

HOUSE BILL No. 2081

AN ACT concerning civil procedure and civil actions; relating to temporary restraining orders; docket fees and costs; poverty affidavits; redemption of real property; asset seizure and forfeiture; unconscionable act or practice under the Kansas consumer protection act; amending K.S.A. 60-903 and K.S.A. 2012 Supp. 60-2001, 60-2414, 60-4104 and 60-4105 and repealing the existing sections.

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

Section 1. K.S.A. 60-903 is hereby amended to read as follows: 60-903. ~~(a) No notice or bond required. A restraining order may issue without notice or bond, except as provided in subsection (b) of K.S.A. 60-904, and amendments thereto, but if it appears to the judge that a restraining order may result in damage to the party restrained, a bond to secure payment of any damages sustained may be required. An application for a restraining order shall also be considered as an application for a temporary injunction and either party may give notice of hearing thereon. The order shall remain in force until the hearing on the application for a temporary injunction.~~

(a) Temporary restraining order; issuing without notice. Except as provided in subsection (b) of K.S.A. 60-904, and amendments thereto, the court may issue a temporary restraining order without notice or bond to the adverse party or its attorney only if:

(1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition;

(2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required; and

(3) notice of the issuance of a temporary restraining order is provided to the attorney general of the state of Kansas if the adverse party is the state of Kansas or an agency, officer or employee thereof, or to the appropriate city clerk or county clerk if the adverse party is a city or county or an agency, officer or employee thereof.

(b) Contents; expiration. Every temporary restraining order issued without notice must state the date and hour it was issued, describe the injury and state why it is irreparable, state why the order was issued without notice and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry, not to exceed 14 days, that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(c) Expediting the temporary injunction hearing. If the temporary restraining order is issued without notice, the motion for a temporary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion, and if the party does not, the court must dissolve the order.

(d) Service. Where a temporary restraining order is issued without notice, it shall be served upon each party restrained in the manner prescribed for personal service of a summons.

(e) Motion to Dissolve. On two days' notice to the party who obtained the temporary restraining order without notice, or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(f) Security. Unless otherwise provided by statute or this section, the court may issue a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully restrained. The state of Kansas or an agency, officer or employee thereof, is not required to give security. For any city or county or an agency, officer or employee thereof, at the discretion of the judge, the security required by this subsection may be waived.

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

or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

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

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

State of Kansas, _____ County.

~~In the district court of the county, I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee set forth a factual basis upon which the plaintiff alleges by reason of poverty an inability to pay a docket fee, including, but not limited to, the source and amount of the plaintiff's weekly income. Such affidavit shall be signed and sworn to by the plaintiff under oath, before one who has authority to administer the oath, under penalty of perjury, K.S.A. 2012 Supp. 21-5903, and amendments thereto. The form of the affidavit shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.~~

(3) *Court review; grounds for dismissal; service of process.* The court shall review any petition authorized for filing under this subsection. Upon such review, if the court finds that the plaintiff's allegation of poverty is untrue, the court shall direct the plaintiff to pay the docket fee or dismiss the petition without prejudice. Notwithstanding K.S.A. 60-301, and amendments thereto, service of process shall not issue unless the court grants leave following its review.

(c) *Disposition of fees.* The docket fees and the fees for service of process shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. For every person to be served by the sheriff, the persons requesting service of process shall provide proper payment to the clerk and the clerk of the district court shall forward the service of process fee to the sheriff in accordance with K.S.A. 28-110, and amendments thereto. The service of process fee, if paid by check or money order, shall be made payable to the sheriff. Such service of process fee shall be submitted by the sheriff at least monthly to the county treasurer for deposit in the county treasury and credited to the county general fund. The docket fee shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

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

Sec. 3. K.S.A. 2012 Supp. 60-2414 is hereby amended to read as follows: 60-2414. (a) *Right of redemption by defendant owner.* Except as stated in subsection (m) and as otherwise provided by law, the defendant owner may redeem any real property sold under execution, special execution or order of sale, at any time within 12 months from the day of sale, for the amount paid by the current holder of the certificate of purchase, including expenses incurred by the holder of the certificate of purchase in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. The defendant owner in the meantime shall be entitled to the possession of the property. If the court finds after hearing, either before or after sale, upon not less than 21 days' notice to all parties, that the property has been abandoned, or is not occupied in good faith, the period of redemption for the defendant owner may be shortened or extinguished by the court. The right of redemption shall not apply to oil and gas leaseholds. Except for mortgages covering agricultural lands or *for mortgages covering* single or two-family dwellings owned by or held in trust for natural persons *owning or holding such dwelling as their residence*, the mortgagor may agree in the mortgage instrument to a shorter period of redemption than 12 months or may wholly waive the period of redemption.

(b) *Redemption by lien creditor.* Except as provided in subsection (m), for the first three months of the redemption period, if any, the right of the defendant owner or successors and assigns to redeem is exclusive. If no redemption is made by the defendant owner during the time in which the defendant owner has the exclusive right to redeem, any creditor referred to in subsection (c) may redeem the property during the balance of the redemption period remaining. If the defendant owner has waived the right of redemption, a creditor shall have a right to redeem the property for a period of three months from the date of the judicial sale. If the defendant owner has agreed to a period of redemption of three months or less, a creditor shall have a right to redeem for a period of three months from the date of expiration of the defendant owner's redemption period. If the court shortens or extinguishes the period of redemption because of abandonment or lack of good faith occupation as provided in subsection (a), the court shall specify in the order a time not to exceed three months during which a creditor may redeem. The first creditor redeeming must pay only the amount of the successful sale bid, the expenses incurred by the holder of the certificate in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. After redemption by a creditor, no further redemption shall be allowed except by the defendant owner or such owner's successors and assigns. If a creditor redeems during the period of redemption for the defendant owner, the defendant owner shall have the balance of such period, but in no event less than 14 days from the filing of the affidavit required in subsection (f), to redeem from the creditor. When the defendant owner or such owner's successors and assigns redeem subsequent to redemption by a creditor, the defendant owner or such owner's successors and assigns shall pay an amount equal to the redemption amount paid by such creditor, plus the amount required by subsection (f), and expenses incurred by the creditor in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption.

(c) *Creditors who may redeem.* Any creditor whose claim is or becomes a lien prior to the expiration of the time allowed by law for the redemption by creditors may redeem. A mortgagee may redeem upon the terms prescribed by this section before or after the debt secured by the mortgage falls due.

(d) *Terms of redemption; rights of parties.* During the period allowed for redemption, the holder of the certificate of purchase or the creditor who has redeemed may pay the taxes on the lands sold, insurance premiums on the improvements thereon, other sums necessary to prevent waste, and interest or sums due, upon any prior lien or encumbrance on the real property. Upon the redemption of the property, the holder of the certificate or the creditor who has redeemed shall be entitled to repayment of all sums thus paid, together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto. All

expenses incurred by the holder of the certificate or the creditor who has redeemed shall be as shown by receipts or vouchers filed in the office of the clerk of the district court.

(e) *Effect of failure of debtor to redeem; deficiency.* If the defendant owner or such owner's successors or assigns fail to redeem as provided in this section, the holder of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period will hold the property absolutely. If it is held by a redeeming creditor, the lien and the claim out of which it arose will be held to be extinguished, unless the redeeming creditor is unwilling to hold the property and credit the defendant owner with the full amount of the redeeming creditor's lien and, at the time of redemption, files with the clerk of the district court a statement of the amount that the redeeming creditor is willing to credit on the claim. If the redeeming creditor files such a statement and the defendant owner or such owner's successors and assigns fail to redeem, the creditor's claim shall be extinguished by the amount in the statement. The sheriff, at the end of the redemption period, shall execute a deed to the current owner of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period.

(f) *Mode of redemption.* The party redeeming shall pay the money into the office of the clerk of the district court for the use of the persons entitled to it. The clerk shall give a receipt for the money, stating the purpose for which it is paid. The clerk shall also enter the transaction on the appearance docket of the case, showing the amount paid. A redeeming creditor, or agent of the creditor, shall also file an affidavit stating as nearly as practicable the amount still unpaid due on the claim of that creditor and any lesser amount the creditor is willing to credit on the claim in accordance with subsection (e). The creditor's claim, or such lesser amount as the creditor is willing to credit on the claim in accordance with subsection (e), shall be added to the redemption amount to be paid by the defendant owner or such owner's successors and assigns.

(g) *Redemption of property sold in parcels, or undivided portions.* Whenever the property has been sold in parcels, any distinct portion of that property may be redeemed by itself. If a creditor has redeemed, the amount of the creditor's claim or such lesser amount as the creditor is willing to credit on the claim as stated in the affidavit under subsection (f) shall be added to each parcel sold pro rata in proportion to the amount for which it was originally sold. When the interests of several tenants in common have been sold on execution the undivided portion of any or either of them may be redeemed separately.

(h) *Transfer of right of redemption.* The rights of the defendant owner in relation to redemption may be assigned or transferred, and the assignee or transferee shall have the same right of redemption as the defendant owner. The assigned or transferred right of redemption shall not be subject to levy or sale on execution.

(i) *Holder of legal title.* The holder of the legal title at the time of issuance of execution or order of sale shall have the same right of redemption upon the same terms and conditions as the defendant in execution and shall be entitled to the possession of the property the same as the defendant in execution.

(j) *Injury or waste after sale.* After the sheriff makes the deed to the purchaser or party entitled to a deed under sale as provided in this section, the purchaser or party may assert a claim for damages against any person committing or permitting any injury or waste upon the property purchased after the sale and before possession is delivered under the conveyance.

(k) *Second sale not permitted.* Real estate once sold upon order of sale, special execution or general execution shall not again be liable for sale for any balance due upon the judgment or decree under which it is sold, or any judgment or lien inferior thereto, including unadjudicated junior liens filed after the petition is filed in the district court to foreclose the senior lien against the real estate.

(l) *Injunction or receiver to protect property.* The holder of the certificate of purchase shall be entitled to prevent any waste or destruction of the premises purchased. For that purpose the court, on proper showing, may issue an injunction or, when required to protect the premises against waste, appoint a receiver who shall hold the premises until the purchaser is entitled to a deed. The receiver may rent, control and man-

age the premises but the income during that time, except the fees and expenses of the receiver and the amount that is necessary to keep up repairs, prevent waste and pay real estate taxes and insurance premiums, shall go to the person who otherwise would be entitled to possession during the period of redemption.

(m) *Owners reduced redemption period.* In the event a default occurs in the conditions of the mortgage or instrument of the most senior lien foreclosed before 1/3 of the original indebtedness secured by the mortgage or lien has been paid, the court shall order a redemption period of three months. If, after proper showing, the court finds that the total outstanding amount of all mortgages or liens is less than 1/3 of the market value of the property, the court shall order a redemption period of 12 months. If the court finds after a hearing with not less than 21 days' notice to all parties, that the defendant owner has involuntarily lost such owner's primary source of income after the date of the foreclosure sale and prior to expiration of a three-month period of redemption, the court may extend the three-month period of redemption an additional three months. If the court orders a redemption period of six months or less, the right of the defendant owner or successors and assigns to redeem is exclusive for the first two months of the redemption period. This subsection shall not apply in the event redemption rights have been shortened, waived or terminated pursuant to subsection (a).

Sec. 4. K.S.A. 2012 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

- (a) All offenses which statutorily and specifically authorize forfeiture;
- (b) violations involving controlled substances, as described in K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto;
- (c) theft, as defined in K.S.A. 2012 Supp. 21-5801, and amendments thereto;
- (d) criminal discharge of a firearm, as defined in subsections (a)(1) and (a)(2) of K.S.A. 2012 Supp. 21-6308, and amendments thereto;
- (e) gambling, as defined in K.S.A. 2012 Supp. 21-6404, and amendments thereto, and commercial gambling, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-6406, and amendments thereto;
- (f) counterfeiting, as defined in K.S.A. 2012 Supp. 21-5825, and amendments thereto;
- (g) unlawful possession *or use* of a scanning device or reencoder, as described in K.S.A. 2012 Supp. 21-6108, and amendments thereto;
- (h) medicaid fraud, as described in K.S.A. 2012 Supp. 21-5925 through 21-5934, and amendments thereto;
- (i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;
- (j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;
- (k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;
- (l) furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 2012 Supp. 21-5423, and amendments thereto;
- (m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6414, and amendments thereto;
- (n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6417, and amendments thereto;
- (o) prostitution, as defined in K.S.A. 2012 Supp. 21-6419, and amendments thereto, promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, and patronizing a prostitute, as defined in K.S.A. 2012 Supp. 21-6421, and amendments thereto;

- (p) human trafficking and aggravated human trafficking, as defined in K.S.A. 2012 Supp. 21-5426, and amendments thereto;
- (q) violations of the banking code, as described in K.S.A. 9-2012, and amendments thereto;
- (r) mistreatment of a dependent adult, as defined in K.S.A. 2012 Supp. 21-5417, and amendments thereto;
- (s) giving a worthless check, as defined in K.S.A. 2012 Supp. 21-5821, and amendments thereto;
- (t) forgery, as defined in K.S.A. 2012 Supp. 21-5823, and amendments thereto;
- (u) making false information, as defined in K.S.A. 2012 Supp. 21-5824, and amendments thereto;
- (v) criminal use of a financial card, as defined in K.S.A. 2012 Supp. 21-5828, and amendments thereto;
- (w) unlawful acts concerning computers, as described in K.S.A. 2012 Supp. 21-5839, and amendments thereto;
- (x) identity theft and identity fraud, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6107, and amendments thereto;
- (y) electronic solicitation, as defined in K.S.A. 2012 Supp. 21-5509, and amendments thereto; ~~and~~
- (z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto;
- (aa) *indecent solicitation of a child and aggravated indecent solicitation of a child, as defined in K.S.A. 2012 Supp. 21-5508, and amendments thereto; and*
- (bb) *sexual exploitation of a child, as defined in K.S.A. 2012 Supp. 21-5510, and amendments thereto.*

Sec. 5. K.S.A. 2012 Supp. 60-4105 is hereby amended to read as follows: 60-4105. The following property is subject to forfeiture:

- (a) Property described in a statute authorizing forfeiture;
- (b) except as otherwise provided by law, all property, of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:
 - (1) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or
 - (2) used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, including, but not limited to, any *electronic device*, computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of a ~~violation of K.S.A. 2012 Supp. 21-6108~~ *an offense listed in K.S.A. 60-4104*, and amendments thereto;
- (c) all proceeds of any conduct giving rise to forfeiture;
- (d) all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;
- (e) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;
- (f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;
- (g) contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in this act;
- (h) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and
- (i) any items bearing a counterfeit mark.

New Sec. 6. (a) The conduct prohibited by K.S.A. 2012 Supp. 21-6107, and amendments thereto, constitutes an unconscionable act or practice in violation of K.S.A. 50-627, and amendments thereto, and any person who engages in such conduct shall be subject to the remedies and penalties provided by the Kansas consumer protection act.

(b) For the purposes of the remedies and penalties provided by the Kansas consumer protection act:

- (1) The person committing the conduct prohibited by K.S.A. 2012

Supp. 21-6107, and amendments thereto, shall be deemed the supplier, and the person who is the victim of such conduct shall be deemed the consumer; and

(2) proof of a consumer transaction shall not be required.

(c) This section shall be part of and supplemental to the Kansas consumer protection act and shall be known and may be cited as the Wayne Owen law.

Sec. 7. K.S.A. 60-903 and K.S.A. 2012 Supp. 60-2001, 60-2414, 60-4104 and 60-4105 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.