

HOUSE BILL No. 2130

By Committee on Judiciary

1-23

1 AN ACT concerning the Kansas probate code; increasing certain dollar
2 amounts; relating to allowance to spouse and minor children;
3 supplemental elective share amount; transfers within two years of
4 death; homestead or homestead allowance; payment of benefits to
5 certain relatives; small estates affidavit for personal property; remission
6 of court costs for small estates; exhibition of demands and allowance
7 without a hearing; refusal to grant letters of administration; appealable
8 orders and bond; requests for transfer from magistrate to district judge;
9 amending K.S.A. 59-6a202, 59-6a205, 59-1507a, 59-2215 and 59-2237
10 and K.S.A. 2022 Supp. 59-403, 59-6a215, 59-1507b, 59-2287, 59-2401
11 and 59-2402a and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2022 Supp. 59-403 is hereby amended to read as
15 follows: 59-403. When a resident of the state dies, testate or intestate, the
16 surviving spouse shall be allowed, for the benefit of such spouse and the
17 decedent's minor children during the period of their minority, from the
18 personal or real property of which the decedent was possessed or to which
19 the decedent was entitled at the time of death, the following:

20 (a) The wearing apparel, family library, pictures, musical instruments,
21 furniture and household goods, utensils and implements used in the home,
22 one automobile, and provisions and fuel on hand necessary for the support
23 of the spouse and minor children for one year.

24 (b) A reasonable allowance of not more than ~~\$50,000~~ \$75,000 in
25 money or other personal or real property at its appraised value in full or
26 part payment thereof, with the exact amount of such allowance to be
27 determined and ordered by the court, after taking into account the
28 condition of the estate of the decedent.

29 The property shall not be liable for the payment of any of decedent's
30 debts or other demands against the decedent's estate, except liens thereon
31 existing at the time of the decedent's death. If there are no minor children,
32 the property shall belong to the spouse; if there are minor children and no
33 spouse, it shall belong to the minor children. The selection shall be made
34 by the spouse, if living, otherwise by the guardian of the minor children. In
35 case any of the decedent's minor children are not living with the surviving
36 spouse, the court may make such division as the court deems equitable.

1 Sec. 2. K.S.A. 59-6a202 is hereby amended to read as follows: 59-
 2 6a202. (a) (1) The surviving spouse of a decedent who dies a resident of
 3 this state has a right of election, under the limitations and conditions stated
 4 in this act, to take an elective-share amount equal to the value of the
 5 elective-share percentage of the augmented estate, determined by the
 6 length of time the spouse and the decedent were married to each other, in
 7 accordance with the following schedule:

8 If the decedent and the spouse 9 were married to each other:	The elective-share percentage is:
10 Less than 1 year.....	Supplemental amount only
11 1 year but less than 2 years.....	3% of the augmented estate
12 2 years but less than 3 years.....	6% of the augmented estate
13 3 years but less than 4 years.....	9% of the augmented estate
14 4 years but less than 5 years.....	12% of the augmented estate
15 5 years but less than 6 years.....	15% of the augmented estate
16 6 years but less than 7 years.....	18% of the augmented estate
17 7 years but less than 8 years.....	21% of the augmented estate
18 8 years but less than 9 years.....	24% of the augmented estate
19 9 years but less than 10 years.....	27% of the augmented estate
20 10 years but less than 11 years.....	30% of the augmented estate
21 11 years but less than 12 years.....	34% of the augmented estate
22 12 years but less than 13 years.....	38% of the augmented estate
23 13 years but less than 14 years.....	42% of the augmented estate
24 14 years but less than 15 years.....	46% of the augmented estate
25 15 years or more.....	50% of the augmented estate

26 (2) If the decedent and the surviving spouse were married to each
 27 other more than once, all periods of marriage to each other are added
 28 together for purposes of this subsection. Periods between marriages are not
 29 counted.

30 (b) If the sum of the amounts described in K.S.A. 59-6a207,
 31 ~~subsection (a)(1) of K.S.A. and 59-6a209(a)(1), and amendments thereto,~~
 32 and that part of the elective-share amount payable from the decedent's
 33 probate estate and nonprobate transfers to others under ~~subsections (b) and~~
 34 ~~(e) of K.S.A. 59-6a209(b) and (c), and amendments thereto,~~ is less than
 35 \$50,000 \$100,000, the surviving spouse is entitled to a supplemental
 36 elective-share amount equal to ~~\$50,000~~ \$100,000, minus the sum of the
 37 amounts described in those sections. The supplemental elective-share
 38 amount is payable from the decedent's probate estate and from recipients
 39 of the decedent's nonprobate transfers to others in the order of priority set
 40 forth in ~~subsections (b) and (e) of K.S.A. 59-6a209(b) and (c), and~~
 41 ~~amendments thereto.~~

42 (c) If the right of election is exercised by or on behalf of the surviving
 43 spouse, the surviving spouse's homestead allowance, and family

1 allowance, if any, are not charged against but are in addition to the
2 elective-share and supplemental elective-share amounts.

3 (d) The right, if any, of the surviving spouse of a decedent who dies a
4 nonresident of this state to take an elective share in property in this state is
5 governed by article 8 of chapter 59 of the Kansas Statutes Annotated, and
6 amendments thereto.

7 Sec. 3. K.S.A. 59-6a205 is hereby amended to read as follows: 59-
8 6a205. The value of the augmented estate includes the value of the
9 decedent's nonprobate transfers to others, not included under K.S.A. 59-
10 6a204, and amendments thereto, of any of the following types, in the
11 amount provided respectively for each type of transfer:

12 (a) Property owned or owned in substance by the decedent
13 immediately before death that passed outside probate at the decedent's
14 death. Property included under this category consists of:

15 (1) Property over which the decedent alone, immediately before
16 death, held a presently exercisable general power of appointment. The
17 amount included is the value of the property subject to the power, to the
18 extent that such property passed at the decedent's death, by exercise,
19 release, lapse, in default, or otherwise, to or for the benefit of any person
20 other than the decedent's estate or surviving spouse.

21 (2) The decedent's fractional interest in property held by the decedent
22 in joint tenancy with the right of survivorship. The amount included is the
23 value of the decedent's fractional interest, to the extent that such fractional
24 interest passed by right of survivorship at the decedent's death to the
25 surviving joint tenant other than the decedent's surviving spouse.

26 (3) The decedent's ownership interest in property or accounts passing
27 to another upon decedent's death. The amount included is the value of the
28 decedent's ownership interest, to the extent that the decedent's ownership
29 interest passed at the decedent's death to or for the benefit of any person
30 other than the decedent's estate or surviving spouse.

31 (4) Proceeds of insurance, including accidental death benefits, on the
32 life of the decedent, if the decedent owned the insurance policy
33 immediately before death or if and to the extent that the decedent alone
34 and immediately before death held a presently exercisable general power
35 of appointment over the policy or its proceeds. The amount included is the
36 value of the proceeds, to the extent that they were payable at the decedent's
37 death to or for the benefit of any person other than the decedent's estate or
38 surviving spouse.

39 (b) Property transferred in any of the following forms by the decedent
40 during marriage:

41 (1) Any irrevocable transfer in which the decedent retained the right
42 to the possession or enjoyment of, or to the income from, the property if
43 and to the extent that the decedent's right terminated at or continued

1 beyond the decedent's death. The amount included is the value of the
2 fraction of the property to which the decedent's right related, to the extent
3 that such fraction of the property passed outside probate to or for the
4 benefit of any person other than the decedent's estate or surviving spouse.

5 (2) Any transfer in which the decedent created a power over income
6 or property, exercisable by the decedent alone or in conjunction with any
7 other person, or exercisable by a nonadverse party, to or for the benefit of
8 the decedent, the creditors of the decedent, the decedent's estate, or
9 creditors of the decedent's estate. The amount included with respect to a
10 power over property is the value of the property subject to the power, and
11 the amount included with respect to a power over income is the value of
12 the property that produces or produced the income, to the extent that the
13 power in either case was exercisable at the decedent's death to or for the
14 benefit of any person other than the decedent's surviving spouse or to the
15 extent that the property passed at the decedent's death, by exercise, release,
16 lapse, in default, or otherwise, to or for the benefit of any person other than
17 the decedent's estate or surviving spouse. If the power is a power over both
18 income and property and the preceding sentence produces different
19 amounts, the amount included is the greater amount.

20 (c) Property that passed during marriage and during the two-year
21 period next preceding the decedent's death as a result of a transfer by the
22 decedent if the transfer was of any of the following types:

23 (1) Any property that passed as a result of the termination of a right
24 or interest in, or power over, property that would have been included in the
25 augmented estate under subparagraph (a)(1), (2), or (3), or under
26 subparagraph (c)(2), if the right, interest, or power had not terminated until
27 the decedent's death. The amount included is the value of the property that
28 would have been included under those subparagraphs, if the property were
29 valued at the time that the right, interest, or power terminated, and is
30 included only to the extent that the property passed upon termination to or
31 for the benefit of any person other than the decedent or the decedent's
32 estate, spouse, or surviving spouse. As used in this subparagraph,
33 "termination," with respect to a right or interest in property, occurs when
34 the right or interest terminated by the terms of the governing instrument or
35 the decedent transferred or relinquished the right or interest, and, with
36 respect to a power over property, occurs when the power terminated by
37 exercise, release, lapse, default, or otherwise, but, with respect to a power
38 described in paragraph (a)(1), "termination" occurs when the power
39 terminated by exercise or release, but not otherwise.

40 (2) Any transfer of or relating to an insurance policy on the life of the
41 decedent if the proceeds would have been included in the augmented estate
42 under subparagraph (a)(4) had the transfer not occurred. The amount
43 included is the value of the insurance proceeds to the extent that the

1 proceeds were payable at the decedent's death to or for the benefit of any
2 person other than the decedent's estate or surviving spouse.

3 (3) Any transfer of property, to the extent not otherwise included in
4 the augmented estate, made to or for the benefit of a person other than the
5 decedent's surviving spouse. The amount included is the value of the
6 transferred property to the extent that the aggregate transfers to any one
7 donee in either of the two years exceeded ~~\$10,000~~ \$25,000.

8 Sec. 4. K.S.A. 2022 Supp. 59-6a215 is hereby amended to read as
9 follows: 59-6a215. A surviving spouse is entitled to the homestead, or in
10 lieu thereof the surviving spouse may elect to receive a homestead
11 allowance of ~~\$50,000~~ \$75,000. The homestead or homestead allowance is
12 exempt from and has priority over all demands against the estate. The
13 homestead or homestead allowance is in addition to any share passing to
14 the surviving spouse by way of elective share.

15 Sec. 5. K.S.A. 59-1507a is hereby amended to read as follows: 59-
16 1507a. (a) If not less than 180 days after the death of an individual entitled
17 at the time of death to a monthly benefit or benefits under title II of the
18 social security act or under any veterans administration program or public
19 or private retirement or annuity plan, all or part of the amount of such
20 benefit or benefits, not in excess of ~~\$5,000~~ \$10,000, is paid to: (1) The
21 surviving spouse; (2) one or more of the deceased's children, or
22 descendants of the deceased's deceased children; (3) the deceased's father
23 or mother; or (4) the deceased's brother or sister; Preference ~~being~~ shall
24 be given in the order named if more than one request for payment has been
25 made by or for the named individuals; Such payment shall be deemed to
26 be a payment to the personal representative of the decedent and shall
27 constitute a full discharge and release from any further claim for such
28 payment to the same extent as if such payment had been made to an
29 executor or administrator of the decedent's estate.

30 (b) The provisions of subsection (a) shall apply only if an affidavit
31 has been made and filed with the appropriate governmental office or
32 private company responsible for the benefit by the surviving spouse or
33 other relative by whom or on whose behalf request for payment is made
34 and such affidavit shows: (1) The date of death of the deceased; (2) the
35 relationship of the affiant to the deceased; (3) that no executor or
36 administrator for the deceased has qualified or been appointed; and (4)
37 that, to the affiant's knowledge, there exists at the time of the filing of such
38 affidavit, no relative of a closer degree of kindred to the deceased than the
39 affiant.

40 Sec. 6. K.S.A. 2022 Supp. 59-1507b is hereby amended to read as
41 follows: 59-1507b. When a resident of the state dies, whether testate or
42 intestate, if the total assets of the estate of the decedent subject to probate
43 do not exceed ~~\$40,000~~ \$75,000 in value, any personal property of

1 whatever nature transferable to the decedent's estate by any entity or
2 person shall be transferred to the successor or successors of the decedent,
3 if entitled thereto by will or by intestate succession, without having been
4 granted letters of administration or letters testamentary, upon such
5 successor's or successors' furnishing the entity or person with an affidavit
6 showing entitlement thereto. Transfer of such personal property to the
7 successor or successors shall be deemed to be a transfer to the personal
8 representative of the decedent, and the receipt of the successor or
9 successors shall constitute a full discharge and release from any further
10 claim for such transfer to the same extent as if the transfer had been made
11 to an executor or administrator of the decedent's estate. The affidavit
12 required herein shall be deemed sufficient if in substantial compliance with
13 the form set forth by the judicial council.

14 Sec. 7. K.S.A. 59-2215 is hereby amended to read as follows: 59-
15 2215. When the total assets of the estate of a decedent or conservatee do
16 not exceed the sum of ~~\$5,000~~ \$10,000 in value, the court may remit the
17 court costs or any part thereof to such estate.

18 Sec. 8. K.S.A. 59-2237 is hereby amended to read as follows: 59-
19 2237. (a) Any person may exhibit a demand against the estate of a
20 decedent by filing a petition for its allowance in the proper district court.
21 Such demand shall be deemed duly exhibited from the date of the filing of
22 the petition. The petition shall contain a statement of all offsets *to* which
23 the estate is entitled. The person exhibiting the demand shall provide a
24 copy of the demand, as filed, to the personal representative of the estate.
25 The court shall from time to time as it deems advisable, and must at the
26 request of the executor or administrator, or at the request of any creditor
27 having exhibited demand, fix the time and place for the hearing of such
28 demands. Notice of the time and place of the demand hearing shall be
29 given in such manner and to such persons as the court shall direct.

30 (b) The verification of any demand may be deemed prima facie
31 evidence of its validity unless a written defense thereto is filed. Upon the
32 adjudication of any demand, the court shall enter its judgment allowing or
33 disallowing it. Such judgment shall show the date of adjudication, the
34 amount allowed, the amount disallowed and classification if allowed.
35 Judgments relating to contingent demands shall state the nature of the
36 contingency.

37 (c) Any demand not exceeding ~~\$5,000~~ \$10,000, other than a demand
38 by the executor or administrator, duly itemized and verified and which is
39 timely filed, may be paid by the executor or administrator without
40 compliance with any of the provisions of this act relating to petition, notice
41 of hearing, allowance by the court or otherwise. If a written defense to the
42 petition of the executor or administrator for a final settlement and
43 accounting is timely filed by any interested party which takes issue with

1 payment of the demand by the executor or administrator, at the hearing on
2 the petition the burden of proof shall be upon the executor or administrator
3 to establish that the demand was due and owing by the estate. If the
4 demand, or any part thereof, is disallowed by the court, the accounting of
5 the executor or administrator shall not be allowed as to the disallowed
6 demand, or part thereof.

7 Sec. 9. K.S.A. 2022 Supp. 59-2287 is hereby amended to read as
8 follows: 59-2287. (a) The district court, in its discretion, may refuse to
9 grant letters in the following cases:

10 (1) When the value of real or personal property owned by the
11 decedent is not greater in amount than is allowed by law as exempt
12 property and the allowance to the surviving spouse or minor children
13 under K.S.A. 59-403, and amendments thereto.

14 (2) When the real and personal estate of the decedent does not exceed
15 ~~\$50,000~~ \$75,000 and the estate is not subject to allowances pursuant to
16 K.S.A. 59-403, and amendments thereto, or such allowances are waived,
17 any heir, devisee, legatee, creditor or other interested person may petition
18 for refusal of letters by giving bond in the sum of not less than the value of
19 the estate. Such bond shall be approved by the district court and
20 conditioned upon the creditor's or heir's assuming the obligation to pay, so
21 far as the assets of the estate will permit, the debts of the decedent in the
22 order of their preference, and to distribute the balance, if any, to the
23 persons entitled thereto under the law, except that real estate sold in
24 accordance with this section shall be deemed to have marketable title as
25 ordered by the court, and no creditor, heir or other person shall be deemed
26 to have an interest after passage of six months following the date of death.

27 (b) Proof may be allowed by or on behalf of the surviving spouse or
28 minor children before the district court of the value and nature of the
29 estate. If the court is satisfied that no estate will be left after allowing
30 to the surviving spouse or minor children their exempt property and statutory
31 allowances, or that the real and personal estate does not exceed ~~\$50,000~~
32 \$75,000 when the petition is filed by a creditor or heir, the court may order
33 that no letters of administration shall be issued on the estate, unless, upon
34 the petition of other creditors, heirs or parties interested, the existence of
35 other or further property is shown.

36 (c) When a petition is filed under this section by a surviving spouse
37 or minor children, notice of the proceeding shall be given pursuant to
38 K.S.A. 59-2222, and amendments thereto.

39 (d) Whenever it appears to the court that further proceedings in the
40 administration of an estate pursuant to this section are unnecessary, the
41 court shall enter an order terminating the administration of such estate.
42 Such order shall be made without notice, unless the court otherwise orders,
43 and it shall be to the effect that, unless further estate of the decedent be

1 discovered, all further settlements and other proceedings concerning the
2 estate be dispensed with and that the surviving spouse and minor children
3 are relieved of any further obligations with respect to the estate. If further
4 estate of the decedent is discovered and administration is had on it, such
5 administration shall not abrogate or invalidate or otherwise affect any
6 right, title or interest in property transferred or vested pursuant to this
7 section unless the court, for good cause shown, otherwise determines and
8 orders.

9 (e) Any will filed pursuant to this section within a period of six
10 months after the death of the testator may be admitted to probate after such
11 six-month period.

12 Sec. 10. K.S.A. 2022 Supp. 59-2401 is hereby amended to read as
13 follows: 59-2401. (a) An appeal from a district magistrate judge to a
14 district judge may be taken no later than 30 days from the date of entry of
15 any of the following orders, judgments or decrees in any case involving a
16 decedent's estate:

17 (1) An order admitting or refusing to admit a will to probate.

18 (2) An order finding or refusing to find that there is a valid consent to
19 a will.

20 (3) An order appointing, refusing to appoint, removing or refusing to
21 remove a fiduciary other than a special administrator.

22 (4) An order setting apart or refusing to set apart a homestead or other
23 property, or making or refusing to make an allowance of exempt property
24 to the spouse and minor children.

25 (5) An order determining, refusing to determine, transferring or
26 refusing to transfer venue.

27 (6) An order allowing or disallowing a demand, in whole or in part,
28 when the amount in controversy exceeds ~~\$5,000~~ \$10,000.

29 (7) An order authorizing, refusing to authorize, confirming or
30 refusing to confirm the sale, lease or mortgage of real estate.

31 (8) An order directing or refusing to direct a conveyance or lease of
32 real estate under contract.

33 (9) Judgments for waste.

34 (10) An order directing or refusing to direct the payment of a legacy
35 or distributive share.

36 (11) An order allowing or refusing to allow an account of a fiduciary
37 or any part thereof.

38 (12) A judgment or decree of partial or final distribution.

39 (13) An order compelling or refusing to compel a legatee or
40 distributee to refund.

41 (14) An order compelling or refusing to compel payments or
42 contributions of property required to satisfy the elective share of a
43 surviving spouse pursuant to K.S.A. 59-6a201 et seq., and amendments

1 thereto.

2 (15) An order directing or refusing to direct an allowance for the
3 expenses of administration.

4 (16) An order vacating or refusing to vacate a previous appealable
5 order, judgment, decree or decision.

6 (17) A decree determining or refusing to determine the heirs, devisees
7 and legatees.

8 (18) An order adjudging a person in contempt pursuant to K.S.A. 59-
9 6a201 et seq., and amendments thereto.

10 (19) An order finding or refusing to find that there is a valid
11 settlement agreement.

12 (20) An order granting or denying final discharge of a fiduciary.

13 (21) Any other final order, decision or judgment in a proceeding
14 involving a decedent's estate.

15 (b) An appeal from the district court to an appellate court taken
16 pursuant to this section shall be taken in the manner provided by chapter
17 60 of the Kansas Statutes Annotated, *and amendments thereto*, for other
18 civil cases.

19 (c) Pending the determination of an appeal pursuant to ~~section~~
20 *subsection* (a) or (b) ~~of this section~~, any order appealed from shall continue
21 in force unless modified by temporary orders entered by the court hearing
22 the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and
23 amendments thereto, shall not stay proceedings under an appeal from the
24 district court to an appellate court.

25 (d) In an appeal taken pursuant to ~~section~~ *subsection* (a) or (b) ~~of this~~
26 ~~section~~, the court from which the appeal is taken may require an
27 appropriate party, other than the state of Kansas, any subdivision thereof,
28 and all cities and counties in this state, to file a bond in such sum and with
29 such sureties as may be fixed and approved by the court to ensure that the
30 appeal will be prosecuted without unnecessary delay and to ensure the
31 payment of all judgments and any sums, damages and costs that may be
32 adjudged against that party.

33 Sec. 11. K.S.A. 2022 Supp. 59-2402a is hereby amended to read as
34 follows: 59-2402a. (a) When a petition is filed in the district court and a
35 district magistrate judge is assigned to hear such petition, any interested
36 party may request the transfer of the matter to the chief judge for
37 assignment to a district judge if the petition is:

- 38 (1) To admit a will to probate;
- 39 (2) to determine venue or a transfer of venue;
- 40 (3) to allow any claim exceeding ~~\$5,000~~ \$10,000 in value;
- 41 (4) for the sale, lease or mortgage of real estate;
- 42 (5) for conveyance of real estate under contract;
- 43 (6) for payment of a legacy or distributive share;

- 1 (7) for partial or final distribution;
2 (8) for an order compelling a legatee or distributee to refund;
3 (9) for an order to determine heirs, devisees or legatees; or
4 (10) for an order which involves construction of a will or other
5 instrument.

6 (b) When a request for such transfer is filed less than three days prior
7 to the commencement of the hearing, the court shall assess the costs
8 occasioned by the subpoena and attendance of witnesses against the party
9 seeking the transfer. Such request may be included in any petition, answer
10 or other pleading, or may be filed as a separate petition, and shall include
11 an allegation that a bona fide controversy exists and that the transfer is not
12 sought for the purpose of vexation or delay. Notice of such request shall be
13 given as ordered by the court.

14 Sec. 12. K.S.A. 59-6a202, 59-6a205, 59-1507a, 59-2215 and 59-2237
15 and K.S.A. 2022 Supp. 59-403, 59-6a215, 59-1507b, 59-2287, 59-2401
16 and 59-2402a are hereby repealed.

17 Sec. 13. This act shall take effect and be in force from and after its
18 publication in the statute book.