

3  
4 **SENATE BILL No. 329**

5  
6 By Committee on Ways and Means

7  
8 2-16  
9

10 AN ACT concerning child support enforcement; establishing the Kansas  
11 payment center; income withholding; amending K.S.A. 23-4,136, 38-  
12 1121, 38-1123 and 60-2803 and K.S.A. 2000 Supp. 23-4,106, 23-4,108,  
13 **23-4,111**, 23-4,118, 60-1610 and 60-2308 and repealing the existing  
14 sections.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2000 Supp. 23-4,106 is hereby amended to read as  
18 follows: 23-4,106. As used in the income withholding act:

19 (a) "Arrearage" means the total amount of unpaid support which is  
20 due and unpaid under an order for support, based upon the due date  
21 specified in the order for support or, if no specific date is stated in the  
22 order, the last day of the month in which the payment is to be made. If  
23 the order for support includes a judgment for reimbursement, an arrear-  
24 age equal to or greater than the amount of support payable for one month  
25 exists on the date the order for support is entered.

26 (b) "Business day" means a day on which state offices in Kansas are  
27 open for regular business.

28 (c) "Health benefit plan" means any benefit plan, other than public  
29 assistance, which is able to provide hospital, surgical, medical, dental or  
30 any other health care or benefits for a child, whether through insurance  
31 or otherwise, and which is available through a parent's employment or  
32 other group plan.

33 (d) "Income" means any form of periodic payment to an individual,  
34 regardless of source, including, but not limited to, wages, salary, trust,  
35 royalty, commission, bonus, compensation as an independent contractor,  
36 annuity and retirement benefits, workers compensation and any other  
37 periodic payments made by any person, private entity or federal, state or  
38 local government or any agency or instrumentality thereof. "Income"  
39 does not include: (1) Any amounts required by law to be withheld, other  
40 than creditor claims, including but not limited to federal and state taxes,  
41 social security tax and other retirement and disability contributions; (2)  
42 any amounts exempted by federal law; (3) public assistance payments;  
43 and (4) unemployment insurance benefits except to the extent otherwise

1 provided by law. Any other state or local laws which limit or exempt  
2 income or the amount or percentage of income that can be withheld shall  
3 not apply. Workers compensation shall be considered income only for the  
4 purposes of child support and not for the purposes of maintenance.

5 (e) "Income withholding order" means an order issued under this act  
6 which requires a payor to withhold income to satisfy an order for support  
7 or to defray an arrearage.

8 (f) "Medical child support order" means an order requiring a parent  
9 to provide coverage for a child under a health benefit plan and, where  
10 the context requires, may include an order requiring a payor to enroll a  
11 child in a health benefit plan.

12 (g) "Medical withholding order" means an income withholding order  
13 which requires an employer, sponsor or other administrator of a health  
14 benefit plan to enroll a child under the health coverage of a parent.

15 (h) "Nonparticipating parent" means, if one parent is a participating  
16 parent as defined in this section, the other parent.

17 (i) "Obligee" means the person or entity to whom a duty of support  
18 is owed.

19 (j) "Obligor" means any person who owes a duty to make payments  
20 or provide health benefit coverage under an order for support.

21 (k) "Order for support" means any order of a court, or of an admin-  
22 istrative agency authorized by law to issue such an order, which provides  
23 for payment of funds for the support of a child, or for maintenance of a  
24 spouse or ex-spouse, and includes an order which provides for modifi-  
25 cation or resumption of a previously existing order; payment of uninsured  
26 medical expenses; payment of an arrearage accrued under a previously  
27 existing order; a reimbursement order, including but not limited to an  
28 order established pursuant to K.S.A. 39-718a or 39-718b, and amend-  
29 ments thereto; an order established pursuant to K.S.A. 23-451 *et seq.* and  
30 amendments thereto; or a medical child support order.

31 (l) "Participating parent" means a parent who is eligible for single  
32 coverage under a health benefit plan as defined in this section, regardless  
33 of the type of coverage actually in effect, if any.

34 (m) "Payor" means any person or entity owing income to an obligor  
35 or any self-employed obligor and includes, with respect to a medical child  
36 support order, the sponsor or administrator of a health benefit plan.

37 (n) "Public office" means any elected or appointed official of the state  
38 or any political subdivision or agency of the state, or any subcontractor  
39 thereof, who is or may become responsible by law for enforcement of, or  
40 who is or may become authorized to enforce, an order for support, in-  
41 cluding but not limited to the department of social and rehabilitation  
42 services, court trustees, county or district attorneys and other  
43 subcontractors.

1 (o) "Title IV-D" means part D of title IV of the federal social security  
2 act (42 U.S.C. § 651 et seq.) and amendments thereto, as in effect on  
3 ~~May 1, 1997~~ *December 31, 1999*. "Title IV-D cases" means those cases  
4 required by title IV-D to be processed by the department of social and  
5 rehabilitation services under the state's plan for providing title IV-D  
6 services.

7 Sec. 2. K.S.A. 2000 Supp. 23-4,108 is hereby amended to read as  
8 follows: 23-4,108. (a) It shall be the affirmative duty of any payor to re-  
9 spond within 10 days to written requests for information presented by  
10 the public office concerning: (1) The full name of the obligor; (2) the  
11 current address of the obligor; (3) the obligor's social security number;  
12 (4) the obligor's work location; (5) the number of the obligor's claimed  
13 dependents; (6) the obligor's gross income; (7) the obligor's net income;  
14 (8) an itemized statement of deductions from the obligor's income; (9)  
15 the obligor's pay schedule; (10) the obligor's health insurance coverage;  
16 and (11) whether or not income owed the obligor is being withheld pur-  
17 suant to this act. This is an exclusive list of the information that the payor  
18 is required to provide under this section.

19 (b) It shall be the duty of any payor who has been served *a copy of*  
20 an income withholding order for payment of an order for cash support to  
21 deduct and pay over income as provided in this section. The payor shall  
22 begin the required deductions no later than the next payment of income  
23 due the obligor after 14 days following service of the order on the payor.

24 (c) Within seven business days of the time the obligor is normally  
25 paid, the payor shall pay the amount withheld as directed by the income  
26 withholding agency pursuant to K.S.A. 23-4,109 and amendments  
27 thereto, as directed by the income withholding order or by a rule of the  
28 Kansas supreme court. The payor shall identify each payment with the  
29 name of the obligor, the county and case number of the income with-  
30 holding order, and the date the income was withheld from the obligor. A  
31 payor subject to more than one income withholding order payable to the  
32 same payee may combine the amounts withheld into a single payment,  
33 but only if the amount attributable to each income withholding order is  
34 clearly identified. Premiums required for a child's coverage under a health  
35 benefit plan shall be remitted as provided in the health benefit plan and  
36 shall not be combined with any other support payment required by the  
37 income withholding order.

38 (d) The payor shall continue to withhold income as required by the  
39 income withholding order until further order of the court or agency.

40 (e) From income due the obligor, the payor may withhold and retain  
41 to defray the payor's costs a cost recovery fee of \$5 for each pay period  
42 for which income is withheld or \$10 for each month for which income is  
43 withheld, whichever is less. Such cost recovery fee shall be in addition to

1 the amount withheld as support.

2 (f) The entire sum withheld by the payor, including the cost recovery  
3 fee and premiums due from the obligor which are incurred solely because  
4 of a medical withholding order, shall not exceed the limits provided for  
5 under section 303(b) of the consumer credit protection act (15 U.S.C. §  
6 1673(b)). If amounts of earnings required to be withheld exceed the max-  
7 imum amount of earnings which may be withheld according to the con-  
8 sumer credit protection act, priority shall be given to payment of current  
9 and past due support, and the payor shall promptly notify the holder of  
10 the limited power of attorney of any nonpayment of premium for a health  
11 benefit plan on the child's behalf. An income withholding order issued  
12 pursuant to this act shall not be considered a wage garnishment as defined  
13 in subsection (b) of K.S.A. 60-2310 and amendments thereto. If amounts  
14 of earnings required to be withheld in accordance with this act are less  
15 than the maximum amount of earnings which could be withheld according  
16 to the consumer credit protection act, the payor shall honor garnishments  
17 filed by other creditors to the extent that the total amount taken from  
18 earnings does not exceed consumer credit protection act limitations.

19 (g) The payor shall promptly notify the court or agency that issued  
20 the income withholding order of the termination of the obligor's em-  
21 ployment or other source of income, or the layoff of the obligor from  
22 employment, and provide the obligor's last known address and the name  
23 and address of the individual's current employer, if known.

24 (h) A payor who complies with *a copy of* an income withholding order  
25 that is regular on its face shall not be subject to civil liability to any person  
26 or agency for conduct in compliance with the income withholding order.

27 (i) Except as provided further, if any payor violates the provisions of  
28 this act, the court may enter a judgment against the payor for the total  
29 amount which should have been withheld and paid over. If the payor,  
30 without just cause or excuse, intentionally fails to pay over income within  
31 the time established in subsection (c) and the obligee files a motion to  
32 have such income paid over, the court shall enter a judgment against the  
33 payor and in favor of the obligee for three times the amount of the income  
34 owed and reasonable attorney fees.

35 (j) In addition to any judgment authorized by subsection (i), a payor  
36 shall be subject to a civil penalty not exceeding \$500 and other equitable  
37 relief as the court considers proper if the payor: (1) Discharges, refuses  
38 to employ or takes disciplinary action against an obligor subject to an  
39 income withholding order because of such withholding and the obliga-  
40 tions or additional obligations which it imposes upon the payor; or (2)  
41 fails to withhold support from income or to pay such amounts in the  
42 manner required by this act.

43 **Sec. 3. K.S.A. 2000 Supp. 23-4,111 is hereby amended to read**

1 *as follows: 23-4,111. This section shall not apply if the income with-*  
2 *holding order was issued by the IV-D agency pursuant to K.S.A. 39-*  
3 *7,147 or 39-7,148 and amendments thereto, unless IV-D services are*  
4 *no longer being provided with respect to either current support or*  
5 *arrearages.*

6 *(a) At any time upon motion the court shall: (1) Modify or ter-*  
7 *minate the income withholding order because of a modification or*  
8 *termination of the underlying order for support; (2) modify the*  
9 *amount of income withheld to reflect payment in full of the arrear-*  
10 *age by income withholding or otherwise; or (3) modify, or when*  
11 *appropriate terminate, an income withholding order consisting in*  
12 *whole or in part of a medical withholding order because of a mod-*  
13 *ification or termination of the underlying medical child support*  
14 *order.*

15 *(b) On request of the obligee or public office, the court shall*  
16 *issue an order which modifies the amount of income withheld, sub-*  
17 *ject to the limitations of subsection (f) of K.S.A. 23-4,108 and*  
18 *amendments thereto.*

19 *(c) The obligor may file a motion to terminate an income order*  
20 *for cash support if: (1) The withholding order has not previously*  
21 *been terminated under this subsection and subsequently initiated;*  
22 *and (2) there is a written agreement among all interested parties*  
23 *which provides for an alternative arrangement. Under this subsec-*  
24 *tion, the court may terminate the income withholding order unless*  
25 *it finds good cause for denying the motion because of the obligor's*  
26 *payment history or otherwise. If an income withholding order is*  
27 *terminated for any reason and the obligor subsequently becomes*  
28 *delinquent in the payment of the order for support, the obligee or*  
29 *public office may obtain another income withholding order by com-*  
30 *plying with all requirements for notice and service pursuant to this*  
31 *act.*

32 *(d) If the income withholding order includes both a medical*  
33 *withholding order and an income withholding order for cash sup-*  
34 *port, modification or termination of one portion of the income with-*  
35 *holding order shall not modify or terminate any other portion of*  
36 *the income withholding order except as expressly provided by the*  
37 *court.*

38 ~~*(e) If support payments are undeliverable to the obligee, any such*~~  
39 ~~*payments shall be held in trust by the court until the payments can be*~~  
40 ~~*delivered.*~~

41 ~~*(e)*~~ *The clerk of court shall cause to be served on the payor a*  
42 *copy of any order entered pursuant to this section that affects the*  
43 *duties of the payor.*

1 Sec. ~~3~~ 4. K.S.A. 2000 Supp. 23-4,118 is hereby amended to read as  
2 follows: 23-4,118. (a) ~~The department of social and rehabilitation services~~  
3 ~~is designated as the state income withholding agency in title IV-D cases.~~  
4 ~~For the purpose of keeping adequate records to document, track and~~  
5 ~~monitor support payments in title IV-D cases and for the purpose of~~  
6 ~~initiating the income withholding process in such cases, the department~~  
7 ~~may contract for the performance of all or a portion of the withholding~~  
8 ~~agency function with existing title IV-D contractors or any newly created~~  
9 ~~entity capable of providing such services.~~

10 ~~—(b) In all other cases, except as otherwise provided in this subsection,~~  
11 ~~the clerk of the district court is designated as the income withholding~~  
12 ~~agency for the purpose of keeping adequate records to allow the obligor~~  
13 ~~and obligee to track and monitor support payments. If a district court~~  
14 ~~trustee has been designated by the chief judge to receive, process and~~  
15 ~~maintain records for moneys received under support orders, the district~~  
16 ~~court trustee is designated as the income withholding agency for non-IV-~~  
17 ~~D cases in the judicial district. *The department of social and rehabilitation*~~  
18 ~~*services, the title IV-D agency for the state, shall establish a central unit*~~  
19 ~~*for collection and disbursement of support payments to meet the require-*~~  
20 ~~*ments of title IV-D. The department shall collaborate with the Kansas*~~  
21 ~~*supreme court to establish the central unit for collection and disbursement*~~  
22 ~~*of support payments, which shall include, but is not limited to, all support*~~  
23 ~~*payments subject to the requirements of title IV-D. Upon designation by*~~  
24 ~~*the Kansas supreme court, the central unit for collection and disbursement*~~  
25 ~~*of support payments shall commence operations with respect to support*~~  
26 ~~*orders entered in each county as provided in a schedule adopted or ap-*~~  
27 ~~*proved by the supreme court or the supreme court's designee.*~~

28 ~~(b) When the central unit for collection and disbursement of support~~  
29 ~~payments commences operations with respect to a county, any provision~~  
30 ~~in any child support order or income withholding order entered in that~~  
31 ~~county which requires remittance of support payments to the clerk of the~~  
32 ~~district court or district court trustee shall be deemed to require remit-~~  
33 ~~tance of support payments to the central unit for collection and disburse-~~  
34 ~~ment of support payments, regardless of the date the child support or~~  
35 ~~income withholding order was entered.~~

36 ~~(c) As used in this section, "child support order" includes any order~~  
37 ~~for maintenance of a spouse or ex-spouse issued in conjunction with a~~  
38 ~~child support order.~~

39 Sec. 4 5. K.S.A. 23-4,136 is hereby amended to read as follows: 23-  
40 4,136. Any person who is the obligor under a support order of another  
41 jurisdiction may obtain voluntary income withholding by filing with the  
42 court a request for an income withholding order and a certified copy of  
43 the support order of the other jurisdiction. The court shall issue an in-

1 come withholding order, as provided in subsection (i) of K.S.A. 23-4,107  
2 and amendments thereto, which shall be honored by any payor regardless  
3 of whether there is an arrearage. ~~In such a case, payments shall be made~~  
4 ~~from the payor or the clerk of the court to the agency for distribution to~~  
5 ~~the obligee.~~

6 Sec. ~~5~~ **6**. K.S.A. 38-1121 is hereby amended to read as follows: 38-  
7 1121. (a) The judgment or order of the court determining the existence  
8 or nonexistence of the parent and child relationship is determinative for  
9 all purposes, but if any person necessary to determine the existence of a  
10 father and child relationship for all purposes has not been joined as a  
11 party, a determination of the paternity of the child shall have only the  
12 force and effect of a finding of fact necessary to determine a duty of  
13 support.

14 (b) If the judgment or order of the court is at variance with the child's  
15 birth certificate, the court shall order that a new birth certificate be is-  
16 sued, but only if any man named as the father on the birth certificate is  
17 a party to the action.

18 (c) Upon adjudging that a party is the parent of a minor child, the  
19 court shall make provision for support and education of the child includ-  
20 ing the necessary medical expenses incident to the birth of the child. The  
21 court may order the support and education expenses to be paid by either  
22 or both parents for the minor child. When the child reaches 18 years of  
23 age, the support shall terminate unless: (1) The parent or parents agree,  
24 by written agreement approved by the court, to pay support beyond that  
25 time; (2) the child reaches 18 years of age before completing the child's  
26 high school education in which case the support shall not automatically  
27 terminate, unless otherwise ordered by the court, until June 30 of the  
28 school year during which the child became 18 years of age if the child is  
29 still attending high school; or (3) the child is still a bona fide high school  
30 student after June 30 of the school year during which the child became  
31 18 years of age, in which case the court, on motion, may order support  
32 to continue through the school year during which the child becomes 19  
33 years of age so long as the child is a bona fide high school student and  
34 the parents jointly participated or knowingly acquiesced in the decision  
35 which delayed the child's completion of high school. The court, in ex-  
36 tending support pursuant to subsection (c)(3), may impose such condi-  
37 tions as are appropriate and shall set the child support utilizing the guide-  
38 line table category for 16-year through 18-year old children. Provision for  
39 payment of support and educational expenses of a child after reaching 18  
40 years of age if still attending high school shall apply to any child subject  
41 to the jurisdiction of the court, including those whose support was or-  
42 dered prior to July 1, 1992. If an agreement approved by the court prior  
43 to July 1, 1988, provides for termination of support before the date pro-

1 vided by subsection (c)(2), the court may review and modify such agree-  
2 ment, and any order based on such agreement, to extend the date for  
3 termination of support to the date provided by subsection (c)(2). If an  
4 agreement approved by the court prior to July 1, 1992, provides for ter-  
5 mination of support before the date provided by subsection (c)(3), the  
6 court may review and modify such agreement, and any order based on  
7 such agreement, to extend the date for termination of support to the date  
8 provided by subsection (c)(3). For purposes of this section, "bona fide  
9 high school student" means a student who is enrolled in full accordance  
10 with the policy of the accredited high school in which the student is  
11 pursuing a high school diploma or a graduate equivalency diploma  
12 (GED). ~~The judgment shall specify the terms of payment and shall re-~~  
13 ~~quire payment to be made through the clerk of the district court or the~~  
14 ~~court trustee except for good cause shown.~~ The judgment may require  
15 the party to provide a bond with sureties to secure payment. The court  
16 may at any time during the minority of the child modify or change the  
17 order of support, including any order issued in a title IV-D case, within  
18 three years of the date of the original order or a modification order, as  
19 required by the best interest of the child. If more than three years has  
20 passed since the date of the original order or modification order, a re-  
21 quirement that such order is in the best interest of the child need not be  
22 shown. The court may make a modification of support retroactive to a  
23 date at least one month after the date that the motion to modify was filed  
24 with the court. Any increase in support ordered effective prior to the date  
25 the court's judgment is filed shall not become a lien on real property  
26 pursuant to K.S.A. 60-2202, and amendments thereto.

27 (d) If both parents are parties to the action, the court shall enter such  
28 orders regarding custody, residency and parenting time as the court con-  
29 siders to be in the best interest of the child.

30 If the parties have an agreed parenting plan it shall be presumed the  
31 agreed parenting plan is in the best interest of the child. This presumption  
32 may be overcome and the court may make a different order if the court  
33 makes specific findings of fact stating why the agreed parenting plan is  
34 not in the best interest of the child. If the parties are not in agreement  
35 on a parenting plan, each party shall submit a proposed parenting plan  
36 to the court for consideration at such time before the final hearing as may  
37 be directed by the court.

38 (e) In entering an original order for support of a child under this  
39 section, the court may award an additional judgment to reimburse the  
40 expenses of support and education of the child from the date of birth to  
41 the date the order is entered. If the determination of paternity is based  
42 upon a presumption arising under K.S.A. 38-1114 and amendments  
43 thereto, the court shall award an additional judgment to reimburse all or



1 part of the expenses of support and education of the child from at least  
2 the date the presumption first arose to the date the order is entered,  
3 except that no additional judgment need be awarded for amounts accrued  
4 under a previous order for the child's support.

5 (f) In determining the amount to be ordered in payment and duration  
6 of such payments, a court enforcing the obligation of support shall con-  
7 sider all relevant facts including, but not limited to, the following:

8 (1) The needs of the child.

9 (2) The standards of living and circumstances of the parents.

10 (3) The relative financial means of the parents.

11 (4) The earning ability of the parents.

12 (5) The need and capacity of the child for education.

13 (6) The age of the child.

14 (7) The financial resources and the earning ability of the child.

15 (8) The responsibility of the parents for the support of others.

16 (9) The value of services contributed by both parents.

17 (g) The provisions of K.S.A. 23-4,107, and amendments thereto, shall  
18 apply to all orders of support issued under this section.

19 (h) An order granting parenting time pursuant to this section may be  
20 enforced in accordance with K.S.A. 23-701, and amendments thereto, or  
21 under the uniform child custody jurisdiction and enforcement act.

22 Sec. ~~6~~ 7. K.S.A. 38-1123 is hereby amended to read as follows: 38-  
23 1123. (a) If existence of the father and child relationship has been deter-  
24 mined and payment of support is ordered under prior law, the court may  
25 order support and any related expenses to be paid through ~~the clerk of~~  
26 ~~the court or district court trustee~~ *the central unit for collection and dis-*  
27 *bursement of support payments designated pursuant to K.S.A. 23-4,118,*  
28 *and amendments thereto.* If payment of support is ordered under this act,  
29 the court shall require such support and any related expense to be paid  
30 through the ~~clerk of the court or the court trustee~~ *central unit for collec-*  
31 *tion and disbursement of support payments designated pursuant to K.S.A.*  
32 *23-4,118, and amendments thereto.*

33 (b) The provisions of ~~K.S.A. 23-4,107~~ *the Kansas income withholding*  
34 *act, K.S.A. 23-4,105 through K.S.A. 23-4,123, and amendments thereto,*  
35 shall apply to orders of support issued under this act or under the pred-  
36 ecessor to this act.

37 (c) Willful failure to obey the judgment or order of the court is a civil  
38 contempt of the court. All remedies for the enforcement of judgments  
39 apply.

40 Sec. 7 ~~8~~. K.S.A. 2000 Supp. 60-1610 is hereby amended to read as  
41 follows: 60-1610. A decree in an action under this article may include  
42 orders on the following matters:

43 (a) *Minor children.* (1) *Child support and education.* The court shall

1 make provisions for the support and education of the minor children. The  
2 court may modify or change any prior order, including any order issued  
3 in a title IV-D case, within three years of the date of the original order  
4 or a modification order, when a material change in circumstances is  
5 shown, irrespective of the present domicile of the child or the parents. If  
6 more than three years has passed since the date of the original order or  
7 modification order, a material change in circumstance need not be shown.  
8 The court may make a modification of child support retroactive to a date  
9 at least one month after the date that the motion to modify was filed with  
10 the court. Any increase in support ordered effective prior to the date the  
11 court's judgment is filed shall not become a lien on real property pursuant  
12 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of  
13 custodial arrangement ordered by the court, the court may order the child  
14 support and education expenses to be paid by either or both parents for  
15 any child less than 18 years of age, at which age the support shall ter-  
16minate unless: (A) The parent or parents agree, by written agreement  
17 approved by the court, to pay support beyond the time the child reaches  
18 18 years of age; (B) the child reaches 18 years of age before completing  
19 the child's high school education in which case the support shall not ter-  
20minate automatically, unless otherwise ordered by the court, until June  
21 30 of the school year during which the child became 18 years of age if  
22 the child is still attending high school; or (C) the child is still a bona fide  
23 high school student after June 30 of the school year during which the  
24 child became 18 years of age, in which case the court, on motion, may  
25 order support to continue through the school year during which the child  
26 becomes 19 years of age so long as the child is a bona fide high school  
27 student and the parents jointly participated or knowingly acquiesced in  
28 the decision which delayed the child's completion of high school. The  
29 court, in extending support pursuant to subsection (a)(1)(C), may impose  
30 such conditions as are appropriate and shall set the child support utilizing  
31 the guideline table category for 16-year through 18-year old children.  
32 Provision for payment of support and educational expenses of a child after  
33 reaching 18 years of age if still attending high school shall apply to any  
34 child subject to the jurisdiction of the court, including those whose sup-  
35port was ordered prior to July 1, 1992. If an agreement approved by the  
36 court prior to July 1, 1988, provides for termination of support before the  
37 date provided by subsection (a)(1)(B), the court may review and modify  
38 such agreement, and any order based on such agreement, to extend the  
39 date for termination of support to the date provided by subsection  
40 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,  
41 provides for termination of support before the date provided by subsec-  
42tion (a)(1)(C), the court may review and modify such agreement, and any  
43 order based on such agreement, to extend the date for termination of

1 support to the date provided by subsection (a)(1)(C). For purposes of this  
2 section, “bona fide high school student” means a student who is enrolled  
3 in full accordance with the policy of the accredited high school in which  
4 the student is pursuing a high school diploma or a graduate equivalency  
5 diploma (GED). In determining the amount to be paid for child support,  
6 the court shall consider all relevant factors, without regard to marital  
7 misconduct, including the financial resources and needs of both parents,  
8 the financial resources and needs of the child and the physical and emo-  
9 tional condition of the child. Until a child reaches 18 years of age, the  
10 court may set apart any portion of property of either the husband or wife,  
11 or both, that seems necessary and proper for the support of the child.  
12 ~~Every~~ *Except for good cause shown, every* order requiring payment of  
13 child support under this section shall require that the support be paid  
14 through the clerk of the district court or the court trustee ~~except for good~~  
15 ~~cause shown~~ *central unit for collection and disbursement of support pay-*  
16 *ments designated pursuant to K.S.A. 23-4,118, and amendments thereto.*  
17 If the divorce decree of the parties provides for an abatement of child  
18 support during any period provided in such decree, the child support  
19 such nonresidential parent owes for such period shall abate during such  
20 period of time, except that if the residential parent shows that the criteria  
21 for the abatement has not been satisfied there shall not be an abatement  
22 of such child support.

23 (2) *Child custody and residency. (A) Changes in custody.* Subject to  
24 the provisions of the uniform child custody jurisdiction and enforcement  
25 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the  
26 court may change or modify any prior order of custody, residency, visi-  
27 tation and parenting time, when a material change of circumstances is  
28 shown, but no ex parte order shall have the effect of changing residency  
29 of a minor child from the parent who has had the sole de facto residency  
30 of the child to the other parent unless there is sworn testimony to support  
31 a showing of extraordinary circumstances. If an interlocutory order is  
32 issued ex parte, the court shall hear a motion to vacate or modify the  
33 order within 15 days of the date that a party requests a hearing whether  
34 to vacate or modify the order.

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

38 (3) *Child custody or residency criteria.* The court shall determine  
39 custody or residency of a child in accordance with the best interests of  
40 the child.

41 (A) If the parties have entered into a parenting plan, it shall be pre-  
42 sumed that the agreement is in the best interests of the child. This pre-  
43 sumption may be overcome and the court may make a different order if

1 the court makes specific findings of fact stating why the agreed parenting  
2 plan is not in the best interests of the child.

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

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

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

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

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

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

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

18 (vii) evidence of spousal abuse.

19 Neither parent shall be considered to have a vested interest in the  
20 custody or residency of any child as against the other parent, regardless  
21 of the age of the child, and there shall be no presumption that it is in the  
22 best interests of any infant or young child to give custody or residency to  
23 the mother.

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

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

32 (B) *Sole legal custody.* The court may order the sole legal custody of  
33 a child with one of the parties when the court finds that it is not in the  
34 best interests of the child that both of the parties have equal rights to  
35 make decisions pertaining to the child. If the court does not order joint  
36 legal custody, the court shall include on the record specific findings of  
37 fact upon which the order for sole legal custody is based. The award of  
38 sole legal custody to one parent shall not deprive the other parent of  
39 access to information regarding the child unless the court shall so order,  
40 stating the reasons for that determination.

41 (5) *Types of residential arrangements.* After making a determination  
42 of the legal custodial arrangements, the court shall determine the resi-  
43 dency of the child from the following options, which arrangement the

1 court must find to be in the best interest of the child. The parties shall  
2 submit to the court either an agreed parenting plan or, in the case of  
3 dispute, proposed parenting plans for the court's consideration. Such op-  
4 tions are:

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

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

11 (C) *Nonparental residency*. If during the proceedings the court de-  
12 termines that there is probable cause to believe that the child is a child  
13 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-  
14 1502 and amendments thereto or that neither parent is fit to have resi-  
15 dency, the court may award temporary residency of the child to a grand-  
16 parent, aunt, uncle or adult sibling, or, another person or agency if the  
17 court finds the award of custody to such person or agency is in the best  
18 interests of the child. In making such a residency order, the court shall  
19 give preference, to the extent that the court finds it is in the best interests  
20 of the child, first to awarding such residency to a relative of the child by  
21 blood, marriage or adoption and second to awarding such residency to  
22 another person with whom the child has close emotional ties. The court  
23 may make temporary orders for care, support, education and visitation  
24 that it considers appropriate. Temporary residency orders are to be en-  
25 tered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-  
26 1543, and amendments thereto, and shall remain in effect until there is  
27 a final determination under the Kansas code for care of children. An  
28 award of temporary residency under this paragraph shall not terminate  
29 parental rights nor give the court the authority to consent to the adoption  
30 of the child. When the court enters orders awarding temporary residency  
31 of the child to an agency or a person other than the parent, the court  
32 shall refer a transcript of the proceedings to the county or district attor-  
33 ney. The county or district attorney shall file a petition as provided in  
34 K.S.A. 38-1531 and amendments thereto and may request termination of  
35 parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The  
36 costs of the proceedings shall be paid from the general fund of the county.  
37 When a final determination is made that the child is not a child in need  
38 of care, the county or district attorney shall notify the court in writing  
39 and the court, after a hearing, shall enter appropriate custody orders  
40 pursuant to this section. If the same judge presides over both proceedings,  
41 the notice is not required. Any disposition pursuant to the Kansas code  
42 for care of children shall be binding and shall supersede any order under  
43 this section.

1 (b) *Financial matters.* (1) *Division of property.* The decree shall di-  
2 vide the real and personal property of the parties, including any retire-  
3 ment and pension plans, whether owned by either spouse prior to mar-  
4 riage, acquired by either spouse in the spouse's own right after marriage  
5 or acquired by the spouses' joint efforts, by: (A) a division of the property  
6 in kind; (B) awarding the property or part of the property to one of the  
7 spouses and requiring the other to pay a just and proper sum; or (C)  
8 ordering a sale of the property, under conditions prescribed by the court,  
9 and dividing the proceeds of the sale. Upon request, the trial court shall  
10 set a valuation date to be used for all assets at trial, which may be the  
11 date of separation, filing or trial as the facts and circumstances of the case  
12 may dictate. The trial court may consider evidence regarding changes in  
13 value of various assets before and after the valuation date in making the  
14 division of property. In dividing defined-contribution types of retirement  
15 and pension plans, the court shall allocate profits and losses on the non-  
16 participant's portion until date of distribution to that nonparticipant. In  
17 making the division of property the court shall consider the age of the  
18 parties; the duration of the marriage; the property owned by the parties;  
19 their present and future earning capacities; the time, source and manner  
20 of acquisition of property; family ties and obligations; the allowance of  
21 maintenance or lack thereof; dissipation of assets; the tax consequences  
22 of the property division upon the respective economic circumstances of  
23 the parties; and such other factors as the court considers necessary to  
24 make a just and reasonable division of property. The decree shall provide  
25 for any changes in beneficiary designation on: (A) Any insurance or an-  
26 nuity policy that is owned by the parties, or in the case of group life  
27 insurance policies, under which either of the parties is a covered person;  
28 (B) any trust instrument under which one party is the grantor or holds a  
29 power of appointment over part or all of the trust assets, that may be  
30 exercised in favor of either party; or (C) any transfer on death or payable  
31 on death account under which one or both of the parties are owners or  
32 beneficiaries. Nothing in this section shall relieve the parties of the ob-  
33 ligation to effectuate any change in beneficiary designation by the filing  
34 of such change with the insurer or issuer in accordance with the terms  
35 of such policy.

36 (2) *Maintenance.* The decree may award to either party an allowance  
37 for future support denominated as maintenance, in an amount the court  
38 finds to be fair, just and equitable under all of the circumstances. The  
39 decree may make the future payments modifiable or terminable under  
40 circumstances prescribed in the decree. The court may make a modifi-  
41 cation of maintenance retroactive to a date at least one month after the  
42 date that the motion to modify was filed with the court. In any event, the  
43 court may not award maintenance for a period of time in excess of 121

1 months. If the original court decree reserves the power of the court to  
2 hear subsequent motions for reinstatement of maintenance and such a  
3 motion is filed prior to the expiration of the stated period of time for  
4 maintenance payments, the court shall have jurisdiction to hear a motion  
5 by the recipient of the maintenance to reinstate the maintenance pay-  
6 ments. Upon motion and hearing, the court may reinstate the payments  
7 in whole or in part for a period of time, conditioned upon any modifying  
8 or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The  
9 recipient may file subsequent motions for reinstatement of maintenance  
10 prior to the expiration of subsequent periods of time for maintenance  
11 payments to be made, but no single period of reinstatement ordered by  
12 the court may exceed 121 months. Maintenance may be in a lump sum,  
13 in periodic payments, on a percentage of earnings or on any other basis.  
14 At any time, on a hearing with reasonable notice to the party affected,  
15 the court may modify the amounts or other conditions for the payment  
16 of any portion of the maintenance originally awarded that has not already  
17 become due, but no modification shall be made without the consent of  
18 the party liable for the maintenance, if it has the effect of increasing or  
19 accelerating the liability for the unpaid maintenance beyond what was  
20 prescribed in the original decree. Every order requiring payment of main-  
21 tenance under this section shall require that the maintenance be paid  
22 through the clerk of the district court or the court trustee **central unit**  
23 **for collection and disbursement of support payments designated**  
24 **pursuant to K.S.A. 23-4,118, and amendments thereto**, except for  
25 good cause shown.

26  
27 (3) *Separation agreement.* If the parties have entered into a separation  
28 agreement which the court finds to be valid, just and equitable, the  
29 agreement shall be incorporated in the decree. A separation agreement  
30 may include provisions relating to a parenting plan. The provisions of the  
31 agreement on all matters settled by it shall be confirmed in the decree  
32 except that any provisions relating to the legal custody, residency, visita-  
33 tion parenting time, support or education of the minor children shall be  
34 subject to the control of the court in accordance with all other provisions  
35 of this article. Matters settled by an agreement incorporated in the de-  
36 cree, other than matters pertaining to the legal custody, residency, visita-  
37 tion, parenting time, support or education of the minor children, shall  
38 not be subject to subsequent modification by the court except: (A) As  
39 prescribed by the agreement or (B) as subsequently consented to by the  
40 parties.

41 (4) *Costs and fees.* Costs and attorney fees may be awarded to either  
42 party as justice and equity require. The court may order that the amount  
43 be paid directly to the attorney, who may enforce the order in the attor-

1 ney's name in the same case.

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

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

12 Sec. **8 9**. K.S.A. 2000 Supp. 60-2308 is hereby amended to read as  
13 follows: 60-2308. (a) Money received by any debtor as pensioner of the  
14 United States within three months next preceding the issuing of an exe-  
15 cution, or attachment, or garnishment process, cannot be applied to the  
16 payment of the debts of such pensioner when it appears by the affidavit  
17 of the debtor or otherwise that such pension money is necessary for the  
18 maintenance of the debtor's support or a family support wholly or in part  
19 by the pension money. The filing of the affidavit by the debtor, or making  
20 proof as provided in this section, shall be *prima facie* evidence of the  
21 necessity of such pension money for such support. It shall be the duty of  
22 the court in which such proceeding is pending to release all moneys held  
23 by such attachment or garnishment process, immediately upon the filing  
24 of such affidavit, or the making of such proof.

25 (b) Except as provided in subsection (c), any money or other assets  
26 payable to a participant or beneficiary from, or any interest of any partic-  
27 ipant or beneficiary in, a retirement plan which is qualified under sections  
28 401(a), 403(a), 403(b), 408, 408A or 409 of the federal internal revenue  
29 code of 1986 and amendments thereto shall be exempt from any and all  
30 claims of creditors of the beneficiary or participant. Any such plan shall  
31 be conclusively presumed to be a spendthrift trust under these statutes  
32 and the common law of the state. All records of the debtor concerning  
33 such plan or arrangement and of the plan concerning the debtor's partic-  
34 ipation in the plan or arrangement shall be exempt from the subpoena  
35 process.

36 (c) Any plan or arrangement described in subsection (b) shall not be  
37 exempt from the claims of an alternate payee under a qualified domestic  
38 relations order. However, the interest of any and all alternate payees  
39 under a qualified domestic relations order shall be exempt from any and  
40 all claims of any creditor, other than the state department of social and  
41 rehabilitation services, of the alternate payee. As used in this subsection,  
42 the terms "alternate payee" and "qualified domestic relations order" have  
43 the meaning ascribed to them in section 414(p) of the federal internal



1 revenue code of 1986 and amendments thereto.

2 (d) The provisions of subsections (b) and (c) shall apply to any pro-  
3 ceeding which: (1) Is filed on or after July 1, 1986; or (2) was filed on or  
4 after January 1, 1986, and is pending or on appeal July 1, 1986.

5 (e) Money held by *the central unit for collection and disbursement of*  
6 *support payments designated pursuant to K.S.A. 23-4,118, and amend-*  
7 *ments thereto*, the state department of social and rehabilitation services,  
8 any clerk of a district court or a *any* district court trustee in connection  
9 with a court order for the support of any person, whether ~~it be~~ *the money*  
10 *is* identified as child support, spousal support, alimony or maintenance,  
11 shall be exempt from execution, attachment or garnishment process.

12 Sec. ~~9~~ **10**. K.S.A. 60-2803 is hereby amended to read as follows: 60-  
13 2803. (a) When a money judgment rendered in a civil action in a court  
14 of this state is satisfied, the judgment creditor or the assignee of the  
15 judgment creditor shall file satisfaction and release of the judgment within  
16 twenty days after receipt of written demand therefor, sent by restricted  
17 mail as defined by K.S.A. 60-103 and amendments thereto. Such satis-  
18 faction and release shall be filed with the clerk of the court in which the  
19 judgment was entered and with the clerk of any other court in which the  
20 judgment was filed.

21 (b) If a judgment creditor or the assignee of a judgment creditor  
22 refuses or neglects to enter satisfaction and release of a judgment when  
23 required by this section, such judgment creditor or assignee shall be liable  
24 to the judgment debtor, or other interested person demanding the satis-  
25 faction or release, in damages in the amount of one hundred dollars,  
26 together with a reasonable attorney's fee for preparing and prosecuting  
27 the action to recover such damages.

28 (c) The provisions of this section shall not apply if the judgment is  
29 satisfied by payment through the office of the clerk of the district court,  
30 *the district court trustee or any central unit for collection and disburse-*  
31 *ment of support payments designated pursuant to K.S.A. 23-4,118, and*  
32 *amendments thereto.*

33 Sec. ~~10~~ **11**. K.S.A. 23-4,136, 38-1121, 38-1123 and 60-2803 and  
34 K.S.A. 2000 Supp. 23-4,106, 23-4,108, ~~23-4,111~~, 23-4,118, 60-1610 and  
35 60-2308 are hereby repealed.

36 Sec. ~~11~~ **12**. This act shall take effect and be in force from and after  
37 its publication in the Kansas register.

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