

HOUSE BILL No. 2252

By Committee on Judiciary

2-9

1 AN ACT concerning divorce; relating to restoration of former name;
2 amending K.S.A. 2010 Supp. 60-1610 and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 2010 Supp. 60-1610 is hereby amended to read as
7 follows: 60-1610. A decree in an action under this article may include
8 orders on the following matters:

9 (a) *Minor children.* (1) *Child support and education.* The court shall
10 make provisions for the support and education of the minor children.
11 Subject to the provisions of K.S.A. 23-9,207, and amendments thereto,
12 the court may modify or change any prior order, including any order
13 issued in a title IV-D case, within three years of the date of the original
14 order or a modification order, when a material change in circumstances is
15 shown, irrespective of the present domicile of the child or the parents. If
16 more than three years has passed since the date of the original order or
17 modification order, a material change in circumstance need not be shown.
18 The court may make a modification of child support retroactive to a date
19 at least one month after the date that the motion to modify was filed with
20 the court. Any increase in support ordered effective prior to the date the
21 court's judgment is filed shall not become a lien on real property pursuant
22 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
23 custodial arrangement ordered by the court, the court may order the child
24 support and education expenses to be paid by either or both parents for
25 any child less than 18 years of age, at which age the support shall
26 terminate unless: (A) The parent or parents agree, by written agreement
27 approved by the court, to pay support beyond the time the child reaches
28 18 years of age; (B) the child reaches 18 years of age before completing
29 the child's high school education in which case the support shall not
30 terminate automatically, unless otherwise ordered by the court, until June
31 30 of the school year during which the child became 18 years of age if the
32 child is still attending high school; or (C) the child is still a bona fide high
33 school student after June 30 of the school year during which the child
34 became 18 years of age, in which case the court, on motion, may order
35 support to continue through the school year during which the child
36 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 12-year through 18-year old children.
6 Provision for payment of support and educational expenses of a child
7 after reaching 18 years of age if still attending high school shall apply to
8 any child subject to the jurisdiction of the court, including those whose
9 support was ordered prior to July 1, 1992. If an agreement approved by
10 the court prior to July 1, 1992, provides for termination of support before
11 the date provided by subsection (a)(1)(C), the court may review and
12 modify such agreement, and any order based on such agreement, to
13 extend the date for termination of support to the date provided by
14 subsection (a)(1)(C). For purposes of this section, "bona fide high school
15 student" means a student who is enrolled in full accordance with the
16 policy of the accredited high school in which the student is pursuing a
17 high school diploma or a graduate equivalency diploma (GED). In
18 determining the amount to be paid for child support, the court shall
19 consider all relevant factors, without regard to marital misconduct,
20 including the financial resources and needs of both parents, the financial
21 resources and needs of the child and the physical and emotional condition
22 of the child. Until a child reaches 18 years of age, the court may set apart
23 any portion of property of either the husband or wife, or both, that seems
24 necessary and proper for the support of the child. Except for good cause
25 shown, every order requiring payment of child support under this section
26 shall require that the support be paid through the central unit for
27 collection and disbursement of support payments designated pursuant to
28 K.S.A. 23-4,118, and amendments thereto. A written agreement between
29 the parties to make direct child support payments to the obligee and not
30 pay through the central unit shall constitute good cause, unless the court
31 finds the agreement is not in the best interest of the child or children. The
32 obligor shall file such written agreement with the court. The obligor shall
33 maintain written evidence of the payment of the support obligation and, at
34 least annually, shall provide such evidence to the court and the obligee. If
35 the divorce decree of the parties provides for an abatement of child
36 support during any period provided in such decree, the child support such
37 nonresidential parent owes for such period shall abate during such period
38 of time, except that if the residential parent shows that the criteria for the
39 abatement has not been satisfied there shall not be an abatement of such
40 child support.

41 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
42 the provisions of the uniform child custody jurisdiction and enforcement
43 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the

1 court may change or modify any prior order of custody, residency,
2 visitation and parenting time, when a material change of circumstances is
3 shown, but no ex parte order shall have the effect of changing residency
4 of a minor child from the parent who has had the sole de facto residency
5 of the child to the other parent unless there is sworn testimony to support
6 a showing of extraordinary circumstances. If an interlocutory order is
7 issued ex parte, the court shall hear a motion to vacate or modify the
8 order within 15 days of the date that a party requests a hearing whether to
9 vacate or modify the order.

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

13 (3) *Child custody or residency criteria.* The court shall determine
14 custody or residency of a child in accordance with the best interests of the
15 child.

16 (A) If the parties have entered into a parenting plan, it shall be
17 presumed that the agreement is in the best interests of the child. This
18 presumption may be overcome and the court may make a different order
19 if the court makes specific findings of fact stating why the agreed
20 parenting plan is not in the best interests of the child.

21 (B) In determining the issue of child custody, residency and
22 parenting time, the court shall consider all relevant factors, including but
23 not limited to:

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

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

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

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

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

34 (vi) the willingness and ability of each parent to respect and
35 appreciate the bond between the child and the other parent and to allow
36 for a continuing relationship between the child and the other parent;

37 (vii) evidence of spousal abuse;

38 (viii) whether a parent is subject to the registration requirements of
39 the Kansas offender registration act, K.S.A. 22-4901, et seq., and
40 amendments thereto, or any similar act in any other state, or under
41 military or federal law;

42 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
43 21-3609, and amendments thereto;

1 (x) whether a parent is residing with an individual who is subject to
2 registration requirements of the Kansas offender registration act, K.S.A.
3 22-4901, et seq., and amendments thereto, or any similar act in any other
4 state, or under military or federal law; and

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

7 (C) Neither parent shall be considered to have a vested interest in the
8 custody or residency of any child as against the other parent, regardless of
9 the age of the child, and there shall be no presumption that it is in the best
10 interests of any infant or young child to give custody or residency to the
11 mother.

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

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

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

20 (E) If a court of competent jurisdiction within this state has entered
21 an order pursuant to the revised Kansas code for care of children
22 regarding custody of a child or children who are involved in a proceeding
23 filed pursuant to this section, and such court has determined pursuant to
24 subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the
25 orders in that case shall become the custody orders in the divorce case,
26 such court shall file a certified copy of the orders with the civil case
27 number in the caption and then close the case under the revised Kansas
28 code for care of children. Such orders shall be binding on the parties,
29 unless modified based on a material change in circumstances, even if
30 such courts have different venues.

31 (4) *Types of legal custodial arrangements.* Subject to the provisions
32 of this article, the court may make any order relating to custodial
33 arrangements which is in the best interests of the child. The order shall
34 provide one of the following legal custody arrangements, in the order of
35 preference:

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

39 (B) *Sole legal custody.* The court may order the sole legal custody of
40 a child with one of the parties when the court finds that it is not in the
41 best interests of the child that both of the parties have equal rights to
42 make decisions pertaining to the child. If the court does not order joint
43 legal custody, the court shall include on the record specific findings of

1 fact upon which the order for sole legal custody is based. The award of
2 sole legal custody to one parent shall not deprive the other parent of
3 access to information regarding the child unless the court shall so order,
4 stating the reasons for that determination.

5 (5) *Types of residential arrangements.* After making a determination
6 of the legal custodial arrangements, the court shall determine the
7 residency of the child from the following options, which arrangement the
8 court must find to be in the best interest of the child. The parties shall
9 submit to the court either an agreed parenting plan or, in the case of
10 dispute, proposed parenting plans for the court's consideration. Such
11 options are:

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

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

18 (C) *Nonparental residency.* If during the proceedings the court
19 determines that there is probable cause to believe that the child is a child
20 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
21 of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither
22 parent is fit to have residency, the court may award temporary residency
23 of the child to a grandparent, aunt, uncle or adult sibling, or, another
24 person or agency if the court finds by written order that:

25 (i) (a) The child is likely to sustain harm if not immediately removed
26 from the home;

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

29 (c) immediate placement of the child is in the best interest of the
30 child; and

31 (ii) reasonable efforts have been made to maintain the family unit
32 and prevent the unnecessary removal of the child from the child's home
33 or that an emergency exists which threatens the safety to the child. In
34 making such a residency order, the court shall give preference, to the
35 extent that the court finds it is in the best interests of the child, first to
36 awarding such residency to a relative of the child by blood, marriage or
37 adoption and second to awarding such residency to another person with
38 whom the child has close emotional ties. The court may make temporary
39 orders for care, support, education and visitation that it considers
40 appropriate. Temporary residency orders are to be entered in lieu of
41 temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-
42 2244, and amendments thereto, and shall remain in effect until there is a
43 final determination under the revised Kansas code for care of children.

1 An award of temporary residency under this paragraph shall not terminate
2 parental rights nor give the court the authority to consent to the adoption
3 of the child. When the court enters orders awarding temporary residency
4 of the child to an agency or a person other than the parent, the court shall
5 refer a transcript of the proceedings to the county or district attorney. The
6 county or district attorney shall file a petition as provided in K.S.A. 2010
7 Supp. 38-2234, and amendments thereto, and may request termination of
8 parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments
9 thereto. The costs of the proceedings shall be paid from the general fund
10 of the county. If a final determination is made that the child is not a child
11 in need of care, the county or district attorney shall notify the court in
12 writing and the court, after a hearing, shall enter appropriate custody
13 orders pursuant to this section. If the same judge presides over both
14 proceedings, the notice is not required. Any order pursuant to the revised
15 Kansas code for care of children shall take precedence over any order
16 under this section.

17 (6) *Priority.* Any custody or parenting time order, or order relating to
18 the best interests of a child, issued pursuant to the revised Kansas code
19 for care of children or the revised Kansas juvenile justice code, shall be
20 binding and shall take precedence over any order under article 16 of
21 chapter 60 of the Kansas Statutes Annotated, and amendments thereto
22 (divorce), until jurisdiction under the revised Kansas code for care of
23 children or the revised Kansas juvenile justice code is terminated.

24 (7) *Child health insurance coverage.* The court may order that each
25 parent execute any and all documents, including any releases, necessary
26 so that both parents may obtain information from and to communicate
27 with any health insurance provider regarding the health insurance
28 coverage provided by such health insurance provider to the child. The
29 provisions of this paragraph shall apply irrespective of which parent
30 owns, subscribes or pays for such health insurance coverage.

31 (b) *Financial matters.* (1) *Division of property.* The decree shall
32 divide the real and personal property of the parties, including any
33 retirement and pension plans, whether owned by either spouse prior to
34 marriage, acquired by either spouse in the spouse's own right after
35 marriage or acquired by the spouses' joint efforts, by: (A) A division of
36 the property in kind; (B) awarding the property or part of the property to
37 one of the spouses and requiring the other to pay a just and proper sum;
38 or (C) ordering a sale of the property, under conditions prescribed by the
39 court, and dividing the proceeds of the sale. Upon request, the trial court
40 shall set a valuation date to be used for all assets at trial, which may be
41 the date of separation, filing or trial as the facts and circumstances of the
42 case may dictate. The trial court may consider evidence regarding
43 changes in value of various assets before and after the valuation date in

1 making the division of property. In dividing defined-contribution types of
2 retirement and pension plans, the court shall allocate profits and losses on
3 the nonparticipant's portion until date of distribution to that
4 nonparticipant. In making the division of property the court shall consider
5 the age of the parties; the duration of the marriage; the property owned by
6 the parties; their present and future earning capacities; the time, source
7 and manner of acquisition of property; family ties and obligations; the
8 allowance of maintenance or lack thereof; dissipation of assets; the tax
9 consequences of the property division upon the respective economic
10 circumstances of the parties; and such other factors as the court considers
11 necessary to make a just and reasonable division of property. The decree
12 shall provide for any changes in beneficiary designation on: (A) Any
13 insurance or annuity policy that is owned by the parties, or in the case of
14 group life insurance policies, under which either of the parties is a
15 covered person; (B) any trust instrument under which one party is the
16 grantor or holds a power of appointment over part or all of the trust
17 assets, that may be exercised in favor of either party; or (C) any transfer
18 on death or payable on death account under which one or both of the
19 parties are owners or beneficiaries. Nothing in this section shall relieve
20 the parties of the obligation to effectuate any change in beneficiary
21 designation by the filing of such change with the insurer or issuer in
22 accordance with the terms of such policy.

23 (2) *Maintenance*. The decree may award to either party an allowance
24 for future support denominated as maintenance, in an amount the court
25 finds to be fair, just and equitable under all of the circumstances. The
26 decree may make the future payments modifiable or terminable under
27 circumstances prescribed in the decree. The court may make a
28 modification of maintenance retroactive to a date at least one month after
29 the date that the motion to modify was filed with the court. In any event,
30 the court may not award maintenance for a period of time in excess of
31 121 months. If the original court decree reserves the power of the court to
32 hear subsequent motions for reinstatement of maintenance and such a
33 motion is filed prior to the expiration of the stated period of time for
34 maintenance payments, the court shall have jurisdiction to hear a motion
35 by the recipient of the maintenance to reinstate the maintenance
36 payments. Upon motion and hearing, the court may reinstate the
37 payments in whole or in part for a period of time, conditioned upon any
38 modifying or terminating circumstances prescribed by the court, but the
39 reinstatement shall be limited to a period of time not exceeding 121
40 months. The recipient may file subsequent motions for reinstatement of
41 maintenance prior to the expiration of subsequent periods of time for
42 maintenance payments to be made, but no single period of reinstatement
43 ordered by the court may exceed 121 months. Maintenance may be in a

1 lump sum, in periodic payments, on a percentage of earnings or on any
2 other basis. At any time, on a hearing with reasonable notice to the party
3 affected, the court may modify the amounts or other conditions for the
4 payment of any portion of the maintenance originally awarded that has
5 not already become due, but no modification shall be made without the
6 consent of the party liable for the maintenance, if it has the effect of
7 increasing or accelerating the liability for the unpaid maintenance beyond
8 what was prescribed in the original decree. Except for good cause shown,
9 every order requiring payment of maintenance under this section shall
10 require that the maintenance be paid through the central unit for
11 collection and disbursement of support payments designated pursuant to
12 K.S.A. 23-4,118, and amendments thereto. A written agreement between
13 the parties to make direct maintenance payments to the obligee and not
14 pay through the central unit shall constitute good cause. If child support
15 and maintenance payments are both made to an obligee by the same
16 obligor, and if the court has made a determination concerning the manner
17 of payment of child support, then maintenance payments shall be paid in
18 the same manner.

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

33 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
34 party as justice and equity require. The court may order that the amount
35 be paid directly to the attorney, who may enforce the order in the
36 attorney's name in the same case.

37 (c) *Miscellaneous matters.* (1) *Restoration of name.* (A) Upon the
38 request of a spouse, the court shall order the restoration of that spouse's
39 maiden or former name. The court shall have jurisdiction to restore the
40 spouse's maiden or former name at or after the time the decree of divorce
41 becomes final.

42 (B) *Upon the request of a spouse who was divorced in another state,*
43 *the court shall order the restoration of that spouse's maiden or former*

1 *name upon receipt of an authenticated copy of the divorce decree from*
2 *such state. If such spouse is a resident of the state of Kansas, the court*
3 *shall have jurisdiction to restore the spouse's maiden or former name.*

4 (C) The judicial council shall develop a form ~~which is or forms~~
5 *which are simple, concise and direct for use with this*
6 ~~paragraph~~*subsection.*

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

14 Sec. 2. K.S.A. 2010 Supp. 60-1610 is hereby repealed.

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

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