

## HOUSE BILL No. 2672

By Committee on Judiciary

1-23

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AN ACT concerning probate; relating to the elective share of surviving spouses; concerning homestead rights; amending K.S.A. 59-6a213 and repealing the existing section.

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

Section 1. K.S.A. 59-6a213 is hereby amended to read as follows: 59-6a213. (a) The right of election of a surviving spouse and the rights of the surviving spouse to ~~either~~ the homestead, *the homestead allowance* or the family allowance, or ~~both~~ *all* of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, consent to any instrument, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) The surviving spouse did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, ~~homestead and family allowance by each spouse in the property of the other and a renunciation by each of all~~ benefits that would otherwise pass to such spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement. *To waive the homestead, the homestead allowance or the family allowance, or all of them, the language of the document must clearly provide that the homestead,*

1 *the homestead allowance or the family allowance, or all of them, were*  
2 *understandably and knowledgeably waived.*

3 Sec. 2. K.S.A. 59-6a213 is hereby repealed.

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

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