

**HOUSE BILL No. 2071**

By Committee on Judiciary

1-24

1 AN ACT concerning inheritance rights; relating to revocation upon  
2 divorce.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) As used in this section:

6 (1) "Disposition or appointment of property" includes a transfer of  
7 an item of property or any other benefit to a beneficiary designated in a  
8 governing instrument.

9 (2) "Divorce or annulment" means any divorce or annulment, or any  
10 dissolution or declaration of invalidity of a marriage, that would exclude  
11 the spouse as a surviving spouse. A decree of separation that does not  
12 terminate the status of husband and wife is not a divorce for purposes in  
13 this section.

14 (3) "Divorced individual" includes an individual whose marriage has  
15 been annulled.

16 (4) "Governing instrument" means a document executed by the  
17 divorced individual before the divorce or annulment of such individual's  
18 marriage to such individual's former spouse.

19 (5) "Relative of the divorced individual's former spouse" means an  
20 individual who is related to the divorced individual's former spouse by  
21 blood, adoption or affinity and who, after the divorce or annulment, is not  
22 related to the divorced individual by blood, adoption or affinity.

23 (6) "Revocable," with respect to a disposition, appointment,  
24 provision or nomination, means one under which the divorced individual,  
25 at the time of the divorce or annulment, was alone empowered, by law or  
26 under the governing instrument, to cancel the designation in favor of such  
27 individual's former spouse or former spouse's relative, whether or not the  
28 divorced individual was then empowered to designate such individual's  
29 self in place of such individual's former spouse or in place of such  
30 individual's former spouse's relative and whether or not the divorced  
31 individual then had the capacity to exercise the power.

32 (7) "Surviving spouse" does not include an individual who:

33 (A) Is divorced from the decedent or whose marriage to the decedent  
34 has been annulled unless, by virtue of a subsequent marriage, such  
35 individual is married to the decedent at the time of death. A decree of  
36 separation that does not terminate the status of husband and wife is not a

1 divorce for purposes of this section;

2 (B) obtains or consents to a final decree or judgment of divorce from  
3 the decedent or an annulment of their marriage, which decree or judgment  
4 is not recognized as valid in this state, unless subsequently they  
5 participate in a marriage ceremony purporting to marry each to the other;

6 (C) following an invalid decree or judgment of divorce or annulment  
7 obtained by the decedent, participates in a marriage ceremony with a third  
8 individual; or

9 (D) was a party to a valid proceeding concluded by an order  
10 purporting to terminate all marital property rights.

11 (b) Except as provided by the express terms of a governing  
12 instrument, a court order or contract relating to the division of the marital  
13 estate made between the divorced individuals before or after the  
14 marriage, divorce or annulment, the divorce or annulment of a marriage:

15 (1) Revokes any revocable:

16 (A) Disposition or appointment of property made by a divorced  
17 individual to such individual's former spouse in a governing instrument  
18 and any disposition or appointment created by law or in a governing  
19 instrument to a relative of the divorced individual's former spouse;

20 (B) provision in a governing instrument conferring a general or  
21 nongeneral power of appointment on the divorced individual's former  
22 spouse or on a relative of the divorced individual's former spouse; and

23 (C) nomination in a governing instrument, nominating a divorced  
24 individual's former spouse or a relative of the divorced individual's  
25 former spouse to serve in any fiduciary or representative capacity,  
26 including a personal representative, executor, trustee, conservator, agent  
27 or guardian; and

28 (2) severs the interests of the former spouses in property held by  
29 them at the time of the divorce or annulment as joint tenants with the  
30 right of survivorship transforming the interests of the former spouses into  
31 equal tenancies in common.

32 (c) A severance under subsection (b)(2) does not affect any third-  
33 party interest in property acquired for value and in good faith reliance on  
34 an apparent title by survivorship in the survivor of the former spouses  
35 unless a writing declaring the severance has been noted, registered, filed  
36 or recorded in records appropriate to the kind and location of the property  
37 which are relied upon, in the ordinary course of transactions involving  
38 such property, as evidence of ownership.

39 (d) Provisions of a governing instrument are given effect as if the  
40 former spouse and relatives of the former spouse disclaimed all  
41 provisions revoked by this section or, in the case of a revoked nomination  
42 in a fiduciary or representative capacity, as if the former spouse and  
43 relatives of the former spouse died immediately before the divorce or

1 annulment.

2 (e) No change of circumstances other than as described in this  
3 section and in K.S.A. 59-610, and amendments thereto, effects a  
4 revocation.

5 (f) (1) A payor or other third party is not liable for having made a  
6 payment or transferred an item of property or any other benefit to a  
7 beneficiary designated in a governing instrument affected by a divorce,  
8 annulment or remarriage, or for having taken any other action in good  
9 faith reliance on the validity of the governing instrument, before the  
10 payor or other third party received written notice of the divorce,  
11 annulment or remarriage. A payor or other third party is liable for a  
12 payment made or other action taken after the payor or other third party  
13 received written notice of a claimed forfeiture or revocation under this  
14 section.

15 (2) Written notice of the divorce, annulment or remarriage under  
16 subsection (f)(1) shall be mailed to the payor's or other third party's main  
17 office or home by registered or certified mail, return receipt requested, or  
18 served upon the payor or other third party in the same manner as a  
19 summons in a civil action. Upon receipt of written notice of the divorce,  
20 annulment or remarriage, a payor or other third party may pay any  
21 amount owed or transfer or deposit any item of property held by it to or  
22 with the court having jurisdiction of the probate proceedings relating to  
23 the decedents' estate or, if no proceedings have commenced, to or with  
24 the court having jurisdiction of probate proceedings relating to the  
25 decedents' estates located in the county of the decedent's residence. The  
26 court shall hold the funds or item of property and, upon its determination  
27 under this section, shall order disbursement or transfer in accordance with  
28 the determination. Payments, transfers or deposits made to or with the  
29 court discharge the payor or other third party from all claims for the value  
30 of amounts paid to or items of property transferred to or deposited with  
31 the court.

32 (g) (1) A person who purchases property from a former spouse,  
33 relative of a former spouse or any other person for value and without  
34 notice, or who receives from a former spouse, relative of a former spouse  
35 or any other person a payment or other item of property in partial or full  
36 satisfaction of a legally enforceable obligation, is neither obligated under  
37 this section to return the payment, item of property or benefit nor is liable  
38 under this section for the amount of the payment or the value of the item  
39 of property or benefit. A former spouse, relative of a former spouse or  
40 other person who, not for value, received a payment, item of property or  
41 any other benefit to which that person is not entitled under this section is  
42 obligated to return the payment, item of property or benefit, or is  
43 personally liable for the amount of the payment or the value of the item of

1 property or benefit, to the person who is entitled to it under this section.

2 (2) If this section or any part of this section is preempted by federal  
3 law with respect to payment, an item of property or any other benefit  
4 covered by this section, a former spouse, relative of the former spouse or  
5 any other person who, not for value, received a payment, item of property  
6 or any other benefit to which that person is not entitled under this section  
7 is obligated to return that payment, item of property or benefit, or is  
8 personally liable for the amount of the payment or the value of the item of  
9 property or benefit, to the person who would have been entitled to it were  
10 this section or part of this section not preempted.

11 (h) If this section is preempted by federal law with respect to any  
12 property item, then this section shall not apply to such item of property  
13 preempted by federal law but shall apply in all other circumstances.

14 Sec. 2. This act shall take effect and be in force from and after its  
15 publication in the statute book.