

HOUSE BILL No. 2350

By Committee on Judiciary

2-10

1 AN ACT concerning the probate code; relating to elective share amount;
2 calculation thereof; amending K.S.A. 59-6a204 and 59-6a209 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 59-6a204 is hereby amended to read as follows: 59-
7 6a204. The value of the augmented estate ~~includes the value of the~~
8 ~~decedent's probate estate~~, shall be reduced by funeral and administration
9 expenses, homestead or homestead allowance, *as defined in K.S.A. 59-*
10 *401, and amendments thereto*, family allowances, *as defined in K.S.A. 59-*
11 *403, and amendments thereto* and enforceable demands. *The value of the*
12 *augmented estate calculated pursuant to this section shall be used to*
13 *calculate the elective share under K.S.A. 59-6a202, and amendments*
14 *thereto.*

15 Sec. 2. K.S.A. 59-6a209 is hereby amended to read as follows: 59-
16 6a209. (a) In a proceeding for an elective share, the following are applied
17 first to satisfy the elective-share amount and to reduce or eliminate any
18 contributions due from the decedent's probate estate and recipients of the
19 decedent's nonprobate transfers to others:

20 (1) Amounts included in the augmented estate under K.S.A. 59-
21 6a204, *and amendments thereto*, which pass or have passed to the
22 surviving spouse by testate or intestate succession and amounts included in
23 the augmented estate under K.S.A. 59-6a206, *and amendments thereto*;

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

28 (3) amounts included in the augmented estate under K.S.A. 59-
29 6a207, *and amendments thereto*, up to the applicable percentage thereof.
30 For the purposes of this subsection, the "applicable percentage" is twice
31 the elective-share percentage set forth in the schedule in ~~subsection (a)~~ of
32 K.S.A. 59-6a202(a), *and amendments thereto*, as appropriate to the length
33 of time the spouse and the decedent were married to each other; and

34 ~~(5)~~(4) the value of any real estate recovered pursuant to K.S.A. 59-
35 505, and amendments thereto.

36 (b) If, after the application of subsection (a), the elective-share

1 amount is not fully satisfied or the surviving spouse is entitled to a
2 supplemental elective-share amount, amounts included in the decedent's
3 probate estate and in the decedent's nonprobate transfer to others other
4 than amounts included under ~~subsection (c)(1) or (3)~~ of K.S.A. 59-
5 6a205(c)(1) or (3), and amendments thereto, are applied first to satisfy the
6 unsatisfied balance of the elective-share amount or the supplemental
7 elective-share amount. The decedent's probate estate and that portion of
8 the decedent's nonprobate transfers to others are so applied that liability for
9 the unsatisfied balance of the elective-share amount or for the
10 supplemental elective-share amount is equitably apportioned among the
11 recipients of the decedent's probate estate and that portion of the
12 decedent's nonprobate transfers to others in proportion to the value of their
13 interest therein.

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

21 (d) *Homestead, as defined in K.S.A. 59-401, and amendments thereto,*
22 *and an allowance to a spouse and minor children, as defined in K.S.A. 49-*
23 *403, and amendments thereto, shall not be used to satisfy the elective*
24 *share, and shall be reduced from the augmented estate before the elective*
25 *share is calculated.*

26 (e) *For the purposes of calculating the elective share, there is no*
27 *requirement to file a petition for homestead, as defined in K.S.A. 59-401,*
28 *and amendments thereto, or a petition for an allowance to a spouse and*
29 *minor children, as defined in K.S.A. 59-403, and amendments thereto.*

30 Sec. 3. K.S.A. 59-6a204 and 59-6a209 are hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the statute book.