

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2130**

As Agreed to April 4, 2023

Brief*

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

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.

The bill would also 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.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

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.]

Filing of Wills in Court

The bill would amend law governing the filing of wills in court to allow a copy of a decedent's will to be filed and admitted to probate. An affidavit would be required to be filed as part of this procedure. The bill would require such affidavit filed on or after July 1, 2023, to state whether the original will or a copy of the will is being filed with the court. [Note: Current law does not allow for a copy of a will to be filed with the court.]

Technical Amendments

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

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2130 as passed by the Senate regarding certain dollar amount limits and thresholds, transfer-on-death deeds, and publication of notice of probate hearings and sales and agreed to insert the provisions of HB 2018, as passed by the House, regarding filing of wills in court with a modification to revert language concerning the time period after which a will or copy of will may be admitted to probate to current law.

Background

This bill contains provisions of HB 2130 and HB 2018.

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.] The bill, as amended by the Senate Committee on Judiciary, adds provisions of HB 2016 (transfer-on-death deeds) and HB 2127 (publication of notice).

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.

[*Note:* The Conference Committee retained these amendments.]

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. [*Note: The Conference Committee retained this amendment.*]

HB 2018 (Filing of Wills)

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

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 allow a copy of a will to be preserved for probate in cases when the original will is lost. No other testimony was provided.

Fiscal Information

HB 2130 (Dollar Amount Limits and Thresholds)

According to the fiscal note prepared by the Division of the Budget on HB 2130, 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 OJA states a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions. The OJA 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.

HB 2016 (Transfer-on-death Deeds)

The 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.

HB 2018 (Filing of Wills in Court)

According to the fiscal note prepared by the Division of the Budget on HB 2018, the Office of Judicial Administration indicates that enactment of the bill could have a fiscal effect on the Judicial Branch because the bill would allow a copy of a will to be filed, which could result in more time spent by court employees and judges processing and deciding cases. However, a precise fiscal effect could not be determined.

HB 2127 (Publication of Notice of Probate Hearings and Probate Sales)

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

Any fiscal effect associated with the above bills is not reflected in *The FY 2024 Governor's Budget Report*.

Kansas probate code; transfer-on-death deed; probate hearing

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