

HOUSE BILL No. 2604

By Committee on Judiciary

2-10

1 AN ACT concerning domestic relations; relating to dissolution of
2 marriage, division of property, spousal support; family counseling;
3 amending K.S.A. 2013 Supp. 23-2106, 23-2701, 23-2702, 23-2707, 23-
4 2709, 23-2711, 23-2802, 23-2903, 23-2904, 23-2905 and 23-3510 and
5 repealing the existing sections; also repealing K.S.A. 2013 Supp. 23-
6 2710 and 23-2715.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2013 Supp. 23-2106 is hereby amended to read as
10 follows: 23-2106. The 2012 amendments to K.S.A. 2013 Supp. 23-2217,
11 23-2706, 23-2709, ~~23-2710, 23-2715~~, 23-2717, 23-2802, 23-2902, 23-
12 2905, 23-3001, 23-3004, 23-3005, 23-3207, 23-3208, 23-3215, 23-3219,
13 23-3221, 23-3222, 23-3301, 23-3302, 23-3304 and 23-3403 *and to K.S.A.*
14 *2013 Supp. 23-2710 and 23-2715, prior to their repeal*, shall be construed
15 and applied retroactively.

16 Sec. 2. K.S.A. 2013 Supp. 23-2701 is hereby amended to read as
17 follows: 23-2701. (a) The district court shall grant a decree of divorce or
18 separate maintenance for any of the following grounds:

19 ~~(1) Incompatibility;~~ (2) *The respondent has been convicted of the*
20 *crime of adultery, as defined in K.S.A. 21-3507, prior to its repeal, or*
21 *K.S.A. 2013 Supp. 21-5511, and amendments thereto;*

22 (2) *the respondent has been convicted of a felony for a crime against*
23 *persons as specified in article 34 of chapter 21 of the Kansas Statutes*
24 *Annotated, prior to its repeal, or article 54 of chapter 21 of the Kansas*
25 *Statutes Annotated, and amendments thereto, or convicted of a felony*
26 *under the laws of any other jurisdiction which is substantially the same as*
27 *a crime against persons as specified in article 34 of chapter 21 of the*
28 *Kansas Statutes Annotated, prior to its repeal, or article 54 of chapter 21*
29 *of the Kansas Statutes Annotated, and amendments thereto;*

30 (3) *the respondent has been convicted of a felony for a sex offense as*
31 *specified in article 35 of chapter 21 of the Kansas Statutes Annotated,*
32 *prior to its repeal, or article 55 of chapter 21 of the Kansas Statutes*
33 *Annotated, and amendments thereto, or convicted of a felony under the*
34 *laws of any other jurisdiction which is substantially the same as a sex*
35 *offense as specified in article 35 of chapter 21 of the Kansas Statutes*
36 *Annotated, prior to its repeal, or article 55 of chapter 21 of the Kansas*

1 *Statutes Annotated, and amendments thereto;*

2 (4) *the respondent has abandoned the matrimonial domicile for a*
3 *period of one year and constantly refuses to return;*

4 (5) *the respondent has physically or sexually abused the petitioner or*
5 *a child of the petitioner or respondent;*

6 (6) *both spouses have been living separate and apart continuously*
7 *without reconciliation for a period of two years; or*

8 (7) *both spouses have been living separate and apart continuously*
9 *without reconciliation for a period of one year from the date of an order*
10 *awarding separate maintenance to one of the spouses;*

11 (8) *both spouses have agreed to separate due to no fault of either*
12 *spouse;*

13 (9) *failure to perform a material marital duty or obligation; or*

14 ~~(3)~~-(10) *incompatibility by reason of mental illness or mental*
15 *incapacity of one or both spouses.*

16 (b) The ground of incompatibility by reason of mental illness or
17 mental incapacity of one or both spouses shall require a finding of either:
18 (1) Confinement of the spouse in an institution by reason of mental illness
19 for a period of two years, which confinement need not be continuous; or
20 (2) an adjudication of mental illness or mental incapacity of the spouse by
21 a court of competent jurisdiction while the spouse is confined in an
22 institution by reason of mental illness. In either case, there must be a
23 finding by at least two of three physicians, appointed by the court before
24 which the action is pending, that the mentally ill or mentally incapacitated
25 spouse has a poor prognosis for recovery from the mental illness or mental
26 incapacity, based upon general knowledge available at the time. A decree
27 granted on the ground of incompatibility by reason of mental illness or
28 mental incapacity of one or both spouses shall not relieve a party from
29 contributing to the support and maintenance of the mentally ill or mentally
30 incapacitated spouse. If both spouses are confined to institutions because
31 of mental illness or mental incapacity, the guardian of either spouse may
32 file a petition for divorce and the court may grant the divorce on the
33 ground of incompatibility by reason of mental illness or mental incapacity.

34 Sec. 3. K.S.A. 2013 Supp. 23-2702 is hereby amended to read as
35 follows: 23-2702. (a) The district court shall grant a decree of annulment
36 of any marriage for either of the following grounds: ~~(1) The marriage is~~
37 ~~void for any reason; or (2) if the contract of marriage is voidable because it~~
38 ~~was induced by fraud.~~

39 (b) The district court may grant a decree of annulment of any
40 marriage if the contract of marriage was induced by mistake of fact, lack
41 of knowledge of a material fact or any other reason justifying rescission of
42 a contract of marriage.

43 Sec. 4. K.S.A. 2013 Supp. 23-2707 is hereby amended to read as

1 follows: 23-2707. (a) *Permissible orders*. After a petition for divorce,
2 annulment or separate maintenance has been filed, and during the
3 pendency of the action prior to final judgment the judge assigned to hear
4 the action may, without requiring bond, make and enforce by attachment,
5 orders which:

6 (1) Jointly restrain the parties with regard to disposition of the
7 property of the parties and provide for the use, occupancy, management
8 and control of that property;

9 (2) restrain the parties from molesting or interfering with the privacy
10 or rights of each other;

11 ~~(3) provide for the legal custody and residency of and parenting time~~
12 ~~with the minor children and the support, if necessary, of either party and of~~
13 ~~the minor children during the pendency of the action;~~

14 ~~(4) require recommend~~ mediation between the parties on issues,
15 including, but not limited to, child custody, residency, division of property,
16 parenting time and development of a parenting plan; *or*

17 ~~(5) make provisions, if necessary, for the expenses of the suit,~~
18 ~~including reasonable attorney's fees, that will insure to either party~~
19 ~~efficient preparation for the trial of the case;~~

20 ~~(6) require an investigation by court service officers into any issue~~
21 ~~arising in the action; or~~

22 ~~(7) (4) require that each parent execute any and all documents,~~
23 including any releases, necessary so that both parents may obtain
24 information from and to communicate with any health insurance provider
25 regarding the health insurance coverage provided by such health insurance
26 provider to the child. The provisions of this paragraph shall apply
27 irrespective of which parent owns, subscribes or pays for such health
28 insurance coverage.

29 (b) *Ex parte orders*. ~~Orders authorized by subsections (a)(1), (2), (3),~~
30 ~~(4) and (7) may be entered after ex parte hearing upon compliance with~~
31 ~~rules of the supreme court, except that~~ No ex parte order shall have the
32 effect of changing the residency of a minor child from the parent who has
33 ~~had the sole de facto~~ residency of the child to the other parent unless there
34 is sworn testimony to support a showing of extraordinary circumstances. If
35 an interlocutory order is issued ex parte, the court shall hear a motion to
36 vacate or modify the order within 14 days of the date on which a party
37 requests a hearing whether to vacate or modify the order. In the absence,
38 disability, or disqualification of the judge assigned to hear the action, any
39 other judge of the district court may make any order authorized by this
40 section, including vacation or modification or any order issued by the
41 judge assigned to hear the action.

42 (c) *Support orders*. (1) An order of support obtained pursuant to this
43 section may be enforced by an order of garnishment as provided in this

1 section.

2 (2) No order of garnishment shall be issued under this section unless:
3 ~~(A) Fourteen or more days have elapsed since the order of support was~~
4 ~~served upon the party required to pay the support; and (B) the order of~~
5 ~~support contained a notice that the order of support may be enforced by~~
6 ~~garnishment and that the party has a right to request an opportunity for a~~
7 ~~hearing to contest the issuance of an order of garnishment, if the hearing is~~
8 ~~requested by motion filed within seven days after service of the order of~~
9 ~~support upon the party. If a hearing is requested; The court shall hold the~~
10 hearing within seven days after the motion requesting the hearing is filed
11 with the court or at a later date agreed to by the parties.

12 (3) No bond shall be required for the issuance of an order of
13 garnishment pursuant to this section. Except as provided in this section,
14 garnishments authorized by this section shall be subject to the procedures
15 and limitations applicable to other orders of garnishment authorized by
16 law.

17 (4) A party desiring to have the order of garnishment issued shall file
18 an affidavit with the clerk of the district court stating that:

19 (A) The order of support contained the notice required by this
20 subsection;

21 (B) fourteen or more days have elapsed since the order of support
22 was served upon the party required to pay the support; and

23 (C) either no hearing was requested on the issuance of an order of
24 garnishment within the seven days after service of the order of support
25 upon the party required to pay the same or a hearing was requested and
26 held and the court did not prohibit the issuance of an order of garnishment.

27 ~~(d) If an interlocutory order for legal custody, residency or parenting~~
28 ~~time is sought, the party seeking such order shall file a proposed temporary~~
29 ~~parenting plan as provided by K.S.A. 2013 Supp. 23-3211, and~~
30 ~~amendments thereto, at the time such order is sought. If any motion is filed~~
31 ~~to modify any such interlocutory orders, or in opposition to a request for~~
32 ~~issuance of interlocutory orders, that party shall attach to such motion or~~
33 ~~opposition a proposed alternative parenting plan.~~

34 ~~(e) (d) Service of process.~~ Service of process served under subsection
35 (a)(1) and (2) shall be by personal service and not by certified mail return
36 receipt requested.

37 Sec. 5. K.S.A. 2013 Supp. 23-2709 is hereby amended to read as
38 follows: 23-2709. The court shall conduct a pretrial conference or
39 conferences in accordance with K.S.A. 60-216, and amendments thereto,
40 upon request of either party ~~or on the court's own motion.~~ Any pretrial
41 conference shall be set on a date other than the date of trial and the parties
42 shall be present or available within the courthouse.

43 Sec. 6. K.S.A. 2013 Supp. 23-2711 is hereby amended to read as

1 follows: 23-2711. (a) A decree in an action under article 27 of chapter 23
2 of the Kansas Statutes Annotated, and amendments thereto, may include
3 orders on the following matters:

4 (1) An order changing or terminating the parties' marital status by
5 divorce, annulment or separate maintenance;

6 (2) an order making an equitable division of the parties' property as
7 authorized by article 28 of chapter 23 of the Kansas Statutes Annotated,
8 and amendments thereto;

9 (3) an order regarding spousal support as authorized by article 29 of
10 chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

11 (4) an order for child support as authorized by article 30 of chapter 23
12 of the Kansas Statutes Annotated, and amendments thereto;

13 (5) an order allocating parental decision-making and entering a
14 parenting plan as authorized by article 32 of chapter 23 of the Kansas
15 Statutes Annotated, and amendments thereto; *and*

16 (6) an order changing one or both parties' names as authorized by
17 K.S.A. 2013 Supp. 23-2716, and amendments thereto; ~~and~~

18 ~~(7) an order awarding costs and attorneys fees to either party under~~
19 ~~K.S.A. 2013 Supp. 23-2715, and amendments thereto.~~

20 (b) The provisions of this section shall be construed and applied
21 retroactively.

22 Sec. 7. K.S.A. 2013 Supp. 23-2802 is hereby amended to read as
23 follows: 23-2802. (a) A decree under K.S.A. 2013 Supp. 23-2711, and
24 amendments thereto, shall divide the real and personal property of the
25 parties, including any retirement and pension plans, whether owned by
26 either spouse prior to marriage, acquired by either spouse in the spouse's
27 own right after marriage or acquired by the spouses' joint efforts, by: (1) A
28 division of the property in kind; (2) ~~awarding the property or part of the~~
29 ~~property to one of the spouses and requiring the other to pay a just and~~
30 ~~proper sum a 1/2 division of the property to each spouse;~~ or (3) ordering a
31 sale of the property, under conditions prescribed by the court, and dividing
32 *1/2 of the proceeds of the sale to each spouse.*

33 (b) Upon request, the trial court shall set a valuation date to be used
34 for all assets at trial, which may be the date of separation, filing or trial as
35 the facts and circumstances of the case may dictate. The trial court may
36 consider evidence regarding changes in value of various assets before and
37 after the valuation date in making the division of property. In dividing
38 defined-contribution types of retirement and pension plans, the court shall
39 allocate profits and losses on the nonparticipant's portion until date of
40 distribution to that nonparticipant.

41 (c) In making the division of property the court shall consider: (1)
42 The age of the parties; (2) the duration of the marriage; (3) the property
43 owned by the parties; (4) their present and future earning capacities; (5)

1 the time, source and manner of acquisition of property; (6) family ties and
2 obligations; (7) the allowance of maintenance or lack thereof; (8)
3 dissipation of assets; (9) the tax consequences of the property division
4 upon the respective economic circumstances of the parties; and (10) such
5 other factors as the court considers necessary to make a just and
6 reasonable division of property.

7 (d) The decree shall provide for any changes in beneficiary
8 designation on: (1) Any insurance or annuity policy that is owned by the
9 parties, or in the case of group life insurance policies, under which either
10 of the parties is a covered person; (2) any trust instrument under which one
11 party is the grantor or holds a power of appointment over part or all of the
12 trust assets, that may be exercised in favor of either party; or (3) any
13 transfer on death or payable on death account under which one or both of
14 the parties are owners or beneficiaries.

15 Nothing in this section shall relieve the parties of the obligation to
16 effectuate any change in beneficiary designation by the filing of such
17 change with the insurer or issuer in accordance with the terms of such
18 policy.

19 Sec. 8. K.S.A. 2013 Supp. 23-2903 is hereby amended to read as
20 follows: 23-2903. ~~At any time,~~ On a hearing with reasonable notice to the
21 party affected, the court may modify the amounts or other conditions for
22 the payment of any portion of the maintenance originally awarded that has
23 not already become due, ~~but~~. No modification shall be made ~~without the~~
24 ~~consent of the party liable for the maintenance,~~ if it has the effect of
25 increasing or accelerating the liability for the unpaid maintenance beyond
26 what was prescribed in the original decree *unless the modification is*
27 *based upon evidence of a need for the increase or acceleration and the*
28 *party liable for the maintenance consents to such increase or acceleration.*

29 Sec. 9. K.S.A. 2013 Supp. 23-2904 is hereby amended to read as
30 follows: 23-2904. The court may make a modification of maintenance
31 retroactive to a date at least one month after the date that the motion to
32 modify was filed with the court. In any event, the court may not award
33 maintenance for a period of time in excess of ~~121~~ 36 months. ~~If the~~
34 ~~original court decree reserves the power of the court to hear subsequent~~
35 ~~motions for reinstatement of maintenance and such a motion is filed prior~~
36 ~~to the expiration of the stated period of time for maintenance payments,~~
37 ~~the court shall have jurisdiction to hear a motion by the recipient of the~~
38 ~~maintenance to reinstate the maintenance payments. Upon motion and~~
39 ~~hearing, the court may reinstate the payments in whole or in part for a~~
40 ~~period of time, conditioned upon any modifying or terminating~~
41 ~~circumstances prescribed by the court, but the reinstatement shall be~~
42 ~~limited to a period of time not exceeding 121 months. The recipient may~~
43 ~~shall not file subsequent motions for reinstatement of maintenance prior to~~

1 the expiration of subsequent periods of time for maintenance payments to
2 be made, but no single period of reinstatement ordered by the court may
3 exceed 121 months.

4 Sec. 10. K.S.A. 2013 Supp. 23-2905 is hereby amended to read as
5 follows: 23-2905. ~~(a) Except for good cause shown, every order requiring~~
6 ~~payment of maintenance under this article shall require that the~~
7 ~~maintenance be paid through the central unit for collection and~~
8 ~~disbursement of support payments designated pursuant to K.S.A. 2013~~
9 ~~Supp. 39-7,135, and amendments thereto. Every order requiring payment~~
10 ~~of maintenance under this article shall require that the maintenance be~~
11 ~~paid through a written agreement between the parties to make direct~~
12 ~~maintenance payments to the obligee and not pay through the central unit~~
13 ~~shall constitute good cause for collection and disbursement of support~~
14 ~~payments designated pursuant to K.S.A. 2013 Supp. 39-7,135, and~~
15 ~~amendments thereto.~~

16 (b) ~~If child support and maintenance payments are both made to an~~
17 ~~obligee by the same obligor, and if the court has made a determination~~
18 ~~concerning the manner of payment of child support, then maintenance~~
19 ~~payments shall be paid in the same manner.~~

20 Sec. 11. K.S.A. 2013 Supp. 23-3510 is hereby amended to read as
21 follows: 23-3510. (a) *Family counseling.* At any time prior or subsequent
22 to the alteration of the parties' marital status the court may order that any
23 party or parties and any of their children be interviewed by a psychiatrist,
24 licensed psychologist or other trained professional in family counseling,
25 approved by the court, for the purpose of determining whether it is in the
26 best interests of any of the parties' children that the parties and any of their
27 children have counseling regarding matters of legal custody, residency,
28 visitation or parenting time. The court shall receive the written opinion of
29 the professional, and the court shall make the opinion available as
30 provided by K.S.A. 2013 Supp. 23-3210, and amendments thereto. Any
31 professional consulted by the court under this section may be examined as
32 a witness. If the opinion of the professional is that counseling is ~~in the best~~
33 ~~interests of the least detrimental alternative for~~ any of the children, the
34 court may order the parties and any of the children to obtain counseling.
35 Neither party shall be required to obtain counseling pursuant to this section
36 if the party objects thereto because the counseling conflicts with sincerely
37 held religious tenets and practices to which any party is an adherent.

38 (b) *Costs.* The costs of the counseling shall be taxed to either party as
39 equity and justice require. *The court shall consider each party's financial*
40 *circumstances prior to assessing the costs of the counseling to either*
41 *party.*

42 Sec. 12. K.S.A. 2013 Supp. 23-2106, 23-2701, 23-2702, 23-2707, 23-
43 2709, 23-2710, 23-2711, 23-2715, 23-2802, 23-2903, 23-2904, 23-2905

1 and 23-3510 are hereby repealed.

2 Sec. 13. This act shall take effect and be in force from and after its
3 publication in the statute book.