

SENATE BILL No. 292

By Committee on Judiciary

1-18

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 an
7 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 of
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, provision
24 or nomination, means one under which the divorced individual, at the time
25 of the divorce or annulment, was alone empowered, by law or under the
26 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 participate
5 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) On and after July 1, 2012, except as provided by the express terms
12 of a governing instrument, a court order or contract relating to the division
13 of the marital estate made between the divorced individuals before or after
14 the marriage, divorce or annulment, the divorce or annulment of a
15 marriage:

16 (1) Revokes any revocable:

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

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

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

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

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

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

1 the former spouse died immediately before the divorce or annulment.

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

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

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

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

1 personally liable for the amount of the payment or the value of the item of
2 property or benefit, to the person who is entitled to it under this section.

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

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

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