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4 **SENATE BILL No. 400**

5  
6 By Committee on Judiciary

7  
8 1-18

9  
10 AN ACT concerning the Kansas probate code; relating to residence of  
11 administrator; resident agent, written acceptance; **relating to the**  
12 **elective share of surviving spouse; concerning homestead**  
13 **rights**; amending K.S.A. **59-6a213**, 59-706 and 59-1706 and repealing  
14 the existing sections.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 **Section 1. K.S.A. 59-6a213 is hereby amended to read as fol-**  
18 **lows: 59-6a213. (a) The right of election of a surviving spouse and**  
19 **the rights of the surviving spouse to either the homestead, the home-**  
20 **stead allowance or the family allowance, or both all of them, may be**  
21 **waived, wholly or partially, before or after marriage, by a written**  
22 **contract, agreement, consent to any instrument, or waiver signed**  
23 **by the surviving spouse.**

24 (b) A surviving spouse's waiver is not enforceable if the surviv-  
25 ing spouse proves that:

26 (1) The surviving spouse did not execute the waiver voluntar-  
27 ily; or

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

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

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

35 (C) did not have, or reasonably could not have had, an ade-  
36 quate knowledge of the property or financial obligations of the  
37 decedent.

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

40 (d) Unless it provides to the contrary, a waiver of "all rights,"  
41 or equivalent language, in the property or estate of a present or  
42 prospective spouse or a complete property settlement entered into  
43 after or in anticipation of separation or divorce is a waiver of all

1 **rights of elective share, homestead and family allowance by each spouse**  
2 **in the property of the other and a renunciation by each of all benefits**  
3 **that would otherwise pass to such spouse from the other by intes-**  
4 **tate succession or by virtue of any will executed before the waiver**  
5 **or property settlement.** *For documents executed on and after July 1,*  
6 *2002, to waive the homestead, the homestead allowance or the family*  
7 *allowance, or all of them, the language of the document must clearly pro-*  
8 *vide that the homestead, the homestead allowance or the family allowance,*  
9 *or all of them, were understandably and knowledgeably waived by each*  
10 *spouse, if applicable.*

11 ~~Section 1.~~ **Sec. 2.** K.S.A. 59-706 is hereby amended to read as fol-  
12 lows: 59-706. In cases of administration of a resident's estate:

13 (a) Letters of administration ~~shall not~~ *may* be granted to a nonresi-  
14 dent of this state, ~~and when the nonresident has appointed an agent pur-~~  
15 ~~suant to K.S.A. 59-1706, and amendments thereto.~~ When an administrator  
16 of a resident's estate ~~shall become~~ *becomes* a nonresident, the court shall  
17 revoke such administrator's letters, ~~until the nonresident has appointed~~  
18 ~~an agent pursuant to K.S.A. 59-1706, and amendments thereto.~~

19 (b) Letters testamentary may be granted to a nonresident of this state  
20 when the nonresident has appointed an agent pursuant to K.S.A. 59-1706,  
21 ~~and amendments thereto.~~ When an executor of a resident's estate ~~shall~~  
22 ~~become~~ *becomes* a nonresident, the court shall revoke such nonresident's  
23 letters, until the nonresident has appointed an agent pursuant to K.S.A.  
24 59-1706, ~~and amendments thereto.~~

25 ~~Sec. 2.~~ **Sec. 3.** K.S.A. 59-1706 is hereby amended to read as follows: 59-  
26 1706. Every nonresident appointed a fiduciary in this state ~~shall,~~ before  
27 entering upon the duties of the trust, ~~shall~~ *shall* appoint in writing an agent  
28 residing in the county where the appointment is made, ~~and shall.~~ By such  
29 writing ~~consent,~~ *the nonresident fiduciary consents* that the service of any  
30 notice or process ~~when made upon said such~~ *upon said such* agent shall have the same  
31 force and effect as ~~if made personal service upon the fiduciary personally~~  
32 ~~within said such county and state.~~ Such writing shall state the correct  
33 address of such agent and shall be filed in the district court where such  
34 appointment is made. *Such writing shall include written acceptance of*  
35 *such appointment by the designated agent.* Service of notice or process  
36 upon such agent shall have the same force and effect as personal service  
37 upon the fiduciary.

38 ~~Sec. 3.~~ **Sec. 4.** K.S.A. ~~59-6a213,~~ 59-706 and 59-1706 are hereby  
39 repealed.

40 ~~Sec. 4.~~ **Sec. 5.** This act shall take effect and be in force from and after its  
41 publication in the statute book.