

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 ~~a.m.~~/p.m. on January 27, 1988 in room 313-S of the Capitol.

All members were present except:

Representative Peterson, who was excused.

Committee staff present:

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

Conferees appearing before the committee:

John Schneider, Income Maintenance and Medical Services Division, S.R.S.
Jerel Wright, Kansas Credit Union League
Jim Maag, Kansas Bankers Association

Continuation of discussion and action on S.B. 264 -- Authorizing division of assets between spouses in determining eligibility for medical assistance

Representative Bideau explained the "excess shelter allowance". It is proposed as an amendment to New Sec. 1, (see Attachment I). He also explained the proposed amendment to the \$9,000 annual income of "plus any allowable excess shelter allowance up to a maximum total amount of \$14,440", (see Attachment II).

Representative Bideau moved to amend S.B. 264 to include the definition of excess shelter allowance and to increase the income amount to include "plus any allowable excess shelter allowance up to a maximum total amount of \$14,440". The motion was seconded by Representative Wagon. The motion passed.

New Sections 4, 5 and 6 were distributed to the Committee, (see Attachment III).

Representative Bideau moved and Representative Wagon seconded to adopt New Sec. 4, New Sec. 5 and New Sec. 6. The motion passed.

Representative Bideau explained the other proposed amendments are technical amendments proposed by S.R.S.

Representative Bideau moved to adopt all of the technical amendments. The motion was seconded by Representative Douville, and passed.

Representative Crowell moved to change the effective date to May 1, 1988, or upon publication in the Kansas Register, whichever one is the latest. Representative Kennard seconded the motion. The motion passed.

John Schneider assured the Committee S.R.S. would begin work implementing this act as soon as it is passed by the legislature and signed by the Governor, and would not wait until the Plan is approved.

A motion was made by Representative Buehler and seconded by Representative Crowell to increase the \$48,000 cap to \$60,000. The motion failed.

Representative Solbach moved to designate the effective date of S.B. 264 "upon publication in the Kansas Register". The motion was seconded by Representative Kennard. The motion failed.

Representative Wagon moved and Representative Sebelius seconded to report S.B. 264 favorably and to recommend the bill be passed, as amended. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on January 27, 19 88

Hearing on H. B. 2632 -- Exemptions from legal process

Jerel Wright testified in support of the proposed amendments to K.S.A. 40-414 relating to life insurance. He stated the Credit Union League opposes the proposed amendments to K.S.A. 1987 Supp 60-2314 (b) and (c) which increases the dollare value limitations on jewelry and tools of the trade. They support the creation of a dollar value limitation for the means of conveyance exemption found in K.S.A. 1987 Supp 60-2304(c). However, they propose a \$5,000 limitation instead of the proposed \$15,000 limitation,(see Attachment IV).

Jim Maag testified in support of an amendment proposed by Mr. Karlin relating to life insurance, (see Attachment V). He also stated he would prefer a \$5,000 limitation on an automobile. In regard to tools of the trade, he stated the present \$5,000 exemption is sufficient, except for agricultural equipment which he proposed could be handled separately with a higher exemption, (see Attachment VI).

The hearing was closed on H.B. 2632.

The Committee meeting was adjourned at 4:50 p.m.

The next meeting will be at 3:30 p.m., Thursday, January 28, 1988, in room 313-S.

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-

(b) "Excess shelter allowance" means for the applicant or recipient's spouse, the amount by which the sum of (1) the spouse's expense for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charges excluding utilities, for the community spouse's principal residence, and (2) the standard utility allowance under section 5(e) of the Food Stamp act of 1977, exceeds 30 percent of the maximum amount of income allowed under New Sec. 3.

Attachment I

Attachment II

0202 the same residence and the applicant's or recipient's spouse is
0203 applying for or receiving medical assistance, in the seventh
0204 month following the month in which the applicant or recipient
0205 becomes a qualified applicant or a qualified recipient, or at any
0206 time thereafter; if the applicant or recipient and the applicant's
0207 or recipient's spouse share the same room and the applicant's or
0208 recipient's spouse is applying for or receiving medical assist-
0209 ance;

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

0210 (2) the secretary of social and rehabilitation services, in de-
0211 termining the eligibility of the applicant or recipient, shall not
0212 take into account the separate *nonexempt* income of the appli-
0213 cant's or recipient's spouse and shall not require proof of ade-
0214 quate consideration for any assignment made in dividing in-
0215 come;

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

0216 (3) of the annual income of the qualified applicant's or qual-
0217 ified recipient's spouse, only that portion exceeding ~~\$8,600~~ shall
0218 be considered to be available to the qualified applicant or quali-
0219 fied recipient for future medical support and the qualified ap-
0220 plicant's or qualified recipient's spouse shall have a duty of
0221 future medical support of the qualified applicant or qualified
0222 recipient only to the extent that such spouse's annual income
0223 exceeds ~~\$8,600~~;

\$9,000 plus any allowable excess shelter allowance up to a maximum of \$14,400.

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

\$9,000 plus any allowable excess shelter allowance up to a maximum of \$14,400.

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

\$9,000 plus any allowable excess shelter allowance up to a maximum of ~~XX~~ \$14,400.

\$9,000 plus any allowable excess shelter allowance up to a maximum of \$14,400.

of a qualified recipient, such notice shall be filed with the 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 \$8,600 to provide future medical support to the
0281 applicant or recipient.

2 (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.

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.

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.

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

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

\$9,000 plus any allowable excess shelter allowance up to a maximum of \$14,400

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.

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.

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.

Renumber remaining sections accordingly

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 III

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.*

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,

, including the month care begins

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:

(g)

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

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 (d)
0144 evidenced by a written interspousal agreement, signed by both
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 ~~(d)~~ 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 ~~(e)~~ 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 ~~(f)~~ If a qualified recipient of medical assistance and such
0181 recipient's spouse have divided their resources as provided by (g)
0182 this section, the secretary, to the extent permitted under 42
0183 U.S.C. 4306p; as amended, may establish, enforce and foreclose
0184 a lien for any amount of medical assistance provided the recipi-
0185 ent:

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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0195 statement of the amount of the lien. The clerk shall enter in the
 0196 appearance docket the name of the owner of the property; the
 0197 amount of lien and the date it is filed and shall note the owner's
 0198 name in the general index. No fee shall be charged for either
 0199 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.*

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) 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.~~

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) ~~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~~

as in effect on the effective date of this act

(h)

(i) 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.

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;*

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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-
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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*~~;

\$9,000

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

\$9,000

\$9,000

\$9,000

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
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 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

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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 \$8,600 to provide future medical support to the
0281 applicant or recipient.

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 (a) 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.~~

0290 Sec. 4-1 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.

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.

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

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

\$9,000

New Sec. 4. (a) No provision of this act shall be considered to be in conflict with any federal statute or regulation until after a final determination by the secretary of the United States department of health and human services finding such a conflict.

(b) If the secretary of the United States department of health and human services makes an initial determination that any provision of this act is in conflict with any federal statute or regulation, the secretary of social and rehabilitation services shall take all available and necessary steps to obtain a final determination reversing that decision. If a final determination is made that this act conflicts with federal law, the secretary of social and rehabilitation services shall immediately request that the attorney general seek judicial review of the determination and shall immediately notify the appropriate policy and fiscal committees of the legislature.

New Sec. 5. 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.

New Sec. 6. For division of income purposes, a court ordered child support obligation or family maintenance allowance to a prior spouse or spouses shall not be considered available income.

Renumber remaining sections accordingly

0380 (e) (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 ~~\$9,600~~ \$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-

TESTIMONY ON H.B.2632
AN ACT concerning civil procedure; relating to
exemptions from legal process

Presented to the
HOUSE COMMITTEE ON JUDICIARY

January 27, 1988
by the

KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Jerel Wright, Governmental Affairs Director, for the Kansas Credit Union League (KCUL). Our association represents 98% of the 162 state-chartered and 40 federally-chartered credit unions located in Kansas. KCUL member credit unions serve the personal financial needs of over 500,000 individual credit union members and have over \$1 billion in combined assets. Kansas credit unions range in asset size from \$28,000 to \$108 million and range in size of membership from 61 to 38,000 members.

KCUL POSITION

I appreciate having this opportunity to appear before the Committee to provide comments on H.B.2632, the bill amending Kansas exemption laws. My purpose today is three-fold. First, to support the proposed amendments to K.S.A. 40-414. Second, to offer additional amendments to K.S.A. 1987 Supp. 60-2304(c). And third, to oppose the proposed amendments to K.S.A. 1987 Supp. 60-2304(b) and (e).

Credit unions are on record in support of legislation designed to clarify Kansas exemption laws and designed to set dollar value limitations on Kansas exemptions from legal process

Attachment IV

equitably balance the rights of debtors and creditors (1981, 1982 and 1987 KCUL Governmental Forum).

AMENDMENTS SUPPORTED

KCUL supports the amendments on lines 0052 through 0058 of H.B.2632 relating to the exemption status of the nonforfeiture value of a life insurance policy. The amendments in K.S.A. 40-414(c) clarify the meaning of the phrase "a policy obtained by the debtor for the purpose of defrauding one or more of the debtor's creditors" by setting a threshold time period after which the debtor cannot purchase the policy and then claim the value as exempt for purposes of bankruptcy or execution on judgments for the claim of a creditor.

In light of the dollar value limitation for the life insurance exemption under federal bankruptcy code as well as many other states, credit unions feel the presumption of fraud proposed by K.S.A. 40-414(c) is fair when attempting to balance rights of debtors and creditors.

ADDITIONAL AMENDMENTS

KCUL supports the creation of a dollar value limitation for the means of conveyance exemption found in K.S.A. 1987 Supp. 60-2304(c). The proposed language which continues the unlimited means of conveyance exemption for a vehicle designed or equipped for handicapped persons is fair and consistent with the federal exemption professionally prescribed health aids for the debtor or

the dependent of debtor.

Credit unions offer an additional amendment on line 0076 of H.B.2632 by proposing to reduce the dollar value limitation on the means of conveyance from current proposal of \$15,000 to \$5,000. The current language in K.S.A. 1987 Supp. 60-2304 (unlimited means of conveyance exemption) seems to send a message to all Kansans that if a debtor is unable to repay debts, then the debtor can use Kansas and Federal laws to put themselves in a better financial position than those who choose to repay all of their debts.

The \$15,000 value limitation is an improvement of over current law but a \$5,000 limitation seems to be more acceptable since the central theme of the exemption laws is to give the debtor a fresh start. The unlimited and \$15,000 exemption gives the debtor much more than a fresh start.

AMENDMENTS OPPOSED

H.B. 2632 also proposes to increase dollar value limitations on the jewelry exemption in K.S.A. 1987 Supp. 60-2304(b) and on the tools of the trade exemption in K.S.A. 1987 Supp. 60-2304(e). During the 1987 interim committee hearings, the discussion showed that the dollar value limitations for these exemptions have changed since 1965 (tools of trade) and 1970 (jewelry). One argument has been that these exemptions need to be increased because of inflation.

An opposing argument can be equally made that the current dollar value limitations are fair and equitable and that an increase in the exemptions will create an imbalance in favor of the debtor. The present (Kansas) dollar value exemption for jewelry is similar to the exemption in other states as well as the federal exemption. The present exemption for tools of trade in Kansas is already much higher than the exemption allowed in surrounding states and in the federal code.

To increase the dollar value limitations in the jewelry and tools of trade exemptions would further liberalize what many have noted to be extremely liberal exemption laws. KCUL proposes that the committee maintain the present dollar value limitations found in K.S.A. 1987 Supp. 60-2304(b) and (e).

SUMMARY

KCUL supports the amendments that clarify K.S.A. 40-414, seeks further amendment of K.S.A. 1987 Supp. 60-2304(c) that would be fair to both the debtor and the creditor and opposes the amendments to K.S.A. 1987 Supp. 60-2304(b) and (e) that increase the dollar value exemptions for jewelry and tools of trade.

Mr. Chairman, thank you for the opportunity to appear before the Committee. I will respond to questions at your direction.

LIST OF ATTACHMENTS

- I. Suggested amendments to H.B.2632
- II. Analysis of selected exemption provisions under Kansas, surrounding states and federal laws.

HOUSE BILL No. 2632

By Special Committee on Judiciary

Re Proposal No. 16

12-16

0018 AN ACT concerning civil procedure; relating to exemptions from
0019 legal process; amending K.S.A. 40-414 and K.S.A. 1987 Supp.
0020 60-2304 and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 40-414 is hereby amended to read as fol-
0023 lows: 40-414. (a) If a life insurance company or fraternal benefit
0024 society issues any policy of insurance or beneficiary certificates
0025 upon the life of an individual and payable at the death of the
0026 insured, or in any given number of years, to any person or
0027 persons having an insurable interest in the life of the insured, the
0028 policy and its reserves, or their present value, shall inure to the
0029 sole and separate use and benefit of the beneficiaries named in
0030 the policy and shall be free from:

0031 (1) The claims of the insured or the insured's creditors and
0032 representatives;

0033 (2) the claims of any policyholder or the policyholder's cred-
0034 itors and representatives, subject to the provisions of subsection
0035 (b);

0036 (3) all taxes, subject to the provisions of subsection (d); and

0037 (4) the claims and judgments of the creditors and represent-
0038 atives of any person named as beneficiary in the policy of
0039 insurance.

0040 (b) The nonforfeiture value of a life insurance policy shall not
0041 be exempt from:

0042 (1) Claims of the creditors of a policyholder who files a
0043 bankruptcy petition under 11 U.S.C. ½ 101 et seq. on or within
0044 one year after the date the policy is issued if the policy was
0045 obtained by the debtor for the purpose of defrauding one or more

0046 of the debtor's creditors; or
0047 (2) the claim of any creditor of a policyholder if execution on
0048 judgment for the claim is issued on or within one year after the
0049 date that the policy is issued if the policy was obtained by the
0050 debtor for the purpose of defrauding one or more of the debtor's
0051 creditors.

0052 (3) For the purposes of this subsection, "a policy obtained by
0053 the debtor for the purpose of defrauding one or more of the
0054 debtor's creditors" means a policy purchased by the debtor
0055 within one year prior to:

0056 (A) Filing a bankruptcy petition under 11 U.S.C. 1/3 101 et
0057 seq.; or

0058 (B) execution on judgment for the claim of the creditor.

0059 (c) Nothing in this section shall be construed as restricting
0060 the right of the insured to change the beneficiary if the policy
0061 reserves that right to the insured.

0062 (d) Nothing in this section shall be construed as exempting
0063 from taxation any real estate which may at any time be carried by
0064 any life insurance company as a part of its legal reserve.

0065 Sec. 2. K.S.A. 1987 Supp. 60-2304 is hereby amended to read
0066 as follows: 60-2304. Every person residing in this state shall have
0067 exempt from seizure and sale upon any attachment, execution or
0068 other process issued from any court in this state, the following
0069 articles of personal property:

0070 (a) The furnishings, equipment and supplies, including food,
0071 fuel and clothing, for the person which is in the person's present
0072 possession and is reasonably necessary at the principal residence
0073 of the person for a period of one year.

0074 (b) Ornaments of the debtor's person, including jewelry,
0075 having a value of not to exceed ~~\$500~~ \$1,000.

0076 (c) Such person's interest, not to exceed \$15,000 in value, in
0077 one means of conveyance regularly used for the transportation of
0078 the person or for transportation to and from the person's regular
0079 place of work, except that the value limitation specified in this
0080 subsection shall not apply when the means of conveyance is a
0081 vehicle designed or equipped, or both, for handicapped persons,
0082 as defined in K.S.A. 8-1,124 and amendments thereto.

Amendment #1. In Section 2 on line 0075, strike \$1,000 and insert \$500

Amendment #2. In Section 2 on line 0076, strike \$15,000 and insert \$5,000

0083 (d) A burial plot or crypt or any cemetery lot exempt from
0084 process pursuant to K.S.A. 17-1302 and amendments thereto.

0085 (e) The books, documents, furniture, instruments, tools, im-
0086 plements and equipment, the breeding stock, seed grain or
0087 growing plants stock, or the other tangible means of production
0088 regularly and reasonably necessary in carrying on the person's
0089 profession, trade, business or occupation in an aggregate value
0090 not to exceed ~~\$5,000~~ \$7,500.

0091 (f) Any personal property exempt from process pursuant to
0092 K.S.A. 36-202, 48-245 or 84-2-326, and amendments thereto.

0093 Sec. 3. K.S.A. 40-414 and K.S.A. 1987 Supp. 60-2304 are
0094 hereby repealed.

0095 Sec. 4. This act shall take effect and be in force from and
0096 after its publication in the statute book.

Amendment #3. In Section 2 on line 0090, strike \$7,500
and insert \$5,000

ANALYSIS OF SELECTED EXEMPTION PROVISIONS UNDER KANSAS,
SURROUNDING STATES, AND FEDERAL LAWS.
PREPARED FOR THE SPECIAL COMMITTEE ON
JUDICIARY HEARING SEPTEMBER 25, 1987,
BY THE KANSAS CREDIT UNION LEAGUE FROM
COLLIERS ON BANKRUPTCY, FIFTEENTH EDITION

	KANSAS	MISSOURI	OKLAHOMA	COLORADO	NEBRASKA	FEDERAL
Home -	Up to 160A with no equity limit. K.S.A. 60-2301 Article 15 §9 Kansas Constitution	\$8000 limit in home equity for an individual or couple. Mo. Ann. Stat. §513.430(6) & §513.475 (Vernon Supp. 1987)	\$5000 limit on equity in home with Acreage limits. Okla. Const. art. XII, § 1; Okla. Stat. Ann. tit. 31, SS1 & 2 (West Supp. 1986-87; and S5 (West 1976)	\$20,000 limit on equity in home Colo. Rev. Stat. § 13-54-102(1) (o) (II) & (o) (II) (Supp. 1986); §§ 38-41-201 & 201.5 (1982); S38-41-204, -205, -207, -209, -210 & -211 (1982)	\$1000 limit on equity in home. -Neb. Rev. Stat. §40-101 (Supp. 1986); §§40-102, 40-103, 40-111, 40-112, 40-113, 40-115 & 40-116 (1984)	\$7500 Limit on equity in home 11 USC 522d(1)
Means of Conveyance-	1 conveyance per person no limit on equity. K.S.A. 60-2304(3)	\$500 limit on equity on a motor vehicle MO. Ann. Stat. §513.430(5) (Vernon Supp. 1987)	\$1500 limit on equity on a motor vehicle Okla. Stat. Ann. tit. 31, § 1(A) (12) (West Supp. 1986-87)	\$1000 limit on equity in one or more motor vehicles. Colo. Rev. Stat. § 13-54-102(1) (j) (Supp. 1986)	No specific exemption	\$1200 limit on equity in one motor vehicle 11 USC 522(d) (2)
HHG's -	All exempt - No limits Guns are not exempt. K.S.A.60-2304	\$1000 limit on HHG's \$400 on Misc. other PP \$850 household & \$250 per unmarried individual w/additional exceptions. Mo. Stat. Ann. § 513.430(1), (3), (9) & 513.440 (Vernon Supp. 1987)	All HHG's no limit includes limited livestock & 1 gun & 1 yrs. supply of provisions Okla. Stat. Ann. tit. 31 § 1 (West Supp. (1985-86)	\$750 in clothing \$500 in jewelry \$750 in books & picture \$1500 HHG's. Colo. Rev. Stat. § 13-54-102(Supp. 1981) § 13-54-103 (1973)	\$2500 Misc. PP \$1500 clothing & HHG's 6 months of provisions Neb. Rev. Stat. §§ 25-1552 & 25-1556 (1985)	\$200 limit per item; w/limit of \$4000 aggregate value & any excess of \$7500 home exemptions. 11 USC 522(d) (3); 11 USC 522d(5)

	KANSAS	MISSOURI	OKLAHOMA	COLORADO	NEBRASKA	FEDERAL
Jewelry -	\$500.00 limit on jewelry. K.S.A. 60-2304(2)	\$500 limit on jewelry. Mo. Stat. Ann. § 513.430(1), (3), (9) & 513.440 (Vernon Supp 1987)	Only as personal property - HHG	\$500 limit on jewelry Colo. Rev. Stat. § 13-54-102(Supp. 1981) § 13-54-103 (1973)	Only as personal property - HHG	\$500 limit 11 USC 522(d) (4)
Tools of Trade -	\$5,000.00 limit K.S.A. 60-2304(5)	\$1000 limit on trade implements. Mo. Ann. Stat. § 513.430(4) (Vernon Supp. 1987)	\$5000 limit on lien avoidance. Okla. Stat. Ann. tit. 31 §§ 1(A) (6) and (1) (C) (West Supp. 1985-86)	\$300 food & fuel; \$3000 livestock; \$2000 tools of trade; for farm debtors. \$1500 limit in trade or \$1500 in library. Colo. Rev. Stat. §§ 13-54-102(1) (i) (k)	\$1500 limit on tools of trade. Neb. Rev. Stat. §§ 25-1552 & 25-1556 (1985)	\$750 limit on tools of trade 11USC522(d) (6)
Life Insurance-	Life ins. purchased more than a year bkruptcy; no limit on cash or loan value. K.S.A. 40-414 Kan. Stat. Ann. § 40-414 (1986)	Life ins. purchased 6 months prior to bkruptcy; limit of \$5000 on cash or loan value. Mo. Ann. Stat. §§ 377.090 and 377.330 (Vernon 1968); §§ 513.430(7) and (8) (Vernon Supp. 1987)	Life ins. exempt No limit on cash or loan value. Okla. Stat. Ann. tit. 36, §§ 2510, 3631 and 3632 (West 1976)	Life ins. exempt only limits - \$200/month disability \$5000 from proceeds no limit on cash or loan value. Colo. Rev. Stat. §§ 10-7-205, 10-8-114 (1974); § 13-54-102 (1) (1) (Supp. 1986)	Life ins. limit cash or loan value of \$5000; \$200 per month on disability insurance. Neb. Rev. Stat. §§ 44-371 & 44-754 (1984)	Life ins. other than credit life; Limit of \$4000 cash or loan value & any unused portion of \$7500 home- stead exemptn. 11USC522(d) (7) & (8)
Various Other Exemptions-	Various	Various	Various	Various	Various	Various

LAW OFFICES
BARBER, EMERSON, SPRINGER, ZINN & MURRAY
MASSACHUSETTS STREET AT SOUTH PARK
POST OFFICE BOX 666
LAWRENCE, KANSAS 66044

RICHARD A. BARBER
JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
THOMAS V. MURRAY
CALVIN J. KARLIN
H. MARC JOSEPH
TODD N. THOMPSON
MARY B. CLARK

MARTIN B. DICKINSON, JR.
COUNSEL

TELEPHONE
913 843-6600

January 21, 1988

The Honorable Robert Frey
Senator
State Capitol
Room 128 South
Topeka, Kansas 66612

Dear Senator Frey:

I am writing in regard to H.B. 2632 on which I testified during the interim session. One of the concerns I (and others) addressed was the need to prove fraud by clear and convincing evidence in order to set aside the purchase of life insurance on the eve of bankruptcy. It is apparent that the Special Committee on Judiciary by its Proposal No. 16 as reflected in H.B. 2632 intended to eliminate the need to prove fraud if insurance is purchased within one year of bankruptcy. Unfortunately, the drafting of the amendment leaves uncertain the need to prove fraud.

As drafted, the statute still refers to the need to establish fraud, but then defines proof of fraud to be purchase within one year. A less convoluted way of achieving the same result would be simply to place a semi-colon and the word "or" after "issued" in subparagraph (1) and a period after "issued" in subparagraph (2) of existing K.S.A. 40-414(b) and not even add the new language in subparagraph (3). K.S.A. 40-414(b) would thus read:

- (b) The nonforfeiture value of a life insurance policy shall not be exempt from:
- (1) Claims of the creditors of a policyholder who files a bankruptcy petition under 11 U.S.C. § 101 et seq. on or within one year after the date the policy is issued; or
 - (2) The claim of any creditor of a policyholder if execution on judgment for the claim is issued on or within one year after the date the policy is issued.

Attachment V

The Honorable Robert Frey
January 21, 1988
Page 2

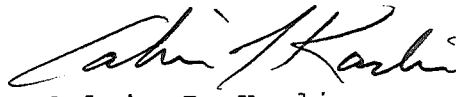
This language says the same thing in a much simpler form and could avoid unnecessary confusion and litigation.

Please also note the printing error where "1/3" has been mistakenly printed for "\$" in 11 U.S.C. § 101 in the bill.

Thank you for your consideration of this matter.

Very truly yours,

BARBER, EMERSON, SPRINGER, ZINN & MURRAY

A handwritten signature in cursive script, appearing to read "Calvin J. Karlin".

Calvin J. Karlin

CJK:kcn



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 27, 1988

TO: House Committee on Judiciary
FROM: James S. Maag, Director of Research
Kansas Bankers Association *JSM*
RE: HB 2632 - Exemptions from legal process

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee to discuss the provisions of HB 2632. We would like to thank the Special Committee on Judiciary for the time they devoted to the study of exemptions from legal process during in the interim. Many problems relating to exemptions were addressed in a thorough and open manner. While we do not agree with all of the recommendations made by the Special Committee we truly appreciate their efforts and their fairness in considering all aspects of the issue.

The Kansas Bankers Association is very supportive of the amendments to K.S.A. 40-414 presented in Section 1 of the bill. This addresses a serious problem relating to the purchase of life insurance prior to a bankruptcy filing. As was pointed out during the Special Committee hearings, the present law makes it necessary to prove fraud by clear and convincing evidence before the purchase of life insurance just prior to bankruptcy can be set aside. The proposed amendment would eliminate the need to prove fraud if insurance is purchased within one year of filing for bankruptcy. We believe this is a major improvement in the exemptions process and should be enacted.

In Section 2 of the bill the amount which a person can exempt as a "means of conveyance" has been limited to a vehicle not exceeding \$15,000 in value. While this is an improvement over existing law which sets no

limitation at all it still places the Kansas limit far above most other states in the exemption allowed for vehicles. We would respectfully request that this committee consider a limit in the \$5000 to \$10000 range which would be more realistic when compared to the exemption laws of surrounding states.

Section 2 of the bill also increases the "tools of the trade" exemption from \$5000 to \$7500. Understandably, the present \$5000 limit does not seem too high when considering agricultural equipment, but in other trades or professions it is quite generous - particularly when compared to exemptions in other states. We would further request that this committee reconsider this increase or explore the possibility of creating different categories of "tools of the trade".

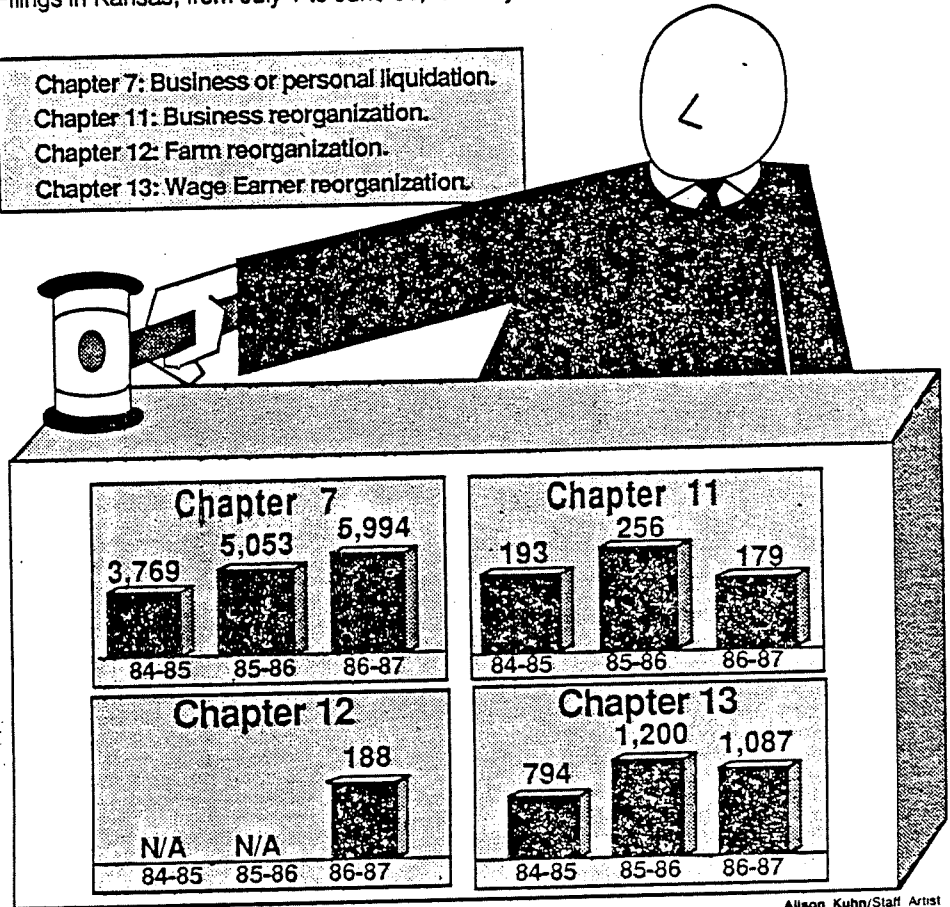
The banking industry of Kansas fully understands the need for a fair and adequate list of exemptions from legal process. Retention of the basic necessities to make a "fresh start" is essential. However, as one conferee stated this summer, the Kansas exemptions laws have become so liberal over the years that it has resulted in the debtor getting a "head start" rather than a "fresh start". We believe HB 2632 takes a major step toward greater fairness with the insurance amendment in Section 1. We would, however, respectfully request the committee to study the proposed amendments in Section 2 and consider lowering the exemption limits on vehicles and tools of the trade.

We appreciate very much the committee's consideration of this important issue.

Kansas Bankruptcy Filings

Filings in Kansas, from July 1 to June 30, for the years indicated

Chapter 7: Business or personal liquidation.
 Chapter 11: Business reorganization.
 Chapter 12: Farm reorganization.
 Chapter 13: Wage Earner reorganization.



Allison Kuhn/Staff Artist

Bankruptcy laws in Kansas allow generous exemptions

By Forrest S. Gossett
Staff Writer

Bankruptcy is never easy, but if an individual wage earner is forced to file, Kansas is about the best state around, according to bankruptcy experts.

When filing for bankruptcy, people are allowed to exempt certain personal property, retirement plans, a house and cars from the bankruptcy.

In other words, even though you are filing for bankruptcy, for the most part, you get to keep that property.

There are exemptions under the U.S. Bankruptcy Code, but people filing for bankruptcy are also allowed to claim exemptions under individual state codes. And in the world of state exemptions, Kansas ranks among the best for debtors.

"The law in Kansas is written to

"The law in Kansas is written to favor debtors, and creditors have the burden to prove why a debt should be discharged — or dismissed."

— Gerald Domitrovic

favor debtors, and creditors have the burden to prove why a debt should be discharged — or dismissed," said Wichita lawyer Gerald Domitrovic. "It is possible for a person to abuse the system with the Kansas exemptions, though it doesn't happen that often."
People filing for bankruptcy in Kansas can claim exemptions on their homes, with no equity limit; "reasonable" household goods and wearing apparel; automobile, no limit on value; \$5,000 worth of trade tools; and pension benefits, which includes Individual Retirement

Accounts and 401k plans.

Compare that with neighboring Missouri. Under that state's exemptions, only \$8,000 of a homeowner's equity is exempt, meaning that in many cases, the person filing the bankruptcy petition could face losing the home; one motor vehicle with a value not exceeding \$500; \$1,000 worth of household goods; and limited trade tools.

"You compare that and you can see that Kansas exemptions are better," said Ed Nazar, a Wichita lawyer.

THE GAZETTE

William Allen White, 1895 - 1944
William Lindsay White, 1944 - 1973

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An Abuse of Kindness

EMPORIA has had its share of bankruptcies in the past couple of years. Several people who were riding high in 1984 are broke now.

Most of these bankrupt Emporians are victims of circumstance. They were caught holding the bag when the bottom dropped out of the local real-estate market.

Others are simply deadbeats. These are the people who abused the system — like the guy who bought a \$35,000 car one week and took bankruptcy the next. He gets to keep the car; the agency that sold it to him must take a loss.

These deadbeats were the subject of an inquiry in Topeka last week.

A committee of the Legislature was told that the state's bankruptcy laws are being abused. A Washburn University Law School professor told legislators that people are taking advantage of the exemptions provided in the bankruptcy law.

The law allows a debtor to keep 160 acres of farmland or one acre of urban property; one car; a life insurance policy; furniture; \$500 worth of jewelry, and \$5,000 worth of tools if they are needed to carry on a trade.

Thus it is possible for a Kansas deadbeat to live in a mansion, drive a limousine, flash a big diamond ring and still be bankrupt. Meanwhile, the people who trusted him are left with unpaid bills.

The exemptions were put into the Kansas bankruptcy law as an act of kindness. Every family is entitled to shelter, clothing and basic transportation.

"Nobody wants to drive a debtor into the dust," said Rep. Ed Bideau at the hearing last week, "but the committee is examining possible modifications to prevent a debtor from driving an \$80,000 Mercedes-Benz."

Similar things have happened — right here in Emporia.

The Legislature should set reasonable limits on the bankruptcy exemptions. — R.C.