

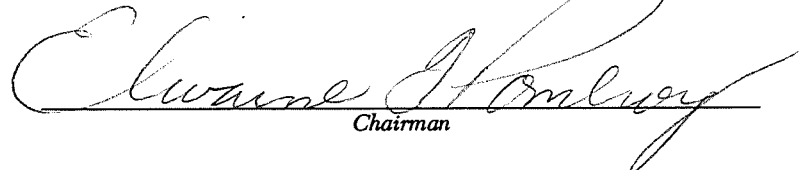
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m. ~~p. m.~~, on February 6, 19 79.

All members were present except: Senator Hess

The next meeting of the Committee will be held at 10:00 a. m. ~~p. m.~~ on February 7, 19 79.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxxx 19 xx were considered, corrected and approved.~~



Cluane A. Homburg  
Chairman

The conferees appearing before the Committee were:

- William R. Carpenter - District Judges Association
- Senator Wint Winter
- Dr. Robert P. Hudson - K.U. Medical Center
- Vincent DeCoursey - Kansas Catholic Conference
- Pat Goodson - Right to Life Affiliates of Kansas

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Wayne Morris - Legislative Research Department

Senator Gaines discussed with the committee proposed legislation to amend the Kansas Inheritance Tax Laws passed last year. A copy of the material he distributed is attached hereto. Senator Simpson stated that a bill was in the process of being drafted for introduction by the Assessment and Taxation Committee. Senator Gaines moved that this committee introduce legislation dealing with these issues; Senator Parrish seconded the motion. During committee discussion, Senator Simpson stated that he hoped that the bill would be referred to the Assessment and Taxation Committee; Senator Gaines said he had no objection to it being referred to that committee. The motion carried.

Judge William Randolph Carpenter discussed with the committee a proposal to amend the State District Judges Retirement Program. Presently, judges contribute 6% of their salary towards retirement, and the state contributes 19.5% to the retirement. During their first 20 years, their retirement benefits increase each year; however, after they have served 20 years, they receive no further increase in retirement benefits, other than receiving the benefit of any increases in salary because their retirement is based upon their five highest annual salaries. He recommended this committee introduce legislation which would reduce the judges contribution from 6% of their annual salary to 3% after they had served 20 years. Senator Parrish moved that this committee introduce such a bill to be referred to the appropriate committee; Senator Berman seconded the motion, and the motion carried.

Continued -

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 6, 1979.

Senate Bill No. 99 - Termination of life-sustaining procedures in terminal cases. The author of the bill, Senator Winter, testified in support of it. He explained the bill deals with the concept of self-determination of medical procedures; it sometimes has been referred to as "death with dignity." He stated the bill would authorize each of us to have more control over the manner in which we meet our death and eliminate the possibility of members of the family or medical practitioners not carrying out the wishes an individual may have concerning artificially prolonging their lives. He explained each section of the bill and distributed to the committee proposed amendments to the bill; a copy is attached hereto. He stated this bill does not affect someone who does not execute a signed document. Committee discussion with him followed.

Doctor Hudson testified that he sees the bill in a moral light. It provides some form of autonomy and protects medical practitioners in honoring that autonomy. He feels that the patient should have the right to make such decisions, not the family of the patient, and not the physicians. He stated the bill would provide the opportunity of making a declaration as to how a person would be treated during a terminal illness, and would permit that determination to be made before the dieing process was reached. He stated it is good that the bill does not have a precise definition of "terminal illness." He stated the bill does not deal with the matter of someone finding themselves in a terminal condition who has not executed a document. He thinks it is wise to begin modestly in this area. He stated that he originally had some problem with the word "euthanasia" in line 197, because it has been equated with mercy killing. He stated that euthanasia is divided into two concepts; active and passive. He stated the word could be dropped from the bill without changing anything.

Vincent DeCoursey spoke in opposition to the bill. A copy of his statement is attached hereto. He stated that the bill takes away the ethical and moral process of dieing. He said it is not right for the law to enter into the process of dieing. Committee discussion with him followed.

Pat Goodson testified in opposition to the bill. She stated she spoke for more than 50 chapters of the Right to Life Organization. She said they are opposed for three reasons: the bill is unnecessary, it is intrusion of the law where it does not belong, and it is extremely dangerous. This bill is considered the first step toward euthanasia. Committee discussion with her followed.

The meeting adjourned.

These minutes were read and approved  
by the committee on 2-21-79.

2-6-79

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Alicia Truman	214 Nebraska	Bishop Ward H.S.
Jamie Kenneman	1436 Byron #33	Washburn Nursing Students
Rosemary Kuhlman	1319 W 5th	Washburn Reg Student
Max Moses	Topeka	KC DAB
William J. Cyprien	Topeka	District Judges Assn
Tracey Strader	Topeka	NASLU
James Hall	T-Town	WREN
Sister Judith Suter	229 So 9th K.C., Ks.	Diocesan Services for Aging
John M. Toplikar	Olathe, Ks.	Eastern Kansas RTL
Stephen F. Willy	Olathe, Ks	Eastern Kansas RTL
James Downing	Kansas City, Mo	Kansas Catholic Conference
Nolan Kressman	K.C. Ks	Catholic Respect Life Committee
JIMMY SAUBERTER	KMS	TOPEKA
Robert P. Hudson	KU Med Cen	KMS
Wint Winter	Ks Senate	ditto
Pat Goodson	Right To Life -	
Don Burt	AP	
Mrs. Jane Clark	6942 Floyd Cir, Ks. 66204	Pro Family & Pro America
Bob & Beverly	Topeka	
Thom Cat Pilla	Right To Life P.O. Box 1354 Merriam, Ks.	
ELIJAH BUJARSKI	East Fairway League of Women Voters 732 Eastern Wichita, Pa	
Johna Lewis	Wichita	Historical Society
Merrin C. Umbotte	Lawrence	KCMS
William S. Kennedy	Shawnee, Ks.	

WOODWARD, WOODWARD & KING

R. C. WOODWARD  
H. PAULINE WOODWARD  
RICHARD C. KING

ATTORNEYS AND COUNSELLORS AT LAW

128 WEST CENTRAL AVE.

P. O. Box 111

EL DORADO, KANSAS 67042

AREA CODE 316  
TEL. NO. 321-2900

December 4, 1978

Senator Franklin D. Gaines  
Attorney at Law  
Suite 3, 5th Avenue Building  
Augusta, Kansas 67010

Dear Frank:

No doubt Morris Moon has gotten in touch with you, but in case he did not, I enclose a report to the Title Standards Committee of the Kansas Bar Association. As you are aware, the last session of the Kansas Legislature really did a superlative job on screwing up the Kansas inheritance tax. Apparently there are no lawyers left on the committees of the Kansas Legislature who practice any real estate law, or if there are, they do not attend the committee hearings that are studying legislation affecting the titles to real estate. As you can well realize, it is going to be necessary for the Legislature to do something to relieve the present intolerable tax lien situation.

It seems to me that Mr. Jordan's suggestions should be given careful attention by the Legislature.

As you know, practically all my business any more is in connection with examining titles to real estate. I would strongly recommend that the Kansas Legislature follow the lead of the Federal Government and continue the former statute which eliminated the lien at the end of ten years. In any event, if it is felt that it is necessary to continue the lien beyond this period, a formal statement should be filed by the Tax Department in the county where the real estate is located, informing the public of the lien claim.

Frank, I am really serious that this situation should be remedied as the first order of business of the coming session of the Legislature. If it is not, I am very much afraid that a very chaotic condition is going to develop in the real estate market which may have a very depressing effect on the Kansas economy.

I am sure with your experience and influence in the Kansas Legislature, you can get some action on this problem.

With warm personal regards, I am

Sincerely yours,

WOODWARD, WOODWARD & KING

R. C. Woodward

RCW:ah  
cc: Morris Moon

MORRIS MOON  
ATTORNEY AT LAW  
103 EAST FIFTH AVENUE  
P. O. BOX 607  
AUGUSTA, KANSAS 67010  
(316) 775-6941

December 20, 1978

Franklin D. Gaines  
116 East Fifth  
Augusta, Kansas 67010

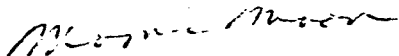
Dear Frank:

I enclose herein a copy of a report made on a subcommittee of the Title Standards Committee. As I told you, it is my understanding that a bill will come from a committee of which Mr. Simpson is the Chairman and presumably will be done with the assistance of the tax department. However, in talking to Mr. Jordan (who wrote the report) he has not seen any draft or received any information on that point.

The thought has occurred to me that paragraphs numbered one and two are the real major problems that should be solved on an emergency basis. It would be my suggestion therefore that legislation be drafted to cover these two points. The particular points are those relating to the effect of the lien and the limitation period. While some of the other matters contained in this report may be desirable I have some reservations concerning the third point since I do not feel that our law is on a parallel with the Federal Government.

It was my understanding that you felt that you could submit this matter to the Revisor and have a bill drafted. I think that this might be very wise with respect to the first two points. Should you need any further information or should there be any need for any testimony, please let me know.

Very truly yours,



Morris Moon  
MM/es  
Enc.

ROY U. JORDAN  
LAWYER  
420 Commercial Street  
EMPORIA, KANSAS 66801

November 22, 1978

TO: Title Standard Committee, Kansas Bar Association

Re: Inheritance Tax law, 1978 Chapter 395

In accordance with the request of the committee at our meeting on October 13, 1978, this letter is to summarize the recommendations of the committee for changes in the inheritance tax law, as follows:

(1) The new law makes the inheritance tax lien a lien on all property of a distributee including other property of the distributee which was not received through the estate of the decedent. This provision would place a cloud on the title of nearly all real estate in Kansas and as a practical matter it would be impossible for an abstracter to determine whether such a lien existed against the owner of property who might be in the process of selling such property. Therefore, it was the consensus of the committee that for any such lien to be effective against a distributee's property which is not received from the estate of the decedent that a notice of lien should be filed in the office of Register of Deeds.

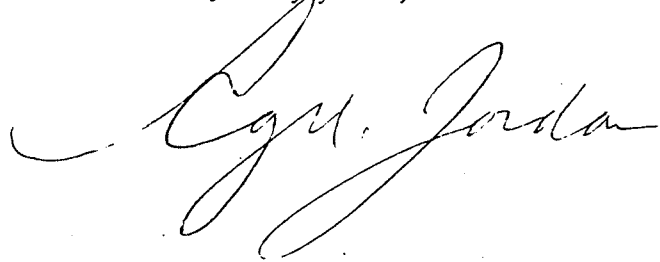
(2) K. S. A. 79-1529 is the present statute of limitations which requires that no action can be brought to recover the inheritance tax unless the action is commenced within ten years after the death of the decedent. The new law eliminates this statute of limitations. The committee felt very strongly that at the very least there should be a provision that any lien against real estate would be released at the end of a ten year period from date of death unless a formal notice of lien for inheritance taxes is filed of record.

(3) The new law conforms in some ways to the Federal Estate Tax provisions but fails to include any provisions similar to the Internal Revenue Code Section 6324. This section, for very practical reasons, releases any lien (arising solely from the death and not formally filed of record) as to certain types of property included in the estate if such property is conveyed away by the distributee for value. For instance, the title examiner has no way of knowing whether a deed in an abstract of title actually involves property conveyed away in contemplation of death which property under both federal and state law would be included in the estate for tax purposes. Under the present new State Inheritance Tax law, such property could be subject to a lien and the title examiner would have absolutely no notice of this. Therefore all real estate titles in Kansas would have a cloud on them as a result of the lien provisions. On the other hand under the Federal Section 6324, assuming the property had been conveyed away for value, such a lien would be released. Therefore there was substantial consensus of the committee that the state law should contain a provision similar to the Federal Section 6324 except perhaps this release of lien provision might not need to apply to joint tenancy property.

There are various other very serious problems in regard to the new inheritance tax law which were discussed at our meeting on October 13, 1978 but time did not permit us to determine a consensus on such problems. These problems involved the following items:

- (1) Methods of recording inheritance tax liens to give adequate notice to purchasers of property especially in the many cases in which there is no probate proceeding.
- (2) Liens on joint tenancy bank accounts to provide some protection to executors in collecting the tax from such accounts to insure that the proper distributee shall pay his proportionate share of the tax.
- (3) Clarify who may release the property of any lien in the case in which the lien has been assigned by the director to the executor.
- (4) Provide that the closing letter contain a description of the real property and that such closing letter constitute an absolute release of any lien so far as a purchaser for value is concerned.
- (5) Eliminate any lien on personal property including corporate stock which is assigned for value to a purchaser and reference is made to the Internal Revenue Code Sections 6323 and 6324(c).
- (6) Review K. S. A. 59-2251 relating to decrees of descent.
- (7) Provide more specific provisions in regard to waivers or releases of liens.

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. J. Jordan". The signature is written in dark ink and is positioned below the typed name "E. J. Jordan".

## SENATE BILL NO. \_\_\_\_\_

AN ACT amending the Kansas inheritance tax act; amending K.S.A. 1978 Supp. 79-1545, 79-1564, 79-1565, 79-1569, 79-1570, 79-1571 and 79-1576 and repealing the existing sections.

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

Section 1. K.S.A. 1978 Supp. 79-1545 is hereby amended to read as follows: 79-1545. (a) If ~~(1) the decedent was, at the time of death, a resident of the state and~~ ~~(2) the person filing the return elects the application of this section~~, the value of qualified real property shall be its value for the use under which it qualifies as qualified real property. Notwithstanding any provision of subsection (b), the value of any real property of a resident decedent used as a farm for farming purposes or used in a trade or business other than the trade or business of farming transferred to a surviving spouse shall, at the election of the person filing the return, be valued in accordance with the provisions of subsection (d) (7) or (8) of this section. The aggregate decrease in the value of qualified real property which results from the application of this section with respect to the gross estate of any decedent shall not exceed five hundred thousand dollars (\$500,000).

(b) For purposes of this section: (1) "Qualified real property" means real property located in the state which, on the date of the decedent's death, was being used for a qualified use, but only if:

(A) Fifty percent (50%) or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(i) On the date of the decedent's death, was being used for a qualified use; and



(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent (25%) or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C) of this subsection (b);

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five (5) years or more, or during any period ending prior to the date of the decedent's death there have been periods aggregating ten (10) years or more, during which:

(i) Such real property was owned by the decedent or a member of the decedent's family and used for a qualified use; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business.

(2) "Qualified use" means the devotion of the property to any of the following:

(A) Use as a farm for farming purposes; or

(B) use in a trade or business other than the trade or business of farming.

(3) "Adjusted value," for purposes of paragraph (1) of this subsection (b), means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to this section, reduced by any amounts allowable as a deduction under subsection (e) of K.S.A. 1978 Supp. 79-1559; or

(B) in the case of any real or personal property, the value of such property for purposes of this act, determined without regard to this section, reduced by any amounts allowable as a deduction in respect to such property under subsection (e) of K.S.A. 1978 Supp. 79-1559.

(c) The election under this section shall be made not later than the time prescribed by section 28 of K.S.A. 1978 Supp. 79-1504, and amendments thereto, for filing the return of tax

imposed by this act, including extensions thereof, and shall be made in such manner as the secretary shall prescribe by rules and regulations.

(d) For purposes of this section: (1) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property, or to whom such property passed, from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his or her family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) "Member of the family" means, with respect to any individual, only such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(3) In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) "Farming purposes" means:

(A) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of

animals on a farm;

(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half (1/2) of the commodity so treated; and

(C) (i) the planting, cultivating, caring for, or cutting of trees, or (ii) the preparation, other than milling, of trees for market.

(6) Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of 26 U.S.C. 1402(a) as such section existed on December 31, 1977.

(7) (A) Except as provided in subparagraph (3), the value of a farm for farming purposes shall be determined by dividing (i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual state and local real estate taxes for such comparable land, by (ii) the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation shall be made on the basis of the five (5) most recent calendar years ending before the date of the decedent's death.

(B) The formula provided by subparagraph (7)(A) shall not be used (i) where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or (ii) where the executor elects to have the value of the farm for farming purposes determined under paragraph (8).

(8) In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account

soil capacity, terrain configuration, and similar factors;

(B) The capitalization of the fair rental value of the land for farmland or closely held business purposes;

(C) Assessed land values in the state pursuant to use value appraisal for farmland or closely held business;

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price; and

(E) Any other factor which fairly values the farm or closely held business value of the property.

(9) The method elected for valuing any qualified real property under the provisions of this section shall be the same method as that elected for valuing said property for federal estate tax purposes if an election is made to value such property under the provisions of 26 U.S.C. 2032A as said section existed on December 31, 1977.

(e) The secretary shall prescribe regulations setting forth the application of this section in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business, within the meaning of subsection (c) of section 30 of K.S.A. 1978 Supp. 79-1566.

Sec. 2. K.S.A. 1978 Supp. 79-1564 is hereby amended to read as follows: 79-1564. (a) Except as hereinafter provided, the executor or administrator of the estate of every decedent whose death gives rise to a tax liability under the provisions of this act, within ~~nine--(9)~~ twelve (12) months following the death of the decedent, shall make and file in the office of the director a return on forms prepared and furnished by the secretary.

(b) In those estates in which no executor or administrator has been appointed, the deemed executor shall make and file such return. In the event there is more than one deemed executor, all deemed executors shall be jointly responsible for completing and filing one return reporting all of the assets of the estate

except as hereinafter provided.

(c) If, after exercising due diligence, the executor, administrator or deemed executor making and filing such return is unable to make a complete return as to any part of the gross estate of the decedent, such executor, administrator or deemed executor shall make and file a return reporting all information as to the estate assets, including a description thereof and the name of any person holding a legal or beneficial interest in the assets to the best of said executor's, administrator's or deemed executor's knowledge.

(d) The taxes imposed under the provisions of this act shall be paid at the expiration of ~~nine (9)~~ twelve (12) months after the death of the decedent. Such taxes shall be payable from the assets of the estate or proceeds therefrom, in order, so far as practicable, that each distributive share of the estate shall bear a just and equitable proportion of said taxes unless otherwise directed by the will of the decedent or trust agreement.

(1) The executor or administrator of the estate of every decedent who is required to file a return shall pay to the director all taxes imposed under this act. In the event the tax imposed against the shares of the decedent's estate exceed the value of the assets or the proceeds therefrom which were in the custody or control of the executor or administrator, the executor or administrator shall pay the tax imposed to the extent of the value of the amount or the proceeds therefrom within his or her custody or control and the balance of the taxes may be stayed upon application to and approval by the director. Such application shall be made at the time the return is filed upon forms prescribed by the secretary. Upon approval of such application payment of the taxes shall be stayed for a period not to exceed one (1) year and the executor or administrator shall have a lien right to proceed against the individual distributee or distributees receiving such taxable shares. ~~Said lien shall be perfected and enforceable~~ and may perfect a lien therefor under

the provisions of K.S.A. 1978 Supp. 79-1569 and amendments thereto.

(2) Except as hereinafter provided, the deemed executor or deemed executors of the estate of every decedent who are required to file a return shall pay to the director all or the taxes imposed by this act. To the extent that all deemed executors do not join in the filing of the return, the deemed executors who jointly file shall pay only that portion of the taxes representing the aggregate tax liability imposed upon the distributive shares of those so filing.

(3) where an asset not within the custody or control of an executor, administrator or deemed executor gives rise to a tax liability and said executor, administrator or deemed executor is required or has voluntarily paid such tax from the assets within said executor's, administrator's or deemed executor's custody or control, the executor, administrator or deemed executor shall have a lien right to proceed against the individual distributee receiving such share. ~~Said lien shall be perfected and enforceable~~ and may perfect a lien therefor under the provisions of K.S.A. 1978 Supp. 79-1569, and amendments thereto.

(4) whenever the executor, administrator or deemed executor is required to pay the taxes imposed upon an asset not within said executor's, administrator's or deemed executor's custody or control and pays the taxes imposed thereon from assets or proceeds therefrom of the estate within said executor's, administrator's or deemed executor's custody or control and thereafter fails to collect the taxes attributable to the distributive shares of the decedent's estate which were not within such executor's, administrator's or deemed executor's custody or control, said executor, administrator or deemed executor shall be entitled to a refund of the taxes attributable to said shares which were paid from assets or proceeds therefrom within said executor's, administrator's or deemed executor's custody or control upon application to the director. The application for refund shall be filed on forms prescribed by the

secretary within the time allowed for refunds pursuant to K.S.A. 1978 Supp. 79-1574. Upon being satisfied that the executor, administrator or deemed executor has exercised due diligence in attempting to recover the taxes attributable to the distributive shares of the decedent's estate which were not within such executor's, administrator's or deemed executor's custody or control, the director shall refund the same.

(5) ~~Whenever the taxes as shown to be due on the return or any additional taxes assessed by the director have been paid by an executor, administrator or deemed executor,~~ The director shall issue his or her receipt acknowledging payment of said taxes whenever the taxes as shown to be due on the return or any additional taxes assessed by the director have been paid by an executor, administrator or deemed executor and (A) such executor or administrator has requested to be subrogated to the state's right to proceed in collecting the tax against a distributee; or (B) such executor or administrator has received a stay of payment from the director. ~~Such receipt shall be issued solely for the purpose of subrogating and assigning the lien or right to proceed against a distributee which the state has to such executor, administrator or deemed executor pursuant to K.S.A. 1978 Supp. 79-1569, and~~ Such a receipt shall be issued only under circumstances described in clauses (A) or (B) of this subsection (5) and shall not constitute evidence that a final determination of taxes pursuant to K.S.A. 1978 Supp. 79-1571, and amendments thereto, has been made.

(e) If the taxes contemplated by this act are not paid when due, interest at the legal rate shall be charged and collected commencing at the time the same become payable. When the filing of the return is delayed beyond ~~nine (9)~~ twelve (12) months after the death of the decedent and the director finds that such delay was due to the inability of the executor, administrator or deemed executor to determine the distributive shares of an estate or the proper recipients thereof, or to litigation, interest shall commence at the time the return is filed.

(f) At the election of the executor, administrator or deemed executor, the taxes imposed by this act may be determined by the director. Such election shall be made by filing a return disclosing all information necessary for the determination of the taxes imposed by this act. Upon receipt of all necessary information, the director shall determine the taxes due and owing and shall notify the executor, administrator or deemed executor of the tax liability by registered or certified mail. Notwithstanding any election made pursuant to this section, the taxes shall be due and payable at the same time and in the same manner as if the taxes had been determined by the executor, administrator or deemed executor. If the election pursuant to this subsection is made before the expiration of the ~~nine (9)~~ twelve (12) month period after the death of the decedent, interest shall be charged and collected commencing ten (10) days after notice of the tax liability has been received by the executor, administrator or deemed executor, or at the expiration of the ~~nine (9)~~ twelve (12) month period after the decedent's death, whichever is later. If the election pursuant to this subsection is not timely made and the director shall find that the delay was not due to the circumstances set forth in subsection (e), interest shall be charged and collected commencing at the expiration of the ~~nine (9)~~ twelve (12) month period after the decedent's death.

Sec. 3. K.S.A. 1978 Supp. 79-1565 is hereby amended to read as follows: 79-1565. The executor, administrator or deemed executor of any decedent, the shares of whose estate are not taxable under the provisions of this act, may obtain a determination of the director that no tax liability exists thereon by filing an affidavit with the director stating that said shares of the decedent's estate are not taxable. Any such affidavit shall be in such form as prescribed by the secretary to show the condition of the estate and the shares thereof to the extent that the director may make such determination. Upon being satisfied of the information contained in said affidavit, the



director shall issue his or her certificate that the shares of the decedent's estate are not taxable under the provisions of this act to the person making said affidavit, and when said estate is involved in ~~probate~~ proceedings before a district court, to the judge of said court for recording in full in the journal of said court. Such certificate shall contain a description of all real property and, if there are no court proceedings pending that are known to the director, the certificate shall be filed in the register of deeds in each county where any such real property is located.

Sec. 4. K.S.A. 1978 Supp. 79-1569 is hereby amended to read as follows: 79-1569. (a) Subject to the provisions of subsection (b), property of which a decedent died seized or possessed, subject to the taxes imposed by this act, in whatever form of investment it may happen to be, ~~and all property acquired in substitution therefor, or the proceeds thereof in the event of disposition of such property,~~ shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any property after the same has been sold or disposed of for value by the executors or administrators in accordance with law. ~~Said lien shall attach to property received by any distributee by reason of the death of the decedent, or the proceeds therefrom in the event of a disposition of such property, and all other real and personal property in which such distributee holds an interest for payment of all taxes and interest which are or may become due on such property received by such distributee.~~ That portion of the decedent's property which is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. The lien on any property subject to the inheritance tax act by virtue of the provisions of this subsection shall be divested after ten (10) years from the date of the decedent's death.

~~(b) In all actions brought to enforce any lien for unpaid~~

~~taxes and interest imposed by this act, said lien shall first be satisfied from the property received by such distributee by reason of the death of the decedent or the proceeds therefrom. To the extent such property or the proceeds therefrom is insufficient to completely satisfy the lien, any and all real and personal property in which such distributee holds an interest shall be used in satisfaction of the lien.~~

(b) If the taxes imposed by the inheritance tax act are not paid when due, then the spouse, transferee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under K.S.A. 1978 Supp. 79-1548 to 79-1553, inclusive, and 79-1555 to 79-1557, inclusive, to the extent of the value of such property at the time of the decedent's death shall be personally liable for such tax. Any part of such property transferred by, or transferred by a transferee of, such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary to a purchaser or holder of a security interest shall be divested of the lien provided for in subsection (a) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

(c) Upon issuance of a receipt for taxes paid pursuant to K.S.A. 1978 Supp. 79-1564(d)(5), and amendments thereto, to an executor, administrator or deemed executor who has paid the taxes imposed by this act or an approved application for stay filed pursuant to K.S.A. 1978 Supp. 79-1564(d)(1), and amendments thereto, said executor, administrator or deemed executor shall be subrogated to ~~any lien or~~ the right to proceed against any real or personal property in which a distributee has an interest which the state might have had. The issuance of a receipt for taxes paid by the director after payment of the taxes or approved

application for stay shall be deemed an assignment by the state to the executor, administrator or deemed executor of the ~~lien--or~~ right to proceed against the real and personal property in which a distributee has an interest and shall be conclusive evidence thereof. ~~Such A lien shall remain effective only if arise and be perfected to aid the executor or administrator in his or her right to proceed against property of a distributee only if the executor, administrator or deemed executor files a notice of lien with the register of deeds of--the--county--of--the--decedent's residence--or.~~ The lien shall be effective only against property of a distributee located in the county where the notice of lien is filed. Such notice of lien may be filed in any county wherein any real or personal property in which the distributee has an interest is located ~~within ninety-(90)-days-of-the-issuance-of-the-receipt-for-taxes-paid-or-the-approved-application-for--stay.~~ The notice of lien shall be made on forms prescribed by the secretary. Upon satisfaction of the lien, a release shall be issued by such executor, administrator or deemed executor on forms prescribed by the secretary.

(d) In the event the executor, administrator or deemed executor has requested and received a refund of taxes paid pursuant to K.S.A. 1978 Supp. 79-1564(d)(4), and amendments thereto. or whenever the executor, administrator or deemed executor fails to collect the tax pursuant to K.S.A. 1978 Supp. 79-1564(d)(1), and amendments thereto. or is not required to pay the tax imposed by this act or the taxes imposed by this act are not paid at the expiration of ~~nine-(9)~~ twelve (12) months after the death of the decedent, the director shall enforce his or her lien by the issuance of a warrant under his or her hand and official seal, directed to the sheriff of any county of the state, commanding such sheriff to levy upon and sell the real and personal property of the distributee found within his or her county for the payment of the amount thereof, with the added interest and the cost of executing the warrant, and to return such warrant to the director and pay to him or her the money

collected by virtue thereof not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his or her county a copy thereof, and thereupon the clerk shall enter in the judgment docket in appropriate columns, the name of the distributee named in the warrant, the amount of the tax or portion thereof and interest for which the warrant is issued and the date such copy is filed. The amount of such warrant so docketed shall thereupon become a lien upon the title to, and interest in, the real property of the distributee against whom it is issued in the same manner, as a judgment duly docketed in the office of such clerk. The sheriff shall proceed in the same manner and with like effect as prescribed by law with respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his or her services to be collected in the same manner.

The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in said court. In the discretion of the director a warrant of like terms, force and effect may be issued and directed to any officer or employee of the director, and in the execution thereof such officer or employee shall have all the powers conferred by laws upon sheriffs, and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The distributee shall have the right to redeem the real estate within a period of eighteen (18) months from the date of such sale. If a warrant be returned, unsatisfied in full, the director shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the distributee for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any said warrants or upon any execution issued upon any judgment rendered in any action for inheritance taxes. The director shall have the right at any time after the

warrant has been returned unsatisfied or satisfied only in part, to issue alias warrants until the full amount of said tax is collected.

~~(e) The lien for all taxes and interest thereon imposed by this act shall expire and be void unless action is brought for enforcement of the same within three (3) years from the date the return was filed or the taxes were paid, whichever is the later date, except when an assessment of additional inheritance taxes has been made pursuant to K.S.A. 1978 Supp. 79-1574, said lien shall expire and be void unless action is brought for enforcement of the same within four (4) years from the date the return was filed or the taxes were paid, whichever is later.~~ Notwithstanding any other provision of this act, no lien shall attach to any accounts or certificates of deposit in or issued by any financial institution which are held in joint tenancy between the decedent and one or more surviving joint tenants unless and until a notice of lien be served on such institution by registered mail setting forth the name of the decedent, the date of death and the amount of the tax.

Sec. 5. K.S.A. 1978 Supp. 79-1570 is hereby amended to read as follows: 79-1570. Except when the court finds that the tax can not with reasonable diligence be collected or finds that there are no funds available in the estate to pay the expenses of collecting such tax, no final account of an executor, administrator or deemed executor shall be allowed by the district court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be settled by said account and already payable have been paid, and that all taxes which may become due on said estate have been paid or settled as hereinbefore provided, or that the payment thereof to the state is secured by bond.

Sec. 6. K.S.A. 1978 Supp. 79-1571 is hereby amended to read as follows: 79-1571. (a) As soon as practicable after the return is filed and the taxes paid, the director shall issue his

or her closing letter. Such closing letter shall be issued upon the director being satisfied that there has been a final determination of all taxes due and that all such taxes have been paid. The director shall issue such closing letter to the executor, administrator or deemed executor, and when said estate is involved in probate proceedings before a district court, a copy of such closing letter shall be forwarded to the judge of said court for recording in full in the journal of said court.

(b) In the event that all deemed executors do not join in the filing of a return, or in the event the executor, administrator or deemed executor is unable to make a complete return as to any part of the gross estate of the decedent, upon the director being satisfied that a final determination of the taxes due on that portion of the estate reported has been made and all taxes due thereon have been paid, the director shall issue his or her closing letter as to that portion of the gross estate which has actually been reported.

(c) To the extent the gross assets of the decedent were reported, the issuance of a closing letter shall be conclusive evidence that all taxes have been determined and paid and shall release any lien which attached to the decedent's property and that of any deemed executor or distributee unless such lien has been subrogated, assigned and perfected pursuant to K.S.A. 1978 Supp. 79-1569 and amendments thereto.

(d) The closing letter shall be applicable only to assets reported in the return filed with the director. The closing letter shall contain a legal description of the real property so reported. When the closing letter has not been filed with a district court pursuant to subsection (a), a copy of the closing letter shall be filed with the register of deeds in the decedent's county of residence.

Sec. 7. K.S.A. 1978 Supp. 79-1576 is hereby amended to read as follows: 79-1576. Subject to the right of any executor, administrator or deemed executor to apply for review as provided for in this act, the director shall hear and determine all

questions relative to said tax. The attorney for the director, at the request of the director, shall represent the state in any court proceedings brought to review any action of the director. If any district court shall find that any such tax remains due and that proper proceedings have not been taken before said director for abatement thereof, it shall order the executor, administrator or deemed executor to pay the same, with interest, and costs, and no question regarding the validity of such tax shall be heard in such court. If it appears that there are no goods or assets of the estate in his or her hands, the court may assess the amount of the tax against the executor, administrator or deemed executor, ~~as if for his or her own debt, and may enforce compliance with such order;~~ but the administrators, executors or deemed executors hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in said offices or have custody or control of decedent's property. In the cases where the tax is due and payable by and collectible from the distributee, all actions shall be prosecuted by the attorney for the director in the name of the state, and such actions may be brought in the same courts as other actions for money.

Sec. 8. K.S.A. 1978 Supp. 79-1545, 79-1564, 79-1565, 79-1569, 79-1570, 79-1571 and 79-1576 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

TESTIMONY: Vincent DeCoursey, Executive Director  
Kansas Catholic Conference

RE: Senate Bill 99: An act concerning natural death

10:00 a.m. Senate Judiciary Committee, February 6, 1979

My name is Vincent DeCoursey, Executive Director of the Kansas Catholic Conference. I appreciate the opportunity of submitting a statement on behalf of the Conference on S.B. 99.

The Conference wishes first of all to express its appreciation of the motives of those who have introduced and who would support a "Living Will" proposal. We believe that it is the natural and proper instinct of all caring persons that a man or woman be allowed to die a natural death, and that the use of extraordinary means, far beyond the necessary treatment for the preservation of life and health, is not a matter of obligation of reason, law or morals. Most of us either by personal experience or through knowledge of the tragedies of others have known the long hours, days and weeks of suffering which preceded the death of loved ones. It is therefore a natural thought to turn to an instrument such as the "Living Will" to forestall that same fate befalling us or members of our families.

I do not propose to address the details of S. B. 99. In most instances it is very similar to S.B. 297 which was introduced in the 1977 session of the legislature and reported "Be not passed" by the Senate Judiciary Committee in the 1978 session. There are however some substantive differences, most notably:  
1) the language of a "living will" is substantially spelled out;



2) the five year life of the "living will" in S.B. 297 has been eliminated in S.B. 99.

What I hope to bring to this committee for its consideration are the real and potential dangers which abound in legislative intrusion into a field where first: it does not belong; second: it is not necessary; and third: which holds real danger for those whom it intends to protect.

All of us have heard of the Karen Quinlan situation in New Jersey and know of the enactment of the California "Living Will" statute in 1976. These two cases caused a flurry of legislative activity. Between January 1, 1977 and December 31, 1977 at least 67 death with dignity bills were introduced in the legislatures of 44 states. Seven were passed: Arkansas, Idaho, New Mexico, Nevada, Oregon, North Carolina and Texas. 29 of these bills, involving 25 states (including Kansas) were patterned in whole or in part after the California "Living Will" law. It is significant to the committee that there are very apparent second thoughts by the legislatures of the several states as to the desirability of "living will" legislation: in 1978 not one state enacted a "living will" law. It would be well to point out that the bills mentioned dealt with all aspects of "death with dignity", and were either active euthanasia or passive euthanasia bills. The "Living Will" proposal is a form of passive euthanasia.

We respectfully submit that legislation is not the correct approach to the problem. We believe that legislation embodying a "living will" should not be enacted in Kansas because it is unnecessary, undesirable and dangerous.

We believe such legislation to be unnecessary because:

1. Doctors and hospitals are now free to meet their responsibilities with respect to their care of the dying;
2. Patients and their families presently have the legal right to request that "extraordinary means" not be used to prolong life;
3. Fear of legal action is more imagined than real. In the history of Anglo-American jurisprudence there have been no known successful prosecutions of physician or facility based upon a failure to use "extraordinary means";
4. Legislation cannot resolve conflicts arising from questions of medical competency or the accuracy of prognosis, or that a patient's wishes be accurately interpreted.

Next we submit that the "Living Will" is undesirable and dangerous:

1. There is fear of the effect on a doctor-patient relationship. A "Living Will" statute would compel a physician to seek to conform his actions to its provisions, not necessarily to his own medical judgment.
2. There is fear of the willingness or ability of a doctor to respond to a patients needs or wishes in the absence of a signed and formal "living will". The right of the patient might be seriously jeopardized if physicians, seeking the security of the statute, refused to discontinue "extraordinary means".

3. There is fear of the effects upon a patient-family relationship. It seems reasonable that some patients could be pressured into signing a living will in advance of their personal commitment to such a decision. In reverse, if there were no signed and formal "living will" would the family be compelled to conclude that the patient wishes that extraordinary not be withdrawn or withheld?

4. How can any person make an intelligent decision with respect to a specific response to unknown events or circumstances.

5. Medical terminology is used throughout, yet the issue relates more closely to the social and human aspects of the decision making than to the practice of medicine.

6. There is fear of the implications relative to society itself. Legislation supposedly designed to protect rights and insure mercy can move very quickly from voluntary discontinuing of life to involuntary and direct taking of life.

In the field of legislation on "death and dying", Kansas was the first of the states to enact a statutory definition of death embodying the "brain wave" theory. Those who were in the legislature at that time will remember that the basic premise on which this legislation was enacted was the necessity of protecting doctors from malpractice charges in the performance of heart transplants. It is now almost ten years since the statute was enacted and to my knowledge, no heart transplant surgery has ever been performed in this state. The reason for the enactment of the statute proved to be inapplicable, yet

the statute remains, transferred from its original rationale into fields not even discussed at the time the legislation was considered.

With respect to the general topic of preparation for dying, we pledge ourselves to support programs and policies which would insure tender and skilled treatment by doctors and health personnel in the vital area of death and dying. We would hope that medical societies and hospital groups, with governmental help and support, could develop inservice educational programs to improve attitudes and services for the dying and their families.

It is our considered judgment that Senate Bill 99 should be reported unfavorably by this committee and we respectfully ask the Senate Judiciary Committee vote not to pass the bill.

PROPOSED COMMITTEE AMENDMENTS TO SB NO. 99

Be amended:

On page 2, in line 62, following the period by inserting the following: "The declaration of a qualified patient diagnosed as pregnant by the attending physician shall have no effect during the course of the qualified patient's pregnancy.";

On page 4, by striking all of lines 135 to 145, inclusive, and inserting in lieu thereof the following:

"No physician, licensed health care professional, medical care facility or employee thereof who in good faith causes or participates in the withholding or withdrawing of life-sustaining procedures from a qualified patient pursuant to a declaration made in accordance with this act shall, as a result thereof, be subject to criminal liability, or be found to have committed an act of unprofessional conduct.";

On page 6, preceding line 239, by inserting a new section to read as follows:

"Sec. 11. The provisions of K.S.A. 77-202 requiring that death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated shall not apply to a qualified patient under this act.";