Approved: Apr. 27, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on February 7, 1994 in Room 313-S of the Capitol.

All members were present except:
Representative Tom Bradley - Excused
Representative Denise Everhart - Excused
Representative Doug Mays - Excused
Representative Candy Ruff - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Gene Johnson, Kansas Alcohol & Drug Programs

Others attending: See attached list

Gene Johnson, Kansas Alcohol & Drug Program, appeared before the Committee with a bill request that would make keg registration mandatory when there is a purchase of six gallons or more of beer or cereal malt beverage. This would require the purchaser to give his name, address, signature and one piece of identification. This information would be kept on file for a period of six months. If the retailer fails to follow through with the registration they would be subject to having their license suspended.

Representative Plummer asked if this would cover taverns and restaurants. Mr. Johnson responded that it would because there is a cereal malt provision in the bill.

Representative Gregory questioned what was the purpose of this bill. Mr. Johnson responded that this would be a tracking device as to who is buying kegs of beer, in case it gets into the hands of underage drinkers.

Representative Wells made a motion to have this bill request introduced as a committee bill. Representative Goodwin seconded the motion. The motion carried.

Representative Carmody stated that he had received a bill request that would state that if a will is presented and it is not a self-proved will (notarized), and there is no objection to the admission of the will, then it can be admitted to probate.

Representative Carmody made a motion to have this bill request introduced as a committee bill. Representative Heinemann seconded the motion. The motion carried.

Chairman O'Neal explained that he had received a request from the Attorney General's office regarding statutes of domestic violence. The Attorney General stated that he looked at the existing domestic violence statutes and the legislation that is being proposed this session and felt this proposed bill would be a better solution.

Chairman O'Neal made a motion to have this bill request introduced as a committee bill. Representative Heinemann seconded the motion. The motion carried.

HB 2430 - Elective Share of Surviving Spouse

Representative Carmody stated that the Sub-Committee on **HB 2430** held hearings (see attachments 1-8) and drafted a substitute bill, (see attachment 9).

Representative Carmody made a motion to adopt the Sub-Committee report. Representative Pauls seconded the motion. The motion carried.

Representative Carmody explained that this bill adopts two concepts that are new to Kansas. The first concept proposes an augmented estate, which would include all property. The other concept is that this bill proposes a sliding scale as to how much the spouse would to receive. The reason for this bill is that it's more fairer to all parties.

Representative Plummer questioned if the spouse would be able to waive the elective share. Representative Carmody responded that a spouse could if they chose to do so. This does not affect the rights of the spouse to inherit property.

Representative Pauls stated that there were several changes such as: insurance proceeds, payable upon death accounts and other joint property that goes outside the estate through inheritances can be brought back into the estate. Representative Heinemann commented that there would be the need to amend the payable upon death statute.

Representative Carmody stated that the effective date of the proposed bill is January 1, 1995. Representative Plummer questioned if there would be a problem with retroactivity. Representative Carmody responded that the bill states that a person who died on or after January 1, 1995 would be covered under the new law. The Chairman asked where this provision was in the bill. Jill Wolters responded it was located in New Section 2 and Section 16.

Representative Carmody made a motion to report **Substitute HB 2430** favorable for passage. Representative Goodwin seconded the motion. The motion carried.

HB 2612 - Prohibiting certain prize notification contest

Representative Adkins stated that the prize notice exception definition in subsection 1(a) & 2(b), lines 22-27, has been problematic in Wisconsin.

Representative Adkins made a motion to delete this language from the bill. Representative Macy seconded the motion. The motion carried.

The Chairman stated that the Attorney General had concerns that if a payment is not actually required, this law may not apply. He suggested adding a "reasonable expectation" clause.

Representative Garner made a motion to add a "reasonable expectation" clause into the bill. Representative Adkins seconded the motion. The motion carried.

Chairman O'Neal commented that the Attorney General also recommended making a distinction between oral and written communication so that this proposed bill would apply to both types of solicitations.

Representative Adkins made a motion to have this bill apply to both oral and written solicitations. Representative Scott seconded the motion. The motion carried.

Representative Garner made a motion to report **HB 2612** favorable for passage as amended. Representative Scott seconded the motion. The motion carried.

HB 2678 - Copies to prove content of business and public records & **HB 2643** - Civil procedure, photographic copies.

Jill Wolters stated that these two bills were virtually the same. John Smith, Kansas Department of Motor Vehicles, requested one bill through the Transportation Committee not realizing that George Barbee, Kansas Association of Financial Services, had requested the other through the Judiciary Committee.

Representative Heinemann asked if there was any reason to have this bill effective before July 1, 1994. Chairman O'Neal responded that the Office of Judicial Administration stated that making the bill effective upon the publication of the Kansas Register makes the work of the courts more complicated.

Representative Heinemann made a motion to report **HB 2678** favorable for passage. Representative Adkins seconded the motion. The motion carried.

Representative Macy made a motion to have **HB 2678** placed on the consent calendar. Representative Carmody seconded the motion. The motion carried.

Representative Scott made a motion to report **HB 2643** adversely. Representative Macy seconded the motion. The motion carried.

The Committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for February 8, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 7, 1994

NAME	ADDRESS	ORGANIZATION
Gene Johnson	Topeka	Ks. Alcohol & Drug Programs
John Koether	Topeka	Sent Council
Ron Smith	Topeka	~~Topeka Ks~~ KBA
Susan Hamm	LAWRENCE	KTLA
Don Lindsey	OSAWATOMIE	UTU

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE January 19, 1994

	NAME	ADDRESS	ORGANIZATION
1/19/94	John F. Kuether	1346 Wayne Ave Tpk	Jud. Council
	Sam F. Bruner	6901 West 69th	Jud. Council
	Richard L. W. Morse	2429 Lockout Dr Manhattan	AARP & Jud. Council
	Joellen Euler	Box 326 Troy 66087	Judicial Council
	EDWARD LARSON	301 W. 10TH TOPEKA, KS 66612	JUDICIAL COUNCIL
	Randy M. Hearrell		Judicial Council
	Brian M. Depew	Topeka	SRS
	David Mikesic	Wy Co Courthouse	Dist Court
1/24/94	Brian M. Depew Vazquze	Topeka	SRS
	Randy M. Hearrell	Topeka	Judicial Council
	Cheryl C. Daniels	7801 W. 119th St Leawood, KS. 66209	Judicial Council
	Willard B Thompson	1600 KSB&T Bldg Wichita, KS.	"
	Jack Haun	Osawatomie KS	KPERS
	Joan Hancock	KC KS	KPERS
	John Kuether	TOPEKA	Jud. Council
	David Mikesic	KC	Dist. Ct
	~~Fred Mertz~~	~~Los Angeles~~	~~Ricky Ricardo Enterprises~~
	Ron Smith	KBA	
	Judy Lambert	TOPEKA	KPERS
1/25/94	Prof. Kuether		Judicial Council
	David Mikesic	WY County	Dist. Ct.
	Randy Harrell		Judicial Council

December 27, 1993

TO: Members, Kansas Legislature

FROM: Ron Smith
General Counsel
Kansas Bar Association

SUBJ: Elective Share Reform

The House Judiciary Committee heard testimony in August, 1993, on HB 2430, which is legislation commonly known as "elective share" reform. The Committee recommended a substitute bill be introduced to the 1994 legislature. Rep. Carmody chairs the subcommittee of Judiciary on this legislation.

This paper tries to explain this complex issue in an understandable way. Hopefully we can answer here some questions you may have before House floor debate.

The bill is the 1993 Uniform Elective Share Provision recommended and approved by the Probate Advisory Committee of the Kansas Judicial Council, the Kansas Judicial Council and the KBA Board of Governors. If you have questions, some of the Topeka-based lawyers on the Judicial Council are:

John Kuether
Washburn University School of Law
21st & College
Topeka KS 66621 913-231-1060

Hon. Ed Larson
Court of Appeals
Judicial Center
310 W 10th
Topeka KS 66612 913-296-6145

Other members of the Probate Advisory Committee include Willard Thompson, Wichita, Jack Dalton, Dodge City, Doyle Beamgard, Atwood, Judge Sam Bruner, Olathe, Jack Euler, Troy, Cheryl Boushka, Overland Park, Professor Richard Morse, Manhattan, Phillip Fidenour, Cimmarron. Thank you.

cc: Policy Paper

House Judiciary
Attachment 1
2-7-94

Elective Share Reform

A Position Paper
From The
Kansas Bar Association

December, 1993

What is Elective Share?

Kansas probate laws govern the transfer of property after death, whether the deceased dies testate (with a valid will) or intestate (without a valid will). The laws make certain provisions for surviving spouses which take precedence over a will or other nonprobate transfer. For example, currently the surviving spouse will get the homestead, family allowance and some social security benefits. In addition, Kansas law allows an additional one-half of the deceased's "probate estate" plus any other nonprobate transfer to the spouse, such as insurance, retirement beneficiary designations and property titled in joint tenancy with the spouse.

Since these laws take precedence over wills, the elective share protects against an attempt to disinherit the surviving spouse.[1]

The elective share concept was conceived in the days when divorce was uncommon and most marriages lasted decades. Further, in those days most of the wealth was in real estate. Our society is living longer and many persons have multiple marriages, often with children from an earlier marriage. Much of the wealth is now in property other than real estate -- stocks, bonds, cash, business ventures, etc. A variety of new testamentary devices, often called "nonprobate transfers," such as trusts or payable on death accounts (POD) also contribute to the problem.

Because the original elective share was premised on the values of a different era, injustices can result. In some cases, the current elective share provision may provide little or no protection for the spouse, while in other cases it allows an electing spouse to needlessly override the deceased's legitimate desire to benefit others through valid estate planning.

The redesigned elective share protects both spouses, not just women.

Sub HB 2430.
How Does It Work?

Our divorce and probate laws originally grew from feudal common law where a wife's property was her husband's at marriage and women had no rights to own property or equal rights in the rearing of children. At common law marriage was not an economic partnership; it was a fiefdom. The original elective

[1]Happily, this happens relatively few times. Most of the time spouses die without a will, or the surviving spouse has been provided for adequately in the will.

share concept in probate law was an exception to this fiefdom and was designed to protect against arbitrary attempts to disinherit the surviving spouse, primarily the wife.

The main purpose of the Redesigned Elective-Share system is to bring spousal elective rights into harmony with the more modern view of marriage as an economic partnership. The "economic partnership" view is that each spouse makes an important contribution to the marriage relationship, whether it is paid employment outside the home, or homemaking and raising the children. As such, each spouse's mutual efforts in the marriage entitles each spouse to an interest in 'marital' property (real estate or personal property acquired during the marriage).

The economic partnership theory of marriage is already reflected in Kansas law when a judge divides property during a divorce. Broad discretion is given to the trial judges to assign property owned by either spouse regardless of how the property is titled, after considering all circumstances and recognizing the value of the contributions of both homemakers and spouses working outside of the home, and the length of the marriage. The judge also takes into consideration the future needs of the parties.

The redesigned elective share provision adopts this equitable distribution theory present in our divorce law and applies it to probate law.

How Redesigned Elective Share Works. When a long-term marriage ends in death of one spouse,[2] the redesigned elective share partnership theory declares each spouse the owner of one-half of the property earned during the marriage. The following examples illustrate the differences between current Kansas elective share law and redesigned elective share rights under a partnership theory of marriage, after satisfaction of the homestead allowances, expenses, and creditors.

> 1. Husband and Wife have been married 40 years. H dies and for some reason leaves nothing to W under his will. The parties had accumulated assets worth $800,000, and all assets were titled in H's name. Under both current Kansas law and the partnership theory, W would be entitled to $400,000 from H's estate.

[2]Long term is defined in the proposed bill as fifteen years in length.

2. Assume same facts as in 1, except that the parties had only been married two years and $400,000 of assets were titled in H's name and $400,000 were titled in W's name. Under current Kansas elective-share provisions, W could still claim one-half of H's estate of $400,000, or $200,000, resulting in a windfall $600,000 for W. W gets 75% of the estate, not 50%. Other heirs are displaced.

Under the new partnership theory in Sub. for HB 2430, in a two-year marriage few of the assets would be considered partnership or marital assets. Most of the property would be the separate property each brought into the marriage. If 12 percent (three percent per year per partner) of the property is considered marital property, each would own six percent, three percent of their own and three percent of the other's property. Setting off W's marital claim to H's property against H's similar marital claim against W's property, neither would have a right to elect against the estate of the other. Since W has $400,000 of all the property already titled in her own name, she keeps that property.

As we see above, under current Kansas law by making the elective share a set percentage (50%) of the deceased's estate regardless of the length of the marriage or the survivor's separate wealth or need, particularly unfortunate results may occur in many short-term, late-in-life second marriages, or in marriages where the deceased has adequately provided for the survivor but the survivor wants more, or where the surviving spouse is needy and the deceased has used nonprobate transfers to pass property to others.

The Redesigned Elective Share[3] essentially creates three classes of property at the death of one spouse: his property, her property and "our" property. The "his and her" property is property each brought to the marriage. The "our" property is "marital" property acquired during the marriage. The Redesigned Elective Share implements the partnership theory by calculating the amount of "marital" property in the marriage and the contribution of each of the spouses to it.

As to the "his and her" property brought to the marriage, the redesigned elective share transfers portions of that property from the "his and her" category to the "marital" category by percentages for each year of the marriage. *After 15 years of marriage, all property brought to the marriage (his and her) is*

[3]1994 Sub. for HB 2430.

considered marital property ("ours") and on the death of one spouse each spouse is entitled to one-half. Once property becomes 'marital' property it makes no difference how or when the assets of husband and wife were acquired or how they are presently titled. There is no need to segregate any property acquired prior to marriage, or by gift or inheritance during marriage.

The Redesigned Elective Share has three fundamental features. These features include:

> (1) the elective-share percentage, which increases as the duration of the marriage increases;
>
> (2) the concept of the augmented or enhanced estate against which the redesigned elective share can be claimed; and,
>
> (3) satisfaction of the redesigned elective share from the combined assets of the couple, using the survivor's assets and assets which pass to the survivor before using the deceased's estate.

Elective-Share Percentage. The first feature is the elective share percentage. The percentage is determined depending upon the duration of marriage. For the first year of marriage, there is no elective share percentage, and all assets of the couple brought to the marriage or titled in each person's name remain separate property.

Marriage Year 1. During the first year, the spouse is only entitled to homestead, allowances and, for the needy survivor, a supplemental amount.

Years 2-10. After the first year and during years two through ten, three percent per year of the couple's individually-owned property is considered to be part of each spouse's elective share.

Years 11-15. For years eleven through fifteen of the marriage, four percent per year of the couple's individually-owned property is considered to be part of each spouse's elective share.

Year 15+ After fifteen years, each spouse has the right to elect up to a maximum of 50 percent of the combined assets of the couple.

The Augmented Estate. Under current law, the elective share is applied against the deceased's "probate estate." Through nonprobate transfers, a deceased's probate estate can be quite small.

Under the redesigned elective share, the applicable percentage is applied to the "augmented estate" of the deceased. The augmented estate includes the

value of the *combined* estates of husband and wife (the property each owns individually) and consists of the aggregate value of the following four components:

1. The deceased's net probate estate, which is the probate estate less homestead, allowances, expenses and claims. Homestead and allowances are excluded because, as under the current Kansas system, the spouse is entitled to homestead and allowances in addition to the elective share.

2. The deceased's "reclaimable estate," which generally includes property over which the deceased had control, such as payable on death accounts or other nonprobate transfers (*e.g.* irrevocable trusts, joint tenancy property) with retained powers, or 'deathbed' transfers. *This may sound complex but attorneys in this area are used to dealing with the concept of an augmented estate because these provisions resemble the "estate" on which the federal estate tax is calculated.* The reclaimable estate includes:

(a) property over which the deceased held a general power of appointment at death (property in which he or she held a life estate);

(b) the deceased's equitably owned interest in property held with the right of survivorship immediately prior to death, or transferred within two years prior to death;

(c) proceeds of all life insurance, and,

(d) property given by the deceased to any person other than the spouse at any time during the marriage, if the transfer meets certain conditions (*e.g.*, did the deceased retain a right of use or enjoy the income from the property or make a major gift within two years of death?).

3. the value of the nonprobate transfer of property which the surviving spouse receives because of the deceased's death, *excluding* homestead, allowances, or property obtained by inheritance.[4] The traditional nonprobate transfers of property passing to the spouse are included in this third component, such items as proceeds of insurance, accidental death benefits, and benefits payable under a retirement plan. Federal Social Security payments are excluded.

[4]The spouse is entitled to the homestead or family allowances regardless of the elective share. This concept does not change under the redesigned elective share.

4. the value of property owned by the surviving spouse at the deceased's death, and the surviving spouse's own property. Insurance owned by the surviving spouse is included at its actual value and not at the face amount of the policy.

Sources for Satisfying the Redesigned Elective Share Amount. We now know how much the surviving spouse is supposed to get. In our first example on pages 4 and 5, the spouse is entitled to one half of $800,000. Once we've determined this amount, the question under the redesigned elective share amount then is which source of funds or property pays or accounts for the share?

First we try to satisfy the amount from the property the surviving spouse owns outright and the property already received from, or willed to the surviving spouse by, the deceased. If the value of this property *equals or exceeds* the elective share amount, the surviving spouse keeps it all. The law presumes the deceased's estate plan is being implemented.

If there is still a deficiency, step two is to use other assets left to other beneficiaries at death through probate and nonprobate transfers of property. These beneficiaries are liable to the surviving spouse on a *pro rata* basis for their share of any deficiency.[5] The deceased's intent is carried out to the extent it is not inconsistent with the elective rights of the surviving spouse.

Examples Illustrating Redesigned Elective Share. The three features of the Redesigned Elective Share system are illustrated as follows:

(a) H1 and W had been married over 30 years and H1 died at age 66 survived by W, age 64. The couple's combined assets equal $800,000, after homestead, statutory allowances and claims and expenses of administration. Because W is a Jayhawk fan, H1 (who bleeds purple) left a will which totally disinherited W and gave his property to Kansas State. *Under the Redesigned Elective-Share system,* W's elective-share percentage would have reached the 50 percent maximum rate in determining the amount of W's claim to the couple's assets. W is entitled to homestead, allowances and at least $400,000 regardless of how the $800,000 of assets were titled.

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[5]Assume under the redesigned elective share surviving spouse was entitled to $500,000 in property from a $1 million combined estate, and owned $400,000 outright. Spouse's "deficiency" is $100,000. Heirs A, B and C are to be given the remainder of the estate. "A" gets 30% of the remainder, "B" gets 20% and "C" gets 50%. From "A"'s allocated property, he or she pays over $30,000, "B" pays over $20,000 and "C" pays over $50,000.

Under *current* Kansas law, after homestead and other allowances are paid, three different results might result:

(1) if all of the assets were in H1's name, W would have a claim against H1's estate for $400,000.

(2) If H1 owned $500,000 of the combined assets and W owned $300,000 of them, then W's claim against H1's *estate* (which was going to KSU) would be $250,000, and KSU would have their amounts reduced in order to bring W's total to $550,000, 69% of the total.

(3) If the assets are titled equally in husband and wife, W can still elect against the husband's estate, netting $600,000 of all the property -- 75%.

The best that can be said for the current elective share system is the fairer the deceased has been in providing for the spouse. the less fair the surviving spouse needs to be with the other heirs. If there are hard feelings between the surviving spouse and the other heirs (perhaps children from a previous marriage), current law allows injustice to result.

(b) Assume two years after the death of H1, W marries H2. At the time of their marriage they were in their late sixties, and each has children from a first marriage. After six years of marriage W dies and is survived by H2. The combined value of W's and H2's assets equal $800,000, $400,000 titled in W's name and $400,000 titled in H2's name. The elective-share percentage for a couple married more than six years but less than seven is 18 percent of their augmented estate of $800,000, or $144,000, after homestead, statutory allowances, claims and expenses. But H2 will not have any claim against W's estate. A portion of H2's own assets must first be applied in satisfying his elective-share amount. Of H2's $400,000 estate, 18 percent is H2's 'marital' property, and 18 percent is considered to be W's marital property. (The same would be true of W's estate if she survived H2.) To determine that H2 has as much as, or more than, his elective share he is considered to have a right to keep the entire 36% of his property, thus fully satisfying his elective-share amount of $144,000 (36 percent of $400,000). Since H2 already owns more than $144,000, no deficiency exists and H2 has no claim against W's estate.

Supplemental Elective Share Amounts. Finally, if all else fails the bill allows the judge authority to award a "supplemental Elective Share Amount." This is premised on the survivor's actual need. If the basic elective-share amount, which is calculated on the duration of the marriage and the value of the assets owned by

the couple, is insufficient to support the surviving spouse, the supplemental elective-share amount implements a support theory for the surviving spouse which is not related to the length of marriage. The theory is that there is a duty of support of a spouse founded upon marital status which arises at the time of marriage, if the survivor needs it and the deceased's estate can afford it. The supplemental elective-share amount is set at $50,000, in addition to the homestead, exempt property and allowances.

> In the atypical May-December marriage where the husband dies in the first year after making no provisions for the new wife, there is no prenuptial agreement and all the property is titled in his name, and where the property, by will, is to go elsewhere, the elective share does not kick in and there is little the wife can do about the previous will and its allocations of wealth. However, the probate code does allow the wife the homestead, family allowances and the supplemental elective share amount, set at $50,000. Wife would also be allowed social security payments as a widow. The supplemental amount plus other allowances and social security is designed to keep surviving spouses out of poverty without disturbing previous estate planning.

Conclusion

The current elective share does not achieve its purposes and the situation will get worse as the use of nonprobate transfers (Trusts, POD Accounts, etc.) increases. The augmented estate under the 1994 Sub. for HB 2430 serves three fundamental functions. It combines the assets of husband and wife under a marital partnership theory. It aids greatly in preventing "fraud on the spouse's share." And it denies the unjust election by the surviving spouse seeking a windfall by considering the survivor's assets and the length of the marriage.

The KBA and the Probate Advisory Committee of the Judicial Council believe this legislation is a good improvement in our probate code. The KBA urges your support of this bill.

HB 2430
1-7-94
JC
Hancock

TESTIMONY OF KPERS ON HB 2430

HB No. 2430 creates a right for a surviving spouse to take an elective share amount equal to the value of the elective share percentage of the "augmented estate." The "augmented estate" would consist of, among other things, the value of the decedent's "reclaimable estate." Certain items are excluded from the "reclaimable estate" pursuant to section (c) of the bill.

It is KPERS' suggestion that section (c) of the bill specifically exclude from the reclaimable estate any life insurance proceeds or refund of accumulated retirement contributions payable to an alternate payee pursuant to the terms of a Qualified Domestic Relations Order.

The bill provides that the decedent's "reclaimable estate" consists, in relevant part, of:

> . . . **proceeds of insurance**, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, **if the decedent** owned the insurance policy, **had the power to change the beneficiary of the insurance policy**, or the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before such decedent's death or if and to the extent the decedent, while married to such decedent's surviving spouse and during the two-year period next preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse[.]

§ (b)(2)(C) **[lines 26-32 on p. 3 of bill]** (emphasis added).

Public employees in Kansas have life insurance coverage pursuant to their employment. KPERS, along with the Security Benefit Group ("SBG") administers a plan devised pursuant to statutory authority and mandate that provides benefits upon death equal to 150% of a contributing member's annual salary rate.

The Retirement Act provides that --

> Any annuity, benefits, funds, property or rights created by or accruing to any person under the provisions of [the Retirement Act] . . . shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, except . . . [such benefits are] **subject to decrees for maintenance or child support**, or both, as provided in [the Divorce and Maintenance Act] and amendments thereto. [KPERS can not be made a party to any action under the Divorce and Maintenance Act, but] is subject to orders from such actions issued by the district court of the county where such action was filed. Such orders . . . shall specify either a specific amount or a specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from the system to be distributed . . . pursuant to this act.

K.S.A. 74-4923(b).

Currently, KPERS has in its possession, located in member files and recorded on specially retained lists, scores (and in the future will undoubtedly have hundreds) of so-called Qualified Domestic Relations Orders ("QDROs") for maintenance and child support, entered pursuant to the divorce and maintenance act and binding on KPERS pursuant to the above language of the Retirement Act. (Legislation has been suggested which would amend the K.S.A. 74-4923(b) to also require KPERS' acceptance of QDROs for property division, as well as for maintenance and

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child support.) These QDROs require KPERS to make payment, upon the retirement of the member, to an "alternate payee" -- virtually always the former spouse of the member -- who has been granted an award of maintenance or support (and, in the future, property division) from the member's retirement account under a QDRO.

Most of these QDROs provide that should the member die prior to retirement, KPERS shall pay to the former spouse his or her QDRO-awarded share of the retirement account from the member's death benefits (*i.e.*, because now that the member has died, there will be no retirement as such). Some QDROs provide that in the event of the death of the member, the former spouse shall be "treated as the surviving spouse." Some QDROs specifically provide that the member is mandated to carry the former spouse and / or the minor or college-age children as beneficiaries of his or her KPERS life insurance. Section (c) of HB 2430 **[lines 34-39 of page 4]** provides that the "reclaimable estate" excludes any transfer of property, or exercise of the power to name a beneficiary, or exercise of the power of appointment: (1) if the decedent received adequate and full consideration therefor; and (2) if irrevocably made with the written consent or joinder of the surviving spouse.

The conditions of QDROs are laid down entirely without the involvement of any future spouse of the divorcing KPERS member -- who may turn out to be the member's surviving spouse as contemplated by HB 2430. The terms of QDROs are usually arrived at during the pendency of divorce proceedings, through negotiation and agreement. If there is no agreement the terms may be a matter of adjudication by the court. The Clerk of Court certifies a copy of the QDRO, which is then served on the administrators of the retirement system and is enforceable against the retirement system in a court of law. The divorce court usually states in the QDRO that it retains jurisdiction of the matter.

In view of the above, it is KPERS' suggestion that § (c) of the proposed legislation also list another type of transfer to be excluded from the reclaimable estate. **That is, the decedent's reclaimable estate should not include any life insurance proceeds, refund of accumulated retirement contributions, or other death benefit or survivor option payable to an alternate payee pursuant to the terms of a Qualified Domestic Relations Order.** Without this provision, doubt is cast upon the status of QDROs that have been negotiated in good faith by the parties, entered by the court, and served upon the retirement system under the provisions of governing law. Unnecessary confusion and litigation might ensue.

KPERS

TESTIMONY BY WILLARD B. THOMPSON

Re: H. B. No. 2430 ("Redesigned Elective Law Share" Law).

I am a member of the Probate/Advisory Committee of the Kansas Judicial Council. I have practiced law with Fleeson, Gooing, Coulson & Kitch, L.L.C. of Wichita since 1958, and my practice has been and currently is concentrated in trusts, estates and probate law.

WHY IS H. B. 2430 NEEDED?

1.
CURRENT ELECTIVE SHARE LAW IS ARCHAIC AND IN SHAMBLES

Current elective share law in Kansas is archaic and is in shambles, based on inconsistent and patchwork legislation and on piecemeal judicial precedent.

There is uncertainty involved on the part of the public and their advisors as to what types of dispositions of property are subject to spousal elective rights and which are not.

I refer you to the attached article published in the **K.B.A. Journal** of December 1992 entitled "The Capricious Operation of the Kansas Elective Share: Feast or Famine for the Surviving Spouse" for a detailed discussion of why existing elective share law in Kansas is "broken" and how it can be fixed through the redesigned elective share provision to comport with the needs of modern society.

House Judiciary
Attachment 3
2-7-94

2.

EXISTING KANSAS LAW FAILS TO PROTECT SURVIVING SPOUSE'S LEGITIMATE PROPERTY INTERESTS

Under existing Kansas law a spouse may effectively disinherit his spouse by utilizing many will substitutes in favor of others, such as:

Joint tenancies of personalty

Life insurance

P. O.D. Accounts

Totten Trusts

in that the elective share in Kansas only applies to "probate" assets and certain other types of will substitutes such as revocable trusts and IRAs.

When our elective share law was enacted, there were very few "will substitutes" in use, and real estate constituted a far greater part of a person or persons' wealth than now.

The problem has arisen because of the explosion in use of will substitutes which permit circumvention of our elective share law.

3.

EXISTING LAW IN KANSAS FAILS TO PROTECT DECEDENT'S LEGITIMATE BENEFICIARY DESIGNATIONS

Current elective share law in Kansas Law provides a tremendous windfall to a surviving spouse - i.e.:

a) where she already has one-half of the assets in her name, and where she elects to take one-half of the decedent's assets away from the decedent's children, or

b) where the parties have been married but a short period of time (the classic situation of an 80

year-old man marrying a younger woman and then dying in a year or two), and the surviving spouse claiming half of the estate against the decedent's children.

The above windfall has become more commonplace in today's world due to people living longer and more marriages ending in divorce with more potential for conflict among inheritors.

4.

THE 1992 AMENDMENT TO ELECTIVE SHARE STATUTES IN KANSAS ARE BAND AIDS

The 1992 amendments to K.S.A. 59-602 and 59-603 were enacted because of decisions of the Kansas Supreme Court and Court of Appeals which set aside transfers and awarded assets entirely to the spouse or beneficiaries other than those explicitly chosen by the decedent.

Admittedly, those enactments were stop-gap measures to provide some guidance and consistency until a comprehensive fix - such as through the redesigned elective share - could be enacted.

5.

THE REDESIGNED ELECTIVE SHARE PROVISIONS PROVIDE UNIFORMITY, RELIABILITY, AND PROTECT THE LEGITIMATE PROPERTY INTERESTS OF SURVIVING SPOUSE AND LEGITIMATE BENEFICIARY DESIGNATIONS OF DECEDENT

The augmented estate concept under the Redesigned Elective Share system serves three salutary functions needed to bring existing Kansas law into conformity with the needs and concerns of the present-day world. They are:

1. It combines the assets of husband and wife under a marital partnership theory.

2. It aids greatly in preventing "fraud on the spouse's share", under which the decedent seeks to evade his spouse's elective share through POD accounts, joint tenancy, life insurance and the like.

3. It denies unjust election by the surviving spouse seeking a windfall by considering the survivor's assets and length of marriage.

CONCLUSION

The Redesigned Elective Share provisions, although complex, are workable, equitable and should be enacted to prevent the inequities and uncertainty inherent in our existing system.

Dated this 24th day of January, 1994.

Willard B. Thompson

Statement

Subcommittee House Judiary Committee
January 19, 1993 Room 522-S 3:30 p.m.

of

Richard L. D. Morse
Professor Emeritus of Family Economics
Kansas State University, Manhattan, KS

Representing: Kansas AARP, The American Association of Retired Persons and the Probate Study Committee, Kansas Judicial Council

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Chairman Carmody and committee members:

I am honored to come before you in support of H.B. No. 2430 relating to the elective share of the surviving spouse. I appear in two capacities. I am a member of the Probate Law Committee, and have been since 1972, and also as a member of AARP I was authorized by the Kansas AARP State Legislative Committee to convey their strong endorsment of this measure.

In our view, this bill addresses a much needed correction in Kansas probate law to better conform to present-day family structure.

Its philosophical orientation is based on a partnership theory of marriage. The graduated scale of Section 1(a)(1) recognizes the length of the marriage. And the augmented estate defined in Section 1(b) recognizes that both partners have shared in the accumulated estate.

The protection theory of marriage is the rationale for the supplemental elective-share in Sec. 1(b), providing for the spouse regardless of the length of marriage in keeping with their marriage vows, and placing upon the estate and not the taxpayer, basic financial support for the surviving spouse.

This bill, as a product of the National Conference of Commissioners of Uniform State Law, has the endoresemnt of the national AARP. The Kansas AARP State Legislative Committee appreciates the work of the Judicial Council to tailor the model law to the needs of Kansans. We urge your favorable consideration of this bill.

This completes my formal statement. I will be pleased to entertain questions. But please bear in mind that I am a family economist and not a lawyer.

Thank you for giving me this opportunity.

MARVIN E. THOMPSON
MARK ARTHUR, JR.
DENNIS R. DAVIDSON

CLIFFORD R. HOLLAND
(1897-1953)

Thompson, Arthur & Davidson
Attorneys at Law

525 MAIN STREET
RUSSELL, KANSAS 67665
913/483-3195

January 21, 1994

Representative Carol Dawson
State Capitol Building
Topeka, Kansas 66612

Re: Proposed Changes in the Elective Share of a Surviving Spouse

Dear Carol:

Representative Carmody has called me to advise that you have indicated to him that I have concerns about the bill before the Legislature concerning the above subject.

I cannot accept his invitation to appear personally at hearings on the bill, and he has kindly suggested that I convey to you and through you my objections to the change that would be wrought by this proposed legislation.

Generally speaking, under present law a surviving spouse, regardless of the length of the marriage, has the right to claim, over and above the homestead and the statutory allowances, one-half of the deceased spouse's estate, unless the surviving spouse has consented to some other disposition of the property.

Because of that existing right in a surviving spouse, we have husbands and wives sign an informed consent to each other's wills where the will would give the surviving spouse less than such one-half share.

The surviving spouse has the right to such one-half share regardless of the value of the estate owned by the surviving spouse.

The proposed legislation is concerned with the present result, primarily in second marriages, but it would effect all marriages. Consequently, it measures the elective share of the surviving spouse by the number of years of the marriage. The percent runs from zero on marriages of one year or less to fifty percent on marriage of fifteen years or more.

The proposed legislation would apply the restricted right of election to the decedent's "augmented estate." The augmented estate would not only include property which we now credit to ownership or control of the decedent but also to the property owned by the surviving spouse.

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Consequently, if husband had given surviving spouse a $5,000 engagement ring and they were married for three years at the time of his death, the engagement ring would be a part of husband's augmented estate. The surviving spouse still keeps the engagement ring but her right of election of other property of the decedent is reduced by nine percent of the value of the engagement ring.

When husband gave wife the engagement ring, they both intended it as a complete gift. Because it is included in wife's property and charged against her elective share, it turns out it was not the complete gift that the parties intended.

The ring is, of course, a bizarre example. But the inclusion of wife's individually owned property regardless of its source (for instance, inheritance from her previous marriage) in the augmented estate of husband, for the purpose of measuring wife's elective share, will create great controversy between the surviving spouse and other heirs of the decedent.

Such controversies are going to necessarily increase litigation which necessarily incurs greater legal expense. The legislation might well become the lawyers' retirement bill.

Those who propose adoption of the legislation will argue that the dire results which I suggest can be avoided by the parties entering into a pre-nuptial agreement.

I thoroughly agree, but permit me to point out that if the parties do not desire the surviving party to claim the present fifty percent interest in the first decedent's estate, they have but to do what they are doing now. Namely, enter into a pre-nuptial agreement.

I suggest that the existing right of a surviving spouse to claim fifty percent of the decedent's estate is well known to those contemplating second marriages. I affirm to you that from my experience as a practicing lawyer in these areas, most people contemplating second marriage are well aware of the fifty percent interest of a surviving spouse and if they desire something different they seek counsel and they enter into pre-nuptial agreements.

All will agree that people are much more satisfied with the agreements which they voluntarily enter into concerning the division of their properties.

Consequently, the law should encourage parties to contemplated second marriages to enter into agreements concerning the passing of their property upon death or divorce. Our present law does precisely that.

The adoption of the proposed elective share statute will be most confusing to people contemplating second marriages. Far less confusion results by merely leaving the fifty percent elective share where it is.

I appreciate your interest and this opportunity to express an opinion based upon more than forty years of looking at these problems in the general practice of the law.

Sincerely,

Marvin E. Thompson
THOMPSON, ARTHUR & DAVIDSON

MET/grp

LAW OFFICES OF
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ARKANSAS CITY, KANSAS 67005

DONALD HICKMAN
ROBERT D. WILSON

AREA CODE 316
442-1950

December 22, 1993

Greta H. Goodwin
420 East 12th
Winfield, Kansas 67156

Dear Greta:

Thank you for your letter of December 16, 1993, together with the proposed statute relating to the elective share of surviving spouse.

First, I must say that over the 50 years during which I have practiced law in this community I have never experienced any trouble or seen any inequities result from the existing statute on that subject.

The statute appears to be an attempt to "do equity" to all spouses and in every circumstance. This I think is impossible to do.

Moreover, it seems to me that the enactment of this long, complex, involved statute on this subject is not warranted.

So if you want my vote on it, I respectfully suggest that we don't add several pages to our statutes in an apparent effort to take care of every surviving spouse in every conceivable situation.

With best wishes, I am

Very truly yours,

DONALD HICKMAN

DH:vld

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Attachment 6
2-7-94

Pho) 342-7105

ROY U. JORDAN
LAWYER
P.O. Box 136
EMPORIA, KANSAS 66801

November 1, 1993

Michael R. O'Neal, Chairperson
House Judiciary Committee

Jerry Moran, Chairperson
Senate Judiciary Committee

Re: Elective Share Statutes - K.S.A 59-602 & 59-603
1993 HB 2430 - proposed revised 1994 version

Gentlemen:

Following up my letter of September 17, 1993, from a recent KBA Seminar I understand that a revised draft of 1993 HB 2430 is being studied for possible introduction into the 1994 Session of the Legislature. I have read 1993 HB 2430 and also certain revisions to the Uniform Probate Code which I presume are to be incorporated into any 1994 revision of 1993 HB 2430.

Based on the above information, it would be my initial impression that this proposal for the right of election to apply to an "augmented estate" would be a **public relations disaster** for the legal profession, and at the same time it would be a **gold mine** for those members of the profession who make their living through litigation.

As noted in my letter of September 17, 1993, Verne M. Laing in his article in the Fall 1973 issue of the KBA Journal indicated that in his opinion the problems created by this proposal would **"boggle the mind"**. Mr. Laing indicated that there would be a **flood of litigation** if this proposal were enacted in Kansas.

I would suggest that the problems suggested by Mr. Laing can be illustrated by the following rather simple and common situations:

1. Wealthy parents have a Will in which all property is left to their only son but if he should predecease them, all property would be given to other persons. The parents then to avoid probate place all of their property in joint tenancy between themselves and the son. The son dies leaving a surviving spouse. The surviving spouse then claims an elective share of such joint tenancy property. Litigation is assured.

2. First wife of husband dies. Husband then places title to all property, which had been owned by him and his wife, in his name and in the names of their two children in joint tenancy. Husband marries second wife. Twenty years later husband dies and the only property in the estate is

the joint tenancy property still held in joint tenancy between the father and two children. The estate is now substantial. Husband had sometimes added to the accounts during the marriage with the second wife but the sources of those funds are unknown. The second wife petitions for the elective share. Litigation is guaranteed.

3. Wife of modest means borrows substantial sum from a widowed sister to purchase a home for herself and her husband. The loan from the widowed sister is made with the (alleged) oral agreement that title to the real property will be conveyed to wife and sister as joint tenants. The wife dies. The only property in the estate is the joint tenancy real estate. The records are lost as to the actual amount of sister's money that was used to purchase the property. Husband claims an elective share. Again, litigation certain.

4. Husband owns an savings account in joint tenancy with a brother to which each had contributed something under a rather vague oral agreement. Husband withdraws the entire account and gives it to a nephew, the son of the brother. The next day the husband dies. The nephew celebrates by living far more lavishing than was his custom until the account is totally depleted. Eight months after the husband's death, the wife files a petition to claim her elective share and later files suit against the nephew for part of the joint tenancy property to satisfy her elective share. The nephew cannot afford the fees involved in litigating the case and in any event does not have sufficient assets to satisfy the claim. A miscarriage of justice is assured whatever the result may be of the litigation.

The above illustrate only the tip of the iceberg. The number of other situations which would produce litigation is almost unlimited.

Public policy in regard to commerce is to permit personal property to be easily assigned. This public policy is in direct conflict with the public policy behind this "augmented estate" proposal. To have statutes based on conflicting public policies is to invite unlimited litigation.

As an active member for 30 years of the KBA Title Standards Committee, I feel rather sure that any such proposal as this would create tremendous problems for real estate title examiners. This proposal has never been submitted to the KBA Title Standards Committee for review. It is also noted that the 1993 SB 367 in regard to deeds of trust was never submitted to the Title Standards Committee for review. Such proposals are of primary concern to the

Title Standards Committee and this Committee is perhaps one of the most active Committees of the Bar -- **26** members attended our August 1993 meeting in Emporia. Many mistakes could have been avoided if the 1992 amendments to the elective share statutes had been submitted to the Title Standards Committee for consideration before being enacted.

All of the above discussion is based on the assumption that the alleged disease is so serious as to justify the proposed complicated cure.

However, it seems to me that a determination should first be made as to how many situations this proposal would actually affect in a beneficial way. In the vast majority of cases, by the time that one spouse is deceased the persons have been married for more than 15 years. In the cases involving second marriages of older people with property substantial enough to be affected by this proposal, many of those people protect themselves (or should protect themselves) through antenuptial agreements. In many cases involving small estates, the proposal becomes largely irrelevant in Kansas in view of our liberal laws in regard to the homestead and statutory allowances. As a practical matter, I do not believe that the proposal would affect the outcome in more than an extremely small percentage of the cases involving younger people who had been married only a short time. I have practiced law more than 40 years, much of such practice being the probate area, and have examined several thousand real estate abstracts of title. I do not recall that I have ever seen a problem arise that would have been satisfactorily solved by this proposal if it had been effect.

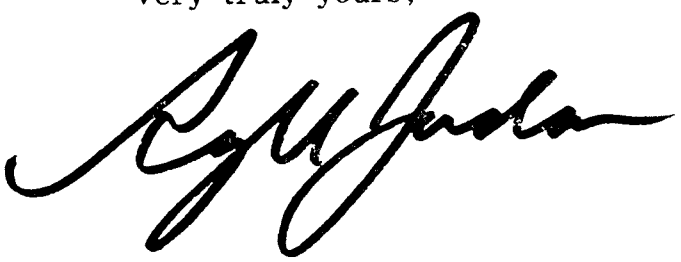
In fact, the other side of the coin is much more likely, that is, the rather typical case of an older person entering into a second marriage shortly before death and leaving everything in joint tenancy with the second spouse, even though there are children from the prior marriage. The proposal does nothing to solve this situation which as a practical matter may produce unjust results. Unjust results produced by lack of foresight, mental incapacity, fraud or undue influence cannot be solved by proposals such as this.

This proposal for an "augmented estate" subject to a right of election would affect many fields of law and many forms of title to property. The proposed cure is far worse than the alleged disease. The many defects in the 1992 amendments to K.S.A. 59-602 and 59-603 should be corrected by amending these elective share statutes only to the extent that the elective right shall affect property passing under Wills and Revocable Trusts, all as suggested in Sections 1 and 2 of the proposed Act submitted to you with my letter of September 15, 1993.

As I noted in my letter of September 17, 1993, the draft of 1993 HB 2430 did not disclose in the title to the Act that the Act involved the amendments/repeals of K.S.A. 59-602 and 59-603. It would seem to me that in drafting any revision of this proposal that it would be necessary to make a very thorough study of a number of statutes which might be affected, perhaps even amended/repealed, by this proposal; such statutes might include a number pertaining to Wills, Trusts, the selection of the homestead and allowances, the election in case of incapacity, joint tenancy, payable on death accounts, assignments, conveyances and transfers of real and personal property in general, and perhaps even the rights of creditors in regard to property to which a surviving spouse would be entitled under provisions involving the "augmented estate".

Very truly yours,

mh



Phone 342-7105

ROY U. JORDAN
LAWYER
P.O. Box 136
EMPORIA, KANSAS 66801

September 17, 1993

Michael R. O'Neal, Chairperson
House Judiciary Committee

Jerry Moran, Chairperson
Senate Judiciary Committee

Re: Elective Share Statutes

Gentlemen:

In connection with the proposed Act concerning trusts which I sent to you with my letter of September 15, 1993, I would call attention to the importance of Sections 1 and 2 of that Act which would clear up the ambiguities created by the 1992 amendments to K.S.A. 59-602 and K.S.A. 59-603 pertaining to the right of a surviving spouse to elect to take against the Will of a deceased spouse.

THe 1992 amendments to the elective share statutes imply, according to the conventional wisdom, that the Court should determine which instruments are subject to the right of election. Prior to the 1992 amendments, the right of election against a Will was purely a creature of statute. Whether any other instrument is to be subject to the **right of election** should surely also be a **creature of statute.** The 1992 amendments do not specifically state that the Legislature has delegated to the Court the power to determine which instruments shall be subject to the right of election, and further the Court has never purported to say that it has the power to make such determinations.

In effect, the 1992 amendments imply that the **Court** could assume **legislative powers** to determine that a great variety of instruments would be subject to the right of election, that is, instruments such as joint tenancies, payable-on-death accounts, deeds reserving life estates, life insurance policies, certain retirement programs and a variety of trusts.

The problem created by assuming that legislative power can be delegated to the Court is compounded by the fact that these 1992 amendments are ambiguous in many other ways. In these amendments the word "disposition" is used in the sense of an "instrument" and also in the sense of "property". The consent of a spouse must be a consent "...to the will, if any, **and.....to any and all other** dispositions subject to a surviving spouse's right of election" -- if the Court is to determine which other "dispositions" (i.e. instruments) will be subject to the right of election, then we have **no way of knowing** which instruments a spouse should consent to. And of course the statute does not state which dispositions, other than a Will, will be subject to the right of election.

There are other ambiguities in the 1992 amendments. For instance, the amended statute states that the consent of the spouse to the Will or other dispositions must be in writing executed in the presence of two or more competent witnesses to the Will which clearly implies that the witnesses to the consent must be the same persons who were witnesses to the Will; it is submitted that this was not the intention in drafting the statute and that this was purely a mistake in punctuation.

If we assume that these 1992 amendments affect inter vivos trusts which are purely Will substitutes and which will never be subject to probate, then the amendments contain no provisions for the procedure for the selection of the homestead and allowances nor the procedure for election if the surviving spouse is incapacitated. The amendments provide that the election of the surviving spouse is to be filed in the district court in the case in which the decedent's estate is being administered, but if we assume that there is no probate administration, then the statutes provide neither the means nor the venue for exercising the right of election unless a petition is filed for probate administration. Further, the amendments do not provide any time within which the election shall be filed, all in contrast to the existing K.S.A. 59-2233 relating to Wills.

1993 HB 2430 proposed to radically amend the elective share statutes, K.S.A. 59-602 and 59-603, although the title to the Act makes no mention of these statutes. It is my understanding that this Bill in a revised form may be introduced in the 1994 Session of the Legislature. This proposal would permit an election which could affect not only property given under Wills and Trusts but also property transferred through other instruments such as joint tenancies. In an article in the Fall 1973 issue of the KBA Journal by Verne M. Laing, a leading probate attorney, in referring to this concept of the "augmented estate", Mr. Laing had this to say:

> How the personal representative under the UPC is going to recover property transferred.....in order to give it back to the surviving spouse presents problems that in the vernacular would **"boggle the mind".** Where do you suppose this concept of "augmented estate" came from. **Can you imagine the flood of litigation that will ensue if this UPC should be adopted in Kansas?** (emphasis added).

This proposal for an "augmented estate" would affect many fields of law and many forms of titles, yet the proposal has never been submitted to the KBA Title Standard Committee for review. The proposed cure is far worse than the alleged disease. K.S.A. 59-602 and 59-603 need to be amended but only to the extent of affecting property passing under Wills and Trusts, specifically as per Sections 1 and 2 of the proposed Act submitted to you with my letter of September 15, 1993.

Very truly yours,

mh

cc
Committee Members

7-6

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ROBERT H. COBEAN
CHAD M. RENN

PHONE 316 326-7422
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September 21, 1993

IN RE: ELECTIVE SHARE OF SURVIVING SPOUSE

Randy Hearrell, Research Director
Kansas Judicial Council
Kansas Judicial Center
301 West Tenth Street, Suite 262
Topeka, Kansas 66612

Dear Randy:

Thanks for your invitation to attend the September 23 morning session of the Probate Law Advisory Committee and the afternoon session with the Legislative Committee, both considering proposed legislation dealing with the "elective share of a surviving spouse." My schedule is such that I will be unable to attend.

However, I have reviewed the proposed legislation and offer the following comments.

Law is in constant change to meet the needs of a changing society. Probate law is no exception. Society, in regard to "elective shares of a surviving spouse" is in a process of material change, not only in Kansas, but nationwide. The Uniform Probate Code Committee, recognizing these social changes, has proposed amendments to the Uniform Probate Code. The Kansas Probate Law Advisory Committee has considered the same social changes, has considered the U.P.C. recommendations and is now proposing appropriate changes applicable to the Kansas Probate Code, as follows:

1. The increased use of revocable living trusts, joint tenancies, P.O.D. accounts, and other methods transferring property outside probate has brought about the recent case law recognizing need for such changes.

2. The current suggested amendments to the Uniform Probate Code seek to follow the recent case law and to codify the U.P.C. by what is called the "Augmented Estate." This has been studied by the Judicial Council Advisory Committee and tailored to fit the needs of Kansas.

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3. Our changing society now includes increasing multiple marriages and certainly brings in question the wisdom of the long held formula of the elective-share amount. This change in society is addressed by the elective-share amount based on the length of the marriage of the surviving spouse to the decedent.

Change in legislation for the sake of change is never justified. Change to meet the needs of a changing society is progress.

In my opinion, the above mentioned proposed changes in the probate law of Kansas are logical and are progress.

I wish I could have been present on the 23rd.

Sincerely yours,

Robert H. Cobean

RHC:kj

Substitute for HOUSE BILL NO. 2430

By Committee on Judiciary

AN ACT concerning probate; relating to the uniform elective share of the surviving spouse; amending K.S.A. 59-2233 and K.S.A. 1993 Supp. 59-403 and 59-602 and repealing the existing sections; also repealing K.S.A. 1993 Supp. 59-603.

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

New Section 1. As used in this section:

(a) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under section 5.

(b) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(c) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(d) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that such person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(e) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(f) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent's self, the decedent's creditors, the decedent's estate, or creditors of such decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(g) "Probate estate" means property that would pass by intestate succession if the decedent died without a valid will.

(h) "Property" includes values subject to a beneficiary designation.

(i) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust or a similar arrangement.

(j) "Transfer" as it relates to a transfer by or of the decedent, includes (1) an exercise or release of a presently exercisable general power of appointment held by the decedent, (2) a lapse at death of a presently exercisable general power of appointment held by the decedent, and (3) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent's self and of a power described in subsection (b)(2) of section 5 that the decedent conferred on a nonadverse party.

New Sec. 2. (a) (1) The surviving spouse of a decedent who dies a resident of this state has a right of election, under the limitations and conditions stated in this act, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	Supplemental Amount only
1 year but less than 2 years	3% of the augmented estate

2 years but less than 3 years.....6% of the augmented estate
3 years but less than 4 years.....9% of the augmented estate
4 years but less than 5 years.....12% of the augmented estate
5 years but less than 6 years.....15% of the augmented estate
6 years but less than 7 years.....18% of the augmented estate
7 years but less than 8 years.....21% of the augmented estate
8 years but less than 9 years.....24% of the augmented estate
9 years but less than 10 years.....27% of the augmented estate
10 years but less than 11 years.....30% of the augmented estate
11 years but less than 12 years.....34% of the augmented estate
12 years but less than 13 years.....38% of the augmented estate
13 years but less than 14 years.....42% of the augmented estate
14 years but less than 15 years.....46% of the augmented estate
15 years or more.....50% of the augmented estate

(2) If the decedent and the surviving spouse were married to each other more than once, all periods of marriage to each other are added together for purposes of this subsection. Periods between marriages are not counted.

(b) If the sum of the amounts described in section 7, subsection (a)(1) of section 9 and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under subsections (b) and (c) of section 9 is less than $50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in subsections (b) and (c) of section 9.

(c) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(d) The right, if any, of the surviving spouse of a decedent who dies a nonresident of this state to take an elective share in property in this state is governed by article 8 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 3. Subject to section 8, the value of the augmented estate, to the extent provided in sections 4, 5, 6 and 7, consists of the sum of the values of all property that constitute the decedent's net probate estate, the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse, and the surviving spouse's property and nonprobate transfers to others.

New Sec. 4. The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead, family allowances and enforceable demands.

New Sec. 5. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under section 4 of any of the following types, in the amount provided respectively for each type of transfer.

(a) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(1) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent that such property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent that such fractional interest passed by right of survivorship at the decedent's death to the surviving

joint tenant other that the decedent's surviving spouse.

(3) The decedent's ownership interest in property or accounts passing to another upon decedent's death. The amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(4) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent that they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

(b) property transferred in any of the following forms by the decedent during marriage:

(1) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent that such fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, the creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is

the value of the property that produces or produced the income, to the extent that the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(c) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(1) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subparagraph (a)(1), (2), or 3), or under subparagraph (c)(2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those subparagraphs, if the property were valued at the time that the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph, "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in paragraph (a)(1), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(2) Any transfer of or relating to an insurance policy on

the life of the decedent if the proceeds would have been included in the augmented estate under subparagraph (a)(4) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent that the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(3) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent that the aggregate transfers to any one donee in either of the two years exceeded $10,000.

New Sec. 6. Excluding property passing to the surviving spouse under the federal social security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consists of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(a) The decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(b) the decedent's ownership interest in property or accounts held in coownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving coowner; and

(c) all other property that would have been included in the augmented estate under subsections (a) or (b) of section 5 had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

New Sec. 7. (a) Except to the extent included in the augmented estate under section 4 or 6, the value of the augmented estate includes the value of:

(1) Property that was owned by the decedent's surviving spouse at the decedent's death, including:

(A) The surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(B) the surviving spouse's ownership interest in property or accounts held in coownership registration with the right of survivorship; and

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including, the spouse's right to homestead, family allowance, or payments under the federal social security system; and

(2) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests include under subparagraphs (a)(1)(A) and (B), had the spouse been the decedent.

(b) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subparagraphs (a)(1)(A) and (B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or coowner of the property or accounts. For purposes of subparagraph (a)(2), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under subsection (a)(4) of section 5 are not valued as if such spouse were deceased.

(c) The value of property included under this section is reduced by enforceable demands against the surviving spouse.

New Sec. 8. (a) The value of any property is excluded from the decedent's nonprobate transfers to others (1) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property or (2) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.

(b) The value of property:

(1) Included in the augmented estate under section 5, 6 or 7 is reduced in each category by enforceable demands against the included property; and

(2) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(c) In case of overlapping application to the same property of the subparagraphs or sub-subparagraphs of section 5, 6 or 7, the property is included in the augmented estate under the provision yielding the greatest value, but under only one overlapping provision if they all yield the same value.

New Sec. 9. (a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(1) Amounts included in the augmented estate under section 4 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under section 6;

(2) amounts included in the augmented estate which would have passed to the spouse but were disclaimed and which will pass to issue of the surviving spouse, as defined in K.S.A. 59-615, and amendments thereto, who are not the issue of the decedent;

(3) amounts included in the augmented estate under section 7 up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in subsection (a) of section 2 as appropriate to the length of time the spouse and the decedent were married to each other; and

(5) the value of any real estate recovered pursuant to

K.S.A. 59-505, and amendments thereto.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfer to others other than amounts included under subsection (c)(1) or (3) of section 5, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's nonprobate transfers to others in proportion to the value of their interest therein.

(c) If, after the application of subsections (a) and (b), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

New Sec. 10. (a) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others to the extent the donees have the property or the property's proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfer to such person or to pay the value of the amount for which such person is liable.

(b) If any section or part of any section of this act is

preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section 3, to the person who would have been entitled to it were that section or part of that section not preempted.

New Sec. 11. (a) Except as provided in subsection (b), the election shall be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six months after the date of the decedent's death, or within six months after the notice of the right to the elective share pursuant to K.S.A. 59-2233, and amendments thereto, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing, in such manner as ordered by the court, to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than six months after the decedent's death.

(b) Within six months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within six months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for good cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental

elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw the petition for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 9 and 10. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than such person would have been under sections 9 and 10 had relief been secured against all persons subject to contribution.

(e) An order or judgment of the court may be enforced by the surviving spouse, as necessary, to obtain contribution or payment in other courts of this state or other jurisdictions. The decedent's personal representative shall not be required to enforce contributions from the assets of the reclaimable estate.

New Sec 12. (a) The right of election to the elective-share amount may be exercised by the surviving spouse or by the personal representative of a deceased surviving spouse or on behalf of a disabled surviving spouse by the court pursuant to K.S.A. 59-2234, and amendments thereto.

(b) The right of election to the supplemental elective-share amount, homestead or statutory allowance may be exercised by the surviving spouse, conservator, agent under a power of attorney,

guardian ad litem appointed for the surviving spouse or by the court on behalf of a disabled spouse pursuant to K.S.A. 59-2234, and amendments thereto.

New Sec. 13. (a) The right of election of a surviving spouse and the rights of the surviving spouse to either the homestead or the family allowance, or both of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, consent to any instrument, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) The surviving spouse did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to such spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

New Sec. 14. (a) Although under section 5 a payment, item of

property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under subsection (d) of section 11, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection (a) of section 11 or, if filed, the demand for an elective share is withdrawn under subsection

(c) of section 11, the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made to the court discharge the payor or other third party from all claims for value of amounts so paid or the value of property so transferred or deposited.

(c) Upon petition to the district court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 15. Where there is no homestead or the homestead is valued at less than $25,000 a decedent's surviving spouse is entitled to a homestead allowance not to exceed $25,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $25,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all demands against the estate. The homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share.

New Sec. 16. Any act done in any proceeding or any irrevocably accrued right acquired, before the effective date of this act is not impaired by this act. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.

New Sec. 17. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given affect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 18. K.S.A. 1993 Supp. 59-403 is hereby amended to read as follows: 59-403. When a resident of the state dies, testate or intestate, the surviving spouse shall be allowed, for the benefit of such spouse and the decedent's minor children during the period of their minority, from the personal or real property of which the decedent was possessed or to which the decedent was entitled at the time of death, the following:

(a) The wearing apparel, family library, pictures, musical instruments, furniture and household goods, utensils and implements used in the home, one automobile, and provisions and fuel on hand necessary for the support of the spouse and minor children for one year.

(b) A reasonable allowance of not ~~less than $1,500 nor~~ more than $25,000 in money or other personal or real property at its appraised value in full or part payment thereof, with the exact amount of such allowance to be determined and ordered by the court, after taking into account the condition of the estate of the decedent.

The property shall not be liable for the payment of any of decedent's debts or other demands against the decedent's estate, except liens thereon existing at the time of the decedent's death. If there are no minor children, the property shall belong to the spouse; if there are minor children and no spouse, it shall belong to the minor children. The selection shall be made by the spouse, if living, otherwise by the guardian of the minor children. In case any of the decedent's minor children are not living with the surviving spouse, the court may make such division as the court deems equitable.

Sec. 19. K.S.A. 1993 Supp. 59-602 is hereby amended to read as follows: 59-602. ~~(1)~~ Any devise or other disposition of real estate located in this state taking effect in possession or enjoyment at death, and any bequest or other disposition of any personal property by a resident of this state taking effect in possession or enjoyment at death, without regard to the time when the will or other instrument containing such devise, bequest or

other such disposition shall have been made, to any foreign country, subdivision thereof, or city, body politic, or corporation, located therein or existing under the laws thereof, or in trust or otherwise to any trustee or agent thereof, except devises, bequests or other such dispositions to institutions created and existing exclusively for religious, educational, or charitable purposes, is hereby prohibited. Any such devise, bequest or other such disposition shall be void.

~~(2)--Either--spouse,-by-will,-or-other-disposition-subject-to-a-surviving-spouse's-right-of-election,-may--transfer--away--from-the--other,-half-of-such-spouse's-property,-subject-to-the-rights-of-homestead-and-allowances-secured-by-statute.--Neither--spouse,-by--will,--or--other--disposition-subject-to-a-surviving-spouse's-right-of-election,-shall-transfer-away-from-the-other,-more--than-half--of--such--spouse's--property,--subject--to--such-rights-and-allowances,-unless-the-other-shall-consent,-in-writing,--executed-in--the--presence-of-two-or-more-competent-witnesses-to-the-will,-if--any,--and--shall--have--consented--to--any--and---all---other-dispositions-subject-to-a-surviving-spouse's-right-of-election-as-provided-by-law,-or-shall-elect-to-take-under-the-testator's-will-and--all-other-dispositions-subject-to-a-surviving-spouse's-right-of-election-as-provided-by-K.S.A.-59-603,-and-amendments-thereto.~~

~~(3)--The-right-of-election-provided--in--this--section--shall-only--apply--to--dispositions--that--the-surviving-spouse-did-not-consent-to.~~

Sec. 20. K.S.A. 59-2233 is hereby amended to read as follows: 59-2233. Except where the court has previously determined the validity and binding consent to a will, when a will is admitted to probate the court shall forthwith transmit to the surviving spouse a certified copy thereof, together with a ~~copy-of-K.S.A.-59-603--and--this--section--and--certify--to--such-transmittal.~~ notice statement to the surviving spouse stating: "Under sections 1 through 17, you may have valuable rights to take a share of conveyances made by the decedent prior to death." If such spouse has consented to the will, as provided by law,

such consent shall control; otherwise such spouse shall be deemed to have elected to take under the testator's will unless such spouse shall have filed in the district court, within six months after the ~~probate of the will~~ notice of the right to the elective share, an instrument in writing to take by the laws of intestate succession. If such spouse files an election before the inventory and valuation of the estate is filed, the election shall be set aside upon petition of the spouse made within 30 days after the filing of the inventory and valuation. For good cause shown, the court may permit an election within such further time as the court may determine, if a petition therefor is made within such period of six months.

Sec. 21. K.S.A. 59-2233 and K.S.A. 1993 Supp. 59-403, 59-602 and 59-603 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after January 1, 1995, and its publication in the statute book.