

## HOUSE BILL No. 2423

By Representative DiVita

2-7

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AN ACT concerning civil procedure; relating to divorce; relating to division of property; 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 in an action under this article may include orders on 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 child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school

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

37 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to  
38 the provisions of the uniform child custody jurisdiction and enforcement  
39 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the  
40 court may change or modify any prior order of custody, residency, visi-  
41 tation and parenting time, when a material change of circumstances is  
42 shown, but no ex parte order shall have the effect of changing residency  
43 of a minor child from the parent who has had the sole de facto residency

1 of the child to the other parent unless there is sworn testimony to support  
2 a showing of extraordinary circumstances. If an interlocutory order is  
3 issued ex parte, the court shall hear a motion to vacate or modify the  
4 order within 15 days of the date that a party requests a hearing whether  
5 to vacate or modify the order.

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

9 (3) *Child custody or residency criteria.* The court shall determine  
10 custody or residency of a child in accordance with the best interests of  
11 the child.

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

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

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

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

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

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

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

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

32 (vii) evidence of spousal abuse.

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

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

43 (A) *Joint legal custody.* The court may order the joint legal custody

1 of a child with both parties. In that event, the parties shall have equal  
2 rights to make decisions in the best interests of the child.

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

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

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

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

25 (C) *Nonparental residency.* If during the proceedings the court de-  
26 termines that there is probable cause to believe that the child is a child  
27 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-  
28 1502 and amendments thereto or that neither parent is fit to have resi-  
29 dency, the court may award temporary residency of the child to a grand-  
30 parent, aunt, uncle or adult sibling, or, another person or agency if the  
31 court finds the award of custody to such person or agency is in the best  
32 interests of the child. In making such a residency order, the court shall  
33 give preference, to the extent that the court finds it is in the best interests  
34 of the child, first to awarding such residency to a relative of the child by  
35 blood, marriage or adoption and second to awarding such residency to  
36 another person with whom the child has close emotional ties. The court  
37 may make temporary orders for care, support, education and visitation  
38 that it considers appropriate. Temporary residency orders are to be en-  
39 tered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-  
40 1543, and amendments thereto, and shall remain in effect until there is  
41 a final determination under the Kansas code for care of children. An  
42 award of temporary residency under this paragraph shall not terminate  
43 parental rights nor give the court the authority to consent to the adoption

1 of the child. When the court enters orders awarding temporary residency  
2 of the child to an agency or a person other than the parent, the court  
3 shall refer a transcript of the proceedings to the county or district attor-  
4 ney. The county or district attorney shall file a petition as provided in  
5 K.S.A. 38-1531 and amendments thereto and may request termination of  
6 parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The  
7 costs of the proceedings shall be paid from the general fund of the county.  
8 When a final determination is made that the child is not a child in need  
9 of care, the county or district attorney shall notify the court in writing  
10 and the court, after a hearing, shall enter appropriate custody orders  
11 pursuant to this section. If the same judge presides over both proceedings,  
12 the notice is not required. Any disposition pursuant to the Kansas code  
13 for care of children shall be binding and shall supersede any order under  
14 this section.

15 (b) *Financial matters.* (1) *Division of property.* The decree shall di-  
16 vide the real and personal property of the parties, including any retire-  
17 ment and pension plans, whether owned by either spouse prior to mari-  
18 riage, acquired by either spouse in the spouse's own right after marriage  
19 or acquired by the spouses' joint efforts, by: (A) a division of the property  
20 in kind; (B) awarding the property or part of the property to one of the  
21 spouses and requiring the other to pay a just and proper sum; or (C)  
22 ordering a sale of the property, under conditions prescribed by the court,  
23 and dividing the proceeds of the sale. *No property shall be sold which*  
24 *would violate the homestead exemption pursuant to K.S.A. 60-2301, and*  
25 *amendments thereto.* Upon request, the trial court shall set a valuation  
26 date to be used for all assets at trial, which may be the date of separation,  
27 filing or trial as the facts and circumstances of the case may dictate. The  
28 trial court may consider evidence regarding changes in value of various  
29 assets before and after the valuation date in making the division of prop-  
30 erty. In dividing defined-contribution types of retirement and pension  
31 plans, the court shall allocate profits and losses on the nonparticipant's  
32 portion until date of distribution to that nonparticipant. In making the  
33 division of property the court shall consider the age of the parties; the  
34 duration of the marriage; the property owned by the parties; their present  
35 and future earning capacities; the time, source and manner of acquisition  
36 of property; family ties and obligations; the allowance of maintenance or  
37 lack thereof; dissipation of assets; the tax consequences of the property  
38 division upon the respective economic circumstances of the parties; and  
39 such other factors as the court considers necessary to make a just and  
40 reasonable division of property. The decree shall provide for any changes  
41 in beneficiary designation on: (A) Any insurance or annuity policy that is  
42 owned by the parties, or in the case of group life insurance policies, under  
43 which either of the parties is a covered person; (B) any trust instrument

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

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

40 (3) *Separation agreement.* If the parties have entered into a separa-  
41 tion agreement which the court finds to be valid, just and equitable, the  
42 agreement shall be incorporated in the decree. A separation agreement  
43 may include provisions relating to a parenting plan. The provisions of the

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

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

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

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

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

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

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