

HOUSE BILL No. 2854

By Committee on Judiciary

2-13

AN ACT concerning child support and maintenance; relating to direct payments; amending K.S.A. 2001 Supp. 23-4,107 and 60-1610 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 23-4,107 is hereby amended to read as follows: 23-4,107. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or (l), all new or modified orders for support shall provide for immediate issuance of an income withholding order. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) Except as otherwise provided in this subsection or subsections (j) or (l), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding

1 order or, if a motion to stay has been filed, the reason an income with-
2 holding order must be issued immediately; (C) a specified amount to be
3 withheld by the payor to satisfy the order of support and to defray any
4 arrearage; (D) whether the income withholding order is to include a med-
5 ical withholding order; and (E) that the amount of the arrearage as of the
6 date the notice to the obligor was prepared was equal to or greater than
7 the amount of support payable for one month. In addition to any other
8 penalty provided by law, the filing of such an affidavit with knowledge of
9 the falsity of a material declaration is punishable as a contempt.

10 Upon the filing of the affidavit, the income withholding order shall be
11 issued without further notice to the obligor, hearing or amendments of
12 the support order. Payment of all or part of the arrearage before issuance
13 of the income withholding order shall not prevent issuance of the income
14 withholding order, unless the arrearage is paid in full and the order for
15 support does not include an amount for the current support of a person.
16 No affidavit is required if the court, upon hearing a motion to stay issu-
17 ance of the income withholding order or otherwise, issues an income
18 withholding order.

19 (2) In a title IV-D case, the IV-D agency may issue an income with-
20 holding order as authorized by K.S.A. 39-7,147, and amendments thereto.
21 Any such income withholding order shall be considered an income with-
22 holding order issued pursuant to this act.

23 (e) (1) An income withholding order shall be directed to any payor
24 of the obligor. Notwithstanding any other requirement of this act as to
25 form or content, any income withholding order prepared in a standard
26 format prescribed by the secretary of social and rehabilitation services
27 shall be deemed to be in compliance with this act.

28 (2) An income withholding order which does not include a medical
29 withholding order shall require the payor to withhold from any income
30 due, or to become due, to the obligor a specified amount sufficient to
31 satisfy the order of support and to defray any arrearage and shall include
32 notice of and direction to comply with the provisions of K.S.A. 23-4,108
33 and 23-4,109, and amendments thereto.

34 (3) An income withholding order which consists only of a medical
35 withholding order shall include notice of the medical child support order
36 and shall conform to the requirements of K.S.A. 23-4,121 and amend-
37 ments thereto. The medical withholding order shall include notice of and
38 direction to comply with the requirements of K.S.A. 23-4,108, 23-4,109,
39 23-4,119 and 23-4,122 and amendments thereto.

40 (4) An income withholding order which includes both a medical with-
41 holding order and an income withholding order for cash support shall
42 meet the requirements of paragraphs (2) and (3).

43 (f) (1) Upon written request and without the requirement of further

1 notice to the obligor, the clerk of the district court shall cause a copy of
2 the income withholding order to be served on the payor only by personal
3 service or registered mail, return receipt requested.

4 (2) Without the requirement of further notice to the obligor, the IV-
5 D agency may cause a copy of any income withholding order to be served
6 on the payor only by personal service or registered mail, return receipt
7 requested or by any alternate method acceptable to the payor. No payor
8 shall be liable to any person solely because of the method of service
9 accepted by the payor.

10 (3) As used in this section, "copy of the income withholding order"
11 means any document or notice, regardless of format, that advises the
12 payor of the same general duties, requires the same amount to be with-
13 held from income and requires medical withholding to the same extent
14 as the original income withholding order.

15 (g) An income withholding order shall be binding on any existing or
16 future payor on whom a copy of the order is served and shall require the
17 continued withholding of income from each periodic payment of income
18 until further order of the court or agency that issued the income with-
19 holding order. At any time following issuance of an income withholding
20 order, a copy of the income withholding order may be served on any
21 payor without the requirement of further notice to the obligor.

22 (h) Except as provided in subsection (k) or (l), at any time following
23 entry of an order for support the obligee or public office may serve upon
24 the obligor a written notice of intent to initiate income withholding. If
25 any notice in the court record indicates that title IV-D services are being
26 provided in the case, whether or not the IV-D services include enforce-
27 ment of current support, the person or public office requesting issuance
28 of the income withholding order shall obtain the consent of the IV-D
29 agency to the terms of the proposed income withholding order.

30 The notice of intent to initiate income withholding shall be served on
31 the obligor only by personal service or registered mail, return receipt
32 requested. The notice served on the obligor must state: (1) The terms of
33 the order of support and the total arrearage as of the date the notice was
34 prepared; (2) the amount of income that will be withheld, not including
35 premiums to satisfy a medical withholding order; (3) whether a medical
36 withholding order will be included; (4) that the provision for withholding
37 applies to any current or subsequent payor; (5) the procedures available
38 for contesting the withholding and that the only basis for contesting the
39 withholding is a mistake of fact concerning the amount of the support
40 order, the amount of the arrearage, the amount of income to be withheld
41 or the proper identity of the obligor; (6) the period within which the
42 obligor must act to stay issuance of the income withholding order and
43 that failure to take such action within the specified time will result in

1 payors' being ordered to begin withholding; and (7) the action which will
2 be taken if the obligor contests the withholding.

3 The obligor may, at any time, waive in writing the notice required by
4 this subsection.

5 (i) On request of an obligor, the court shall issue an income with-
6 holding order which shall be honored by a payor regardless of whether
7 there is an arrearage. Nothing in this subsection shall limit the right of
8 the obligee to request modification of the income withholding order.

9 (j) (1) ~~In a nontitle IV-D case, upon presentation to the court of a~~
10 ~~written agreement between the parties providing for an alternative ar-~~
11 ~~reangement, no income withholding order shall be issued pursuant to sub-~~
12 ~~section (b).~~ In any case, before entry of a new or modified order for
13 support, a party may request that no income withholding order be issued
14 pursuant to subsection (b) if notice of the request has been served on all
15 interested parties and: (A) The party demonstrates, and the court finds,
16 that there is good cause not to require immediate income withholding,
17 or (B) a written agreement among all interested parties provides for an
18 alternative arrangement. If child support and maintenance payments are
19 both made to an obligee by the same obligor, and if the court has deter-
20 mined that good cause has been shown that direct child support payments
21 to the obligee may be made, then the court shall provide for direct main-
22 tenance payments to the obligee and no income withholding order shall
23 be issued pursuant to subsection (b). In a title IV-D case, the determi-
24 nation that there is good cause not to require immediate income with-
25 holding must include a finding that immediate income withholding would
26 not be in the child's best interests and, if an obligor's existing obligation
27 is being modified, proof of timely payment of previously ordered support.

28 (2) Notwithstanding the provisions of subsection (j)(1), the court shall
29 issue an income withholding order when an affidavit pursuant to subsec-
30 tion (d) is filed if an arrearage exists in an amount equal to or greater
31 than the amount of support payable for one month.

32 (3) If a notice pursuant to subsection (h) has been served in a title
33 IV-D case, there is no arrearage or the arrearage is less than the amount
34 of support payable for one month, and the obligor files a motion to stay
35 issuance of the income withholding order based upon the court's previous
36 finding of good cause not to require immediate income withholding pur-
37 suant to subsection (j)(1), the obligor must demonstrate the continued
38 existence of good cause. Unless the court again finds that good cause not
39 to require immediate income withholding exists, the court shall issue the
40 income withholding order.

41 (4) If a notice pursuant to subsection (h) has been served in a title
42 IV-D case, there is no arrearage or the arrearage is less than the amount
43 of support payable for one month, and the obligor files a motion to stay

1 issuance of an income withholding order based upon a previous agree-
2 ment of the interested parties for an alternative arrangement pursuant to
3 subsection (j)(1), the court shall issue an income withholding order, not-
4 withstanding any previous agreement, if the court finds that:

5 (A) The agreement was not in writing;

6 (B) the agreement was not approved by all interested parties;

7 (C) the terms of the agreement or alternative arrangement are not
8 being met;

9 (D) the agreement or alternative arrangement is not in the best in-
10 terests of the child; or

11 (E) the agreement or alternative arrangement places an unnecessary
12 burden upon the obligor, obligee or a public office.

13 (5) The procedures and requirements of K.S.A. 23-4,110 and amend-
14 ments thereto apply to any motion pursuant to paragraph (3) or (4) of
15 this subsection (j).

16 (k) (1) An ex parte interlocutory order for support may be enforced
17 pursuant to subsection (b) only if the obligor has consented to the in-
18 come withholding in writing.

19 (2) An ex parte interlocutory order for support may be enforced pur-
20 suant to subsection (c) only if 10 or more days have elapsed since the
21 order for support was served on the obligor.

22 (3) Any other interlocutory order for support may be enforced by
23 income withholding pursuant to this act in the same manner as a final
24 order for support.

25 (4) No bond shall be required for the issuance of an income with-
26 holding order to enforce an interlocutory order pursuant to this act.

27 (l) All new or modified orders for maintenance of a spouse or ex-
28 spouse, except orders for a spouse or ex-spouse living with a child for
29 whom an order of support is also being enforced, entered on or after July
30 1, 1992, shall include a provision for the withholding of income to enforce
31 the order of support. Unless the parties consent in writing to earlier is-
32 suance of a withholding order, withholding shall take effect only after
33 there is an arrearage in an amount equal to or greater than the amount
34 of support payable for two months and after service of a notice as provided
35 in subsection (h).

36 Sec. 2. K.S.A. 2001 Supp. 60-1610 is hereby amended to read as
37 follows: 60-1610. A decree in an action under this article may include
38 orders on the following matters:

39 (a) *Minor children.* (1) *Child support and education.* The court shall
40 make provisions for the support and education of the minor children. The
41 court may modify or change any prior order, including any order issued
42 in a title IV-D case, within three years of the date of the original order
43 or a modification order, when a material change in circumstances is

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

1 diploma (GED). In determining the amount to be paid for child support,
2 the court shall consider all relevant factors, without regard to marital
3 misconduct, including the financial resources and needs of both parents,
4 the financial resources and needs of the child and the physical and emo-
5 tional condition of the child. Until a child reaches 18 years of age, the
6 court may set apart any portion of property of either the husband or wife,
7 or both, that seems necessary and proper for the support of the child.
8 Except for good cause shown, every order requiring payment of child
9 support under this section shall require that the support be paid through
10 the central unit for collection and disbursement of support payments
11 designated pursuant to K.S.A. 23-4,118, and amendments thereto. ~~A writ-
12 ten agreement between the parties to make direct child support payments
13 to the obligee and not pay through the central unit shall constitute good
14 cause, unless the court finds the agreement is not in the best interest of
15 the child or children. The obligor shall file such written agreement with
16 the court. The obligor shall maintain written evidence of the payment of
17 the support obligation and, at least annually, shall provide such evidence
18 to the court and the obligee.~~ If the divorce decree of the parties provides
19 for an abatement of child support during any period provided in such
20 decree, the child support such nonresidential parent owes for such period
21 shall abate during such period of time, except that if the residential parent
22 shows that the criteria for the abatement has not been satisfied there shall
23 not be an abatement of such child support.

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

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

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

42 (A) If the parties have entered into a parenting plan, it shall be pre-
43 sumed that the agreement is in the best interests of the child. This pre-

1 sumption may be overcome and the court may make a different order if
2 the court makes specific findings of fact stating why the agreed parenting
3 plan is not in the best interests of the child.

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

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

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

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

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

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

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

19 (vii) evidence of spousal abuse.

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

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

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

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

42 (5) *Types of residential arrangements.* After making a determination
43 of the legal custodial arrangements, the court shall determine the resi-

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

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

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

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

1 this section.

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

37 (2) *Maintenance.* The decree may award to either party an allowance
38 for future support denominated as maintenance, in an amount the court
39 finds to be fair, just and equitable under all of the circumstances. The
40 decree may make the future payments modifiable or terminable under
41 circumstances prescribed in the decree. The court may make a modifi-
42 cation of maintenance retroactive to a date at least one month after the
43 date that the motion to modify was filed with the court. In any event, the

1 court may not award maintenance for a period of time in excess of 121
2 months. If the original court decree reserves the power of the court to
3 hear subsequent motions for reinstatement of maintenance and such a
4 motion is filed prior to the expiration of the stated period of time for
5 maintenance payments, the court shall have jurisdiction to hear a motion
6 by the recipient of the maintenance to reinstate the maintenance pay-
7 ments. Upon motion and hearing, the court may reinstate the payments
8 in whole or in part for a period of time, conditioned upon any modifying
9 or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The
10 recipient may file subsequent motions for reinstatement of maintenance
11 prior to the expiration of subsequent periods of time for maintenance
12 payments to be made, but no single period of reinstatement ordered by
13 the court may exceed 121 months. Maintenance may be in a lump sum,
14 in periodic payments, on a percentage of earnings or on any other basis.
15 At any time, on a hearing with reasonable notice to the party affected,
16 the court may modify the amounts or other conditions for the payment
17 of any portion of the maintenance originally awarded that has not already
18 become due, but no modification shall be made without the consent of
19 the party liable for the maintenance, if it has the effect of increasing or
20 accelerating the liability for the unpaid maintenance beyond what was
21 prescribed in the original decree. Except for good cause shown, every
22 order requiring payment of maintenance under this section shall require
23 that the maintenance be paid through the central unit for collection and
24 disbursement of support payments designated pursuant to K.S.A. 23-
25 4,118, and amendments thereto. ~~A written agreement between the parties
26 to make direct maintenance payments to the obligee and not pay through
27 the central unit shall constitute good cause.~~ If child support and main-
28 tenance payments are both made to an obligee by the same obligor, and
29 if the court has made a determination concerning the manner of payment
30 of child support, then maintenance payments shall be paid in the same
31 manner.
32

33 (3) *Separation agreement.* If the parties have entered into a separation
34 agreement which the court finds to be valid, just and equitable, the
35 agreement shall be incorporated in the decree. A separation agreement
36 may include provisions relating to a parenting plan. The provisions of the
37 agreement on all matters settled by it shall be confirmed in the decree
38 except that any provisions relating to the legal custody, residency, visita-
39 tion parenting time, support or education of the minor children shall be
40 subject to the control of the court in accordance with all other provisions
41 of this article. Matters settled by an agreement incorporated in the de-
42 cree, other than matters pertaining to the legal custody, residency, visi-
43 tation, parenting time, support or education of the minor children, shall

1 not be subject to subsequent modification by the court except: (A) As
2 prescribed by the agreement or (B) as subsequently consented to by the
3 parties.

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

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

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

18 Sec. 3. K.S.A. 2001 Supp. 23-4,107 and 60-1610 are hereby repealed.

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.

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