Approved: March 10, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 2, 1995 in Room 313-S-of the Capitol.

All members were present except:
Representative David Heinemann - Excused
Representative Doug Mays - Excused
Representative Candy Ruff - Excused
Representative Doug Spangler - Excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Randy Hearrell, Judicial Council
Judge Ed Larson, Judicial Council, Probate Law Advisory Committee
Brian Vasquez, Kansas Department of Social & Rehabilitation Services

Others attending: See attached list

Hearings on **HB 2183** - probate code reference update, were opened.

Judge Ed Larson, Probate Law Advisory Committee, appeared before the committee in support of the proposed bill. He told the committee that this was clean-up language to the Uniform Simultaneous Death law. (Attachment 1)

Hearings on **HB 2183** were closed.

Hearings on **HB 2181** - exceptions to the general rule of trustee's office not transferable, were opened.

Judge Ed Larson, Probate Law Advisory Committee, appeared before the committee as a proponent of the bill. He commented that the this proposed bill would clean-up conflicts in K.S.A. 58-1204, Uniform Trustee's Powers Act. (Attachment 2)

Hearings on **HB 2181** were closed.

Hearings on **HB 2184** - classification of demands against an estate, were opened.

Judge Ed Larson, Probate Law Advisory Committee, appeared before the committee as a proponent of the bill. He explained to the committee that in 1992 Congress passed legislation which mandated that states recover Medicaid expenditures. It was not understood what class of demand was required. Kansas enacted that Medicaid be a first class demand placing it ahead of expenses of administration and expenses of the illness. He provided the committee with a copy of Estate Recovery and Claim Classification Statutes from various states which showed that most states have it listed as a third class claim. (Attachment 3)

Brian Vasquez, Department of SRS, appeared before the committee as a neutral party. This proposed bill was designed to reduce the level of demand for medical assistance claim from it's current level. The impact of this proposal would be to reduce the total amount of collections to SRS by 15%. (Attachment 4)

Hearings on **HB 2184** were closed.

Hearings on **HB 2179** - revocation of probate and nonprobate transfers by divorce, were opened.

Judge Ed Larson, Probate Law Advisory Committee, appeared before the committee in support of the proposed bill. He explained that the Probate Law Advisory Committee believes that a statute which automatically revokes spousal rights in probate and non probate property upon divorce and protects innocent

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

parties is a good policy. An example would be that during the first marriage a life insurance policy was taken out. Then there's a divorce and the life insurance policy was forgotten and regardless of whether there is a remarriage the first spouse would receive the policy. This bill would automatically drop the first spouse unless it is written into the divorce agreement or will. (Attachment 5)

Hearings on **HB 2179** were closed.

The committee meeting adjourned at 5:45. The next meeting is scheduled for February 7, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: FEBRUARY 2, 1995

NAME	REPRESENTING
[illegible] Hearrell	Judicial Council
ED LARSON	JUDICIAL COUNCIL
JOHN F. KUETHER	JUDICIAL COUNCIL
[illegible]	SRS
Randy [illegible]	SRS
Ron Smith	KBA (The real KBA)
Kathy [illegible]	KBA (the original KBA)
Jon Newman	KS Governmental Consulting
WILLIAM GRANT	OFFICE STATE BANK COMMISSIONER
Paul Shelby	OJA
[illegible]	KDOH

Judicial Council Testimony
on
1995 HB 2183

The proposed change occurs in lines 22 and 23 of the bill. This is a "clean-up" amendment. L. 1992, ch. 97 repealed the "Uniform Simultaneous Death Law" (K.S.A. 58-701 to 58-707) and enacted the "Uniform Simultaneous Death Act" (K.S.A. 58-708 to 58-718). K.S.A. 59-513 was not amended to update the citation. The other amendments are language changes made by the Revisor of Statutes Office consistent with their style of drafting.

House Judiciary
2-02-95
Attachment 1

Judicial Council Testimony
on
1995 HB 2181

The proposed change in K.S.A. 58-1204 cleans up a conflict in that statute.

K.S.A. 58-1204 (a part of the Uniform Trustees' Powers Act) provides:

> "**Trustee's office not transferable.** The trustee shall not transfer his or her office to another or delegate the entire administration of the trust to a cotrustee or another."

K.S.A. 9-2107(a)(1) defines "contracting trustees" to include banks having trust authority under the state bank commissioner or under the comptroller of the currency. K.S.A. 9-2107(a)(2) defines "originating trustee" as banks having their principal place of business in this state which have trust powers. (See attached statute.)

It is our opinion that even though the banking statute [9-2107(b)] uses the phrase "succeeds to and is substituted for" rather than the word "transfer" it is still in conflict and a reference to K.S.A. 9-2107 should be substituted.

In addition, K.S.A. 17-5004, which sets out the standards for investments by fiduciaries, conservators and trustees following written directions regarding trust property states that a trustee is obligated to follow certain written directions. Presumably, if these written directions refer to transfer of the trustee's office or delegation of the entire administration of the trust to a cotrustee or another, they must also be followed. Thus, a reference to K.S.A. 17-5004 should be inserted in K.S.A. 58-1204. (See attached statute.)

1-1-11 Supp.

9-2107. Allowing for the contracting for trust services; definitions; notice filing; authority of commissioner; fees; examination; branches. (a) As used in this section:

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the state bank commissioner under K.S.A. 9-1602, and amendments thereto, or any national bank chartered to do business in Kansas that has been granted trust authority by the comptroller of the currency under 12 USC 92a, or any bank, regardless of where located, that has been granted trust authority and which is controlled, as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, which accepts or succeeds to any fiduciary responsibility as provided in this section;

(2) "originating trustee" means any trust company, bank, national banking association, savings and loan association or savings bank which has trust powers and its principal place of business is in this state and which places or transfers any fiduciary responsibility to a contracting trustee as provided in this section;

(3) "financial institution" means any bank, national banking association, savings and loan association or savings bank which has its principal place of business in this state but which does not have trust powers.

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, no contracting trustee as defined in K.S.A. 9-2107(a)(1) and amendments thereto, having its home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) The contracting trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills and court orders, which pertain to the affected fiduciary accounts;

(2) the originating trustee is absolved from all fiduciary duties and obligations arising under such writings and shall discontinue the exercise of any fiduciary duties with respect to such writings, except that the originating trustee is not absolved or discharged from any duty to account required by K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule of law, rules and regulations or court order, nor shall the originating trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may authorize the contracting trustee:

(1) To establish a trust service desk at any office of the originating trustee at which the contracting trustee may conduct any trust business and any business incidental thereto and which the contracting trustee may otherwise conduct at its principal place of business; and

(2) to engage the originating trustee as the agent of the contracting trustee, on a disclosed basis to customers, for the purposes of providing administrative, advertising and safekeeping services incident to the fiduciary services provided by the contracting trustee.

(e) Any contracting trustee may enter into an agreement with a financial institution providing that the contracting trustee may establish a trust service desk as authorized by subsection (d) in the offices of such financial institution and which provides such financial institution, on a disclosed basis to customers, may act as the agent of contracting trustee for purposes of providing administrative services and advertising incident to the fiduciary services to be performed by the contracting trustee.

(f) No activity authorized by subsections (b) through (e) shall be conducted by any contracting trustee, originating trustee or financial institution until an application for such authority has been submitted to and approved by the commissioner. The application shall be in the form and contain the information required by the commissioner, which shall at a minimum include certified copies of the following documents:

(1) The agreement;

(2) the written action taken by the board of directors of the originating trustee or financial institution approving the agreement;

(3) all other required regulatory approvals;

(4) an affidavit of publication of notice of intent to file the application with the commissioner. Publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city or county where the principal office of the originating trustee or financial institution is located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant contracting trustee, the originating trustee or financial institution, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application, and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed agreement. All comments and requests for public hearing shall be filed with the commissioner on or before the 30th day after the date the application is filed; and

(5) a certification by the parties to the agreement that written notice of the proposed substitution was sent by first-class mail to each cofiduciary, each surviving settlor of a trust, each

ward of a guardianship, each person who has sole or shared power to remove the originating trustee as fiduciary and each adult beneficiary currently receiving or entitled to receive a distribution of principle or income from a fiduciary account affected by the agreement, and that such notice was sent to each such person's address as shown in the originating trustee's records. An unintentional failure to give such notice shall not impair the validity or effect of any such agreement, except an intentional failure to give such notice shall render the agreement null and void as to the party not receiving the notice of substitution.

(g) A contracting trustee making application to the commissioner for approval of any agreement pursuant to this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner adopted pursuant to K.S.A. 9-1713 and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate account in the state treasury for each application. The money in each such account shall be used to pay the expenses of the commissioner, or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(h) Upon the filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

(1) The reasonable probability of usefulness and success of the contracting trustee;

(2) the financial history and condition of the contracting trustee including the character, qualifications and experience of the officers employed by the contracting trustee; and

(3) whether the contracting agreement will result in any undue injury to properly conducted existing banks, national banks and trust companies.

If the commissioner shall determine any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, then the application shall be approved.

(i) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days of the date upon which the application was filed.

(j) If a written request for public hearing is filed, the commissioner shall hold within 30 days of the close of the comment period, a public hearing in a location determined by the commissioner. Notice of the time, date and place of such hearing shall be published by the applicant in a newspaper of general circulation in the county where the originating trustee or financial institution is located, not less than 10 nor more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons may present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(k) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period provided for by this section, shall give written notice to each party to the agreement of the commissioner's intent to extend the period which shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(l) Within 15 days of the date of the commissioner's approval or denial, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance

with the act for judicial review and civil enforcement of agency actions. Any party which files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713 and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(m) When the commissioner determines that any contracting trustee domiciled in this state has entered into a contracting agreement in violation of the laws governing the operation of such contracting trustee, the commissioner shall give written notice to the contracting trustee and the originating trustee or financial institution of such determination. Within 15 days after receipt of such notification, the contracting trustee and originating trustee or financial institution shall have the right to appeal in writing to the state banking board the commissioner's determination. The board shall fix a date for hearing, which shall be held within 45 days after the date of the appeal and shall be conducted in accordance with the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination. The decision of the board shall be final and conclusive. If the contracting trustee does not appeal to the board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714 and amendments thereto, until such time as the commissioner determines the contracting trustee, originating trustee and financial institution are in full compliance with the laws governing the operation of a contracting trustee and originating trustee or financial institution.

(n) Any party entitled to receive a notice under subsection (f)(5) may file a petition in the court having jurisdiction over the fiduciary relationship, or if none, in the district court in the county where the originating trustee has its principal office, seeking to remove any contracting trustee substituted or about to be substituted as fiduciary pursuant to this section. Unless the contracting trustee files a written consent to its removal or a written declination to act subsequent to the filing of the petition, the court, upon notice and hearing, shall determine the best interest of the petitioner and all other parties concerned and shall fashion such relief as it deems appropriate in the circumstances, including the awarding of reasonable attorney fees. The right to file a petition under this subsection shall be in addition to any other rights to remove fiduciary provided by any other statute or regulation or by the writing creating the fiduciary relationship. If the removal of the fiduciary is prompted solely as a result of the contracting agreement, any reasonable cost associated with such removal and transfer, not to exceed $200 per account, shall be paid by the originating trustee or financial institution entering into the agreement.

History: L. 1989, ch. 48, § 7; L. 1990, ch. 60, § 3; L. 1993, ch. 30, § 2; L. 1994, ch. 51, § 1; L. 1994, ch. 294, § 1; May 5.

17-5004. Standards for investments by fiduciaries; prudent investor rule; conservators; trustees following written directions regarding trust property. (a) *Prudent Investor Rule.* (1) A fiduciary has a duty to invest and manage the trust assets as follows: (A) The fiduciary has a duty to invest and manage assets as a prudent investor would considering the purposes, terms, distribution requirements and other circumstances of the trust or conservatorship. This standard requires the exercise of reasonable care, skill and caution and is to be applied to investments not in isolation, but in the context of the portfolio under the fiduciary's control as a whole and as a part of an overall investment strategy that should incorporate risk and return objectives reasonably suitable to such assets.

(B) No specific investment or course of action is, taken alone, prudent or imprudent. Except as provided in this section, the fiduciary may invest in every kind of property and type of investment. The fiduciary's investment decisions and actions are to be judged in terms of the fiduciary's reasonable business judgment regarding the anticipated effect on the portfolio under the fiduciary's control as a whole given the facts and circumstances prevailing at the time of the decision or action. The prudent investor rule is a test of conduct and not of resulting performance.

(C) The fiduciary has a duty to diversify the investments of the portfolio except, under the circumstances, when the fiduciary reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the portfolio not to diversify.

(D) The fiduciary has a duty, within a reasonable time after the acceptance of the portfolio, to review portfolio assets and to make and implement decisions concerning the retention and disposition of original preexisting investments in order to conform to the provisions of this section. The fiduciary's decision to retain or dispose of an asset may properly be influenced by the asset's special relationship or value to the purposes of the trust or conservatorship, or to some or all of the beneficiaries, consistent with the fiduciary's duty of impartiality.

(E) The fiduciary has a duty to pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the fiduciary's duty of impartiality and the purposes of the trust or conservatorship. Whether investments are underproductive or overproductive of income shall be judged by the portfolio as a whole and not as to any particular asset.

(F) The circumstances that the fiduciary may consider in making investment decisions include, but shall not be limited to, the following: The general economic conditions; the possible effect of inflation; the expected tax consequences of investment decisions or strategies; the role each investment or course of action plays within the overall portfolio; the expected total return, including both income yield and appreciation of capital; and the duty to incur only reasonable and appropriate costs. The fiduciary may but need not consider related trusts and the assets of beneficiaries when making investment decisions.

(2) If a trust, the provisions of this section may be expanded, restricted, eliminated or otherwise altered by express provisions of the trust instrument. The fiduciary is not liable to a beneficiary for the fiduciary's reasonable and good faith reliance on those express provisions.

(3) Nothing in this section abrogates or restricts the power of an appropriate court in proper cases to: (A) Direct or permit the fiduciary to deviate from the terms of a trust or similar instrument; or

(B) direct or permit the fiduciary to take, or to restrain the fiduciary from taking, any action regarding the making or retention of investments.

(4) The following terms or comparable language in the investment powers and related provisions of a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as authorizing any investment or strategy permitted under this section: "Investments permissible by law for investment of trust funds;" "legal investments;" "authorized investments;" "using the judgment and care under the circumstances then prevailing that men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital;" "prudent man rule;" and "prudent person rule."

(5) On and after the effective date of this act, the provisions of this section shall apply to all existing and future trusts or conservatorships, but only as to actions or inactions occurring after the effective date of this act.

(b) *Duty Not to Delegate.* (1) The fiduciary has a duty not to delegate to others the performance of any acts involving the exercise of judgment and discretion, except acts constituting investment functions that a prudent investor of comparable skills might delegate under the circumstances. The fiduciary may delegate those investment functions to an investment agent as provided in subsection (b)(2).

(2) For a fiduciary to properly delegate investment functions under subsection (b)(1), all of the following requirements shall apply: (A) The fiduciary must exercise reasonable care, skill and caution in selection of the investment agent, in establishing the scope and specific terms of any delegation and in periodically reviewing the agent's actions in order to monitor overall performance and compliance with the scope and specific terms of the delegation.

(B) The fiduciary must conduct an inquiry into the experience, performance history, professional licensing or registration, if any, and financial stability of the investment agent.

(C) The investment agent shall be subject to the jurisdiction of the courts of this state.

(D) The investment agent shall be subject to the same standards that are applicable to the fiduciary.

(E) The investment agent shall be liable to the beneficiaries of the trust and to the designated fiduciary to the same extent as if the investment agent were a designated fiduciary in relation to the exercise or nonexercise of the investment function.

(F) If a trust, the trustee shall send written notice of its intention to begin delegating investment functions under this section to the beneficiaries eligible to receive income from the trust on the date of initial delegation at least 30 days before the delegation. This notice shall thereafter, until or unless the beneficiaries eligible to receive income from the trust at the time are notified to the contrary, authorize the fiduciary to delegate investment functions pursuant to this section.

(3) If all requirements of subsection (b) are satisfied, the fiduciary shall not otherwise be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated.

(4) On and after the effective date of this act, the provisions of this section shall apply to all existing and future trusts or conservatorships, but only as to actions or inactions occurring after the effective date of this act.

(c) Notwithstanding the provisions of subsection (a), conservators shall not invest funds under their control and management in investments other than those specifically permitted by K.S.A. 59-3019 and amendments thereto, except upon the entry of an order of a court of competent jurisdiction, after a hearing on a verified petition. Before authorizing any such investment, the court shall require evidence of value and advisability of such purchase.

(d) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property of a trust which is revocable or amendable, a trustee following written directions regarding the property of the trust that are received by the trustee from the person or persons then having the power to revoke or amend the trust or from the person or persons, other than the trustee, to whom the grantor delegates the right to give such written directions to the trustee shall be deemed to have complied with the foregoing standards provided in subsection (a). The trustee is authorized to follow such written directions regardless of any fiduciary obligations to which the directing party may also be subject.

History: L. 1949, ch. 319, § 1; L. 1951, ch. 209, § 1; L. 1961, ch. 124, § 1; L. 1965, ch. 150, § 9; L. 1978, ch. 82, § 1; L. 1987, ch. 87, § 1; L. 1993, ch. 238, § 1; July 1.

Judicial Council Testimony
on
1995 HB 2184

The 1992 Legislature passed SB 607 which became L. 1992, ch. 150, sec. 8, and amended K.S.A. 59-1301, a statute in the probate code, which sets the priority of payment of claims when the assets of an estate are insufficient to pay the full amount of the demands against the estate.

Prior to 1992, the U.S. Congress passed legislation which required the enactment of the state legislation to recover Medicaid expenditures and the 1992 Kansas enactment was in response to that federal mandate. What was not understood in 1992 was that the federal requirement that a recovery statute be enacted was not a requirement that such statute be enacted to make recovery a first class demand, but merely that such a statute be enacted.

Prior to 1992, the demands were classified as follows:

- First class - Funeral expenses
- Second class - Costs of administration and expenses of last illness
- Third class - Judgments and liens
- Fourth class - All other demands

After the enactment of the 1992 legislation, the Medicaid recovery became a first class demand placing it ahead of expenses of administration and expenses of last illness. Shortly thereafter, SRS set up the Kansas Estate Recovery Program which pursues the recovery of this money.

Mr. Brian Vazquez, Attorney for Estate Recovery program, has done an excellent job of administering the program and our discussions with him concerning this bill have been open and frank. While we expect he may oppose this legislation, we also want to acknowledge the professional manner in which he conducts the program and has treated the Judicial Council in its study of this matter. In our conversations with Mr. Vazquez, it became clear that his policies in dealing with these estates will somewhat lessen the fiscal impact of such change.

Attached is research entitled "Estate Recovery and Claim Classification Statutes of the Various States" provided by Mr. Hearrell, Research Director for the Judicial Council. He located the recovery statutes in other states and in the shaded area, made a judgment as to where the respective state's recovery statutes would be classified in Kansas. Mr. Hearrell states his classifications are subjective but it is clear that no other state has a first class classification for Medicaid claims and it appears most are third class claims.

As to other changes in HB 2184, the language on page 1, in lines 37, 38 and 39 was moved to the end of page one and the top of page two because it should be in the concluding paragraph which applies to the entire section and not in the paragraph relating to fourth class claims. On page one, in line 40, the phrase "for the first class of demands" was stricken because when the Medicaid language is removed, it is no longer required.

It is the opinion of the Probate Law Advisory Committee and the Judicial Council that K.S.A. 59-1301 should be amended to make estate recovery a second class claim.

ESTATE RECOVERY AND CLAIM CLASSIFICATION STATUTES OF THE VARIOUS STATES

ALABAMA	
None	As of 1994
ALASKA	
47.07.055 CH. 102 § 21 of 1994 Session Laws	Recovery of medical assistance from estates
13.16.470 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, medical expenses of last illness, and before all other claims.
ARIZONA	
36-2935	Estate recovery program; liens
14-3805 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, expenses of last illness, and before all other claims.
ARKANSAS	
20-76-436	Recovery of benefits from recipients' estates
28-50-106 4th Class	The claim is classified last, as all other claims, and is payable after costs of administration, and funeral last illness expenses.
CALIFORNIA	
14009.5 (Welfare and Institutions Code)	Liability to repay cost of health care; decedents' estates; distributees; exceptions; waiver of claim
9201, 9204, 11420 (Probate Code) 4th Class	The claim is classified last, as general debt, and is payable after expenses of administration, funeral expenses, expenses of last illness, family allowances, wage claims, and liens.

COLORADO	
26-4-403.3	Recovery of assets
15-12-805 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, expenses of last illness, and before all other claims.
CONNECTICUT	
17-83g	State's claim on death of beneficiary or parent of beneficiary
45a-365 3rd Class	The claim is classified as debt to the state, and is payable after funeral expenses, administration costs, last illness expenses, and before wage claims, other preferred claims, and all other claims.
DELAWARE	
None	As of 1993
FLORIDA	
None	As of 1994
GEORGIA	
49-4-147.1	Claims by department against estate of Medicaid recipients
53-7-91 3rd Class	The claim is classified as debt to the state, and is payable after funeral and last illness expenses, administration costs, and before liens, rent, liquidated demands, and open accounts.
HAWAII	
346-37	Recovery of payments
560:3-805 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, family allowances, exempt property, last illness expenses, and before all other claims.
IDAHO	
56-218	recovery of certain medical assistance
15-3-805 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, expenses of last illness, and before all other claims.

ILLINOIS	
305 ILCS 5/3-9	Claims against the estate of a deceased recipient
755 ILCS 5/18-10 3rd Class	The claim is classified as debt to the state, and is payable after administration costs and funeral expenses, family allowances, debts due the U.S., wage claims and last illness expenses, and before all other claims.
INDIANA	
12-14-21-1	Claim filed against estate
29-1-14-9 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, family allowances, debts due the U.S., last illness expenses, and before all other claims.
IOWA	
249A.5	Recovery of payment
633.425 3rd Class	The claim is classified as debt for medical assistance, and is payable after court costs, administration costs, funeral expenses, debts due the U.S., last illness expenses, taxes due the state, and before wage claims, unpaid support payments, and all other claims.
KENTUCKY	
None	As of 1992
LOUISIANA	
None	As of 1994
MAINE	
22 § 14(2-I)	Claims against estates of Medicaid recipients
18A § 3-805 2nd Class	The claim is classified with last illness expenses, and is payable after administration costs, funeral expenses, debts due the U.S., and before taxes due the state, and all other claims.

MARYLAND	
Art. 88A § 77	Recovery from estate
8-105 (Estates and Trusts) 3rd Class	The claim is classified as old age assistance, and is payable after court costs, administration costs, funeral expenses, attorney fees, family allowances, taxes due, last illness expenses, rent, wage claims, and before all other claims.
MASSACHUSETTS	
195:16	Informal administration of certain small estates
198:1 3rd Class	The claim is classified as medical assistance, and is payable after administration costs and funeral expenses and last illness expenses, debts due the U.S., taxes, and before wage claims, debt for necessaries, all other claims.
MICHIGAN	
None	As of 1993
MINNESOTA	
256B.15	Claims against estates
524.3-805 2nd Class	The claim is classified as last illness expense, and is payable after administration costs, funeral expenses, debts due the U.S., and before debts due the state, and all other claims.
MISSISSIPPI	
None	As of 1993
MISSOURI	
473.398	Recovery of public assistance funds from recipient's estate
473.397 3rd Class	The claim is classified as debt to the state, and is payable after court costs, administration costs, family allowances, funeral expenses, debts due the U.S., last illness expenses, and before past judgments, and all other claims.

MONTANA	
53-2-611	Recovery from recipient's estate
72-3-807 3rd Class	The claim is classified as debt to the state and the U.S., and is payable after administration costs, funeral expenses and last illness expenses, estate taxes due the U.S. and the state, and before taxes due the state and U.S., all other claims.
NEBRASKA	
LB 1224 § 39 of 1994 Session Laws	(estate recovery program)
30-2487 (LB § 40) 2nd Class	The claim is classified with last illness expenses, and is payable after administration costs, funeral expenses, debts and taxes due the U.S., and before debts and taxes due the state, and all other claims.
NEVADA	
422.2935	Recovery of benefits paid for assistance to medically indigent; claim against estate of recipient or spouse
150.220 3rd Class	The claim is classified as payment of benefits, and is payable after funeral expenses, last illness expenses, family allowances, debts due the U.S., and before wage claims, past judgments, and all other claims.
NEW HAMPSHIRE	
167:13 to 167:16a	Recovery for assistance furnished
554:19 3rd Class	The claim is classified as old age assistance, and is payable after administration costs, funeral expenses, last illness expenses, and before all other claims.
NEW JERSEY	
30:4D-7.2	Lien against estate of recipient
3B:22-2 2nd Class	The claim is classified as debt to the state and the U.S., and is payable after funeral expenses, administration costs, and before last illness expenses, past judgments, and all other claims.

NEW MEXICO	
27-2A-1 et seq.	Medicaid Estate Recovery Act
45-3-805 3rd Class	The claim is classified as debt to the state, and is payable after administration costs and attorney fees, last illness expenses, funeral expenses, debts due the U.S., and before all other claims.
NEW YORK	
Soc S § 369 CH. 170 §§ 451, 452 of 1994 Sess. Laws	Application of other provisions
SCPA § 1811 2nd Class	The claim is classified as debt to the state and the U.S., and is payable after administration costs and funeral expenses, and before taxes, past judgments, and all other claims.
NORTH CAROLINA	
None	As of 1994
NORTH DAKOTA	
50-24.1-07	Recovery from estate of medical assistance recipient
30.1-19-05 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, debts due the U.S., last illness expenses, and before all other claims.
OHIO	
5111.11	Recovery program against property and estates of recipients; liens
2117.25 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, family allowances, debts due the U.S., last illness expenses, and before wage claims, and all other claims.
OKLAHOMA	
None	As of 1994

OREGON	
411.795	Claim against estate of deceased recipient
115.125 3rd Class	The claim is classified as amount of public assistance and is payable after family allowances, administration costs, funeral expenses, debts due the U.S., last illness expenses, taxes due the state, wage claims, and before all other claims.
PENNSYLVANIA	
None	As of 1994
RHODE ISLAND	
40-8-15	Lien on deceased recipient's estate for assistance
33-12-11 3rd Class	The claim is classified as debt to the state, and is payable after administration costs and family allowances, funeral expenses, last illness expenses, debts due the U.S., and before wage claims, state lottery claims, and all other claims.
SOUTH CAROLINA	
None	As of 1993
SOUTH DAKOTA	
28-6-23	Medical assistance as debt to department - recovery of debt
30-21-1 4th Class	The claim is classified last with all other demands, and is payable after administration costs, funeral expenses, last illness expenses, wage claims, and debts due the U.S..
TENNESSEE	
71-5-116	Lien on real estate - Claim against estate
30-2-317 ?	The claim is classified as debt to the state and the U.S., and is payable after administration costs and attorney fees, and before funeral expenses, and all other demands.

TEXAS	
None	no estate recovery statute, but Probate Code includes recovery provision
Probate Code §§ 320, 322 3rd Class	The claim is classified as medical assistance payments, and is payable after funeral and last illness expenses, family allowances, administration costs, liens, taxes due the state, cost of confinement, and before and all other claims.
UTAH	
26-19-13	Recovery of medical assistance payments from recipient - lien against estate
75-3-805 2nd Class	The claim is classified as last illness expenses, and is payable after funeral expenses, administration costs, debts due the U.S., and before debts due the state, and all other claims.
VERMONT	
33 §§ 122, 2113	Recovery of payments, Action for recovery of expenditures
14 § 1205 4th Class	The claim is classified last as all other claims, and is payable after administration costs, funeral and last illness expenses, and wage claims.
VIRGINIA	
32.1-326.1, 32.1-327	Department to operate program of estate recovery, Claim against indigent's estate for payment made
64.1-157 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, family allowances, funeral expenses, debts due the U.S., last illness expenses, and before all other claims.
WASHINGTON	
CH. 21 §§ 2, 3 of 1994 Sess. Laws	(estate recovery)
11.76.110 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, last illness expenses, wage claims, debts due the U.S., and before liens, and all other claims.

WEST VIRGINIA	
None	As of 1994
WISCONSIN	
49.496	Recovery of correct medical assistance payments
859.25 3rd Class	The claim is classified as debt to the state and the U.S., and is payable after administration costs, funeral expenses, family allowances, last illness expenses, and before wage claims, and all other claims.
WYOMING	
42-4-206	Claims against estates
2-7-701 3rd Class	The claim is classified as last illness expenses, and is payable after court costs, administration costs, funeral expenses, family allowances, debts due the U.S., and before debts due the state, wage claims, and all other claims.

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Janet Schalansky, Acting Secretary
House Committee on Judiciary
Testimony on H.B. 2184 Pertaining to Probate and Demand Claims
February 2, 1995

Mr. Chairman and members of the committee, thank you for the opportunity to present testimony on H.B. 2184. This bill is designed to reduce the level of demand for the medical assistance claim from its current level as a first class claim to a second class claim equivalent with costs of administration and costs of last illness.

The impact of this proposal on the agency would be to reduce the total amount of collections while increasing the cost of administration of the program. To understand these issues, it is important to describe the present estate recovery program. Initially authorized by the legislature in 1992, it allows the agency to recover Medicaid expenditures paid on behalf of a recipient from the recipient's estate. Most of the recoveries are from probate actions and family agreements. Operation of the program has helped offset the ever increasing state costs in the Medicaid program. As the attached exhibit shows, the Estate Recovery program has recovered nearly $1,300,000 while incurring expenses of $361,000 in handling approximately 1,500 cases.

As a second class claimant under the proposed legislation, SRS would recover less since the available money left after payment of reasonable funeral expense would be split proportionately with costs of administration and costs of last illness. The amount paid to a claimant in a class is determined by computing the claim's respective percentage to the overall amount of similar class claims. The fiscal impact of reducing the claim in this manner is conservatively estimated at a 15% reduction in total collections. For FY 96, the loss would be estimated at $180,000.

Second class claim status would also result in a need for more administrative review and court time to determine the amount to be paid to the agency. Since determination of SRS's appropriate amount would be based on other claims presented, all creditors' claims would need to be heard and determined. This would increase staff time needed on each case due to preparation, litigation, tracking, and negotiation.

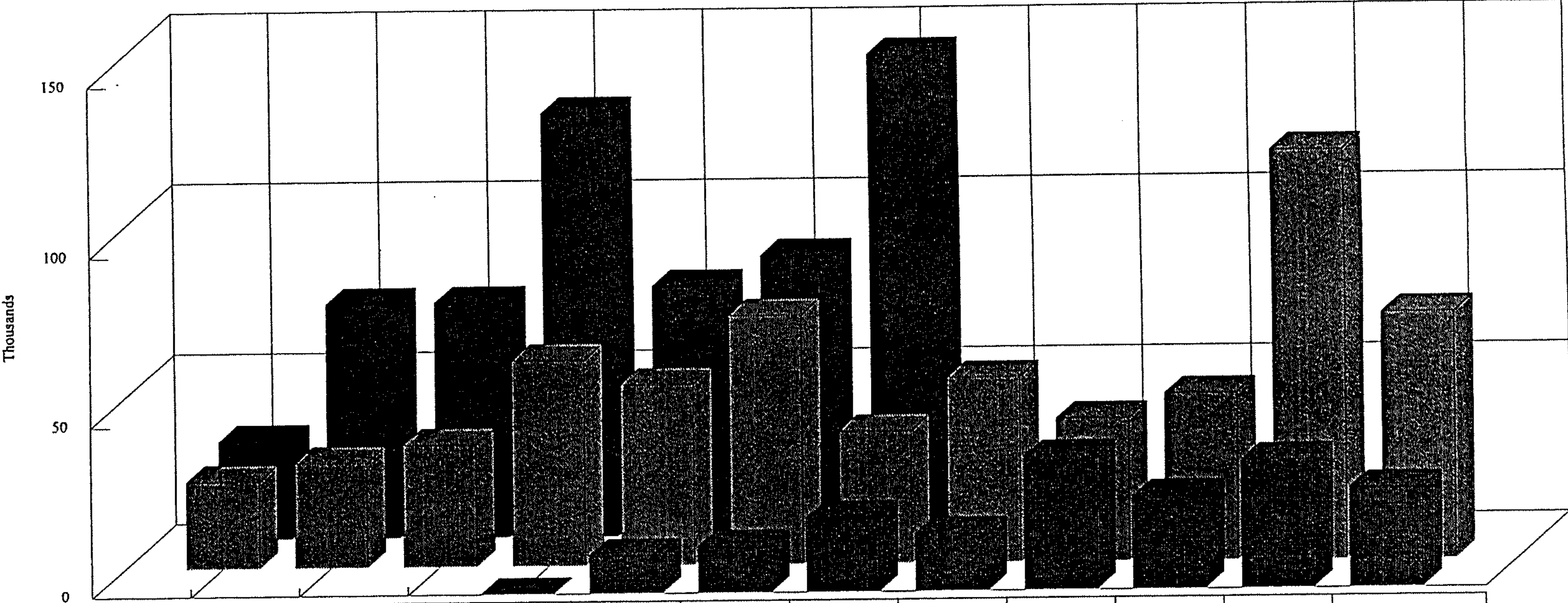
Since there are some estates in which the property value would not justify a normal probate process, the proposed legislation would probably not increase the number of probate actions filed. However, on those cases where there are assets which justify the probate action, there would be an added financial incentive for someone other than the agency to file. This added time and litigation would probably not benefit the family. The costs of last sickness and the costs of administration, except for attorney fees, are in many cases already covered by some other means. (Hospital, pharmacy, and nursing home charges are cognizable through state or federal assistance; filing fees and publication costs are covered by SRS under estate recovery

initiated probates.) The main items not covered automatically are attorney fees. As such, this proposal may encourage attorneys to initiate probate since payment of fees would now be available. This would further reduce the amount of the state's claim and increase costs as a result of additional litigation.

In summary, passage of this legislation will have a substantive impact on the dollars recovered through estate recovery as well as further increase the operations cost of the program.

Brian Vasquez
Administrator
Estate Recovery Program
Acting for Janet Schalansky
Acting Secretary

COLLECTIONS



	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
FISCAL YEAR 1993				73.07	11,262.42	13,621.57	21,745.35	16,728.99	39,080.66	27,074.08	37,611.91	29,092.65
FISCAL YEAR 1994	25,335.03	30,562.61	35,551.89	60,295.88	52,880.01	73,102.65	38,595.11	54,130.50	41,759.80	48,876.60	120,102.53	72,405.31
FISCAL YEAR 1995	28,630.89	68,851.01	69,097.39	124,310.00	73,424.19	82,103.69	140,887.47					

SRS Estate Recovery
Attachment to Testimony

Judicial Council Testimony
on
1995 HB 2179

This is a unique bill in that it is recommended for adoption by both the Judicial Council Probate Law Advisory Committee and the Judicial Council Family Law Advisory Committee and of course approved by the Judicial Council.

Currently, revocation of a will upon divorce is covered by K.S.A. 59-610 which states that, upon divorce, provisions in a will in favor of the testator's divorced spouse are revoked. No statute covers will substitutes and these should be addressed specifically in property settlements but sometimes are not. Each member of the Probate Law Committee could recall an instance when either matters weren't completed, a death occurred, or there was property omitted and in each case an unfair result occurred. Please note the newspaper clipping from the Topeka Capital Journal which is typical of such problems.

The committees believe a statute which automatically revokes spousal rights in probate and nonprobate property upon divorce and protects innocent parties is the best answer. The proposed legislation comes from a section of the Uniform Probate Code. It has been adopted in a number of states and many others have adopted piece-meal legislation intending the same result. The Probate Law Advisory Committee reviewed section 2-804 of the UPC and adapted the language to Kansas and recommends the adoption of HB 2179.

The proposed legislation includes:

Subsection (a), "Definitions".

Subsection (b) which provides that unless expressly stated in a court order or contract relating to the division of the marital estate, divorce revokes and severs interests of former spouses in property held by them during the marriage.

Subsections (c) and (d) refers to the effects of severance and revocation.

Subsection (e) refers to revival if the divorce is nullified.

Subsection (f) says no revocation for other change of circumstances.

Subsections (g) and (h) refer to protection of payors, third parties and bona fide purchasers.

As drafted, the bill repeals K.S.A. 59-610. This was a miscommunication with the Revisor's Office by the Judicial Council staff. The bill should be revised to amend K.S.A. 59-610 as follows:

> "If after making a will the testator marries ~~and has a child, by birth or adoption~~, the will is thereby revoked, unless the will is drafted in contemplation of marriage. ~~If after making a will the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are thereby revoked.~~

House Judiciary
2-02-95
Attachment 5

AGENDA ITEM NO. 5

TOPEKA CAPITAL JOURNAL
December 7, 1994

Widow loses out on insurance

By KENT S. COLLINS

Q: Here's a stupid golden years story for you and your readers.

My husband died last summer, and his first wife got rich for it. When he was married the first time, he bought some sort of whole life insurance policy. He put a lot of money into it, then stopped making premium payments and let it grow. On the date he took out the policy — 27 years ago — he made his first wife the beneficiary.

As the years went by, he divorced his wife, forgot about the insurance policy and married me. We had eight beautiful years together. We had a rich relationship, even if only a modest lifestyle. When he died in August, he had precious little to leave me. His will said I was supposed to get what little there was. But that life insurance policy had his first wife as beneficiary — not me. She is long gone, remarried and spiteful of their years together.

I loved him when he was well, and nursed him when he wasn't. But she got the life insurance — something in the neighborhood of $55,000!

Now tell me, how fair is that? — NOT A BENEFICIARY

A: Life insurance payouts don't have to follow the rules of wills and probate. They are beholden only to designated beneficiaries. As such, they bypass whatever your husband might have written in his will. Some retirement accounts and annuities also go to pre-designated beneficiaries, no matter what a will or the probate court might say.

Even a tin-horn lawyer knows to ask a will-writing client about assets beholden to a beneficiary declaration. My guess is your husband may have authored his own will. Not wise. Lawyers write wills. Husbands — and everyone else — would be wise only to advise.

A poorly written will is sometimes more trouble than no will at all. And assets not carefully recorded and not often reviewed may not have the intended value. Retirees would serve their kinfolk best by digging through old financial records and setting those records straight.

Los Angeles Times Syndicate