

SENATE BILL No. 360

By Senators D. Schmidt, Abrams, Apple, Huelskamp, Lynn, Petersen,
V. Schmidt, Schodorf, Taddiken, Vratil and Wagle

1-12

10 AN ACT concerning small claims; amending K.S.A. 61-2714 and K.S.A.
11 2009 Supp. 61-2704 and 61-2707 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 61-2704 is hereby amended to read as
15 follows: 61-2704. (a) An action seeking the recovery of a small claim shall
16 be considered to have been commenced at the time a person files a writ-
17 ten statement of the person's small claim with the clerk of the court if,
18 within 90 days after the small claim is filed, service of process is obtained
19 or the first publication is made for service by publication. Otherwise, the
20 action is deemed commenced at the time of service of process or first
21 publication. An entry of appearance shall have the same effect as service.

22 (b) Upon the filing of a plaintiff's small claim, the clerk of the court
23 shall require from the plaintiff a docket fee of \$39 on and after July 1,
24 2009 through June 30, 2013, and \$37 on and after July 1, 2013, if the
25 claim does not exceed \$500; or \$59 on and after July 1, 2009 through
26 June 30, 2013, and \$57 on and after July 1, 2013, if the claim exceeds
27 \$500; unless for good cause shown the judge waives the fee. The docket
28 fee shall be the only costs required in an action seeking recovery of a
29 small claim. ~~No person may file more than 20 small claims under this act
30 in the same court during any calendar year.~~

31 (c) Except as provided further, the docket fee established in this sec-
32 tion shall be the only fee collected or moneys in the nature of a fee
33 collected for the docket fee. Such fee shall only be established by an act
34 of the legislature and no other authority is established by law or otherwise
35 to collect a fee. On and after July 1, 2009 through June 30, 2010, the
36 supreme court may impose an additional charge, not to exceed \$10 per
37 docket fee, to fund the costs of non-judicial personnel.

38 Sec. 2. K.S.A. 2009 Supp. 61-2707 is hereby amended to read as
39 follows: 61-2707. (a) The trial of all actions shall be to the court, and
40 except as provided in K.S.A. 61-2714, and amendments thereto, no party
41 in any such action shall be represented by an attorney prior to judgment.
42 A party may appear by a full-time employee or officer or any person in a
43 representative capacity so long as such person is not an attorney. Discov-

1 ery methods or proceedings shall not be allowed nor shall the taking of
2 depositions for any purpose be permitted. No order of attachment or
3 garnishment shall be issued in any action commenced under this act prior
4 to judgment in such action.

5 (b) When entering judgment in the action, the judge shall include as
6 a part of the judgment form or order a requirement that, unless the
7 judgment has been paid, the judgment debtor shall submit to the clerk
8 of the district court, within 30 days after receipt of the form therefor, a
9 verified statement describing the location and nature of property and
10 assets which the person owns, including the person's place of employ-
11 ment, account numbers and names of financial institutions holding assets
12 of such person and a description of real property owned by such person.
13 The court shall also include as a part of the judgment form or order a
14 requirement that, within 15 days of the date judgment is entered, unless
15 judgment has been paid, the judgment creditor shall mail a copy of the
16 judgment form or order to the judgment debtor, together with the form
17 for providing the information required to be submitted under this sub-
18 section, and that the judgment creditor shall file with the court proof of
19 the mailing thereof. When the form containing the required information
20 is submitted to the clerk as required by this subsection, the clerk shall
21 note in the record of the proceeding that it was received and then shall
22 mail the form to the judgment creditor. No copy of such form shall be
23 retained in the court records nor shall it be made available to other per-
24 sons. Upon motion of the judgment creditor, the court may punish for
25 contempt any person failing to submit information as required by this
26 subsection.

27 (c) Any judgment entered under this act on a claim which is not a
28 small claim, as defined in K.S.A. 61-2703, and amendments thereto, ~~or~~
29 ~~which has been filed with the court in contravention of the limitation~~
30 ~~prescribed by K.S.A. 61-2704 and amendments thereto on the number~~
31 ~~of claims which may be filed by any person,~~ shall be void and
32 unenforceable.

33 Sec. 3. K.S.A. 61-2714 is hereby amended to read as follows: 61-
34 2714. (a) Notwithstanding any other provision of the small claims pro-
35 cedure act, if any party in small claims litigation: (1) Uses any person in
36 a representative capacity if such person representing the party is an at-
37 torney or was formerly an attorney; or (2) is an attorney representing the
38 attorney's self in a small claims action, all other parties to such litigation
39 shall be entitled to have an attorney appear on their behalf in such action.

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

- 1 (c) The filing of a small claims action is a certification by the plaintiff
2 that such plaintiff is complying with the provisions of the small claims
3 procedures act, specifically with the provisions of K.S.A. 61-2704, and
4 amendments thereto, relating to the limited number of claims a person
5 may file in the same court during any calendar year.
- 6 (d) ~~Any defendant may raise as a defense to a small claims action that
7 the plaintiff has filed or caused to be filed more claims than allowed by
8 the small claims act. When such defense is raised, if the court finds the
9 plaintiff to have filed more claims than allowed by law, the court shall
10 dismiss the action with prejudice and such a finding shall be considered
11 a violation of the unconscionable acts and practices section of the Kansas
12 consumer protection act. The defendant may file a collateral action under
13 the Kansas consumer protection act.~~
- 14 ~~(e)~~ As used in this section, “attorney” means persons licensed to prac-
15 tice law in Kansas or in any other state whether on active or inactive
16 status, or persons otherwise qualified to take the Kansas bar examination
17 and acting under the supervisory authority of a licensed attorney.
- 18 Sec. 4. K.S.A. 61-2714 and K.S.A. 2009 Supp. 61-2704 and 61-2707
19 are hereby repealed.
- 20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.