

CORRECTED

Session of 2020

SENATE BILL No. 253

By Senator Denning

1-10

1 AN ACT concerning service of process; relating to the secretary of state;
2 nonresident drivers or their representatives; domestic or foreign
3 business entities; amending K.S.A. 8-402 and K.S.A. 2019 Supp. 60-
4 304 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 8-402 is hereby amended to read as follows: 8-402.
8 ~~The manner of procuring and serving process in any cause, brought~~
9 ~~pursuant to the preceding section, shall be as follows, to wit Service of~~
10 ~~process under K.S.A. 8-401, and amendments thereto, shall be made as~~
11 ~~follows:~~

12 (a) (1) The plaintiff shall file a verified petition in the district court in
13 the county where the cause of action arose or the plaintiff resides, showing
14 a cause of action against the defendant of the class contemplated in K.S.A.
15 8-401, *and amendments thereto*, and shall further show in ~~said~~ the petition,
16 or by affidavit, to the satisfaction of the ~~judge of said~~ court, *the following:*
17 (A) That the defendant is one of the persons contemplated in ~~said~~ K.S.A. 8-
18 401, *and amendments thereto*; (B) the residence of ~~said~~ the defendant; ~~and~~;
19 (C) a description of the car or motor vehicle claimed to have been operated
20 by the ~~said~~ the defendant or an agent of the defendant, as near as ~~the same~~
21 can reasonably be ascertained by the plaintiff; and (D) the time, place and
22 nature of ~~such~~ the accident; or injury.

23 (2) Upon such showing being made, the ~~judge~~ court shall make an
24 order; *directing a summons to be issued and directing that service of*
25 *process be made on the defendant as provided in ~~said~~ K.S.A. 8-401; and*
26 ~~also, that, and amendments thereto, by delivering a copy of the ~~process,~~~~
27 ~~and summons, petition; and of said order; and a notice that the same have~~
28 ~~been served upon the secretary of state, pursuant to this act, be delivered to~~
29 ~~the defendant by registered mail or personally without the state by a sheriff~~
30 ~~or deputy sheriff in such state. Proof of such service shall be made by~~
31 ~~affidavit filed in said cause by the person making said service, and service~~
32 ~~shall be deemed complete thirty (30) days from the date the affidavit is~~
33 ~~filed by the person making the service stating that such personal service~~
34 ~~has been made on the defendant and giving the date thereof in accordance~~
35 ~~with subsection (b). The court in which the action is pending shall, upon~~
36 ~~affidavit submitted upon behalf of the defendant, grant such additional~~

1 time to answer, or continuances, as shall be reasonably necessary to allow
2 *the* defendant full opportunity to plead and prepare for ~~the trial of the said~~
3 ~~cause~~.

4 (b) (1) *The plaintiff may serve the defendant by providing the*
5 *secretary of state with a copy of the summons, petition and order and the*
6 *last known address, residence or place of abode for each defendant and*
7 *paying the secretary of state a fee in the amount provided in K.S.A. 60-*
8 *304(f), and amendments thereto. The secretary of state shall immediately*
9 *mail to each defendant by return receipt delivery, addressed to the*
10 *defendant at the defendant's last known address, residence or place of*
11 *abode, a notice of service and a copy of the summons, petition and order*
12 *provided by the plaintiff.*

13 (2) *The plaintiff may serve the defendant by causing a notice of*
14 *service and a copy of the summons, petition and order to be personally*
15 *served on the defendant in the foreign state by an adult person not a party*
16 *to the suit or an officer duly qualified to serve legal process in the state or*
17 *jurisdiction where the defendant is found, by delivering such documents to*
18 *the defendant or by offering to make such delivery in the case of a*
19 *defendant who refuses to accept the delivery. The server shall, on or*
20 *before the return day of the process or within such further time as the*
21 *court may allow, file an affidavit or a declaration pursuant to K.S.A. 53-*
22 *601, and amendments thereto, or any other competent proof, stating the*
23 *time, manner and place of service. The plaintiff shall notify the secretary*
24 *of state in writing that the plaintiff is personally serving the defendant and*
25 *shall provide the secretary of state with a copy of the notice of service,*
26 *summons, petition and order provided to the defendant.*

27 (3) *Compliance with this subsection constitutes sufficient service on*
28 *the defendant.*

29 (c) *The notice of service required by subsection (b) shall be signed,*
30 *dated and in substantially the following form: "To (insert the name of each*
31 *defendant and such defendant's last known address, residence or place of*
32 *abode), you will take notice that original process in this suit against you, a*
33 *copy of which is hereto attached, was duly served upon you at Topeka,*
34 *Shawnee County, Kansas, on (insert date) by serving the required*
35 *documents on the secretary of state of the state of Kansas."*

36 (d) *The secretary of state shall keep a record of all process served*
37 *upon the office under this section, and such record shall show the day of*
38 *service of every such process.*

39 Sec. 2. K.S.A. 2019 Supp. 60-304 is hereby amended to read as
40 follows: 60-304. As used in this section, "serving" means making service
41 by any of the methods described in K.S.A. 60-303, and amendments
42 thereto, unless a specific method of making service is prescribed in this
43 section. Except for service by publication under K.S.A. 60-307, and

1 amendments thereto, service of process under this article must be made as
2 follows:

3 (a) *Individual*. On an individual other than a minor or a disabled
4 person, by serving the individual or by serving an agent authorized by
5 appointment or by law to receive service of process. If the agent is one
6 designated by statute to receive service, such further notice as the statute
7 requires must be given. Service by return receipt delivery must be
8 addressed to an individual at the individual's dwelling or usual place of
9 abode and to an authorized agent at the agent's usual or designated address.
10 If the sheriff, party or party's attorney files a return of service stating that
11 the return receipt delivery to the individual at the individual's dwelling or
12 usual place of abode was refused or unclaimed and that a business address
13 is known for the individual, the sheriff, party or party's attorney may
14 complete service by return receipt delivery, addressed to the individual at
15 the individual's business address.

16 (b) *Minor*. On a minor, by serving:

17 (1) The minor; and

18 (2) either:

19 (A) The minor's guardian or conservator, if the minor has one within
20 this state;

21 (B) the minor's father, mother or other person having the minor's care
22 or control or with whom the minor resides; or

23 (C) if service cannot be made as specified in paragraphs (A) or (B),
24 as provided by order of the court.

25 Service by return receipt delivery must be addressed to an individual at
26 the individual's dwelling or usual place of abode and to a corporate
27 guardian or conservator at the guardian's or conservator's usual place of
28 business.

29 (c) *Disabled person*. On a disabled person, as defined in K.S.A. 77-
30 201, and amendments thereto, by:

31 (1) Serving:

32 (A) The person's guardian, conservator or a competent adult member
33 of the person's family with whom the person resides;

34 (B) if the person resides in an institution, the director or chief
35 executive officer of the institution; or

36 (C) if service cannot be made as specified in paragraphs (A) or (B),
37 as provided by order of the court; and

38 (2) unless the court otherwise orders, serving the disabled person.

39 Service by return receipt delivery must be addressed to the director or
40 chief executive officer of an institution at the institution, to any other
41 individual at the individual's dwelling or usual place of abode, and to a
42 corporate guardian or conservator at the guardian's or conservator's usual
43 place of business.

1 (d) *Governmental bodies*. On:

2 (1) A county, by serving one of the county commissioners, the county
3 clerk or the county treasurer;

4 (2) a township, by serving the clerk or a trustee;

5 (3) a city, by serving the clerk or the mayor;

6 (4) any other public corporation, body politic, district or authority, by
7 serving the clerk or secretary or, if the clerk or secretary is not found, any
8 officer, director or manager thereof; and

9 (5) the state or any governmental agency of the state, when subject to
10 suit, by serving the attorney general or an assistant attorney general.

11 Service by return receipt delivery must be addressed to the appropriate
12 official at the official's governmental office. Income withholding orders for
13 support and orders of garnishment of earnings of state officers and
14 employees must be served on the state or governmental agency of the state
15 in the manner provided by K.S.A. 60-723, and amendments thereto.

16 (e) *Corporations, domestic or foreign limited liability companies,*
17 *domestic or foreign limited partnerships, domestic or foreign limited*
18 *liability partnerships and partnerships*. On a domestic or foreign
19 corporation, domestic or foreign limited liability company, domestic or
20 foreign limited partnership, domestic or foreign limited liability
21 partnership or a partnership or other unincorporated association that is
22 subject to suit in a common name, by:

23 (1) Serving an officer, manager, partner or a resident, managing or
24 general agent;

25 (2) leaving a copy of the summons and petition or other document at
26 any of its business offices with the person having charge thereof; or

27 (3) serving any agent authorized by appointment or by law to receive
28 service of process, and if the agent is one authorized by statute to receive
29 service and the statute so requires, by also mailing a copy to the defendant.

30 Service by return receipt delivery on an officer, partner or agent must
31 be addressed to the person at the person's usual place of business.

32 (f) *Resident agent for a corporation, limited liability company,*
33 *limited partnership or limited liability partnership*. A domestic
34 corporation, domestic limited liability company—~~or~~, domestic limited
35 partnership *or domestic limited liability partnership*, and, if it is authorized
36 to transact business or transacts business without authority in this state, a
37 foreign corporation, foreign limited liability company—~~or~~, foreign limited
38 partnership *or foreign limited liability partnership* irrevocably authorizes
39 the secretary of state as its agent to accept on its behalf service of process,
40 or any notice or demand required or permitted by law to be served on it,
41 when: (1) It fails to appoint or maintain in this state a resident agent on
42 whom service may be had; or (2) its resident agent cannot with reasonable
43 diligence be found at the registered office in this state. Service on the

1 secretary of state of any process, notice or demand must be made by
2 delivering to the secretary of state, by personal service or by return receipt
3 delivery, the original and two copies of the process and two copies of the
4 petition, notice or demand. When any process, notice or demand is served
5 on the secretary of state, the secretary must promptly forward a copy of it
6 by return receipt delivery, addressed to the corporation, limited liability
7 company—~~or~~, limited partnership *or limited liability partnership* at its
8 principal office as it appears in the records of the secretary of state, or at
9 the registered or principal office of the corporation, limited liability
10 company—~~or~~, limited partnership *or limited liability partnership* in the state
11 of its incorporation or formation. The secretary of state must keep a record
12 of all processes, notices and demands served on the secretary under this
13 subsection, and must record the time of the service and the action taken by
14 the secretary. A fee of \$40 must be paid to the secretary of state by the
15 party requesting the service of process, to cover the cost of serving
16 process, except the secretary of state may waive the fee for state agencies.
17 The fee must not be included in or paid from any deposit as security for
18 costs or the docket fee required by K.S.A. 60-2001 or 61-4001, and
19 amendments thereto.

20 (g) *Insurance companies or associations.* Service of summons or
21 other process on any insurance company or association, organized under
22 the laws of this state, may also be made by serving the commissioner of
23 insurance in the same manner as provided for service on foreign insurance
24 companies or associations.

25 (h) *Service on an employee.* If a party or a party's agent or attorney
26 files an affidavit or a declaration pursuant to K.S.A. 53-601, and
27 amendments thereto, that to the best of the affiant's or declarant's
28 knowledge and belief the person to be served is employed in this state, and
29 is a nonresident or that the place of residence of the person is unknown,
30 the affiant or declarant may request that the sheriff or other duly
31 authorized person direct an officer, partner, managing or general agent or
32 the individual having charge of the place at which the person to be served
33 is employed, to make the person available to permit the sheriff or other
34 duly authorized person to serve the summons or other process.

35 (i) *Service on a series of a limited liability company.* On a series
36 established under a domestic or foreign limited liability company by
37 service on such domestic or foreign limited liability company in the same
38 manner as described in subsections (e) and (f), but if service is made on
39 the resident, managing, general or other agent of the limited liability
40 company upon which service may be made or the secretary of state on
41 behalf of any such series, such service shall include the name of the
42 limited liability company and the name of such series.

43 Sec. 3. K.S.A. 8-402 and K.S.A. 2019 Supp. 60-304 are hereby

1 repealed.

2 Sec. 4. This act shall take effect and be in force from and after its
3 publication in the statute book.