

**TO: Judicial Council**  
**FROM: Probate Law Advisory Committee**  
**DATE: December 2, 2022**  
**RE: Dollar amounts in probate code**

At its June meeting, the Judicial Council reviewed the Probate Committee's recommendation to raise the dollar limit for use of the small estates affidavit procedure in K.S.A. 59-1507b from \$40,000 to \$60,000. Several Council members expressed concern that this increase was not enough, and the Council ultimately agreed to ask the Probate Committee to reconsider the original request to increase the amount to \$100,000. The Council also granted permission for the Committee to review the other amounts in the probate code (with the exception of the guardianship and conservatorship act).

After reviewing all of the statutes listed in the chart below, the Probate Committee is recommending that the small estates affidavit amount be increased to \$75,000 and that all other dollar amounts be increased to keep up with inflation. Except for the increase in the small estates affidavit amount, each proposed increase is based on the increase in the CPI percentage since the last time the amount was updated (rounding up as appropriate). The chart shows each proposed increase, and redline drafts of the amended statutes are attached.

Statute	Description	Current amount (last increase)	CPI change	Increased amount	As rounded up
59-403	Allowance to spouse and minor children	50,000 (2008)	34.7%	67,350	75,000
59-6a202	Supplemental elective share amount	50,000 (1994)	99.65%	99,825	100,000
59-6a205	Transfers within 2 years of death	10,000 (1994)	99.65%	19,965	25,000
59-6a215	Homestead or homestead allowance	50,000 (2008)	34.7%	67,350	75,000
59-1507a	Payment of benefits to certain relatives	5,000 (2000)	71.46%	8,573	10,000
59-1507b	Small estates affidavit for personal property	40,000 (2008)	34.7%	53,880	75,000

59-2215	Remission of court costs for small estates	5,000 (2000)	71.46%	8,573	10,000
59-2237	Exhibition of demands; allowance without hearing	5,000 (2000)	71.46%	8,573	10,000
59-2287	Refusal to grant letters of administration	50,000 (2008)	34.7%	67,350	75,000
59-2401	Appealable orders; when; bond	5,000 (2006)	45.59%	7,280	10,000
59-2402a	Request for transfer from magistrate to district judge	5,000 (2006)	45.59%	7,280	10,000

**59-403. Allowance to spouse and minor children.** 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 more than ~~\$50,000~~ \$75,000 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.

**59-6a202. Elective share; amount; supplemental amount; effect of election on statutory benefits; nonresident.** (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 K.S.A. [59-6a207](#), subsection (a)(1) of K.S.A. [59-6a209](#) 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 K.S.A. [59-6a209](#) is less than ~~\$50,000~~ \$100,000, the surviving spouse is entitled to a supplemental elective-share amount equal to ~~\$50,000~~ \$100,000, 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 K.S.A. [59-6a209](#).

(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.

**59-6a205. Decedent's nonprobate transfers to others.** The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under K.S.A. 59-6a204, and amendments thereto, 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 than 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~~ \$25,000.

**59-6a215. Homestead or homestead allowance.** A surviving spouse is entitled to the homestead, or in lieu thereof the surviving spouse may elect to receive a homestead allowance of ~~\$50,000~~ \$75,000. The homestead or homestead allowance is exempt from and has priority over all demands against the estate. The homestead or homestead allowance is in addition to any share passing to the surviving spouse by way of elective share.

**59-1507a. Payment of certain benefits to certain relatives; discharge and release; affidavit.** (a) If not less than 180 days after the death of an individual entitled at the time of death to a monthly benefit or benefits under title II of the social security act or under any veterans administration program or public or private retirement or annuity plan, all or part of the amount of such benefit or benefits, not in excess of ~~\$5,000~~ \$10,000, is paid to (1) the surviving spouse, (2) one or more of the deceased's children, or descendants of the deceased's deceased children, (3) the deceased's father or mother, or (4) the deceased's brother or sister, preference being given in the order named if more than one request for payment has been made by or for the named individuals, such payment shall be deemed to be a payment to the personal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(b) The provisions of subsection (a) shall apply only if an affidavit has been made and filed with the appropriate governmental office or private company responsible for the benefit by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (1) the date of death of the deceased, (2) the relationship of the affiant to the deceased, (3) that no executor or administrator for the deceased has qualified or been appointed, and (4) that, to the affiant's knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant.

**59-1507b. Transfer of certain personal property to successor, discharge and release, affidavit.** When a resident of the state dies, whether testate or intestate, if the total assets of the estate of the decedent subject to probate do not exceed ~~\$40,000~~ \$75,000 in value, any personal property of whatever nature transferable to the decedent's estate by any entity or person shall be transferred to the successor or successors of the decedent, if entitled thereto by will or by intestate succession, without having been granted letters of administration or letters testamentary, upon such successor's or successors' furnishing the entity or person with an affidavit showing entitlement thereto. Transfer of such personal property to the successor or successors shall be deemed to be a transfer to the personal representative of the decedent, and the receipt of the successor or successors shall constitute a full discharge and release from any further claim for such transfer to the same extent as if the transfer had been made to an executor or administrator of the decedent's estate. The affidavit required herein shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

**59-2215. Remission of court costs in small estates.** When the total assets of the estate of a decedent or conservatee do not exceed the sum of ~~\$5,000~~ \$10,000 in value, the court may remit the court costs or any part thereof to such estate.

**59-2237. Exhibition of demands and hearing thereon; allowance without hearing, when.** (a) Any person may exhibit a demand against the estate of a decedent by filing a petition for its allowance in the proper district court. Such demand shall be deemed duly exhibited from the date of the filing of the petition. The petition shall contain a statement of all offsets which the estate is entitled. The person exhibiting the demand shall provide a copy of the demand, as filed, to the personal representative of the

estate. The court shall from time to time as it deems advisable, and must at the request of the executor or administrator, or at the request of any creditor having exhibited demand, fix the time and place for the hearing of such demands. Notice of the time and place of the demand hearing shall be given in such manner and to such persons as the court shall direct.

(b) The verification of any demand may be deemed prima facie evidence of its validity unless a written defense thereto is filed. Upon the adjudication of any demand, the court shall enter its judgment allowing or disallowing it. Such judgment shall show the date of adjudication, the amount allowed, the amount disallowed and classification if allowed. Judgments relating to contingent demands shall state the nature of the contingency.

(c) Any demand not exceeding ~~\$5,000~~ \$10,000, other than a demand by the executor or administrator, duly itemized and verified and which is timely filed, may be paid by the executor or administrator without compliance with any of the provisions of this act relating to petition, notice of hearing, allowance by the court or otherwise. If a written defense to the petition of the executor or administrator for a final settlement and accounting is timely filed by any interested party which takes issue with payment of the demand by the executor or administrator, at the hearing on the petition the burden of proof shall be upon the executor or administrator to establish that the demand was due and owing by the estate. If the demand, or any part thereof, is disallowed by the court, the accounting of the executor or administrator shall not be allowed as to the disallowed demand, or part thereof.

**59-2287. Refusal to grant letters of administration; order; notice; termination of administration. (a)**

The district court, in its discretion, may refuse to grant letters in the following cases:

(1) When the value of real or personal property owned by the decedent is not greater in amount than is allowed by law as exempt property and the allowance to the surviving spouse or minor children under K.S.A. [59-403](#), and amendments thereto.

(2) When the real and personal estate of the decedent does not exceed ~~\$50,000~~ \$75,000 and the estate is not subject to allowances pursuant to K.S.A. [59-403](#), and amendments thereto, or such allowances are waived, any heir, devisee, legatee, creditor or other interested person may petition for refusal of letters by giving bond in the sum of not less than the value of the estate. Such bond shall be approved by the district court and conditioned upon the creditor's or heir's assuming the obligation to pay, so far as the assets of the estate will permit, the debts of the decedent in the order of their preference, and to distribute the balance, if any, to the persons entitled thereto under the law, except that real estate sold in accordance with this section shall be deemed to have marketable title as ordered by the court, and no creditor, heir or other person shall be deemed to have an interest after passage of six months following the date of death.

(b) Proof may be allowed by or on behalf of the surviving spouse or minor children before the district court of the value and nature of the estate. If the court is satisfied that no estate will be left after allowing to the surviving spouse or minor children their exempt property and statutory allowances, or that the real and personal estate does not exceed ~~\$50,000~~ \$75,000 when the petition is filed by a creditor or heir, the court may order that no letters of administration shall be issued on the estate, unless, upon the petition of other creditors, heirs or parties interested, the existence of other or further property is shown.

(c) When a petition is filed under this section by a surviving spouse or minor children, notice of the proceeding shall be given pursuant to K.S.A. [59-2222](#), and amendments thereto.

(d) Whenever it appears to the court that further proceedings in the administration of an estate pursuant to this section are unnecessary, the court shall enter an order terminating the administration of such estate. Such order shall be made without notice, unless the court otherwise orders, and it shall be to the effect that, unless further estate of the decedent be discovered, all further settlements and other proceedings concerning the estate be dispensed with and that the surviving spouse and minor children are relieved of any further obligations with respect to the estate. If further estate of the decedent is discovered and administration is had on it, such administration shall not abrogate or invalidate or otherwise affect any right, title or interest in property transferred or vested pursuant to this section unless the court, for good cause shown, otherwise determines and orders.

(e) Any will filed pursuant to this section within a period of six months after the death of the testator may be admitted to probate after such six-month period.

**59-2401. Appealable orders in cases involving decedents' estates, when; bond.** (a) An appeal from a district magistrate judge to a district judge may be taken no later than 30 days from the date of entry of any of the following orders, judgments or decrees in any case involving a decedent's estate:

- (1) An order admitting or refusing to admit a will to probate.
- (2) An order finding or refusing to find that there is a valid consent to a will.
- (3) An order appointing, refusing to appoint, removing or refusing to remove a fiduciary other than a special administrator.
- (4) An order setting apart or refusing to set apart a homestead or other property, or making or refusing to make an allowance of exempt property to the spouse and minor children.
- (5) An order determining, refusing to determine, transferring or refusing to transfer venue.
- (6) An order allowing or disallowing a demand, in whole or in part, when the amount in controversy exceeds ~~\$5,000~~ \$10,000.
- (7) An order authorizing, refusing to authorize, confirming or refusing to confirm the sale, lease or mortgage of real estate.
- (8) An order directing or refusing to direct a conveyance or lease of real estate under contract.
- (9) Judgments for waste.
- (10) An order directing or refusing to direct the payment of a legacy or distributive share.
- (11) An order allowing or refusing to allow an account of a fiduciary or any part thereof.
- (12) A judgment or decree of partial or final distribution.
- (13) An order compelling or refusing to compel a legatee or distributee to refund.



(14) An order compelling or refusing to compel payments or contributions of property required to satisfy the elective share of a surviving spouse pursuant to K.S.A. [59-6a201](#) et seq., and amendments thereto.

(15) An order directing or refusing to direct an allowance for the expenses of administration.

(16) An order vacating or refusing to vacate a previous appealable order, judgment, decree or decision.

(17) A decree determining or refusing to determine the heirs, devisees and legatees.

(18) An order adjudging a person in contempt pursuant to K.S.A. [59-6a201](#) et seq., and amendments thereto.

(19) An order finding or refusing to find that there is a valid settlement agreement.

(20) An order granting or denying final discharge of a fiduciary.

(21) Any other final order, decision or judgment in a proceeding involving a decedent's estate.

(b) An appeal from the district court to an appellate court taken pursuant to this section shall be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil cases.

(c) Pending the determination of an appeal pursuant to section (a) or (b) of this section, any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. [60-2103](#), and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to section (a) or (b) of this section, the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

**59-2402a. Request for transfer of certain matters from district magistrate judge to district judge.** When a petition is filed in the district court and a district magistrate judge is assigned to hear such petition, any interested party may request the transfer of the matter to the chief judge for assignment to a district judge if the petition is:

(1) To admit a will to probate;

(2) to determine venue or a transfer of venue;

(3) to allow any claim exceeding ~~\$5,000~~ \$10,000 in value;

(4) for the sale, lease or mortgage of real estate;

(5) for conveyance of real estate under contract;

(6) for payment of a legacy or distributive share;

(7) for partial or final distribution;

(8) for an order compelling a legatee or distributee to refund;

(9) for an order to determine heirs, devisees or legatees; or

(10) for an order which involves construction of a will or other instrument.

When a request for such transfer is filed less than three days prior to the commencement of the hearing, the court shall assess the costs occasioned by the subpoena and attendance of witnesses against the party seeking the transfer. Such request may be included in any petition, answer or other pleading, or may be filed as a separate petition, and shall include an allegation that a bona fide controversy exists and that the transfer is not sought for the purpose of vexation or delay. Notice of such request shall be given as ordered by the court.