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**TO:** Senate Judiciary Committee

**FROM:** Kansas Judicial Council – Nancy Strouse

**DATE:** January 14, 2016

**RE:** Judicial Council Testimony on SB 319

The Judicial Council supports SB 319, which corrects a reference in K.S.A. 61-2708. The citation in this statute to “article 19 of chapter 61” was never amended when the Council’s proposed revision of the code of civil procedure for limited actions was passed 15 years ago.

During the 2000 legislative session, a new code was enacted and the old statutes were repealed. K.S.A. 61-2708 currently refers to article 19 for venue provisions, although article 19 was repealed as of January 1, 2001. In the new code, venue is covered in article 34.

While this may seem like a very small change, it is important. It is currently unclear what law applies to small claims venue issues. I have been contacted by district judges and the Office of the Attorney General expressing concerns about the absence of venue provisions in small claims actions as a result of the erroneous reference to a repealed article.

The Judicial Council recommends that SB 319 be passed to delete from K.S.A. 61-2708 the reference to repealed article 19 and replace it with the correct reference to article 34.

## Chapter 61.—PROCEDURE, CIVIL, FOR LIMITED ACTIONS

### Law Review and Bar Journal References:

“Y2K: An active year for judicial legislation,” Paul T. Davis,  
69 J.K.B.A. No. 7, 12 (2000).

### Articles

1. JURISDICTION. 61-101 to 61-109 (Not in active use).
2. COMMENCEMENT OF AN ACTION. 61-201 to 61-209 (Not in active use).
3. ARREST AND BAIL. 61-301 to 61-310 (Not in active use).
4. ATTACHMENT AND GARNISHMENT. 61-401 to 61-432 (Not in active use).
5. REPLEVIN. 61-501 to 61-516 (Not in active use).
6. BILL OF PARTICULARS. 61-601 to 61-604 (Not in active use).
7. CHANGE OF VENUE. 61-701 to 61-707 (Not in active use).
8. TRIAL. 61-801 to 61-832 (Not in active use).
9. JUDGMENT. 61-901 to 61-907 (Not in active use).
10. APPEAL. 61-1001 to 61-1014 (Not in active use).
11. STAY OF EXECUTION. 61-1101 to 61-1104 (Not in active use).
12. EXECUTIONS. 61-1201 to 61-1224 (Not in active use).
13. FORCIBLE ENTRY AND DETAINER. 61-1301 to 61-1314 (Not in active use).
14. CONSTABLES. 61-1401 to 61-1413 (Not in active use).
15. MISCELLANEOUS PROVISIONS. 61-1501 to 61-1520 (Not in active use).
16. PREFATORY. 61-1601 to 61-1608. (Not in active use).
17. RULES OF PROCEDURE. 61-1701 to 61-1729. (Not in active use).
18. PROCESS. 61-1801 to 61-1807. (Not in active use).
19. VENUE. 61-1901 to 61-1909. (Not in active use).
20. ATTACHMENT AND GARNISHMENT. 61-2001 to 61-2014. (Not in active use).
21. APPEALS. 61-2101 to 61-2109. (Not in active use).
22. EXECUTIONS AND ORDERS OF SALE. 61-2201 to 61-2204. (Not in active use).
23. FORCIBLE DETAINER. 61-2301 to 61-2311. (Not in active use).
24. REPLEVIN AND FORECLOSURE OF SECURED INTERESTS. 61-2401 to 61-2405. (Not in active use).
25. COSTS. 61-2501 to 61-2504. (Not in active use).
26. GENERAL PROVISIONS. 61-2601 to 61-2605. (Not in active use).
27. SMALL CLAIMS PROCEDURE. 61-2701 to 61-2714.
28. PREFATORY. 61-2801 to 61-2806.
29. PLEADINGS. 61-2901 to 61-2912.
30. PROCESS. 61-3001 to 61-3006.
31. DISCOVERY. 61-3101 to 61-3106.
32. PRETRIAL AND TRIAL. 61-3201, 61-3202.
33. JUDGMENT. 61-3301 to 61-3304.
34. VENUE. 61-3401 to 61-3409.
35. ATTACHMENT AND GARNISHMENT. 61-3501 to 61-3516.
36. EXECUTIONS. 61-3601 to 61-3611.
37. REPLEVIN AND FORECLOSURE OF SECURED INTERESTS. 61-3701 to 61-3705.
38. EVICTIONS. 61-3801 to 61-3808.
39. APPEALS. 61-3901 to 61-3909.

## CASE ANNOTATIONS

1. Section applied; appeal time under 61-2102 for limited actions tolled by 60-2103(a). *Squires v. City of Salina*, 9 K.A.2d 199, 200, 201, 675 P.2d 926 (1984).

2. Procedure for plaintiff to dismiss limited action stated in 60-241, which is incorporated into limited actions code. *Patterson v. Brouhard*, 246 K. 700, 704, 792 P.2d 983 (1990).

3. Amendment to petition allowed to correct typographical error to reflect case is limited action. *Hole-in-One, Inc., v. Kansas Industrial Land Corp.*, 22 K.A.2d 197, 204, 913 P.2d 1225 (1996).

**61-1725a.**

**History:** L. 1979, ch. 80, § 3; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

## CASE ANNOTATIONS

1. Where petition in limited action fails to set out times and places, defendant may seek to serve interrogatories under this section. *Mitchell v. Wiltfong*, 4 K.A.2d 231, 235, 604 P.2d 79.

**61-1726.**

**History:** L. 1969, ch. 290, § 61-1726; L. 1976, ch. 258, § 21; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**61-1727.**

**History:** L. 1969, ch. 290, § 61-1727; Repealed, L. 1976, ch. 258, § 66; Jan. 10, 1977.

**61-1728.**

**History:** L. 1969, ch. 290, § 61-1728; L. 1976, ch. 258, § 22; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**61-1729.**

**History:** L. 1990, ch. 212, § 7; L. 1997, ch. 173, § 37; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

## Article 18.—PROCESS

**61-1801.**

**History:** L. 1969, ch. 290, § 61-1801; L. 1976, ch. 258, § 23; L. 1986, ch. 215, § 19; L. 1990, ch. 202, § 16; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**

61-203.

**61-1802.**

**History:** L. 1969, ch. 290, § 61-1802; L. 1990, ch. 202, § 17; L. 1994, ch. 273, § 15; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**

61-203, 61-204, 61-209, 61-603.

**61-1803.**

**History:** L. 1969, ch. 290, § 61-1803; L. 1976, ch. 258, § 24; L. 1977, ch. 112, § 32; L. 1982, ch.

244, § 2; L. 1986, ch. 215, § 20; L. 1990, ch. 202, § 18; L. 1992, ch. 290, § 3; L. 2000, ch. 175, § 9; Repealed, L. 2001, ch. 211, § 18; July 1.

**Source or prior law:**

61-203, 61-1519.

## CASE ANNOTATIONS

1. Cited; whether trial court lacked personal jurisdiction because out-of-state service by corporation was invalid examined. *In re Marriage of Welliver*, 254 K. 801, 804, 869 P.2d 653 (1994).

**61-1804.**

**History:** L. 1969, ch. 290, § 61-1804; L. 1976, ch. 258, § 25; Repealed, L. 1982, ch. 244, § 3; July 1.

**Source or prior law:**

61-1512, 61-1513; see, also, Mo. Rev. Stats. § 517.100.

**61-1805.**

**History:** L. 1969, ch. 290, § 61-1805; L. 1970, ch. 235, § 3; L. 1976, ch. 258, § 26; L. 1981, ch. 238, § 2; L. 1986, ch. 215, § 18; L. 1990, ch. 202, § 19; L. 1994, ch. 273, § 16; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**

61-204 to 61-208.

## CASE ANNOTATIONS

1. Constitutionality upheld; attempted service of aid in execution order hereunder void; indirect contempt judgment reversed. *Threadgill v. Beard*, 225 K. 296, 299, 300, 301, 590 P.2d 1021.

2. Defendant's mere absence from state did not toll statute of limitations. *Gideon v. Gates*, 5 K.A.2d 23, 27, 611 P.2d 166.

**61-1806.**

**History:** L. 1969, ch. 290, § 61-1806; L. 1985, ch. 198, § 2; L. 1990, ch. 202, § 20; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**61-1807.**

**History:** L. 1969, ch. 290, § 61-1807; L. 1975, ch. 306, § 7; L. 1990, ch. 202, § 21; L. 1994, ch. 273, § 17; L. 2000, ch. 175, § 10; Repealed, L. 2001, ch. 211, § 18; July 1.

**Source or prior law:**

61-204.

## CASE ANNOTATIONS

1. Summary judgment for creditor affirmed. *Porter v. Stomont-Vail Hospital*, 228 K. 641, 644, 621 P.2d 411.

## Article 19.—VENUE

**61-1901.**

**History:** L. 1969, ch. 290, § 61-1901; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.



**61-1902.**

**History:** L. 1969, ch. 290, § 61-1902; L. 1976, ch. 258, § 27; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-101.

**61-1903.**

**History:** L. 1969, ch. 290, § 61-1903; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-205.

**61-1904.**

**History:** L. 1969, ch. 290, § 61-1904; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-207.

**61-1905.**

**History:** L. 1969, ch. 290, § 61-1905; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-205, 61-207.

**61-1906.**

**History:** L. 1969, ch. 290, § 61-1906; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**61-1907.**

**History:** L. 1969, ch. 290, § 61-1907; L. 1976, ch. 258, § 28; L. 1977, ch. 109, § 38; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-701 to 61-707.

**61-1908.**

**History:** L. 1969, ch. 290, § 61-1908; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-701.

**61-1909.**

**History:** L. 1969, ch. 290, § 61-1909; L. 1976, ch. 258, § 29; L. 1993, ch. 107, § 2; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-704 to 61-707.

## Article 20.—ATTACHMENT AND GARNISHMENT

**61-2001.**

**History:** L. 1969, ch. 290, § 61-2001; L. 1976, ch. 258, § 30; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-401 et seq.

**61-2002.**

**History:** L. 1969, ch. 290, § 61-2002; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-401 et seq.

**61-2003.**

**History:** L. 1969, ch. 290, § 61-2003; L. 1970, ch. 238, § 9; L. 1979, ch. 183, § 4; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-429.

**61-2004.**

**History:** L. 1969, ch. 290, § 61-2004; L. 1972, ch. 222, § 5; L. 1982, ch. 247, § 3; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-1222.

**61-2005.**

**History:** L. 1969, ch. 290, § 61-2005; L. 1970, ch. 238, § 10; L. 1972, ch. 222, § 6; L. 1978, ch. 227, § 6; L. 1983, ch. 198, § 3; L. 1988, ch. 212, § 4; L. 1988, ch. 213, § 4; L. 1994, ch. 273, § 6; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-410, 61-411, 64-429, 61-430, 61-432.

### CASE ANNOTATIONS

1. Garnishee's check passed to holder in due course prior to issuance of a garnishment; no indebtedness due judgment debtor from the garnishee. *Schwerdt v. Speedway Festivals, Inc.*, 7 K.A.2d 40, 44, 637 P.2d 477 (1982).

2. Monthly payments due judgment debtor from former spouse under divorce property settlement subject to garnishment only as they come due. *Curriel v. Quinn*, 17 K.A.2d 125, 127, 832 P.2d 1206 (1992).

**61-2006.**

**History:** L. 1969, ch. 290, § 61-2006; L. 1970, ch. 238, § 11; L. 1972, ch. 222, § 7; L. 1983, ch. 198, § 4; L. 1988, ch. 212, § 5; L. 1994, ch. 273, § 7; Repealed, L. 2000, ch. 161, § 117; Jan. 1, 2001.

**Source or prior law:**  
61-412, 61-414, 61-416, 61-417, 61-427, 61-431.

### CASE ANNOTATIONS

1. Answer to a garnishment, although not meeting all of the statutory requirements, was sufficient to constitute appearance by garnishee. *Schwerdt v. Speedway Festivals, Inc.*, 7 K.A.2d 40, 42, 637 P.2d 477 (1982).

(d) In cases where no service is had, for good cause shown, the court may set aside a default judgment pursuant to the applicable provisions of subsection (b) of K.S.A. 60-260, and amendments thereto.

**History:** L. 2000, ch. 161, § 33; Jan. 1, 2001.

**Source or Prior Law:**  
61-1721.

#### CASE ANNOTATIONS

1. Defendant's failure to file motion in small claims court to set aside default judgment does not deprive district court of jurisdiction but district court was limited to determining whether small claims court erred in granting default judgment. *Frost v. Cook*, 30 K.A.2d 1270, 58 P.3d 112 (2002).

**61-3302. Judgments.** (a) A judgment may be entered by master or other journal entry or judgment form approved by a judge. The judgment shall be effective from the date the journal entry or judgment form is filed with the clerk of the court.

(b) One or more cases may be shown on a master journal entry or judgment form.

(c) When more than one claim for relief is presented in a lawsuit, the court may direct the entry of a final judgment upon one or more but less than all of the claims upon such terms and conditions as set forth in the judgment of the court.

(d) Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, regardless of whether the party has demanded such relief in such party's pleadings. Upon entry of such judgment, the party in whose favor judgment is entered shall be deemed to have waived such party's right to recover any amount due in excess of such judgment, and such party may not recover in a subsequent lawsuit any amount in excess of such judgment.

(e) Whenever a party has commenced postjudgment proceedings for the enforcement of a judgment, and such judgment is subsequently set aside, reversed on appeal or otherwise nullified, such party shall not be liable for damages as a result of such postjudgment proceedings, unless it can be proven that the judgment upon which such proceedings were based was fraudulently obtained.

**History:** L. 2000, ch. 161, § 34; L. 2002, ch. 157, § 6; July 1.

**Source or Prior Law:**  
61-1722.

#### Law Review and Bar Journal References:

"2002 Legislative Wrap-Up," Paul T. Davis, 71 J.K.B.A. No. 7, 15 (2002).

**61-3303. Interest on judgments.** The provisions of K.S.A. 16-201, 16-204 and 16-205, and amendments thereto, shall apply to judgments entered under the code of civil procedure for limited actions.

**History:** L. 2000, ch. 161, § 35; Jan. 1, 2001.

**Source or Prior Law:**  
61-1723.

**61-3304. Modification of judgment.** The provisions of K.S.A. 60-252, 60-259 and 60-260, and amendments thereto, shall apply to judgments entered under the code of civil procedure for limited actions where such provisions are not inconsistent with other provisions of the code.

**History:** L. 2000, ch. 161, § 36; Jan. 1, 2001.

**Source or Prior Law:**  
61-1721.

#### Article 34.—VENUE

##### 61-3401.

**History:** L. 2000, ch. 161, § 37; Repealed, L. 2002, ch. 157, § 20; July 1.

**Source or Prior Law:**  
61-1901.

**61-3402. Actions against residents.** An action against a resident of this state, other than an action for which venue is otherwise specifically prescribed by law, may be brought in the county in which:

- (a) The defendant resides;
- (b) the plaintiff resides if the defendant is served therein;
- (c) the cause of action arose;
- (d) the defendant has a place of business or of employment if the defendant is served therein;
- (e) the estate of a deceased person is being probated if such deceased person was jointly liable with the defendant and a demand to enforce such liability has been duly exhibited in the probate proceedings of such decedent's estate; or
- (f) there is located tangible personal property which is the subject of an action for the possession thereof if immediate possession is sought in accordance with K.S.A. 61-3701, and amendments thereto, at the time of the filing of the action.

**History:** L. 2000, ch. 161, § 38; Jan. 1, 2001.

**Source or Prior Law:**  
61-1902.



**61-3403. Actions against corporations.**

An action against a domestic corporation, or against a foreign corporation which is qualified to do business in this state, other than an action for which venue is otherwise specifically prescribed by law, may be brought in the county in which:

- (a) Its registered office is located;
- (b) the cause of action arose;
- (c) the defendant is transacting business at the time of the filing of the petition; or
- (d) there is located tangible personal property which is the subject of an action for the possession thereof if immediate possession is sought in accordance with K.S.A. 61-3701, and amendments thereto, at the time of the filing of the action.

**History:** L. 2000, ch. 161, § 39; Jan. 1, 2001.

**Source or Prior Law:**  
61-1903.

**61-3404. Actions against nonresidents and nonqualified corporations.** An action against a nonresident of this state, or against a corporation which is not qualified to do business in this state, other than an action for which venue is otherwise specifically prescribed by law, may be brought in the county in which:

- (a) The plaintiff resides, or if the plaintiff is a corporation, in the county of its registered office or in which it maintains a place of business;
- (b) the defendant is served;
- (c) the cause of action arose;
- (d) the defendant is transacting business at the time of the filing of the petition;
- (e) there is property of the defendant, or debts owing to the defendant; or
- (f) there is located tangible personal property which is the subject of an action for the possession thereof if immediate possession is sought in accordance with K.S.A. 61-3701, and amendments thereto, at the time of the filing of the action.

**History:** L. 2000, ch. 161, § 40; Jan. 1, 2001.

**Source or Prior Law:**  
61-1904.

**61-3405. Actions against public utility, common carrier or transportation system.** Any action brought against a public utility, common carrier or transportation system for any liability or penalty or forfeiture, may be brought in any county into or through which such public utility, common carrier or transportation system operates regularly.

**History:** L. 2000, ch. 161, § 41; Jan. 1, 2001.

**Source or Prior Law:**  
61-1905.

**61-3406. Multiple parties.** If there are several plaintiffs properly joined and venue is determined by the residence of one of them, it shall be necessary that such plaintiff's claim is a substantial part of the action. If there are several defendants properly joined, venue of the action may be determined at the election of the plaintiff as to any one of the defendants against whom a substantial claim exists. If, before trial of an action on the merits is commenced, a party with reference to whom venue was determined ceases to be a party and venue would no longer be proper as to the remaining parties, on the application of any remaining party promptly made, the cause shall be transferred to a court of a county of proper jurisdiction and venue. If there is more than one such county, the transfer shall be to a county selected by the plaintiff.

**History:** L. 2000, ch. 161, § 42; Jan. 1, 2001.

**Source or Prior Law:**  
61-1906.

**61-3407. Change of venue.** In all cases pursuant to the provisions of the code of civil procedure for limited actions in which it shall be made to appear that a fair and impartial trial cannot be had in the county where the suit is pending, for reasons other than the disqualification of the judge, the court, upon application of either party, may change the place of trial to the district court of some county where the objection does not exist.

**History:** L. 2000, ch. 161, § 43; Jan. 1, 2001.

**Source or Prior Law:**  
61-1907.

**61-3408. Time for objection to venue.** Objection to the venue of an action shall not be allowed except on timely motion made and for grounds established before trial of the action is commenced on the merits.

**History:** L. 2000, ch. 161, § 44; Jan. 1, 2001.

**Source or Prior Law:**  
61-1908.

**61-3409. Effect of improper venue.** If an action is commenced in good faith and a subsequent timely objection to the venue is sustained, or if before trial on the merit commences, it is found that no cause of action exists in favor of or against a party upon whom venue was dependent, the action shall be transferred to a court of proper jurisdiction of any county of proper venue. If



there is more than one such county, the transfer shall be to the court of a county selected by the plaintiff. In accordance with K.S.A. 61-4001, and amendments thereto, the receiving district court shall require the payment of an appropriate docket fee from the movant.

**History:** L. 2000, ch. 161, § 45; Jan. 1, 2001.

**Source or Prior Law:**  
61-1909.

### Article 35.—ATTACHMENT AND GARNISHMENT

**61-3501. Attachment.** The provisions of article 7 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, relating to attachment shall govern attachment proceedings for actions pursuant to the code of civil procedure for limited actions, except the provisions of K.S.A. 60-711, and amendments thereto, relating to the appointment of a receiver, and the provisions of article 7 of chapter 60 of the Kansas Statutes Annotated relating to the attachment of real property, shall not be applicable in lawsuits filed under the code of civil procedure for limited actions.

**History:** L. 2000, ch. 161, § 46; Jan. 1, 2001.

**Source or Prior Law:**  
61-2001.

**61-3502. Nature of garnishment.** Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

**History:** L. 2000, ch. 161, § 47; Jan. 1, 2001.

**Source or Prior Law:**  
61-2002.

**61-3503. When garnishment available before judgment.** An order of garnishment before judgment may be obtained only upon order of a judge of the district court pursuant to the procedure to obtain an order of attachment. No order of garnishment may be obtained before judgment where the property sought to be attached is wages earned by the person being garnished.

**History:** L. 2000, ch. 161, § 48; Jan. 1, 2001.

**Source or Prior Law:**  
61-2003.

**61-3504. When garnishment available after judgment.** (a) As an aid to the collection of a judgment, an order of garnishment may be ob-

tained at any time after 10 days following judgment. There is no requirement that an execution first be issued and returned unsatisfied.

(b) The party requesting a garnishment shall file a request in an individual case or by a master request covering more than one case asking the court to issue an order of garnishment. The request shall designate whether the order of garnishment is to be issued to attach earnings or to attach other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor to enforce:

(1) An order of any court for the support of any person;

(2) an order of any court of bankruptcy under chapter 13 of the United States bankruptcy code; or

(3) a debt due for any state or federal tax, the direction of the party shall so indicate. No bond is required for an order of garnishment issued after judgment.

**History:** L. 2000, ch. 161, § 49; Jan. 1, 2001.

**Source or Prior Law:**  
61-2004.

**61-3505. Order of garnishment, other than earnings.** This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) The order of garnishment and the appropriate form for the garnishee's answer shall be served on the garnishee in the same manner as process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto, except that the garnishee may be served by any means provided under K.S.A. 61-3001 through 61-3006, and amendments thereto, at the garnishee's business or office location and this shall be considered proper service. A copy of the answer form shall be served if the garnishment order is not served electronically. If the order is served prior to a judgment, the order shall also be served on the judgment debtor, if the judgment debtor can be found, except that the order shall not be served on the judgment debtor until after service has been made on the garnishee. Failure to serve the judgment debtor shall not relieve the garnishee from liability under the order.

(b) The order of garnishment shall have the effect of attaching:

(1) All intangible property, funds, credits or other indebtedness belonging to or owing the judgment debtor, other than earnings, which is in