

HOUSE BILL No. 2038

AN ACT concerning inheritance rights; relating to revocation upon divorce.

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

Section 1. (a) As used in this section:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse. A decree of separation that does not terminate the parties' marital status is not a divorce for purposes of this section.

(3) "Divorced individual" includes an individual whose marriage has been annulled.

(4) "Governing instrument" means a document executed by the divorced individual before the divorce or annulment of such individual's marriage to such individual's former spouse.

(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity.

(6) "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of such individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate such individual's self in place of such individual's former spouse or in place of such individual's former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(7) "Surviving spouse" does not include an individual who:

(A) Is divorced from the decedent or whose marriage to the decedent has been annulled unless, by virtue of a subsequent marriage, such individual is married to the decedent at the time of death. A decree of separation that does not terminate the parties' marital status is not a divorce for purposes of this section;

(B) obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of the marriage, if the decree or judgment is not recognized as valid in this state, unless subsequently the individual and the decedent participated in a marriage ceremony purporting to marry each to the other;

(C) following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(D) was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

(b) On and after July 1, 2019, except as provided by the express terms of a governing instrument, a court order or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) Revokes any revocable:

(A) Disposition or appointment of property made by a divorced individual to such individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator,

agent or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

(c) A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses, unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) No change of circumstances other than as described in this section and K.S.A. 59-610, and amendments thereto, effects a revocation.

(f) (1) A payor or other third party is not liable for having made a payment or transferring an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument before the payor or other third party received written notice of the claimed forfeiture or revocation under this section as a result of a divorce, annulment or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section as a result of a divorce, annulment or remarriage.

(2) Written notice of the claimed forfeiture or revocation under this section as a result of a divorce, annulment or remarriage under subsection (f)(1) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the claimed forfeiture or revocation under this section as a result of a divorce, annulment or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by the payor or third party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estate located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(g) (1) A person who purchases property from a former spouse, relative of a former spouse or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit, nor liable under this section for the amount of the payment or the value of the item of property or benefit. A former spouse, relative of a former spouse or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person

who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to payment, an item of property or any other benefit covered by this section, a former spouse, relative of a former spouse or any other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(h) If this section is preempted by federal law with respect to any property item, then this section shall not apply to such item of property preempted by federal law, but shall apply in all other circumstances.

(i) This section shall be a part of and supplemental to the Kansas probate code.

Sec. 2. 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 House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.