

HOUSE BILL No. 2130

By Committee on Judiciary

1-23

1 AN ACT concerning the Kansas probate code; increasing certain dollar
2 amounts; relating to allowance to spouse and minor children;
3 supplemental elective share amount; transfers within two years of
4 death; homestead or homestead allowance; payment of benefits to
5 certain relatives; small estates affidavit for personal property; remission
6 of court costs for small estates; exhibition of demands and allowance
7 without a hearing; refusal to grant letters of administration; appealable
8 orders and bond; requests for transfer from magistrate to district judge;
9 ***adjusting time requirements linked to notice by publication and***
10 ***mailing; relating to hearing dates; sales at public auction; clarifying***
11 ***how property held under a transfer-on-death deed is distributed when***
12 ***one beneficiary predeceases the grantor***; amending K.S.A. 59-6a202,
13 59-6a205, 59-1507a, ***59-2209***, 59-2215 ~~and~~, 59-2237 ***and 59-2308*** and
14 K.S.A. 2022 Supp. 59-403, 59-6a215, 59-1507b, 59-2287, 59-2401
15 ~~and~~, 59-2402a ***and 59-3504*** and repealing the existing sections.
16

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

18 Section 1. K.S.A. 2022 Supp. 59-403 is hereby amended to read as
19 follows: 59-403. When a resident of the state dies, testate or intestate, the
20 surviving spouse shall be allowed, for the benefit of such spouse and the
21 decedent's minor children during the period of their minority, from the
22 personal or real property of which the decedent was possessed or to which
23 the decedent was entitled at the time of death, the following:

24 (a) The wearing apparel, family library, pictures, musical instruments,
25 furniture and household goods, utensils and implements used in the home,
26 one automobile, and provisions and fuel on hand necessary for the support
27 of the spouse and minor children for one year.

28 (b) A reasonable allowance of not more than ~~\$50,000~~ *\$75,000* in
29 money or other personal or real property at its appraised value in full or
30 part payment thereof, with the exact amount of such allowance to be
31 determined and ordered by the court, after taking into account the
32 condition of the estate of the decedent.

33 The property shall not be liable for the payment of any of decedent's
34 debts or other demands against the decedent's estate, except liens thereon
35 existing at the time of the decedent's death. If there are no minor children,
36 the property shall belong to the spouse; if there are minor children and no

1 spouse, it shall belong to the minor children. The selection shall be made
2 by the spouse, if living, otherwise by the guardian of the minor children. In
3 case any of the decedent's minor children are not living with the surviving
4 spouse, the court may make such division as the court deems equitable.

5 Sec. 2. K.S.A. 59-6a202 is hereby amended to read as follows: 59-
6 6a202. (a) (1) The surviving spouse of a decedent who dies a resident of
7 this state has a right of election, under the limitations and conditions stated
8 in this act, to take an elective-share amount equal to the value of the
9 elective-share percentage of the augmented estate, determined by the
10 length of time the spouse and the decedent were married to each other, in
11 accordance with the following schedule:

| 12 If the decedent and the spouse | The elective-share |
|---|-----------------------------|
| 13 were married to each other: | percentage is: |
| 14 Less than 1 year..... | Supplemental amount only |
| 15 1 year but less than 2 years..... | 3% of the augmented estate |
| 16 2 years but less than 3 years..... | 6% of the augmented estate |
| 17 3 years but less than 4 years..... | 9% of the augmented estate |
| 18 4 years but less than 5 years..... | 12% of the augmented estate |
| 19 5 years but less than 6 years..... | 15% of the augmented estate |
| 20 6 years but less than 7 years..... | 18% of the augmented estate |
| 21 7 years but less than 8 years..... | 21% of the augmented estate |
| 22 8 years but less than 9 years..... | 24% of the augmented estate |
| 23 9 years but less than 10 years..... | 27% of the augmented estate |
| 24 10 years but less than 11 years..... | 30% of the augmented estate |
| 25 11 years but less than 12 years..... | 34% of the augmented estate |
| 26 12 years but less than 13 years..... | 38% of the augmented estate |
| 27 13 years but less than 14 years..... | 42% of the augmented estate |
| 28 14 years but less than 15 years..... | 46% of the augmented estate |
| 29 15 years or more..... | 50% of the augmented estate |

30 (2) If the decedent and the surviving spouse were married to each
31 other more than once, all periods of marriage to each other are added
32 together for purposes of this subsection. Periods between marriages are not
33 counted.

34 (b) If the sum of the amounts described in K.S.A. 59-6a207,
35 ~~subsection (a)(1) of K.S.A. and 59-6a209(a)(1), and amendments thereto,~~
36 and that part of the elective-share amount payable from the decedent's
37 probate estate and nonprobate transfers to others under ~~subsections (b) and~~
38 ~~(c) of K.S.A. 59-6a209(b) and (c), and amendments thereto,~~ is less than
39 ~~\$50,000~~ \$100,000, the surviving spouse is entitled to a supplemental
40 elective-share amount equal to ~~\$50,000~~ \$100,000, minus the sum of the
41 amounts described in those sections. The supplemental elective-share
42 amount is payable from the decedent's probate estate and from recipients
43 of the decedent's nonprobate transfers to others in the order of priority set

1 forth in ~~subsections (b) and (c)~~ of K.S.A. 59-6a209(b) and (c), and
2 *amendments thereto.*

3 (c) If the right of election is exercised by or on behalf of the surviving
4 spouse, the surviving spouse's homestead allowance, and family
5 allowance, if any, are not charged against but are in addition to the
6 elective-share and supplemental elective-share amounts.

7 (d) The right, if any, of the surviving spouse of a decedent who dies a
8 nonresident of this state to take an elective share in property in this state is
9 governed by article 8 of chapter 59 of the Kansas Statutes Annotated, and
10 amendments thereto.

11 Sec. 3. K.S.A. 59-6a205 is hereby amended to read as follows: 59-
12 6a205. The value of the augmented estate includes the value of the
13 decedent's nonprobate transfers to others, not included under K.S.A. 59-
14 6a204, and amendments thereto, of any of the following types, in the
15 amount provided respectively for each type of transfer:

16 (a) Property owned or owned in substance by the decedent
17 immediately before death that passed outside probate at the decedent's
18 death. Property included under this category consists of:

19 (1) Property over which the decedent alone, immediately before
20 death, held a presently exercisable general power of appointment. The
21 amount included is the value of the property subject to the power, to the
22 extent that such property passed at the decedent's death, by exercise,
23 release, lapse, in default, or otherwise, to or for the benefit of any person
24 other than the decedent's estate or surviving spouse.

25 (2) The decedent's fractional interest in property held by the decedent
26 in joint tenancy with the right of survivorship. The amount included is the
27 value of the decedent's fractional interest, to the extent that such fractional
28 interest passed by right of survivorship at the decedent's death to the
29 surviving joint tenant other than the decedent's surviving spouse.

30 (3) The decedent's ownership interest in property or accounts passing
31 to another upon decedent's death. The amount included is the value of the
32 decedent's ownership interest, to the extent that the decedent's ownership
33 interest passed at the decedent's death to or for the benefit of any person
34 other than the decedent's estate or surviving spouse.

35 (4) Proceeds of insurance, including accidental death benefits, on the
36 life of the decedent, if the decedent owned the insurance policy
37 immediately before death or if and to the extent that the decedent alone
38 and immediately before death held a presently exercisable general power
39 of appointment over the policy or its proceeds. The amount included is the
40 value of the proceeds, to the extent that they were payable at the decedent's
41 death to or for the benefit of any person other than the decedent's estate or
42 surviving spouse;

43 (b) Property transferred in any of the following forms by the decedent

1 during marriage:

2 (1) Any irrevocable transfer in which the decedent retained the right
3 to the possession or enjoyment of, or to the income from, the property if
4 and to the extent that the decedent's right terminated at or continued
5 beyond the decedent's death. The amount included is the value of the
6 fraction of the property to which the decedent's right related, to the extent
7 that such fraction of the property passed outside probate to or for the
8 benefit of any person other than the decedent's estate or surviving spouse.

9 (2) Any transfer in which the decedent created a power over income
10 or property, exercisable by the decedent alone or in conjunction with any
11 other person, or exercisable by a nonadverse party, to or for the benefit of
12 the decedent, the creditors of the decedent, the decedent's estate, or
13 creditors of the decedent's estate. The amount included with respect to a
14 power over property is the value of the property subject to the power, and
15 the amount included with respect to a power over income is the value of
16 the property that produces or produced the income, to the extent that the
17 power in either case was exercisable at the decedent's death to or for the
18 benefit of any person other than the decedent's surviving spouse or to the
19 extent that the property passed at the decedent's death, by exercise, release,
20 lapse, in default, or otherwise, to or for the benefit of any person other than
21 the decedent's estate or surviving spouse. If the power is a power over both
22 income and property and the preceding sentence produces different
23 amounts, the amount included is the greater amount.

24 (c) Property that passed during marriage and during the two-year
25 period next preceding the decedent's death as a result of a transfer by the
26 decedent if the transfer was of any of the following types:

27 (1) Any property that passed as a result of the termination of a right
28 or interest in, or power over, property that would have been included in the
29 augmented estate under subparagraph (a)(1), (2), or (3), or under
30 subparagraph (c)(2), if the right, interest, or power had not terminated until
31 the decedent's death. The amount included is the value of the property that
32 would have been included under those subparagraphs, if the property were
33 valued at the time that the right, interest, or power terminated, and is
34 included only to the extent that the property passed upon termination to or
35 for the benefit of any person other than the decedent or the decedent's
36 estate, spouse, or surviving spouse. As used in this subparagraph,
37 "termination," with respect to a right or interest in property, occurs when
38 the right or interest terminated by the terms of the governing instrument or
39 the decedent transferred or relinquished the right or interest, and, with
40 respect to a power over property, occurs when the power terminated by
41 exercise, release, lapse, default, or otherwise, but, with respect to a power
42 described in paragraph (a)(1), "termination" occurs when the power
43 terminated by exercise or release, but not otherwise.

1 (2) Any transfer of or relating to an insurance policy on the life of the
2 decedent if the proceeds would have been included in the augmented estate
3 under subparagraph (a)(4) had the transfer not occurred. The amount
4 included is the value of the insurance proceeds to the extent that the
5 proceeds were payable at the decedent's death to or for the benefit of any
6 person other than the decedent's estate or surviving spouse.

7 (3) Any transfer of property, to the extent not otherwise included in
8 the augmented estate, made to or for the benefit of a person other than the
9 decedent's surviving spouse. The amount included is the value of the
10 transferred property to the extent that the aggregate transfers to any one
11 donee in either of the two years exceeded ~~\$10,000~~ \$25,000.

12 Sec. 4. K.S.A. 2022 Supp. 59-6a215 is hereby amended to read as
13 follows: 59-6a215. A surviving spouse is entitled to the homestead, or in
14 lieu thereof the surviving spouse may elect to receive a homestead
15 allowance of ~~\$50,000~~ \$75,000. The homestead or homestead allowance is
16 exempt from and has priority over all demands against the estate. The
17 homestead or homestead allowance is in addition to any share passing to
18 the surviving spouse by way of elective share.

19 Sec. 5. K.S.A. 59-1507a is hereby amended to read as follows: 59-
20 1507a. (a) If not less than 180 days after the death of an individual entitled
21 at the time of death to a monthly benefit or benefits under title II of the
22 social security act or under any veterans administration program or public
23 or private retirement or annuity plan, all or part of the amount of such
24 benefit or benefits, not in excess of ~~\$5,000~~ \$10,000, is paid to: (1) The
25 surviving spouse; (2) one or more of the deceased's children, or
26 descendants of the deceased's deceased children; (3) the deceased's father
27 or mother; or (4) the deceased's brother or sister. Preference ~~being~~ shall
28 be given in the order named if more than one request for payment has been
29 made by or for the named individuals. Such payment shall be deemed to
30 be a payment to the personal representative of the decedent and shall
31 constitute a full discharge and release from any further claim for such
32 payment to the same extent as if such payment had been made to an
33 executor or administrator of the decedent's estate.

34 (b) The provisions of subsection (a) shall apply only if an affidavit
35 has been made and filed with the appropriate governmental office or
36 private company responsible for the benefit by the surviving spouse or
37 other relative by whom or on whose behalf request for payment is made
38 and such affidavit shows: (1) The date of death of the deceased; (2) the
39 relationship of the affiant to the deceased; (3) that no executor or
40 administrator for the deceased has qualified or been appointed; and (4)
41 that, to the affiant's knowledge, there exists at the time of the filing of such
42 affidavit, no relative of a closer degree of kindred to the deceased than the
43 affiant.

1 Sec. 6. K.S.A. 2022 Supp. 59-1507b is hereby amended to read as
2 follows: 59-1507b. When a resident of the state dies, whether testate or
3 intestate, if the total assets of the estate of the decedent subject to probate
4 do not exceed ~~—\$40,000~~ \$75,000 in value, any personal property of
5 whatever nature transferable to the decedent's estate by any entity or
6 person shall be transferred to the successor or successors of the decedent,
7 if entitled thereto by will or by intestate succession, without having been
8 granted letters of administration or letters testamentary, upon such
9 successor's or successors' furnishing the entity or person with an affidavit
10 showing entitlement thereto. Transfer of such personal property to the
11 successor or successors shall be deemed to be a transfer to the personal
12 representative of the decedent, and the receipt of the successor or
13 successors shall constitute a full discharge and release from any further
14 claim for such transfer to the same extent as if the transfer had been made
15 to an executor or administrator of the decedent's estate. The affidavit
16 required herein shall be deemed sufficient if in substantial compliance with
17 the form set forth by the judicial council.

18 ***Sec. 7. K.S.A. 59-2209 is hereby amended to read as follows: 59-***
19 ***2209. (a) When notice of hearing is required by any provision of this act***
20 ***by specific reference to this section, such notice shall be published once***
21 ***a per week for three consecutive weeks in some newspaper of the county***
22 ***authorized by law to publish legal notices. The first publication shall be***
23 ***made within ~~10~~ 30 days after the order fixing the time and place of the***
24 ***hearing and, within seven days after the first published notice, the***
25 ***petitioner shall mail or cause to be mailed, postage prepaid, a copy of the***
26 ***notice to each heir, devisee and legatee or guardian and ward,***
27 ***conservator and conservatee or guardian ad litem, as the case may be,***
28 ***other than the petitioner, whose name and address is known to the***
29 ***petitioner. A copy of the petition, any attachments to it and, when***
30 ***applicable, a copy of the will, accounting and settlement agreement shall***
31 ***be included with the notice, unless excused by court order. The date set***
32 ***for the hearing shall not be earlier than ~~seven days~~ nor later than ~~14~~ 10***
33 ***days and not later than 30 days after the date of the last publication of***
34 ***notice.***

35 ***(b) Whenever notice is mailed to a person residing in a foreign***
36 ***country, such notice shall be mailed by air mail.***

37 ~~Sec. 7.~~ **8.** K.S.A. 59-2215 is hereby amended to read as follows: 59-
38 2215. When the total assets of the estate of a decedent or conservatee do
39 not exceed the sum of ~~—\$5,000~~ \$10,000 in value, the court may remit the
40 court costs or any part thereof to such estate.

41 ~~Sec. 8.~~ **9.** K.S.A. 59-2237 is hereby amended to read as follows: 59-
42 2237. (a) Any person may exhibit a demand against the estate of a
43 decedent by filing a petition for its allowance in the proper district court.

1 Such demand shall be deemed duly exhibited from the date of the filing of
2 the petition. The petition shall contain a statement of all offsets *to* which
3 the estate is entitled. The person exhibiting the demand shall provide a
4 copy of the demand, as filed, to the personal representative of the estate.
5 The court shall from time to time as it deems advisable, and must at the
6 request of the executor or administrator, or at the request of any creditor
7 having exhibited demand, fix the time and place for the hearing of such
8 demands. Notice of the time and place of the demand hearing shall be
9 given in such manner and to such persons as the court shall direct.

10 (b) The verification of any demand may be deemed *prima facie*
11 evidence of its validity unless a written defense thereto is filed. Upon the
12 adjudication of any demand, the court shall enter its judgment allowing or
13 disallowing it. Such judgment shall show the date of adjudication, the
14 amount allowed, the amount disallowed and classification if allowed.
15 Judgments relating to contingent demands shall state the nature of the
16 contingency.

17 (c) Any demand not exceeding ~~\$5,000~~ \$10,000, other than a demand
18 by the executor or administrator, duly itemized and verified and which is
19 timely filed, may be paid by the executor or administrator without
20 compliance with any of the provisions of this act relating to petition, notice
21 of hearing, allowance by the court or otherwise. If a written defense to the
22 petition of the executor or administrator for a final settlement and
23 accounting is timely filed by any interested party which takes issue with
24 payment of the demand by the executor or administrator, at the hearing on
25 the petition the burden of proof shall be upon the executor or administrator
26 to establish that the demand was due and owing by the estate. If the
27 demand, or any part thereof, is disallowed by the court, the accounting of
28 the executor or administrator shall not be allowed as to the disallowed
29 demand, or part thereof.

30 Sec. 9. 10. K.S.A. 2022 Supp. 59-2287 is hereby amended to read as
31 follows: 59-2287. (a) The district court, in its discretion, may refuse to
32 grant letters in the following cases:

33 (1) When the value of real or personal property owned by the
34 decedent is not greater in amount than is allowed by law as exempt
35 property and the allowance to the surviving spouse or minor children
36 under K.S.A. 59-403, and amendments thereto.

37 (2) When the real and personal estate of the decedent does not exceed
38 ~~\$50,000~~ \$75,000 and the estate is not subject to allowances pursuant to
39 K.S.A. 59-403, and amendments thereto, or such allowances are waived,
40 any heir, devisee, legatee, creditor or other interested person may petition
41 for refusal of letters by giving bond in the sum of not less than the value of
42 the estate. Such bond shall be approved by the district court and
43 conditioned upon the creditor's or heir's assuming the obligation to pay, so

1 far as the assets of the estate will permit, the debts of the decedent in the
2 order of their preference, and to distribute the balance, if any, to the
3 persons entitled thereto under the law, except that real estate sold in
4 accordance with this section shall be deemed to have marketable title as
5 ordered by the court, and no creditor, heir or other person shall be deemed
6 to have an interest after passage of six months following the date of death.

7 (b) Proof may be allowed by or on behalf of the surviving spouse or
8 minor children before the district court of the value and nature of the
9 estate. If the court is satisfied that no estate will be left after allowing to
10 the surviving spouse or minor children their exempt property and statutory
11 allowances, or that the real and personal estate does not exceed ~~\$50,000~~
12 *\$75,000* when the petition is filed by a creditor or heir, the court may order
13 that no letters of administration shall be issued on the estate, unless, upon
14 the petition of other creditors, heirs or parties interested, the existence of
15 other or further property is shown.

16 (c) When a petition is filed under this section by a surviving spouse
17 or minor children, notice of the proceeding shall be given pursuant to
18 K.S.A. 59-2222, and amendments thereto.

19 (d) Whenever it appears to the court that further proceedings in the
20 administration of an estate pursuant to this section are unnecessary, the
21 court shall enter an order terminating the administration of such estate.
22 Such order shall be made without notice, unless the court otherwise orders,
23 and it shall be to the effect that, unless further estate of the decedent be
24 discovered, all further settlements and other proceedings concerning the
25 estate be dispensed with and that the surviving spouse and minor children
26 are relieved of any further obligations with respect to the estate. If further
27 estate of the decedent is discovered and administration is had on it, such
28 administration shall not abrogate or invalidate or otherwise affect any
29 right, title or interest in property transferred or vested pursuant to this
30 section unless the court, for good cause shown, otherwise determines and
31 orders.

32 (e) Any will filed pursuant to this section within a period of six
33 months after the death of the testator may be admitted to probate after such
34 six-month period.

35 ***Sec. 11. K.S.A. 59-2308 is hereby amended to read as follows: 59-***
36 ***2308. In all sales at public auction the personal representative shall give***
37 ***notice containing a particular description of the real estate to be sold,***
38 ***and by stating such notice shall state the time, terms and place of sale.***
39 ***The notice shall be given by publication once—***~~a~~***per week for three***
40 ***consecutive weeks in some newspaper, authorized to publish legal***
41 ***notices, of the county—in which where the real estate is situated. The date***
42 ***set for the sale shall not be earlier than—seven days—nor later than—***~~14~~***10***
43 ***days and not later than 30 days after the date of the last publication of***

1 ***notice. If the tracts to be sold are contiguous and lie in more than one***
2 ***county, notice may be given and the sale made in either of such counties.***

3 Sec. ~~10~~ 12. K.S.A. 2022 Supp. 59-2401 is hereby amended to read as
4 follows: 59-2401. (a) An appeal from a district magistrate judge to a
5 district judge may be taken no later than 30 days from the date of entry of
6 any of the following orders, judgments or decrees in any case involving a
7 decedent's estate:

8 (1) An order admitting or refusing to admit a will to probate.

9 (2) An order finding or refusing to find that there is a valid consent to
10 a will.

11 (3) An order appointing, refusing to appoint, removing or refusing to
12 remove a fiduciary other than a special administrator.

13 (4) An order setting apart or refusing to set apart a homestead or other
14 property, or making or refusing to make an allowance of exempt property
15 to the spouse and minor children.

16 (5) An order determining, refusing to determine, transferring or
17 refusing to transfer venue.

18 (6) An order allowing or disallowing a demand, in whole or in part,
19 when the amount in controversy exceeds ~~\$5,000~~ \$10,000.

20 (7) An order authorizing, refusing to authorize, confirming or
21 refusing to confirm the sale, lease or mortgage of real estate.

22 (8) An order directing or refusing to direct a conveyance or lease of
23 real estate under contract.

24 (9) Judgments for waste.

25 (10) An order directing or refusing to direct the payment of a legacy
26 or distributive share.

27 (11) An order allowing or refusing to allow an account of a fiduciary
28 or any part thereof.

29 (12) A judgment or decree of partial or final distribution.

30 (13) An order compelling or refusing to compel a legatee or
31 distributee to refund.

32 (14) An order compelling or refusing to compel payments or
33 contributions of property required to satisfy the elective share of a
34 surviving spouse pursuant to K.S.A. 59-6a201 et seq., and amendments
35 thereto.

36 (15) An order directing or refusing to direct an allowance for the
37 expenses of administration.

38 (16) An order vacating or refusing to vacate a previous appealable
39 order, judgment, decree or decision.

40 (17) A decree determining or refusing to determine the heirs, devisees
41 and legatees.

42 (18) An order adjudging a person in contempt pursuant to K.S.A. 59-
43 6a201 et seq., and amendments thereto.

1 (19) An order finding or refusing to find that there is a valid
2 settlement agreement.

3 (20) An order granting or denying final discharge of a fiduciary.

4 (21) Any other final order, decision or judgment in a proceeding
5 involving a decedent's estate.

6 (b) An appeal from the district court to an appellate court taken
7 pursuant to this section shall be taken in the manner provided by chapter
8 60 of the Kansas Statutes Annotated, *and amendments thereto*, for other
9 civil cases.

10 (c) Pending the determination of an appeal pursuant to ~~section~~
11 ~~subsection (a) or (b) of this section~~, any order appealed from shall continue
12 in force unless modified by temporary orders entered by the court hearing
13 the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and
14 amendments thereto, shall not stay proceedings under an appeal from the
15 district court to an appellate court.

16 (d) In an appeal taken pursuant to ~~section~~ *subsection (a) or (b) of this*
17 ~~section~~, the court from which the appeal is taken may require an
18 appropriate party, other than the state of Kansas, any subdivision thereof,
19 and all cities and counties in this state, to file a bond in such sum and with
20 such sureties as may be fixed and approved by the court to ensure that the
21 appeal will be prosecuted without unnecessary delay and to ensure the
22 payment of all judgments and any sums, damages and costs that may be
23 adjudged against that party.

24 ~~Sec. 13.~~ 13. K.S.A. 2022 Supp. 59-2402a is hereby amended to read
25 as follows: 59-2402a. (a) When a petition is filed in the district court and a
26 district magistrate judge is assigned to hear such petition, any interested
27 party may request the transfer of the matter to the chief judge for
28 assignment to a district judge if the petition is:

29 (1) To admit a will to probate;
30 (2) to determine venue or a transfer of venue;
31 (3) to allow any claim exceeding ~~\$5,000~~ \$10,000 in value;
32 (4) for the sale, lease or mortgage of real estate;
33 (5) for conveyance of real estate under contract;
34 (6) for payment of a legacy or distributive share;
35 (7) for partial or final distribution;
36 (8) for an order compelling a legatee or distributee to refund;
37 (9) for an order to determine heirs, devisees or legatees; or
38 (10) for an order which involves construction of a will or other
39 instrument.

40 (b) When a request for such transfer is filed less than three days prior
41 to the commencement of the hearing, the court shall assess the costs
42 occasioned by the subpoena and attendance of witnesses against the party
43 seeking the transfer. Such request may be included in any petition, answer

1 or other pleading, or may be filed as a separate petition, and shall include
2 an allegation that a bona fide controversy exists and that the transfer is not
3 sought for the purpose of vexation or delay. Notice of such request shall be
4 given as ordered by the court.

5 ***Sec. 14. K.S.A. 2022 Supp. 59-3504 is hereby amended to read as***
6 ***follows: 59-3504. (a) Title to the interest in real estate recorded in***
7 ***transfer-on-death form shall vest in the designated grantee beneficiary***
8 ***or beneficiaries on the death of the record owner.***

9 ***(b) Grantee beneficiaries of a transfer-on-death deed take the***
10 ***record owner's interest in the real estate at death subject to all***
11 ***conveyances, assignments, contracts, mortgages, liens and security***
12 ***pledges made by the record owner or to which the record owner was***
13 ***subject during the record owner's lifetime including, but not limited to,***
14 ***any executory contract of sale, option to purchase, lease, license,***
15 ***easement, mortgage, deed of trust or lien, claims of the state of Kansas***
16 ***for medical assistance, as defined in K.S.A. 39-702, and amendments***
17 ***thereto, pursuant to K.S.A. 39-709, and amendments thereto, and to any***
18 ***interest conveyed by the record owner that is less than all of the record***
19 ***owner's interest in the property.***

20 ***(c) (1) Except as provided in subsection (c)(2), if a grantee***
21 ***beneficiary dies prior to the death of the record owner and an alternative***
22 ***grantee beneficiary has not been designated on the deed to succeed to***
23 ***such deceased grantee beneficiary's interest, the transfer, with respect to***
24 ***any such deceased grantee beneficiary, shall lapse.***

25 ***(2) When the transfer-on-death deed was not made contingent on***
26 ***such grantee beneficiary surviving the record owner and a deceased***
27 ***grantee beneficiary leaves at least one then-surviving issue of such***
28 ***beneficiary upon the death of the owner when such interest would***
29 ***otherwise have lapsed under subsection (c)(1), the interest in the real***
30 ***estate shall not lapse and shall vest on such record owner's death in the***
31 ***then-surviving issue of the deceased grantee beneficiary on a per stirpes***
32 ***basis as successor grantee or grantees.***

33 ***(d) Any judicial proceeding initiated by an interested party to***
34 ***determine the succession of ownership of real estate of a deceased record***
35 ***owner pursuant to subsection (c) shall be subject to chapter 59 of the***
36 ***Kansas Statutes Annotated, and amendments thereto, to determine***
37 ***descent.***

38 ***(e) The amendments made to this section by this act shall apply to***
39 ***deeds filed of record on or after July 1, 2023.***

40 ***Sec. ~~12~~ 15. K.S.A. 59-6a202, 59-6a205, 59-1507a, 59-2209, 59-2215***
41 ***and, 59-2237 and 59-2308 and K.S.A. 2022 Supp. 59-403, 59-6a215, 59-***
42 ***1507b, 59-2287, 59-2401 and, 59-2402a and 59-3504 are hereby repealed.***

43 ***Sec. ~~13~~ 16. This act shall take effect and be in force from and after***

- 1 its publication in the statute book.