

**HOUSE BILL No. 2038**

By Committee on Judiciary

1-17

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

3

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

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

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

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

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

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

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

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

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

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

1 for purposes of this section;

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

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

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

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

17 (1) Revokes any revocable:

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

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

25 (C) nomination in a governing instrument, nominating a divorced  
26 individual's former spouse or a relative of the divorced individual's former  
27 spouse to serve in any fiduciary or representative capacity, including a  
28 personal representative, executor, trustee, conservator, agent or guardian;  
29 and

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

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

41 (d) Provisions of a governing instrument are given effect as if the  
42 former spouse and relatives of the former spouse disclaimed all provisions  
43 revoked by this section or, in the case of a revoked nomination in a

1 fiduciary or representative capacity, as if the former spouse and relatives of  
2 the former spouse died immediately before the divorce or annulment.

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

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

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

35 (g) (1) A person who purchases property from a former spouse,  
36 relative of a former spouse or any other person for value and without  
37 notice, or who receives from a former spouse, relative of a former spouse  
38 or any other person a payment or other item of property in partial or full  
39 satisfaction of a legally enforceable obligation, is neither obligated under  
40 this section to return the payment, item of property or benefit, nor liable  
41 under this section for the amount of the payment or the value of the item of  
42 property or benefit. A former spouse, relative of a former spouse or other  
43 person who, not for value, received a payment, item of property or any

1 other benefit to which that person is not entitled under this section is  
2 obligated to return the payment, item of property or benefit, or is  
3 personally liable for the amount of the payment or the value of the item of  
4 property or benefit, to the person who is entitled to it under this section.

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

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

17 ***{(i) This section shall be a part of and supplemental to the Kansas***  
18 ***probate code.}***

19 Sec. 2. This act shall take effect and be in force from and after its  
20 publication in the statute book.