

Approved: 2-23-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on February 11, 1993 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Michelle Smith, Legislative Intern
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Mr. Charles Engel, Topeka Attorney
Donna Whiteman, Secretary, SRS
Mr. Stan Lentz, Lentz & Clark law firm, Overland Park, KS

Others attending: See attached list

Chairman Moran introduced Charles Engel, a Topeka attorney who specializes in bankruptcy law primarily on behalf of creditors, for a briefing on Kansas bankruptcy law relative to the federal law. Mr. Engel stated Kansas exemption statutes are fair to both debtors and creditors currently; however, there are abuses of the system. He distributed a copy of the Federal Exemption Statute and noted by law in Kansas the debtor may only claim Kansas exemptions and not the federal exemptions (Attachment 1). Recently there have been cases in which the property that may be designated as the homestead, and therefore 100% exempt, is at issue. It rests on establishing the intent of the debtor to abandon one homestead and to adopt another piece of property for that purpose. Mr. Engel indicated that the conditions under which one homestead is abandoned and another adopted may be one area of the law that needs the Committee's attention.

Another area of concern to Mr. Engel is in rents in which a creditor may have an interest (Attachment 2). He explained that under the new 1991 statute, if a creditor has an interest in rents, he can seize the rent on his own without any legal action such as foreclosure petition. Previously under case law, a receiver would be appointed to hold the rent until the issue is determined by the court. Mr. Engel is suggesting that a reconciliation be made between K.S.A. 60-1304 and 58-2343 to reflect Kansas long-standing theory to allow the debtor to retain the property and the income so that he might redeem the property and keep it.

Regarding the interplay between federal and state bankruptcy law, Mr. Engel advised that bankruptcy law is exclusively the jurisdiction of the federal courts except where real or personal property is involved, wherein state law prevails. In response to a question, Mr. Engel stated in his opinion Kansas is generally more liberal in exemptions than most states.

Senator Petty provided a copy of a staff memorandum regarding Bankruptcy Exemptions dated January 30, 1992 prepared at her request to be included in the committee minutes (Attachment 3).

INTRODUCTION OF BILLS

Donna Whiteman, Secretary, SRS, requested introduction of three bills regarding the state Medicaid budget. The first bill would amend Chapter 40 of the K.S.A. to place into state law the congressional intent that the Medicaid program is the payer of last resort (Attachment 4). The second bill would provide that lien notice would not have to be given when Medicaid has a claim against a third party for medical assistance which was paid (Attachment 5). The third bill request would codify current SRS policy to ensure that Medical Assistance recipients and applicants do not divert resources from being available to cover nursing facility care by signing a disclaimer of an inheritance (Attachment 6). Senator Bond moved introduction of the three bills. Senator Petty seconded. Motion carried.

Senator Petty moved introduction of two bills that would allow court-appointed special advocates to be immune from liability under the divorce and juvenile codes. Senator Ranson seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on February 11, 1993.

Senator Bond moved approval of the minutes of January 28, January 29, February 2, 3 and 4, 1993 as presented. Senator Feleciano seconded. Motion carried.

A copy of States and the Indian Gaming Regulatory Act, which is a summary of federal law, was distributed to the members along with Indian Gaming Briefing prepared by the Kansas Legislative Research Department (both documents on file in the Kansas Legislative Research Department).

Senator Bond announced that the Family Law Subcommittee will meet February 12 at 10:00 a.m. in Room 529-S for hearings on SB 211 and SB 213.

Stan Lentz, Overland Park attorney who specializes in bankruptcy law primarily on behalf of debtors, advised the Committee that he agrees Kansas bankruptcy exemptions are more liberal than most states, but he feels they are realistic and work well and he does not recommend any changes in the exemption law. Chairman Moran asked any member who wished to pursue Mr. Engel's suggestion regarding rents to advise and noted at this point no changes in the exemption laws would be requested.

The meeting was adjourned at 10:55 a.m. The next meeting is scheduled for February 15, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-11-93

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Title 11

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Title 11

CREDITORS, DEBTOR, & THE ESTATE

§ 522

Cross References

Filing of list, schedule and statement by trustee, see section 1106.
Proof of claim or interest deemed filed if scheduled, see section 1111.
Property scheduled but unadministered before close of case deemed abandoned, see section 554.

Library References:

C.J.S. Bankruptcy §§ 44, 184, 186, 191.
West's Key No. Digests, Bankruptcy ¶2321 et seq., 3022, 3063.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 522. Exemptions

Federal Exemption Statute

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

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2-11-93
Attachment 1

(2) a debt secured by a lien that is—

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed; or

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution.

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed \$7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$1,200 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$200 in value in any particular item or \$4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed \$500 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value \$400 plus up to \$3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value \$4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

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the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity,
or similar plan or contract on account of illness, disability, death, age, or
length of service, to the extent reasonably necessary for the support of
the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the
auspices of an insider that employed the debtor at the time the
debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a),
403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26
U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of
whom the debtor was a dependent, to the extent reasonably necessary
for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life
of an individual of whom the debtor was a dependent on the date of such
individual's death, to the extent reasonably necessary for the support of
the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$7,500, on account of personal bodily
injury, not including pain and suffering or compensation for actual
pecuniary loss, of the debtor or an individual of whom the debtor is a
dependent; or

(E) a payment in compensation of loss of future earnings of the
debtor or an individual of whom the debtor is or was a dependent, to the
extent reasonably necessary for the support of the debtor and any
dependent of the debtor.

(e) A waiver of an exemption executed in favor of a creditor that holds an
unsecured claim against the debtor is unenforceable in a case under this title
with respect to such claim against property that the debtor may exempt under
subsection (b) of this section. A waiver by the debtor of a power under
subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i)
of this section to exempt property, or under subsection (i) of this section to
recover property or to preserve a transfer, is unenforceable in a case under this
title.

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the
fixing of a lien on an interest of the debtor in property to the extent that such
lien impairs an exemption to which the debtor would have been entitled under
subsection (b) of this section, if such lien is—

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-money security interest in any—

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of

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Charles Eng...

agreement and which shall be the following form:

ALL OF THIS DISCLOSURE MUST BE MADE FULLY BEFORE SIGNING IT. IT TO CONSULT WITH AN ATTORNEY OR OTHER PERSON BEFORE SIGNING OR GIVING UP IMPORTANT

As the owner of (legal description of property) commonly known as (address), have entered into an agreement for the sale of the above-mentioned property. I realize I have the right

to have the property be in foreclosure on any mortgage for a period of redemption following the proceedings during which period I am in the residence. This period could be 12 months, depending on the state, the unpaid balance thereof and

and of redemption I have the right to sell my rights to my residence. I have mortgage guaranty insurance protecting my rights under the terms of the agreement under applicable state or federal law.

THE RIGHT TO RESCIND ANY CONTRACT OR DEED WITH THE BUYER WITHIN 30 DAYS, AS DEFINED BY THE AMENDMENTS THERETO, AFTER THE AGREEMENT OR CONTRACT TO GIVE UP OR SELL THE PROPERTY.

being promised to me or given to me, my rights must be in the agreement. This includes the amount being paid for the mortgage payments up to the time of the sale. Concerning what will be done with the property after the sale, the written agreement might not be binding.

RIGHTS AND THE RESIDENCE. I, I MAY STILL BE RESPONSIBLE FOR THE MORTGAGE PAYMENTS STILL OWED ON THE PROPERTY. THE SALE DOES NOT RAISE THE ENTIRE MORTGAGE PAYMENTS. IF THE RESIDENCE IS SOLD, IT IS LIKELY THAT THE MORTGAGE PAYMENTS WILL BE PAID TO THOSE WHO KEEP THE PROPERTY. THIS MIGHT INJURE MY

serious matter and that I may want an attorney to make sure my interests are being protected before

(9) This provision is not intended to deprive the homestead owner of any other right under the law.

OWNER-SELLER

OWNER-SELLER

I ACKNOWLEDGE THAT THE OWNER-SELLER'S RECISSION OF THE AGREEMENT IF MADE PURSUANT TO PARAGRAPH (5) ABOVE, MAY BE MAILED WITHIN FIVE BUSINESS DAYS TO ME BY CERTIFIED MAIL AT THE FOLLOWING ADDRESS: (BUYER'S ADDRESS)

BUYER

(d) Failure to comply with the pertinent provisions of this section shall render the transfer or assignment voidable at the election of the transferor.

History: L. 1990, ch. 197, § 1; July 1.

58-2343. Assignment of rents of real property; lien; action upon default. (a) As used in this section:

(1) "Assignment instrument" means any mortgage, deed of trust, or other instrument or agreement by which a borrower assigns, transfers, pledges, or otherwise grants a lien upon or encumbers its rights to rents of real property therein described to or for the benefit of a lender as security for the repayment of any indebtedness or the performance of any obligations.

(2) "Borrower" means any mortgagor, deed of trust grantor, assignor, or debtor of any lender.

(3) "Lender" means any mortgagee, deed of trust beneficiary, assignee, or creditor, or its assigns, holding an assignment instrument.

(4) "Rents" includes the rents, income, proceeds, profits, royalties and other sums which (A) are derived under present and future leases, licenses, contracts and other agreements for the use or possession of real property and (B) are either in the possession or control of the borrower or are due and unpaid or are to become due and payable.

(b) The lien of an assignment instrument shall be a good, valid and enforceable lien on the rents from the real property therein described. Such lien shall be valid and binding against, unavoidable by and fully perfected as to the borrower and all subsequent purchasers, mortgagees, lien creditors, other lienholders and other persons for all purposes from the time of filing the assignment instrument or an affidavit of assignment of rents signed by the borrower for record in accordance with K.S.A.

58-2221 and amendments thereto, with a priority dating from the time of such filing, without any necessity for the lender to take possession or control of such rents or the property from which such rents are derived, to take any action tantamount to the taking of such possession or control, or to take other action whatsoever.

(c) Upon default by a borrower under the terms of an assignment instrument, the lender shall be entitled to enforce the assignment instrument in accordance with its terms and applicable law, and may apply to the district court having jurisdiction for appropriate relief to gain possession and control of the rents in enforcement of the assignment instrument. Upon such application, the court shall enter such orders and take such actions as appear necessary to collect, protect and preserve the rents and protect and preserve the lender's interest therein pending final disposition of an action upon the obligations secured by the assignment instrument.

(d) Any tenant who, upon due notice from the lender, makes rent payments to the lender in accordance with the terms of the assignment instrument shall be given credit for such payment as if the payments had been made to the borrower, but nothing herein shall affect the other rights and obligations of the borrower or the tenant as to one another.

History: L. 1991, ch. 161, § 1; May 23.

Article 24.—TRUSTS AND POWERS

Cross References to Related Sections:

Cy-pres rule; amendment or construction of will or trust to preserve federal estate tax deduction, see 59-22a01.

58-2401.

CASE ANNOTATIONS

65. Trust by implication may arise from oral agreement and evidence of fraud; equitable estoppel renders statute inapplicable. *Potucek v. Potucek*, 11 K.A.2d 254, 258, 259, 719 P.2d 14 (1986).

58-2405.

CASE ANNOTATIONS

4. Trustee cannot ratify an act that is in violation of trust agreement because such an act is void. *Mark Twain Kansas City Bank v. Kroh Bros. Dev. Co.*, 250 K. 754, 764, 766, 829 P.2d 907 (1992).

58-2417.

Law Review and Bar Journal References:

"Decedents Estates: Revocable Trusts and The Surviving Spouse's Share: How Much Is Enough? [*Newman v. George*, 243 Kan. 183, 755 P.2d 18 (1988)]." Gary Patterson, 28 W.L.J. 430 (1989).

CASE ANNOTATIONS

2. Cited; general rules on revocation of private express trusts, revocation of power of attorney discussed. *Peterson v. Peterson*, 10 K.A.2d 437, 439, 700 P.2d 585 (1985).

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2-11-93

Attachment 2

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

January 30, 1992

TO: Senator Marge Petty

Office No. 523-S

RE: Bankruptcy Exemptions

In response to your inquiry about certain Kansas bankruptcy exemptions compared with other states, I am enclosing a chart listing the federal Bankruptcy Code exemptions, the Kansas exemptions, and the exemptions of 13 other states. The areas highlighted are the homestead property, vehicle, insurance, and personal property exemptions, as you requested. The states selected include those surrounding Kansas, several other states that are one state removed from Kansas, such as Texas and South Dakota and certain other states, including California and New York. The source for the table is *Collier Bankruptcy Exemption Guide*, 1991.

Under Section 522(b) of the Bankruptcy Code, a debtor may choose either the federal exemptions or those available under state law unless the state has "opted out" of the federal exemption, in which case the debtor must utilize the state exemptions. Of the states listed in the chart, all have opted out except New Mexico and Texas.

Kansas appears to have one of the more liberal exemption schemes of the states listed, especially in regard to automobiles. I am also enclosing a copy of Anderson, "Exemption Laws in Kansas: Recent Amendments and Bankruptcy Estate Planning," 38 *Kansas Law Review*, 143 (1989) for your review.

I hope this is useful. If you need additional information, please let me know.

Mike Heim
Principal Analyst

92-0113/MH

Enclosures

SJ
2-11-93
Attachment 3

BANKRUPTCY EXEMPTIONS: KANSAS AND SELECTED STATES

(Source: Collier Bankruptcy Exemption Guide)

	Homestead and Residential Property	Motor Vehicle	Insurance	Personal Property
Federal Bankruptcy	Federal Bankruptcy § 522(d) not to exceed \$7,500 in real or personal property used as residence.	One motor vehicle not to exceed \$1,200 in value.	Any unmaturred life insurance contract owned by a debtor except a credit life insurance contract and up to \$4,000 in any accrued dividend, interest, or loan value of an unmaturred life insurance contract.	Not to exceed \$200 in any item or \$4,000 in aggregate value household furnishings, appliances, clothing, etc. plus not to exceed \$500 in value of jewelry; plus \$400 wild card exemption plus any unused portion of \$3,750 of the residence exemption toward any property the debtor chooses.
Kansas	Exempt to the extent of 160 acres of farm land or one acre within the limits of an incorporated town or city or a mobile home but property may be sold for taxes or debts arising from the purchase or improvement of the property. The homestead exemption is not applicable to liens given with the consent of both spouses.	One means of conveyance, not to exceed \$20,000 in value, regularly used for transportation to and from work is exempt; value limitation does not apply when vehicle is designed or equipped, or both, for handicapped persons.	Exempt from claims of the insured, the creditors of the insured, the policy holder, the creditors of the policy holder, and creditors of the beneficiary; nonexempt when insurance obtained with fraudulent intent and bankruptcy case is commenced within one year of acquisition.	Debtor may exempt household goods, fuel, food, and clothing which is in the debtor's possession and is reasonably necessary at the debtor's principal residence for one year and \$1,000 in jewelry.
Colorado	Debtor may exempt \$20,000 in a residence, if occupied as a home; proceeds from the sale of the exempt homestead are exempt for a year after the sale if the funds are kept separately and if the proceeds are used for a new homestead, the new homestead is eligible for the same homestead exemption as the property sold; insurance proceeds on exempt improvements are exempt; mobile homes are eligible for the homestead exemption.	Debtor may exempt \$1,000 in one or more motor vehicles used in debtor's occupation.	Group life insurance policies and the proceeds thereof are exempt; \$200 per month in benefits from sickness and accident insurance during the debtor's disability is exempt except if the debt is for necessities contracted for in such period; \$5,000 in life insurance proceeds are exempt.	\$750 in clothing; \$500 in jewelry; \$750 in books and family pictures; one burial site for the debtor and each dependent; \$1,500 in household goods; \$300 in food and fuel; \$3,000 in livestock and \$2,000 in tools for farmer debtors; professionally prescribed health aids are exempt; exemptions do not apply to debts arising from the purchase price of such property.
Nebraska	Debtor may exempt \$1,000 in a dwelling located on up to 160 acres if the land is not in an incorporated city or village, or two contiguous lots in an incorporated city or village.		Annuity contract benefits, life insurance proceeds, or any accident or health insurance benefits are exempt from the insured's debts and, if the beneficiary is related to the insured, the beneficiary's as well, unless the claimant has a written assignment to the contrary; the exemption does not apply to loan values or cash values in excess of \$10,000 of an unmaturred life insurance contract.	Debtors without a homestead may exempt \$2,500 in personal property except for wages; immediate personal possessions of the debtor and family; \$1,500 in clothing and household goods; \$1,500 in equipment and tools used for support; six months worth of provisions and fuel.
Missouri	Debtor may exempt \$8,000 in a residence and land used in connection with it; co-owners may not exempt more than \$8,000 aggregate. A mobile home used as a residence and not exceeding \$1,000 in value is exempt.	Debtor may exempt any motor vehicle not exceeding \$500 in value.	Life insurance benefits under an assessment plan or a stipulated premium plan are exempt from debts of the policy holder and the beneficiary; all unmaturred life insurance contracts are exempt. Debtor may exempt, except from claims for child support, an aggregate of \$5,000 accrued dividend, interest, or loan value of any unmaturred life insurance contract if purchased more than six months prior to bankruptcy, less any sum transferred by the insurer to itself in good faith to satisfy contractual requirements.	Debtor may exempt up to \$1,000 in household goods and furnishings, wearing apparel, appliances, books, animals, crops, or musical instruments for personal, family, or household use; up to \$500 in jewelry; and \$400 in other property of any kind, together with all prescribed health aids of debtor or a dependent. Each head of family may exempt any other property worth up to \$850 in aggregate value, plus \$250 additional per unmarried dependent child

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	Homestead and Residential Property	Motor Vehicle	Insurance	Personal Property
Oklahoma	Homestead exemption consists of up to 160 acres outside a city or town or one acre inside a city or town; the urban homestead exemption may not exceed \$5,000 except that in all cases the urban homestead shall not be reduced to less than 1/4 acre. The homestead is subject to certain liens.	Debtor may exempt \$3,000 in one motor vehicle.	A beneficiary is entitled to life insurance proceeds as against the insured's creditors; group life insurance is exempt before and after payment from the liabilities of persons having rights under the policy; benefits issued by limited stock life, accident, and health insurers are exempt.	under 18, except for 10 percent of any debt, income, salary, or wages due such head of family. Debtor may exempt all household furniture, books, portraits, and pictures held for household use; wearing apparel for personal, family, or household use up to an aggregate value of \$14,000; health aids, a limited number of poultry and livestock, one gun and a year's supply of provisions.
Iowa	Up to one-half acre in a city or town plot; otherwise 40 acres but acreage may be increased to attain \$500 value; a building on the property used by the debtor in his business has a \$300 exemption; the homestead exemptions are subject to certain liens; an apartment can be a homestead; homestead is exempt from judicial sale; new homestead acquired with the proceeds from the old is exempt to the extent the old homestead would have been exempt.	One motor vehicle is exempt; aggregate value of debtor's exemptions for motor vehicle, musical instruments, accrued wages, and tax returns is limited to \$5,000.	Public employee's group insurance benefits are all exempt; debtor's interest in any life insurance policy is exempt when debtor's spouse, child, or dependent is the beneficiary; this exemption shall not exceed \$10,000 of any interest in insurance acquired within two years of issuance of execution or claiming of exemptions, and shall not include additions to this policy within the foregoing two-year period in excess of the amount needed to fund the face value coverage; all benefits from accident, health, or disability policies are exempt from the insured's debts; \$15,000 of such benefits are exempt from another debtor-beneficiary's debts.	Debtor may exempt \$100 in cash on hand (in lieu of bank deposit exemption); \$1,000 in clothing and storage trunks; any engagement or wedding ring; one shotgun and either a rifle or a musket; \$1,000 in private libraries, bibles, and painting; \$2,000 in household goods; professionally prescribed health aids, \$5,000 in aggregate of: musical instruments, one motor vehicle, and up to \$1,000 in accrued wages and tax refunds.
South Dakota	A debtor's dwelling is exempt; if a building is used in the debtor's business, it may be deemed appurtenant to the homestead; a mobile home must be larger than 240 square feet at its base to be exempt; \$30,000 in sale proceeds is exempt for one year after receipt, but the exemption is unlimited if the debtor is 70 or older or the unremarried spouse of such a person; area limit is one acre if within a town plat and 160 acres if outside a town plat; if outside a town plat and acquired under U.S. laws relating to mineral lands, limit is 40 acres; if acquired as a "lode mining claim," limit is five acres.	None listed.	In the absence of an agreement or assignment, \$20,000 in proceeds from life or health insurance policies is exempt from the creditors of the insured, the surviving spouse or children, \$20,000 from an endowment policy is exempt from the debts of the surviving spouse or children; \$250 per month in annuity payment is exempt unless necessary for support.	All family pictures, a pew, \$200 in a family library, clothing, provisions and fuel for one year and a burial plot are absolutely exempt; additionally, a debtor who is head of a family may exempt either \$4,000 in personal property or \$200 in books and musical instruments, \$200 in household furnishings, various livestock and one year's food for them, \$1,250 in farming tools, trade implements and \$200 in stock in trade, \$300 in a professional library; a debtor who is not a head of a family may exempt \$2,000 in personal property.
Arkansas	Debtor may exempt \$800 for unmarried debtors or \$1,250 for married debtors in a residence plus, for married debtors or heads of families, 80 acres rural or one-fourth acre urban residential land plus, if such acreage is worth less than \$2,500, additional land until the maximum \$2,500 value is reached; however, total acreage cannot exceed 160 acres rural or one acre urban; the homestead is subject to certain liens.	Debtor may exempt \$1,200 in one motor vehicle.	A policy or the proceeds of group life insurance is exempt from debts of the insured and the beneficiary; disability insurance which is supplemental to life insurance is wholly exempt from debts of the insured, and exempt from debts of the beneficiary existing at the time the proceeds are made available; annuities are exempt from debts of the annuitant, unless such benefits were procured in defraud of creditors; all other proceeds of life, health, accident, and disability insurance are exempt from debts of the recipient.	Debtor may exempt \$800 for unmarried debtors or \$1,250 for married debtors in personal property used as a residence or a burial plot if this sum is not applied to real property; wedding bands; wearing apparel, and \$200 for married debtors or \$500 for unmarried debtors in any personal property.

	<u>Homestead and Residential Property</u>	<u>Motor Vehicle</u>	<u>Insurance</u>	<u>Personal Property</u>
Indiana	\$7,500 in a residence is exempt; the exemption is individually available to joint tenants or tenants by entirety; the exemption is subject to certain liens.	None listed.	Life insurance policies which name as beneficiary the insured's spouse, children, dependent relatives, or any creditor, and the proceeds of such policies are exempt from claims against the insured and the insured's spouse; mutual life and accident insurance proceeds are exempt from debts of policy holder and beneficiary; the right to benefits under a life insurance contract may be contractually exempt from liability for the beneficiary's debts.	Debtor may exempt \$4,000 in any tangible personal property or nonresidential real property and \$100 of intangible personal property; however, the combination of the homestead exemption and the foregoing personal exemptions may never exceed \$10,000; health aids are exempt, without regard to the above limitation; national guard uniforms, arms, and equipment are exempt; exemptions are subject to certain liens.
New Mexico	\$20,000 in land or a dwelling if the debtor owns, leases, or purchases the dwelling and is married, widowed, or supporting another person; jointly owned property entitles each owner to \$20,000 exemption; the exemption is subject to certain liens.	One motor vehicle in the amount of \$4,000 is exempt.	Cash surrender values and benefits of life insurance contracts and payment from life, accident and health insurance policies, or annuity contracts are exempt from the insured's debts.	Debtor may exempt \$500 in personal property; \$2,500 in jewelry; clothing, furniture, books, health aids; debtors who are married or heads of households may take \$500 in cash instead of the personal property; a resident without a homestead may exempt \$2,000 in real or personal property; the minimum amount of shares necessary for membership in certain cooperative associations are exempt; the debtor's interest in the property of an unincorporated association is exempt.
Texas	A rural homestead consists of not more than 200 acres for a family or 100 acres for a single person; an urban homestead consists of not more than one acre; in all cases, the homestead includes improvements; homestead must be claimant's home or place of business; proceeds from sale of the homestead are exempt for six months; the homestead is subject to certain liens.	The following motor vehicles may be exempted as part of overall \$30,000 personal property exemption; an automobile, a truck cab, a truck trailer, a camper truck, a truck, and a pickup truck.	Debtor may exempt benefits paid under any insurance policy issued by a life, health, or accident insurance company, including mutual and fraternal insurance; and benefits paid under the Texas Employee Uniform Group Insurance Benefits Act and the Texas State College and University Employees Uniform Insurance Benefits Act.	Specific "eligible personal property" is exempt to the extent of \$30,000 for a family and \$15,000 for a single adult not a member of the family. Property so eligible includes: household furnishings, provisions, trade implements, clothing, two firearms, athletic and sporting equipment, certain animals, certain vehicles, pets, life insurance, and current wages for personal services.
Kentucky	\$5,000 in real or personal property used as a residence is exempt except from debts arising prior to purchase of the property; debtor may exempt an additional \$1,000 in real property when this sum is not applied to exempt personal property.	Any individual debtor may exempt one motor vehicle not exceeding \$2,500 in value; also, any mechanic, any artisan servicing essential electrical or mechanical equipment in general use, or any minister, lawyer, doctor, veterinarian, chiropractor, or dentist may exempt one motor vehicle not exceeding \$2,500 in value; these exemptions cannot be claimed against child support obligations.	The proceeds of life, group life, and health insurance, of annuity contracts not obtained in defraud of creditors, and of disability insurance supplemental to life insurance are exempt from the debts of the insured and the beneficiary; benefits to be paid by any assessment or cooperative life or casualty insurance company are exempt from the debts of the policy holder; life insurance is exempt from claims against the insured, unless obtained in defraud of creditors.	The assets of and benefits under profit sharing, annuity or similar plans based on debtor's age, illness disability, or length of service, and \$3,000 in household goods, clothing, and jewelry are exempt; additionally debtor may exempt \$1,000 in any real or personal property.
California	Debtor who is a member of a family unit may	Debtor may exempt \$1,200 in any	Unmatured life insurance policies, but not the loan value, are	Debtor may exempt ordinary and necessary house-

Homestead and Residential Property

exempt \$75,000 if at least one other family unit member owns no interest in homestead or only a community property interest with debtor, debtors over 55 with an income under \$15,000 (debtors without joint income) or \$20,000 (married debtors' joint income) may exempt \$100,000 if sale is involuntary; debtors who are older than 65 or disabled may exempt \$100,000; all others may exempt \$50,000; spouses may not double the exemption; homestead may include but is not limited to: a house, a mobile home, a boat, or a condominium; proceeds exempt for six months.

New York

Debtor may exempt up to \$10,000 in the following types of property owned and operated as a principal residence; a lot with a dwelling, a cooperative apartment, a condominium, or a mobile home, unless the judgement was recovered wholly for the purchase price; proceeds from a judgment sale of homestead property are exempt for one year.

Motor Vehicle

combination of the aggregate equity in motor vehicles, the proceeds of an execution sale of a motor vehicle, and the proceeds of insurance or other indemnification for a motor vehicle; proceeds are exempt for 90 days after debtor actually receives them; no doubling of exemptions.

Debtor may exempt up to \$2,400 in one motor vehicle.

Insurance

exempt without making a claim; the aggregate loan value of un-matured life insurance policies is exempt in the amount of \$4,000; if the debtor is married each spouse is entitled to a separate exemption which may be combined; benefits from mature life insurance policies are exempt to the extent necessary for support; disability or health insurance benefits are exempt except from claims for health care that form the basis for the benefits.

Benefits under an annuity contract are exempt unless a court finds a portion of such payments are not necessary to meet the debtor's ordinary financial needs; annuity contracts purchased by the debtor within six months of filing of bankruptcy petition and not described in any paragraph of 26 U.S.C.A. § 805(d) are subject to a \$5,000 exemption limit, disability generally exempt; income benefits not exempt as respects debts incurred for necessities during the period of disability; only exempt to the extent of \$400 per month as respects debts incurred post-disability; lump sum payments related to specific loss are exempt. Life insurance beneficiaries may generally exempt benefits from debts of the insured; if the person effecting the policy is the spouse of the insured and the beneficiary, benefits are exempt from his or her own debts; third party beneficiaries may exempt benefits from debts of the insured and the person effecting the policy.

Personal Property

hold furnishings, appliances, wearing apparel and other personal effects; proceeds from execution sale of items of extraordinary value are exempt in the amount determined by the court to be sufficient to purchase ordinary and necessary replacement; jewelry, heirlooms, and works of art are exempt up to \$2,500; necessary health aids are exempt; no doubling of exemptions.

None listed.

PROPOSED AGENCY LEGISLATION

3 RS 0126

Medicaid (Medical Assistance) Program as "Payer of Last Resort"

The purpose of the proposed legislation to amend Chapter 40 of the Kansas Statutes Annotated is to place into state law the congressional intent that the Medicaid (Medical Assistance) program, as created by Title XIX of the Social Security Act of 1965, is the payer of last resort.

Section 1903(o) of the Social Security Act of 1965 [**42 U.S.C. Sec. 1396b(o)**] was added by the 1977 Medicare and Medicaid Antifraud and Abuse Amendments. This provision, codified at **42 CFR 433.140**, denies Federal Financial Participation (FFP) for expenses which could have been paid for under private insurance contracts except for a provision in the contract limiting or excluding payment because of eligibility for or receipt of Medicaid benefits. The need for legislation was first considered in passage of P.L. 90-248, but the legislative history states that it was believed that the States should modify their insurance laws, and, therefore, no provision was enacted. This history reflects the concern that Medicaid should be payer of last resort. For the purpose of Section 1903(o), **42 CFR 433.136**, defines "private insurer" as:

Any organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any similar organization offering these payments or services, including self-insured and self-funded plans.

The Bill further seeks to clarify that a policy may not be limited based solely on an applicant's eligibility for Medicaid (Medical Assistance). This is accomplished by prohibiting an insurer from considering Medicaid eligibility as a rateable or declinable condition.

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Attachment 4

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PROPOSED AGENCY LEGISLATION
3 RS 0028
Medicaid Liens; Notice and Amount

K.S.A. 1992 Supp. 39-719a provides that the Department of SRS has a claim for medical expenses paid under the Medical Assistance programs (Medicaid and Medikan). This claim may be asserted against third parties who are liable to pay medical bills of the Medical Assistance recipient.

In pursuing claims, SRS has discovered that some recipients will attempt to settle a lawsuit with a third party without reimbursing SRS for Medical Assistance paid to providers on behalf of the injured recipient. Attorneys who represent recipients have argued that unless SRS has filed a written notice with the recipient, the recipient is under no duty to reimburse SRS for those claims.

The purpose of the first new sentence is to ensure that the lien will exist whether or not SRS has served written notice on the recipient.

Under the provisions of K.A.R. 30-5-81t through 81v, general hospitals are reimbursed for services under the Diagnosis Related Group ("DRG") reimbursement system. Because that system reimburses hospitals according to a formula based on the diagnosis of the patient rather than a set fee, occasionally SRS will reimburse the hospital more than the provider's customary charge. When there is a third party which has liability for that medical claim, SRS must have a program to collect from such third parties, under 42 C.F.R. Sec. 433.138 (10-1-90 Edition), et seq. If there is a case where third party liability has not been established at the time the claim is filed, SRS "must pay the full amount allowed under the agency's payment schedule" and seek recovery of reimbursement from the third party. 42 C.F.R. Sec. 433.139(c) and (d) (10-1-90 Edition). (Emphasis added.) SRS is responsible to pay the full federal share of the recovered money to the Health Care Finance Administration (HCFA) in accordance with 42 C.F.R. Sec. 433.140(c) (10-1-90 Edition). Insurance companies have refused to reimburse SRS the full amount paid under the DRG system. They have argued that they only have to pay the customary charges of the provider, citing common law principles.

The purpose of the second new sentence is to ensure that third parties reimburse SRS the full amount paid under the DRG system. Providers have the right to be reimbursed the full amount of the DRG system when they treat a Medical Assistance recipient, and SRS should have the right to recover that full amount when they have initially paid the claim and are seeking reimbursement from a liable third party.

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Attachment 5

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PROPOSED AGENCY LEGISLATION

3 RS 0051

Medicaid Eligibility; Disclaimers of Inheritances Prohibited

Under K.A.R. 30-4-39(e), Medical Assistance recipients must meet their own needs insofar as they are capable. K.A.R. 30-4-55(e) and (f) provide that the client must cooperate with the agency in obtaining resources, and particularly third party resources for medical services. Under federal law, Medicaid is to be the payor of last resort (42 U.S.C. Sec. 1396b[o]). Further, Medicaid rules provide that Medical Assistance recipients or applicants who transfer resources for inadequate consideration may be ineligible for up to 30 months from receiving nursing facility coverage under their medical card. Under Kansas law, people who stand to inherit money from a will may disclaim their interest in the inheritance.

The current policy of SRS is to consider a client who disclaims an inheritance ineligible due to having transferred a resource. Some states have, through legislation, declared that disclaimers will not serve to make a client eligible for medical assistance. As one example of a state which has decided this matter through case law, the New York Supreme Court, Appellate Division declared that disclaimers were the same as transfers. In re Scrivani, 455 N.Y.S.2d 505 (1982). However, there is no known Kansas case law on point.

The current SRS policy of finding ineligibility due to disclaimers is presently under attack in Court by a claim that it is contrary to Kansas common law. The purpose of this bill is to codify current SRS policy and to ensure that Medical Assistance recipients and applicants do not divert resources from being available to cover nursing facility care by signing a disclaimer of an inheritance.

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Attachment 6