

**HOUSE Substitute for HOUSE Substitute for
SENATE BILL No. 18**

By Committee on Judiciary

3-18

10 AN ACT concerning civil procedure; relating to small claims; amending
11 K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703 and 61-2713 and re-
12 pealing the existing sections.
13

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

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

17 (a) "Small claim" means a claim for the recovery of money or personal
18 property, where the amount claimed or the value of the property sought
19 does not exceed ~~\$1,800~~ \$3,200, exclusive of interest, costs and any dam-
20 ages awarded pursuant to K.S.A. 60-2610 and amendments thereto. In
21 actions of replevin, the verified petition fixing the value of the property
22 shall be determinative of the value of the property for jurisdictional pur-
23 poses. A small claim shall not include:

24 (1) An assigned claim;

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

29 (3) a claim obtained through subrogation.

30 (b) "Person" means an individual, partnership, limited liability com-
31 pany, corporation, fiduciary, joint venture, society, organization or other
32 association of persons.

33 Sec. 2. K.S.A. 61-2706 is hereby amended to read as follows: 61-
34 2706. (a) Whenever a plaintiff demands judgment beyond the scope of
35 the small claims jurisdiction of the court, the court shall either: (1) Dis-
36 miss the action without prejudice at the cost of the plaintiff; (2) allow the
37 plaintiff to amend the plaintiff's pleadings and service of process to bring
38 the demand for judgment within the scope of the court's small claims
39 jurisdiction and thereby waive the right to recover any excess, assessing
40 the costs accrued to the plaintiff; or (3) if the plaintiff's demand for judg-
41 ment is within the scope of the court's general jurisdiction, allow the
42 plaintiff to amend the plaintiff's pleadings and service of process so as to
43 commence an action in such court in compliance with K.S.A. 61-1703

1 and amendments thereto, assessing the costs accrued to the plaintiff.
 2 (b) Whenever a defendant asserts a claim beyond the scope of the
 3 court's small claims jurisdiction, but within the scope of the court's gen-
 4 eral jurisdiction, the court may determine the validity of defendant's en-
 5 tire claim. If the court refuses to determine the entirety of any such claim,
 6 the court must allow the defendant to: (1) Make no demand for judgment
 7 and reserve the right to pursue the defendant's entire claim in a court of
 8 competent jurisdiction; (2) make demand for judgment of that portion of
 9 the claim not exceeding ~~\$1,800~~ \$3,200, plus interest, costs and any dam-
 10 ages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and
 11 reserve the right to bring an action in a court of competent jurisdiction
 12 for any amount in excess thereof; or (3) make demand for judgment of
 13 that portion of the claim not exceeding ~~\$1,800~~ \$3,200, plus interest, costs
 14 and any damages awarded pursuant to K.S.A. 60-2610 and amendments
 15 thereto, and waive the right to recover any excess.

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

19 In the District Court of _____ County, Kansas.
 20 _____
 21 Plaintiff
 22 vs. No. _____
 23 _____
 24 Defendant

25 PETITION PURSUANT TO CHAPTER 61 OF THE
 26 KANSAS STATUTES ANNOTATED

27 *Statement of claim:*

28 I, _____, having read the instruction below, hereby assert the following
 29 claim against _____, defendant:

30 *Demand for judgment:*

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

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

36 *Instructions to plaintiff:*

- 37 1. State the claim you have against the defendant in the space provided. Be clear and
- 38 concise.
- 39 2. Your total claim against defendant may not exceed ~~\$1,800~~ \$3,200, not including in-
- 40 terest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto. If
- 41 you are seeking the recovery of personal property, the value of that property shall be based
- 42 on your estimate of its value under oath.
- 43 3. You must be present in person at the hearing in order to avoid default judgment

1 against you on any claim defendant may have which arises out of the transaction or occur-
2 rence which is the subject to your claim against the defendant.

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

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

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

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

9 I, _____, hereby swear that, to the best of my knowledge and belief, the
10 foregoing claim asserted against the defendant (including the estimate of value of any prop-
11 erty sought to be recovered) is a just and true statement, exclusive of any valid claim or
12 defense which defendant may have.

13 [Signature] _____

14 Plaintiff

15 Subscribed and sworn to before me this _____ day of _____,
16 ~~th~~ (year)_____.

17 [Signature] _____

18 Judge (clerk or notary)

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

20 In the District Court of _____ County, Kansas.

21 _____

22 Plaintiff

23 vs.

No. _____

24 _____

25 Defendant

26 SUMMONS

27 (Small Claims Procedure)

28 *To the above-named defendant:*

29 You are hereby notified that the above-named plaintiff has filed a claim against you under
30 the small claims procedure of this court. The statement of plaintiff's claim and demand for
31 judgment against you are set forth in the petition which is served upon you with this sum-
32 mons.

33 A trial will be held on this matter at ____o'clock ____m. on the _____ day of
34 _____, ~~th~~ (year)_____, at

35 _____

36 (Place of hearing and address)

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

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

43 If you admit the claim, but desire additional time to satisfy plaintiff's demands, you must

1 be present at the trial and explain the circumstances to the court.

2 If you have a claim against the plaintiff, which arises out of the transaction or occurrence
3 which is the subject of plaintiff's claim and your claim does not exceed ~~\$1,500~~ \$3,200, you
4 must complete the form for "Defendant's Claim," which accompanies this summons, and
5 return it to the judge or clerk of the court on or before the time set for the trial. If your
6 claim against plaintiff exceeds ~~\$1,500~~ \$3,200, you may complete and return the form for
7 "Defendant's Claim" on or before the time set for trial.

8 RETURN ON SERVICE OF SUMMONS

9 I hereby certify that I have served this summons:

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

12 _____, ~~19~~(year)_____ _____, ~~19~~(year)_____

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

15 _____, ~~19~~(year)_____ _____, ~~19~~(year)_____

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

17 Dated: _____

18 _____
19 (Signature and Title of Officer)

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

21 In the District Court of _____ County, Kansas.

22 _____

23 Plaintiff

24 vs.

No. _____

25 _____

26 Defendant

27 DEFENDANT'S CLAIM

28 *Instructions:*

29 1. As stated in the summons, if you have a claim against the plaintiff which arises out
30 of the transaction or occurrence which is the subject of plaintiff's claim and your claim does
31 not exceed ~~\$1,500~~ \$3,200, you must state your claim in the space provided below. If your
32 claim against the plaintiff exceeds ~~\$1,500~~ \$3,200, you may state your claim in the space
33 provided below. In determining whether or not your claim against the plaintiff exceeds
34 ~~\$1,500~~ \$3,200, do not include interest, costs and any damages under K.S.A. 60-2610 and
35 amendments thereto, but do include the value of any personal property sought to be re-
36 covered as determined by your estimate of its value under oath.

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

38 3. If the value of your claim exceeds ~~\$1,500~~ \$3,200 (not including interest, costs and
39 any damages awarded under K.S.A. 60-2610 and amendments thereto, but including the
40 value of any personal property sought to be recovered, as determined by your estimate of
41 its value under oath), the court must decide whether you may pursue your entire claim or
42 only that portion not exceeding ~~\$1,500~~ \$3,200.

43 4. If your claim exceeds ~~\$1,500~~ \$3,200 and the court determines that you may not pursue

1 the entire claim at the hearing, you have three alternatives: (1) Make no demand for judg-
 2 ment and reserve the right to pursue your entire claim in a court of competent jurisdiction;
 3 (2) make demand for judgment of that portion of your claim which does not exceed ~~\$1,500~~
 4 \$3,200 and reserve the right to bring an action in a court of competent jurisdiction for any
 5 amount in excess thereof; or (3) make demand for judgment of that portion of your claim
 6 which does not exceed ~~\$1,500~~ \$3,200 and waive your right to recover any excess.

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

9 *Statement of claim:*

10 I, _____, having read the instructions above, assert the following claim against
 11 _____, plaintiff:

12 *Demand for judgment:*

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

14 1. Payment of \$_____, plus interest, costs and any damages awarded under K.S.A. 60-
 15 2610 and amendments thereto.

16 2. Recovery of the following described personal property, plus costs:

17 This property has an estimated value of \$_____.

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

[Signature] _____

Plaintiff

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

[Signature] _____

Judge (clerk or notary)

26 Sec. 4. K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703 and 61-2713
 27 are hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after its
 29 publication in the statute book.