

## HOUSE BILL No. 2116

By Committee on Judiciary

1-28

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1 AN ACT concerning civil procedure; relating to electronic service of  
2 process; fees; amending K.S.A. 2012 Supp. 60-303 and 60-2001 and  
3 repealing the existing sections.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 60-303 is hereby amended to read as  
7 follows: 60-303. (a) *In general.* Methods of service of process within this  
8 state, except service by publication as provided in K.S.A. 60-307, and  
9 amendments thereto, are described in this section. Methods of out-of-state  
10 service of process are described in K.S.A. 60-308, and amendments  
11 thereto.

12 (b) *Who serves process.* The sheriff of the county in which the action  
13 is filed must serve any process by any method authorized by this section,  
14 or as otherwise provided by law, unless a party, either personally or  
15 through an attorney, notifies the clerk that the party elects to undertake  
16 responsibility for service.

17 (c) *Service by return receipt delivery.* (1) Service of process may be  
18 made by return receipt delivery, which is effected by certified mail,  
19 priority mail, commercial courier service, overnight delivery service or  
20 other reliable personal delivery service to the party addressed, in each  
21 instance evidenced by a written or electronic receipt showing to whom  
22 delivered, the date of delivery, the address where delivered and the person  
23 or entity effecting delivery.

24 (2) The sheriff, party or party's attorney must give to the person or  
25 entity effecting delivery a copy of the process and petition or other  
26 document in a sealed envelope, with postage or other delivery fees  
27 prepaid, addressed to the person to be served in accordance with K.S.A.  
28 60-304, and amendments thereto.

29 (3) Service of process is obtained under K.S.A. 60-203, and  
30 amendments thereto, upon the delivery of the sealed envelope.

31 (4) After service and return of the return receipt, the sheriff, party or  
32 party's attorney must execute and file a return of service. The return of  
33 service must state the nature of the process, to whom delivered, the date of  
34 delivery, the address where delivered and the person or entity effecting  
35 delivery. It must include a copy of the return receipt evidencing delivery.

36 (5) If the sealed envelope is returned with an endorsement showing

1 refusal to accept delivery, the sheriff, party or the party's attorney may  
2 send a copy of the process and petition or other document by first-class  
3 mail, postage prepaid, addressed to the party to be served, or may elect  
4 other methods of service. If mailed, service is considered to be obtained  
5 three days after the mailing. Mailing must be evidenced by a certificate  
6 filed with the clerk. If the unopened envelope sent by first-class mail is  
7 returned as undelivered for any reason, service is not obtained and the  
8 sheriff, party or party's attorney must file an amended certificate with the  
9 clerk indicating nondelivery. Mere failure to claim the sealed envelope  
10 sent by return receipt delivery is not refusal of service within the meaning  
11 of this subsection.

12 (d) *Personal and residence service.* (1) A party may file with the clerk  
13 a written request for personal service or, in the case of service on an  
14 individual, for residence service.

15 (A) Personal service is effected by delivering or offering to deliver a  
16 copy of the process and petition or other document to the person to be  
17 served.

18 (B) Residence service on an individual is effected by leaving a copy  
19 of the process and petition or other document at the individual's dwelling  
20 or usual place of abode with someone of suitable age and discretion who  
21 resides there.

22 (C) If personal or residence service cannot be made on an individual,  
23 other than a minor or a disabled person, service is effected by leaving a  
24 copy of the process and petition or other document at the individual's  
25 dwelling or usual place of abode and mailing to the individual by first-  
26 class mail, postage prepaid, a notice that the copy has been left at the  
27 individual's dwelling or usual place of abode.

28 (2) (A) *Except as provided in subsection (d)(2)(B),* when process is to  
29 be served under this subsection, the clerk must deliver sufficient copies of  
30 the process and petition or other document to the sheriff or the county  
31 where the process is to be served or, if requested, to a person appointed to  
32 serve process or to the requesting party's attorney.

33 (B) *When a case is electronically filed and process is to be served*  
34 *under this subsection, the chief judge of each judicial district shall*  
35 *determine the procedure for service of process through an agreement with*  
36 *a local enforcement agency.*

37 (3) Service, levy and execution of all process under this subsection,  
38 including, but not limited to, writs of execution, orders of attachment,  
39 replevin orders, orders for delivery, writs of restitution and writs of  
40 assistance, must be made by a sheriff within the sheriff's county, by the  
41 sheriff's deputy, by an attorney admitted to the practice of law in Kansas,  
42 by a person licensed as a private detective pursuant to K.S.A. 75-7b01 et  
43 seq., and amendments thereto, or by a person appointed as a process server

1 by a judge or clerk of the district court. A subpoena may also be served by  
2 any other person who is not a party and is at least 18 years of age. Process  
3 servers should be appointed freely and may be authorized either to serve  
4 process in a single case or in cases generally during a fixed period of time.  
5 An appointed process server, an authorized attorney or a licensed private  
6 detective may make the service anywhere in or outside this state and must  
7 be allowed the fees prescribed for the sheriff in K.S.A. 28-110, and  
8 amendments thereto. The court may allow other fees and costs. A person  
9 authorized under this subsection to serve, levy or execute process is  
10 considered an "officer" as that term is used in K.S.A. 60-706 and 60-2401,  
11 and amendments thereto.

12 (4) In all cases when the person to be served, or an agent authorized  
13 by the person to accept service of process, refuses to receive the process,  
14 the offer of the duly authorized process server to deliver the process, and  
15 the refusal, is sufficient service of process.

16 (e) *Acknowledgment or appearance.* An acknowledgment of service  
17 on the summons is equivalent to service. The voluntary appearance by a  
18 party is equivalent to service on the date of appearance.

19 (f) *Other service methods for garnishments.* In addition to other  
20 methods listed in this section, a person serving a garnishment process may  
21 serve the process by any of the following methods:

22 (1) *First-class mail.* Process may be sent to a person by first-class  
23 mail by placing a copy of the process and petition or other document to be  
24 served in an envelope addressed to the person to be served in accordance  
25 with K.S.A. 60-304, and amendments thereto, at the person's last known  
26 address. The envelope used for service must be addressed to the person in  
27 accordance with K.S.A. 60-304, and amendments thereto, and must  
28 contain adequate postage. The envelope must be sealed and placed in the  
29 United States mail. Service by first-class mail is complete when the  
30 envelope is placed in the mail unless it is returned undelivered.

31 (2) *Telefacsimile communication.* Process may be sent to a garnishee  
32 by telefacsimile communication at a telefacsimile number designated by  
33 the garnishee. Service is complete upon receipt of a confirmation  
34 generated by the transmitting machine.

35 (3) *Internet electronic mail.* Process may be sent to a garnishee by  
36 internet electronic mail at an internet electronic mail address designated by  
37 the garnishee and as provided by supreme court rules. Service is complete  
38 upon receipt of an electronic confirmation of delivery.

39 Sec. 2. K.S.A. 2012 Supp. 60-2001 is hereby amended to read as  
40 follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no  
41 case shall be filed or docketed in the district court, whether original or  
42 appealed, without payment of a docket fee in the amount of \$156 on and  
43 after July 1, 2009 through June 30, 2013, and \$154 on and after July 1,

1 2013, to the clerk of the district court. Except as provided further, the  
2 docket fee established in this subsection shall be the only fee collected or  
3 moneys in the nature of a fee collected for the docket fee. Such fee shall  
4 only be established by an act of the legislature and no other authority is  
5 established by law or otherwise to collect a fee. On and after the effective  
6 date of this act through June 30, 2013, the supreme court may impose an  
7 additional charge, not to exceed \$22 per docket fee, to fund the costs of  
8 non-judicial personnel.

9 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case  
10 where a plaintiff by reason of poverty is unable to pay a docket fee, and an  
11 affidavit so stating is filed, no fee will be required. An inmate in the  
12 custody of the secretary of corrections may file a poverty affidavit only if  
13 the inmate attaches a statement disclosing the average account balance, or  
14 the total deposits, whichever is less, in the inmate's trust fund for each  
15 month in: (A) The six-month period preceding the filing of the action; or  
16 (B) the current period of incarceration, whichever is shorter. Such  
17 statement shall be certified by the secretary. On receipt of the affidavit and  
18 attached statement, the court shall determine the initial fee to be assessed  
19 for filing the action and in no event shall the court require an inmate to pay  
20 less than \$3. The secretary of corrections is hereby authorized to disburse  
21 money from the inmate's account to pay the costs as determined by the  
22 court. If the inmate has a zero balance in such inmate's account, the  
23 secretary shall debit such account in the amount of \$3 per filing fee as  
24 established by the court until money is credited to the account to pay such  
25 docket fee. Any initial filing fees assessed pursuant to this subsection shall  
26 not prevent the court, pursuant to subsection (d), from taxing that  
27 individual for the remainder of the amount required under subsection (a) or  
28 this subsection.

29 (2) *Form of affidavit.* The affidavit provided for in this subsection  
30 shall be in the following form and attached to the petition:

31 State of Kansas, \_\_\_\_\_ County.

32 In the district court of the county: I do solemnly swear that the claim  
33 set forth in the petition herein is just, and I do further swear that, by reason  
34 of my poverty, I am unable to pay a docket fee.

35 (c) *Disposition of fees.* The docket fees and the fees for service of  
36 process shall be the only costs assessed in each case for services of the  
37 clerk of the district court and the sheriff. For every person to be served by  
38 the sheriff, the persons requesting service of process shall provide proper  
39 payment to the clerk and the clerk of the district court shall forward the  
40 service of process fee *at least monthly* to the sheriff in accordance with  
41 K.S.A. 28-110, and amendments thereto. *If a case is not electronically*  
42 *filed, the service of process fee, if may be paid by check or money order,*  
43 ~~shall be~~ made payable to the sheriff. Such service of process fee shall be

1 submitted by the sheriff at least monthly to the county treasurer for deposit  
2 in the county treasury and credited to the county general fund. The docket  
3 fee shall be disbursed in accordance with K.S.A. 20-362, and amendments  
4 thereto.

5 (d) *Additional court costs.* Other fees and expenses to be assessed as  
6 additional court costs shall be approved by the court, unless specifically  
7 fixed by statute. Other fees shall include, but not be limited to, witness  
8 fees, appraiser fees, fees for service of process, fees for depositions,  
9 alternative dispute resolution fees, transcripts and publication, attorney  
10 fees, court costs from other courts and any other fees and expenses  
11 required by statute. All additional court costs shall be taxed and billed  
12 against the parties as directed by the court. No sheriff in this state shall  
13 charge any mileage for serving any papers or process.

14 Sec. 3. K.S.A. 2012 Supp. 60-303 and 60-2001 are hereby repealed.

15 Sec. 4. This act shall take effect and be in force from and after its  
16 publication in the Kansas register.