

SENATE BILL No. 400

AN ACT concerning the Kansas probate code; relating to residence of administrator; resident agent, written acceptance; relating to the elective share of surviving spouse; concerning homestead rights; invalidity of certain provisions in wills or trusts, exceptions; certain rights of aliens; amending K.S.A. 38-1507, 59-605, 59-6a213, 59-706 and 59-1706 and repealing the existing sections; also repealing K.S.A. 59-511 and 59-512.

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

Section 1. K.S.A. 38-1507 is hereby amended to read as follows: 38-1507. (a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall be kept confidential except: (1) To those persons or entities with a need for information that is directly related to achieving the purposes of this code, or (2) upon an order of a court of competent jurisdiction pursuant to a determination by the court that disclosure of the reports and records is in the best interests of the child or are necessary for the proceedings before the court, or both, and are otherwise admissible in evidence. Such access shall be limited to in camera inspection unless the court otherwise issues an order specifying the terms of disclosure.

(b) The provisions of subsection (a) shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. ~~2000~~ 2001 Supp. 72-89b03 and amendments thereto.

(c) When a report is received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker which indicates a child may be in need of care, the following persons and entities shall have a free exchange of information between and among them:

- (1) The department of social and rehabilitation services;
- (2) the commissioner of juvenile justice;
- (3) the law enforcement agency receiving such report;
- (4) members of a court appointed multidisciplinary team;
- (5) an entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected to be in need of care;
- (6) a military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care;
- (7) a county or district attorney;
- (8) a court services officer who has taken a child into custody pursuant to K.S.A. 38-1527, and amendments thereto;
- (9) a guardian ad litem appointed for a child alleged to be in need of care;
- (10) an intake and assessment worker;
- (11) any community corrections program which has the child under court ordered supervision;
- (12) the department of health and environment or persons authorized by the department of health and environment pursuant to K.S.A. ~~59-512~~ 65-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments thereto; and
- (13) members of a duly appointed community services team.

(d) The following persons or entities shall have access to information, records or reports received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities to maintain their personal safety and the personal safety of individuals in their care or to diagnose, treat, care for or protect a child alleged to be in need of care.

- (1) A child named in the report or records.
- (2) A parent or other person responsible for the welfare of a child, or such person's legal representative.
- (3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.
- (4) A person licensed to practice the healing arts or mental health

profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of care. In order to assist a child placed for care by the secretary of social and rehabilitation services in a foster home or child care facility, the secretary shall provide relevant information to the foster parents or child care facility prior to placement and as such information becomes available to the secretary.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) A prospective adoptive parent prior to placing a child in their care.

(9) The department of health and environment or person authorized by the department of health and environment pursuant to K.S.A. ~~50-512~~ 65-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments thereto.

(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(13) The secretary of social and rehabilitation services.

(14) A law enforcement agency.

(15) A juvenile intake and assessment worker.

(16) The commissioner of juvenile justice.

(e) Information from a record or report of a child in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on appropriations, senate committee on ways and means, legislative post audit committee and joint committee on children and families, carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319 and amendments thereto, in a closed or executive meeting. Except in limited conditions established by  $\frac{2}{3}$  of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) Nothing in this section shall be interpreted to prohibit the secretary of social and rehabilitation services from summarizing the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(g) Disclosure of information from reports or records of a child in need of care to the public shall be limited to confirmation of factual details with respect to how the case was handled that do not violate the privacy of the child, if living, or the child's siblings, parents or guardians. Further, confidential information may be released to the public only with the express written permission of the individuals involved or their representatives or upon order of the court having jurisdiction upon a finding by the court that public disclosure of information in the records or reports is necessary for the resolution of an issue before the court.

(h) Nothing in this section shall be interpreted to prohibit a court of competent jurisdiction from making an order disclosing the findings or information pursuant to a report of alleged or suspected child abuse or neglect which has resulted in a child fatality or near fatality if the court determines such disclosure is necessary to a legitimate state purpose. In making such order, the court shall give due consideration to the privacy of the child, if living, or the child's siblings, parents or guardians.

(i) Information authorized to be disclosed in subsections (d) through (g) shall not contain information which identifies a reporter of a child in need of care.

(j) Records or reports authorized to be disclosed in this section shall not be further disclosed, except that the provisions of this subsection shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. ~~2000~~ 2001 Supp. 72-89b03 and amendments thereto.

(k) Anyone who participates in providing or receiving information without malice under the provisions of this section shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from providing or receiving information.

(l) No individual, association, partnership, corporation or other entity shall willfully or knowingly disclose, permit or encourage disclosure of the contents of records or reports concerning a child in need of care received by the department of social and rehabilitation services, a law enforcement agency or a juvenile intake and assessment worker except as provided by this code. Violation of this subsection is a class B misdemeanor.

Sec. 2. K.S.A. 59-605 is hereby amended to read as follows: 59-605. ~~If it shall appear that any will was written or prepared by the sole or principal beneficiary in such will, who, at the time of writing or preparing the same, was the confidential agent or legal adviser of the testator, or who occupied at the time any other position of confidence or trust to such testator, such will shall not be held to be valid unless it shall affirmatively appear that the testator had read or knew the contents of such will, and had independent advice with reference thereto. Any provision in a will or trust, written or prepared for another person, that gives the writer or preparer or the writer's or preparer's parent, children, issue, sibling or spouse any devise or bequest is invalid unless: (a) The writer or preparer is related to the testator or grantor by blood or marriage and such provision that gives such devise or bequest does not give the writer or preparer or the writer's or preparer's parent, child, issue, sibling or spouse more than the writer or preparer or the writer's or preparer's parent, child, issue, sibling or spouse would receive under the laws of intestate succession; or (b) it affirmatively appears that the testator or grantor had read or knew the content of the will or trust and had independent legal advice with reference thereto. As used in this section, "children" and "issue" shall have the same meaning as provided in K.S.A. 59-501, and amendments thereto.~~

Sec. 3. K.S.A. 59-6a213 is hereby amended to read as follows: 59-6a213. (a) The right of election of a surviving spouse and the rights of the surviving spouse to ~~either~~ the homestead, *the homestead allowance* or the family allowance, or ~~both~~ all of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, consent to any instrument, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) The surviving spouse did not execute the waiver voluntarily; or  
(2) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, ~~homestead and family allowance by each spouse in the property of the other and a renunciation by each of all~~ benefits that would otherwise pass to such spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement. *For documents exe-*

*cuted on and after July 1, 2002, to waive the homestead, the homestead allowance or the family allowance, or all of them, the language of the document must clearly provide that the homestead, the homestead allowance or the family allowance, or all of them, were understandably and knowledgeably waived by each spouse, if applicable.*

Sec. 4. K.S.A. 59-706 is hereby amended to read as follows: 59-706. In cases of administration of a resident's estate:

(a) Letters of administration ~~shall not~~ *may* be granted to a nonresident of this state; ~~and when the nonresident has appointed an agent pursuant to K.S.A. 59-1706, and amendments thereto.~~ *When an administrator of a resident's estate shall become becomes a nonresident, the court shall revoke such administrator's letters, until the nonresident has appointed an agent pursuant to K.S.A. 59-1706, and amendments thereto.*

(b) Letters testamentary may be granted to a nonresident of this state when the nonresident has appointed an agent pursuant to K.S.A. 59-1706, ~~and amendments thereto.~~ *When an executor of a resident's estate shall become becomes a nonresident, the court shall revoke such nonresident's letters, until the nonresident has appointed an agent pursuant to K.S.A. 59-1706, and amendments thereto.*

Sec. 5. K.S.A. 59-1706 is hereby amended to read as follows: 59-1706. Every nonresident appointed a fiduciary in this state ~~shall~~, before entering upon the duties of the trust, ~~shall~~ *shall* appoint in writing an agent residing in the county where the appointment is made; ~~and shall~~. By such writing ~~consent~~, *the nonresident fiduciary consents* that the service of any notice or process ~~when made upon said such agent~~ shall have the same force and effect as ~~if made personal service upon the fiduciary personally within said such county and state.~~ *Such writing shall state the correct address of such agent and shall be filed in the district court where such appointment is made. Such writing shall include written acceptance of such appointment by the designated agent.* Service of notice or process upon such agent shall have the same force and effect as personal service upon the fiduciary.

Sec. 6. K.S.A. 38-1507, 59-511, 59-512, 59-605, 59-6a213, 59-706 and 59-1706 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_  
SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*