

## HOUSE BILL No. 2415

By Committee on Judiciary

2-6

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9 AN ACT concerning civil procedure; relating to separate maintenance;  
10 amending K.S.A. 2006 Supp. 60-1610 and repealing the existing  
11 section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 60-1610 is hereby amended to read as  
15 follows: 60-1610. A decree in an action under this article may include  
16 orders on the following matters:

17 (a) *Minor children.* (1) *Child support and education.* The court shall  
18 make provisions for the support and education of the minor children. The  
19 court may modify or change any prior order, including any order issued  
20 in a title IV-D case, within three years of the date of the original order  
21 or a modification order, when a material change in circumstances is  
22 shown, irrespective of the present domicile of the child or the parents. If  
23 more than three years has passed since the date of the original order or  
24 modification order, a material change in circumstance need not be shown.  
25 The court may make a modification of child support retroactive to a date  
26 at least one month after the date that the motion to modify was filed with  
27 the court. Any increase in support ordered effective prior to the date the  
28 court's judgment is filed shall not become a lien on real property pursuant  
29 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of  
30 custodial arrangement ordered by the court, the court may order the child  
31 support and education expenses to be paid by either or both parents for  
32 any child less than 18 years of age, at which age the support shall ter-  
33minate unless: (A) The parent or parents agree, by written agreement  
34 approved by the court, to pay support beyond the time the child reaches  
35 18 years of age; (B) the child reaches 18 years of age before completing  
36 the child's high school education in which case the support shall not ter-  
37minate automatically, unless otherwise ordered by the court, until June  
38 30 of the school year during which the child became 18 years of age if  
39 the child is still attending high school; or (C) the child is still a bona fide  
40 high school student after June 30 of the school year during which the  
41 child became 18 years of age, in which case the court, on motion, may  
42 order support to continue through the school year during which the child  
43 becomes 19 years of age so long as the child is a bona fide high school

1 student and the parents jointly participated or knowingly acquiesced in  
2 the decision which delayed the child's completion of high school. The  
3 court, in extending support pursuant to subsection (a)(1)(C), may impose  
4 such conditions as are appropriate and shall set the child support utilizing  
5 the guideline table category for 16-year through 18-year old children.  
6 Provision for payment of support and educational expenses of a child after  
7 reaching 18 years of age if still attending high school shall apply to any  
8 child subject to the jurisdiction of the court, including those whose sup-  
9 port was ordered prior to July 1, 1992. If an agreement approved by the  
10 court prior to July 1, 1988, provides for termination of support before the  
11 date provided by subsection (a)(1)(B), the court may review and modify  
12 such agreement, and any order based on such agreement, to extend the  
13 date for termination of support to the date provided by subsection  
14 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,  
15 provides for termination of support before the date provided by subsec-  
16 tion (a)(1)(C), the court may review and modify such agreement, and any  
17 order based on such agreement, to extend the date for termination of  
18 support to the date provided by subsection (a)(1)(C). For purposes of this  
19 section, "bona fide high school student" means a student who is enrolled  
20 in full accordance with the policy of the accredited high school in which  
21 the student is pursuing a high school diploma or a graduate equivalency  
22 diploma (GED). In determining the amount to be paid for child support,  
23 the court shall consider all relevant factors, without regard to marital  
24 misconduct, including the financial resources and needs of both parents,  
25 the financial resources and needs of the child and the physical and emo-  
26 tional condition of the child. Until a child reaches 18 years of age, the  
27 court may set apart any portion of property of either the husband or wife,  
28 or both, that seems necessary and proper for the support of the child.  
29 Except for good cause shown, every order requiring payment of child  
30 support under this section shall require that the support be paid through  
31 the central unit for collection and disbursement of support payments  
32 designated pursuant to K.S.A. 23-4,118, and amendments thereto. A writ-  
33 ten agreement between the parties to make direct child support payments  
34 to the obligee and not pay through the central unit shall constitute good  
35 cause, unless the court finds the agreement is not in the best interest of  
36 the child or children. The obligor shall file such written agreement with  
37 the court. The obligor shall maintain written evidence of the payment of  
38 the support obligation and, at least annually, shall provide such evidence  
39 to the court and the obligee. If the divorce decree of the parties provides  
40 for an abatement of child support during any period provided in such  
41 decree, the child support such nonresidential parent owes for such period  
42 shall abate during such period of time, except that if the residential parent  
43 shows that the criteria for the abatement has not been satisfied there shall

1 not be an abatement of such child support.

2 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to  
3 the provisions of the uniform child custody jurisdiction and enforcement  
4 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the  
5 court may change or modify any prior order of custody, residency, visi-  
6 tation and parenting time, when a material change of circumstances is  
7 shown, but no ex parte order shall have the effect of changing residency  
8 of a minor child from the parent who has had the sole de facto residency  
9 of the child to the other parent unless there is sworn testimony to support  
10 a showing of extraordinary circumstances. If an interlocutory order is  
11 issued ex parte, the court shall hear a motion to vacate or modify the  
12 order within 15 days of the date that a party requests a hearing whether  
13 to vacate or modify the order.

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

17 (3) *Child custody or residency criteria.* The court shall determine  
18 custody or residency of a child in accordance with the best interests of  
19 the child.

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

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

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

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

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

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

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

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

40 (vii) evidence of spousal abuse;

41 (viii) whether a parent is subject to the registration requirements of  
42 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-  
43 ments thereto, or any similar act in any other state, or under military or

1 federal law;

2 (ix) whether a parent has been convicted of abuse of a child, K.S.A.  
3 21-3609, and amendments thereto;

4 (x) whether a parent is residing with an individual who is subject to  
5 registration requirements of the Kansas offender registration act, K.S.A.  
6 22-4901, et seq., and amendments thereto, or any similar act in any other  
7 state, or under military or federal law; and

8 (xi) whether a parent is residing with an individual who has been  
9 convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

10 (C) Neither parent shall be considered to have a vested interest in  
11 the custody or residency of any child as against the other parent, regard-  
12 less of the age of the child, and there shall be no presumption that it is  
13 in the best interests of any infant or young child to give custody or resi-  
14 dency to the mother.

15 (D) There shall be a rebuttable presumption that it is not in the best  
16 interest of the child to have custody or residency granted to a parent who:

17 (i) Is residing with an individual who is subject to registration require-  
18 ments of the Kansas offender registration act, K.S.A. 22-4901, et seq.,  
19 and amendments thereto, or any similar act in any other state, or under  
20 military or federal law; or

21 (ii) is residing with an individual who has been convicted of abuse of  
22 a child, K.S.A. 21-3609, and amendments thereto.

23 (4) *Types of legal custodial arrangements.* Subject to the provisions  
24 of this article, the court may make any order relating to custodial arrange-  
25 ments which is in the best interests of the child. The order shall provide  
26 one of the following legal custody arrangements, in the order of prefer-  
27 ence: (A) *Joint legal custody.* The court may order the joint legal custody  
28 of a child with both parties. In that event, the parties shall have equal  
29 rights to make decisions in the best interests of the child.

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

39 (5) *Types of residential arrangements.* After making a determination  
40 of the legal custodial arrangements, the court shall determine the resi-  
41 dency of the child from the following options, which arrangement the  
42 court must find to be in the best interest of the child. The parties shall  
43 submit to the court either an agreed parenting plan or, in the case of

1 dispute, proposed parenting plans for the court's consideration. Such op-  
2 tions are:

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

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

9 (C) *Nonparental residency*. If during the proceedings the court de-  
10 termines that there is probable cause to believe that the child is a child  
11 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)  
12 of K.S.A. 2006 Supp. 38-2202, and amendments thereto, or that neither  
13 parent is fit to have residency, the court may award temporary residency  
14 of the child to a grandparent, aunt, uncle or adult sibling, or, another  
15 person or agency if the court finds by written order that: (i) (a) The child  
16 is likely to sustain harm if not immediately removed from the home;

17 (b) allowing the child to remain in home is contrary to the welfare of  
18 the child; or

19 (c) immediate placement of the child is in the best interest of the  
20 child; and

21 (ii) reasonable efforts have been made to maintain the family unit  
22 and prevent the unnecessary removal of the child from the child's home  
23 or that an emergency exists which threatens the safety to the child. In  
24 making such a residency order, the court shall give preference, to the  
25 extent that the court finds it is in the best interests of the child, first to  
26 awarding such residency to a relative of the child by blood, marriage or  
27 adoption and second to awarding such residency to another person with  
28 whom the child has close emotional ties. The court may make temporary  
29 orders for care, support, education and visitation that it considers appro-  
30 priate. Temporary residency orders are to be entered in lieu of temporary  
31 orders provided for in K.S.A. 2006 Supp. 38-2243 and 38-2244, and  
32 amendments thereto, and shall remain in effect until there is a final de-  
33 termination under the revised Kansas code for care of children. An award  
34 of temporary residency under this paragraph shall not terminate parental  
35 rights nor give the court the authority to consent to the adoption of the  
36 child. When the court enters orders awarding temporary residency of the  
37 child to an agency or a person other than the parent, the court shall refer  
38 a transcript of the proceedings to the county or district attorney. The  
39 county or district attorney shall file a petition as provided in K.S.A. 2006  
40 Supp. 38-2234, and amendments thereto, and may request termination  
41 of parental rights pursuant to K.S.A. 2006 Supp. 38-2266, and amend-  
42 ments thereto. The costs of the proceedings shall be paid from the general  
43 fund of the county. When a final determination is made that the child is

1 not a child in need of care, the county or district attorney shall notify the  
2 court in writing and the court, after a hearing, shall enter appropriate  
3 custody orders pursuant to this section. If the same judge presides over  
4 both proceedings, the notice is not required. Any disposition pursuant to  
5 the revised Kansas code for care of children shall be binding and shall  
6 supersede any order under this section.

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

42 (2) *Maintenance.* The decree may award to either party an allowance  
43 for future support denominated as maintenance, in an amount the court

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

38 (3) *Separation agreement.* If the parties have entered into a separa-  
39 tion agreement which the court finds to be valid, just and equitable, the  
40 agreement shall be incorporated in the decree. A separation agreement  
41 may include provisions relating to a parenting plan. The provisions of the  
42 agreement on all matters settled by it shall be confirmed in the decree  
43 except that any provisions relating to the legal custody, residency, visita-

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

9 *Annual Payment Adjustments.* (A) *No amount of maintenance*  
10 *awarded by decree pursuant to paragraph (2) or separation agreement*  
11 *providing for maintenance pursuant to paragraph (3) shall be found by*  
12 *a court to be fair, just and equitable unless such amount of maintenance*  
13 *or agreement provides for the annual adjustment of the maintenance pay-*  
14 *ment amount in accordance with the net percentage change in the CPI*  
15 *(urban) for the prior year.*

16 (B) *Any decree awarding maintenance or incorporating a separation*  
17 *agreement providing for maintenance shall include a date and mechanism*  
18 *for such annual adjustment of the maintenance payment amount. Such*  
19 *mechanism may incorporate any method permitted by this section and*  
20 *need not require the court to take annual action.*

21 (C) *The provisions of this paragraph shall apply to all original decrees*  
22 *awarding maintenance or incorporating separation agreements providing*  
23 *for maintenance made by a court on and after July 1, 2007.*

24 ~~(4)~~ (5) *Costs and fees.* Costs and attorney fees may be awarded to  
25 either party as justice and equity require. The court may order that the  
26 amount be paid directly to the attorney, who may enforce the order in  
27 the attorney's name in the same case.

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

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

38 Sec. 2. K.S.A. 2006 Supp. 60-1610 is hereby repealed.

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