

Approved: April 28, 2000  
Date

## 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 March 9, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Tim Carmody - Excused  
Representative John Edmonds - Excused  
Representative Jonathan Wells - 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:

Senator John Vratil  
Melissa Wangemann, Legal Counsel, Secretary of State

Hearings on **SB 629 - Information required on annual reports and nondisclosure of amount of annual franchise tax by certain business entities**, were opened.

Senator John Vratil explained that the proposed bill would make confidential the amount of franchise taxes to be paid. It would protect corporate information. (Attachment 1)

Hearings on **SB 629** were closed.

Hearings on **SB 483 - Service of process on corporations, limited liability companies and limited partnerships**, were opened.

Melissa Wangemann, Legal Counsel, Secretary of State, appeared on behalf of the Secretary of State, and explained that the bill would create uniform standards that would allow the Secretary of State's office to assist with service of process. (Attachment 2)

Hearings on **SB 483** were closed.

Hearings on **SB 529 - Execution of corporate documents**, were opened.

Melissa Wangemann, Legal Counsel, Secretary of State, requested this bill so it would eliminate the requirement that documents must be notarized. This change would make the filing process more efficient and uniform with other business entities. (See Attachment 3)

Hearings on **SB 529** were closed.

### **HB 2697 - Recodification of Chapter 61, civil procedure for limited actions**

Representative Loyd made the motion adopt the balloon amendment (Attachment 3). Representative Gregory seconded the motion. The motion carried.

Representative Loyd made the motion to allow service of process by fax, first class mail and e-mail. Representative Gregory seconded the motion. The motion carried.

Representative Loyd made the motion to add "shall forthwith" on page 22 (c)(2). Representative Powell seconded the motion. The motion carried.

Representative Powell made the motion that an employer shall not unreasonably impede or impair the service of process of an employee who a judgement has been order against him. Representative Long seconded the

CONTINUATION SHEET

motion. The motion carried.

Representative Crow made the motion to change the cap from \$25,000 back to \$10,000. Representative Ruff seconded the motion. The motion carried 8-5.

Representative Loyd made the motion to report **Substitute for HB 2697** favorably for passage. Representative Powell seconded the motion. The motion failed 6-8.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 13, 2000.

JOHN VRATIL  
 SENATOR, ELEVENTH DISTRICT  
 JOHNSON COUNTY  
 LEGISLATIVE HOTLINE  
 1-800-432-3924



COMMITTEE ASSIGNMENTS  
 VICE CHAIRMAN: JUDICIARY  
 MEMBER: ENERGY AND NATURAL RESOURCES  
 FEDERAL AND STATE AFFAIRS  
 SPECIAL CLAIMS AGAINST THE STATE  
 STATE/TRIBAL RELATIONS

TOPEKA

SENATE CHAMBER

STATE CAPITOL  
 TOPEKA, KANSAS 66612-1504  
 (785) 296-7361

**TESTIMONY ON SENATE BILL 629  
 TO THE HOUSE JUDICIARY COMMITTEE  
 SENATOR JOHN VRATIL**

Senate Bill 629 concerns the annual report filed by corporations and other business entities with the Secretary of State. It prohibits the disclosure of the amount of franchise taxes paid to the Secretary of State and amends the Kansas Open Records Act to clarify that those records are closed. It also eliminates the current requirement that annual reports of business entities contain a reconciliation of the capital accounts (balance sheets) for the preceding taxable year. The purpose of this bill is to protect the confidentiality of private financial information and to avoid a situation where a business entity might gain an unfair competitive advantage.

**BALANCE SHEET INFORMATION**

The 1997 Legislature eliminated the requirement that corporations include their balance sheet information on their annual report. However, that same provision was not made applicable to limited liability companies, limited partnerships, limited liability partnerships, and other business entities. This bill would treat all business entities the same in that it would eliminate the requirement that business entities include balance sheet information on their annual reports. That type of information is private information and should not be disclosed on a public document. There is no public policy reason to require disclosure of private balance sheet information on a business entities annual report. Disclosure of that type of information can be harmful to a business entity and result in an unfair competitive advantage.

**AMOUNT OF FRANCHISE TAX**

The same reasons exist for maintaining the confidentiality of the amount of franchise tax paid by a business entity. The amount of that tax, i.e. \$1.00 for every \$1000 of shareholder equity, can be used to determine the financial status of a business entity. All that is required is a simple mathematical calculation to determine, from the franchise tax, the amount of shareholder equity in a business entity. No public purpose is served by disclosing the amount of franchise tax paid by a business entity.

HOME  
 9534 LEE BLVD.  
 LEAWOOD, KS 66206  
 (913) 341-7559

DISTRICT OFFICE  
 1050/40 CORPORATE WOODS  
 9401 INDIAN CREEK PKWY.  
 OVERLAND PARK, KS 66210  
 (913) 451-5100  
 FAX (913) 451-0875

House Judiciary  
 3-9-2000  
 Attachment 1

## **CONCLUSION**

In conclusion, I urge you to favorably consider Senate Bill 629 and advance it for consideration by the House.



**TESTIMONY OF THE SECRETARY OF STATE  
TO THE HOUSE JUDICIARY COMMITTEE  
MARCH 9, 2000**

The Secretary of State proposed two bills that relate to our Corporations Division.

**SB 483 – SERVICE OF PROCESS ON BUSINESS ENTITIES**

The Secretary of State requested the introduction of SB 483 to clean up provisions of the code of civil procedure relating to the secretary's duties to serve process on business entities. There are four amendments accomplished by the bill.

1. **Uniform standard for service of process by the Secretary of State.** K.S.A. 60-304 authorizes service of process on corporations and limited partnerships by serving the resident agent but allows the Secretary of State to serve foreign corporations and foreign limited partnerships when the resident agent cannot be located. We ask that the statute be amended to allow our office also to service process on *domestic* corporations and limited partnerships in cases when service on their resident agents cannot be obtained. Corporate and LP statutes allow the Secretary of State to serve domestic corporations and LPs when the resident agent has died or left the state; however, that fact is not easily determined. The amendment would create a simple, uniform standard that allows our office to assist with service of process whenever the resident agent cannot be located.

2. **Service by Certified Mail or Personal Service.** K.S.A. 60-304 allows a person to serve the Secretary of State by personal service only, but allows the clerk of the court to send process to

our office by restricted mail. We request an amendment to clarify that service may be made on the Secretary of State by certified mail or personal service, service methods recognized by the Kansas code of civil procedure. The clerk of the court can continue to send service to our office by certified mail.

3. **Inclusion of Limited Liability Companies.** The Limited Liability Company Act references K.S.A. 60-304 for service of process on LLCs so it seems appropriate to add limited liability companies to the statute. Inclusion of LLCs in K.S.A. 60-304 provides clearer notice to the public that the statute applies to them.

4. **Waiver of Fee for State Agencies.** The statute requires the Secretary of State to charge a \$30 fee for providing service of process, money that goes to the state general fund. The law does not exempt state agencies, and the transfer of money from state agencies to the Secretary of State amounts to an unnecessary shifting of money within the general fund. The Secretary of State proposes that the fee be waived for state agencies.

5. **Senate Amendments.** The senate judiciary committee added amendments to the bill that further the goal of a uniform standard for service of process. The first amendment adds specific references to other business entities to subsection (e) of the statute. Because other Kansas statutes already provide for service of process on these business entities in accordance with K.S.A. 60-304, adding them to the statute does not alter the current method of process. Amendments were made to K.S.A. 17-7667, the statute governing service of process for limited liability companies, however, to eliminate any conflict between that statute and K.S.A. 60-304. The committee also added corporate director as a person who may be served on behalf of a corporation, a provision given in Delaware law. The bill was further amended to raise the service fee from \$30 to \$40, money that goes to the state general fund. The Secretary of State

was asked to calculate the cost of this job, and our office determined that the cost of providing service of process is \$39.94. The senate committee recommended that the fee be raised so that general fund money does not subsidize this expense.

### **SB 529 – EXECUTION OF CORPORATE DOCUMENTS**

The Secretary of State asked for the introduction of SB 529 to amend the corporate code and eliminate the requirement that corporate documents be acknowledged (i.e., notarized). The corporate code was enacted in 1972 with the requirement that corporate documents be notarized. Since that time, newer business entities such as limited liability companies, limited partnerships and limited liability partnerships have been created in Kansas law with a simpler execution method of signing documents under penalty of perjury. Because the Secretary of State is required by law to check corporate documents for statutory compliance, we must reject corporate documents that are improperly notarized. Rejection by our office slows down the filing process for our customers. SB 529 would eliminate notarial errors, making the filing process more efficient, while making the corporate filings uniform with other business entities.

The senate judiciary committee amended the bill to include an amendment that allows an existing Kansas corporation to convert to a holding company, modeled on Delaware law. This amendment was proposed by Western Resources.

Submitted by Melissa Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

HOUSE BILL No. 2697

By Committee on Judiciary

1-24

HOUSE BILL Proposed Amendments

By Committee on Judiciary March 8, 2000

House Judiciary 3-9-2000 Attachment 3

9 AN ACT concerning civil procedure for limited actions; ~~relating to small~~  
10 ~~claims procedure~~, amending K.S.A. 58-227, 58-2542, 58-25102, 60-  
11 201, 60-213, 60-265, 60-304, 60-725, 60-2418, 60-3331 and 75-6103  
12 and K.S.A. 1999 Supp. 19-4737, 20-302b, 20-310a, 20-362, 58-2565  
13 and 60-2202 and repealing the existing sections; also repealing K.S.A.  
14 61-1601, 61-1603 through 61-1605, 61-1608, 61-1701 through 61-  
15 1703, 61-1703a, 61-1704 through 61-1709, 61-1711 through 61-1719,  
16 61-1721 through 61-1723, 61-1725a, 61-1726, 61-1728, 61-1801  
17 through 61-1803, 61-1805 through 61-1807, 61-1901 through 61-1909,  
18 61-2001 through 61-2012, 61-2101, 61-2102, 61-2104 through 61-  
19 2109, 61-2201 through 61-2204, 61-2301 through 61-2304, 61-2306  
20 through 61-2311, 61-2402 through 61-2405, 61-2502, 61-2503, 61-  
21 2601 through 61-2605, ~~61-2701, 61-2702, 61-2705, 61-2706, 61-2708,~~  
22 ~~61-2710, 61-2712 and 61-2714~~ and K.S.A. 1999 Supp. 61-1710, 61-  
23 1720, 61-1724, 61-1725, 61-1729, 61-2013, 61-2014, 61-2103, 61-2305,  
24 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



- 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.

sections 79 through 86,  
[internal reference error]

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

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

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

within the county [motion by Rep. Pauls]

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

1 proceeding.

2 New Sec. 7. The party who files a lawsuit shall be called the plaintiff  
3 and the adverse party shall be called the defendant.

4 New Sec. 8. ~~(a) A lawsuit filed under this act shall be deemed to be~~  
5 commenced at the time a petition is filed with the clerk of the district  
6 court if service of process is obtained within 120 days after the petition  
7 is filed, otherwise the lawsuit shall be deemed to be commenced at the  
8 time service of process is obtained.

9 (b) If the plaintiff seeks to obtain service of process by publication,  
10 service of process shall be obtained at the time of first publication.

11 (c) If service of process or first publication purports to have been  
12 made but is later determined by a court to have been invalid due to any  
13 irregularity in form or procedure or any defect in making service, the  
14 lawsuit shall nevertheless be deemed to have been commenced when  
15 filed if valid service is obtained within the next 120 days after such  
16 determination.

(c) 17 (d) An entry of appearance by the defendant shall have the same  
18 effect as service of process on the defendant.

(d) 19 (e) The limitation of time for commencing lawsuits pursuant to the  
20 code of civil procedure for limited actions shall be as provided in article  
21 5 of chapter 60 of the Kansas Statutes Annotated, and amendments  
22 thereto, except where a different limitation is specifically provided by  
23 statute.

24 New Sec. 9. (a) Pleadings. Only the pleadings set forth in K.S.A. 60-  
25 207, and amendments thereto, shall be allowed in an action commenced  
26 pursuant to the code of civil procedure for limited actions, but the only  
27 pleadings required are a petition and an answer. Third-party practice in  
28 the manner prescribed by K.S.A. 60-214, and amendments thereto, shall  
29 be permitted.

30 (b) Petitions. A petition shall state the claim or claims which the plain-  
31 tiff has against the defendant. It shall set forth the current address, phone  
32 number, fax phone number and electronic mail address for the plaintiff.  
33 If the plaintiff is not represented by an attorney, the petition shall be  
34 signed by the plaintiff ~~under penalty of perjury~~.

35 (c) Motions and other papers. An application to the court or judge  
36 for an order shall be by motion which, unless made during a hearing or  
37 trial, shall be made in writing, shall state the particular grounds for the  
38 motion, shall set forth the relief or order sought, and shall contain a notice  
39 of when the motion is to be heard by the court.

40 New Sec. 10. (a) A defendant shall either appear, in person or by  
41 counsel, at the time and date set forth in the summons or file on or before  
42 such date a written answer. If the defendant appears and disputes the  
43 petition, the defendant shall file an answer not later than 10 days after

(a) An action pursuant to the code of civil procedure for limited actions is commenced at the time of:

(1) Filing a petition with the clerk of the district court, if service of process is obtained or the first publication is made for service by publication, within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff; or

(2) service of process or first publication, if service of process or first publication is not made within the time specified by provision (1).

(b) If service of process or first publication purports to have been made but is later adjudicated to have been invalid due to any irregularity in form or procedure or any defect in making service, the action shall nevertheless be deemed to have been commenced at the applicable time under subsection (a) if valid service is obtained or first publication is made within 90 days after that adjudication, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff.

[Suggested by KS Bar Assn., handout point 2]

pleading required is a petition  
[Answer no longer mandatory]

[Suggested by KS Bar Assn.; handout point 1]

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: \_\_\_\_\_

when filed

- 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.~~ (d)  
22 ~~60-208, and amendments thereto.~~

23 ~~(f) The date the defendant is required to appear as set forth in the~~ (e)  
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 parties  
31 of whom the court cannot acquire jurisdiction, except that the defendant  
32 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 jurisdiction  
36 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 section.  
41 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

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; <sup>^</sup> or

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.

[Returning to current forms of service pursuant 2000 HB 2905, KSA 61-1803 and 61-180]

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.

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.

article 27 of chapter 61 of the  
Kansas Statutes Annotated

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.

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~~

New Sec. 21. (a) Methods of service of process within  
this state, except service by publication, are described in this  
section. Service of process outside the state shall be made in  
substantial compliance with the applicable provisions of K.S.A.  
60-308, and amendments thereto.

(b) Who serves process. The sheriff of the county in  
which the action is filed shall serve any process by any method  
authorized by this section, by K.S.A. 60-903, 60-2401 or 60-3104,  
and amendments thereto, or as otherwise provided by law, unless a  
party, either personally or through an attorney, elects to undertake  
responsibility for service and so notifies the clerk or requests  
personal or residence service pursuant to subsection (d).

(c) Service by return receipt delivery.

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

(2) The sheriff, party or party's attorney shall cause a copy of the  
process and petition or other document to be placed in a sealed  
envelope addressed to the person to be served in accordance with  
section 22, and amendments thereto, with postage or other  
delivery fees prepaid, and the sealed envelope placed in the  
custody of the person or entity effecting delivery.

(3) Service of process shall be considered obtained under section  
8, and amendments thereto, upon the delivery of the sealed  
envelope.

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

(5) If the sealed envelope is returned with an endorsement  
showing refusal to accept delivery, the sheriff, party or the party's  
attorney may send a copy of the process and petition or other  
document by first-class mail addressed to the party to be served,  
or may elect other methods of service. If mailed, service shall be  
considered obtained three days after the mailing by first- class  
mail, postage prepaid, which shall be evidenced by a certificate of  
service filed with the clerk. If the unopened envelope sent

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

first-class mail is returned as undelivered for any reason, the  
 sheriff, party or party's attorney shall file an amended certificate of  
 service with the clerk indicating nondelivery, and service by such  
 mailing shall not be considered obtained. Mere failure to claim  
 return receipt delivery is not refusal of service within the meaning  
 of this subsection.

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

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

(3) Service, levy and execution of all process under this  
 subsection, including, but not limited to, writs of execution, orders  
 of attachment, replevin orders, orders for delivery, writs of  
 restitution and writs of assistance, shall be made by a sheriff  
 within the sheriff's county, by the sheriff's deputy, by an attorney  
 admitted to the practice of law before the supreme court of Kansas  
 or by some person appointed as a process server by a judge or  
 clerk of the district court, except that a subpoena may also be  
 served by any other person who is not a party and is not less than  
 18 years of age. Process servers shall be appointed freely and may  
 be authorized either to serve process in a single case or in cases  
 generally during a fixed period of time. A process server or an  
 authorized attorney may make the service anywhere in or out of  
 the state and shall be allowed the fees prescribed in K.S.A.  
 28-110, and amendments thereto, for the sheriff and such other  
 fees and costs as the court shall allow. All persons authorized  
 under this subsection to serve, levy and execute process shall be  
 considered an "officer" as used in K.S.A. 60-706 and 60-2401  
 and amendments thereto.

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

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

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

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

[K.S.A. 61-1803 from 2000 HB 2905 and subsection (e) is K.S.A. 61-1806]



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

[technical]

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

New Sec. 23. Proof of service shall be made as follows:

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

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

(b) Service by return receipt delivery. Service by return  
receipt delivery shall be proven in the manner provided by  
subsection (e) of K.S.A. 60-308 or subsection (c) of section 21,  
and amendments thereto.

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

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

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

[K.S.A. 61-1807 from 2000 HB 2905]

or if the defendant appears and disputes the claims in the petition  
[Amendment needed if answer not mandatory]

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 practicable].~~ 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-

or on or before such date files  
an answer  
[Amendment needed if answer not mandatory]

Such hearing shall be held at least 10 days after the  
date of the defendant's appearance.  
[Suggested by Bruce Ward, for Judicial Council;  
handout section f]

upon such terms and conditions as  
the court deems proper

[Suggested by Bruce Ward, for Judicial  
Council; handout point 2]

made on or before the date of  
the pretrial conference

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

[Returning to current forms of service  
 pursuant to 2000 HB 2905, KSA 61-1803  
 and 61-1807]

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;

- 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-

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.

13

United States bankruptcy code  
[technical]

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

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-

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-

If the party seeking the garnishment is notified by the garnishee that the judgment debtor has never been employed by the garnishee or the judgment debtor's employment has been terminated, the party seeking the garnishment shall forthwith release such garnishment. [Suggested by Bruce Ward, for Judicial Council; handout section b]

The party for whom the garnishment is issued shall file a release with the clerk of the court upon satisfaction of the judgment and provide a copy thereof to the defendant and garnishee.

(a)

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

*[the party seeking the garnishment suggested by Bruce Ward, for Judicial Council; handout 3c]*

4 ~~(a) That a garnishment order has been issued against the judgment~~ (1)  
5 ~~debtor and the effect of such order;~~

6 ~~(b) of the judgment debtor's right to assert any claim of exemption~~ (2)  
7 ~~allowed under the law with respect to a garnishment against property~~  
8 ~~other than earnings or of the judgment debtor's right to object to the~~  
9 ~~calculation of exempt and nonexempt earnings with respect to a garnish-~~  
10 ~~ment against the earnings of the debtor; and~~

11 ~~(c) of the judgment debtor's right to a hearing on such claim or ob-~~ (3)  
12 ~~jection. The notice shall be substantially in compliance with the form set~~  
13 ~~forth in the rules of the supreme court of this state, and shall contain a~~  
14 ~~description of the exemptions that are applicable to garnishments and the~~  
15 ~~procedure by which the judgment debtor can assert any claim of exemp-~~  
16 ~~tion. A copy of the notice form shall be served on the garnishee with the~~  
17 ~~order of garnishment. ~~if the garnishee does not have possession of any~~~~  
18 ~~property, funds, credits, indebtedness or wages belonging to or owing the~~  
19 ~~judgment debtor, the garnishee does not need to send the notice to the~~  
20 ~~judgment debtor.]~~

(b) If the judgment debtor requests a hearing to assert any claim of exemption, the request shall be filed no later than 10 days following the date the notice is served on the judgment debtor. If a hearing is requested, the hearing shall be held by the court no sooner than 5 days nor later than 10 days after the request is filed. At the time the request for hearing is filed, the judgment debtor shall obtain from the clerk or court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the judgment debtor shall hand-deliver to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, or mail to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, by first-class mail at the party seeking the garnishment or such party's attorney's, last known address, a copy of the request for hearing.

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

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

25 (b) Within 10 days after service upon a garnishee of an order of gar-  
26 nishment the garnishee shall complete the answer in accordance with the  
27 instructions accompanying the answer form stating the facts with respect  
28 to the demands of the order and send the completed answer to the judg-  
29 ment creditor and judgment debtor at the addresses listed on the answer  
30 form. The answer shall be supported by unsworn declaration in the man-  
31 ner set forth on the answer form.

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

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

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

(c) If a hearing is held, the judgment debtor shall have the burden of proof to show that some or all of the property subject to the garnishment is exempt, and the court shall enter an order determining the exemption and such other order or orders as is appropriate.

[Subsections (d) and (e) from K.S.A. 1999 Supp. 61-2014; suggested by Bruce Ward, for Judicial Council; handout section c]

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.

may  
 [technical]

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.

**If the garnishee complies with the direction of the judgment creditor and pays money or delivers property to the judgment creditor pursuant to direction from the judgment creditor, the garnishee shall be discharged of all liability under the garnishment order and held harmless against all claims by the judgment creditor and judgment debtor, including its attorney fees, for the payment or delivery of property made to the judgment creditor.**

[Suggested by Bruce Ward, for Judicial Council; handout section d; Mr. Ward stated he has checked with the KS Bankers Assn. and Heartland and they approve of the language]

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 judgment 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



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.

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.]~~

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.

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

[Renumber remaining sections; redesignate  
 any internal references; suggested by  
 Bruce Ward, for Judicial Council,  
 handout section e; also suggested  
 by KS Bar Assn., handout point 4]

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

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

in the filing of the contempt citation and the hearing thereon

[Suggested by the KS Bar Assn., handout point 5]

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.~~

An employer shall not impede or impair the service of process on an employee who is a judgment debtor.

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.

3-29

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

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 piate 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

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.

, when filed,

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-

1 mediately 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-

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 insuffi-  
10 cient, 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,

3-41

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~~

[Deleting small claims procedure  
from the bill, return to current  
law; suggested by Bruce Ward  
for Judicial Council, handout §9]



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.

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.

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.

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

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

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 of 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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1 Claim" on or before the time set for trial.

2 RETURN ON SERVICE OF SUMMONS

3 I hereby certify that I have served this summons:

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

6 \_\_\_\_\_, \_\_\_\_\_(year) \_\_\_\_\_(year)

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

9 \_\_\_\_\_, \_\_\_\_\_(year) \_\_\_\_\_(year)

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

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

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

14 (c) The defendant's claim 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 DEFENDANT'S CLAIM

22 *Instructions:*

23 1. As stated in the summons, if you have a claim against the plaintiff which arises out  
24 of the transaction or occurrence which is the subject of plaintiff's claim and your claim does  
25 not exceed \$1,800, you must state your claim in the space provided below. If your claim  
26 against the plaintiff exceeds \$1,800, you may state your claim in the space provided below.  
27 In determining whether or not your claim against the plaintiff exceeds \$1,800, do not include  
28 interest, costs and any damages under K.S.A. 60-2610 and amendments thereto, but do  
29 include the value of any personal property sought to be recovered as determined by your  
30 estimate of its value under oath.

31 2. Be clear and concise in stating your claim.

32 3. If the value of your claim exceeds \$1,800 (not including interest, costs and any dam-  
33 ages awarded under K.S.A. 60-2610 and amendments thereto, but including the value of  
34 any personal property sought to be recovered, as determined by your estimate of its value  
35 under oath), the court must decide whether you may pursue your entire claim or only that  
36 portion not exceeding \$1,800.

37 4. If your claim exceeds \$1,800 and the court determines that you may not pursue the  
38 entire claim at the hearing, you have three alternatives: (1) Make no demand for judgment  
39 and reserve the right to pursue your entire claim in a court of competent jurisdiction; (2)  
40 make demand for judgment of that portion of your claim which does not exceed \$1,800 and  
41 reserve the right to bring an action in a court of competent jurisdiction for any amount in  
42 excess thereof; or (3) make demand for judgment of that portion of your claim which does  
43 not exceed \$1,800 and waive your right to recover any excess.

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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.

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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.]~~

[renumber remaining sections and  
 redesignate internal references]

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-



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

[deleted because only amendment  
is to small claims procedure  
statute]

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. 61-2700 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]~~ or KSA 61-2704 or 61-2709  
 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]~~ KSA 61-2704 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.

or KSA 61-2704 or 61-2709

KSA 61-2704

[technical, small claims procedure]

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 warding 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-

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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~~

[deleted because only amendment is  
 to small claims procedure statute]

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, 61-2700 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.