

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2014

By Committee on Judiciary

1-16

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 status of husband and wife is not a divorce for purposes of
13 this 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 status of husband and wife is not a

1 divorce 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 their marriage, which decree or judgment
4 is not recognized as valid in this state, unless subsequently they participate
5 in a marriage ceremony purporting to marry each to the other;

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

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

11 (b) On and after July 1, 2013, except as provided by the express terms
12 of a governing instrument, a court order or contract relating to the division
13 of the marital estate made between the divorced individuals before or after
14 the marriage, divorce or annulment, **if the decree of divorce or**
15 **annulment specifies any interests of the former spouse described in**
16 **this subsection which are to be revoked or severed**, the divorce or
17 annulment of a marriage:

18 (1) Revokes any revocable:

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

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

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

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

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

42 (d) Provisions of a governing instrument are given effect as if the
43 former spouse and relatives of the former spouse disclaimed all provisions

1 revoked by this section or, in the case of a revoked nomination in a
2 fiduciary or representative capacity, as if the former spouse and relatives of
3 the former spouse died immediately before the divorce or annulment.

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

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

17 (2) Written notice of the claimed forfeiture or revocation under this
18 section as a result of a divorce, annulment or remarriage under subsection
19 (f)(1) shall be mailed to the payor's or other third party's main office or
20 home by registered or certified mail, return receipt requested, or served
21 upon the payor or other third party in the same manner as a summons in a
22 civil action. Upon receipt of written notice of the claimed forfeiture or
23 revocation under this section as a result of a divorce, annulment or
24 remarriage, a payor or other third party may pay any amount owed or
25 transfer or deposit any item of property held by it to or with the court
26 having jurisdiction of the probate proceedings relating to the decedent's
27 estate or, if no proceedings have commenced, to or with the court having
28 jurisdiction of probate proceedings relating to the decedent's estates
29 located in the county of the decedent's residence. The court shall hold the
30 funds or item of property and, upon its determination under this section,
31 shall order disbursement or transfer in accordance with the determination.
32 Payments, transfers or deposits made to or with the court discharge the
33 payor or other third party from all claims for the value of amounts paid to
34 or items of property transferred to or deposited with the 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 is 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 the former spouse or
8 any other person who, not for value, received a payment, item of property
9 or any other benefit to which that person is not entitled under this section
10 is 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 Sec. 2. This act shall take effect and be in force from and after its
18 publication in the statute book.