

## SENATE BILL No. 497

By Committee on Judiciary

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AN ACT concerning medical assistance; concerning the repayment thereof; creating and imposing a lien on real property of certain recipients of medical assistance; making certain transfers of property voidable; amending K.S.A. 39-709 and repealing the existing section.

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

Section 1. K.S.A. 39-709 is hereby amended to read as follows: 39-709. (a) *General eligibility requirements for assistance for which federal moneys are expended.* Subject to the additional requirements below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the department of social and rehabilitation services under which federal moneys are expended, the secretary of social and rehabilitation services shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted to the United States and who is residing in the state of Kansas.

(b) *Assistance to families with dependent children.* Assistance may be granted under this act to any dependent child, or relative, subject to the

1 general eligibility requirements as set out in subsection (a), who resides  
2 in the state of Kansas or whose parent or other relative with whom the  
3 child is living resides in the state of Kansas. Such assistance shall be known  
4 as aid to families with dependent children. Where husband and wife are  
5 living together both shall register for work under the program require-  
6 ments for aid to families with dependent children in accordance with  
7 criteria and guidelines prescribed by rules and regulations of the  
8 secretary.

9 (c) *Aid to families with dependent children; assignment of support*  
10 *rights and limited power of attorney.* By applying for or receiving aid to  
11 families with dependent children such applicant or recipient shall be  
12 deemed to have assigned to the secretary on behalf of the state any ac-  
13 crued, present or future rights to support from any other person such  
14 applicant may have in such person's own behalf or in behalf of any other  
15 family member for whom the applicant is applying for or receiving aid.  
16 In any case in which an order for child support has been established and  
17 the legal custodian and obligee under the order surrenders physical cus-  
18 tody of the child to a caretaker relative without obtaining a modification  
19 of legal custody and support rights on behalf of the child are assigned  
20 pursuant to this section, the surrender of physical custody and the as-  
21 signment shall transfer, by operation of law, the child's support rights  
22 under the order to the secretary on behalf of the state. Such assignment  
23 shall be of all accrued, present or future rights to support of the child  
24 surrendered to the caretaker relative. The assignment of support rights  
25 shall automatically become effective upon the date of approval for or  
26 receipt of such aid without the requirement that any document be signed  
27 by the applicant, recipient or obligee. By applying for or receiving aid to  
28 families with dependent children, or by surrendering physical custody of  
29 a child to a caretaker relative who is an applicant or recipient of such  
30 assistance on the child's behalf, the applicant, recipient or obligee is also  
31 deemed to have appointed the secretary, or the secretary's designee, as  
32 an attorney in fact to perform the specific act of negotiating and endorsing  
33 all drafts, checks, money orders or other negotiable instruments repre-  
34 senting support payments received by the secretary in behalf of any per-  
35 son applying for, receiving or having received such assistance. This limited  
36 power of attorney shall be effective from the date the secretary approves  
37 the application for aid and shall remain in effect until the assignment of  
38 support rights has been terminated in full.

39 (d) *Eligibility requirements for general assistance, the cost of which*  
40 *is not shared by the federal government.* (1) General assistance may be  
41 granted to eligible persons who do not qualify for financial assistance in  
42 a program in which the federal government participates and who satisfy  
43 the additional requirements prescribed by or under this subsection (d).

1 (A) To qualify for general assistance in any form a needy person must  
2 have insufficient income or resources to provide a reasonable subsistence  
3 compatible with decency and health and, except as provided for transi-  
4 tional assistance, be a member of a family in which a minor child or a  
5 pregnant woman resides or be unable to engage in employment. The  
6 secretary shall adopt rules and regulations prescribing criteria for estab-  
7 lishing when a minor child may be considered to be living with a family  
8 and whether a person is able to engage in employment, including such  
9 factors as age or physical or mental condition. Eligibility for general as-  
10 sistance, other than transitional assistance, is limited to families in which  
11 a minor child or a pregnant woman resides or to an adult or family in  
12 which all legally responsible family members are unable to engage in  
13 employment. Where a husband and wife are living together the combined  
14 income or resources of both shall be considered in determining the eli-  
15 gibility of either or both for such assistance unless otherwise prohibited  
16 by law. The secretary in determining need of any applicant for or recipient  
17 of general assistance shall not take into account the financial responsibility  
18 of any individual for any applicant or recipient of general assistance unless  
19 such applicant or recipient is such individual's spouse or such individual's  
20 minor child or a minor stepchild if the stepchild is living with such indi-  
21 vidual. In determining the need of an individual, the secretary may pro-  
22 vide for income and resource exemptions.

23 (B) To qualify for general assistance in any form a needy person must  
24 be a citizen of the United States or an alien lawfully admitted to the  
25 United States and must be residing in the state of Kansas.

26 (2) General assistance in the form of transitional assistance may be  
27 granted to eligible persons who do not qualify for financial assistance in  
28 a program in which the federal government participates and who satisfy  
29 the additional requirements prescribed by or under this subsection (d),  
30 but who do not meet the criteria prescribed by rules and regulations of  
31 the secretary relating to inability to engage in employment or are not a  
32 member of a family in which a minor or a pregnant woman resides.

33 (3) In addition to the other requirements prescribed under this sub-  
34 section (d), the secretary shall adopt rules and regulations which establish  
35 community work experience program requirements for eligibility for the  
36 receipt of general assistance in any form and which establish penalties to  
37 be imposed when a work assignment under a community work experience  
38 program requirement is not completed without good cause. The secretary  
39 may adopt rules and regulations establishing exemptions from any such  
40 community work experience program requirements. A first time failure  
41 to complete such a work assignment requirement shall result in ineligi-  
42 bility to receive general assistance for a period fixed by such rules and  
43 regulations of not more than three calendar months. A subsequent failure

1 to complete such a work assignment requirement shall result in a period  
2 fixed by such rules and regulations of ineligibility of not more than six  
3 calendar months.

4 (4) If any person is found guilty of the crime of theft under the pro-  
5 visions of K.S.A. 39-720, and amendments thereto, such person shall  
6 thereby become forever ineligible to receive any form of general assis-  
7 tance under the provisions of this subsection (d) unless the conviction is  
8 the person's first conviction under the provisions of K.S.A. 39-720, and  
9 amendments thereto, or the law of any other state concerning welfare  
10 fraud. First time offenders convicted of a misdemeanor under the pro-  
11 visions of such statute shall become ineligible to receive any form of  
12 general assistance for a period of 12 calendar months from the date of  
13 conviction. First time offenders convicted of a felony under the provisions  
14 of such statute shall become ineligible to receive any form of general  
15 assistance for a period of 60 calendar months from the date of conviction.  
16 If any person is found guilty by a court of competent jurisdiction of any  
17 state other than the state of Kansas of a crime involving welfare fraud,  
18 such person shall thereby become forever ineligible to receive any form  
19 of general assistance under the provisions of this subsection (d) unless  
20 the conviction is the person's first conviction under the law of any other  
21 state concerning welfare fraud. First time offenders convicted of a mis-  
22 demeanor under the law of any other state concerning welfare fraud shall  
23 become ineligible to receive any form of general assistance for a period  
24 of 12 calendar months from the date of conviction. First time offenders  
25 convicted of a felony under the law of any other state concerning welfare  
26 fraud shall become ineligible to receive any form of general assistance for  
27 a period of 60 calendar months from the date of conviction.

28 (e) *Requirements for medical assistance for which federal moneys or*  
29 *state moneys or both are expended.* When the secretary has adopted a  
30 medical care plan under which federal moneys or state moneys or both  
31 are expended, medical assistance in accordance with such plan shall be  
32 granted to any person who is a citizen of the United States or who is an  
33 alien lawfully admitted to the United States and who is residing in the  
34 state of Kansas, whose resources and income do not exceed the levels  
35 prescribed by the secretary. In determining the need of an individual, the  
36 secretary may provide for income and resource exemptions and protected  
37 income and resource levels. Resources from inheritance shall be counted.  
38 A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amend-  
39 ments thereto, shall constitute a transfer of resources. The secretary shall  
40 exempt principal and interest held in irrevocable trust pursuant to sub-  
41 section (c) of K.S.A. 16-303, and amendments thereto, from the eligibility  
42 requirements of applicants for and recipients of medical assistance. Such  
43 assistance shall be known as medical assistance.

1 (f) *Eligibility for medical assistance of resident receiving medical care*  
2 *outside state.* A person who is receiving medical care including long-term  
3 care outside of Kansas whose health would be endangered by the post-  
4 ponement of medical care until return to the state or by travel to return  
5 to Kansas, may be determined eligible for medical assistance if such in-  
6 dividual is a resident of Kansas and all other eligibility factors are met.  
7 Persons who are receiving medical care on an ongoing basis in a long-  
8 term medical care facility in a state other than Kansas and who do not  
9 return to a care facility in Kansas when they are able to do so, shall no  
10 longer be eligible to receive assistance in Kansas unless such medical care  
11 is not available in a comparable facility or program providing such medical  
12 care in Kansas. For persons who are minors or who are under guardi-  
13 anship, the actions of the parent or guardian shall be deemed to be the  
14 actions of the child or ward in determining whether or not the person is  
15 remaining outside the state voluntarily.

16 (g) *Medical assistance; assignment of rights to medical support and*  
17 *limited power of attorney; recovery from estates of deceased recipients.*

18 (1) Except as otherwise provided in K.S.A. 39-786 and 39-787, and  
19 amendments thereto, or as otherwise authorized on and after September  
20 30, 1989, under section 303 and amendments thereto of the federal med-  
21 icare catastrophic coverage act of 1988, whichever is applicable, by ap-  
22 plying for or receiving medical assistance under a medical care plan in  
23 which federal funds are expended, any accrued, present or future rights  
24 to support and any rights to payment for medical care from a third party  
25 of an applicant or recipient and any other family member for whom the  
26 applicant is applying shall be deemed to have been assigned to the sec-  
27 retary on behalf of the state. The assignment shall automatically become  
28 effective upon the date of approval for such assistance without the re-  
29 quirement that any document be signed by the applicant or recipient. By  
30 applying for or receiving medical assistance the applicant or recipient is  
31 also deemed to have appointed the secretary, or the secretary's designee,  
32 as an attorney in fact to perform the specific act of negotiating and en-  
33 dorsing all drafts, checks, money orders or other negotiable instruments,  
34 representing payments received by the secretary in behalf of any person  
35 applying for, receiving or having received such assistance. This limited  
36 power of attorney shall be effective from the date the secretary approves  
37 the application for assistance and shall remain in effect until the assign-  
38 ment has been terminated in full. The assignment of any rights to pay-  
39 ment for medical care from a third party under this subsection shall not  
40 prohibit a health care provider from directly billing an insurance carrier  
41 for services rendered if the provider has not submitted a claim covering  
42 such services to the secretary for payment. Support amounts collected on  
43 behalf of persons whose rights to support are assigned to the secretary

1 only under this subsection and no other shall be distributed pursuant to  
2 subsection (d) of K.S.A. 39-756, and amendments thereto, except that  
3 any amounts designated as medical support shall be retained by the sec-  
4 retary for repayment of the unreimbursed portion of assistance. Amounts  
5 collected pursuant to the assignment of rights to payment for medical  
6 care from a third party shall also be retained by the secretary for repay-  
7 ment of the unreimbursed portion of assistance.

8 (2) The amount of any medical assistance paid after June 30, 1992,  
9 under the provisions of subsection (e) is (A) a claim against the property  
10 or any interest therein belonging to and a part of the estate of any de-  
11 ceased recipient or, if there is no estate, the estate of the surviving spouse,  
12 if any, shall be charged for such medical assistance paid to either or both,  
13 and (B) a claim against any funds of such recipient or spouse in any  
14 account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-  
15 5829, and amendments thereto. There shall be no recovery of medical  
16 assistance correctly paid to or on behalf of an individual under subsection  
17 (e) except after the death of the surviving spouse of the individual, if any,  
18 and only at a time when the individual has no surviving child who is under  
19 21 years of age or is blind or permanently and totally disabled. Transfers  
20 of real or personal property by recipients of medical assistance without  
21 adequate consideration are voidable and may be set aside. Except where  
22 there is a surviving spouse, or a surviving child who is under 21 years of  
23 age or is blind or permanently and totally disabled, the amount of any  
24 medical assistance paid under subsection (e) is a claim against the estate  
25 in any guardianship or conservatorship proceeding. The monetary value  
26 of any benefits received by the recipient of such medical assistance under  
27 long-term care insurance, as defined by K.S.A. 40-2227, and amendments  
28 thereto, shall be a credit against the amount of the claim provided for  
29 such medical assistance under this subsection (g). The secretary is au-  
30 thorized to enforce each claim provided for under this subsection (g).  
31 The secretary shall not be required to pursue every claim, but is granted  
32 discretion to determine which claims to pursue. All moneys received by  
33 the secretary from claims under this subsection (g) shall be deposited in  
34 the social welfare fund. The secretary may adopt rules and regulations  
35 for the implementation and administration of the medical assistance re-  
36 covery program under this subsection (g).

37 (3) *The secretary of social and rehabilitation services or the secre-*  
38 *tary's designee is authorized to file and enforce a lien against the real*  
39 *property of a recipient of medical assistance in certain situations. This*  
40 *lien is for payments of medical assistance made by the department of social*  
41 *and rehabilitation services to the recipient who is an inpatient in a nursing*  
42 *home or other medical institution. Such lien may be filed only after notice*  
43 *and an opportunity for a hearing has been given. Such lien may be en-*

1 forced only upon competent medical testimony that the recipient cannot  
2 reasonably be expected to be discharged and returned home. A one-year  
3 period of compensated inpatient care at a nursing home, nursing homes  
4 or other medical institution shall constitute a determination by the de-  
5 partment of social and rehabilitation services that the recipient cannot  
6 reasonably be expected to be discharged and returned home. To return  
7 home means the recipient leaves the nursing or medical facility and resides  
8 in the home on which the lien has been placed for a period of at least 90  
9 days without being readmitted as an inpatient to a nursing or medical  
10 facility. The amount of the lien shall be for the amount of assistance paid  
11 by the department of social and rehabilitation services after the expiration  
12 of one year from the date the recipient became eligible for compensated  
13 inpatient care at a nursing home, nursing homes or other medical insti-  
14 tution until the time of the filing of the lien and for any amount paid  
15 thereafter for such medical assistance to the recipient.

16 (4) The lien filed by the secretary or the secretary's designee for med-  
17 ical assistance correctly received may be enforced before or after the death  
18 of the recipient. However, it may be enforced only:

- 19 (A) After the death of the surviving spouse of the recipient;  
20 (B) when there is no child of the recipient, natural or adopted, who  
21 is 20 years of age or less residing in the home;  
22 (C) when there is no adult child of the recipient, natural or adopted,  
23 who is blind or disabled residing in the home; or  
24 (D) when no brother or sister of the recipient is lawfully residing in  
25 the home, who has resided there for at least one year immediately before  
26 the date of the recipient's admission to the nursing or medical facility,  
27 and has resided there on a continuous basis since that time.

28 (5) The lien remains on the property even after a transfer of the title  
29 by conveyance, sale, succession, inheritance or will unless one of the fol-  
30 lowing events occur:

- 31 (A) The lien is satisfied. The recipient, the heirs, personal represen-  
32 tative or assigns of the recipient may discharge such lien at any time by  
33 paying the amount of the lien to the secretary or the secretary's designee;  
34 (B) the value of the real property is consumed by the lien, at which  
35 time the secretary or the secretary's designee may force the sale for the  
36 real property to satisfy the lien; or  
37 (C) after a lien is filed against the real property, it will be dissolved  
38 if the recipient leaves the nursing or medical facility and resides in the  
39 property to which the lien is attached for a period of more than 90 days  
40 without being readmitted as an inpatient to a nursing or medical facility,  
41 even though there may have been no reasonable expectation that this  
42 would occur. If the recipient is readmitted to a nursing or medical facility  
43 during this period, and does return home after being released, another

1 90 days must be completed before the lien can be dissolved.

2 (h) *Placement under code for care of children or juvenile offenders*  
3 *code; assignment of support rights and limited power of attorney.* In any  
4 case in which the secretary of social and rehabilitation services pays for  
5 the expenses of care and custody of a child pursuant to K.S.A. 38-1501  
6 *et seq.* or 38-1601 *et seq.*, and amendments thereto, including the ex-  
7 penses of any foster care placement, an assignment of all past, present  
8 and future support rights of the child in custody possessed by either  
9 parent or other person entitled to receive support payments for the child  
10 is, by operation of law, conveyed to the secretary. Such assignment shall  
11 become effective upon placement of a child in the custody of the secretary  
12 or upon payment of the expenses of care and custody of a child by the  
13 secretary without the requirement that any document be signed by the  
14 parent or other person entitled to receive support payments for the child.  
15 When the secretary pays for the expenses of care and custody of a child  
16 or a child is placed in the custody of the secretary, the parent or other  
17 person entitled to receive support payments for the child is also deemed  
18 to have appointed the secretary, or the secretary's designee, as attorney  
19 in fact to perform the specific act of negotiating and endorsing all drafts,  
20 checks, money orders or other negotiable instruments representing sup-  
21 port payments received by the secretary on behalf of the child. This lim-  
22 ited power of attorney shall be effective from the date the assignment to  
23 support rights becomes effective and shall remain in effect until the as-  
24 signment of support rights has been terminated in full.

25 (i) No person who voluntarily quits employment or who is fired from  
26 employment due to gross misconduct as defined by rules and regulations  
27 of the secretary or who is a fugitive from justice by reason of a felony  
28 conviction or charge shall be eligible to receive public assistance benefits  
29 in this state. Any recipient of public assistance who fails to timely comply  
30 with monthly reporting requirements under criteria and guidelines pre-  
31 scribed by rules and regulations of the secretary shall be subject to a  
32 penalty established by the secretary by rules and regulations.

33 (j) If the applicant or recipient of aid to families with dependent chil-  
34 dren is a mother of the dependent child, as a condition of the mother's  
35 eligibility for aid to families with dependent children the mother shall  
36 identify by name and, if known, by current address the father of the  
37 dependent child except that the secretary may adopt by rules and regu-  
38 lations exceptions to this requirement in cases of undue hardship. Any  
39 recipient of aid to families with dependent children who fails to cooperate  
40 with requirements relating to child support enforcement under criteria  
41 and guidelines prescribed by rules and regulations of the secretary shall  
42 be subject to a penalty established by the secretary by rules and regula-  
43 tions which penalty shall progress to ineligibility for the family after three



1 months of noncooperation.

2 (k) By applying for or receiving child care benefits or food stamps,  
3 the applicant or recipient shall be deemed to have assigned, pursuant to  
4 K.S.A. 39-756 and amendments thereto, to the secretary on behalf of the  
5 state only accrued, present or future rights to support from any other  
6 person such applicant may have in such person's own behalf or in behalf  
7 of any other family member for whom the applicant is applying for or  
8 receiving aid. The assignment of support rights shall automatically be-  
9 come effective upon the date of approval for or receipt of such aid without  
10 the requirement that any document be signed by the applicant or recip-  
11 ient. By applying for or receiving child care benefits or food stamps, the  
12 applicant or recipient is also deemed to have appointed the secretary, or  
13 the secretary's designee, as an attorney in fact to perform the specific act  
14 of negotiating and endorsing all drafts, checks, money orders or other  
15 negotiable instruments representing support payments received by the  
16 secretary in behalf of any person applying for, receiving or having received  
17 such assistance. This limited power of attorney shall be effective from the  
18 date the secretary approves the application for aid and shall remain in  
19 effect until the assignment of support rights has been terminated in full.  
20 An applicant or recipient who has assigned support rights to the secretary  
21 pursuant to this subsection shall cooperate in establishing and enforcing  
22 support obligations to the same extent required of applicants for or re-  
23 cipients of aid to families with dependent children.

24 Sec. 2. K.S.A. 39-709 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its  
26 publication in the statute book.

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