

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2130

As Amended by Senate Committee on Judiciary

Brief*

HB 2130, as amended, would amend law in the Kansas Probate Code (Code) concerning certain dollar amount limits and thresholds referenced in the Code, transfer-on-death deeds, and publication of notice of probate hearings and sales of probate real estate.

Dollar Amount Limits and Thresholds

The bill would increase limits on amounts that may be received by a decedent's surviving spouse or children pursuant to the Code under certain circumstances from \$5,000 to \$10,000, including:

- Payable amount of public or private retirement or annuity plan, Social Security, and Veterans Administration benefits;
- Total assets threshold allowing for remission of court costs;
- Demand amount to bypass a required hearing; and
- Amount in controversy for a transfer from a magistrate to a district judge.

The bill would increase the two-year transfer amount threshold from \$10,000 to \$25,000.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would increase the following amounts from \$50,000 to \$75,000:

- Allowance to spouse and minor children;
- Homestead allowance;
- Small estate cap for personal property; and
- Estate cap for a petition for a refusal of letters of administration.

The bill would increase the supplemental elective share amount threshold from \$50,000 to \$100,000.

Transfer-on-death Deeds

The bill would amend law regarding the effect of a transfer-on-death deed to real estate when a grantee beneficiary dies prior to the death of the record owner.

Current law provides, in this situation, the transfer shall lapse if an alternative grantee beneficiary has not been designated on the deed. The bill would amend this provision to apply it only when an alternative grantee beneficiary has not been designated to succeed to the deceased grantee beneficiary's interest and to lapse the transfer only with respect to any such deceased grantee's beneficiary.

The bill also would add an exception to this provision stating when the transfer-on-death deed was not made contingent on the grantee beneficiary surviving the record owner, and the deceased grantee beneficiary (beneficiary) leaves at least one then-surviving issue upon the death of the owner when such interest would otherwise have lapsed under the above provision, the interest would not lapse and would vest on the record owner's death in the then-surviving issue of the beneficiary on a *per stirpes* basis as successor grantee or grantees. [Note: *Per stirpes* is a legal term meaning

“proportionally divided between beneficiaries according to their deceased ancestor’s share.”]

The bill would provide that any judicial proceeding initiated by an interested party to determine the succession of ownership of real estate of a deceased record owner pursuant to the above provisions would be subject to the Code to determine descent.

The bill would state its amendments would apply to deeds filed of record on or after July 1, 2023.

Publication of Notice of Probate Hearings and Probate Sales

Probate Hearings

The bill would amend the requirement that the first publication of notice be made within 10 days after the court order setting the time and place of the hearing to require such first publication be made within 30 days after the hearing is set. Continuing law requires such notice to be published once weekly for three consecutive weeks.

The bill would also amend the time period requirements for the hearing date to be no earlier than 10 days, and no later than 30 days, after the date of the last publication of notice. [*Note:* Current law requires a hearing to be set between 7 and 14 days after the date of the last publication of notice.]

Sale of Probate Real Estate

The bill would amend the time period requirements for the sale date to be at least 10 days, and not later than 30 days, after the date of the last publication of notice of the sale. [*Note:* Current law requires the sale to be set between 7 and 14 days after the last publication of notice.]

Technical Amendments

The bill would make technical amendments to ensure consistency in statutory phrasing.

Background

The bill as amended by the Senate Committee on Judiciary adds provisions of HB 2016 and HB 2127.

HB 2130 – Dollar Amount Limits and Thresholds

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Judicial Council. [*Note: As introduced, the bill contained only provisions concerning dollar amounts in the Code.*]

House Committee on Judiciary

In the House Committee hearing on January 31, 2023, a representative of the Kansas Judicial Council provided **proponent** testimony, stating the new dollar amounts were calculated by applying the consumer price index to the statutory amounts based on the last time each amount was changed in an effort to address inflation. He further stated that the small estate amount would be higher than the inflation amount in an effort to allow more people to avoid the time and expenses of probate. No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on March 13, 2023, the same representative of the Kansas Judicial Council testified as a **proponent** of the bill and gave substantially similar testimony as in the House Committee hearing. No other testimony was provided.

The Senate Committee adopted amendments to insert the contents of HB 2016, concerning transfer-on-death deeds, and the contents of HB 2127, concerning publication of notice of probate hearings and sales of probate real estate. Background information for HB 2016 and HB 2127 follows.

HB 2016 – Transfer on Death Deeds

The bill was introduced by the House Committee on Judiciary at the request of the Kansas Bar Association (KBA).

[*Note:* The bill is identical (with the exception of dates of applicability) to the provisions of 2021 HB 2152, as amended by the House Committee on Judiciary, which was recommended by the House Committee on Judiciary, but did not pass the House.]

House Committee on Judiciary

In the House Committee hearing on January 17, 2023, a representative of the KBA testified as a **proponent** of the bill, stating the bill would clarify the operation of the statute when there is more than one transfer-on-death beneficiary or a deceased beneficiary has surviving issue. No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on February 9, 2023, the same representative of the KBA testified as a **proponent** of the bill and gave substantially similar testimony as in the House Committee hearing. No other testimony was provided.

HB 2127 – Publication of Notice of Probate Hearings and Probate Sales

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Judicial Council.

House Committee on Judiciary

In the House Committee hearing on January 31, 2023, a representative of the Kansas Judicial Council testified as a **proponent** of the bill, stating the bill would balance providing more flexibility in how notice is provided with allowing parties plenty of notice before hearings and sales. No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on March 13, 2023, the same representative of the Kansas Judicial Council testified as a **proponent** of the bill and gave substantially similar testimony as in the House Committee hearing. No other testimony was provided.

The Senate Committee adopted an amendment to adjust the number of days required for publication of notice under the bill.

Fiscal Information

HB 2130

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration (OJA) states enactment of HB 2130 could have a fiscal effect on Judicial Branch operations because the bill's provisions would increase the threshold dollar

amounts under the Code, which could increase the time spent by judges and court employees processing and researching these cases. However, the Office states a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions. The Office states enactment of the bill could result in the collection of docket fees in those cases filed under the bill's provisions, which would be credited to the State General Fund. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

HB 2016

OJA indicates enactment of HB 2016 could have a fiscal effect on the Judicial Branch because the bill would allow property to be transferred without needing a court case (unless someone contests ownership), which could result in a decrease in the number of cases filed, and subsequently, a decrease in docket fee revenue. However, a precise fiscal effect cannot be determined because the number of fewer cases cannot be estimated. Any fiscal effect associated with enactment of HB 2016 is not reflected in *The FY 2024 Governor's Budget Report*.

HB 2127

OJA states enactment of HB 2127 would have a negligible fiscal effect on Judicial Branch operations.

Kansas Probate Code; two-year transfer; allowance to spouse and minor children; small estate; refusal of letters of administration; Social Security; Veterans Administration; amount in controversy; magistrate; transfer-on-death deed; predeceased beneficiary; publication; mailing; hearing date; public auction; probate hearing; notice; sale