

HOUSE BILL No. 2562

By Representative Swanson

1-28

1 AN ACT concerning children; relating to retroactive child support;
2 amending K.S.A. 2015 Supp. 23-2215 and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 2015 Supp. 23-2215 is hereby amended to read as
7 follows: 23-2215. (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 a
13 party's duty of support.

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

18 (c) 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 under
20 article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments
21 thereto. The court may order the payment of all or a portion of the
22 necessary medical expenses incident to the child's birth. The court may
23 order the support and education expenses to be paid by either or both
24 parents for the minor child.

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

28 If the parties have an agreed parenting plan it shall be presumed the
29 agreed parenting plan is in the best interest of the child. This presumption
30 may be overcome and the court may make a different order if the court
31 makes specific findings of fact stating why the agreed parenting plan is not
32 in the best interest of the child. If the parties are not in agreement on a
33 parenting plan, each party shall submit a proposed parenting plan to the
34 court for consideration at such time before the final hearing as may be
35 directed by the court.

36 (e) If during the proceedings the court determines that there is

1 probable cause to believe that the child is a child in need of care, as
2 defined by ~~subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2015~~
3 ~~Supp. 38-2202(d)(1), (d)(2), (d)(3) or (d)(11)~~, and amendments thereto, or
4 that neither parent is fit to have residency, the court may award temporary
5 residency of the child to a grandparent, aunt, uncle or adult sibling, or
6 another person or agency if the court finds by written order that: (1) (A)
7 The child is likely to sustain harm if not immediately removed from the
8 home; (B) allowing the child to remain in home is contrary to the welfare
9 of the child; or (C) immediate placement of the child is in the best interest
10 of the child; and (2) reasonable efforts have been made to maintain the
11 family unit and prevent the unnecessary removal of the child from the
12 child's home or that an emergency exists which threatens the safety of the
13 child. In making such a residency order, the court shall give preference, to
14 the extent that the court finds it is in the best interests of the child, first to
15 awarding such residency to a relative of the child by blood, marriage or
16 adoption and second to awarding such residency to another person with
17 whom the child has close emotional ties. The court may make temporary
18 orders for care, support, education and visitation that it considers
19 appropriate. Temporary residency orders are to be entered in lieu of
20 temporary orders provided for in K.S.A. 2015 Supp. 38-2243 and 38-2244,
21 and amendments thereto, and shall remain in effect until there is a final
22 determination under the revised Kansas code for care of children. An
23 award of temporary residency under this subsection shall not terminate
24 parental rights nor give the court the authority to consent to the adoption of
25 the child. When the court enters orders awarding temporary residency of
26 the child to an agency or a person other than the parent, the court shall
27 refer a transcript of the proceedings to the county or district attorney. The
28 county or district attorney shall file a petition as provided in K.S.A. 2015
29 Supp. 38-2234, and amendments thereto, and may request termination of
30 parental rights pursuant to K.S.A. 2015 Supp. 38-2266, and amendments
31 thereto. The costs of the proceedings shall be paid from the general fund of
32 the county. If a final determination is made that the child is not a child in
33 need of care, the county or district attorney shall notify the court in writing
34 and the court, after a hearing, shall enter appropriate custody orders
35 pursuant to this section. If the same judge presides over both proceedings,
36 the notice is not required. Any order pursuant to the revised Kansas code
37 for care of children shall take precedence over any similar order under this
38 section.

39 ~~(f)(1) — In A court entering an original order for retroactive support of~~
40 ~~a child under this section, the court may award an additional judgment to~~
41 ~~the mother or any other party who made expenditures for support and~~
42 ~~education of the child from the date of birth to the date the order is~~
43 ~~entered. If the determination of paternity is based upon a presumption~~

1 arising under K.S.A. 2015 Supp. 23-2208, and amendments thereto, the
2 court shall award an additional judgment to reimburse all or part of the
3 expenses of support and education of the child from at least the date the
4 presumption first arose to the date the order is entered, except that no
5 additional judgment need be awarded for amounts accrued under a
6 previous order for the child's support.

7 (2) The court may consider any affirmative defenses pled and proved
8 in making an award under this subsection.

9 (3) The amount of any award made under this subsection shall be
10 determined by application of the Kansas child support guidelines. For any
11 period occurring five years or less before or after commencement of the
12 action, there is a rebuttable presumption that such child support guidelines
13 amount reflects the actual expenditures made on the child's behalf during
14 that period. For any period occurring more than five years before
15 commencement of the action, the person seeking the award has the burden
16 of proving that the total amount requested for that period does not exceed
17 expenditures actually made on the child's behalf during that period *shall*
18 *only do so up until four years after the child reaches the age of majority,*
19 *notwithstanding any other provision of chapter 23 of the Kansas Statutes*
20 *Annotated, and amendments thereto.*

21 (1) *The Kansas child support guidelines shall be used to guide the*
22 *court in determining the amount of retroactive child support, if any, to be*
23 *ordered.*

24 (2) *In ordering retroactive child support, the court shall consider the*
25 *net resources of the obligor during the relevant time period and whether:*

26 (A) *The mother of the child had made any previous attempts to notify*
27 *the obligor of his paternity or probable paternity;*

28 (B) *the obligor had knowledge of his paternity or probable paternity;*

29 (C) *the order of retroactive child support will impose an undue*
30 *financial hardship on the obligor or the obligor's family; and*

31 (D) *the obligor has provided actual support or other necessities*
32 *before commencement of the action.*

33 (3) *There is a rebuttable presumption that a court order limiting the*
34 *amount of retroactive child support to an amount that does not exceed the*
35 *total amount of support that would have been due for the period occurring*
36 *four years before commencement of the action is reasonable and in the*
37 *best interest of the child. Such presumption may be rebutted by evidence*
38 *that the obligor:*

39 (A) *Knew or should have known that the obligor was the father of the*
40 *child for whom support is sought; and*

41 (B) *sought to avoid the establishment of a support obligation to the*
42 *child.*

43 (4) *An order under this subsection limiting the amount of retroactive*

1 *child support does not constitute a variance from the Kansas child support*
2 *guidelines.*

3 (5) *A court, in determining the amount of retroactive child support to*
4 *be ordered, shall make such determination based on the factors to be*
5 *considered pursuant to this subsection. The court, in denying or limiting*
6 *such retroactive child support, shall list the factors relied upon in its order.*

7 Sec. 2. K.S.A. 2015 Supp. 23-2215 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the statute book.