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Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ks.gov
www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR
NANCY J. STROUSE

STAFF ATTORNEYS
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TO: House Judiciary Committee

FROM: Kansas Judicial Council – Mark Knackendoffel

DATE: January 31, 2023

RE: H.B. 2130 increasing dollar amounts in probate code

The Judicial Council and its Probate Law Advisory Committee recommend H.B. 2130, a bill that would increase various dollar amounts in the probate code. Most of the increases in the bill are necessary simply to keep up with inflation; however, the increase in the dollar limit for use of the small estates affidavit procedure under K.S.A. 59-1507b has a somewhat different rationale.

K.S.A. 59-1507b allows the transfer of personal property to a decedent's successors by affidavit without any court involvement when the total value of the probate estate is less than \$40,000. This affidavit procedure benefits Kansans by allowing them to avoid the court costs and attorney fees involved with opening a probate proceeding when a decedent has left a relatively small estate.

The dollar limit in K.S.A. 59-1507b has been \$40,000 since 2008. The Consumer Price Index (CPI) has increased 35% between July 2008 and November 2022. The Council is recommending that the limit be raised to \$75,000. While somewhat larger than necessitated by inflation alone, this increase would allow a greater number of people to avoid the time and expense of probate by using the affidavit process. As just one example, the affidavit process is commonly used to transfer title to vehicles, and the value of vehicles has increased greatly over the last few years.

The Council recommends the increases reflected in the chart below. Except for the increase in the small estates affidavit amount discussed above, each proposed increase is based on the increase in the CPI since the last time the amount was updated (rounding up as appropriate). Comments following the chart provide a more detailed explanation of each proposed increase.

Statute	Description	Current amount (last increase)	CPI change	Increased amount	As rounded up
59-403	Allowance to spouse and minor children	50,000 (2008)	35.35%	67,675	75,000
59-6a202	Supplemental elective share amount	50,000 (1994)	100.61%	100,305	100,000
59-6a205	Transfers within 2 years of death	10,000 (1994)	100.61%	20,061	25,000
59-6a215	Homestead or homestead allowance	50,000 (2008)	35.35%	67,675	75,000
59-1507a	Payment of benefits to certain relatives	5,000 (2000)	72.29%	8,615	10,000
59-1507b	Small estates affidavit for personal property	40,000 (2008)	35.35%	54,140	75,000
59-2215	Remission of court costs for small estates	5,000 (2000)	72.29%	8,615	10,000
59-2237	Exhibition of demands; allowance without hearing	5,000 (2000)	72.29%	8,615	10,000
59-2287	Refusal to grant letters of administration	50,000 (2008)	35.35%	67,675	75,000
59-2401	Appealable orders; when; bond	5,000 (2006)	46.30%	7,315	10,000
59-2402a	Request for transfer from magistrate to district judge	5,000 (2006)	46.30%	7,315	10,000

Section 1.

K.S.A. 59-403 provides for an allowance to a surviving spouse and minor children of not more than \$50,000. This allowance was raised from \$35,000 to \$50,000 in 2008. The CPI has increased by 35% since 2008, and the Council recommends raising the allowance to \$75,000.

Section 2.

K.S.A. 59-6a202 is part of the Kansas elective share act and provides for a supplemental elective share of \$50,000 in cases where the surviving spouse's assets and other entitlements are less than that amount. The supplemental elective share amount has been set at \$50,000 since the elective share act was enacted in 1994. The CPI has increased by 100% since 1994, and the Council recommends a corresponding increase in the supplemental elective share amount to \$100,000.

Section 3.

K.S.A. 59-6a205 is part of the Kansas elective share act and provides that certain transfers of property over \$10,000 within two years of a decedent spouse's death will be counted in the augmented estate for purposes of determining the elective share amount. This amount was set at \$10,000 when the elective share act was enacted in 1994. It was originally tied to the federal gift tax exclusion, which will increase to \$17,000 in 2023. The CIP has increased by 100% since 1994, and the Council recommends increasing the transfer amount to \$25,000.

Section 4.

K.S.A. 59-6a215 provides that a surviving spouse is entitled to the homestead or, in lieu thereof, may elect to receive a homestead allowance of \$50,000. The homestead allowance has been set at \$50,000 since 2008. The CPI has increased by 35% since 2008, and the Council recommends increasing the homestead allowance to \$75,000.

Section 5.

K.S.A. 59-1507a authorizes the payment of certain benefits not in excess of \$5,000 to a decedent's relatives using an affidavit process. The dollar limit in this statute has been set at \$5,000 since 2000. The CPI has increased by 72% since then, and the Council recommends raising the limit to \$10,000.

Section 6.

As discussed on the first page of this testimony, K.S.A. 59-1507b allows the transfer of personal property to a decedent's successors using an affidavit process when the value of the probate estate does not exceed \$40,000. The dollar limit in K.S.A. 59-1507b has been \$40,000 since 2008. The CPI has increased 35% since 2008, and the Council is recommending that the limit be raised to \$75,000. While somewhat

larger than necessitated by inflation alone, this increase would allow a greater number of people to avoid the time and expense of probate by using the affidavit process.

Section 7.

K.S.A. 59-2215 authorizes the court to remit court costs when the total assets in an estate do not exceed \$5,000. The dollar amount in this statute has been set at \$5,000 since 2000. The CPI has increased by 72% since then, and the Council recommends raising the amount to \$10,000.

Section 8.

K.S.A. 59-2237 authorizes the executor or administrator of an estate to pay any timely demand not exceeding \$5,000 without giving prior notice and without court approval. The dollar amount in this statute has been set at \$5,000 since 2000. The CPI has increased by 72% since then, and the Council recommends raising the amount to \$10,000. Raising the amount will promote efficiency in the administration of estates and avoid unnecessary court involvement for small creditor claims.

Section 9.

K.S.A. 59-2287 allows the court to refuse to grant letters of administration when a decedent's estate does not exceed \$50,000 and the estate is not subject to allowances or allowances are waived. The dollar amount in this statute has been \$50,000 since 2008. The CPI has increased by 35% since 2008, and the Council recommends increasing the statutory amount to \$75,000. This is consistent with the proposed amendment to increase the allowance to surviving spouse and minor children in K.S.A. 59-403 from \$50,000 to \$75,000.

Section 10.

K.S.A. 59-2401 provides that an appeal from a district magistrate judge to a district judge may be taken no later than 30 days from the date of entry of any order allowing or disallowing a demand, in whole or in part, when the amount in controversy exceeds \$5,000. The dollar amount in this statute has been \$5,000 since 2006. The CPI has increased by 46% since then, and the Council recommends raising the amount to \$10,000. This is consistent with the proposed amendment to increase the amount of a demand that can be paid without court approval from \$5,000 to \$10,000 in K.S.A. 59-2237.

Section 11.

K.S.A. 59-2402a allows any interested party to request transfer of a matter from a district magistrate judge to a district judge when the petition is to allow any claim exceeding \$5,000. The dollar amount in this statute has been \$5,000 since 2006. The CPI has increased by 46% since then, and the Council recommends raising the amount to \$10,000. This is consistent with the proposed amendment to increase the amount of a demand that can be paid without court approval from \$5,000 to \$10,000 in K.S.A. 59-2237.