

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2038

As Amended by Senate Committee of the Whole

Brief*

HB 2038, as amended, would create law within the Kansas Probate Code providing for the automatic revocation of certain inheritance rights of a former spouse or former spouse's relatives upon divorce, as follows.

Automatic Revocation and Severance

The bill would provide that, on and after July 1, 2019, the divorce or annulment of a marriage would revoke any revocable:

- Disposition or appointment of property made to an individual's former spouse or relative of such spouse in a governing instrument;
- Provision in a governing instrument conferring a general or nongeneral power of appointment on a former spouse or relative of such spouse; and
- Nomination in a governing instrument of a former spouse or relative of such spouse to serve in any fiduciary or representative capacity.

A divorce or annulment also would sever the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transform these interests into equal tenancies in common. Such severance would not affect any

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses, unless a writing declaring the severance has been noted, registered, filed, or recorded in a manner further specified by the bill.

Provisions of a governing instrument would be given effect as if the former spouse and relatives of such spouse had disclaimed all automatically revoked provisions, or, for a revoked nomination in a fiduciary or representative capacity, as if the former spouse and such spouse's relatives had died immediately before the divorce or annulment.

An exception to the automatic revocation or severance would apply if provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment.

No change of circumstances other than those described in the bill and in a similar existing section of the Probate Code applicable to wills would effect a revocation.

Liability of Payors or Third Parties

The bill would provide a payor or other third party is not liable for making a payment, transferring an item of property or any other benefit to a beneficiary designated by a document affected by the operation of the provisions of the bill, or taking any other action in good faith reliance on the validity of the governing instrument before receiving written notice of the claimed forfeiture or revocation. A payor or third party would be liable for such payments or actions taken after receiving such notice. The bill would provide specific requirements for the written notice required, including manner of service. Upon receiving such notice, the payor or third party could pay any amount owed or transfer or deposit any item of property held by the payor or third party to or with the court having jurisdiction of the relevant probate proceedings

or, if no proceedings have commenced, with the court having jurisdiction of probate proceedings located in the county of the decedent's residence. This would discharge the payor or third party from all claims related to the amounts paid or property transferred to the court. The court would then hold the funds or property and order disbursement or transfer in accordance with its determination.

Obligations of Those Purchasing or Receiving Payment or Items of Property; Effect of Federal Preemption

The bill would provide that its provisions would not obligate a purchaser for value without notice, or a receiver of a payment or property in partial or full satisfaction of a legally enforceable obligation, to return the payment, property, or benefit, and the purchaser or receiver would not be liable for the amount of payment or value of the property or benefit.

A former spouse, former spouse's relative, or other person who, not for value, received a payment, property, or other benefit to which the person is not entitled under the provisions of the bill would be obligated to return the same, or would be personally liable for the payment or value of the property or benefit, to the person entitled to it. A similar provision would apply where federal law preempts the bill's provisions.

The bill would state that, if the bill's provisions are preempted by federal law with regard to any property item, then the provisions of the bill would not apply to such preempted item, but would apply in all other circumstances.

Definitions

The bill would define "disposition or appointment of property," "divorce or annulment," "divorced individual," "governing instrument," "relative of the divorced individual's

former spouse,” “revocable,” and exclusions to the term “surviving spouse.”

Background

The bill was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Kansas Judicial Council. At the House Committee hearing, a representative of the Judicial Council testified in support of the bill, stating it is similar to a provision in the Uniform Probate Code, with a few changes to adapt the language to Kansas. The representative also stated the current Kansas Probate Code includes a statute (KSA 59-610) providing for automatic revocation of provisions of a will upon divorce, but the current statute does not apply to revocable trusts or designations that are now often being used in place of wills. No other testimony was provided.

The Senate Committee of the Whole amended the bill to make its provisions part of and supplemental to the Kansas Probate Code.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of Judicial Administration indicates any fiscal effect resulting from the enactment of the bill would be negligible. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor’s Budget Report*.