

## HOUSE BILL No. 2215

By Representative Huff

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AN ACT concerning civil procedure; relating to small claims; amending K.S.A. 61-2706 and K.S.A. 2002 Supp. 61-2703, 61-2704 and 61-2713 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 61-2703 is hereby amended to read as follows: 61-2703. As used in this act:

(a) "Small claim" means a claim for the recovery of money or personal property, where the amount claimed or the value of the property sought does not exceed ~~\$1,800~~ \$5,000, exclusive of interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto. In actions of replevin, the verified petition fixing the value of the property shall be determinative of the value of the property for jurisdictional purposes. A small claim shall not include:

(1) An assigned claim;

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

(3) a claim obtained through subrogation.

(b) "Person" means an individual, partnership, limited liability company, corporation, fiduciary, joint venture, society, organization or other association of persons.

Sec. 2. K.S.A. 2002 Supp. 61-2704 is hereby amended to read as follows: 61-2704. (a) An action seeking the recovery of a small claim shall be considered to have been commenced at the time a person files a written statement of the person's small claim with the clerk of the court if, within 90 days after the small claim is filed, service of process is obtained or the first publication is made for service by publication. Otherwise, the action is deemed commenced at the time of service of process or first publication. An entry of appearance shall have the same effect as service.

(b) Upon the filing of a plaintiff's small claim, the clerk of the court shall require from the plaintiff a docket fee of \$26, if the claim does not exceed ~~\$500~~ \$2,500; or \$46, if the claim exceeds ~~\$500~~ \$2,500; unless for good cause shown the judge waives the fee. The docket fee shall be the

1 only costs required in an action seeking recovery of a small claim. No  
2 person may file more than 10 small claims under this act in the same  
3 court during any calendar year.

4 Sec. 3. K.S.A. 61-2706 is hereby amended to read as follows: 61-  
5 2706. (a) Whenever a plaintiff demands judgment beyond the scope of  
6 the small claims jurisdiction of the court, the court shall either: (1) Dis-  
7 miss the action without prejudice at the cost of the plaintiff; (2) allow the  
8 plaintiff to amend the plaintiff's pleadings and service of process to bring  
9 the demand for judgment within the scope of the court's small claims  
10 jurisdiction and thereby waive the right to recover any excess, assessing  
11 the costs accrued to the plaintiff; or (3) if the plaintiff's demand for judg-  
12 ment is within the scope of the court's general jurisdiction, allow the  
13 plaintiff to amend the plaintiff's pleadings and service of process so as to  
14 commence an action in such court in compliance with K.S.A. 61-1703  
15 and amendments thereto, assessing the costs accrued to the plaintiff.

16 (b) Whenever a defendant asserts a claim beyond the scope of the  
17 court's small claims jurisdiction, but within the scope of the court's gen-  
18 eral jurisdiction, the court may determine the validity of defendant's en-  
19 tire claim. If the court refuses to determine the entirety of any such claim,  
20 the court must allow the defendant to: (1) Make no demand for judgment  
21 and reserve the right to pursue the defendant's entire claim in a court of  
22 competent jurisdiction; (2) make demand for judgment of that portion of  
23 the claim not exceeding ~~\$1,500~~ \$5,000, plus interest, costs and any dam-  
24 ages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and  
25 reserve the right to bring an action in a court of competent jurisdiction  
26 for any amount in excess thereof; or (3) make demand for judgment of  
27 that portion of the claim not exceeding ~~\$1,500~~ \$5,000, plus interest, costs  
28 and any damages awarded pursuant to K.S.A. 60-2610 and amendments  
29 thereto, and waive the right to recover any excess.

30 Sec. 4. K.S.A. 2002 Supp. 61-2713 is hereby amended to read as  
31 follows: 61-2713. (a) The petition shall be in substantially the following  
32 form:

33 In the District Court of \_\_\_\_\_ County, Kansas.  
34 \_\_\_\_\_  
35 Plaintiff  
36 vs. No. \_\_\_\_\_  
37 \_\_\_\_\_  
38 Defendant

39 PETITION PURSUANT TO CHAPTER 61 OF THE KANSAS  
40 STATUTES ANNOTATED

41 *Statement of claim:*  
42 I, \_\_\_\_\_, having read the instruction below, hereby assert the following claim  
43 against \_\_\_\_\_, defendant:

1 *Demand for judgment:*

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

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

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

7 *Instructions to plaintiff:*

8 1. State the claim you have against the defendant in the space provided. Be clear and  
9 concise.

10 2. Your total claim against defendant may not exceed ~~\$1,500~~ \$5,000, not including in-  
11 terest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto. If  
12 you are seeking the recovery of personal property, the value of that property shall be based  
13 on your estimate of its value under oath.

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

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

18 5. Except as provided by law, neither you nor the defendant is permitted to appear with  
19 an attorney at the hearing.

20 6. You may not file more than 10 small claims under the small claims procedure act in  
21 this court during any calendar year.

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

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

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

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

[Signature] \_\_\_\_\_  
Judge (clerk or notary)

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

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

35 \_\_\_\_\_  
36 Plaintiff

37 vs. No. \_\_\_\_\_

38 \_\_\_\_\_  
39 Defendant

40 SUMMONS  
41 (Small Claims Procedure)

42 *To the above-named defendant:*

43 You are hereby notified that the above-named plaintiff has filed a claim against you under

1 the small claims procedure of this court. The statement of plaintiff's claim and demand for  
2 judgment against you are set forth in the petition which is served upon you with this sum-  
3 mons.

4 A trial will be held on this matter at \_\_\_\_\_ o'clock \_\_\_\_\_ m. on the \_\_\_\_\_ day of \_\_\_\_\_,  
5 ~~19~~ (year) \_\_\_\_\_, at

6 \_\_\_\_\_.

7 (Place of hearing and address)

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

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

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

16 If you have a claim against the plaintiff, which arises out of the transaction or occurrence  
17 which is the subject of plaintiff's claim and your claim does not exceed ~~\$1,500~~ \$5,000, you  
18 must complete the form for "Defendant's Claim," which accompanies this summons, and  
19 return it to the judge or clerk of the court on or before the time set for the trial. If your  
20 claim against plaintiff exceeds ~~\$1,500~~ \$5,000, you may complete and return the form for  
21 "Defendant's Claim" on or before the time set for trial.

22 RETURN ON SERVICE OF SUMMONS

23 I hereby certify that I have served this summons:

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

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

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

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

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

31 Dated: \_\_\_\_\_.

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

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

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

36 \_\_\_\_\_  
37 Plaintiff

38 vs.

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

39 \_\_\_\_\_  
40 Defendant

41 DEFENDANT'S CLAIM

42 Instructions:

43 1. As stated in the summons, if you have a claim against the plaintiff which arises out

1 of the transaction or occurrence which is the subject of plaintiff's claim and your claim does  
2 not exceed ~~\$1,500~~ \$5,000, you must state your claim in the space provided below. If your  
3 claim against the plaintiff exceeds ~~\$1,500~~ \$5,000, you may state your claim in the space  
4 provided below. In determining whether or not your claim against the plaintiff exceeds  
5 ~~\$1,500~~ \$5,000, do not include interest, costs and any damages under K.S.A. 60-2610 and  
6 amendments thereto, but do include the value of any personal property sought to be re-  
7 covered as determined by your estimate of its value under oath.

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

9 3. If the value of your claim exceeds ~~\$1,500~~ \$5,000 (not including interest, costs and  
10 any damages awarded under K.S.A. 60-2610 and amendments thereto, but including the  
11 value of any personal property sought to be recovered, as determined by your estimate of  
12 its value under oath), the court must decide whether you may pursue your entire claim or  
13 only that portion not exceeding ~~\$1,500~~ \$5,000.

14 4. If your claim exceeds ~~\$1,500~~ \$5,000 and the court determines that you may not pursue  
15 the entire claim at the hearing, you have three alternatives: (1) Make no demand for judg-  
16 ment and reserve the right to pursue your entire claim in a court of competent jurisdiction;  
17 (2) make demand for judgment of that portion of your claim which does not exceed ~~\$1,500~~  
18 \$5,000 and reserve the right to bring an action in a court of competent jurisdiction for any  
19 amount in excess thereof; or (3) make demand for judgment of that portion of your claim  
20 which does not exceed ~~\$1,500~~ \$5,000 and waive your right to recover any excess.

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

23 *Statement of claim:*

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

26 *Demand for judgment:*

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

28 1. Payment of \$\_\_\_\_\_, plus interest, costs and any damages awarded under K.S.A. 60-  
29 2610 and amendments thereto.

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

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

35 [Signature] \_\_\_\_\_  
36 Plaintiff

37 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ (year)\_\_\_\_\_.  
38 [Signature] \_\_\_\_\_  
39 Judge (clerk or notary)

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41 Sec. 5. K.S.A. 61-2706 and K.S.A. 2002 Supp. 61-2703, 61-2704 and  
42 61-2713 are hereby repealed.  
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1     Sec. 6. This act shall take effect and be in force from and after its  
2 publication in the statute book.  
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