

Kansas Family Law Code; HB 2568

HB 2568 amends the Kansas Family Law Code. In parentage proceedings, the bill provides that child support will be determined pursuant to the Kansas Child Support Guidelines (the Guidelines). The court can consider any affirmative defenses pled and proved in making such an award. For any period occurring five years or less before or after commencement of the action, the bill creates a rebuttable presumption that the Guidelines reflect the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award has the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.

Additionally, in parentage proceedings, the bill allows the court to award costs and attorney fees to either party as justice and equity may require; and, unless the attorney represents a public agency in an action, the court could order the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case. Further, the bill strikes language prohibiting fees for representation of a petitioner by the county or district attorney.

After the filing of a petition for divorce, annulment, or separate maintenance and during the pendency of the action until the entry of final judgment, the bill allows the judge assigned to hear the action to modify and vacate certain orders, including temporary custody orders, orders restraining the parties from disposing of property, and orders requiring mediation. Prior to passage of the bill, judges already had authority to make and enforce these orders.

In child support proceedings, the bill requires a person who files a motion to request or modify a child support order to include a completed domestic relations affidavit and proposed child support worksheet. In making a child support award, the bill strikes language requiring the court to consider "all relevant factors, without regard to marital misconduct, including the financial resources and needs of both the parents, the financial resources and needs of the child, and the physical and emotional condition of the child." Instead, the bill requires the court to follow the Guidelines, which are created by the Supreme Court based on "all relevant factors, including, but not limited to: the needs of the child; the standards of living and circumstances of the parents; the relative financial means of the parents; the need and capacity of the child for education; the age of the child; the financial resources and earning ability of the child; the responsibility of the parents for the support of others; and the value of services contributed by both parents."

The bill allows the court to make a modification of child support retroactive to the first day of the month following the filing of the motion to modify, replacing law that allows the court to make the modification retroactive to a date at least one month after the date the motion was filed. Any retroactive award will not become a lien on real property until the date of the order.

In a proceeding to determine child custody, residency, and parenting time, the bill modifies the factors courts must consider. The bill strikes language requiring the court to consider "the length of time the child has been under the actual care and control of any person other than a parent" and adds the following factors: the age of the child; the emotional and physical needs of the child; the ability of the parties to communicate, cooperate, and manage parental duties; the school activity schedule of the child; the parties' work schedule; the location

of the parties' residences and places of employment; and the location of the child's school. Further the bill clarifies the court will consider the desires only of a child "of sufficient age and maturity" and must consider evidence of both physical and emotional spousal abuse.