

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2568

As Amended by Senate Committee on Judiciary

Brief*

HB 2568, as amended, would amend the Kansas Family Law Code. In parentage proceedings, the bill would provide that orders concerning legal custody, residency, and parenting time would be made pursuant to existing law governing these issues, which, among other provisions, contains a preference for joint custody that does not appear in the Parentage Act.

Child support awarded as part of a parentage proceeding would be determined pursuant to the Kansas Child Support Guidelines (the Guidelines). The court would be allowed to consider any affirmative defenses pled and proved in making such an award. For any period occurring five years or less before or after commencement of the action, there would be a rebuttable presumption that the Guidelines reflect the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award would have the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.

Additionally, in parentage proceedings, the bill would allow the court to award costs and attorney fees to either party as justice and equity may require and, unless the attorney represents a public agency in an action, could order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

*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>

Further, the bill would strike language prohibiting fees for representation of a petitioner by the county or district attorney.

After the filing of a petition for divorce, annulment, or separate maintenance and during the pendency of the action until the entry of final judgment, the bill would allow the judge assigned to hear the action to modify and vacate certain orders, including temporary custody orders, orders restraining the parties from disposing of property, and orders requiring mediation. Judges already have authority to make and enforce these orders.

In child support proceedings, the bill would require a person who files a motion to request or modify a child support order to include a completed domestic relations affidavit and proposed child support worksheet. In making a child support award, the bill would strike language requiring the court to consider “all relevant factors, without regard to marital misconduct, including the financial resources and needs of both the parents, the financial resources and needs of the child, and the physical and emotional condition of the child.” Instead, the bill would require the court to follow the Guidelines. The Guidelines are created by the Supreme Court based on “all relevant factors, including, but not limited to: the needs of the child; the standards of living and circumstances of the parents; the relative financial means of the parents; the need and capacity of the child for education; the age of the child; the financial resources and earning ability of the child; the responsibility of the parents for the support of others; and the value of services contributed by both parents.”

The bill would allow the court to make a modification of child support retroactive to the first day of the month following the filing of the motion to modify, replacing current law that allows the court to make the modification retroactive to a date at least one month after the date the motion was filed. Any retroactive award would not become a lien on real property until the date of the order.

In a proceeding to determine child custody, residency, and parenting time, the bill would modify the factors courts must consider. The bill would strike language requiring the court to consider “the length of time the child has been under the actual care and control of any person other than a parent,” and would add the following factors: the age of the child; the emotional and physical needs of the child; the ability of the parties to communicate, cooperate, and manage parental duties; the school activity schedule of the child; the parties’ work schedule; the location of the parties’ residences and places of employment; and the location of the child’s school. Further the bill would clarify the court would consider the desires only of a child “of sufficient age and maturity” and must consider evidence of both physical and emotional spousal abuse.

The bill also would make many technical amendments.

Background

In the House Judiciary Committee, representatives of the Kansas Bar Association and Kansas Judicial Council offered testimony in support of the bill. The representative of the Judicial Council explained the majority of the bill cross-references other articles of the family law code and would delete redundant provisions from the parentage act. Additionally, the bill would make changes to the law in response to recent case law concerning modification of child support orders and when a domestic relations affidavit must be filed. Finally, the representative explained the bill would modify the factors for determining child custody as the current factors are based on a third-party custody case, which are not applicable in most residential custody orders. Other statutory provisions specifically address third-party custody. No opponents offered testimony.

The House Committee amended the bill to remove a section that would have amended how courts determine custody, residency, and parenting time in paternity

proceedings so that a separate bill can be introduced for further consideration of this issue.

In the Senate Judiciary Committee, a representative of the Kansas Judicial Council appeared in support of the bill and asked for restoration of the section removed by the House Committee. Though the section would result in a substantive change in the law because the preference for joint custody would apply to both divorce and parentage proceedings, the Judicial Council's Family Law Advisory Committee has concerns that treating the two situations differently based solely on marital status could be a constitutional issue. A representative of the Kansas Bar Association and a private attorney offered written testimony in support of the bill. A concerned citizen appeared to oppose the bill, citing broader concerns about the domestic relations code.

The Senate Committee amended the bill to restore the provision removed by the House Committee.

The fiscal note prepared by the Division of the Budget indicates passage of the bill, as introduced, likely would have no fiscal effect on the Kansas Department for Children and Families. The Office of Judicial Administration indicates passage could increase expenditures for the Judicial Branch, as it would increase time spent by judges hearing child support matters and by nonjudicial personnel in processing, researching, and hearing cases. The precise impact cannot be determined at this time, however.