

HOUSE BILL No. 2354

By Committee on Judiciary

2-7

AN ACT concerning civil procedure; relating to divorce; amending
K.S.A. 2000 Supp. 60-1610 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 60-1610 is hereby amended to read as follows: 60-1610. ~~A decree~~ *The district court, with the consent of the parties, may enter an order granting a requested decree of divorce, separate maintenance or annulment prior to making a final order concerning any other matter which is the subject of the proceeding.* In an action commenced under the provisions of this article, ~~the district court may include enter orders on~~ *the district court may* concerning the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior 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. 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. 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. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, 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 (C) the child is still a bona fide high school student after June 30 of the school year during which the

1 child became 18 years of age, in which case the court, on motion, may
2 order support to continue through the school year during which the child
3 becomes 19 years of age so long as the child is a bona fide high school
4 student and the parents jointly participated or knowingly acquiesced in
5 the decision which delayed the child's completion of high school. The
6 court, in extending support pursuant to subsection (a)(1)(C), may impose
7 such conditions as are appropriate and shall set the child support utilizing
8 the guideline table category for 16-year through 18-year old children.
9 Provision for payment of support and educational expenses of a child after
10 reaching 18 years of age if still attending high school shall apply to any
11 child subject to the jurisdiction of the court, including those whose sup-
12 port was ordered prior to July 1, 1992. If an agreement approved by the
13 court prior to July 1, 1988, provides for termination of support before the
14 date provided by subsection (a)(1)(B), the court may review and modify
15 such agreement, and any order based on such agreement, to extend the
16 date for termination of support to the date provided by subsection
17 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
18 provides for termination of support before the date provided by subsec-
19 tion (a)(1)(C), the court may review and modify such agreement, and any
20 order based on such agreement, to extend the date for termination of
21 support to the date provided by subsection (a)(1)(C). For purposes of this
22 section, "bona fide high school student" means a student who is enrolled
23 in full accordance with the policy of the accredited high school in which
24 the student is pursuing a high school diploma or a graduate equivalency
25 diploma (GED). In determining the amount to be paid for child support,
26 the court shall consider all relevant factors, without regard to marital
27 misconduct, including the financial resources and needs of both parents,
28 the financial resources and needs of the child and the physical and emo-
29 tional condition of the child. Until a child reaches 18 years of age, the
30 court may set apart any portion of property of either the husband or wife,
31 or both, that seems necessary and proper for the support of the child.
32 Every order requiring payment of child support under this section shall
33 require that the support be paid through the clerk of the district court or
34 the court trustee except for good cause shown. If the divorce decree of
35 the parties provides for an abatement of child support during any period
36 provided in such decree, the child support such nonresidential parent
37 owes for such period shall abate during such period of time, except that
38 if the residential parent shows that the criteria for the abatement has not
39 been satisfied there shall not be an abatement of such child support.

40 (2) *Child custody and residency. (A) Changes in custody.* Subject to
41 the provisions of the uniform child custody jurisdiction and enforcement
42 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
43 court may change or modify any prior order of custody, residency, visi-

1 tation and parenting time, when a material change of circumstances is
2 shown, but no ex parte order shall have the effect of changing residency
3 of a minor child from the parent who has had the sole de facto residency
4 of the child to the other parent unless there is sworn testimony to support
5 a showing of extraordinary circumstances. If an interlocutory order is
6 issued ex parte, the court shall hear a motion to vacate or modify the
7 order within 15 days of the date that a party requests a hearing whether
8 to vacate or modify the order.

9 (B) *Examination of parties.* The court may order physical or mental
10 examinations of the parties if requested pursuant to K.S.A. 60-235 and
11 amendments thereto.

12 (3) *Child custody or residency criteria.* The court shall determine
13 custody or residency of a child in accordance with the best interests of
14 the child.

15 (A) If the parties have entered into a parenting plan, it shall be pre-
16 sumed that the agreement is in the best interests of the child. This pre-
17 sumption may be overcome and the court may make a different order if
18 the court makes specific findings of fact stating why the agreed parenting
19 plan is not in the best interests of the child.

20 (B) In determining the issue of child custody, residency and parent-
21 ing time, the court shall consider all relevant factors, including but not
22 limited to:

23 (i) The length of time that the child has been under the actual care
24 and control of any person other than a parent and the circumstances
25 relating thereto;

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

27 (iii) the desires of the child as to the child's custody or residency;

28 (iv) the interaction and interrelationship of the child with parents,
29 siblings and any other person who may significantly affect the child's best
30 interests;

31 (v) the child's adjustment to the child's home, school and community;

32 (vi) the willingness and ability of each parent to respect and appre-
33 ciate the bond between the child and the other parent and to allow for a
34 continuing relationship between the child and the other parent; and

35 (vii) evidence of spousal abuse.

36 Neither parent shall be considered to have a vested interest in the
37 custody or residency of any child as against the other parent, regardless
38 of the age of the child, and there shall be no presumption that it is in the
39 best interests of any infant or young child to give custody or residency to
40 the mother.

41 (4) *Types of legal custodial arrangements.* Subject to the provisions
42 of this article, the court may make any order relating to custodial arrange-
43 ments which is in the best interests of the child. The order shall provide

1 one of the following legal custody arrangements, in the order of
2 preference:

3 (A) *Joint legal custody.* The court may order the joint legal custody
4 of a child with both parties. In that event, the parties shall have equal
5 rights to make decisions in the best interests of the child.

6 (B) *Sole legal custody.* The court may order the sole legal custody of
7 a child with one of the parties when the court finds that it is not in the
8 best interests of the child that both of the parties have equal rights to
9 make decisions pertaining to the child. If the court does not order joint
10 legal custody, the court shall include on the record specific findings of
11 fact upon which the order for sole legal custody is based. The award of
12 sole legal custody to one parent shall not deprive the other parent of
13 access to information regarding the child unless the court shall so order,
14 stating the reasons for that determination.

15 (5) *Types of residential arrangements.* After making a determination
16 of the legal custodial arrangements, the court shall determine the resi-
17 dency of the child from the following options, which arrangement the
18 court must find to be in the best interest of the child. The parties shall
19 submit to the court either an agreed parenting plan or, in the case of
20 dispute, proposed parenting plans for the court's consideration. Such op-
21 tions are:

22 (A) *Residency.* The court may order a residential arrangement in
23 which the child resides with one or both parents on a basis consistent
24 with the best interests of the child.

25 (B) *Divided residency.* In an exceptional case, the court may order a
26 residential arrangement in which one or more children reside with each
27 parent and have parenting time with the other.

28 (C) *Nonparental residency.* If during the proceedings the court de-
29 termines that there is probable cause to believe that the child is a child
30 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-
31 1502 and amendments thereto or that neither parent is fit to have resi-
32 dency, the court may award temporary residency of the child to a grand-
33 parent, aunt, uncle or adult sibling, or, another person or agency if the
34 court finds the award of custody to such person or agency is in the best
35 interests of the child. In making such a residency order, the court shall
36 give preference, to the extent that the court finds it is in the best interests
37 of the child, first to awarding such residency to a relative of the child by
38 blood, marriage or adoption and second to awarding such residency to
39 another person with whom the child has close emotional ties. The court
40 may make temporary orders for care, support, education and visitation
41 that it considers appropriate. Temporary residency orders are to be en-
42 tered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-
43 1543, and amendments thereto, and shall remain in effect until there is

1 a final determination under the Kansas code for care of children. An
2 award of temporary residency under this paragraph shall not terminate
3 parental rights nor give the court the authority to consent to the adoption
4 of the child. When the court enters orders awarding temporary residency
5 of the child to an agency or a person other than the parent, the court
6 shall refer a transcript of the proceedings to the county or district attorney.
7 The county or district attorney shall file a petition as provided in
8 K.S.A. 38-1531 and amendments thereto and may request termination of
9 parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The
10 costs of the proceedings shall be paid from the general fund of the county.
11 When a final determination is made that the child is not a child in need
12 of care, the county or district attorney shall notify the court in writing
13 and the court, after a hearing, shall enter appropriate custody orders
14 pursuant to this section. If the same judge presides over both proceedings,
15 the notice is not required. Any disposition pursuant to the Kansas code
16 for care of children shall be binding and shall supersede any order under
17 this section.

18 (b) *Financial matters. (1) Division of property.* The decree shall di-
19 vide the real and personal property of the parties, including any retire-
20 ment and pension plans, whether owned by either spouse prior to mar-
21 riage, acquired by either spouse in the spouse's own right after marriage
22 or acquired by the spouses' joint efforts, by: (A) a division of the property
23 in kind; (B) awarding the property or part of the property to one of the
24 spouses and requiring the other to pay a just and proper sum; or (C)
25 ordering a sale of the property, under conditions prescribed by the court,
26 and dividing the proceeds of the sale. Upon request, the trial court shall
27 set a valuation date to be used for all assets at trial, which may be the
28 date of separation, filing or trial as the facts and circumstances of the case
29 may dictate. The trial court may consider evidence regarding changes in
30 value of various assets before and after the valuation date in making the
31 division of property. In dividing defined-contribution types of retirement
32 and pension plans, the court shall allocate profits and losses on the non-
33 participant's portion until date of distribution to that nonparticipant. In
34 making the division of property the court shall consider the age of the
35 parties; the duration of the marriage; the property owned by the parties;
36 their present and future earning capacities; the time, source and manner
37 of acquisition of property; family ties and obligations; the allowance of
38 maintenance or lack thereof; dissipation of assets; the tax consequences
39 of the property division upon the respective economic circumstances of
40 the parties; and such other factors as the court considers necessary to
41 make a just and reasonable division of property. The decree shall provide
42 for any changes in beneficiary designation on: (A) Any insurance or an-
43 nuity policy that is owned by the parties, or in the case of group life

1 insurance policies, under which either of the parties is a covered person;
2 (B) any trust instrument under which one party is the grantor or holds a
3 power of appointment over part or all of the trust assets, that may be
4 exercised in favor of either party; or (C) any transfer on death or payable
5 on death account under which one or both of the parties are owners or
6 beneficiaries. Nothing in this section shall relieve the parties of the ob-
7 ligation to effectuate any change in beneficiary designation by the filing
8 of such change with the insurer or issuer in accordance with the terms
9 of such policy.

10 (2) *Maintenance.* The decree may award to either party an allowance
11 for future support denominated as maintenance, in an amount the court
12 finds to be fair, just and equitable under all of the circumstances. The
13 decree may make the future payments modifiable or terminable under
14 circumstances prescribed in the decree. The court may make a modifi-
15 cation of maintenance retroactive to a date at least one month after the
16 date that the motion to modify was filed with the court. In any event, the
17 court may not award maintenance for a period of time in excess of 121
18 months. If the original court decree reserves the power of the court to
19 hear subsequent motions for reinstatement of maintenance and such a
20 motion is filed prior to the expiration of the stated period of time for
21 maintenance payments, the court shall have jurisdiction to hear a motion
22 by the recipient of the maintenance to reinstate the maintenance pay-
23 ments. Upon motion and hearing, the court may reinstate the payments
24 in whole or in part for a period of time, conditioned upon any modifying
25 or terminating circumstances prescribed by the court, but the reinstate-
26 ment shall be limited to a period of time not exceeding 121 months. The
27 recipient may file subsequent motions for reinstatement of maintenance
28 prior to the expiration of subsequent periods of time for maintenance
29 payments to be made, but no single period of reinstatement ordered by
30 the court may exceed 121 months. Maintenance may be in a lump sum,
31 in periodic payments, on a percentage of earnings or on any other basis.
32 At any time, on a hearing with reasonable notice to the party affected,
33 the court may modify the amounts or other conditions for the payment
34 of any portion of the maintenance originally awarded that has not already
35 become due, but no modification shall be made without the consent of
36 the party liable for the maintenance, if it has the effect of increasing or
37 accelerating the liability for the unpaid maintenance beyond what was
38 prescribed in the original decree. Every order requiring payment of main-
39 tenance under this section shall require that the maintenance be paid
40 through the clerk of the district court or the court trustee except for good
41 cause shown.

42 (3) *Separation agreement.* If the parties have entered into a separa-
43 tion agreement which the court finds to be valid, just and equitable, the

1 agreement shall be incorporated in the decree. A separation agreement
2 may include provisions relating to a parenting plan. The provisions of the
3 agreement on all matters settled by it shall be confirmed in the decree
4 except that any provisions relating to the legal custody, residency, visita-
5 tion parenting time, support or education of the minor children shall be
6 subject to the control of the court in accordance with all other provisions
7 of this article. Matters settled by an agreement incorporated in the de-
8 cree, other than matters pertaining to the legal custody, residency, visi-
9 tation, parenting time, support or education of the minor children, shall
10 not be subject to subsequent modification by the court except: (A) As
11 prescribed by the agreement or (B) as subsequently consented to by the
12 parties.

13 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
14 party as justice and equity require. The court may order that the amount
15 be paid directly to the attorney, who may enforce the order in the attor-
16 ney's name in the same case.

17 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
18 of a spouse, the court shall order the restoration of that spouse's maiden
19 or former name.

20 (2) *Effective date as to remarriage.* Any marriage contracted by a
21 party, within or outside this state, with any other person before a judg-
22 ment of divorce becomes final shall be voidable until the decree of divorce
23 becomes final. An agreement which waives the right of appeal from the
24 granting of the divorce and which is incorporated into the decree or
25 signed by the parties and filed in the case shall be effective to shorten
26 the period of time during which the remarriage is voidable.

27 Sec. 2. K.S.A. 2000 Supp. 60-1610 is hereby repealed.

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

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