and sufficient sureties to pay all costs and damages that
24 the officer may sustain by reason of the execution of such order.

25 (h) Judgment. Judgment for the plaintiff shall be for a money judg-
26 ment and foreclosure of the security interest, and the plaintiff may pro-
27 ceed to foreclose the security interest in accordance with the terms of
28 the security agreement covering the property, as governed by the provi-
29 sions of the uniform commercial code, unless the court otherwise directs.
30 If the court directs the plaintiff to proceed to enforce such plaintiff's
31 judgment other than pursuant to the security agreement, and if the judg-
32 ment is not satisfied within 10 days thereafter, then the clerk shall issue
33 an order of special execution directed to the appropriate officer to sell
34 the property in accordance with section 76, and amendments thereto. If
35 the property is not then in the possession of the officer, the order shall
36 also direct the person having possession to deliver such property to the
37 officer. If the property has been delivered to the officer, and the defend-
38 ant claims a return thereof, judgment shall be for the defendant or a
39 return of the property and damages for the taking and withholding of
40 same.

41 New Sec. 76. (a) Any sale conducted under the provisions of this
42 section shall be subject to the provisions of K.S.A. 60-2406, and amend-
43 ments thereto, except that the disposition of proceeds after the satisfac-

1 tion of senior security interests or liens shall be made in accordance with
2 the provisions of section 78, and amendments thereto. The officer who
3 shall be directed to sell the personal property, before the officer proceeds
4 to sell the same, shall cause public notice to be given of the time and
5 place of sale, at least 10 days before the day of sale. The notice shall be
6 given by publication at least once each week for two consecutive weeks
7 in any newspaper published in the county, and which is qualified to carry
8 legal publications, or, in the discretion of the court, by posting notices in
9 five public places in the county, one of which shall be on a bulletin board
10 established for public notices in the county courthouse. Within five days
11 of the date of first publication or posting of notice, plaintiff shall send by
12 restricted mail a copy of such notice to the defendant and to those persons
13 known by the plaintiff to have a security interest in the property. Such
14 notice shall be sent to the last known address of the person to whom sent
15 and shall be in compliance with paragraph (26) of K.S.A. 84-1-201, and
16 amendments thereto. If the personal property cannot be sold at the spe-
17 cial execution sale for want of bidders, the plaintiff may direct the officer
18 to return the special execution showing that fact or, at the plaintiff's op-
19 tion, may report the same to the judge and obtain an order permitting a
20 second sale under the same special execution and an extension of the
21 return day of the special execution if that be necessary.

22 (b) If the personal property to be sold shall consist of more than one
23 item of property, the appropriate officer conducting such sale shall sell
24 only so much of the personal property in the officer's custody as is nec-
25 essary to satisfy the judgment, interest and costs, and shall return the
26 balance of any property remaining unsold to the defendant by notifying
27 the defendant of the time and place when same may be obtained.

28 (c) Neither the officer conducting the sale nor any other member of
29 the officer's staff may bid at any such sale.

30 (d) The provisions of K.S.A. 60-2411, and amendments thereto, re-
31 lating to advancement of printer's fees shall apply to this section.

32 New Sec. 77. Upon sale of such property, the appropriate officer
33 shall make a return of such sale to the clerk of the court, together with
34 an itemization of the officer's expenses of sale. The court, upon finding
35 the proceedings regular and in conformity with law, shall confirm the
36 same, and order the officer to make to the purchaser a certificate of sale.
37 The certificate of sale shall accurately describe the property sold, name
38 the purchaser and recite the facts of the sale. If a certificate of title is
39 obtainable for such property under the laws of this state, the description
40 of the property shall include the year, make, style and identification num-
41 ber of such property. A certificate of sale shall vest title to the property
42 in the purchaser.

43 New Sec. 78. (a) Upon the sale of personal property by the appro-

1 priate officer, the clerk of the court shall apply the proceeds of sale in
2 the following priority:

3 (1) To the court costs of the action including the officer's expenses
4 and cost of publication;

5 (2) in accordance with the provisions of K.S.A. 60-2406, and amend-
6 ments thereto;

7 (3) in satisfaction of all judgments rendered in the action against the
8 defendant or the property in accordance with the priority determined by
9 the court;

10 (4) any surplus shall be paid to the defendant, except that if any other
11 security interest holder, subsequent to the entering of the judgment of
12 foreclosure, files with the clerk of the court a written notification of de-
13 mand furnishing reasonable proof of the security interest holder's inter-
14 est, the clerk shall withhold any payment to the defendant. Such security
15 interest holder shall serve the defendant with notice of the demand within
16 10 days after such filing and furnish proof of such notice to the court.

17 (b) If the defendant does not, within 10 days, notify the clerk in writ-
18 ing that the defendant takes exception to the demand of such security
19 interest holder, the clerk shall apply the surplus to the demand and pay
20 any balance to the defendant.

21 (c) If the defendant, within 10 days, notifies the clerk in writing that
22 the defendant takes exception to the demand, the clerk shall withhold all
23 surplus in the clerk's possession for a period of 30 days. If the security
24 interest holder has not commenced a separate action to recover the se-
25 curity interest holder's claim and garnished the clerk within the time, the
26 clerk shall pay the surplus to the defendant.

27 New Sec. 79. Sections 79 through 86, and amendments thereto, shall
28 govern lawsuits brought to evict a person from possession of real property
29 or of an interest in real property.

30 New Sec. 80. A judgment in a lawsuit brought under sections 79
31 through 86, and amendments thereto, shall not be a bar to any subsequent
32 lawsuit brought by either party for claims not included in such judgment.

33 New Sec. 81. Before a lawsuit to evict a person pursuant to sections
34 79 through 86, and amendments thereto, is filed, the party desiring to
35 file such lawsuit shall deliver to the other party a notice to leave the
36 premises for which possession is sought. The notice shall be delivered at
37 least three days before commencing the lawsuit, by leaving a written copy
38 with the other party or by leaving a copy thereof with any person over
39 the age of 12 years residing on the premises described in such notice, or
40 if no such person is found upon the premises, by posting a copy of such
41 notice in a conspicuous place thereon, or by mailing a copy of the notice
42 to the other party at the address of the premises described in the notice.
43 The three day notice period provided for in this section shall be computed

This is essentially the same as K.S.A. 61-2301 and 2302.

This is the same as K.S.A. 61-2303.

This is to clarify the current law at K.S.A. 61-2304. There are two
statutes which now must be satisfied when drafting what is commonly
called the "three day" notice, K.S.A. 61-2304 and K.S.A. 58-2564.
This section attempts to combine the requirements of both.

1 as three consecutive 24-hour periods to commence at the time the notice
 2 is delivered, posted or mailed. If the notice is mailed, an additional two
 3 days from the date of mailing shall be allowed for the person to leave the
 4 premises before the lawsuit is filed. Intermediate Saturdays, Sundays and
 5 legal holidays shall be included in the computation of the notice period.
 6 The form of the notice shall be substantially in the form set forth in the
 7 rules of the supreme court of this state.

8 New Sec. 82. The petition shall describe the premises for which pos-
 9 session is sought and why the plaintiff is seeking possession. If there is
 10 rent due for possession of the premises, the petition may include a request
 11 for judgment for that amount or the plaintiff may bring a subsequent
 12 lawsuit for that amount. The form of the petition shall be set forth in the
 13 rules of the supreme court of this state.

14 New Sec. 83. The form of summons in lawsuits under sections 79
 15 through 86, and amendments thereto, shall be the same as for other
 16 lawsuits filed under the code of civil procedure for limited actions. The
 17 time stated in the summons requiring the defendant to appear in response
 18 to the petition shall be determined by the court. Such time shall be not
 19 less than three nor more than 14 days after the date the summons is
 20 issued.

21 New Sec. 84. A defendant shall either appear in person or by counsel
 22 at the time and date set forth in the summons or file on or before such
 23 date a written answer. The answer shall contain the information as re-
 24 quired under subsection (b) of section 10, and amendments thereto.

25 New Sec. 85. (a) If a trial is necessary, the trial shall be conducted
 26 within eight days after the appearance date stated in the summons.

27 (b) No continuance shall be granted unless the defendant requesting
 28 a continuance shall file a bond with good and sufficient security approved
 29 by the court, conditioned for the payment of all damages and rent that
 30 may accrue if judgment is entered against the defendant.

31 New Sec. 86. (a) If judgment is entered against the defendant for
 32 possession of the subject premises, the court shall issue, at the request of
 33 the plaintiff, a writ of restitution which shall direct anyone who is au-
 34 thorized to serve process and who is named in the writ to place the plain-
 35 tiff in possession of the premises described in the writ. The form of the
 36 writ shall be set forth in the rules of the supreme court of this state.

37 (b) The writ of restitution shall be executed within 10 days after the
 38 person named in the writ receives it, and that person shall file a return
 39 as with other writs under the code of civil procedure for limited actions.
 40 The person serving the writ may use such reasonable force as is necessary
 41 to execute the writ.

42 (c) If the person named in the writ receives a notice from the court
 43 that the proceedings have been stayed by appeal, that person shall im-

This is similar to K.S.A. 61-2305 which was amended effective July 1, 1999 by Chapter 58 of 1999 Session Laws (H.B. 2222).

Under current law, the time for appearance shall be not less than 11 days nor more than 35 days (K.S.A. 61-1802). It has been shortened here because of the urgency of eviction matter.

This is nearly the same as K.S.A. 61-2307 but now tracks with the other changes made in section 10.

Forcible detainer suits need to be scheduled for appearance and trial quickly because of the pressing nature of the dispute. This section follows the current law at K.S.A. 61-2308 and 2309.

This is the same as K.S.A. 61-2310 and 2311 except this section c. who may serve the writ and the how it may served.

1 immediately delay all further proceedings upon the execution. If the prem-
 2 ises have been restored to the plaintiff, the person named in the writ shall
 3 immediately place the defendant in the possession thereof.

4 New Sec. 87. Any party to a civil action pursuant to the code of civil
 5 procedure for limited actions may appeal from:

6 (a) A final judgment, except a judgment rendered on confession;

7 (b) any order, ruling or decision which determines the action at any
 8 stage of the proceedings;

9 (c) any order, ruling or decision that sustains or overrules a motion
 10 to dissolve an attachment or to discharge a garnishment; or

11 (d) any order, ruling or decision that sustains or overrules a motion
 12 to vacate the levy under an execution on property claimed to be exempt
 13 under the laws of this state.

14 New Sec. 88. (a) All appeals from orders, rulings, decisions or judg-
 15 ments of district magistrate judges under the code of civil procedure for
 16 limited actions shall be taken in the manner provided in subsection (a) of
 17 K.S.A. 60-2103a, and amendments thereto. All appeals from orders, rul-
 18 ings, decisions or judgments of district judges under the code of civil
 19 procedure for limited actions shall be taken in the manner provided in
 20 subsections (a) and (b) of K.S.A. 60-2103, and amendments thereto. Not-
 21 withstanding the foregoing provisions of this subsection, if judgment has
 22 been rendered in an action for forcible detainer and the defendant desires
 23 to appeal from that portion of the judgment granting restitution of the
 24 premises, notice of appeal shall be filed within five days after entry of
 25 judgment. The notice of appeal shall specify the party or parties taking
 26 the appeal; the order, ruling, decision or judgment appealed from; and
 27 the court to which the appeal is taken.

28 (b) The provisions of K.S.A. 60-2001, and amendments thereto, shall
 29 apply to appeals pursuant to this section.

30 (c) An appeal from an action heard by a district magistrate judge shall
 31 be taken to a district judge of the county. An appeal from an action heard
 32 by a district judge shall be taken to the court of appeals.

33 New Sec. 89. Subject to the rules of the supreme court of this state,
 34 once an appeal is perfected, if the judge from whom such appeal is taken
 35 is a district magistrate judge, such judge shall notify the chief judge of
 36 the judicial district that the appeal has been perfected. The chief judge
 37 then shall assign the case to a district judge to hear the appeal.

38 New Sec. 90. No execution shall issue upon a judgment, nor shall
 39 proceedings be taken for its enforcement, until the expiration of 10 days
 40 after its entry. If an appellant does not file a supersedeas bond as provided
 41 in the code of civil procedure for limited actions, the taking of an appeal
 42 shall not operate to stay proceedings for the enforcement of a final judg-
 43 ment or to take execution thereon. Nothing in this section shall be con-

Sections 87 through 95 are the same as present law (K.S.A. 61-2101
 - 2109) except in an appeal from an eviction case, the defendant can
 post into court in lieu of filing a supersedeas bond.

1 strued as limiting any power of a judge hearing such appeal to stay pro-
2 ceedings during the pendency of an appeal, to grant an injunction during
3 the pendency of such appeal or to make any other appropriate order to
4 preserve the status quo or the effectiveness of the judgment subsequently
5 to be rendered.

6 New Sec. 91. (a) Whenever an appellant entitled thereto desires a
7 stay on appeal from an action pursuant to the code of civil procedure for
8 limited actions, such appellant may present to the judge from which the
9 appeal is taken, for the judge's approval, a supersedeas bond which shall
10 have such surety or sureties as the judge requires. The bond may be given
11 at or after the time of filing the notice of appeal, and the stay is effective
12 when the supersedeas bond is approved by the judge. Such bond shall be
13 conditioned for the satisfaction of the judgment in full together with costs,
14 interest and damages for delay, if for any reason the appeal is dismissed,
15 or if the judgment is affirmed; and to satisfy in full any modification of
16 the judgment and such costs, interests and damages as the appellate court
17 may adjudge and award.

18 (b) When the judgment is for the recovery of money not otherwise
19 secured, the amount of the bond shall be fixed at such sum as will cover
20 the whole amount of the judgment remaining unsatisfied, costs on the
21 appeal, interest and damages for delay, unless the court after notice and
22 hearing and for good cause shown fixes a different amount or orders
23 security other than the bond. When the judgment determines the dis-
24 position of the property in controversy as in replevin, or when such prop-
25 erty is in the custody of the sheriff or when the proceeds of such property
26 or a bond for its value is in the custody or control of the court, the amount
27 of the supersedeas bond shall be fixed after notice and hearing at such
28 sum only as will secure the amount recovered for the use and detention
29 of the property, the costs of the action, costs on appeal, interest and
30 damages for delay. When an order is made discharging, vacating or mod-
31 ifying a provisional remedy, a party aggrieved thereby shall be entitled,
32 upon application to the judge, to have the operation of such order sus-
33 pended for a period of not to exceed 10 days on condition that, within
34 the period of 10 days, such party shall file notice of appeal and obtain the
35 approval of such supersedeas bond as is required under this section.

36 (c) In lieu of a supersedeas bond, the court may condition a stay of
37 proceedings pending appeal upon the timely payment into court of the
38 periodic rent otherwise due from the defendant to the plaintiff under the
39 rental agreement pertaining to the real property in issue.

40 New Sec. 92. In appeals taken by the defendant in actions for the
41 forcible detention of real property, the supersedeas bond filed on appeal
42 shall be conditioned that the appellant will not commit or suffer waste to
43 be committed on the premises in controversy, and if upon appeal the

1 court judgment be rendered against the appellant, the appellant will pay
2 the value of the use and occupation of the property, from the date such
3 bond was filed until the delivery of the property pursuant to the judgment,
4 and all damages and costs that may be awarded against the appellant.

5 New Sec. 93. If a supersedeas bond was not filed with the notice of
6 appeal, and if the action is not yet docketed on appeal, a bond may be
7 filed with the court from which the appeal is taken. After the action is so
8 docketed, application for leave to file a bond may be made only in the
9 appellate court. When the surety for a supersedeas bond shall be insuf-
10 ficient, or such bond is insufficient in form or amount, the appellate court
11 may on motion order a change or renewal of such bond, and direct that
12 it be filed in such court.

13 New Sec. 94. By entering into a supersedeas bond given pursuant to
14 sections 91 and 92, and amendments thereto, the surety submits to the
15 jurisdiction of the court wherein the judgment becomes final, and irrev-
16 ocably appoints the clerk of such court as the surety's agent upon whom
17 any papers affecting the surety's liability on the bond may be served. The
18 surety's liability may be enforced on motion without the necessity of an
19 independent action. The motion and such notice of the motion as the
20 judge prescribes may be served on the clerk of the court who shall forth-
21 with mail copies to the surety if the surety's address is known.

22 New Sec. 95. If the appeal is dismissed by the judge hearing such
23 appeal, the action shall be remanded to the judge from which such appeal
24 was taken.

25 New Sec. 96. (a) Docket fee. No case shall be filed or docketed pur-
26 suant to the code of civil procedure for limited actions without the pay-
27 ment of a docket fee in the amount of \$19.50, if the amount in controversy
28 or claimed does not exceed \$500; \$39.50, if the amount in controversy or
29 claimed exceeds \$500 but does not exceed \$5,000; or \$64.50, if the
30 amount in controversy or claimed exceeds \$5,000. If judgment is ren-
31 dered for the plaintiff, the court also may enter judgment for the plaintiff
32 for the amount of the docket fee paid by the plaintiff.

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

37 New Sec. 97. The provisions of K.S.A. 60-2002, 60-2003, 60-2006,
38 60-2610 and 60-2611, and amendments thereto, shall be applicable to
39 lawsuits brought under the code of civil procedure for limited actions.

40 New Sec. 98. The applicable provisions of article 25 of chapter 60 of
41 the Kansas Statutes Annotated, and amendments thereto, relating to lost
42 or destroyed court files and records, shall govern lost court files and re-
43 cords in actions pursuant to the code of civil procedure for limited actions,

Sections 96 and 97 are the same as present law (K.S.A. 61-2501-2503). K.S.A. 60-2006, K.S.A. 60-2610 and K.S.A. 60-2611 were made applicable to actions filed under Chapter 61 Ch. 76 of 1999 Session Laws (H.B. 2221).

Sections 98 through 102 are the same as current law (K.S.A. 61-2601 through K.S.A. 61-2605) except to provide that there will be forms contained in the Supreme Court rule to be adopted pursuant to the new act.

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1 except as otherwise provided in the rules of the supreme court of this
2 state.

3 New Sec. 99. Whenever an oath is required by the code of civil pro-
4 cedure for limited actions, the affirmation of a person conscientiously
5 opposed to taking an oath shall have the same effect.

6 New Sec. 100. If a case arises in which an action or proceeding for
7 the enforcement or protection of a substantive right, or the redress or
8 prevention of a wrong, cannot be had under any specific provisions of the
9 code of civil procedure for limited actions or other statutes, then the court
10 shall proceed as nearly in conformity with the provisions of the code of
11 civil procedure for limited actions as the circumstances permit to do what-
12 ever law and justice require for the protection of the parties.

13 New Sec. 101. The procedures prescribed by the code of civil pro-
14 cedure for limited actions shall apply to any actions or proceedings com-
15 menced, or judgments entered, prior to the enactment of this act.

16 New Sec. 102. The forms contained in the rules to be adopted here-
17 under by the supreme court are sufficient under this act and are intended
18 to indicate the simplicity and brevity of statement which this act
19 contemplates.

20 New Sec. 103. Sections 103 through 115, and amendments thereto,
21 shall be known and may be cited as the small claims procedure act.

22 New Sec. 104. Sections 103 through 115, and amendments thereto,
23 shall apply to and be an alternative procedure for the processing of small
24 claims pursuant to the code of civil procedure for limited actions, and the
25 provisions of sections 103 through 115, and amendments thereto, shall
26 be part of and supplemental to the code of civil procedure for limited
27 actions, and any acts amendatory thereof or supplemental thereto. Except
28 as otherwise specifically provided or where a different or contrary pro-
29 vision is included in sections 103 through 115, and amendments thereto,
30 the code of civil procedure for limited actions shall be applicable to the
31 processing of small claims and judgments under sections 103 through 115,
32 and amendments thereto.

33 New Sec. 105. As used in sections 103 through 115 and amendments
34 thereto:

35 (a) ``Small claim'' means a claim for the recovery of money or personal
36 property, where the amount claimed or the value of the property sought
37 does not exceed \$1,800, exclusive of interest, costs and any damages
38 awarded pursuant to K.S.A. 60-2610, and amendments thereto. In actions
39 of replevin, the petition fixing the value of the property shall be deter-
40 minative of the value of the property for jurisdictional purposes. A small
41 claim shall not include:

- 42 (1) An assigned claim;
- 43 (2) a claim based on an obligation or indebtedness allegedly owed to

Sections 103 through 115 are the procedures for small claims. The only change is to clarify the use of the judgment form and the appearance by attorneys. No substantive changes have been made to the present law.

The Small Claims Procedure Act was amended by Chapter 145 (S.B. 97), 1999 Session Laws. The provisions of the amendment were not included in this Article because it was originally drafted before the amendments. This discrepancy should probably be reconciled.

(New Sec. 103)
This is the same as K.S.A. 61-2701.

(New Sec. 104)
This is the same as K.S.A. 61-2702

(New Sec. 105)
This is the same as K.S.A. 61-2703.

1 a person other than the plaintiff, where the plaintiff is not a full-time,
2 salaried employee of the person to whom the obligation or indebtedness
3 is allegedly owed; or

4 (3) a claim obtained through subrogation.

5 (b) ``Person'' means an individual, partnership, limited liability com-
6 pany, corporation, fiduciary, joint venture, society, organization or other
7 associations of persons.

This is the same as K.S.A. 61-2704.

8 New Sec. 106. (a) An action seeking the recovery of a small claim
9 shall be considered to have been commenced at the time a statement of
10 claim is filed with the clerk of the court if, within 90 days after the state-
11 ment of claim is filed, service of process is obtained or the first publication
12 is made for service by publication. Otherwise, the action is deemed com-
13 menced at the time of service of process or first publication. An entry of
14 appearance shall have the same effect as service.

15 (b) Upon the filing of a plaintiff's small claim, the clerk of the court
16 shall require from the plaintiff a docket fee of \$19.50 if the claim does
17 not exceed \$500; or \$39.50 if the claim exceeds \$500; unless for good
18 cause shown the judge waives the fee. The docket fee shall be the only
19 costs required in an action seeking recovery of a small claim. No person
20 may file more than 10 small claims under the small claims procedure act
21 in the same court during any calendar year.

This is essentially the same as K.S.A. 61-2705.

22 New Sec. 107. It is the purpose of the small claims procedure act to
23 provide and maintain simplicity of pleading, and the court shall supply
24 the forms prescribed by the act to assist the party in preparing their
25 pleading. The only pleading required in an action commenced under the
26 act shall be the statement of plaintiff's claim, which shall be denominated
27 a petition, except a defendant who has a claim against the plaintiff, which
28 arises out of the transaction or occurrence that is the subject matter of
29 the plaintiff's claim shall file a statement of the defendant's dispute and
30 counterclaim if the claim does not exceed the amount specified in sub-
31 section (a) of section 105, and amendments thereto. If the defendant's
32 claim exceeds the amount specified in subsection (a) of section 105, and
33 amendments thereto, the defendant may file a statement of the defend-
34 ant's claim on the form prescribed by the small claims procedure act. The
35 court shall not have any jurisdiction under the small claims procedure act
36 to hear or determine any claim by a defendant which does not arise out
37 of the transaction or occurrence which is the subject matter of the plain-
38 tiff's claim.

This is the same as K.S.A. 61-2706.

39 New Sec. 108. (a) Whenever a plaintiff demands judgment beyond
40 the scope of the small claims jurisdiction of the court, the court shall
41 either:

- 42 (1) Dismiss the action without prejudice at the cost of the plaintiff;
- 43 (2) allow the plaintiff to amend the plaintiff's pleading and service of

1 process to bring the demand for judgment within the scope of the court's
2 small claims jurisdiction and thereby waive the right to recover any excess,
3 assessing the cost accrued to the plaintiff; or

4 (3) if the plaintiff's demand for judgment is within the scope of the
5 court's general jurisdiction, allow the plaintiff to amend the plaintiff's
6 pleading and service of process so as to commence an action in such court
7 in compliance with section 8, and amendments thereto, assessing the costs
8 accrued to the plaintiff.

9 (b) Whenever a defendant asserts a claim beyond the scope of the
10 court's small claims jurisdiction, but within the scope of the court's gen-
11 eral jurisdiction, the court may determine the validity of the defendant's
12 entire claim. If the court refuses to determine the entirety of any such
13 claim, the court must allow the defendant to:

14 (1) Make no demand for judgment and reserve the right to pursue
15 the defendant's entire claim in a court of competent jurisdiction;

16 (2) make demands for judgment of the portion of the claim not ex-
17 ceeding \$1,800, plus interest, costs and any damages awarded pursuant
18 to K.S.A. 60-2610, and amendments thereto, and reserve the right to
19 bring an action in a court of competent jurisdiction for any amount in
20 excess thereof; or

21 (3) make demand for judgment of that portion of the claim not ex-
22 ceeding \$1,800, plus interest, costs and any damages awarded pursuant
23 to K.S.A. 60-2610, and amendments thereto, and waive the right to re-
24 cover any excess.

25 New Sec. 109. (a) The trial of all actions shall be by the court, and
26 no party in any such action shall be represented by an attorney prior to
27 judgment, except as provided in section 115, and amendments thereto.
28 Discovery methods or proceedings shall not be allowed nor shall the tak-
29 ing of depositions for any purpose be permitted. No order of attachment
30 of garnishment shall be issued in any action commenced under the small
31 claims procedure act prior to judgment in such action.

32 (b) (1) When entering judgment in the action, the judge shall include
33 as part of the judgment form or order a requirement that, within 15 days
34 of the date judgment is entered, unless judgment has been paid, the
35 judgment creditor shall mail a copy of the judgment form or order to the
36 judgment debtor together with a form for providing the information re-
37 quired to be submitted under this subsection, and that the judgment
38 creditor shall file with the court proof of the mailing thereof.

39 (2) The judgment form or order shall also include a requirement that
40 unless the judgment has been paid, the judgment debtor shall submit to
41 the clerk of the district court within 30 days after receipt of the form
42 therefor, a verified statement describing the location and nature of prop-
43 erty and assets which the person owns, including the person's place of

The present law at K.S.A. 61-2707 on the use of the judgment form is not clearly written. This section attempts to correct that. Also current law (K.S.A. 61-2714) allows attorneys to represent parties in certain circumstances. Section 115 below adopts this same provision. The exception provided in Section 115 is noted in this section for clarity.

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1 employment, account numbers and names of financial institutions holding
2 assets of such person and a description of all property owned by such
3 person. The office of judicial administration shall develop the form to be
4 used in submitting information to the clerk under this subsection.

5 (3) When the form containing the required information is submitted
6 to the clerk as required by this subsection, the clerk shall note in the
7 record of the proceedings that it was received and then shall mail the
8 form to the judgment creditor. No copy of such form shall be retained in
9 the court records nor shall it be made available to other persons. Upon
10 motion of the judgment creditor, the court may punish for contempt any
11 person failing to submit information as required by this subsection.

12 (c) In a judgment entered under the small claims procedure act on
13 a claim which is not a small claim or which has been filed at the court in
14 contravention of the limitation prescribed by section 105, and amend-
15 ments thereto, on the number of claims which may be filed by any person,
16 shall be void and unenforceable.

17 New Sec. 110 The venue of actions commenced under the small
18 claims procedure act shall be as prescribed in sections 37 through 45, and
19 amendments thereto, except that the county in which the cause of action
20 arose shall be proper venue only where it is affirmatively shown that the
21 defendant was a resident of the county where the cause of action arose.

22 New Sec. 111. (a) An appeal may be taken from any judgment under
23 the small claims procedure act. All appeals shall be by notice of appeal
24 specifying the party or parties taking the appeal and the order, ruling,
25 decision or judgment complained of and shall be filed with the clerk of
26 the district court within 10 days after entry of judgment. All appeals shall
27 be tried and determined de novo before a district judge, other than the
28 judge from which the appeal is taken. The provisions of K.S.A. 60-2001
29 and section 32, and amendments thereto, shall be applicable to actions
30 appealed pursuant to this subsection. The appealing party shall cause
31 notice of the appeal to be served upon all other parties to the action in
32 accordance with the provisions of K.S.A. 60-205, and amendments
33 thereto. An appeal shall be perfected upon the filing of the notice of
34 appeal. When the appeal is perfected, the clerk of the court or the judge
35 from which the appeal is taken shall refer the case to the chief judge for
36 assignment in accordance with this section. All proceedings for the en-
37 forcement of any judgment under the small claims procedure act shall be
38 stayed during the time within which an appeal may be taken and during
39 the pendency of an appeal, without the necessity of the appellant filing a
40 supersedeas bond. If the appellee is successful on an appeal pursuant to
41 this subsection, the court shall award to the appellee, as part of the costs,
42 reasonable attorney fees incurred by the appellee on appeal.

43 (b) Any order, ruling, decision or judgment rendered by a district

This is essentially the same as K.S.A. 61-2709.

This is the same as K.S.A. 61-2709.

This is the same as K.S.A. 61-2710.

This is the same as K.S.A. 61-2712.

These are the same forms as under the present law (K.S.A. 61-2713).

1 judge on an appeal taken pursuant to subsection (a) may be appealed in
2 the manner provided in article 21 of chapter 60 of the Kansas Statutes
3 Annotated, and amendments thereto.

4 New Sec. 112. The costs of any action commenced under the small
5 claims procedure act shall be taxed against the parties as in other actions
6 pursuant to the code of civil procedure for limited actions.

7 New Sec. 113. It is the purpose of the small claims procedure act to
8 provide a forum to the speedy trial of small claims, and to this end, the
9 court may make such orders or rulings, consistent with the provisions of
10 the act, as are necessary to permit justice and fairly protect the parties.

11 New Sec. 114. (a) The petition shall be in substantially the following
12 form:

13 In the District Court of _____ County, Kansas.
14 _____
15 Plaintiff
16 vs. _____ No. ____
17 _____
18 Defendant

19 PETITION PURSUANT TO THE CODE OF CIVIL PROCEDURE FOR LIMITED
20 ACTIONS OF THE KANSAS STATUTES ANNOTATED

21 Statement of claim:

22 I, _____, having read the instruction below, hereby assert the following claim
23 against _____, defendant:

24 Demand for judgment:

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

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

30 Instructions to plaintiff:

- 31 1. State the claim you have against the defendant in the space provided. Be clear and
- 32 concise.
- 33 2. Your total claim against defendant may not exceed \$1,800, not including interest,
- 34 costs and any damages awarded under K.S.A. 60-2610 and amendments thereto. If you are
- 35 seeking the recovery of personal property, the value of that property shall be based on your
- 36 estimate of its value under oath.
- 37 3. You must be present in person at the hearing in order to avoid default judgment
- 38 against you on any claim defendant may have which arises out of the transaction or occur-
- 39 rence which is the subject to your claim against the defendant.
- 40 4. You must make demand for judgment in one or both of the spaces provided above.
- 41 5. Except as provided by law, neither you nor the defendant is permitted to appear with
- 42 an attorney at the hearing.
- 43 6. You may not file more than 10 small claims under the small claims procedure act in

1 this court during any calendar year.

2 7. After completing this form, you must subscribe to the following oath:

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

7 [Signature] _____
8 Plaintiff

9 Subscribed and sworn to before me this _____ day of _____, ____
10 (year).

11 [Signature] _____
12 Judge (clerk or notary)

13
14 (b) The summons shall be in substantially the following form:
15 In the District Court of _____ County, Kansas.

16 _____
17 Plaintiff
18 vs. No. _____

19 _____
20 Defendant
21 SUMMONS
22 (Small Claims Procedure)

23 To the above-named defendant:
24 You are hereby notified that the above-named plaintiff has filed a claim against you under
25 the small claims procedure of this court. The statement of plaintiff's claim and demand for
26 judgment against you are set forth in the petition which is served upon you with this sum-
27 mons.

28 A trial will be held on this matter at __ o'clock __ m. on the _____ day of _____,
29 __ (year), at _____.
30 (Place of hearing and address)

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

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

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

39 If you have a claim against the plaintiff, which arises out of the transaction or occurrence
40 which is the subject of plaintiff's claim and your claim does not exceed \$1,800, you must
41 complete the form for ``Defendant's Claim,' ' which accompanies this summons, and return
42 it to the judge or clerk of the court on or before the time set for the trial. If your claim
43 against plaintiff exceeds \$1,800, you may complete and return the form for ``Defendant's

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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 \$1,800, you must state your claim in the space provided below. If your claim against the plaintiff exceeds \$1,800, you may state your claim in the space provided below. In determining whether or not your claim against the plaintiff exceeds \$1,800, 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 \$1,800 (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 \$1,800.

4. If your claim exceeds \$1,800 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 \$1,800 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 \$1,800 and waive your right to recover any excess.

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

3 Statement of claim:

4 I, _____, having read the instructions above, assert the following claim
5 against _____, plaintiff:

6 Demand for judgment:

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

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

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

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

15 [Signature] _____
16 Plaintiff

17 Subscribed and sworn to before me this _____ day of _____, ____
18 (year).

19 [Signature] _____
20 Judge (clerk or notary)

21 New Sec. 115. (a) If any party in small claims litigation: (1) Uses any
22 person in a representative capacity or such person representing the party
23 is an attorney or was formerly an attorney; or (2) is an attorney repre-
24 senting the attorney's self in a small claims action, then all other parties
25 to such litigation shall be entitled to have an attorney appear on their
26 behalf in such action.

27 (b) When appropriate, the court shall advise all parties of this right
28 to hire counsel pursuant to this section and, if requested by any party,
29 shall grant one reasonable continuance in such matter to afford a party
30 an opportunity to secure representation of an attorney.

31 (c) The filing of a small claims action is a certification by the plaintiff
32 that such plaintiff is complying with the provisions of the small claims
33 procedure act, specifically with the provisions of section 106, and amend-
34 ments thereto, relating to the limited number of claims the person may
35 file in the same court during any calendar year.

36 (d) Any defendant may raise as a defense to a small claims action the
37 plaintiff has filed or caused to be filed more claims than allowed by the
38 small claims procedure act. When such defense is raised, if the court finds
39 the plaintiff to have filed more claims than allowed by law, the court shall
40 dismiss the action with prejudice and such a finding shall be considered
41 a violation of the unconscionable acts and practices section of the Kansas
42 consumer protection act. The defendant may file a collateral action under
43 the Kansas consumer protection act.

This is the same as K.S.A. 61-2714.

1 (e) As used in this section, ``attorney'' means persons licensed to prac-
 2 tice law in Kansas or in any other state whether on active or inactive
 3 status, or persons otherwise qualified to take the Kansas bar examination
 4 and acting under the supervisory authority of a licensed attorney.

5 Sec. 116. K.S.A. 1999 Supp. 19-4737 is hereby amended to read as
 6 follows: 19-4737. (a) An appeal may be taken from any judgment under
 7 the code for the enforcement of county codes and resolutions. All appeals
 8 shall be by notice of appeal specifying the party or parties taking the
 9 appeal and the order, ruling, decision or judgment complained of and
 10 shall be filed with the clerk of the district court within 10 days after entry
 11 of judgment. All appeals shall be tried and determined *de novo* before a
 12 district judge, other than the judge from which the appeal is taken. The
 13 provisions of K.S.A. 60-2001 and ~~61-1716~~ *section 32*, and amendments
 14 thereto, shall be applicable to actions appealed pursuant to this subsec-
 15 tion. The appealing party shall cause notice of the appeal to be served
 16 upon all other parties to the action in accordance with the provisions of
 17 K.S.A. 60-205 and amendments thereto. An appeal shall be perfected
 18 upon the filing of the notice of appeal. When the appeal is perfected, the
 19 clerk of the court or the judge from which the appeal is taken shall refer
 20 the case to the chief judge for assignment in accordance with this section.

21 All proceedings for the enforcement of any judgment under the code for
 22 the enforcement of county codes and resolutions shall be stayed during
 23 the time within which an appeal may be taken and during the pendency
 24 of an appeal, without the necessity of the appellant filing a supersedeas
 25 bond.

26 (b) Any order, ruling, decision or judgment rendered by a district
 27 judge on an appeal taken pursuant to subsection (a) may be appealed in
 28 the manner provided in article 21 of chapter 60 of the Kansas Statutes
 29 Annotated.

30 Sec. 117. K.S.A. 1999 Supp. 20-302b is hereby amended to read as
 31 follows: 20-302b. (a) A district magistrate judge shall have the jurisdiction
 32 and power, in any case in which a violation of the laws of the state is
 33 charged, to conduct the trial of traffic infractions, cigarette or tobacco
 34 infractions or misdemeanor charges to conduct the preliminary exami-
 35 nation of felony charges and to hear felony arraignments subject to as-
 36 signment pursuant to K.S.A. 20-329 and amendments thereto. In civil
 37 cases, a district magistrate judge shall have concurrent jurisdiction, pow-
 38 ers and duties with a district judge, except that, unless otherwise specifi-
 39 cally provided in subsection (b), a district magistrate judge shall not have
 40 jurisdiction or cognizance over the following actions:

41 (1) Any action, other than an action seeking judgment for an unse-
 42 cured debt not sounding in tort and arising out of a contract for the
 43 provision of goods, services or money, in which the amount in contro-

The remaining sections (New Sec. 116 - 134) were added by the
 R/ to correct references to the new code.

1 versy, exclusive of interests and costs, exceeds \$10,000, except that in
 2 actions of replevin, the affidavit in replevin or the verified petition fixing
 3 the value of the property shall govern the jurisdiction; nothing in this
 4 paragraph shall be construed as limiting the power of a district magistrate
 5 judge to hear any action pursuant to the Kansas probate code or to issue
 6 support orders as provided by paragraph (6) of this subsection;

7 (2) actions against any officers of the state, or any subdivisions
 8 thereof, for misconduct in office;

9 (3) actions for specific performance of contracts for real estate;

10 (4) actions in which title to real estate is sought to be recovered or
 11 in which an interest in real estate, either legal or equitable, is sought to
 12 be established, except that nothing in this paragraph shall be construed
 13 as limiting the right to bring an action for forcible detainer as provided
 14 in ~~the acts contained in article 23 of chapter 61 of the Kansas Statutes~~
 15 ~~Annotated, and any acts amendatory thereof or supplemental sections 79~~
 16 ~~through 86, and amendments~~ thereto; and nothing in this paragraph shall
 17 be construed as limiting the power of a district magistrate judge to hear
 18 any action pursuant to the Kansas probate code;

19 (5) actions to foreclose real estate mortgages or to establish and fore-
 20 close liens on real estate as provided in the acts contained in article 11 of
 21 chapter 60 of the Kansas Statutes Annotated, and ~~any acts amendatory~~
 22 ~~thereof or supplemental amendments~~ thereto;

23 (6) actions for divorce, separate maintenance or custody of minor
 24 children, except that nothing in this paragraph shall be construed as lim-
 25 iting the power of a district magistrate judge to: (A) Hear any action
 26 pursuant to the Kansas code for care of children or the Kansas juvenile
 27 justice code; (B) establish, modify or enforce orders of support, including,
 28 but not limited to, orders of support pursuant to the Kansas parentage
 29 act, K.S.A. 23-451 *et seq.*, 39-718a, 39-718b, 39-755 or 60-1610 or K.S.A.
 30 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, 38-1542, 38-1543
 31 or 38-1563, and amendments thereto; or (C) enforce orders granting a
 32 parent visitation rights to the parent's child;

33 (7) habeas corpus;

34 (8) receiverships;

35 (9) change of name;

36 (10) declaratory judgments;

37 (11) mandamus and quo warranto;

38 (12) injunctions;

39 (13) class actions;

40 (14) rights of majority; and

41 (15) actions pursuant to K.S.A. 59-29a01 *et seq.* and amendments
 42 thereto.

43 (b) Notwithstanding the provisions of subsection (a), in the absence,

1 disability or disqualification of a district judge, a district magistrate judge
2 may:

3 (1) Grant a restraining order, as provided in K.S.A. 60-902 and
4 amendments thereto;

5 (2) appoint a receiver, as provided in K.S.A. 60-1301 and amend-
6 ments thereto; and

7 (3) make any order authorized by K.S.A. 60-1607 and amendments
8 thereto.

9 (c) In accordance with the limitations and procedures prescribed by
10 law, and subject to any rules of the supreme court relating thereto, any
11 appeal permitted to be taken from an order or final decision of a district
12 magistrate judge shall be tried and determined *de novo* by a district judge,
13 except that in civil cases where a record was made of the action or pro-
14 ceeding before the district magistrate judge, the appeal shall be tried and
15 determined on the record by a district judge.

16 (d) Upon motion of a party, the chief judge may reassign an action
17 from a district magistrate judge to a district judge.

18 Sec. 118. K.S.A. 1999 Supp. 20-310a is hereby amended to read as
19 follows: 20-310a. (a) Upon the application of the chief judge of a judicial
20 district to the departmental justice of that district, for good cause shown,
21 or in the absence, sickness or disability of a district judge or district mag-
22 istrate judge in any judicial district, a judge pro tem may be appointed
23 whenever the departmental justice for such judicial district has not as-
24 signed a district judge from another judicial district, as provided in K.S.A.
25 20-319, and amendments thereto.

26 (b) Any judge pro tem appointed pursuant to this section shall be a
27 regularly admitted member of the bar of this state. The appointment of
28 any such judge pro tem shall be made by the chief judge or, in the absence
29 of the chief judge, by the departmental justice for the judicial district.

30 (c) Any judge pro tem appointed pursuant to this section shall have
31 the full power and authority of a district judge with respect to any actions
32 or proceedings before such judge pro tem, except that any judge pro tem
33 appointed pursuant to subsection (d) or (e) shall have only such power
34 and authority as provided therein. A judge pro tem shall receive such
35 compensation as is prescribed by the district court, subject to the budget
36 limitations of such district court.

37 (d) Subject to the budget limitations of the district court, the chief
38 judge of any judicial district may appoint one or more judges pro tem for
39 the limited purpose of hearing the original trials of actions filed pursuant
40 to the small claims procedures act or other action within the jurisdiction
41 of a district magistrate judge as provided in K.S.A. 20-302b, and amend-
42 ments thereto. Any such judge pro tem shall have only such judicial power
43 and authority as is necessary to hear such actions. Any party aggrieved by

1 any order of a judge pro tem under this subsection may appeal such order
2 and such appeal shall be heard by a district judge de novo. If the appeal
3 is a small claims action, the appeal shall be under ~~K.S.A. 61-2709~~ *section*
4 *111*, and amendments thereto. If the appeal is an action within the juris-
5 diction of a district magistrate judge, the appeal shall be under K.S.A. 20-
6 302b, and amendments thereto.

7 (e) Subject to the budget limitations of the district court, the chief
8 judge of any judicial district in which the board of county commissioners
9 is authorized to use the code for the enforcement of county codes and
10 resolutions as provided in subsection (b) of K.S.A. 19-101d, and amend-
11 ments thereto, may appoint one or more judges pro tem for the limited
12 purpose of hearing such cases. Any such judge pro tem shall have only
13 such power and authority as is necessary to hear such actions, and shall
14 have the power to compel appearances before the court, to hold persons
15 in contempt for failure to appear, and to issue bench warrants for ap-
16 pearances. Such judge pro tem shall receive the salary and other com-
17 pensation set by resolution of the board of county commissioners which
18 shall be paid from the revenues of the county general fund or other fund
19 established for the purpose of financing code enforcement.

20 (f) The chief judge of each judicial district shall report to the judicial
21 administrator of the courts: (1) The dates on which any judge pro tem
22 served in such district, (2) the compensation paid to any judge pro tem,
23 and (3) such other information as the judicial administrator may request
24 with regard to the appointment of judges pro tem. The reports shall be
25 submitted annually on or before January 15 on forms provided by the
26 judicial administrator.

27 Sec. 119. K.S.A. 1999 Supp. 20-362 is hereby amended to read as
28 follows: 20-362. The clerk of the district court shall remit at least monthly
29 all revenues received from docket fees as follows:

30 (a) To the county treasurer, for deposit in the county treasury and
31 credit to the county general fund:

32 (1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A.
33 60-2001 and 60-3005, and amendments thereto, during the preceding
34 calendar month;

35 (2) a sum equal to \$10 for each \$36.50 or \$61.50 docket fee paid
36 pursuant to ~~K.S.A. 61-2501, 61-2704 or 61-2709~~ *section 96, 106 or 111*,
37 and amendments thereto; and

38 (3) a sum equal to \$5 for each ~~\$16.50~~ *\$19.50* docket fee paid pursuant
39 to ~~K.S.A. 61-2501 or 61-2704~~ *section 96 or 106*, and amendments thereto,
40 during the preceding calendar month.

41 (b) To the board of trustees of the county law library fund, for deposit
42 in the fund, a sum equal to the library fees paid during the preceding
43 calendar month for cases filed in the county.

1 (c) To the county treasurer, for deposit in the county treasury and
2 credit to the prosecuting attorneys' training fund, a sum equal to \$1 for
3 each docket fee paid pursuant to K.S.A. 28-172a, and amendments
4 thereto, during the preceding calendar month for cases filed in the county
5 and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and
6 amendments thereto, during the preceding calendar month for cases filed
7 in the county.

8 (d) To the state treasurer, for deposit in the state treasury and credit
9 to the indigents' defense services fund, a sum equal to \$.50 for each
10 docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A.
11 28-170, and amendments thereto, during the preceding calendar month.

12 (e) To the state treasurer, for deposit in the state treasury and credit
13 to the law enforcement training center fund, during the period com-
14 mencing July 1, 1998, and ending June 30, 2002, a sum equal to \$9, and
15 on and after July 1, 2002, a sum equal to \$8 for each docket fee paid
16 pursuant to K.S.A. 28-172a, and amendments thereto, during the pre-
17 ceding calendar month.

18 (f) To the state treasurer, for deposit in the state treasury and distri-
19 bution according to K.S.A. 20-367 and amendments thereto, a sum equal
20 to the balance which remains from all docket fees paid during the pre-
21 ceding calendar month after deduction of the amounts specified in sub-
22 sections (a), (b), (c), (d) and (e).

23 Sec. 120. K.S.A. 58-227 is hereby amended to read as follows: 58-
24 227. (a) Any person leasing or renting space for a manufactured home or
25 mobile home site shall have a lien upon any manufactured home or mo-
26 bile home situated thereon for unpaid lease or rental payments and for
27 other unpaid charges due such lessor under the written terms and con-
28 ditions of any lease or rental agreement with the lessee. Such lien shall
29 be effective after the lessee has defaulted in payments as provided in the
30 written rental or lease agreement with the lessor. Notice of such lien shall
31 be given by the lessor by causing written notice of such lien to be posted
32 conspicuously upon such manufactured home or mobile home.

33 The lien provided by this act shall have priority over all other liens
34 except a previous validly perfected security interest in such manufactured
35 home or mobile home.

36 (b) At any time after 30 days beyond the date notice is given to the
37 lessee, the lessor may remove the manufactured home or mobile home
38 from the leased or rented site and may retain such lien as is provided in
39 this act. Upon such removal, reasonable charges for such removal and
40 storage may be assessed against the manufactured home or mobile home.
41 Notwithstanding the foregoing no manufactured home or mobile home
42 may be removed pursuant to this subsection if such manufactured home
43 or mobile home is occupied by the lessee; in such cases the lessor may

1 obtain restitution of the premises pursuant to ~~article 23 of chapter 61 of~~
2 ~~the Kansas Statutes Annotated sections 79 through 86, and amendments~~
3 ~~thereto.~~

4 (c) Such lien may be enforced and foreclosed as security agreements
5 are enforced under the provisions of the uniform commercial code.

6 Sec. 121. K.S.A. 58-2542 is hereby amended to read as follows: 58-
7 2542. The district court shall have jurisdiction over any landlord or tenant
8 with respect to any conduct in this state governed by this act or with
9 respect to any claim arising from a transaction subject to this act, and
10 notwithstanding the provisions of subsection (b) of ~~K.S.A. 61-1603 section~~
11 ~~2, and any amendments thereto~~, such actions may be commenced pur-
12 suant to the code of civil procedure for limited actions. Unless otherwise
13 specifically provided in this act, the code of civil procedure for limited
14 actions shall govern any action commenced pursuant to this act.

15 Sec. 122. K.S.A. 1999 Supp. 58-2565 is hereby amended to read as
16 follows: 58-2565. (a) If the rental agreement requires the tenant to give
17 notice to the landlord of an anticipated extended absence in excess of
18 seven days required in K.S.A. 58-2558, and amendments thereto, and the
19 tenant willfully fails to do so, the landlord may recover actual damages
20 from the tenant.

21 (b) During any absence of the tenant in excess of 30 days, the landlord
22 may enter the dwelling unit at times reasonably necessary. If, after the
23 tenant is 10 days in default for nonpayment of rent and has removed a
24 substantial portion of such tenant's belongings from the dwelling unit,
25 the landlord may assume that the tenant has abandoned the dwelling unit,
26 unless the tenant has notified the landlord to the contrary.

27 (c) If the tenant abandons the dwelling unit, the landlord shall make
28 reasonable efforts to rent it at a fair rental. If the landlord rents the
29 dwelling unit for a term beginning prior to the expiration of the rental
30 agreement, it is deemed to be terminated as of the date the new tenancy
31 begins. The rental agreement is deemed to be terminated by the landlord
32 as of the date the landlord has notice of the abandonment, if the landlord
33 fails to use reasonable efforts to rent the dwelling unit at a fair rental or
34 if the landlord accepts the abandonment as a surrender. If the tenancy is
35 from month-to-month, or week-to-week, the term of the rental agree-
36 ment for this purpose shall be deemed to be a month or a week, as the
37 case may be.

38 (d) If the tenant abandons or surrenders possession of the dwelling
39 unit and leaves household goods, furnishings, fixtures or any other per-
40 sonal property in or at the dwelling unit or if the tenant is removed from
41 the dwelling unit as a result of a forcible detainer action, pursuant to
42 ~~K.S.A. 61-2301, et seq. sections 79 through 86, and amendment amend-~~
43 ~~ments~~ thereto, and fails to remove any household goods, furnishings, fix-

1 tures or any other personal property in or at the dwelling unit after pos-
2 session of the dwelling unit is returned to the landlord, the landlord may
3 take possession of the property, store it at tenant's expense and sell or
4 otherwise dispose of the same upon the expiration of 30 days after the
5 landlord takes possession of the property, if at least 15 days prior to the
6 sale or other disposition of such property the landlord shall publish once
7 in a newspaper of general circulation in the county in which such dwelling
8 unit is located a notice of the landlord's intention to sell or dispose of
9 such property. Within seven days after publication, a copy of the pub-
10 lished notice shall be mailed by the landlord to the tenant at the tenant's
11 last known address. Such notice shall state the name of the tenant, a brief
12 description of the property and the approximate date on which the land-
13 lord intends to sell or otherwise dispose of such property. If the foregoing
14 requirements are met, the landlord may sell or otherwise dispose of the
15 property without liability to the tenant or to any other person who has or
16 claims to have an interest in such property, except as to any secured
17 creditor who gives notice of creditor's interest in such property to the
18 landlord prior to the sale or disposition thereof, if the landlord has no
19 knowledge or notice that any person, other than the tenant, has or claims
20 to have an interest in such property. During such 30 [30-day] period after
21 the landlord takes possession of the property, and at any time prior to
22 sale or other disposition thereof, the tenant may redeem the property
23 upon payment to the landlord of the reasonable expenses incurred by the
24 landlord of taking, holding and preparing the property for sale and of any
25 amount due from the tenant to the landlord for rent or otherwise.

26 (e) Any proceeds from the sale or other disposition of the property
27 as provided in subsection (d) shall be applied by the landlord in the fol-
28 lowing order:

29 (1) To the reasonable expenses of taking, holding, preparing for sale
30 or disposition, giving notice and selling or disposing thereof;

31 (2) to the satisfaction of any amount due from the tenant to the land-
32 lord for rent or otherwise; and,

33 (3) the balance, if any, may be retained by the landlord, without lia-
34 bility to the tenant or to any other person, other than a secured creditor
35 who gave notice of creditors interest as provided in subsection (d), for
36 any profit made as a result of a sale or other disposition of such property.

37 (f) Any person who purchases or otherwise receives the property pur-
38 suant to a sale or other disposition of the property as provided under
39 subsection (d) of this section, without knowledge that such sale or dis-
40 position is in violation of the ownership rights or security interest of a
41 third party in the property, takes title to the property free and clear of
42 any right, title, claim or interest of the tenant or such third party in the
43 property.

1 Sec. 123. K.S.A. 58-25,102 is hereby amended to read as follows: 58-
2 25,102. ~~(a)~~ The district court shall have jurisdiction over a landlord or
3 tenant with respect to conduct in this state governed by this act or with
4 respect to any claim arising from a transaction subject to this act, and
5 notwithstanding the provisions of subsection (b) of ~~K.S.A. 61-1603~~ *section*
6 *2*, and amendments thereto, such actions may be commenced pursuant
7 to the code of civil procedure for limited actions. Unless otherwise spe-
8 cifically provided in this act, the code of civil procedure for limited actions
9 shall govern any action commenced pursuant to this act. If the relief
10 sought is beyond the jurisdiction of a district magistrate judge as provided
11 in K.S.A. 20-302b, and amendments thereto, the action shall be heard by
12 a district judge.

13 Sec. 124. K.S.A. 60-201 is hereby amended to read as follows: 60-
14 201. This article governs the procedure in the district courts of Kansas,
15 other than actions commenced pursuant to ~~chapter 61 of the Kansas Stat-~~
16 ~~utes Annotated, and any amendments thereto,~~ *the code of civil procedure*
17 *for limited actions* and governs the procedure in all original proceedings
18 in the supreme court in all suits of a civil nature whether cognizable as
19 cases at law or in equity, except as provided in K.S.A. 60-265, *and amend-*
20 *ments thereto.*

21 Sec. 125. K.S.A. 60-213 is hereby amended to read as follows: 60-
22 213. (a) *Compulsory counterclaims.* A pleading shall state as a counter-
23 claim any claim which at the time of serving the pleading the pleader has
24 against any opposing party, if it arises out of the transaction or occurrence
25 that is the subject matter of the opposing party's claim and does not
26 require for its adjudication the presence of third parties of whom the
27 court cannot acquire jurisdiction; but the pleader need not state the claim
28 if (1) at the time the action was commenced the claim was the subject of
29 another pending action, or (2) the opposing party brought suit upon such
30 party's claim by attachment or other process by which the court did not
31 acquire jurisdiction to render a personal judgment on that claim, and the
32 pleader is not stating any other counterclaim under this section.

33 (b) *Permissive counterclaims.* A pleading may state as a counterclaim
34 any claim against an opposing party not arising out of the transaction or
35 occurrence that is the subject matter of the opposing party's claim.

36 (c) *Counterclaim exceeding opposing claim.* A counterclaim may or
37 may not diminish or defeat the recovery sought by the opposing party. It
38 may claim relief exceeding in amount or different in kind from that sought
39 in the pleading of the opposing party.

40 (d) *Effect of death or limitations.* When cross demands have existed
41 between persons under such circumstances that, if one had brought an
42 action against the other, a counterclaim or cross-claim could have been
43 set up, neither can be deprived of the benefit thereof by the assignment

1 or death of the other or by reason of the statute of limitations if arising
2 out of the contract or transaction set forth in the petition as the foundation
3 of plaintiff's claim or connected with the subject of the action; but the
4 two demands must be deemed compensated so far as they equal each
5 other.

6 (e) *Counterclaim maturing or acquired after pleading.* A claim which
7 either matured or was acquired by the pleader after serving the pleading
8 may, with the permission of the court, be presented as a counterclaim by
9 supplemental pleading.

10 (f) *Omitted counterclaim.* When a pleader fails to set up a counter-
11 claim through oversight, inadvertence, or excusable neglect, or when jus-
12 tice requires, the pleader may by leave of court set up the counterclaim
13 by amendment.

14 (g) *Compulsory cross-claim against co-party.* In an action involving
15 a claim governed by K.S.A. 60-258a and amendments thereto, a party
16 shall state as a cross-claim any claim that party has against any co-party
17 arising out of the transaction or occurrence that is the subject matter of
18 the claim governed by K.S.A. 60-258a and amendments thereto.

19 (h) *Permissive cross-claim against co-party.* A pleading may state as
20 a cross-claim any claim by one party against a co-party arising out of the
21 transaction or occurrence that is the subject matter either of the original
22 action or of a counterclaim therein or relating to any property that is the
23 subject matter of the original action. Such cross-claim may include a claim
24 that the party against whom it is asserted is or may be liable to the cross-
25 claimant for all or part of a claim asserted in the action against the cross-
26 claimant.

27 (i) *Joinder of additional parties.* Persons other than those made par-
28 ties to the original action may be made parties to a counterclaim or cross-
29 claim in accordance with the provisions of K.S.A. 60-219 and 60-220, and
30 amendments thereto.

31 (j) *Separate trials; separate judgments.* If the court orders separate
32 trials as provided in K.S.A. 60-242 and amendments thereto judgment on
33 a counterclaim or cross-claim may be rendered in accordance with the
34 terms of K.S.A. 60-254 and amendments thereto when the judge has
35 jurisdiction so to do, even if the claims of the opposing party have been
36 dismissed or otherwise disposed of.

37 (k) *Appealed and removed actions.* When an action is filed in the
38 district court pursuant to ~~chapter 61~~ *the code of civil procedure for limited*
39 *actions* and such action is transferred as provided in ~~K.S.A. 61-1717~~ *sec-*
40 *tion 16*, and amendments thereto or such action is heard by a district
41 magistrate judge and is appealed and a trial *de novo* will be held before
42 a district judge, any counterclaim made compulsory by subsection (a) shall
43 be stated as an amendment to the pleading within 20 days after such filing

1 or such other time as the court shall allow. Other counterclaims and cross-
2 claims shall be permitted as in an original action in the district court
3 pursuant to this chapter.

4 Sec. 126. K.S.A. 60-265 is hereby amended to read as follows: 60-
5 265. The provisions of this article shall apply only to actions and pro-
6 ceedings in the district courts, other than actions commenced pursuant
7 to ~~chapter 61 of the Kansas Statutes Annotated, and any amendments~~
8 ~~thereto, the code of civil procedure for limited actions~~ and shall apply to
9 original actions in the supreme court except:

10 (1) When made applicable in any other courts, boards, commissions,
11 or other judicial or quasi-judicial bodies by specific statutory provisions
12 referring to this article.

13 (2) When any other such court or judicial or quasi-judicial body
14 adopts by an order, which order is consistent with all statutes controlling
15 its procedures, all or a part of this article for its own proceedings, either
16 in a particular matter before it or in any matters generally, or

17 (3) When any statute pertaining to any such court or other judicial
18 or quasi-judicial body, which statute was enacted prior to the adoption of
19 this article and which incorporated by reference procedures under the
20 then existing code of civil procedure, then the most nearly comparable
21 provisions of this article shall be applicable to the procedures in such
22 court or body until modified or supplemented by specific statutes or or-
23 ders in accordance with clauses (1) or (2) of this section.

24 In any matter over which the court has jurisdiction but with reference
25 to which no specific provision is included in this article, the court shall
26 proceed in such manner as shall be just and equitable to protect the rights
27 and interests of all parties affected thereby.

28 Sec. 127. K.S.A. 60-304 is hereby amended to read as follows: 60-
29 304. As used in this section, ``serving'' means making service by any of
30 the methods described in K.S.A. 60-303, and amendments thereto, unless
31 a specific method of making service is prescribed in this section. Except
32 for service by publication under K.S.A. 60-307, and amendments thereto,
33 service of process under this article shall be made as follows:

34 (a) *Individual.* Upon an individual other than a minor or a disabled
35 person, by serving the individual or by serving an agent authorized by
36 appointment or by law to receive service of process, but if the agent is
37 one designated by statute to receive service, such further notice as the
38 statute requires shall be given. Service by certified mail shall be addressed
39 to an individual at the individual's dwelling house or usual place of abode
40 and to an authorized agent at the agent's usual or designated address. If
41 service by certified mail to the individual's dwelling house or usual place
42 of abode is refused or unclaimed, the sheriff, party or party's attorney
43 seeking service may complete service by certified mail, restricted delivery,

1 by serving the individual at a business address after filing a return on
2 service stating the certified mailing to the individual at such individual's
3 dwelling house or usual place of abode has been refused or unclaimed
4 and a business address is known for such individual.

5 (b) *Minor*. Upon a minor, by serving the minor and also either the
6 minor's guardian or conservator if the minor has one within the state or
7 the minor's father or mother or other person having the minor's care or
8 control or with whom such minor resides, or if service cannot be made
9 upon any of them, then as provided by order of the judge. Service by
10 certified mail shall be addressed to an individual at the individual's dwell-
11 ing house or usual place of abode and to a corporate guardian or conser-
12 vator at such guardian or conservator's usual place of business.

13 (c) *Disabled person*. Upon a disabled person, as defined in K.S.A.
14 59-3002, and amendments thereto, by serving (1) such person's guardian,
15 conservator or a competent adult member of such person's family with
16 whom the person resides, or if such person is living in an institution, then
17 the director or chief executive officer of the institution or, if service can-
18 not be made upon any of them, then as provided by order of the judge,
19 and (2) unless the judge otherwise orders, the disabled person. Service
20 by certified mail shall be addressed to a director or chief executive officer
21 of an institution at the institution, to any other individual at the individ-
22 ual's dwelling house or usual place of abode, and to a corporate guardian
23 or conservator at such guardian or conservator's usual place of business.

24 (d) *Governmental bodies*. (1) Upon a county, by serving one of the
25 county commissioners or the county clerk or the county treasurer; (2)
26 upon a township, by serving the clerk or the trustee; (3) upon a city, by
27 serving the clerk or the mayor; (4) upon any other public corporation,
28 body politic, district or authority by serving the clerk or secretary or, if
29 not to be found, to any officer, director or manager thereof; and (5) upon
30 the state or any governmental agency of the state, when subject to suit,
31 by serving the attorney general or an assistant attorney general. Service
32 by certified mail shall be addressed to the appropriate official at the of-
33 ficial's governmental office. Income withholding orders for support and
34 orders of garnishment of earnings of state officers and employees shall
35 be served upon the state or governmental agency of the state in the man-
36 ner provided by K.S.A. 60-723 and amendments thereto.

37 (e) *Corporations and partnerships*. Upon a domestic or foreign cor-
38 poration or upon a partnership or other unincorporated association, when
39 by law it may be sued as such, (1) by serving an officer, partner or a
40 resident, managing or general agent, or (2) by leaving a copy of the sum-
41 mons and petition at any business office of the defendant with the person
42 having charge thereof, or (3) by serving any agent authorized by appoint-
43 ment or required by law to receive service of process, and if the agent is

1 one authorized by law to receive service and the law so requires, by also
2 mailing a copy to the defendant. Service by certified mail on an officer,
3 partner or agent shall be addressed to such person at the person's usual
4 place of business.

5 (f) *Foreign corporation or foreign limited partnership resident agent.*

6 Service of process or service of any notice or demand required or per-
7 mitted by law to be served on a foreign corporation or foreign limited
8 partnership may also be made on the corporation or limited partnership
9 by service thereof on the resident agent of the corporation or limited
10 partnership. Whenever any foreign corporation or foreign limited part-
11 nership authorized to transact business or transacting business without
12 authority in this state fails to appoint or maintain in this state a resident
13 agent upon whom service of legal process or service of any such notice
14 or demand may be had, whenever the resident agent of such corporation
15 or limited partnership cannot with reasonable diligence be found at the
16 registered office in this state or whenever the certificate of authority of
17 any foreign corporation or foreign limited partnership is forfeited, the
18 secretary of state shall be irrevocably authorized as the agent and repre-
19 sentative of the foreign corporation or foreign limited partnership to ac-
20 cept service of any process or service of any notice or demand required
21 or permitted by law to be served upon the corporation or limited part-
22 nership. Service on the secretary of state of any process, notice or demand
23 against the foreign corporation or foreign limited partnership shall be
24 made by delivering to and leaving with the secretary of state, or with any
25 clerk having charge of the corporation department of the secretary of
26 state's office, the original and two copies of the process and two copies
27 of the petition, notice or demand, or the clerk of the court may send the
28 original process and two copies of both the process and the petition,
29 notice or demand directly to the secretary of state by restricted mail. In
30 the event that any process, notice or demand is served on the secretary
31 of state, the secretary shall immediately cause a copy thereof to be for-
32 forwarded by restricted mail, addressed to the corporation or limited part-
33 nership at its principal office as it appears in the records of the secretary
34 of state, or to the registered or principal office of the corporation or
35 limited partnership in the state of its incorporation or formation. The
36 secretary of state shall keep a record of all processes, notices and demands
37 served upon the secretary under this subsection, and shall record in the
38 record the time of the service and the action of the secretary with ref-
39 erence to it. A fee of \$30 shall be paid to the secretary of state by the
40 party requesting the service of process, to cover the cost thereof. That
41 fee shall not be included within or paid from any deposit as security for
42 any costs or docket fee required by K.S.A. 60-2001 or ~~61-2501~~ *section 96,*
43 and amendments thereto.

1 (g) *Insurance companies or associations.* Service of summons or other
2 process may also be made on any insurance company or association, or-
3 ganized under the laws of the state of Kansas by service on the commis-
4 sioner of insurance in the same manner as that provided for service on
5 foreign insurance companies. All the requirements of law relating to serv-
6 ice on foreign insurance companies so far as applicable shall also apply
7 to domestic insurance companies.

8 (h) *Service upon an employee.* If the plaintiff or the plaintiff's agent
9 or attorney files an affidavit that to the best of the affiant's knowledge
10 and belief the defendant is a nonresident who is employed in this state,
11 or that the place of residence of the defendant is unknown, the affiant
12 may direct that the service of summons or other process be made by the
13 sheriff or other duly authorized person by directing an officer, partner,
14 managing or general agent, or the person having charge of the office or
15 place of employment at which the defendant is employed, to make the
16 defendant available for the purpose of permitting the sheriff or other duly
17 authorized person to serve the summons or other process.

18 Sec. 128. K.S.A. 60-725 is hereby amended to read as follows: 60-
19 725. Whenever the secretary of labor, pursuant to authority vested in ~~said~~
20 ~~the~~ secretary under P.L. 90-321, shall promulgate rules and regulations
21 establishing the amount of disposable earnings subject to wage garnish-
22 ment, which rules and regulations are a result of a change in and based
23 upon multiples of the minimum hourly wage established by section
24 206(a)(1) of title 29 of the United States code, the clerks of the several
25 district courts are hereby authorized and directed to amend the instruc-
26 tions to the garnishee in the garnishee's answer form, as contained in
27 subsection (b) of K.S.A. 60-718, *and amendments thereto*, to correspond
28 to *said* such rules and regulations ~~and in like manner, to amend the in-~~
29 ~~structions to the garnishee in the garnishee's answer form, as contained~~
30 ~~in Form No. 8a in the appendix of forms following K.S.A. 61-2605, to~~
31 ~~correspond to said rules and regulations.~~

32 Sec. 129. K.S.A. 1999 Supp. 60-2202 is hereby amended to read as
33 follows: 60-2202. (a) Any judgment rendered in this state by a court of
34 the United States or by a district court of this state in an action com-
35 menced under chapter 60 of the Kansas Statutes Annotated shall be a
36 lien on the real estate of the judgment debtor within the county in which
37 judgment is rendered. Except as provided in subsection (c), the lien shall
38 be effective from the time at which the petition stating the claim against
39 the judgment debtor was filed but not to exceed four months prior to the
40 entry of the judgment. An attested copy of the journal entry of the judg-
41 ment, together with a statement of the costs taxed against the judgment
42 debtor in the case, may be filed in the office of the clerk of the district
43 court of any other county upon payment of the fee prescribed by K.S.A.

1 28-170 and amendments thereto, and the judgment shall become a lien
2 on the real estate of the debtor within that county from the date of filing
3 the copy. The clerk shall enter the judgment on the appearance docket
4 and index it in the same manner as if rendered in the court in which the
5 clerk serves. Executions shall be issued only from the court in which the
6 judgment is rendered.

7 (b) Any judgment rendered by a district court of this state in an action
8 commenced under ~~chapter 61 of the Kansas Statutes~~ *Annotated the code*
9 *of civil procedure for limited actions* shall become a lien on the real prop-
10 erty of the judgment debtor when the party in whose favor the judgment
11 was rendered pays the fee prescribed by K.S.A. 28-170 and amendments
12 thereto and the clerk of the district court enters the judgment in the
13 appearance docket. The lien shall become a lien only upon the debtor's
14 real property that is located in the county in which the filing is made, but
15 a filing may be made in any county in which real property of the judgment
16 debtor is located. Upon the filing of a journal entry of judgment and
17 payment of the fee as provided in this section, the clerk of the district
18 court shall enter it in the appearance docket. The lien shall cease to be a
19 lien on the real property of the judgment debtor at the time provided in
20 article 24 of this chapter.

21 (c) Notwithstanding the foregoing provisions of this section, the filing
22 of a petition or other pleadings against an employee of the state or a
23 municipality which alleges a negligent or wrongful act or omission of the
24 employee while acting within the scope of the employee's employment
25 shall create no lien rights as against the property of the employee prior
26 to judgment, regardless of whether or not it is alleged in the alternative
27 that the employee was acting outside the scope of the employee's em-
28 ployment. A judgment against an employee shall become a lien upon the
29 employee's property when the judgment is rendered only if it is found
30 that (1) the employee's negligent or wrongful act or omission occurred
31 when the employee was acting outside the scope of the employee's em-
32 ployment or (2) the employee's conduct which gave rise to the judgment
33 was because of actual fraud or actual malice of the employee; in those
34 cases the lien shall not be effective prior to the date judgment is rendered.

35 As used in this subsection, ``employee'' has the meaning provided by
36 K.S.A. 75-6102 and amendments thereto.

37 (d) If unpaid arrearages accrued under a support order rendered in
38 another state give rise to a lien on real property in the state where ren-
39 dered, such arrearages shall become a lien on the real property of the
40 obligor as of the date the clerk of the court in this state enters the order
41 in the appearance docket. The clerk of the court shall enter the order in
42 the appearance docket upon receiving payment of the fee prescribed by
43 K.S.A. 28-170 and amendments thereto; a sworn statement that the ob-

1 ligor was provided at least 30 days' prior written notice that the lien would
 2 be filed in this state, that the obligor was provided an opportunity for
 3 hearing concerning the proposed filing and that no hearing was timely
 4 requested or the decision therein allows the lien to be filed; a sworn
 5 statement of the amount of the lien; and a legible copy of the support
 6 order or, in a title IV-D case, a notice of lien that describes the support
 7 order. The lien shall become a lien only upon the obligor's real property
 8 that is located in the county in which the filing is made, but a filing may
 9 be made in any county in which real property of the obligor is located.

10 The lien shall cease to be a lien on the real property of the obligor at the
 11 time provided in article 24 of this chapter. As used in this section, "title
 12 IV-D case" means a case being administered pursuant to part D of title
 13 IV of the federal social security act (42 U.S.C. § 651 et seq.) and amend-
 14 ments thereto. Any person filing the documents required by this subsec-
 15 tion shall be deemed to have submitted to the jurisdiction of the courts
 16 of this state with respect to any action in this state to determine the
 17 validity of the lien or the lien's attachment to any real property.

18 (e) A person named as the debtor in a notice of lien filed pursuant
 19 to subsection (d) based upon a support order issued in another state, or
 20 a person whose interest in real estate is affected by the filing of such a
 21 notice of lien may file a petition pursuant to chapter 60 of the Kansas
 22 Statutes Annotated, and amendments thereto, with the district court
 23 where the notice of lien was filed. The petitioner shall notify the person
 24 who filed the notice of lien that a hearing to contest the validity of the
 25 lien or the lien's attachment to the petitioner's property will be held no
 26 less than 30 days after the date of mailing or personal service of the notice.

27 Sec. 130. K.S.A. 60-2418 is hereby amended to read as follows: 60-
 28 2418. (a) In all cases in which a judgment is rendered pursuant to ~~chapter~~
 29 ~~61 of the Kansas Statutes Annotated~~ *the code of civil procedure for limited*
 30 *actions*, the party in whose favor judgment is rendered may pay the fee
 31 prescribed by K.S.A. 28-170 and amendments thereto. Upon payment of
 32 the fee the clerk of the district court in the county in which the judgment
 33 was rendered shall renumber the case as a case filed under this chapter
 34 and enter payment of the fee and the renumbering of the case on the
 35 appearance docket of the case. The judgment shall become a lien on the
 36 real estate of the judgment debtor in the county from the date of the
 37 entry. Execution to satisfy the judgment shall proceed in the same manner
 38 as original judgments in the district court pursuant to this chapter.

39 (b) If any judgment filed pursuant to this section becomes dormant,
 40 it may be revived in the same manner as other judgments in the district
 41 court.

42 Sec. 131. K.S.A. 60-3331 is hereby amended to read as follows: 60-
 43 3331. (a) Except as otherwise provided, a merchant may file a civil action

1 to receive a civil penalty against any adult or emancipated minor who
 2 shoplifts from that merchant. If the merchant does not recover the mer-
 3 chandise in merchantable condition, the merchant shall be entitled to a
 4 civil penalty for an amount equal to twice the retail cost of the merchan-
 5 dise, or \$50, whichever is greater, but in no case shall such civil penalty
 6 be more than \$500. If the merchant recovers the merchandise in mer-
 7 chantable condition, the merchant shall be entitled to a civil penalty of
 8 \$50 or 50% of the retail cost of the merchandise, whichever is greater,
 9 but in no case shall such civil penalty be more than \$350.

10 (b) Unless the action is brought pursuant to the Kansas small claims
 11 act and a final judgment is rendered in small claims court, the prevailing
 12 party in such action brought pursuant to this section shall be entitled to
 13 reasonable attorney fees and costs. If the action is brought in small claims
 14 court and the judgment is appealed to district court pursuant to chapter
 15 60 of the Kansas Statutes Annotated or ~~K.S.A. 61-2709~~ *section 111*, and
 16 amendments thereto, the prevailing party on appeal shall be entitled to
 17 reasonable attorney fees and costs.

18 (c) A conviction or a plea of guilty to the offense of theft of the mer-
 19 chandise is not a prerequisite to the filing of a civil action under this
 20 section.

21 (d) Prior to filing a civil action under this section, a merchant dam-
 22 aged by shoplifting may demand that an individual alleged to be civilly
 23 liable under this act reimburse such merchant in an amount of the civil
 24 penalty as prescribed in subsection (a). Such demand, if made, shall be
 25 in writing and may be offered in consideration for the merchant's agree-
 26 ment not to commence a civil action under this section. Such demand
 27 shall not contain a threat of criminal prosecution against such individual.
 28 Any merchant who makes a demand with a threat of criminal prosecution
 29 against such individual shall be precluded from filing a civil action under
 30 this section and pursuing any other remedy at law or equity. A demand
 31 pursuant to this subsection is not a prerequisite to filing a civil action
 32 under this section, but no demand may be made which does not comply
 33 with this subsection.

34 (e) Nothing contained in this act shall be construed to preclude a
 35 merchant from pursuing any other remedy at law or equity prior to filing
 36 an action under this act.

37 (f) For purposes of this act, ``shoplift'' means any one or more of the
 38 following acts committed by a person without the consent of the merchant
 39 and with the intent of appropriating merchandise to that person's or an-
 40 other's own use without payment, obtaining merchandise at less than its
 41 stated sales price or otherwise depriving a merchant of all or any part of
 42 the value or use of merchandise:

43 (1) Removing any merchandise from the premises of the merchant's

1 establishment;

2 (2) concealing any merchandise with intent to leave the premises with

3 the merchandise;

4 (3) substituting, altering, removing or disfiguring any label or price

5 tag;

6 (4) transferring any merchandise from a container in which that mer-

7 chandise is displayed or packaged to any other container; or

8 (5) disarming any alarm tag attached to any merchandise.

9 Sec. 132. K.S.A. 75-6103 is hereby amended to read as follows: 75-

10 6103. (a) Subject to the limitations of this act, each governmental entity

11 shall be liable for damages caused by the negligent or wrongful act or

12 omission of any of its employees while acting within the scope of their

13 employment under circumstances where the governmental entity, if a

14 private person, would be liable under the laws of this state.

15 (b) (1) Except as otherwise provided in this act, either the code of

16 civil procedure or, subject to provision (2) of this subsection, the code of

17 civil procedure for limited actions shall be applicable to actions within

18 the scope of this act. Actions for claims within the scope of the Kansas

19 tort claims act brought under the code of civil procedure for limited

20 actions are subject to the limitations provided in ~~K.S.A. 61-1603~~ *section*

21 *2, and amendments thereto.*

22 (2) Actions within the scope of the Kansas tort claims act may not be

23 brought under the small claims procedure act.

24 Sec. 133. K.S.A. 58-227, 58-2542, 58-25,102, 60-201, 60-213, 60-

25 265, 60-304, 60-725, 60-2418, 60-3331, 61-1601, 61-1603 through 61-

26 1605, 61-1608, 61-1701 through 61-1703, 61-1703a, 61-1704 through 61-

27 1709, 61-1711 through 61-1719, 61-1721 through 61-1723, 61-1725a,

28 61-1726, 61-1728, 61-1801 through 61-1803, 61-1805 through 61-1807,

29 61-1901 through 61-1909, 61-2001 through 61-2012, 61-2101, 61-2102,

30 61-2104 through 61-2109, 61-2201 through 61-2204, 61-2301 through 61-

31 2304, 61-2306 through 61-2311, 61-2402 through 61-2405, 61-2502, 61-

32 2503, 61-2601 through 61-2605, 61-2701, 61-2702, 61-2705, 61-2706, 61-

33 2708, 61-2710, 61-2712, 61-2714 and 75-6103 and K.S.A. 1999 Supp.

34 19-4737, 20-302b, 20-310a, 20-362, 58-2565, 60-2202, 61-1710, 61-1720,

35 61-1724, 61-1725, 61-1729, 61-2013, 61-2014, 61-2103, 61-2305, 61-

36 2401, 61-2501, 61-2703, 61-2704, 61-2707, 61-2709 and 61-2713 are

37 hereby repealed.

38 Sec. 134. This act shall take effect and be in force from and after its

39 publication in the statute book.



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LEGISLATIVE TESTIMONY

February 10, 2000

TO: Chairman Mike O'Neal and Members of the House
Judiciary Committee

FROM: Paul Davis, Legislative Counsel

RE: House Bill 2697

Mr. Chairman and Members of the Committee:

I thank you for the opportunity to present this written testimony on House Bill 2697. The sole purpose of my testimony is to state the KBA's support for deleting subsections (a), (b) and (e) from New Section 115 of the bill. These subsections are found on pages 48 and 49 of the bill.

As many of you are aware, the legislature enacted Senate Bill 97 during the 1999 session. The bill changed the law with regard to who may represent a party in small claims court by amending K.S.A. 61-2707 to state that "a party may appear by a fulltime employee or officer or any person in a representative capacity so long as such person is not an attorney." Previously, the law only allowed the parties themselves to appear in small claims court. Attorneys have never been able to represent parties in small claims court.

The subsections that we are requesting to be deleted would allow attorneys, along with other third parties, to represent litigants in small claims court. The KBA's position is that non-attorney representation of litigants in small claims court constitutes the unauthorized practice of law. Furthermore, the determination of who may practice in Kansas courts is a power that is reserved for the judicial branch

Under Article 3, Section 1 of the Kansas Constitution, only the Kansas Supreme Court has the inherent power to prescribe conditions for admissions to the bar, and to define, supervise, regulate and control the practice of law. Case law has reiterated the Supreme Court's powers in this area. See *State ex rel. Stephan v. O'Keefe*, 235 Kan. 1022, 1035-1036 (1984), *Martin v. Davis*, 187 Kan. 473, 478-479 (1960) and *State ex rel. Stephan v. Williams*, 246 Kan. 681, 689-690 (1990). Furthermore, the legislature has recognized in L. Kan. 1992, ch. 337, that regulating who

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may represent parties before courts “traditionally, constitutionally and appropriately resides in the Supreme Court of Kansas.”

As you are aware, the KBA opposed Senate Bill 97 on these grounds last year and we would support the deletion of these subsections for the same reasons. Additionally, there is pending litigation before the Supreme Court that has been initiated by the KBA that will determine whether the legislature infringes upon inherent judicial powers by prescribing who may represent litigants in small claims court.

The KBA Legislative Committee is currently reviewing the other provisions of this legislation so we are not able to offer up a position on the remainder of the bill at this time. I thank you for your time.