

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chair Melvin Neufeld at 9:30 a.m. on May 2, 2003, in Room 514-S of the Capitol.

All members were present except: Representative Andrew Howell, excused
Representative Dean Newton, excused
Representative Jo Ann Pottorff, excused

Committee staff present: Amy Deckard, Legislative Research Department
Becky Krahl, Legislative Research Department
Audrey Nogle, Legislative Research Department
Debra Hollon, Legislative Research Department
J. G. Scott, Legislative Research Department
Alan Conroy, Legislative Research Department
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Administrative Analyst
Shirley Jepson, Committee Secretary

Conferees appearing before the committee: Brian Vaquez, Attorney, Department of Social and Rehabilitation Services (SRS)

Others attending: See attached

- Attachment 1 Proposed Amendment to **SB 272** by SRS
- Attachment 2 Proposed Amendment to **SB 272** by John Peterson

Jim Wilson, Revisor of Statutes, presented an amendment to **SB 272**, proposed by the Department of Social and Rehabilitation Services, stating "Such lien may be filed only when the community spouse of the spouse receiving medical assistance has vacated the home and the home is not being used as a permanent residence of the community spouse" (Attachment 1).

Brian Vaquez, Attorney for SRS, stated that the amendment is proposed to allow a community spouse of a spouse receiving Medicaid and has not vacated the home, to continue living in the home and prevents the State from attaching a lien to the home. Mr. Vaquez noted that the agency, in proposing the amendment, is working toward setting the parameters to match federal guidelines.

Representative Campbell moved to adopt the amendment to **SB 272** as proposed by SRS. The motion was seconded by Representative Bethell. The motion carried.

The Chair asked the Committee to return to the three amendments which were brought forth by John Peterson, Kansas Land Title Association, during the May 1, 2003, hearing on **SB 272** (Attachment 2).

Representative Landwehr moved to adopt the amendments to **SB 272** as set forth in the memo. The motion was seconded by Representative Campbell. The motion carried.

In response to an inquiry from the Committee as to why the amount of the lien is not required to be filed (line 29 of the bill), Mr. Vaquez stated that the amount would continue to change as long as that person requires Medicaid services. This would make it necessary to continue filing revisions to the lien periodically as long as that person continued to require Medicaid services. Mr. Vaquez noted that the difference between this legislation and the law currently in effect, is that **SB 272** allows a lien to be placed on property before the client's death; whereas, the current law allows for recovery after the client's death with a probate claim.

Representative Shultz moved to pass **SB 272** favorably as amended and allow the Revisor of Statutes to make technical adjustments to the bill. The motion was seconded by Representative Merrick. Division was requested. The motion failed.

Representative Campbell moved to approve the Committee meeting minutes of January 24, January 28,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS at 9:30 a.m. on May 2, 2003, in Room 514-S of the Capitol.

February 6, February 11, February 12, February 13, February 17, February 18, February 19, February 20, February 21, February 24, March 13, March 14, March 17 and March 18, 2003. The motion was seconded by Representative Schwartz. The motion carried.

The Chair announced that the biennial tour of the Appropriations Committee will be held October 13 through October 17, 2003.

The Committee meeting was adjourned.



Melvin Neufeld, Chair

Proposed Amendment
For Consideration by
House Committee on Appropriations

HOUSE APPROPRIATIONS

DATE 5-01-2003
ATTACHMENT 1

1 the secretary from claims under this subsection (g) shall be deposited in
2 the social welfare fund. The secretary may adopt rules and regulations
3 for the implementation and administration of the medical assistance re-
4 covery program under this subsection (g).

5 (3) *By applying for or receiving medical assistance under the provi-*
6 *sions of article 7 of chapter 39 of the Kansas Statutes Annotated, such*
7 *individual or such individual's agent, fiduciary, guardian conservator,*
8 *representative payee or other person acting on behalf of the individual*
9 *consents to the following definitions of estate and the results therefrom:*

10 (A) *If an individual receives any medical assistance before July 1,*
11 *2003, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,*
12 *which forms the basis for a claim under subsection (g)(2), such claim is*
13 *limited to the individual's probatable estate as defined by applicable law;*
14 *and*

15 (B) *if an individual receives any medical assistance on or after July*
16 *1, 2003, pursuant to article 7 of chapter 39 of the Kansas Statutes An-*
17 *notated, which forms the basis for a claim under subsection (g)(2), such*
18 *claim shall apply to the individual's medical assistance estate. The medical*
19 *assistance estate is defined as including all real and personal property and*
20 *other assets in which the deceased individual had any legal title or interest*
21 *at the time of death including assets conveyed to a survivor, heir or assign*
22 *of the deceased individual through joint tenancy, tenancy in common,*
23 *survivorship, transfer-on-death deed, payable-on-death contract, life es-*
24 *tate, trust, annuities or similar arrangement.*

25 (4) *The secretary of social and rehabilitation services or the secre-*
26 *tary's designee is authorized to file and enforce a lien against the real*
27 *property of a recipient of medical assistance in certain situations[, subject*
28 *to all prior liens of record in the office of the register of deeds of*
29 *the county where the real property is located]. This lien is for pay-*
30 *ments of medical assistance made by the department of social and reha-*
31 *bilitation services to the recipient who is an inpatient in a nursing home*
32 *or other medical institution. Such lien may be filed only after notice and*
33 *an opportunity for a hearing has been given. Such lien may be enforced*
34 *only upon competent medical testimony that the recipient cannot reason-*
35 *ably be expected to be discharged and returned home. A one-year six-*
36 *month period of compensated inpatient care at a nursing home, nursing*
37 *homes or other medical institution shall constitute a determination by the*
38 *department of social and rehabilitation services that the recipient cannot*
39 *reasonably be expected to be discharged and returned home. To return*
40 *home means the recipient leaves the nursing or medical facility and resides*
41 *in the home on which the lien has been placed for a period of at least 90*
42 *days without being readmitted as an inpatient to a nursing or medical*

Such lien may be filed only when the community spouse of the spouse receiving medical assistance has vacated the home and the home is not being used as the permanent residence of the community spouse.

5
6 **SENATE BILL No. 272**

7
8 By Committee on Way and Means

9
10 3-25

HOUSE APPROPRIATIONS COMMITTEE
May 1, 2003

RECOMMENDATION OF
KANSAS LAND TITLE ASSOCIATION

11
12 AN ACT concerning medical assistance; concerning the repayment
13 thereof; creating and imposing a lien on real property of certain recip-
14 ients of medical assistance; making certain transfers of property void-
15 able; amending K.S.A. 39-709 and repealing the existing section.
16

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

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

23 (1) Has insufficient income or resources to provide a reasonable sub-
24 sistence compatible with decency and health. Where a husband and wife
25 are living together, the combined income or resources of both shall be
26 considered in determining the eligibility of either or both for such assis-
27 tance unless otherwise prohibited by law. The secretary, in determining
28 need of any applicant for or recipient of assistance shall not take into
29 account the financial responsibility of any individual for any applicant or
30 recipient of assistance unless such applicant or recipient is such individ-
31 ual's spouse or such individual's minor child or minor stepchild if the
32 stepchild is living with such individual. The secretary in determining need
33 of an individual may provide such income and resource exemptions as
34 may be permitted by federal law. For purposes of eligibility for aid for
35 families with dependent children, for food stamp assistance and for any
36 other assistance provided through the department of social and rehabil-
37 itation services under which federal moneys are expended, the secretary
38 of social and rehabilitation services shall consider one motor vehicle
39 owned by the applicant for assistance, regardless of the value of such
40 vehicle, as exempt personal property and shall consider any equity in any
41 additional motor vehicle owned by the applicant for assistance to be a
42 nonexempt resource of the applicant for assistance.

43 (2) Is a citizen of the United States or is an alien lawfully admitted

HOUSE APPROPRIATIONS

DATE 5-2-2003

ATTACHMENT 2

1 secretary from claims under this subsection (g) shall be deposited in
2 the social welfare fund. The secretary may adopt rules and regulations
3 for the implementation and administration of the medical assistance re-
4 covery program under this subsection (g).

5 (3) By applying for or receiving medical assistance under the provi-
6 sions of article 7 of chapter 39 of the Kansas Statutes Annotated, such
7 individual or such individual's agent, fiduciary, guardian conservator,
8 representative payee or other person acting on behalf of the individual
9 consents to the following definitions of estate and the results therefrom:

10 (A) If an individual receives any medical assistance before July 1,
11 2003, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
12 which forms the basis for a claim under subsection (g)(2), such claim is
13 limited to the individual's probatable estate as defined by applicable law;
14 and

15 (B) if an individual receives any medical assistance on or after July
16 1, 2003, pursuant to article 7 of chapter 39 of the Kansas Statutes An-
17 notated, which forms the basis for a claim under subsection (g)(2), such
18 claim shall apply to the individual's medical assistance estate. The medical
19 assistance estate is defined as including all real and personal property and
20 other assets in which the deceased individual had any legal title or interest
21 at the time of death including assets conveyed to a survivor, heir or assign
22 of the deceased individual through joint tenancy, tenancy in common,
23 survivorship, transfer-on-death deed, payable-on-death contract, life es-
24 tate, trust, annuities or similar arrangement.

25 (4) The secretary of social and rehabilitation services or the secre-
26 tary's designee is authorized to file and enforce a lien against the real
27 property of a recipient of medical assistance in certain situations, **subject**
28 **to all prior liens of record in the office of the register of deeds of**
29 **the county where the real property is located]. This lien is for pay-**
30 **ments of medical assistance made by the department of social and reha-**
31 **ilitation services to the recipient who is an inpatient in a nursing home**
32 **or other medical institution. Such lien may be filed only after notice and**
33 **an opportunity for a hearing has been given. Such lien may be enforced**
34 **only upon competent medical testimony that the recipient cannot reason-**
35 **ably be expected to be discharged and returned home. A one-year six-**
36 **month period of compensated inpatient care at a nursing home, nursing**
37 **homes or other medical institution shall constitute a determination by the**
38 **department of social and rehabilitation services that the recipient cannot**
39 **reasonably be expected to be discharged and returned home. To return**
40 **home means the recipient leaves the nursing or medical facility and resides**
41 **in the home on which the lien has been placed for a period of at least 90**
42 **days without being readmitted as an inpatient to a nursing or medical**
43 **facility. The amount of the lien shall be for the amount of assistance paid**

The lien must be filed
and must contain the legal description of
all real property in said county subject to
the lien

1 by department of social and rehabilitation services after the expiration
 2 of ~~one year six months~~ from the date the recipient became eligible for
 3 compensated inpatient care at a nursing home, nursing homes or other
 4 medical institution until the time of the filing of the lien and for any
 5 amount paid thereafter for such medical assistance to the recipient.

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

9 (A) After the death of the surviving spouse of the recipient;

10 (B) when there is no child of the recipient, natural or adopted, who
 11 is 20 years of age or less residing in the home;

12 (C) when there is no adult child of the recipient, natural or adopted,
 13 who is blind or disabled residing in the home; or

14 (D) when no brother or sister of the recipient is lawfully residing in
 15 the home, who has resided there for at least one year immediately before
 16 the date of the recipient's admission to the nursing or medical facility,
 17 and has resided there on a continuous basis since that time.

18 (6) The lien remains on the property even after a transfer of the title
 19 by conveyance, sale, succession, inheritance or will unless one of the fol-
 20 lowing events occur:

21 (A) The lien is satisfied. The recipient, the heirs, personal represen-
 22 tative or assigns of the recipient may discharge such lien at any time by
 23 paying the amount of the lien to the secretary or the secretary's designee;

24 [(B) The lien is terminated by foreclosure of prior lien of
 25 record;]

26 ~~(B)~~ [(C)] the value of the real property is consumed by the lien, at
 27 which time the secretary or the secretary's designee may force the sale for
 28 the real property to satisfy the lien; or

29 ~~(C)~~ [(D)] after a lien is filed against the real property, it will be
 30 dissolved if the recipient leaves the nursing or medical facility and resides
 31 in the property to which the lien is attached for a period of more than 90
 32 days without being readmitted as an inpatient to a nursing or medical
 33 facility, even though there may have been no reasonable expectation that
 34 this would occur. If the recipient is readmitted to a nursing or medical
 35 facility during this period, and does return home after being released,
 36 another 90 days must be completed before the lien can be dissolved.

37 (h) Placement under code for care of children or juvenile offenders
 38 code; assignment of support rights and limited power of attorney. In any
 39 case in which the secretary of social and rehabilitation services pays for
 40 the expenses of care and custody of a child pursuant to K.S.A. 38-1501
 41 et seq. or 38-1601 et seq., and amendments thereto, including the ex-
 42 penses of any foster care placement, an assignment of all past, present
 43 and future support rights of the child in custody possessed by either

by the filing of an action to foreclose said
 lien in the Kansas District Court or
 through an estate probate court action in
 the county where the real property of the
 recipient is located

(E) If the secretary of social and
 rehabilitation services or the secretary's
 designee has not filed an action to
 foreclose the lien in the Kansas District
 Court in the county where the real
 property is located within 10 years from
 the date of the filing of the lien, then the
 lien shall become dormant, and shall
 cease to operate as a lien on the real estate
 of the recipient. Such dormant lien may
 be revived in the same manner as a
 dormant judgment lien is revived under
 K.S.A. §60-2403 et. seq.