

**HOUSE BILL No. 2219**

By Committee on Judiciary

2-8

1 AN ACT concerning child support; relating to exceptional children;  
2 amending K.S.A. 2010 Supp. 38-1121 and 60-1610 and repealing the  
3 existing sections.  
4

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

6 Section 1. K.S.A. 2010 Supp. 38-1121 is hereby amended to read as  
7 follows: 38-1121. (a) The judgment or order of the court determining the  
8 existence or nonexistence of the parent and child relationship is  
9 determinative for all purposes, but if any person necessary to determine  
10 the existence of a father and child relationship for all purposes has not  
11 been joined as a party, a determination of the paternity of the child shall  
12 have only the force and effect of a finding of fact necessary to determine  
13 a duty of support.

14 (b) If the judgment or order of the court is at variance with the  
15 child's birth certificate, the court shall order that a new birth certificate be  
16 issued, but only if any man named as the father on the birth certificate is a  
17 party to the action.

18 (c) (1) Upon adjudging that a party is the parent of a minor child, the  
19 court shall make provision for support and education of the child  
20 including the necessary medical expenses incident to the birth of the  
21 child. The court may order the support and education expenses to be paid  
22 by either or both parents for the minor child.

23 (2) When the child reaches 18 years of age, the support shall  
24 terminate unless: (1)

25 (A) The parent or parents agree, by written agreement approved by  
26 the court, to pay support beyond that time; (2)

27 (B) the child reaches 18 years of age before completing the child's  
28 high school education in which case the support shall not automatically  
29 terminate, unless otherwise ordered by the court, until June 30 of the  
30 school year during which the child became 18 years of age if the child is  
31 still attending high school; ~~(3)~~

32 (C) the child is still a bona fide high school student after June 30 of  
33 the school year during which the child became 18 years of age, in which  
34 case the court, on motion, may order support to continue through the  
35 school year during which the child becomes 19 years of age so long as  
36 the child is a bona fide high school student and the parents jointly

1 participated or knowingly acquiesced in the decision which delayed the  
2 child's completion of high school. The court, in extending support  
3 pursuant to subsection (c)(3)(2)(C), may impose such conditions as are  
4 appropriate and shall set the child support utilizing the guideline table  
5 category for 16-year through 18-year old children. Provision for payment  
6 of support and educational expenses of a child after reaching 18 years of  
7 age if still attending high school shall apply to any child subject to the  
8 jurisdiction of the court, including those whose support was ordered prior  
9 to July 1, 1992. ~~If an agreement approved by the court prior to July 1,~~  
10 ~~1988, provides for termination of support before the date provided by~~  
11 ~~subsection (e)(2), the court may review and modify such agreement, and~~  
12 ~~any order based on such agreement, to extend the date for termination of~~  
13 ~~support to the date provided by subsection (e)(2). If an agreement~~  
14 ~~approved by the court prior to July 1, 1992, provides for termination of~~  
15 ~~support before the date provided by subsection (c)(3)(2)(C), the court~~  
16 ~~may review and modify such agreement, and any order based on such~~  
17 ~~agreement, to extend the date for termination of support to the date~~  
18 ~~provided by subsection (c)(3)(2)(C); or~~

19 *(D) the child is an exceptional child and still a bona fide high*  
20 *school student after June 30 of the school year during which the*  
21 *exceptional child became 18 years of age, in which case the court, on*  
22 *motion, may order support to continue through the school year during*  
23 *which the exceptional child becomes 23 years of age so long as the*  
24 *exceptional child is a bona fide high school student. The court, in*  
25 *extending support pursuant to subsection (c)(2)(D), may impose such*  
26 *conditions as are appropriate and shall set the child support utilizing the*  
27 *guideline table category for 16-year through 18-year old children.*  
28 *Provision for payment of support and educational expenses of an*  
29 *exceptional child after reaching 18 years of age if still attending high*  
30 *school shall apply to any exceptional child subject to the jurisdiction of*  
31 *the court, including those whose support was ordered prior to July 1,*  
32 *2011. If an agreement approved by the court prior to July 1, 2011,*  
33 *provides for termination of support before the date provided by*  
34 *subsection (c)(2)(D), the court may review and modify such agreement,*  
35 *and any order based on such agreement, to extend the date for*  
36 *termination of support to the date provided by subsection (c)(2)(D).*

37 (3) For purposes of this section:

38 (A) "Bona fide high school student" means a student who is enrolled  
39 in full accordance with the policy of the accredited high school in which  
40 the student is pursuing a high school diploma or a graduate equivalency  
41 diploma (GED).

42 (B) "Exceptional child" means persons who are children with  
43 disabilities and are school age, to be determined in accordance with

1 *rules and regulations adopted by the state board of education, which age*  
2 *may differ from the ages of children required to attend school under the*  
3 *provisions of K.S.A. 72-1111, and amendments thereto.*

4 (4) The judgment may require the party to provide a bond with  
5 sureties to secure payment. The court may at any time during the minority  
6 of the child modify or change the order of support, including any order  
7 issued in a title IV-D case, within three years of the date of the original  
8 order or a modification order, as required by the best interest of the child.  
9 If more than three years has passed since the date of the original order or  
10 modification order, a requirement that such order is in the best interest of  
11 the child need not be shown. The court may make a modification of  
12 support retroactive to a date at least one month after the date that the  
13 motion to modify was filed with the court. Any increase in support  
14 ordered effective prior to the date the court's judgment is filed shall not  
15 become a lien on real property pursuant to K.S.A. 60-2202, and  
16 amendments thereto.

17 (d) If both parents are parties to the action, the court shall enter such  
18 orders regarding custody, residency and parenting time as the court  
19 considers to be in the best interest of the child.

20 If the parties have an agreed parenting plan it shall be presumed the  
21 agreed parenting plan is in the best interest of the child. This presumption  
22 may be overcome and the court may make a different order if the court  
23 makes specific findings of fact stating why the agreed parenting plan is  
24 not in the best interest of the child. If the parties are not in agreement on a  
25 parenting plan, each party shall submit a proposed parenting plan to the  
26 court for consideration at such time before the final hearing as may be  
27 directed by the court.

28 (e) If during the proceedings the court determines that there is  
29 probable cause to believe that the child is a child in need of care, as  
30 defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2010  
31 Supp. 38-2202, and amendments thereto, or that neither parent is fit to  
32 have residency, the court may award temporary residency of the child to a  
33 grandparent, aunt, uncle or adult sibling, or another person or agency if  
34 the court finds by written order that: (1)(A) The child is likely to sustain  
35 harm if not immediately removed from the home; (B) allowing the child  
36 to remain in home is contrary to the welfare of the child; or (C)  
37 immediate placement of the child is in the best interest of the child; and  
38 (2) reasonable efforts have been made to maintain the family unit and  
39 prevent the unnecessary removal of the child from the child's home or  
40 that an emergency exists which threatens the safety of the child. In  
41 making such a residency order, the court shall give preference, to the  
42 extent that the court finds it is in the best interests of the child, first to  
43 awarding such residency to a relative of the child by blood, marriage or

1 adoption and second to awarding such residency to another person with  
2 whom the child has close emotional ties. The court may make temporary  
3 orders for care, support, education and visitation that it considers  
4 appropriate. Temporary residency orders are to be entered in lieu of  
5 temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-  
6 2244, and amendments thereto, and shall remain in effect until there is a  
7 final determination under the revised Kansas code for care of children.  
8 An award of temporary residency under this paragraph shall not terminate  
9 parental rights nor give the court the authority to consent to the adoption  
10 of the child. When the court enters orders awarding temporary residency  
11 of the child to an agency or a person other than the parent, the court shall  
12 refer a transcript of the proceedings to the county or district attorney. The  
13 county or district attorney shall file a petition as provided in K.S.A. 2010  
14 Supp. 38-2234, and amendments thereto, and may request termination of  
15 parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments  
16 thereto. The costs of the proceedings shall be paid from the general fund  
17 of the county. If a final determination is made that the child is not a child  
18 in need of care, the county or district attorney shall notify the court in  
19 writing and the court, after a hearing, shall enter appropriate custody  
20 orders pursuant to this section. If the same judge presides over both  
21 proceedings, the notice is not required. Any custody, residency or  
22 parenting time order pursuant to the revised Kansas code for care of  
23 children shall take precedence over any custody, residency or parenting  
24 time order under this section.

25 (f) In entering an original order for support of a child under this  
26 section, the court may award an additional judgment to reimburse the  
27 expenses of support and education of the child from the date of birth to  
28 the date the order is entered. If the determination of paternity is based  
29 upon a presumption arising under K.S.A. 38-1114, and amendments  
30 thereto, the court shall award an additional judgment to reimburse all or  
31 part of the expenses of support and education of the child from at least  
32 the date the presumption first arose to the date the order is entered, except  
33 that no additional judgment need be awarded for amounts accrued under a  
34 previous order for the child's support.

35 (g) In determining the amount to be ordered in payment and duration  
36 of such payments, a court enforcing the obligation of support shall  
37 consider all relevant facts including, but not limited to, the following:

- 38 (1) The needs of the child.
- 39 (2) The standards of living and circumstances of the parents.
- 40 (3) The relative financial means of the parents.
- 41 (4) The earning ability of the parents.
- 42 (5) The need and capacity of the child for education.
- 43 (6) The age of the child.

1 (7) The financial resources and the earning ability of the child.

2 (8) The responsibility of the parents for the support of others.

3 (9) The value of services contributed by both parents.

4 (h) The provisions of K.S.A. 23-4,107, and amendments thereto,  
5 shall apply to all orders of support issued under this section.

6 (i) An order granting parenting time pursuant to this section may be  
7 enforced in accordance with K.S.A. 23-701, and amendments thereto, or  
8 under the uniform child custody jurisdiction and enforcement act.

9 Sec. 2. K.S.A. 2010 Supp. 60-1610 is hereby amended to read as  
10 follows: 60-1610. A decree in an action under this article may include  
11 orders on the following matters:

12 (a) *Minor children.* (1) *Child support and education.* (A) The court  
13 shall make provisions for the support and education of the minor  
14 children. Subject to the provisions of K.S.A. 23-9,207, and amendments  
15 thereto, the court may modify or change any prior order, including any  
16 order issued in a title IV-D case, within three years of the date of the  
17 original order or a modification order, when a material change in  
18 circumstances is shown, irrespective of the present domicile of the child  
19 or the parents. If more than three years has passed since the date of the  
20 original order or modification order, a material change in circumstance  
21 need not be shown. The court may make a modification of child support  
22 retroactive to a date at least one month after the date that the motion to  
23 modify was filed with the court. Any increase in support ordered effective  
24 prior to the date the court's judgment is filed shall not become a lien on  
25 real property pursuant to K.S.A. 60-2202, and amendments thereto.

26 (B) Regardless of the type of custodial arrangement ordered by the  
27 court, the court may order the child support and education expenses to be  
28 paid by either or both parents for any child less than 18 years of age, at  
29 which age the support shall terminate unless:

30 ~~(A)~~ (i) The parent or parents agree, by written agreement approved  
31 by the court, to pay support beyond the time the child reaches 18 years of  
32 age;

33 ~~(B)~~ (ii) the child reaches 18 years of age before completing the  
34 child's high school education in which case the support shall not  
35 terminate automatically, unless otherwise ordered by the court, until June  
36 30 of the school year during which the child became 18 years of age if the  
37 child is still attending high school; ~~or~~

38 ~~(C)~~ (iii) the child is still a bona fide high school student after June 30  
39 of the school year during which the child became 18 years of age, in  
40 which case the court, on motion, may order support to continue through  
41 the school year during which the child becomes 19 years of age so long  
42 as the child is a bona fide high school student and the parents jointly  
43 participated or knowingly acquiesced in the decision which delayed the

1 child's completion of high school. The court, in extending support  
2 pursuant to subsection (a)(1)(~~C~~)(B)(iii), may impose such conditions as  
3 are appropriate and shall set the child support utilizing the guideline table  
4 category for ~~12-year~~16-year through 18-year old children. Provision for  
5 payment of support and educational expenses of a child after reaching 18  
6 years of age if still attending high school shall apply to any child subject  
7 to the jurisdiction of the court, including those whose support was  
8 ordered prior to July 1, 1992. If an agreement approved by the court prior  
9 to July 1, 1992, provides for termination of support before the date  
10 provided by subsection (a)(1)(~~C~~)(B)(iii), the court may review and  
11 modify such agreement, and any order based on such agreement, to  
12 extend the date for termination of support to the date provided by  
13 subsection (a)(1)(~~C~~)(B)(iii); or

14 *(iv) the child is an exceptional child and still a bona fide high*  
15 *school student after June 30 of the school year during which the*  
16 *exceptional child became 18 years of age, in which case the court, on*  
17 *motion, may order support to continue through the school year during*  
18 *which the exceptional child becomes 23 years of age so long as the*  
19 *exceptional child is a bona fide high school student. The court, in*  
20 *extending support pursuant to subsection (a)(1)(B)(iv), may impose such*  
21 *conditions as are appropriate and shall set the child support utilizing the*  
22 *guideline table category for 16-year through 18-year old children.*  
23 *Provision for payment of support and educational expenses of an*  
24 *exceptional child after reaching 18 years of age if still attending high*  
25 *school shall apply to any exceptional child subject to the jurisdiction of*  
26 *the court, including those whose support was ordered prior to July 1,*  
27 *2011. If an agreement approved by the court prior to July 1, 2011,*  
28 *provides for termination of support before the date provided by*  
29 *subsection (a)(1)(B)(iv), the court may review and modify such*  
30 *agreement, and any order based on such agreement, to extend the date*  
31 *for termination of support to the date provided by subsection (a)(1)(B)*  
32 *(iv).*

33 (C) For purposes of this section:

34 (i) "Bona fide high school student" means a student who is enrolled  
35 in full accordance with the policy of the accredited high school in which  
36 the student is pursuing a high school diploma or a graduate equivalency  
37 diploma (GED).

38 (ii) "Exceptional child" means persons who are children with  
39 disabilities and are school age, to be determined in accordance with  
40 rules and regulations adopted by the state board of education, which age  
41 may differ from the ages of children required to attend school under the  
42 provisions of K.S.A. 72-1111, and amendments thereto.

43 (D) In determining the amount to be paid for child support, the court

1 shall consider all relevant factors, without regard to marital misconduct,  
2 including the financial resources and needs of both parents, the financial  
3 resources and needs of the child and the physical and emotional condition  
4 of the child. Until a child reaches 18 years of age, the court may set apart  
5 any portion of property of either the husband or wife, or both, that seems  
6 necessary and proper for the support of the child.

7 (E) Except for good cause shown, every order requiring payment of  
8 child support under this section shall require that the support be paid  
9 through the central unit for collection and disbursement of support  
10 payments designated pursuant to K.S.A. 23-4,118, and amendments  
11 thereto. A written agreement between the parties to make direct child  
12 support payments to the obligee and not pay through the central unit shall  
13 constitute good cause, unless the court finds the agreement is not in the  
14 best interest of the child or children. The obligor shall file such written  
15 agreement with the court. The obligor shall maintain written evidence of  
16 the payment of the support obligation and, at least annually, shall provide  
17 such evidence to the court and the obligee.

18 (F) If the divorce decree of the parties provides for an abatement of  
19 child support during any period provided in such decree, the child support  
20 such nonresidential parent owes for such period shall abate during such  
21 period of time, except that if the residential parent shows that the criteria  
22 for the abatement has not been satisfied there shall not be an abatement of  
23 such child support.

24 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to  
25 the provisions of the uniform child custody jurisdiction and enforcement  
26 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the  
27 court may change or modify any prior order of custody, residency,  
28 visitation and parenting time, when a material change of circumstances is  
29 shown, but no ex parte order shall have the effect of changing residency  
30 of a minor child from the parent who has had the sole de facto residency  
31 of the child to the other parent unless there is sworn testimony to support  
32 a showing of extraordinary circumstances. If an interlocutory order is  
33 issued ex parte, the court shall hear a motion to vacate or modify the  
34 order within 15 days of the date that a party requests a hearing whether to  
35 vacate or modify the order.

36 (B) *Examination of parties.* The court may order physical or mental  
37 examinations of the parties if requested pursuant to K.S.A. 60-235, and  
38 amendments thereto.

39 (3) *Child custody or residency criteria.* The court shall determine  
40 custody or residency of a child in accordance with the best interests of the  
41 child.

42 (A) If the parties have entered into a parenting plan, it shall be  
43 presumed that the agreement is in the best interests of the child. This

1 presumption may be overcome and the court may make a different order  
2 if the court makes specific findings of fact stating why the agreed  
3 parenting plan is not in the best interests of the child.

4 (B) In determining the issue of child custody, residency and  
5 parenting time, the court shall consider all relevant factors, including but  
6 not limited to:

7 (i) The length of time that the child has been under the actual care  
8 and control of any person other than a parent and the circumstances  
9 relating thereto;

10 (ii) the desires of the child's parents as to custody or residency;

11 (iii) the desires of the child as to the child's custody or residency;

12 (iv) the interaction and interrelationship of the child with parents,  
13 siblings and any other person who may significantly affect the child's best  
14 interests;

15 (v) the child's adjustment to the child's home, school and  
16 community;

17 (vi) the willingness and ability of each parent to respect and  
18 appreciate the bond between the child and the other parent and to allow  
19 for a continuing relationship between the child and the other parent;

20 (vii) evidence of spousal abuse;

21 (viii) whether a parent is subject to the registration requirements of  
22 the Kansas offender registration act, K.S.A. 22-4901, et seq., and  
23 amendments thereto, or any similar act in any other state, or under  
24 military or federal law;

25 (ix) whether a parent has been convicted of abuse of a child, K.S.A.  
26 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010*  
27 *Session Laws of Kansas*, and amendments thereto;

28 (x) whether a parent is residing with an individual who is subject to  
29 registration requirements of the Kansas offender registration act, K.S.A.  
30 22-4901, et seq., and amendments thereto, or any similar act in any other  
31 state, or under military or federal law; and

32 (xi) whether a parent is residing with an individual who has been  
33 convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or*  
34 *section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and  
35 amendments thereto.

36 (C) Neither parent shall be considered to have a vested interest in the  
37 custody or residency of any child as against the other parent, regardless of  
38 the age of the child, and there shall be no presumption that it is in the best  
39 interests of any infant or young child to give custody or residency to the  
40 mother.

41 (D) There shall be a rebuttable presumption that it is not in the best  
42 interest of the child to have custody or residency granted to a parent who:

43 (i) Is residing with an individual who is subject to registration



1 requirements of the Kansas offender registration act, K.S.A. 22-4901, et  
2 seq., and amendments thereto, or any similar act in any other state, or  
3 under military or federal law; or

4 (ii) is residing with an individual who has been convicted of abuse  
5 of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter*  
6 *136 of the 2010 Session Laws of Kansas*, and amendments thereto.

7 (E) If a court of competent jurisdiction within this state has entered  
8 an order pursuant to the revised Kansas code for care of children  
9 regarding custody of a child or children who are involved in a proceeding  
10 filed pursuant to this section, and such court has determined pursuant to  
11 subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the  
12 orders in that case shall become the custody orders in the divorce case,  
13 such court shall file a certified copy of the orders with the civil case  
14 number in the caption and then close the case under the revised Kansas  
15 code for care of children. Such orders shall be binding on the parties,  
16 unless modified based on a material change in circumstances, even if  
17 such courts have different venues.

18 (4) *Types of legal custodial arrangements.* Subject to the provisions  
19 of this article, the court may make any order relating to custodial  
20 arrangements which is in the best interests of the child. The order shall  
21 provide one of the following legal custody arrangements, in the order of  
22 preference:

23 (A) *Joint legal custody.* The court may order the joint legal custody  
24 of a child with both parties. In that event, the parties shall have equal  
25 rights to make decisions in the best interests of the child.

26 (B) *Sole legal custody.* The court may order the sole legal custody of  
27 a child with one of the parties when the court finds that it is not in the  
28 best interests of the child that both of the parties have equal rights to  
29 make decisions pertaining to the child. If the court does not order joint  
30 legal custody, the court shall include on the record specific findings of  
31 fact upon which the order for sole legal custody is based. The award of  
32 sole legal custody to one parent shall not deprive the other parent of  
33 access to information regarding the child unless the court shall so order,  
34 stating the reasons for that determination.

35 (5) *Types of residential arrangements.* After making a determination  
36 of the legal custodial arrangements, the court shall determine the  
37 residency of the child from the following options, which arrangement the  
38 court must find to be in the best interest of the child. The parties shall  
39 submit to the court either an agreed parenting plan or, in the case of  
40 dispute, proposed parenting plans for the court's consideration. Such  
41 options are:

42 (A) *Residency.* The court may order a residential arrangement in  
43 which the child resides with one or both parents on a basis consistent with

1 the best interests of the child.

2 (B) *Divided residency.* In an exceptional case, the court may order a  
3 residential arrangement in which one or more children reside with each  
4 parent and have parenting time with the other.

5 (C) *Nonparental residency.* If during the proceedings the court  
6 determines that there is probable cause to believe that the child is a child  
7 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)  
8 of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither  
9 parent is fit to have residency, the court may award temporary residency  
10 of the child to a grandparent, aunt, uncle or adult sibling, or, another  
11 person or agency if the court finds by written order that: (i) (a) The child  
12 is likely to sustain harm if not immediately removed from the home;

13 (b) allowing the child to remain in home is contrary to the welfare of  
14 the child; or

15 (c) immediate placement of the child is in the best interest of the  
16 child; and

17 (ii) reasonable efforts have been made to maintain the family unit  
18 and prevent the unnecessary removal of the child from the child's home  
19 or that an emergency exists which threatens the safety to the child. In  
20 making such a residency order, the court shall give preference, to the  
21 extent that the court finds it is in the best interests of the child, first to  
22 awarding such residency to a relative of the child by blood, marriage or  
23 adoption and second to awarding such residency to another person with  
24 whom the child has close emotional ties. The court may make temporary  
25 orders for care, support, education and visitation that it considers  
26 appropriate. Temporary residency orders are to be entered in lieu of  
27 temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-  
28 2244, and amendments thereto, and shall remain in effect until there is a  
29 final determination under the revised Kansas code for care of children.  
30 An award of temporary residency under this paragraph shall not terminate  
31 parental rights nor give the court the authority to consent to the adoption  
32 of the child. When the court enters orders awarding temporary residency  
33 of the child to an agency or a person other than the parent, the court shall  
34 refer a transcript of the proceedings to the county or district attorney. The  
35 county or district attorney shall file a petition as provided in K.S.A. 2010  
36 Supp. 38-2234, and amendments thereto, and may request termination of  
37 parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments  
38 thereto. The costs of the proceedings shall be paid from the general fund  
39 of the county. If a final determination is made that the child is not a child  
40 in need of care, the county or district attorney shall notify the court in  
41 writing and the court, after a hearing, shall enter appropriate custody  
42 orders pursuant to this section. If the same judge presides over both  
43 proceedings, the notice is not required. Any order pursuant to the revised

1 Kansas code for care of children shall take precedence over any order  
2 under this section.

3 (6) *Priority.* Any custody or parenting time order, or order relating to  
4 the best interests of a child, issued pursuant to the revised Kansas code  
5 for care of children or the revised Kansas juvenile justice code, shall be  
6 binding and shall take precedence over any order under article 16 of  
7 chapter 60 of the Kansas Statutes Annotated, and amendments thereto  
8 (divorce), until jurisdiction under the revised Kansas code for care of  
9 children or the revised Kansas juvenile justice code is terminated.

10 (7) *Child health insurance coverage.* The court may order that each  
11 parent execute any and all documents, including any releases, necessary  
12 so that both parents may obtain information from and to communicate  
13 with any health insurance provider regarding the health insurance  
14 coverage provided by such health insurance provider to the child. The  
15 provisions of this paragraph shall apply irrespective of which parent  
16 owns, subscribes or pays for such health insurance coverage.

17 (b) *Financial matters.* (1) *Division of property.* The decree shall  
18 divide the real and personal property of the parties, including any  
19 retirement and pension plans, whether owned by either spouse prior to  
20 marriage, acquired by either spouse in the spouse's own right after  
21 marriage or acquired by the spouses' joint efforts, by: (A) A division of  
22 the property in kind; (B) awarding the property or part of the property to  
23 one of the spouses and requiring the other to pay a just and proper sum;  
24 or (C) ordering a sale of the property, under conditions prescribed by the  
25 court, and dividing the proceeds of the sale. Upon request, the trial court  
26 shall set a valuation date to be used for all assets at trial, which may be  
27 the date of separation, filing or trial as the facts and circumstances of the  
28 case may dictate. The trial court may consider evidence regarding  
29 changes in value of various assets before and after the valuation date in  
30 making the division of property. In dividing defined-contribution types of  
31 retirement and pension plans, the court shall allocate profits and losses on  
32 the nonparticipant's portion until date of distribution to that  
33 nonparticipant. In making the division of property the court shall consider  
34 the age of the parties; the duration of the marriage; the property owned by  
35 the parties; their present and future earning capacities; the time, source  
36 and manner of acquisition of property; family ties and obligations; the  
37 allowance of maintenance or lack thereof; dissipation of assets; the tax  
38 consequences of the property division upon the respective economic  
39 circumstances of the parties; and such other factors as the court considers  
40 necessary to make a just and reasonable division of property. The decree  
41 shall provide for any changes in beneficiary designation on: (A) Any  
42 insurance or annuity policy that is owned by the parties, or in the case of  
43 group life insurance policies, under which either of the parties is a

1 covered person; (B) any trust instrument under which one party is the  
2 grantor or holds a power of appointment over part or all of the trust  
3 assets, that may be exercised in favor of either party; or (C) any transfer  
4 on death or payable on death account under which one or both of the  
5 parties are owners or beneficiaries. Nothing in this section shall relieve  
6 the parties of the obligation to effectuate any change in beneficiary  
7 designation by the filing of such change with the insurer or issuer in  
8 accordance with the terms of such policy.

9 (2) *Maintenance.* The decree may award to either party an allowance  
10 for future support denominated as maintenance, in an amount the court  
11 finds to be fair, just and equitable under all of the circumstances. The  
12 decree may make the future payments modifiable or terminable under  
13 circumstances prescribed in the decree. The court may make a  
14 modification of maintenance retroactive to a date at least one month after  
15 the date that the motion to modify was filed with the court. In any event,  
16 the court may not award maintenance for a period of time in excess of  
17 121 months. If the original court decree reserves the power of the court to  
18 hear subsequent motions for reinstatement of maintenance and such a  
19 motion is filed prior to the expiration of the stated period of time for  
20 maintenance payments, the court shall have jurisdiction to hear a motion  
21 by the recipient of the maintenance to reinstate the maintenance  
22 payments. Upon motion and hearing, the court may reinstate the  
23 payments in whole or in part for a period of time, conditioned upon any  
24 modifying or terminating circumstances prescribed by the court, but the  
25 reinstatement shall be limited to a period of time not exceeding 121  
26 months. The recipient may file subsequent motions for reinstatement of  
27 maintenance prior to the expiration of subsequent periods of time for  
28 maintenance payments to be made, but no single period of reinstatement  
29 ordered by the court may exceed 121 months. Maintenance may be in a  
30 lump sum, in periodic payments, on a percentage of earnings or on any  
31 other basis. At any time, on a hearing with reasonable notice to the party  
32 affected, the court may modify the amounts or other conditions for the  
33 payment of any portion of the maintenance originally awarded that has  
34 not already become due, but no modification shall be made without the  
35 consent of the party liable for the maintenance, if it has the effect of  
36 increasing or accelerating the liability for the unpaid maintenance beyond  
37 what was prescribed in the original decree. Except for good cause shown,  
38 every order requiring payment of maintenance under this section shall  
39 require that the maintenance be paid through the central unit for  
40 collection and disbursement of support payments designated pursuant to  
41 K.S.A. 23-4,118, and amendments thereto. A written agreement between  
42 the parties to make direct maintenance payments to the obligee and not  
43 pay through the central unit shall constitute good cause. If child support

1 and maintenance payments are both made to an obligee by the same  
2 obligor, and if the court has made a determination concerning the manner  
3 of payment of child support, then maintenance payments shall be paid in  
4 the same manner.

5 (3) *Separation agreement.* If the parties have entered into a  
6 separation agreement which the court finds to be valid, just and equitable,  
7 the agreement shall be incorporated in the decree. A separation agreement  
8 may include provisions relating to a parenting plan. The provisions of the  
9 agreement on all matters settled by it shall be confirmed in the decree  
10 except that any provisions relating to the legal custody, residency,  
11 visitation parenting time, support or education of the minor children shall  
12 be subject to the control of the court in accordance with all other  
13 provisions of this article. Matters settled by an agreement incorporated in  
14 the decree, other than matters pertaining to the legal custody, residency,  
15 visitation, parenting time, support or education of the minor children,  
16 shall not be subject to subsequent modification by the court except: (A)  
17 As prescribed by the agreement or (B) as subsequently consented to by  
18 the parties.

19 (4) *Costs and fees.* Costs and attorney fees may be awarded to either  
20 party as justice and equity require. The court may order that the amount  
21 be paid directly to the attorney, who may enforce the order in the  
22 attorney's name in the same case.

23 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request  
24 of a spouse, the court shall order the restoration of that spouse's maiden  
25 or former name. The court shall have jurisdiction to restore the spouse's  
26 maiden or former name at or after the time the decree of divorce becomes  
27 final. The judicial council shall develop a form which is simple, concise  
28 and direct for use with this paragraph.

29 (2) *Effective date as to remarriage.* Any marriage contracted by a  
30 party, within or outside this state, with any other person before a  
31 judgment of divorce becomes final shall be voidable until the decree of  
32 divorce becomes final. An agreement which waives the right of appeal  
33 from the granting of the divorce and which is incorporated into the decree  
34 or signed by the parties and filed in the case shall be effective to shorten  
35 the period of time during which the remarriage is voidable.

36 Sec. 3. K.S.A. 2010 Supp. 38-1121 and 60-1610 are hereby  
37 repealed.

38 Sec. 4. This act shall take effect and be in force from and after its  
39 publication in the statute book.