

Kansas Debt Collection Laws

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Cohen McNeile & Pappas P.C. represents a diverse group of local, regional and national companies to handle their business debt collection, bankruptcy, real and personal property foreclosure and litigation needs. Our attorneys are licensed to practice in both Missouri and Kansas, and are prepared to offer prompt and efficient legal guidance throughout each state, having offices in the Kansas City and St. Louis metropolitan areas. The firm is directed by its board of directors, Clifford A. Cohen, James M. McNeile, and Gregory J. Pappas. Rick Milone has been an associate with the firm since 2008, and Dustin Styles relocated from Nebraska to join as an associate in 2011. Together they've prosecuted hundreds of hearings and trials before numerous state, federal, and appellate courts throughout each of Missouri and Kansas. Mr. Milone and Mr. Styles authored this whitepaper under the direction and supervision of Mr. McNeile.

Statutes of Limitation

In Kansas, [K.S.A. § 60-512](#) states that actions on contract shall be maintained within 3 years. The same qualifications and limitations as stated for Missouri, apply to Kansas.

Kansas domestic judgments become dormant after a period of three years ([K.S.A. § 60-2403](#)) and may be revived up to a period of two years from becoming dormant ([K.S.A. § 60-2404](#)). Kansas domestic judgments for child support after July 1, 2007 never become dormant.

Kansas has common-law remedies to enforce foreign judgments, as well as the Uniform Enforcement of Foreign Judgments Act. [K.S.A. § 60-3001](#), *et seq.*; However, whether and what the statute of limitations might be on a foreign judgment to be enforced in Kansas is not an easy nor straightforward analysis. For an analysis of Kansas limitations on the enforcement of foreign judgments, see [Johnson Bros. Wholesale Liquor Co. v. Clemmons](#), 233 Kan. 405, P.2d 1242 (1983).

Bad Check Law

Passing a worthless check in Kansas is a crime for which an offender may be prosecuted, with additional possible liability for theft by deception. See [K.S.A. § 21-5801](#); and see [State v. Ringi](#), 712 P.2d 1223, 1227 (Kan. 1986). Per the Kansas Constitution's Bill of Rights: "No person shall be imprisoned for debt, except in cases of fraud." Kan. Const. Bill of Rts. § 16. However, Kansas courts construe passing a bad check as a fraudulent act, punishable by imprisonment: "The worthless check statute makes it an offense and punishes a person for a fraud, not because he fails to redeem his check." [State v. Haremza](#), 515

[P.2d 1217, 1224 \(Kan. 1973\)](#). Kansas bad check criminal penalties are governed by [K.S.A. § 21-5821](#).

- A. Check less than \$1,000:
 1. Criminal Charge – Class A misdemeanor
 2. Potential Sentence – Fines reaching \$2,500 and up to 1 year in prison
- B. Check less than \$1,000 but prior conviction within 5 years:
 1. Criminal Charge – Level 9 felony
 2. Potential Sentence – 5-17 months (typically 6 months if 2nd offense)
- C. Checks from \$1,000 - \$25,000:
 1. Criminal Charge – Level 9 felony
 2. Potential Sentence – 5-17 months (typically 6 months if 2nd offense)
- D. Checks from \$25,001 - \$100,000:
 1. Criminal Charge – Level 7 felony
 2. Potential Sentence – 11-34 months (typically 12 months for 1st offense)

Kansas considers all bad-check charges as nonperson offenses. If an offender writes more than 1 bad check in 7 days, the combined amount is used to determine the criminal charge.

Additionally, civil penalties may ensue from a back check: “(a) If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following: (1) Damages equal to three times the amount of the check, but not exceeding the amount of the check by more than \$500; or (2) \$100.” [Kan. Stat. Ann. § 60-2610 \(West\)](#). Civil penalties are enforced by initiating civil actions, and are subject to the applicable statute of limitations, which should always be checked by counsel before filing.

Forgery

Additional criminal penalties relating to bad checks arise in the case of forgery. Forgery is a Kansas Level 8 nonperson felony and carries mandatory sentence. If convicted, an individual could face 7-23 months in prison as well as other mandatory elements. If an individual has prior forgery convictions, they will be used to determine certain mandatory penalties of that person’s sentence. With a forgery conviction, an individual is always facing a potential 7-23 months in prison. An individual could also face the following penalties for forgery:

- First offence: Fines of \$500 or the value of the forged instrument, whichever is less;
- Second offence: Mandatory 30 days in jail and \$1,000 in fines or the value of the forged instrument, whichever is less.
- Third or subsequent offense: Mandatory 45 day jail sentence and fines of \$2,500 or the value of the forged instrument, whichever is less.

- A multiple conviction for the Defendant will result in a mandatory incarceration period. [K.S.A. § 21-5823](#).

General Execution & Garnishment Processes and Exemptions

In Kansas, general executions, garnishments and attachments are governed by Kansas Statutes Annotated Chapter 60 Articles 7 (attachment and garnishment), 22 (*lis pendens* and judgment liens on real property), and 24 (executions and orders of sale). Kansas Statutes Annotated Chapter 61, Article 35 governs attachment and garnishment, and Article 36 governs executions.

In Kansas, certain popular claims of exemption made by consumers against an involuntary execution include homestead claims (to avoid liens), head of household claims entitling a reduction in percentage of monies garnished, certain claims to protected retirement and pension monies, and federally-protected Social Security Income.

In Kansas, the homestead exemption has been interpreted extremely broadly to include funds held in a bank traceable to the sale or liquidation of one homestead intended to be used toward the purchase of a new homestead. Claims of jointly-held property (such as garnished bank funds) are to be proved by the party making the claim that such property is not, in fact, the debtor's.

General Practices Relating to Collections

There are no laws in Kansas particular to controlling the intake process for credit card collection files as opposed to any other general civil litigation matter (and as opposed to any Federal statutes such as the Fair Debt Collections Practices Act, Truth in Lending Act, Fair Credit Reporting Act, or the like). In Kansas, the Rules Governing the Kansas Bar and the Judiciary (Kansas Supreme Court Rule 226 and Kansas Rule of Professional Conduct "KRPC" 1.6) and interpreting case law tend to govern the minimum responsibilities owed to a client, generally, including matters related to the opening, handling, closing, and retention of any given client's file. In Kansas, Kansas Supreme Court Rule 226 (the Rules of Professional Conduct) governs the same.

In Kansas, Rule of Professional Conduct ("KRPC") 1.6 (and interpreting case law) governs the same.

Mo. Rule 4-4.4, "Respect for Rights of Third Persons," and interpreting case law might generally apply under certain circumstances; and, KRPC 4.4, "Respect for Rights of Third Persons," and interpreting case law might generally apply under certain circumstances when handling and safeguarding a debtor's personal and account information.

Otherwise, the practice and procedure of debt collection practice in Kansas will be particular to the firm and its clients' needs and objectives.

Cases Brought by State's Attorney General Related to Debt Collection

Kansas has enacted the "Kansas Consumer Protection Act," [K.S.A. § 50-623](#), *et seq.* with the stated purpose: "This act shall be construed liberally to promote the following policies: (a) To simplify, clarify and modernize the law governing consumer transactions; (b) to protect consumers from suppliers who commit deceptive and unconscionable practices; (c) to protect consumers from unbargainedfor warranty disclaimers; and (d) to provide consumers with a three-day cancellation period for door-to-door sales. [K.S.A. § 50-623](#).

Hundreds of points of law have been published regarding the KCPA and its operation/applicability. However, it is clear that it could apply to a consumer creditor. See [Wenner v. Bank of Am., NA, 637 F. Supp. 2d 944, 956 \(D. Kan. 2009\)](#). The KCPA confers broad regulatory authority upon the Kansas Attorney General to enforce the act, including broad investigation, subpoena, and rule-making authority, as well authorizing the attorney general to hold certain public hearings. The KCPA also authorizes a consumer's private right of action for declaratory relief, civil penalties, or damages (inclusive).

The Kansas Attorney General has issued several opinions regarding debt collection:

Kansas Attorney General Opinion 2012-11: The Kansas Legislature has distinguished between a creditor who *sells* or *assigns* a debt to a collection agent or agency for collection and a creditor who *places* a debt with a collection agency or agency for collection. When a creditor sells or assigns a debt to a collection agent or agency, the assignee is the real party in interest to file suit against the debtor and may sue in its own name under the real party in interest statute [K.S.A. 60-217\(a\)\(1\)](#); but the assignee cannot garnish the debtor's wages under [K.S.A. 60-2310\(d\)](#). The assignee must also comply with applicable laws governing debt collection.

When a creditor places a debt with a collect agent or agency for collection, there is no assignment and the creditor is the real party in interest to file suit against the debtor under [K.S.A. 60-217\(a\)\(1\)](#) and can garnish the debtor's wages under [K.S.A. 60-2310\(d\)](#).

Kansas Attorney General Opinion 93-116: Kansas law has prohibited the business of debt adjusting under [K.S.A. 21-4402](#). Any fee paid by a debtor to an organization, whether established for profit or not, in exchange for that organization distributing money periodically paid by the debtor among specific creditors is "consideration," as that term is used in the Kansas debt adjusting statute. Debt adjusting is classified as a class B nonperson misdemeanor.

[State of Kansas, ex rel. Vern Miller, District Attorney of Sedgwick County v. Midwest Service Bureau of Topeka, Inc., 623 P.2d 1343 \(Kan. 1981\)](#): District Attorney of county brought action against independent debt collection agency for civil penalties under the Kansas Consumer Protection Act (KCPA), [K.S.A. 50-](#)

[623 et seq.](#) The Kansas Supreme Court determined that KCPA should be construed to include within its application independent debt collection agencies. The Court announced that an independent debt collection agency falls within the definition of “supplier” and is subject to the provisions of the KCPA, if it is found that three specific conditions exist: (1) The debt sought to be enforced came into being as a result of a consumer transaction; (2) The parties to the original consumer transaction were a “supplier” and a “consumer” as defined in the act; and (3) The conduct complained of, either deceptive or unconscionable, occurred during the collection of, or an attempt to collect, a debt that arose from the consumer transaction and was owed by the consumer to the original supplier.

Pertinent Laws and Cases Pertaining to Debt Collection in Kansas

Courts and Rules. Aside from small claims or municipal divisions, most collections actions or other civil litigation matters are filed properly in a “Civil” division or “Limited Actions” division of the proper district court. “Limited Actions” are filed pursuant to a limited set of rules of civil procedure contained in K.S.A. Chapter 61, as opposed to K.S.A. Chapter 60 for “Civil” divisions. What here is being called “Civil” divisions are the courts of general jurisdiction in Kansas, which can hear any case not otherwise preempted by operation of federal law and the Supremacy Clause (if any). Magistrate judges with limited jurisdiction may hear cases filed in the Limited Actions courts. However, in certain districts, a district court judge with unlimited jurisdiction may hear a case. The judge’s designation is dispositive of the judge’s jurisdiction, and may alter a party’s rights on appeal. That is—a matter heard by a district court judge with unlimited jurisdiction may have different courses for appeal than the same matter heard by a magistrate judge.

Additionally, K.S.A. Chapters 60 and 61 often parallel each other in procedure, and Chapter 61 often cites directly to a Chapter 60 rule as the relevant authority. But this is not always the case, and is especially relevant in determining certain discovery limitations and deadlines. Also, additional court rules may apply in the prosecution of an action, as are found in the Kansas Supreme Court Rules and Rules Relating to District Courts (and particularly Rules 141 regarding Motions for Summary Judgment, and Rule 170 regarding the service of certain pleadings and papers—referred to in Kansas as “Journal Entries”).

Finally, in each of “Civil” and “Limited Actions” courts, the defendant must file a formal answer to plaintiff’s claim—although the deadlines for doing so will differ per each Chapter, and possibly by the procedure employed by any given district court.

Necessity of a Trial Witness. Similar to Missouri, Kansas has enacted legislation on par with the Uniform Business Records as Evidence law, such that business records are excepted from hearsay objections solely on the grounds that they are business records (but subject to other substantive or procedural objections, such as relevancy) so long as a qualified witness testifies to the mode and preparation of the documents, and satisfies the court that the records and information therein appears to

be reliable. [K.S.A. § 60-460](#). In contrast to Missouri, Kansas has not enacted a statute providing that such evidentiary foundation be set by and through any Business Records Affidavit. As a result, a business records custodian or other qualified witness must be present at all trials in order to lay a proper foundation for the admission of relevant account documentation into evidence over a hearsay objection. The witness need not be present during the production or creation of the record, but merely familiar with the records such that he or she can testify as to the records' general method of preparation, and that such information would have been recorded on the record at or near the time of the events or information so recorded.

Statute of Limitations and “Relation Back.” [K.S.A. 60-203](#), Commencement of Actions: An action is commenced on the day the petition is filed only if the defendant is not within 90 days of the filing; and, the trial court may grant an additional 30 days in which to effect service of process for good cause shown such that the commencement of the action “relates back” to the date the petition actually was filed at the court house. Otherwise, the action is considered commenced not on the date of filing, but on the date the defendant was served. This can be an important analysis when determining whether a matter has been commenced within the applicable statute of limitations.

Kansas Savings Statute. Most generally, when an action is timely commenced but subsequently “fails” (*i.e.*, dismissed) for any reason except upon the merits (*i.e.*, it is not found in favor of defendant or dismissed by the court with prejudice), and it is now outside of the original statute of limitations, a subsequent action may be “refiled” against the same defendant on the same subject matter within 6 months of the failure of the action. The 90/120-day “relation back” analysis applies to whether the refiled action commenced within this savings statute. [K.S.A. § 60-518](#).

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.