

HOUSE BILL No. 2568

AN ACT concerning domestic relations; relating to the Kansas family law code; child support guidelines; amending K.S.A. 2013 Supp. 20-165, 23-2215, 23-2216, 23-2223, 23-2224, 23-2707, 23-3002, 23-3005 and 23-3203 and repealing the existing sections; also repealing K.S.A. 2013 Supp. 23-2217 and 23-2218.

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

Section 1. K.S.A. 2013 Supp. 20-165 is hereby amended to read as follows: 20-165. (a) The supreme court shall adopt rules establishing guidelines for the amount of child support to be ordered in any action in this state including, but not limited to, K.S.A. 39-755 and K.S.A. 2013 Supp. 23-2215, and amendments thereto, article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, and K.S.A. 2013 Supp. 23-2711, and amendments thereto.

(b) In adopting such rules, the court shall consider ~~the criteria in K.S.A. 2013 Supp. 23-2215, and amendments thereto~~ all relevant factors, including, but not limited to:

- (1) *The needs of the child;*
- (2) *the standards of living and circumstances of the parents;*
- (3) *the relative financial means of the parents;*
- (4) *the earning ability of the parents;*
- (5) *the need and capacity of the child for education;*
- (6) *the age of the child;*
- (7) *the financial resources and earning ability of the child;*
- (8) *the responsibility of the parents for the support of others; and*
- (9) *the value of services contributed by both parents.*

Sec. 2. K.S.A. 2013 Supp. 23-2215 is hereby amended to read as follows: 23-2215. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a party's duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child ~~including under article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto. The court may order the payment of all or a portion of the necessary medical expenses incident to the child's birth of the child.~~ The court may order the support and education expenses to be paid by either or both parents for the minor child. ~~When the child reaches 18 years of age, the support shall terminate unless: (1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time; (2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school, or (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year-old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for~~

~~termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3). For purposes of this section, “bona fide high school student” means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). The judgment may require the party to provide a bond with sureties to secure payment. The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court’s judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.~~

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care, as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2013 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or another person or agency if the court finds by written order that: (1) (A) The child is likely to sustain harm if not immediately removed from the home; (B) allowing the child to remain in home is contrary to the welfare of the child; or (C) immediate placement of the child is in the best interest of the child; and (2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child’s home or that an emergency exists which threatens the safety of the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2013 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this ~~paragraph~~ *subsection* shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2013 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2013 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. If a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any order pursuant to the revised Kansas code for

care of children shall take precedence over any similar order under this section.

(f) (1) In entering an original order for support of a child under this section, the court may award an additional judgment to ~~reimburse the expenses of the mother or any other party who made expenditures for~~ support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 2013 Supp. 23-2208, and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(2) *The court may consider any affirmative defenses pled and proved in making an award under this subsection.*

(3) *The amount of any award made under this subsection shall be determined by application of the Kansas child support guidelines. For any period occurring five years or less before or after commencement of the action, there is a rebuttable presumption that such child support guidelines amount reflects the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award has the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.*

~~(g) In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:~~

- ~~(1) The needs of the child.~~
- ~~(2) The standards of living and circumstances of the parents.~~
- ~~(3) The relative financial means of the parents.~~
- ~~(4) The earning ability of the parents.~~
- ~~(5) The need and capacity of the child for education.~~
- ~~(6) The age of the child.~~
- ~~(7) The financial resources and the earning ability of the child.~~
- ~~(8) The responsibility of the parents for the support of others.~~
- ~~(9) The value of services contributed by both parents.~~

~~(h) The provisions of K.S.A. 2013 Supp. 23-3103, and amendments thereto, shall apply to all orders of support issued under this section.~~

~~(i) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 2013 Supp. 23-3401, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.~~

Sec. 3. K.S.A. 2013 Supp. 23-2216 is hereby amended to read as follows: 23-2216. (a) *Costs and attorney fees may be awarded to either party as justice and equity may require. Unless the attorney represents a public agency in an action, the court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.*

(b) *The court may order reasonable fees of counsel and for the child's guardian ad litem and.*

(c) *The court may order other expenses of the action, including blood genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid from the general fund of the county. After payment, the court may tax all, part or none of the expenses as costs in the action. No fee shall be allowed for representation of the petitioner by the county or district attorney.*

(d) *The fee of an expert witness qualified as an examiner of blood types to perform genetic testing, but not appointed by the court, shall be paid by the party calling the expert witness but shall not be taxed as costs in the action.*

Sec. 4. K.S.A. 2013 Supp. 23-2223 is hereby amended to read as follows: 23-2223. (a) Whenever the parents of a minor child desire that the child's birth certificate be amended to add the name of a parent, correct the name of either parent or of the child or change the child's last name to that of either parent, both parents shall appear before a judge of the district court or a hearing officer authorized by rule of the supreme

court to accept voluntary acknowledgments of parentage. The parents shall execute affidavits in the presence of the judge or hearing officer, attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child. If both parents are not residents of this state and are outside this state, both parents shall forward to such judge or hearing officer affidavits, sworn to before a judicial officer of the state in which they reside and attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child.

(b) The judge or hearing officer shall require the parents to exhibit or to forward to the judge or hearing officer evidence of the birth of the child. If the judge or hearing officer finds that the birth certificate of the child fails to name either the father or mother of the child, that the name of either parent or the child is incorrect or that the child's name should be changed to that of either parent, the judge or hearing officer shall forward both parents' affidavits to the state registrar of vital statistics, together with a certified order to prepare a new birth registration in the manner provided by K.S.A. 2013 Supp. 23-2222, and amendments thereto, and to seal the affidavits, court order and original birth certificate and allow inspection of them only as provided therein.

(c) The judge or hearing officer shall return all evidence and other exhibits to the parents of the child. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

~~(d) This statute shall be part of and supplemental to the Kansas parentage act.~~

Sec. 5. K.S.A. 2013 Supp. 23-2224 is hereby amended to read as follows: 23-2224. (a) The court, without requiring bond, may make and enforce orders which:

(1) Restrain the parties from molesting or interfering with the privacy or rights of each other;

(2) confirm the existing de facto custody of the child subject to further order of the court, *if the court has jurisdiction under K.S.A. 23-37,101 et seq., and amendments thereto*;

(3) appoint an expert to conduct genetic tests for determination of paternity as provided in K.S.A. 2013 Supp. 23-2212, and amendments thereto;

(4) order the mother and child and alleged father to contact the court appointed expert and provide tissue samples for testing within 30 days after service of the order;

(5) order the payment of temporary child support pursuant to subsection (c); or

~~(6) the court deems necessary to carry the provisions of the Kansas parentage act~~ *appropriate under the provisions of article 22 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto.*

(b) (1) Interlocutory orders authorized by this section that relate to genetic testing may be issued ex parte, if:

(A) The appointed expert is a paternity laboratory accredited by the American association of blood banks; and

(B) the order does not require an adverse party to make advance payment toward the cost of the test.

(2) If such ex parte orders are issued, and if an adverse party requests modification thereof, the court will conduct a hearing within 10 days of such request.

(c) After notice and hearing, the court shall enter an order for child support during the pendency of the action as provided in this subsection. The order shall be entered if the pleadings and the motion for temporary support, if separate from the pleadings, indicate there is only one presumed father and if probable paternity by the presumed father is indicated by clear and convincing evidence. For purposes of this subsection, "clear and convincing evidence" may be presented in any form, including, but not limited to, an uncontested allegation in the pleadings, an uncontested affidavit or an agreement between the parties. For purposes of this subsection, "clear and convincing evidence" means:

(1) The presumed father does not deny paternity;

(2) the mother and the presumed father were married to each other,

regardless of whether the marriage was void or voidable, at any time between 300 days before the child's birth and the child's birth;

(3) a voluntary acknowledgment of paternity was completed by the mother and the presumed father more than 60 days before the motion was filed and no request to revoke the voluntary acknowledgment has been filed; or

(4) results of genetic tests show the probability of paternity by the presumed father is equal to or greater than 97% and the report was received more than 20 days before the motion was filed, unless written notice of intent to challenge the validity of the report has been timely given.

~~(d) The provisions of this section are part of and supplemental to the Kansas parentage act.~~

Sec. 6. K.S.A. 2013 Supp. 23-2707 is hereby amended to read as follows: 23-2707. (a) *Permissible orders*. After ~~the filing of~~ a petition for divorce, annulment or separate maintenance ~~has been filed~~, and during the pendency of the action ~~prior to~~ *until the entry of final judgment* the judge assigned to hear the action may, without requiring bond, make, *modify, vacate* and enforce by attachment, orders which:

(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the legal custody and residency of and parenting time with the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;

(4) require mediation between the parties on issues, including, but not limited to, child custody, residency, division of property, parenting time and development of a parenting plan;

(5) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case;

(6) require an investigation by court service officers into any issue arising in the action; or

(7) require that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(b) *Ex parte orders*. Orders authorized by subsections (a)(1), (2), (3), (4) and (7) may be entered after ex parte hearing upon compliance with rules of the supreme court, except that no ex parte order shall have the effect of changing the residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 14 days of the date on which a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the action, any other judge of the district court may make any order authorized by this section, including vacation or modification or any order issued by the judge assigned to hear the action.

(c) *Support orders*. (1) An order of support obtained pursuant to this section may be enforced by an order of garnishment as provided in this section.

(2) No order of garnishment shall be issued under this section unless: (A) Fourteen or more days have elapsed since the order of support was served upon the party required to pay the support; and (B) the order of support contained a notice that the order of support may be enforced by garnishment and that the party has a right to request an opportunity for a hearing to contest the issuance of an order of garnishment, if the hearing is requested by motion filed within seven days after service of the order of support upon the party. If a hearing is requested, the court shall hold the hearing within seven days after the motion requesting the hearing is filed with the court or at a later date agreed to by the parties.

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) fourteen or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the seven days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

(d) If an interlocutory order for legal custody, residency or parenting time is sought, the party seeking such order shall file a proposed temporary parenting plan as provided by K.S.A. 2013 Supp. 23-3211, and amendments thereto, at the time such order is sought. If any motion is filed to modify any such interlocutory orders, or in opposition to a request for issuance of interlocutory orders, that party shall attach to such motion or opposition a proposed alternative parenting plan.

(e) *Service of process.* Service of process served under subsection (a)(1) and (2) shall be by personal service and not by certified mail return receipt requested.

Sec. 7. K.S.A. 2013 Supp. 23-3002 is hereby amended to read as follows: 23-3002. (a) In determining the amount to be paid for child support, the court shall ~~consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child follow the Kansas child support guidelines adopted by the supreme court pursuant to K.S.A. 20-165, and amendments thereto.~~

(b) *Any person who files a motion requesting a child support order or modification order shall include in such filing a completed domestic relations affidavit and proposed child support worksheet.*

Sec. 8. K.S.A. 2013 Supp. 23-3005 is hereby amended to read as follows: 23-3005. (a) Subject to the provisions of K.S.A. 23-36,207, and amendments thereto, the court may ~~modify or change~~ any prior child support order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown.

(b) The court may make a modification of child support retroactive to ~~a date at least one month after the date that the motion to modify was filed with the court~~ *the first day of the month following the filing of the motion to modify.* Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto, *until the date of the order.*

Sec. 9. K.S.A. 2013 Supp. 23-3203 is hereby amended to read as follows: 23-3203. In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including, but not limited to:

(a) ~~The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;~~ *Each parent's role and involvement with the minor child before and after separation;*

(b) the desires of the child's parents as to custody or residency;

(c) the desires of ~~the~~ *a child of sufficient age and maturity* as to the child's custody or residency;

(d) *the age of the child;*

- (e) *the emotional and physical needs of the child;*
- (f) *the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;*
- ~~(g)~~ (g) *the child's adjustment to the child's home, school and community;*
- ~~(h)~~ (h) *the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;*
- ~~(i)~~ (i) *evidence of spousal abuse, either emotional or physical;*
- (j) *the ability of the parties to communicate, cooperate and manage parental duties;*
- (k) *the school activity schedule of the child;*
- (l) *the work schedule of the parties;*
- (m) *the location of the parties' residences and places of employment;*
- (n) *the location of the child's school;*
- ~~(o)~~ (o) *whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;*
- ~~(p)~~ (p) *whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2013 Supp. 21-5602, and amendments thereto;*
- ~~(q)~~ (q) *whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and*
- ~~(r)~~ (r) *whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2013 Supp. 21-5602, and amendments thereto.*

Sec. 10. K.S.A. 2013 Supp. 20-165, 23-2215, 23-2216, 23-2217, 23-2218, 23-2223, 23-2224, 23-2707, 23-3002, 23-3005 and 23-3203 are hereby repealed.

Sec. 11. 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.