

Approved February 2, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on January 26, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson and Vancrum

Committee staff present:

Jerry Johnson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Gordon Self, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Matt Lynch, Judicial Council
Art Griggs, Department of Administration
David Ryan, Professor, Washburn Law School
John Scheirman, Kansas Department of Transportation
Jo Jenkins, Kansas Corporation Commission

The minutes of January 19, January 20, and January 21 Committee meetings were approved.

Subcommittee report on S.B. 264 -- Authorizing division of assets between spouses in determining eligibility for medical assistance

Representative Bideau, Chairman of the Subcommittee, reported the subcommittee recommended the bill be amended to bring about minimum compliance with the pending federal bills. The subcommittee recommended permitting the transfer of property so that the well spouse has at least \$12,000 and not more than \$48,000 of exempt assets; increase the income limits to \$750.00 a month; cost of living adjustment on both asset transfer and income in accordance with the federal bill; exclude from income to be considered the amount of any required payment of court ordered support obligation to children or prior spouse; provision for division treatment where sick spouse is incompetent or incapacitated; requirement that S.R.S. use best efforts to obtain federal approval and file suit if necessary to do so; and several S.R.S. technical amendments. If the federal limits, when acted upon, are higher than the Kansas limits, then the Kansas limits would automatically conform to the higher amount. However, if the federal limits are lower than the Kansas limits, then the state would have to fund the higher limit without federal participation on the difference, (see Attachment I). He also submitted an amended bill, (see Attachment II).

Representative Wagon stated it was the intent of the subcommittee that a couple could have nonexempt resources up to \$96,000 to divide in half. The cap would apply if their combined resources exceeded \$96,000. From zero to \$12,000 combined resources, the well spouse would receive it all. After \$24,000 the well spouse would receive half.

Representative Bideau moved and Representative Whiteman seconded that the Committee adopt the first amendment the subcommittee recommended on page 4 of the bill. The motion passed.

Representative Bideau moved and Representative Buehler seconded to adopt the amendment on page 6, (j), to increase the consumer price index to conform with federal legislation. The motion passed.

Representative Bideau moved to adopt the amendments on page 7 and 8, increasing the income level for the recipient's spouse from \$8,600 annually to \$9,000. The motion was seconded and passed.

The Chairman continued the hearing on S.B. 264 to Wednesday, January 27, 1988 at 3:30 p.m.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on January 26, 19 88

The Committee considered S.B. 334 -- Kansas Administrative Procedure Act

Matt Lynch reported the Judicial Council's Administrative Advisory Committee met Friday and discussed, among other things, how this bill should be triggered. The trigger recommended by the Advisory Committee is contained in Sec. 2, page 3, lines 113 through 115, "to all orders and to all adjudicative proceedings thereon not expressly exempted by statute".

Art Griggs stated he opposed changing the trigger mechanism to the broad definition of "order". He recommended the trigger mechanism remain as it was before being amended by the Senate Committee. He also stated this bill would require greater reliance on legal counsel for both citizens and state agencies; that the bill is hard to read and will make it difficult for citizens to represent themselves; and that consideration should be given to more limited discovery procedures where the amount in controversy is under \$5,000, (see Attachment III).

Professor Ryan testified in support of the trigger mechanism being changed "to all orders and to all adjudicative proceedings thereon not expressly exempted by statute". The trigger mechanism also applies to the language in lines 92 through 95 and which was adopted from the 1981 model state act.

Representative Whiteman moved to approve the trigger mechanism on page 3 to apply to all orders and to all adjudicative proceedings thereon not expressly exempted by statute.

John Scheirman spoke in support of the position taken by Art Griggs.

Jo Jenkins stated the K.C.C. does not have a position on S.B. 334, but feels there is some ambiguity in the bill.

Representative Bideau moved and Representative Douville seconded to amend S.B. 334 by striking lines 113 through 115 and reinserting the stricken language in lines 111 through 113. The motion passed.

The Chairman announced the Committee would continue the discussion and action on S.B. 334 at a later date.

The Committee meeting was adjourned at 5:10 p.m.

The next meeting will be 3:30 p.m. Wednesday, January 27, 1988, in room 313-S.

GUEST REGISTER

DATE Jan. 26, 1988

HOUSE JUDICIARY

<u>NAME</u>	<u>ORGANIZATION</u>	<u>ADDRESS</u>
John Scheirman	KDOT	734-S Docking
Bob Foster	ARRDA WICHITA KS	
Marnel Chambers	" " "	
Robert P. Guthrie	ARRDA Topeka KS	3000 W. 19 th
Glenna L. Knouse	ARRDA - Topeka Chapter 1607 Campbell St Topeka Kan.	1607 Campbell
Lee Mae Gibson		1610 W. 29 th Terr
Gay E. Gibson	AARP St. Legislative Committee	1610 W. 29 th Terr.
Mary E. Harper	farmer retired	ro of Kingsley Scott City
PATRICIA HENSHAW	OJA	TOPEKA
Vera Sieber	Silver Haird Dept.	Manchester KS
Jo Jenkins	KCC	Topeka KS
Math Lynch	Judicial Council	"
Art Gri GGS	Dept of Adm.	"
Kenneth M. Wilke	Ks. Bd. of Agriculture	Topeka KS
Lee Rolfs	" " " "	" "
W. J. Root	Anderson Corlee & Associates	Topeka KS
J. J. Miller	FG	"
Mark Stafford	ALG	"
Faith Loretto	Dept. of Adm.	"
Dave Cunningham	Board of Tax Appeals	"
Larry H. Netter	Gover. Fellow (Dep on Aging)	
Karl Szad	Ks. Dept. of Human Resources	Topeka
A. J. Kotich	HUMAN RESOURCES	"
Nancy Junglaus	Research Psychiatric Center	KC

EDWIN BIDEAU III
 REPRESENTATIVE, FIFTH DISTRICT
 NEOSHO COUNTY
 14 SOUTH RUTTER
 CHANUTE, KANSAS 66720-1442



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN, LEGISLATIVE, JUDICIAL AND
 CONGRESSIONAL APPORTIONMENT
 MEMBER, JUDICIARY
 LABOR AND INDUSTRY

DIVISION OF ASSETS SUBCOMMITTEE RECOMMENDATION

The Subcommittee recommends that the bill be amended in the following manner to bring about minimum compliance with the pending Federal bills. This method will not bring about total compliance, particularly since both bills have to go to conference committee on the Federal level. However, these provisions are possible on a prompt action basis and meet the major points of the Federal bills.

1. Change division provisions to permit transfer of property so that well spouse has at least \$12,000 and not more than \$48,000.00 of exempt assets. This is a level **above** exempt assets.

2. Increase income limits in S.B. 264 from \$717 per month to \$750.00 per month to track Senate version of Federal bill. This does not include however the extra housing allowance provisions of the Federal bill. Extra housing allowance would require hearing provisions and would require extensive detailed drafting. The committee as a whole needs to decide the income limit. \$750.00 would likely insure that we would not be out of compliance with Federal action.

3. Cost of living adjustment on both asset transfer and income in accordance with Federal bill.

4. Exclude from income to be considered the amount of any required payment of court ordered support obligation to children or prior spouse.

5. Provision for division treatment where sick spouse is incompetent or incapacitated as per suggested amendment.

6. SRS Technical amendments.

7. Requirement that SRS use best efforts to obtain Federal approval and file suit if necessary to do so.

It is my understanding that if any of these limits end up lower than the Federal limits (when the Federal legislation is finally acted upon) that our state limits would automatically conform to the higher amount. On the other hand, if our state limits are higher than the resulting Federal limits, the higher state limit would have to be funded without federal participation on the difference.

Attachment I

SENATE BILL No. 264

By Committee on Public Health and Welfare

2-17

0018 AN ACT concerning medical assistance; relating to determina-
0019 tion of persons eligible therefor; concerning recovery of med-
0020 ical assistance paid; amending K.S.A. 21-3605, 39-709 and
0021 39-719a and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. As used in sections 1 to ~~3~~, inclusive: 8

0024 (a) "Adult care home" means a skilled nursing home or
0025 intermediate nursing care home licensed under the adult care
0026 home licensure act.

0027 (b) "Home and community based services" means those ser-
0028 vices provided under the state medical assistance program under
0029 waivers as defined in title XIX of the federal social security act in
0030 accordance with the plan adopted under subsection (s) of K.S.A.
0031 39-708c and amendments thereto to recipients who would re-
0032 quire admission to an adult care home if such services were not
0033 otherwise provided.

0034 (c) "Income" means earned income and unearned income as
0035 defined under the state medical assistance program in accord-
0036 ance with the plan adopted under subsection (s) of K.S.A. 39-
0037 708c and amendments thereto to determine eligibility of appli-
0038 cants for medical assistance.

0039 (d) "Institution" means an adult care home or a long-term
0040 care unit of a medical care facility.

0041 (e) "Medical assistance" has the meaning provided under
0042 K.S.A. 39-702 and amendments thereto.

0043 (f) "Qualified applicant" means a person who (1) applies for
0044 medical assistance and (2) is ~~under institutional care or is eligi-~~
0045 ~~ble for home and community based services receiving long-term~~
0046 ~~care in an institution or would be eligible for home and com-~~

Attachment II

0017 *munity based services if receiving medical assistance.*

0018 (g) "Qualified recipient" means a person who (1) receives
0019 medical assistance and (2) is ~~under institutional care~~ *receiving*
0050 *long-term care in an institution* or is receiving home and com-
0051 munity based services.

0052 (h) "Resources" means cash or other liquid assets or any real
0053 or personal property that an individual or spouse owns and could
0054 convert to cash to be used for such individual's support and
0055 maintenance. If the individual has the right, authority or power
0056 to liquidate the property, or such individual's share of the prop-
0057 erty, it is a resource. If a property right cannot be liquidated, the
0058 property will not be considered a resource of the individual or
0059 spouse.

0060 (i) "Secretary" means the secretary of social and rehabilita-
0061 tion services.

0062 (j) "*Exempt income*" means income which is not considered
0063 in determining eligibility for medical assistance under the plan
0064 adopted under subsection (s) of K.S.A. 39-708 and amendments
0065 thereto.

0066 (k) "*Nonexempt income*" means income which is considered
0067 in determining eligibility for medical assistance under the plan
0068 adopted under subsection (s) of K.S.A. 39-708 and amendments
0069 thereto.

0070 (l) "*Exempt resources*" means resources which are not con-
0071 sidered in determining eligibility for medical assistance under
0072 the plan adopted under subsection (s) of K.S.A. 39-708 and
0073 amendments thereto.

0074 (m) "*Nonexempt resources*" means resources which are con-
0075 sidered in determining eligibility for medical assistance under
0076 the plan adopted under subsection (s) of K.S.A. 39-708 and
0077 amendments thereto.

0078 (n) "*Long-term care*" means care which exceeds or is pro-
0079 ~~jected to exceed three months~~

, including the month care begins

0080 New Sec. 2. (a) For the purpose of determining medical
0081 assistance eligibility pursuant to K.S.A. 39-709 and amendments
0082 thereto and the right to and obligation of medical support for the
0083 purposes of K.S.A. 39-709 and 39-719a, and amendments thereto,

0084 a qualified applicant or qualified recipient and such applicant's
 0085 or recipient's spouse may divide their aggregate resources,
 0086 whether owned jointly or singly, into separate shares as provided
 0087 by this section. Subject to the provisions of subsection (f), if a
 0088 qualified applicant or qualified recipient and such applicant's or
 0089 recipient's spouse so divide their aggregate resources:

0090 (1) Only the separate *nonexempt* resources of the applicant or
 0091 recipient shall be considered in determining eligibility for med-
 0092 ical assistance: (A) ~~If the applicant's or recipient's spouse is~~
 0093 ~~not applying for or receiving medical assistance~~ in the month
 0094 following the month in which the applicant or recipient becomes
 0095 ~~a qualified applicant or a qualified recipient~~, or at any time
 0096 thereafter, if the applicant's or recipient's spouse is not applying
 0097 for or receiving medical assistance; or (B) *if the applicant's or*
 0098 *recipient's spouse is applying for or receiving medical assistance,*
 0099 in the seventh month following the month in which the applicant
 0100 or recipient becomes a qualified applicant or a qualified recipi-
 0101 ~~ent~~, or at any time thereafter, if the applicant's or recipient's
 0102 spouse is applying for or receiving medical assistance;

0103 (2) the secretary of social and rehabilitation services, in de-
 0104 termining the eligibility of the applicant or recipient, shall not
 0105 take into account the separate *nonexempt* resources of the appli-
 0106 cant's or recipient's spouse and shall not require proof of ade-
 0107 quate consideration for any transfer made in dividing resources
 0108 *in accordance with this section;*

0109 (3) the resources ~~of~~ the qualified applicant's or qualified
 0110 recipient's spouse shall not be considered to be available to the
 0111 applicant or recipient for future medical support and the quali-
 0112 fied applicant's or qualified recipient's spouse shall have no duty
 0113 of future medical support of the qualified applicant or qualified
 0114 recipient from such resources;

0115 (4) *except as otherwise provided in this section,* neither the
 0116 secretary nor the state may recover from the resources ~~of~~ the
 0117 qualified applicant's or qualified recipient's spouse any amounts
 0118 paid for future medical assistance provided to the qualified
 0119 applicant or qualified recipient; and

0120 (5) neither the secretary nor the state shall be subrogated to

(g)

enters an institution to receive long-term care or begins to receive home and community based services

for long-term institutional care or home and community based services

received by

pursuant to this section

received by

pursuant to this section

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0121 or assigned any future right of the qualified applicant or quali-
0122 fied recipient to medical support from the resources of the
0123 qualified applicant's or qualified recipient's spouse.

0124 (b) If a qualified applicant or qualified recipient and such
0125 applicant's or recipient's spouse choose to divide their aggregate
0126 resources pursuant to this section, the division shall be as fol-
0127 lows.

~~0128 (1) The aggregate exempt resources shall be divided in such
0129 a manner that the qualified applicant's or qualified recipient's
0130 spouse owns singly exempt resources having a value equal to 1/2
0131 the value of the aggregate exempt resources; and~~

~~0132 (2) (A) if the aggregate nonexempt resources have a value of
0133 less than \$50,000, such nonexempt resources shall be divided in
0134 such a manner that the qualified applicant's or qualified recipi-
0135 ent's spouse owns singly all the nonexempt resources or owns
0136 singly nonexempt resources having a value of \$25,000, which-
0137 ever is less; or (B) if the aggregate nonexempt resources have a
0138 value of \$50,000 or more, such nonexempt resources shall be
0139 divided in such a manner that the qualified applicant's or quali-
0140 fied recipient's spouse owns singly nonexempt resources having
0141 a value equal to 1/2 the value of the aggregate nonexempt re-
0142 sources.~~

0143 (c) A division of resources pursuant to this section shall be
0144 evidenced by a written interspousal agreement, signed by both (c)
0145 spouses or their personal representatives, to divide the resources
0146 as provided by this section and to make any transfers necessary
0147 to carry out the division. In the case of a qualified applicant, a
0148 notice of intent to divide resources shall be filed with the
0149 secretary at the time of application. In the case of a qualified
0150 recipient, such notice shall be filed with the secretary at the time
0151 the recipient and the recipient's spouse desire to divide re-
0152 sources. The division shall apply to resources owned on the date
0153 the notice of intent is filed and the division shall be presumed to
0154 take place on that date if a copy of the agreement to divide
0155 resources and evidence, satisfactory to the secretary, of comple-
0156 tion of any transfers necessary to effect the division are filed with
0157 the secretary within 90 days after the notice of intent is filed or

aggregate nonexempt resources with a value which is the
greatest of: (A) \$12,000, subject to adjustment under subsection
(j); or (B) the lessor of (i) the spousal share computed under
subsection (c) or (ii) four times the amount described in clause
(A).

(c) There shall be computed, as of the beginning of a
continuous period of long-term care of the qualified applicant or
qualified recipient: (A) The total value of the nonexempt
resources to the extent the qualified applicant or qualified
recipient or such applicant's or recipient's spouse has an
ownership interest; and (B) a spousal share which is equal to 1/2
of such total value.

0158 within such additional time as permitted by the secretary, in the
0159 secretary's discretion, for good cause shown.

0160 ~~(4)~~ Once a qualified applicant for or qualified recipient of
0161 medical assistance has divided resources with a spouse pursuant
0162 to this section, such applicant or recipient may not thereafter
0163 again divide resources under this ~~act~~ *section* with such spouse or
0164 any subsequent spouse. (e)

0165 ~~(4)~~ The secretary of social and rehabilitation services shall
0166 furnish to each qualified applicant or qualified recipient and
0167 such applicant's or recipient's spouse, and any personal repre-
0168 sentative thereof, a clear and simple written statement that:

0169 (1) The total resources of the qualified applicant or qualified
0170 recipient and of the applicant's or recipient's spouse may be
0171 divided hereunder;

0172 (2) upon such a division, the spouse's *nonexempt* resources
0173 will not be considered in determining eligibility ~~and the spouse~~ of the applicant or recipient for long-term institutional care or home
0174 shall not be required to use ~~such resources~~ *to provide future* and community based services
0175 medical support to the qualified applicant or qualified recipient; ~~the resources received by the spouse pursuant to this section~~

0176 (3) a lien for medical assistance paid may be imposed against
0177 the property of the qualified applicant or qualified recipient and
0178 the property of the applicant's or recipient's spouse *but only to*
0179 *the extent authorized under this section.*

0180 ~~(4)~~ If a qualified recipient of medical assistance and such
0181 recipient's spouse have divided their resources as provided by
0182 this section, the secretary, to the extent permitted under ~~42~~
0183 ~~U.S.G. 4396p~~, as amended, may establish, enforce and foreclose
0184 a lien for any amount of medical assistance provided the recipi-
0185 ent; (g)

0186 (1) Upon the personal property of the qualified recipient or
0187 the recipient's spouse, in the same manner as provided by K.S.A.
0188 23-4,146 and amendments thereto for establishing, enforcing and
0189 foreclosing liens for support.

0190 (2) Upon the real property of the qualified recipient or the
0191 recipient's spouse, by filing with the clerk of the district court in
0192 which the property is located a verified statement showing a lien
0193 in the name of the state of Kansas and containing the name of the
0194 owner of the real property, a description of such property and a

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0105 statement of the amount of the lien. The clerk shall enter in the
 0106 appearance docket the name of the owner of the property; the
 0107 amount of lien and the date it is filed and shall note the owner's
 0108 name in the general index. No fee shall be charged for either
 0109 entry. The secretary may enforce and foreclose such lien in the
 0200 district court upon the transfer of the property or may release
 0201 such lien at any time *but only to the extent authorized under 42*
 0202 *U.S.C. 1396p, as amended.*

as in effect on the effective date of this act

(h)

0203 (g) The secretary shall adopt such rules and regulations as
 0204 necessary to implement and enforce the provisions of this sec-
 0205 tion.

0206 ~~(h)~~ ⁽ⁱ⁾ *The provisions of this section shall not be effective until*
 0207 *the plan adopted under subsection (s) of K.S.A. 39-708c and*
 0208 *amendments thereto is revised in accordance with this section*
 0209 *and is approved by the federal department of health and human*
 0210 *services.*

The secretary of social and rehabilitation services is directed to submit the proposed plan amendments for approval to the federal department of health and human services within 30 days of the effective date of this act. If disapproved, the secretary is directed to pursue all available and necessary steps to reverse such determination, including judicial review if legally defensible.

(j) The dollar amounts specified in subsection (b)(2) and section (3)(a) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers, all items, the United States city average, between July, 1987 and the July before the calendar year involved.

0211 New Sec. 3. (a) For the purpose of determining medical
 0212 assistance eligibility pursuant to K.S.A. 39-709 and amendments
 0213 thereto and the right to and obligation of medical support for the
 0214 purposes of K.S.A. 39-709 and 39-719a, and amendments thereto,
 0215 a qualified applicant or qualified recipient and such applicant's
 0216 or recipient's spouse may divide their aggregate income,
 0217 whether received jointly or singly, into separate equal shares as
 0218 provided by this section. If a qualified applicant or qualified
 0219 recipient and such applicant's or recipient's spouse so divide
 0220 their aggregate income:

0221 (1) Only the separate *nonexempt* income of the qualified
 0222 applicant or qualified recipient shall be considered in deter-
 0223 mining eligibility for medical assistance: (A) ~~in~~ *If the applicant's*
 0224 *or recipient's spouse is not applying for or receiving medical*
 0225 *assistance, in the month following the month in which the*
 0226 *applicant or recipient becomes a qualified applicant or a quali-*
 0227 *fied recipient, or at any time thereafter, if the applicant or*
 0228 *recipient and the applicant's or recipient's spouse do not share*
 0229 *the same room or if the applicant's or recipient's spouse is not*
 0230 *applying for or receiving medical assistance; or (B) if the appli-*
 0231 *cant or recipient and the applicant's or recipient's spouse share*

enters an institution to receive long-term care or begins to receive home and community based services

0232 *the same residence and the applicant's or recipient's spouse is*
 0233 *applying for or receiving medical assistance, in the seventh*
 0234 *month following the month in which the applicant or recipient*
 0235 ~~*becomes a qualified applicant or a qualified recipient,*~~ or at any
 0236 *time thereafter; if the applicant or recipient and the applicant's*
 0237 *or recipient's spouse share the same room and the applicant's or*
 0238 *recipient's spouse is applying for or receiving medical assist-*
 0239 *ance;*

0240 (2) *the secretary of social and rehabilitation services, in de-*
 0241 *termining the eligibility of the applicant or recipient, shall not*
 0242 *take into account the separate nonexempt income of the appli-*
 0243 *cant's or recipient's spouse and shall not require proof of ade-*
 0244 *quate consideration for any assignment made in dividing in-*
 0245 *come;*

0246 (3) *of the annual income of the qualified applicant's or qual-*
 0247 *ified recipient's spouse, only that portion exceeding ~~\$8,600~~ shall*
 0248 *be considered to be available to the qualified applicant or quali-*
 0249 *fied recipient for future medical support and the qualified ap-*
 0250 *plicant's or qualified recipient's spouse shall have a duty of*
 0251 *future medical support of the qualified applicant or qualified*
 0252 *recipient only to the extent that such spouse's annual income*
 0253 *exceeds ~~\$8,600~~;*

0254 (4) *neither the secretary nor the state may recover from the*
 0255 *income of the qualified applicant's or qualified recipient's*
 0256 *spouse, for future medical assistance provided to the qualified*
 0257 *applicant or qualified recipient: (A) Any amount in any calendar*
 0258 *year when the income of such spouse is less than ~~\$8,600~~ or (B) an*
 0259 *amount in any calendar year which would reduce such spouse's*
 0260 *income to less than ~~\$8,600~~ for such calendar year; and*

0261 (5) *the secretary's subrogation rights on behalf of the state*
 0262 *shall be subject to the limitation of subsection (a)(4).*

0263 (b) *A division of income pursuant to this section shall be*
 0264 *evidenced by a written interspousal agreement, signed by both*
 0265 *spouses or their personal representatives, to divide income as*
 0266 *provided by this section and to carry out the division. In the case*
 0267 *of a qualified applicant, a notice of intent to divide income shall*
 0268 *be filed with the secretary at the time of application. In the case*

enters an institution to receive long-term care or begins to receive home
and community based services

for long-term institutional care or home and community based services

\$9,000

\$9,000

\$9,000

\$9,000

0269 of a qualified recipient, such notice shall be filed with the
0270 secretary.

0271 (c) The secretary of social and rehabilitation services shall
0272 furnish to each qualified applicant or qualified recipient and
0273 such applicant's or recipient's spouse, and any personal repre-
0274 sentative thereof, a clear and simple written statement that the
0275 total income of the qualified applicant or qualified recipient and
0276 of the applicant's or recipient's spouse may be divided hereun-
0277 der and that, upon such a division, the spouse's income will not
0278 be considered in determining eligibility and the spouse shall be
0279 required to use only that portion of the spouse's annual income
0280 which exceeds \$9,600 to provide future medical support to the
0281 applicant or recipient.

of the applicant or recipient for long-term institutional care or home
and community based services

\$9,000

0282 (d) The secretary shall adopt such rules and regulations as
0283 necessary to implement and enforce the provisions of this sec-
0284 tion.

0285 (e) The provisions of this section shall not be effective until
0286 the plan adopted under subsection (s) of K.S.A. 39-708c and
0287 amendments thereto is revised in accordance with this section
0288 and is approved by the federal department of health and human
0289 services.

The secretary of social and rehabilitation services is directed to
submit the proposed plan amendments for approval to the federal
department of health and human services within 30 days of the
effective date of this act. If disapproved, the secretary is directed
to pursue all available and necessary steps to reverse such
determination, including judicial review if legally defensible.

0290 Sec. 4. K.S.A. 21-3605 is hereby amended to read as follows
0291 21-3605. (1) (a) Nonsupport of a child is a parent's failure, neglect
0292 or refusal without lawful excuse to provide for the support and
0293 maintenance of his or her the parent's child in necessitous
0294 circumstances.

New Sec. 4. Assistance shall not be withheld from any
institutionalized person or any person seeking home and community
based services who would otherwise qualify for assistance under this
act but who, by reason of disability as defined by K.S.A. 59-3002, and
amendments thereto, is unable to give the consent prerequisite to the
property and income transfers described in this act, provided that the
spouse of the individual seeking assistance seeks a court order of
maintenance, an order of conservatorship or of property and income
division pursuant to this act within one year from the beginning of
the first benefit period.

0295 (b) As used in this section, "child" means a child under the
0296 age of eighteen (18) 18 years; and includes an adopted child or a
0297 child born out of wedlock whose parentage has been judicially
0298 determined or has been acknowledged in writing by the person
0299 to be charged with the support of such child.

New Sec. 5. For division of income purposes, court ordered a
child support obligation or family maintenance allowance to a prior
spouse or spouses shall not be considered available income.

0300 (c) At any time before the trial, upon petition and notice, the
0301 court, or a judge thereof, may enter such temporary order as may
0302 seem just providing for support of such child, and may punish for
0303 violation of such order as for contempt.

0304 (d) At any stage of the proceeding, instead of or in addition to
0305 imposing the penalty hereinafter provided, or in addition to such

Renumber remaining sections accordingly

0306 ~~penalty~~, the court, in its discretion, *and* having regard ~~to~~ *for* the
0307 circumstances and ~~to~~ the financial ability or earning capacity of
0308 the defendant, ~~shall have the power to make~~ *may enter* an order
0309 which shall be subject to change by the court, as circumstances
0310 may require, directing the defendant to pay a certain sum peri-
0311 odically, for a term not exceeding the period during which the
0312 obligation to support shall continue, to the guardian, conservator
0313 or custodian of ~~said~~ *such* child or to an organization or individual
0314 approved by the court as trustee; ~~and~~. *The court* shall also have
0315 the power to release the defendant ~~from~~ *eustody* on probation for
0316 the period so fixed, upon ~~his or her~~ *the defendant's* entering into
0317 a recognizance, with or without surety, in such sum as the court
0318 ~~or a judge thereof~~ may order and approve. The condition of the
0319 recognizance shall be such that if the defendant shall make ~~his or~~
0320 ~~her~~ *a* personal appearance in court whenever ordered to do so
0321 and shall further comply with the terms of such order of support,
0322 or of any subsequent modification thereof, then such recogni-
0323 zance shall be void; otherwise the recognizance shall be of full
0324 force and effect.

0325 (c) If the court is satisfied by due proof that, at any time
0326 during the period while the obligation to support continues, the
0327 defendant has violated the terms of such order, the court may
0328 forthwith proceed with the trial of the defendant under the
0329 original charge, or sentence ~~him or her~~ *the defendant* under the
0330 original conviction, or enforce the suspended sentence as the
0331 case may be.

0332 (d) A preponderance of the evidence shall be sufficient to
0333 prove that the defendant is the father or mother of such child. In
0334 no prosecution under this act shall any existing statute or rule of
0335 law prohibiting the disclosure of confidential communications
0336 between husband and wife apply, and both husband and wife
0337 shall be competent witnesses to testify against each other to any
0338 and all relevant matters, including the parentage of such child.
0339 Proof of the nonsupport of such child in necessitous circum-
0340 stances or neglect or refusal to provide for the support and
0341 maintenance of such child shall be prima facie evidence that
0342 such neglect or refusal is willful.

0343 (g) Nonsupport of a child is a class E felony.

0344 (2) (a) Nonsupport of a spouse is an individual's failure
0345 without just cause to provide for the support of ~~his or her~~ *such*
0346 *individual's* spouse in necessitous circumstances.

0347 (b) At any time before the trial in a prosecution for nonsup-
0348 port of a spouse, upon petition and notice, the court, ~~or a judge~~
0349 ~~thereof,~~ may enter such temporary order as may seem just pro-
0350 viding for support of such spouse, and may punish for violation of
0351 such order as for contempt.

0352 (c) At any stage of the proceeding, instead of *or in addition to*
0353 imposing the penalty hereinafter provided, ~~or in addition to such~~
0354 ~~penalty,~~ the court, in its discretion, *and* having regard to *for* the
0355 circumstances and to the financial ability or earning capacity of
0356 the defendant, shall have the power to make *may enter* an order
0357 which shall be subject to change by the court, as circumstances
0358 may require, directing the defendant to pay a certain sum peri-
0359 odically, for a term not exceeding the period during which the
0360 obligation to support shall continue, to the spouse or to the
0361 guardian or conservator of ~~said~~ *such* spouse or to an organization
0362 or individual approved by the court as trustee; ~~and.~~ *The court*
0363 shall also have the power to release the defendant ~~from custody~~
0364 on probation for the period so fixed, upon ~~his or her~~ *the defend-*
0365 *ant's* entering into a recognizance, with or without surety, in
0366 such sum as the court ~~or a judge thereof~~ may order and approve.
0367 The condition of the recognizance shall be such that if the
0368 defendant shall make his or her *a* personal appearance in court
0369 whenever ordered to do so, and shall further comply with the
0370 terms of such order of support, or of any subsequent modification
0371 thereof, then such recognizance shall be void; otherwise the
0372 recognizance shall be of full force and effect.

0373 (d) If the court is satisfied by due proof that, at any time
0374 during the period while the obligation to support continues, the
0375 defendant has violated the terms of such order, the court may
0376 forthwith proceed with the trial of the defendant under the
0377 original charge, or sentence him or her *the defendant* under the
0378 original conviction, or enforce the suspended sentence as the
0379 case may be.

0380 (c) (i) A division of resources by an individual and such
 0381 individual's spouse in accordance with section 2 shall be con-
 0382 sidered just cause for failure to use such individual's share of
 0383 such resources to provide medical support of such individual's
 0384 spouse so long as such spouse is receiving medical assistance as
 0385 defined by K.S.A. 39-702 and amendments thereto.

0386 (ii) A division of income by an individual and such individ-
 0387 ual's spouse in accordance with section 3 shall be considered
 0388 just cause for using only that portion of such individual's
 0389 annual income which exceeds ~~\$8,600~~ \$9,000 to provide medical support
 0390 of such individual's spouse so long as such spouse is receiving
 0391 medical assistance as defined by K.S.A. 39-702 and amendments
 0392 thereto.

0393 (f) Nonsupport of a spouse is a class E felony.

0394 Sec(5) ¹ K.S.A. 39-709 is hereby amended to read as follows:
 0395 39-709. (a) *General eligibility requirements for assistance for*
 0396 *which federal moneys are expended.* Subject to the additional
 0397 requirements below, assistance in accordance with plans under
 0398 which federal moneys are expended may be granted to any
 0399 needy person who:

0400 (1) Has insufficient income or resources to provide a reason-
 0401 able subsistence compatible with decency and health. Where a
 0402 husband and wife are living together, the combined income or
 0403 resources of both shall be considered in determining the eligi-
 0404 bility of either or both for such assistance unless otherwise
 0405 prohibited by law. The secretary, in determining need of any
 0406 applicant for or recipient of assistance shall not take into account
 0407 the financial responsibility of any individual for any applicant or
 0408 recipient of assistance unless such applicant or recipient is such
 0409 individual's spouse or such individual's minor child or minor
 0410 stepchild if the stepchild is living with such individual. The
 0411 secretary in determining need of an individual may provide such
 0412 income and resource exemptions as may be permitted by federal
 0413 legislation.

0414 (2) Is a citizen of the United States or is an alien lawfully
 0415 admitted to the United States and who is residing in the state of
 0416 Kansas. If any person transfers or assigns property without ade-

0417 quite consideration or for the purpose of becoming eligible for
0418 assistance (A) within the two-year period immediately preceding
0419 the application if the value of the property so transferred or
0420 assigned is \$12,000 or less or (B) within a period of time in excess
0421 of two years, as established by rules and regulations of the
0422 secretary, if the value of the property so transferred or assigned is
0423 in excess of \$12,000, such person shall thereby become ineligi-
0424 ble to receive assistance for such period of time as the value of
0425 the property assigned or transferred would have reasonably
0426 maintained such person at a standard compatible with decency
0427 and health. If any person without the consent of the secretary
0428 assigns or transfers property without adequate consideration
0429 while on the assistance rolls, after making application for assist-
0430 ance or while receiving assistance, such person shall thereby
0431 become ineligible to receive assistance for such period of time as
0432 the value of the property assigned or transferred would have
0433 reasonably maintained such person at a standard compatible
0434 with decency and health.

0435 (b) *Assistance to families with dependent children.* Assist-
0436 ance may be granted under this act to any dependent child, or
0437 relative, subject to the general eligibility requirements as set out
0438 in subsection (a), who resides in the state of Kansas or whose
0439 parent or other relative with whom the child is living resides in
0440 the state of Kansas. Such assistance shall be known as aid to
0441 families with dependent children.

0442 (c) *Aid to families with dependent children; assignment of*
0443 *support rights and limited power of attorney.* (1) By applying for
0444 or receiving aid to families with dependent children such appli-
0445 cant or recipient shall be deemed to have assigned to the secre-
0446 tary on behalf of the state any accrued, present or future rights to
0447 support from any other person such applicant may have in such
0448 person's own behalf or in behalf of any other family member for
0449 whom the applicant is applying for or receiving aid. In any case
0450 in which an order for child support has been established and the
0451 legal custodian and obligee under the order surrenders physical
0452 custody of the child to a caretaker relative without obtaining a
0453 modification of legal custody and the caretaker relative's support

0451 rights are assigned pursuant to this section, the surrender of
0452 physical custody and the assignment shall transfer, by operation
0453 of law, the child support obligation under the order to the
0454 secretary on behalf of the state. Such assignment shall be of all
0455 accrued, present or future rights to support of the child surren-
0456 dered to the caretaker relative. The assignment of support rights
0457 shall automatically become effective upon the date of approval
0458 for or receipt of such aid without the requirement that any
0459 document be signed by the applicant, recipient or obligee.
0460 Except as provided by subsection (c)(2), the assignment shall
0461 remain in full force and effect so long as such person is an
0462 applicant for or recipient of such aid or a caretaker relative no
0463 longer has physical custody of the child and aid to dependent
0464 children is discontinued. Upon the discontinuance of such aid,
0465 the assignment shall remain in effect as to unpaid support obli-
0466 gations due and owing at the time of the discontinuance of such
0467 aid until the claim of the secretary of social and rehabilitation
0468 services for repayment of the unreimbursed portion of such aid is
0469 satisfied. By applying for or receiving aid to dependent children
0470 assistance, or by surrendering physical custody of a child to a
0471 caretaker relative whose support rights are assigned, the appli-
0472 cant, recipient or obligee is also deemed to have appointed the
0473 secretary, or the secretary's designee, as an attorney in fact to
0474 perform the specific act of negotiating and endorsing all drafts,
0475 checks, money orders or other negotiable instruments repre-
0476 senting support payments received by the secretary in behalf of
0477 any person applying for, receiving or having received such
0478 assistance or in behalf of an obligee whose child receives or has
0479 received aid to dependent children because of the child's place-
0480 ment with a caretaker relative. This limited power of attorney
0481 shall be effective from the date the secretary approves the
0482 application for aid and shall remain in full force and effect as to
0483 the respective support rights assigned to the secretary under this
0484 subsection (c). The secretary retains the power to endorse all
0485 drafts, checks, money orders or other negotiable instruments
0486 representing support to which the secretary retains a partial
0487 claim pursuant to subsection (c) of K.S.A. 39-754 and amend-

0491 ments thereto.

0492 (2) For a period of five calendar months after a recipient's
0493 final aid to families with dependent children payment, the sec-
0494 retary of social and rehabilitation services shall continue to
0495 provide all appropriate support enforcement services for the
0496 persons who were receiving assistance, unless the former recip-
0497 ient requests that support enforcement services be discontinued.
0498 Before the end of the five-month period, the secretary shall send
0499 notice to the former recipient that support enforcement services
0500 pursuant to this subsection will continue unless a request to
0501 discontinue the services is received. The notice shall summarize
0502 the services available, any fees charged and policies for cost
0503 recovery and collection distribution. During the period services
0504 are being provided pursuant to this subsection, the assignment
0505 and limited power of attorney provided in subsection (c)(1) shall
0506 continue in full force and effect, except that the secretary's claim
0507 for repayment of the unreimbursed portion of aid to families with
0508 dependent children previously provided shall not be satisfied
0509 from support obligations which accrue after the final assistance
0510 payment. Nothing in this subsection (c)(2) shall affect or limit
0511 any assignment of support rights pursuant to subsection (c)(1)
0512 which occurs after the final assistance payment to the recipient.

0513 (d) *Eligibility requirements for general assistance, the cost*
0514 *of which is not shared by the federal government.* (1) General
0515 assistance may be granted to eligible persons who do not qualify
0516 for financial assistance in a program in which the federal gov-
0517 ernment participates and who satisfy the additional require-
0518 ments prescribed by or under this subsection (d).

0519 (A) To qualify for general assistance in any form a needy
0520 person must have insufficient income or resources to provide a
0521 reasonable subsistence compatible with decency and health and,
0522 except as provided for transitional assistance, be a member of a
0523 family in which a minor child or a pregnant woman resides or be
0524 unable to engage in employment. The secretary shall adopt rules
0525 and regulations prescribing criteria for establishing when a
0526 minor child may be considered to be living with a family and
0527 whether a person is able to engage in employment, including

0528 such factors as age or physical or mental condition. Eligibility for
0529 general assistance, other than transitional assistance, is limited to
0530 families in which a minor child or a pregnant woman resides or
0531 to an adult or family in which all legally responsible family
0532 members are unable to engage in employment. Where a husband
0533 and wife are living together the combined income or resources of
0534 both shall be considered in determining the eligibility of either
0535 or both for such assistance unless otherwise prohibited by law.
0536 The secretary in determining need of any applicant for or recip-
0537 ient of general assistance shall not take into account the financial
0538 responsibility of any individual for any applicant or recipient of
0539 general assistance unless such applicant or recipient is such
0540 individual's spouse or such individual's minor child or a minor
0541 stepchild if the stepchild is living with such individual. In
0542 determining the need of an individual, the secretary may provide
0543 for income and resource exemptions.

0026 0544 (B) To qualify for general assistance in any form a needy
0027 0545 person must be a citizen of the United States or an alien lawfully
0546 admitted to the United States and must be residing in the state of
0547 Kansas.

0548 (2) General assistance in the form of transitional assistance
0549 may be granted to eligible persons who do not qualify for
0550 financial assistance in a program in which the federal govern-
0551 ment participates and who satisfy the additional requirements
0552 prescribed by or under this subsection (d), but who do not meet
0553 the criteria prescribed by rules and regulations of the secretary
0554 relating to inability to engage in employment or are not a
0555 member of a family in which a minor or a pregnant woman
0556 resides.

0028 0557 (3) In addition to the other requirements prescribed under
0558 this subsection (d), the secretary shall adopt rules and regula-
0559 tions which establish community work experience program re-
0560 quirements for eligibility for the receipt of general assistance in
0561 any form and which establish penalties to be imposed when a
0029 0562 work assignment under a community work experience program
0030 0563 requirement is not completed without good cause. The secretary
0564 may adopt rules and regulations establishing exemptions from

0565 any such community work experience program requirements. A
0566 first time failure to complete such a work assignment require-
0567 ment shall result in ineligibility to receive general assistance for
0568 a period fixed by such rules and regulations of not more than
0569 three calendar months. A subsequent failure to complete such a
0570 work assignment requirement shall result in a period fixed by
0571 such rules and regulations of ineligibility of not more than six
0572 calendar months.

0573 (4) If any person transfers or assigns property without ade-
0574 quate consideration or for the purpose of becoming eligible for
0575 any form of general assistance (A) within the two-year period
0576 immediately preceding the application if the value of the prop-
0577 erty so transferred or assigned is \$12,000 or less or (B) within a
0578 period of time in excess of two years, as established by rules and
0579 regulations of the secretary, if the value of the property so
0580 transferred or assigned is in excess of \$12,000, such person shall
0581 thereby become ineligible to receive any form of general assist-
0582 ance for such period of time as the value of the property assigned
0583 or transferred would have reasonably maintained such person at
0584 a standard compatible with decency and health. If any person
0585 without the consent of the secretary assigns or transfers property
0586 without adequate consideration while on the assistance rolls
0587 after making application for assistance or while receiving assist-
0588 ance, such person shall thereby become ineligible to receive
0589 assistance for such period of time as the value of the property
0590 assigned or transferred would have reasonably maintained such
0591 person at a standard compatible with decency and health. If any
0592 person is found guilty of the crime of theft under the provisions
0593 of K.S.A. 39-720 and amendments thereto, such person shall
0594 thereby become forever ineligible to receive any form of general
0595 assistance under the provisions of this subsection (d) unless the
0596 conviction is the person's first conviction under the provisions of
0597 K.S.A. 39-720 and amendments thereto or the law of any other
0598 state concerning welfare fraud. First time offenders convicted of
0599 a misdemeanor under the provisions of such statute shall become
0600 ineligible to receive any form of general assistance for a period of
0601 12 calendar months from the date of conviction. First time

0602 offenders convicted of a felony under the provisions of such
0603 statute shall become ineligible to receive any form of general
0604 assistance for a period of 60 calendar months from the date of
0605 conviction. If any person is found guilty by a court of competent
0606 jurisdiction of any state other than the state of Kansas of a crime
0607 involving welfare fraud, such person shall thereby become for-
0608 ever ineligible to receive any form of general assistance under
0609 the provisions of this subsection (d) unless the conviction is the
0610 person's first conviction under the law of any other state con-
0611 cerning welfare fraud. First time offenders convicted of a mis-
0612 demeanor under the law of any other state concerning welfare
0613 fraud shall become ineligible to receive any form of general
0614 assistance for a period of 12 calendar months from the date of
0615 conviction. First time offenders convicted of a felony under the
0616 law of any other state concerning welfare fraud shall become
0617 ineligible to receive any form of general assistance for a period of
0618 60 calendar months from the date of conviction.

0619 (c) *Requirements for medical assistance for which federal*
0620 *moneys or state moneys or both are expended.* When the secre-
0621 tary has adopted a medical care plan under which federal
0622 moneys or state moneys or both are expended, medical assist-
0623 ance in accordance with such plan shall be granted to any person
0624 who is a citizen of the United States or who is an alien lawfully
0625 admitted to the United States and who is residing in the state of
0626 Kansas, whose resources and income do not exceed the levels
0627 prescribed by the secretary. In determining the need of an
0628 individual, the secretary may provide for income and resource
0629 exemptions and protected income and resource levels. The sec-
0630 retary shall exempt principal and interest held in irrevocable
0631 trust pursuant to subsection (c) of K.S.A. 16-303 and amendments
0632 thereto from the eligibility requirements of applicants for and
0633 recipients of medical assistance. Such assistance shall be known
0634 as medical assistance.

0635 (f) *Eligibility for medical assistance of resident receiving*
0636 *medical care outside state.* A person who is receiving medical
0637 care including long-term care outside of Kansas whose health
0638 would be endangered by the postponement of medical care until

0639 return to the state or by travel to return to Kansas, may be
0640 determined eligible for medical assistance if such individual is a
0641 resident of Kansas and all other eligibility factors are met. Per-
0642 sons who are receiving medical care on an ongoing basis in a
0643 long-term medical care facility in a state other than Kansas and
0644 who do not return to a care facility in Kansas when they are able
0645 to do so, shall no longer be eligible to receive assistance in
0646 Kansas unless such medical care is not available in a comparable
0647 facility or program providing such medical care in Kansas. For
0648 persons who are minors or who are under guardianship, the
0649 actions of the parent or guardian shall be deemed to be the
0650 actions of the child or ward in determining whether or not the
0651 person is remaining outside the state voluntarily.

0652 (g) *Medical assistance; assignment of rights to medical sup-*
0653 *port and limited power of attorney. Except as otherwise pro-*
0654 *vided in sections 2 and 3, by applying for or receiving medical*
0655 *assistance under a medical care plan in which federal funds are*
0656 *expended, any accrued, present or future rights to medical sup-*
0657 *port and any rights to payment for medical care from a third party*
0658 *of an applicant or recipient and any other family member for*
0659 *whom the applicant is applying shall be deemed to have been*
0660 *assigned to the secretary on behalf of the state. The assignment*
0661 *shall automatically become effective upon the date of approval*
0662 *for such assistance without the requirement that any document*
0663 *be signed by the applicant or recipient. Upon the discontinuance*
0664 *of such assistance, the assignment shall remain in effect as to*
0665 *unpaid obligations due and owing at the time of the discontinu-*
0666 *ance of such assistance until the claim of the secretary for*
0667 *repayment of the unreimbursed portion of such assistance is*
0668 *satisfied. By applying for or receiving medical assistance the*
0669 *applicant or recipient is also deemed to have appointed the*
0670 *secretary, or the secretary's designee, as an attorney in fact to*
0671 *perform the specific act of negotiating and endorsing all drafts,*
0672 *checks, money orders or other negotiable instruments, repre-*
0673 *senting payments received by the secretary in behalf of any*
0674 *person applying for, receiving or having received such assist-*
0675 *ance. This limited power of attorney shall be effective from the*

0676 date the secretary approves the application for assistance and
0677 shall remain in full force and effect as to the respective rights
0678 assigned to the secretary under this subsection. The secretary
0679 retains the power to endorse all drafts, checks, money orders or
0680 other negotiable instruments representing support to which the
0681 secretary retains a partial claim pursuant to subsection (c) of
0682 K.S.A. 39-754 and amendments thereto. The assignment of any
0683 rights to payment for medical care from a third party under this
0684 subsection shall not prohibit a health care provider from directly
0685 billing an insurance carrier for services rendered if the provider
0686 has not submitted a claim covering such services to the secretary
0687 for payment.

0688 (h) *Placement under code for care of children or juvenile*
0689 *offenders code; assignment of support rights and limited power*
0690 *of attorney.* In any case in which the secretary of social and
0691 rehabilitation services pays for the expenses of care and custody
0692 of a child pursuant to K.S.A. 38-1501 *et seq.* or 38-1601 *et seq.*,
0693 and amendments thereto, including the expenses of any foster
0694 care placement, an assignment of all past, present and future
0695 support rights of the child in custody possessed by either parent
0696 or other person entitled to receive support payments for the child
0697 is, by operation of law, conveyed to the secretary. Such assign-
0698 ment shall become effective upon placement of a child in the
0699 custody of the secretary or upon payment of the expenses of care
0700 and custody of a child by the secretary without the requirement
0701 that any document be signed by the parent or other person
0702 entitled to receive support payments and shall remain in full
0703 force and effect so long as such expenses are paid or the child
0704 remains in the custody of the secretary. When the payment of
0705 expenses by the secretary ceases or the secretary is relieved of
0706 custody of the child, the assignment shall remain in effect as to
0707 unpaid support obligations due and owing for the child who was
0708 in custody at the time payments for expense of care and custody
0709 or custody of the child are discontinued until the claim of the
0710 secretary of social and rehabilitation services has been satisfied.
0711 Such claim under this subsection is limited to an amount not
0712 exceeding the amount of assistance provided to the child. When

0713 the secretary pays for the expenses of care and custody of a child
0714 or a child is placed in the custody of the secretary, the parent or
0715 other person to whom support is ordered paid in a previously
0716 existing order for support is also deemed to have appointed the
0717 secretary, or the secretary's designee, as attorney in fact to
0718 perform the specific act of negotiating and endorsing all drafts,
0719 checks, money orders or other negotiable instruments repre-
0720 senting support payments received by the secretary on behalf of
0721 any parent or other person otherwise entitled to receive support
0722 payments pursuant to the assignment of support rights. This
0723 limited power of attorney shall be effective from the date the
0724 assignment to support rights becomes effective and shall remain
0725 in full force and effect as to the respective support rights as-
0726 signed to the secretary under this subsection. The secretary
0727 retains the power to endorse all drafts, checks, money orders or
0728 other negotiable instruments representing support to which the
0729 secretary retains a partial claim pursuant to K.S.A. 39-754 and
0730 amendments thereto.

0731 Sec. 6. K.S.A. 39-719a is hereby amended to read as follows:
0732 39-719a. Where medical assistance has been paid by the secre-
0733 tary and a third party has a legal obligation to pay such medical
0734 expenses to or on behalf of the recipient, the secretary may
0735 recover the same from the recipient or from the third party and
0736 shall be in all respects subrogated to the rights of the recipient in
0737 such cases *except as provided in sections 2 and 3.*

0738 Sec. 7. K.S.A. 21-3605, 39-709 and 39-719a are hereby re-
0739 pealed.

0740 Sec. 8. This act shall take effect and be in force from and
0741 after its publication in the statute book.

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION

State Capitol
Topeka 66612-1572
913-296-3011

H. Edward Flentje, *Secretary*

M E M O R A N D U M

TO: House Judiciary Committee

FROM: Arthur H. ~~Aggs~~ Aggs
Chief Attorney

DATE: January 26, 1988

SUBJECT: S.B. 334 Kansas Administrative
Procedures Act (KAPA)

There are a few areas of S.B. 334 that I would raise for your consideration:

1. The Trigger Mechanism. The current KAPA is made applicable to various state agency functions by the language stricken on page 3, in lines 111 thru 113 of S.B. 334, As Amended by Senate Committee.

The new trigger mechanism proposed in S.B. 334 is in this same subsection in lines 113 to 115. By this language, KAPA is expanded to all "orders" unless there is an expressed exemption by statute. (Sec. 2(c) and 3(c) then provide some expressed exemptions.)

I have a concern that the broad definition of "order" (line 92 to 95), coupled with the exemptions in sections 2 and 3, will provide fruitful grounds for unproductive litigation to determine if a particular function is under KAPA. The potential of putting citizens, judges and state agencies through this litigation can be totally avoided by retaining the current trigger mechanism.

Another result of the trigger mechanism proposed in S.B. 334 is that KAPA is expanded to many new functions without the specific new area being considered by the Judicial Council or any legislative committee. I believe that the application of KAPA to a specific agency function should be a conscious policy choice.

Attachment III

I would recommend that the trigger mechanism remain as is. Then, if there is a conscious policy decision to expand KAPA to a specific new function - fine, you just say so in a statute. I think the Legislature's decision in 1984 as to how to trigger the act was a sound one and is a policy that should be retained.

In fact, the Judicial Council, did specifically consider a very large number of specific functions and wrote in language in S.B. 334 to make KAPA applicable under the existing trigger mechanism (for example see page 17, line 630). Thus, if you amend S.B. 334 to preserve the existing triggering mechanism, KAPA will be greatly expanded to all those new functions specified in sections 16 thru 356 of S.B. 334.

Let me tell you how sections 16 on in S.B. 334 were developed.

The Revisor of Statutes office provided the Judicial Council Committee a statutory search to identify the statutes that require hearings.

The committee then considered these statutes and drafted proposed amendments and discussed them with affected groups and state agencies. I compliment the Judicial Council Committee on this portion of their work.

The Committee later voted to retain the trigger mechanism that is now contained in S.B. 334. I urge you to amend S.B. 334 to leave the trigger mechanism as is. This will still greatly expand the KAPA.

2. Citizen Safeguards

Some proponents may suggest that citizens are not properly safeguarded against arbitrary action by government without this bill. However, it should be remembered that under the broad provisions of the judicial review act (K.S.A. 77-601 et. seq.), arbitrary agency action is reversible by the district court. An overly broad expansion of KAPA can improperly force citizens through administrative proceedings before they can seek judicial review. This results because the judicial review act first requires the exhaustion of administrative remedies. (K.S.A. 77-612)

3. Discovery Proceedings

Under KAPA, the full range of discovery procedures are available - depositions, medical examinations, interrogatories, requests for admissions, etc. Even in court proceedings, discovery procedures are more limited for areas where the amount in controversy is under \$5,000 (See K.S.A. Chapter 61).

I'd suggest that discovery under KAPA be limited the same way it is in courts under K.S.A. chapter 61 versus chapter 60. There's a reason for limiting discovery in courts that is just as applicable in administrative proceedings - it can be expensive, time consuming and citizens can be abused by discovery.

4. General Remarks

I am not a proponent of S.B. 334, nor am I an opponent of bringing greater uniformity to administrative proceedings in those areas where citizens are currently afforded a hearing...but the language and procedures in KAPA are very difficult for citizens to follow if they are acting pro se. More simplified language and procedures would be preferable for a uniform act.

In summary, the bill as written has the following concerns:

1. It will mean greater reliance on legal counsel for both citizens and state agencies.
2. It is hard to read and will make it difficult for citizens to represent themselves.
3. The bill's overly broad trigger mechanism provides too large an expansion of KAPA. The current trigger mechanism is better.
4. Consideration should be given to more limited discovery procedures where the amount in controversy is under \$5,000.