

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on Wednesday, January 11, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Patricia Biggs, Executive Director, Kansas Sentencing Commission
Kathy Damron, Damron & Associates
Randy Hearrell, Kansas Judicial Council
Rex Beasley, Deputy Attorney General, Director of Medicaid Fraud Control Unit
Jerry Goodell, Kansas Judicial Council
Pam Moses, Chief Clerk District County for 27th Judicial District

Others attending:

See attached list.

Bill Introductions

Senator Vratil introduced a bill concerning electronic access to district court records. Senator Goodwin moved, Senator Donovan seconded, to have the bill introduced as a committee bill. Motion carried.

Patricia Biggs requested the introduction of two bills. The first would extend the expiration date of K. S. A. 75-5291(a)(3). The second bill requested a statewide, mandatory, standardized risk assessment tool be used for all adult felony offenders as part of the pre-sentence investigation. Senator Bruce moved, Senator O'Connor seconded, to have both bills introduced as committee bills. Motion carried.

Kathy Damron requested a bill that would provide for a filing fee on dissolution of marriages to provide a stable funding source for the operation of the supervised child visitation exchange program. Senator Schmidt moved, seconded by Senator Umbarger, to have the bill introduced as a committee bill. Motion carried.

Randy Hearrell requested the introduction of three bills. The first clarifies the appeal procedure in K. S. A. Chapter 59. The second bill is a technical correction in Chapter 59. The third will remove legal forms from the statute book. Senator Donovan moved, Senator Bruce seconded, to introduce the bills as committee bills. Motion carried.

The hearing on **SB 342 - Obstruction of a Medicaid fraud investigation and forfeiture of proceeds was opened.**

Senator Schmidt briefed the committee on the bill and provided written testimony in favor. The bill is part of a series of bills that arose from the Interim committee this past summer. It is an attempt to slow the rate of erroneous payments within the Medicaid program and to recover funds once convicted. It expands the authority of the Attorney General's office to seek property and asset forfeiture in order to cover judgments after conviction of Medicaid fraud (Attachment 1).

Rex Beasley spoke as a proponent and requested two amendments (Attachment 2). The first in Section 1, to indicate the intended consequences for engaging in the obstruction of an investigation and in Section 2, add Medicaid fraud to the current list of conduct and offenses giving rise to forfeiture of assets which were used in committing fraud, or assets derived from proceeds obtained by fraud.

Discussion followed clarifying limits of forfeiture of property in the bankruptcy laws and distribution of recovered funds. The committee also discussed appropriation of funds for use by the Attorney General.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 11, 2006 in Room 123-S of the Capitol.

Chairman Vratil indicated that the intent is to treat the recovered funds the same as other funds in the state treasury.

There being no further conferees to come before the committee, the Chairman closed the public hearing on **SB 326**.

The hearing on **SB 40 - Probate code; notice to surviving spouse; responsibility shifted from court to administrator, executor, petitioner or attorney representing such person** was opened.

Jerry Goodell appeared as a proponent and stated other probate notices are not given by the court and there are no known problems with these notices and giving such notice can be a burden for courts, especially in high volume districts. In addition, he requested a new subsection (b) be added to K.S.A. 59-2233. If the surviving spouse is the administrator, executor, petitioner or affiant, that eliminates the necessity of the surviving spouse sending notice of the elective share to themselves (Attachment 3).

Pam Moses spoke in favor of the bill, stating that the purpose of the bill is to change the responsibility for notification of the surviving spouse of their elective share rights from the court to the administrator, executor, petitioner or attorney (Attachment 4).

There being no further conferees to come before the committee, the Chairman closed the public hearing on **SB 40**.

Senator Bruce moved, Senator Schmidt seconded to adopt the amendments recommended in the Kansas Judicial Council's balloon to SB 40. Motion carried.

Senator O'Connor moved, Senator Bruce seconded to recommend SB 40 as amended favorably for passage. Motion carried.

The meeting adjourned at 10:33 a.m. The next meeting is scheduled for January 12, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/11/06

NAME	REPRESENTING
General Cook	Judicial Council
Randy M. Nease	"
Caryn Mendenhall	Ks & Ns Comm
Barb Covert	KDOA
CHRIS SHEPARD	DAMRON + ASSOCIATES
KATHY DAMRON	DAMRON + ASSOCIATES
Rep Beasley	Kansas Atty General
PATRICIA BIGGS	KS Sent Comm
BRENDA HARMON	KS Sent Comm
NATALIE GIBSON	KS Sent Comm
Loren Snell	KS AG
KEVIN GRAHAM	KS AG
Cynthia Smith	SCL Health System
JEANNE Goodwin	City of Wichita
Andy Schlapp	Sedgwick County
ATI SULTANI	

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Senator Derek Schmidt
Majority Leader

Committee Assignments

Chair: Confirmation Oversight
Vice Chair: Assessment & Taxation
Organization Calendar & Rules
Member: Judiciary
Agriculture
Legislative Post Audit
Message Only (800) 432-3924
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Testimony in Support of Senate Bill 326 and Senate Bill 342
Presented to the Senate Judiciary Committee
by Senator Derek Schmidt

January 10 and 11, 2006

Mr. Chairman, members of the committee, thank you for the opportunity to testify today.

These two bills arose from the interim Special Committee on Medicaid Reform, which I chaired this past summer. They are part of a broader package of bills aimed at reducing the rate of erroneous payments within the program, including but not limited to fraudulent payments.

Senate Bill 326 is modeled on legislation that was introduced several years ago but did not advance. It would create a civil false claims act in Kansas, which would allow the attorney general an additional tool to attempt to recover moneys that were inappropriately paid by the Medicaid program. As drafted, this bill applies across state government and is not limited to Medicaid payments.

Senate Bill 342 is modeled on legislation the attorney general requested of the House of Representatives last year. It would give the attorney general authority to seek forfeiture of property held by a person convicted of Medicaid fraud in order to recover for the state the proceeds of the fraud. It is similar to the authority prosecutors have in many drug prosecutions to track the money and recover it wherever it is held.

The interim committee heard testimony on the rate of Medicaid erroneous payments that ranged from 25 percent of all payments to as little as 5 percent of all payments. The data is not well-developed. Unfortunately, rather than working to get good data, many have spent time and effort trying to discredit the data that does exist and to imply that this problem is insignificant.

But even assuming a conservative 5 percent error rate, in a \$2.2 billion program such as Medicaid, that is \$110 million each year paid inappropriately. The state's share of that is \$44 million. That's \$44 million per year that is unavailable to provide legitimate Medicaid services to legitimate recipients. That's a problem worth trying to solve.

Thank you for considering these two measures as part of that solution. I would be happy to stand for questions.

Senate Judiciary

1-11-06

Attachment 1



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

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January 11, 2006

Senate Judiciary Committee

Dear Chairman Vratil , Vice-Chair Bruce, and Members of the Committee:

Thank you for allowing me to appear today on behalf of Attorney General Phill Kline to support Senate Bill No 342. My name is Rex Beasley. I am a Deputy Attorney General and the head of Attorney General Phill Kline's Medicaid Fraud and Abuse Division. Our Division is the Medicaid Fraud Control Unit (MFCU) required of the states by the Medicare-Medicaid Anti-Fraud and Abuse Amendments (P.L. 95-142), enacted by Congress in 1977. Along with establishing the state Medicaid Fraud Control Units, Congress provided the states with incentive funding to investigate and prosecute Medicaid provider fraud, and to investigate fraud in the administration of the Medicaid program. The Kansas Medicaid Fraud Control Unit needs more legislative tools to fulfill the mission envisioned for it by Congress - tools that Medicaid Fraud Control Units in other states already have and are using to their advantage in protecting their states' Medicaid dollars.

Senate Bill 342 does not create new legal concepts. It merely adds two new items to concepts already existing in our laws. Both are needed to strengthen our fight against Medicaid fraud and to return dollars fraudulently taken from the Medicaid program.

First, New Section 1 dealing with obstruction of a Medicaid investigation supplements the existing provisions of K.S.A 21-3846(a)(8). Currently under K.S.A 21-3846(a)(8) making a false claim to the Medicaid program includes making or presenting or submitting false or fraudulent books, records, documents, data or instruments to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the department of social and rehabilitation services, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program. New Section 1 to Senate Bill 342 makes it a violation of the law to falsify, conceal or cover up material facts during an investigation of Medicaid fraud and abuse. The effective investigation and discovery of Medicaid fraud depends on the ability to find the truth. This part of the bill will aid us in our investigations by making it illegal to obstruct a Medicaid fraud investigation. Missing from the bill however is the intended consequences for engaging in the illegal conduct. Therefore we are offering a balloon amendment to reflect that, like the violations currently established for violating K.S.A

Senate Judiciary

1-11-06
Attachment 2

21-3846(a)(8), obstruction of a Medicaid investigation, as prohibited by Senate Bill 342 is a severity level 9, nonperson felony. That balloon amendment is attached.

Next, Section 2 adds Medicaid fraud to the current list of conduct and offenses giving rise to forfeiture of assets which were used in committing the fraud, the proceeds of the fraud, or any assets derived from or realized through any proceeds obtained from the fraud. Under the current state of the law a person who commits fraud on, or causes fraud to be committed on, the Medicaid program and receives money as a result, doesn't have to worry about having to give up any of that money, or any assets purchased with that money if caught. That is because Medicaid fraud is not one of the offenses or conduct enumerated in our current forfeiture statute - K.S.A. 60-4104. The example below is a good illustration of why it should be.

In 2003 a woman in Atchison County, Kansas was caught submitting fraudulent claims to the Medicaid program. The Medicaid Fraud Control Unit charged and convicted her on 4 counts of Conspiracy to commit Medicaid fraud; 4 counts of Medicaid fraud; and two counts of criminal solicitation to make false claims to the Medicaid program. On June 14, 2004 she was placed on probation and ordered to repay the Medicaid program the \$47,862.01 that she had illegally obtained, plus interest. Forty-seven thousand, eight hundred, sixty-two dollars and one cent that could have been used by someone on a Medicaid waiting list if it had not been illegally taken out of the program. The defendant's probation officer reported to me that as of January 10, 2006 the defendant has repaid the Medicaid program only \$340.00. More disturbing than the non-payment is what the probation officer reported to me that she saw on a visit to the defendant's home. The probation officer reported to me that in the defendant's home she saw a big screen television, a home theater/stereo system, and other high dollar electronic equipment including a computer and fax machine. Given the defendant's economic situation there is a high probability that most, if not all, of the electronics seen in her home were purchased with money illegally obtained from the Medicaid program. Under current Kansas law the defendant can not be compelled to return either the Medicaid money she took or any assets purchased with that money. However, if the defendant had stolen livestock, for example, she would have been subject to the forfeiture provisions currently in K.S.A. 60-4104.

It seems inherently unjust that someone who steals from the Kansas Medicaid program should be able to keep the stolen money or property purchased with the stolen money. That money needs to be returned to the Medicaid program for appropriate use by those for whom it is intended.

Therefore, on behalf of Attorney General Phill Kine, I encourage the Committee to support Senate Bill 342 with the requested amendment, and to recommend the bill for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Rex G. Beasley
Deputy Attorney General
Director, Kansas Medicaid Fraud Control Unit

SENATE BILL No. 342

By Committee on Judiciary

Proposed Amendment

Rex Beasley
Office of Attorney
General 1-11-06

Session of 2005

~~HOUSE BILL NO. 2418~~

~~by Committee on Corrections and Juvenile Justice~~

2-11

9 AN ACT concerning medicaid fraud; relating to obstruction of an inves-
10 tigation and forfeiture; amending K.S.A. 60-4119 and K.S.A. 2004
11 Supp. 60-4104, 60-4105, 60-4107 and 60-4117 and repealing the ex-
12 isting sections.

13

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

15 New Section 1. (a) Obstruction of a medicaid fraud investigation is
16 knowingly and intentionally engaging in one or more of the following
17 during an investigation of any matter pursuant to K.S.A. 21-3844 *et seq.*,
18 and amendments thereto:

19 (1) Falsifying, concealing or covering up a material fact by any trick,
20 misstatement, scheme or device; or

21 (2) making or causing to be made any materially false writing or docu-
22 ment knowing that such writing or document contains any false, ficti-
23 tious or fraudulent statement or entry.

24 (b) This section shall be part of and supplemental to the Kansas med-
25 icaid fraud control act. ▲

26 Sec. 2. K.S.A. 2004 Supp. 60-4104 is hereby amended to read as
27 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
28 act, whether or not there is a prosecution or conviction related to the
29 offense, are:

30 (a) All offenses which statutorily and specifically authorize forfeiture;

31 (b) violations of the uniform controlled substances act, K.S.A. 65-
32 4101 *et seq.*, and amendments thereto;

33 (c) theft which is classified as a felony violation pursuant to K.S.A.
34 21-3701, and amendments thereto, in which the property taken was
35 livestock;

36 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
37 thereto;

38 (e) money laundering, K.S.A. 65-4142, and amendments thereto;

39 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
40 mercial gambling, K.S.A. 21-4304, and amendments thereto;

41 (g) counterfeiting, K.S.A. 2004 Supp. 21-3763, and amendments
42 thereto;

43 (h) medicaid fraud, K.S.A. 21-3844 *et seq.*, and amendments thereto;

▲ [(c) Obstruction of a medicaid fraud
investigation is a severity level 9,
nonperson felony.]

1 ~~(h)~~ (i) an act or omission occurring outside this state, which would
2 be a violation in the place of occurrence and would be described in this
3 section if the act occurred in this state, whether or not it is prosecuted in
4 any state;

5 ~~(i)~~ (j) an act or omission committed in furtherance of any act or omis-
6 sion described in this section including any inchoate or preparatory of-
7 fense, whether or not there is a prosecution or conviction related to the
8 act or omission;

9 ~~(j)~~ (k) any solicitation or conspiracy to commit any act or omission
10 described in this section, whether or not there is a prosecution or con-
11 viction related to the act or omission.

12 Sec. 3. K.S.A. 2004 Supp. 60-4105 is hereby amended to read as
13 follows: 60-4105. The following property is subject to forfeiture:

14 (a) Property described in a statute authorizing forfeiture;

15 (b) all property, ~~including of every kind, including, but not limited to,~~
16 *cash and negotiable instruments and the whole of any lot or tract of land*
17 and any appurtenances or improvements to real property that is either:

18 (1) Furnished or intended to be furnished by any person in an
19 exchange that constitutes conduct giving rise to forfeiture; or

20 (2) used or intended to be used in any manner to facilitate conduct
21 giving rise to forfeiture;

22 (c) all proceeds of any conduct giving rise to forfeiture;

23 (d) ~~any all~~ *property of every kind, including, but not limited to, cash*
24 *and negotiable instruments* derived from *or realized through* any pro-
25 ceeds which were obtained directly or indirectly from the commission of
26 an offense listed in K.S.A. 60-4104, and amendments thereto;

27 (e) all weapons possessed, used, or available for use in any manner
28 to facilitate conduct giving rise to forfeiture;

29 (f) ownership or interest in real property that is a homestead, to the
30 extent the homestead was acquired with proceeds from conduct giving
31 rise to forfeiture;

32 (g) contraband, which shall be seized and summarily forfeited to the
33 state without regard to the procedures set forth in this act;

34 (h) all controlled substances, raw materials, controlled substance an-
35 alogs, counterfeit substances, or imitation controlled substances that have
36 been manufactured, distributed, dispensed, possessed, or acquired in vi-
37 olation of the laws of this state; and

38 (i) any items bearing a counterfeit mark.

39 Sec. 4. K.S.A. 2004 Supp. 60-4107 is hereby amended to read as
40 follows: 60-4107. (a) Property may be seized for forfeiture by a law en-
41 forcement officer upon process issued by the district court. The court
42 may issue a seizure warrant on an affidavit under oath demonstrating that
43 probable cause exists for the property's forfeiture or that the property has

- 1 been the subject of a previous final judgment of forfeiture in the courts
2 of any state or of the United States. The court may order that the property
3 be seized on such terms and conditions as are reasonable in the discretion
4 of the court. The order may be made on or in connection with a search
5 warrant. All real property is to be seized constructively or pursuant to a
6 pre-seizure adversarial judicial determination of probable cause, except
7 that this determination may be done ex parte when the attorney for the
8 state has demonstrated exigent circumstances to the court.
- 9 (b) Property may be seized for forfeiture by a law enforcement officer
10 without process on probable cause to believe the property is subject to
11 forfeiture under this act.
- 12 (c) Property may be seized constructively by:
- 13 (1) Posting notice of seizure for forfeiture or notice of pending for-
14 feiture on the property.
- 15 (2) Giving notice pursuant to K.S.A. 60-4109, and amendments
16 thereto.
- 17 (3) Filing or recording in the public records relating to that type of
18 property notice of seizure for forfeiture, notice of pending forfeiture, a
19 forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to
20 this act are not subject to a filing fee or other charge.
- 21 (d) The seizing agency shall make reasonable effort to provide notice
22 of the seizure to the person from whose possession or control the property
23 was seized and any interest holder of record within 30 days of seizing the
24 property. If no person is in possession or control, the seizing agency may
25 attach the notice to the property or to the place of the property's seizure
26 or may make a reasonable effort to deliver the notice to the owner of the
27 property. The notice shall contain a general description of the property
28 seized, the date and place of seizure, the name of the seizing agency and
29 the address and telephone number of the seizing officer or other person
30 or agency from whom information about the seizure may be obtained.
- 31 (e) A person who acts in good faith and in a reasonable manner to
32 comply with an order of the court or a request of a law enforcement
33 officer is not liable to any person on account of acts done in reasonable
34 compliance with the order or request. No liability may attach from the
35 fact that a person declines a law enforcement officer's request to deliver
36 property.
- 37 (f) A possessory lien of a person from whose possession property is
38 seized is not affected by the seizure.
- 39 (g) When property is seized for forfeiture under this act, the seizing
40 agency shall, within 45 days of such seizure, forward to the county or
41 district attorney in whose jurisdiction the seizure occurred, a written re-
42 quest for forfeiture which shall include a statement of facts and circum-
43 stances of the seizure, the estimated value of the property, the owner and

1 lienholder of the property, the amount of any lien, and a summary of the
2 facts relied on for forfeiture.

3 (h) Upon receipt of a written request for forfeiture from a local law
4 enforcement agency, the county or district attorney shall have 15 days to
5 accept the request. Should such county or district attorney decline such
6 request, or fail to answer, the seizing agency may:

7 (1) Request a state law enforcement agency which enforces this act
8 to adopt the forfeiture; or

9 (2) engage an attorney, approved by the county or district attorney,
10 to represent the agency in the forfeiture proceeding.

11 (i) Upon receipt of a written request for forfeiture from a state law
12 enforcement agency, the county or district attorney shall have 15 days to
13 accept the request. Should such county or district attorney decline such
14 request, or fail to answer, the seizing agency may engage an assistant
15 attorney general or other attorney approved by the attorney general's
16 office to represent the agency in the forfeiture proceeding.

17 (j) *Nothing in this act shall prevent the attorney general, an employee*
18 *of the attorney general or an authorized representative of the attorney*
19 *general from conducting forfeiture proceedings under this act.*

20 (k) Nothing in this act shall prevent a seizing agency from requesting
21 federal adoption of a seizure. It shall not be necessary to obtain any order
22 pursuant to K.S.A. 22-2512, and amendments thereto, to release any
23 seized property to a federal agency should the county or district attorney
24 approve of such transfer.

25 ~~(l)~~ (l) Nothing in this act shall prevent a seizing agency, or the plain-
26 tiff's attorney on behalf of the seizing agency, from settling any alleged
27 forfeiture claim against property before or during forfeiture proceedings.
28 Such settlement shall be in writing and shall be approved, if a local agency,
29 by the county or district attorney or, if a state agency, by the attorney
30 general's office and a district court judge. No hearing or other proceeding
31 shall be necessary. The records of settlements occurring prior to com-
32 mencement of judicial forfeiture proceedings in the district court shall
33 be retained by the county or district attorney for not less than five years.

34 ~~(m)~~ (m) Settlements under this act shall not be conditioned upon any
35 disposition of criminal charges.

36 Sec. 5. K.S.A. 2004 Supp. 60-4117 is hereby amended to read as
37 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
38 thereto: (a) When property is forfeited under this act, the law enforce-
39 ment agency may:

40 (1) Retain such property for official use or transfer the custody or
41 ownership to any local, state or federal agency, subject to any lien pre-
42 served by the court;

43 (2) destroy or use for investigative or training purposes, any illegal or

1 controlled substances and equipment or other contraband, provided that
2 materials necessary as evidence shall be preserved;

3 (3) sell property which is not required by law to be destroyed and
4 which is not harmful to the public:

5 (A) All property, except real property, designated by the seizing
6 agency to be sold shall be sold at public sale to the highest bidder for
7 cash without appraisal. The seizing agency shall first cause notice of the
8 sale to be made by publication at least once in an official county news-
9 paper as defined by K.S.A. 64-101, and amendments thereto. Such notice
10 shall include the time, place, and conditions of the sale and description
11 of the property to be sold. Nothing in this subsection shall prevent a state
12 agency from using the state surplus property system and such system's
13 procedures shall be sufficient to meet the requirements of this subsection.

14 (B) Real property may be sold pursuant to subsection (A), or the
15 seizing agency may contract with a real estate company, licensed in this
16 state, to list, advertise and sell such real property in a commercially rea-
17 sonable manner.

18 (C) No employee or public official of any agency involved in the in-
19 vestigation, seizure or forfeiture of seized property may purchase or at-
20 tempt to purchase such property; or

21 (4) salvage the property, subject to any lien preserved by the court.

22 (b) When firearms are forfeited under this act, the firearms in the
23 discretion of the seizing agency, shall be destroyed, used within the seiz-
24 ing agency for official purposes, traded to another law enforcement
25 agency for use within such agency or given to the Kansas bureau of in-
26 vestigation for law enforcement, testing, comparison or destruction by
27 the Kansas bureau of investigation forensic laboratory.

28 (c) The proceeds of any sale shall be distributed in the following order
29 of priority:

30 (1) For satisfaction of any court preserved security interest or lien,
31 *or in the case of a violation as defined by subsection (h) of K.S.A. 60-*
32 *4104, and amendments thereto, the proceeds shall be remitted to the state*
33 *treasurer in accordance with the provisions of K.S.A. 75-4215, and*
34 *amendments thereto. Upon receipt of such remittance, the state treasurer*
35 *shall deposit the entire amount into the state treasury to the credit of the*
36 *medicaid fraud reimbursement fund;*

37 (2) thereafter, for payment of all proper expenses of the proceedings
38 for forfeiture and disposition, including expenses of seizure, inventory,
39 appraisal, maintenance of custody, preservation of availability, advertising,
40 service of process, sale and court costs;

41 (3) reasonable attorney fees:

42 (A) If the plaintiff's attorney is a county or district attorney, an assis-
43 tant, or another governmental agency's attorney, fees shall not exceed

1 15% of the total proceeds, less the amounts of subsection (c)(1) and (2),
2 in an uncontested forfeiture nor 20% of the total proceeds, less the
3 amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees
4 shall be deposited in the county or city treasury and credited to the special
5 prosecutor's trust fund. Moneys in such fund shall not be considered a
6 source of revenue to meet normal operating expenditures, including sal-
7 ary enhancement. Such fund shall be expended by the county or district
8 attorney, or other governmental agency's attorney through the normal
9 county or city appropriation system and shall be used for such additional
10 law enforcement and prosecutorial purposes as the county or district at-
11 torney or other governmental agency's attorney deems appropriate, in-
12 cluding educational purposes. All moneys derived from past or pending
13 forfeitures shall be expended pursuant to this act. The board of county
14 commissioners shall provide adequate funding to the county or district
15 attorney's office to enable such office to enforce this act. Neither future
16 forfeitures nor the proceeds therefrom shall be used in planning or adopt-
17 ing a county or district attorney's budget; or

18 (B) *if the plaintiff's attorney is the attorney general and the conduct*
19 *and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A.*
20 *60-4104, and amendments thereto, fees shall not exceed 15% of the total*
21 *proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested*
22 *forfeiture nor 20% of the total proceeds, less the amounts of subsection*
23 *(c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the*
24 *state treasurer in accordance with the provisions of K.S.A. 75-4215, and*
25 *amendments thereto. Upon receipt of each such remittance, the state trea-*
26 *surer shall deposit the entire amount in the state treasury to the credit of*
27 *the medicaid fraud prosecution revolving fund. Moneys paid into the med-*
28 *icaid fraud prosecution revolving fund pursuant to this subsection shall*
29 *be appropriated to the attorney general for use by the attorney general*
30 *in the investigation and prosecution of medicaid fraud and abuse.*

31 (C) if the plaintiff's attorney is a private attorney, such reasonable
32 fees shall be negotiated by the employing law enforcement agency;

33 (4) repayment of law enforcement funds expended in purchasing of
34 contraband or controlled substances, subject to any interagency
35 agreement.

36 (d) Any proceeds remaining shall be credited as follows, subject to
37 any interagency agreement:

38 (1) If the law enforcement agency is a state agency, the entire amount
39 shall be deposited in the state treasury and credited to such agency's state
40 forfeiture fund. There is hereby established in the state treasury the fol-
41 lowing state funds: Kansas bureau of investigation state forfeiture fund,
42 Kansas highway patrol state forfeiture fund, *Kansas attorney general's*
43 *state medicaid fraud forfeiture fund*, Kansas department of corrections

1 state forfeiture fund and Kansas national guard counter drug state for-
2 feiture fund. Expenditures from the Kansas bureau of investigation state
3 forfeiture fund shall be made upon warrants of the director of accounts
4 and reports issued pursuant to vouchers approved by the attorney general
5 or by a person or persons designated by the attorney general. *Expendi-*
6 *tures from the Kansas attorney general's state medicaid fraud forfeiture*
7 *fund shall be made upon warrants of the director of accounts and reports*
8 *issued pursuant to vouchers approved by the attorney general or by a*
9 *person or persons designated by the attorney general.* Expenditures from
10 the Kansas highway patrol state forfeiture fund shall be made upon war-
11 rants of the director of accounts and reports issued pursuant to vouchers
12 approved by the superintendent of the highway patrol or by a person or
13 persons designated by the superintendent. Expenditures from the Kansas
14 department of corrections state forfeiture fund shall be made upon war-
15 rants of the director of accounts and reports issued pursuant to vouchers
16 approved by the secretary of the department of corrections or by a person
17 or persons designated by the secretary. Expenditures from the Kansas
18 national guard counter drug state forfeiture fund shall be made upon
19 warrants of the director of accounts and reports issued pursuant to vouch-
20 ers approved by the adjutant general of Kansas or by a person or persons
21 designated by the adjutant general. Each agency shall compile and submit
22 a forfeiture fund report to the legislature on or before February 1 of each
23 year. Such report shall include, but not be limited to: (A) The fund bal-
24 ance on December 1; (B) the deposits and expenditures for the previous
25 12-month period ending December 1. Upon the effective date of this act,
26 the director of accounts and reports is directed to transfer each agency's
27 balance in the state special asset forfeiture fund to the agency's new, state
28 forfeiture fund. All liabilities of the state special asset forfeiture fund
29 existing prior to such date are hereby imposed on the Kansas bureau of
30 investigation state forfeiture fund, Kansas highway patrol state forfeiture
31 fund and the Kansas department of corrections state forfeiture fund. The
32 state special asset forfeiture fund is hereby abolished.

33 (2) If the law enforcement agency is a city or county agency, the
34 entire amount shall be deposited in such city or county treasury and cred-
35 ited to a special law enforcement trust fund. Each agency shall compile
36 and submit annually a special law enforcement trust fund report to the
37 entity which has budgetary authority over such agency and such report
38 shall specify, for such period, the type and approximate value of the for-
39 feited property received, the amount of any forfeiture proceeds received,
40 and how any of those proceeds were expended.

41 (3) Moneys in the Kansas bureau of investigation state forfeiture
42 fund, Kansas highway patrol state forfeiture fund, Kansas department of
43 corrections state forfeiture fund, the special law enforcement trust funds

1 and the Kansas national guard counter drug state forfeiture fund shall not
2 be considered a source of revenue to meet normal operating expenses.
3 Such funds shall be expended by the agencies or departments through
4 the normal city, county or state appropriation system and shall be used
5 for such special, additional law enforcement purposes as the law enforce-
6 ment agency head deems appropriate. Neither future forfeitures nor the
7 proceeds from such forfeitures shall be used in planning or adopting a
8 law enforcement agency's budget.

9 (4) *Moneys in the Kansas attorney general's medicaid fraud forfeiture*
10 *fund shall defray costs of the attorney general in connection with the*
11 *duties of investigating and prosecuting medicaid fraud and abuse.*

12 Sec. 6. K.S.A. 60-4119 is hereby amended to read as follows: 60-
13 4119. (a) If a person is or may be called to produce evidence at a depo-
14 sition, hearing or trial under this act or at an investigation brought by the
15 attorney under K.S.A. 60-4118, *and amendments thereto*, the district
16 court for the county in which the deposition, hearing, trial, or investiga-
17 tion is or may be held, upon certification in writing of a request of the
18 county or district attorney for the county, *or the attorney general*, shall
19 issue an order, ex parte or after a hearing, requiring the person to produce
20 evidence, notwithstanding that person's refusal to do so on the basis of
21 the privilege against self-incrimination.

22 (b) The county or district attorney, *or the attorney general*, may cer-
23 tify in writing a request for an ex parte order under this section if in such
24 ~~county or district attorney's~~ judgment:

25 (1) The production of the evidence may be necessary to the public
26 interest; and

27 (2) the person has refused or is likely to refuse to produce evidence
28 on the basis of such person's privilege against self-incrimination.

29 (c) If a person refuses, on the basis of such person's privilege against
30 self-incrimination, to produce evidence in any proceeding described in
31 this act, and the presiding officer informs the person of an order issued
32 under this section, the person may not refuse to comply with the order.
33 The person may be compelled or punished by the district court issuing
34 an order for civil or criminal contempt.

35 (d) The production of evidence compelled by order issued under this
36 section, and any information directly or indirectly derived from such ev-
37 idence, may not be used against the person in a subsequent criminal case,
38 except in a prosecution for perjury, K.S.A. 21-3805, and amendments
39 thereto, making false writing, K.S.A. 21-3711, and amendments thereto,
40 or an offense otherwise involving a failure to comply with the order. Noth-
41 ing in this subsection shall be interpreted as preventing the use in a crim-
42 inal action any evidence lawfully obtained independently of these
43 procedures.

- 1 Sec. 7. K.S.A. 60-4119 and K.S.A. 2004 Supp. 60-4104, 60-4105, 60-
- 2 4107 and 60-4117 are hereby repealed.
- 3 Sec. 8. This act shall take effect and be in force from and after its
- 4 publication in the statute book.

**JUDICIAL COUNCIL TESTIMONY ON
2005 SB 40 RELATING TO NOTICE OF
ELECTIVE SHARE RIGHTS OF SURVIVING SPOUSE**

In 2005, the Office of Judicial Administration, at the request of the court clerks, introduced SB 40 (a copy of the bill is attached at page 2). SB 40 amends K.S.A. 59-2233 to provide that the notice which informs the surviving spouse of his or her elective share rights shall be given by the administrator, executor, petitioner or attorney, rather than by the court.

A district judge objected to the change and the Judicial Council was requested by Senate Judiciary Chair Vratil to study Senate Bill 40.

The Judicial Council Probate Law Advisory Committee has reviewed SB 40 and agrees with the concept that the notice should be given by the administrator, executor, petitioner or affiant, rather than by the court. A copy of SB 40, with proposed amendments, is attached to this memorandum at page 3.

The PLAC found that: (1) Other probate notices are not given by the court and there are unknown problems with these notices and (2) giving such notice can be a burden for courts, especially in high volume districts.

In addition, the Committee is of the opinion that the language in K.S.A. 59-6a-211, (a copy is attached at page 4) which provides:

"...the election shall be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six months after the date of the decedent's death, or within six months after the notice of the right to the elective share pursuant to K.S.A. 59-2233 and amendments thereto, whichever limitation later expires."

offers protection to the surviving spouse. The language provides that the time for filing a petition for the elective share does not begin to run until the notice of the right to the elective share is given.

In addition to amendment of existing K.S.A. 59-2233, the Committee proposes new subsection (b) which addresses a different issue. In the situation in which the surviving spouse is the administrator, executor, petitioner or affiant the new subsection allows the surviving spouse to acknowledge by pleading or affidavit that he or she is aware of elective share rights and eliminates the necessity of the surviving spouse sending the elective share notice to themselves.

Serry Gardell
Kansas Judicial Council

Senate Judiciary

1-11-06

Attachment 3

Proposed amendment
Kansas Judicial Council 1-11-06

Session of 2005

SENATE BILL No. 40

By Committee on Judiciary

1-18

9 AN ACT concerning the probate code; relating to notice to surviving
10 spouse; amending K.S.A. 2004 Supp. 59-2233 and repealing the exist-
11 ing section.
12

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

14 Section 1. K.S.A. 2004 Supp. 59-2233 is hereby amended to read as
15 follows: 59-2233. Upon the appointment and qualification of any admin-
16 istrator or executor, the filing of a petition for an order refusing to grant
17 letters of administration or the filing of an affidavit pursuant to K.S.A.
18 59-618a, and amendments thereto, the ~~court~~ *administrator, executor, pe-*
19 *tioner or the attorney representing the administrator, executor or pe-*
20 *tioner* shall forthwith ~~cause~~ *mail* a copy of the will, if any, together with
21 a notice statement ~~to be mailed~~ to the surviving spouse stating: "Under
22 K.S.A. 59-6a201 through 59-6a217, and amendments thereto, you may
23 have a right to take a share of property owned by the decedent at death,
24 in whole or in part, and of transfers of property made by the decedent
25 prior to death." Such notice shall be mailed within 10 days of the quali-
26 fication of the administrator or executor, the filing of a petition for an
27 order refusing to grant letters of administration or the filing of an affidavit
28 pursuant to K.S.A. 59-618a, and amendments thereto. Proof shall be by
29 affidavit filed with the court.

30 Sec. 2. K.S.A. 2004 Supp. 59-2233 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its
32 publication in the statute book.

SENATE BILL No. 40

By Committee on Judiciary

1-18

3-3

9 AN ACT concerning the probate code; relating to notice to surviving
10 spouse; amending K.S.A. 2004 Supp. 59-2233 and repealing the exist-
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16 istrator or executor, the filing of a petition for an order refusing to grant
17 letters of administration or the filing of an affidavit pursuant to K.S.A.
18 59-618a, and amendments thereto, the ~~court~~ administrator, executor, pe-
19 titioner or the attorney representing the administrator, executor or peti-
20 tioner shall forthwith ~~cause~~ mail a copy of the will, if any, together with
21 a notice statement to be mailed to the surviving spouse stating: "Under
22 K.S.A. 59-6a201 through 59-6a217, and amendments thereto, you may
23 have a right to take a share of property owned by the decedent at death,
24 in whole or in part, and of transfers of property made by the decedent
25 prior to death." Such notice shall be mailed within 10 days of the quali-
26 fication of the administrator or executor, the filing of a petition for an
27 order refusing to grant letters of administration or the filing of an affidavit
28 pursuant to K.S.A. 59-618a, and amendments thereto. Proof shall be by
29 affidavit filed with the court.

30 Sec. 2. K.S.A. 2004 Supp. 59-2233 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its
32 publication in the statute book.

(a)

affiant

(b) The mailing requirement of subsection (a) may be waived if:

- (1) The surviving spouse is the petitioner or affiant, and
- (2) a statement that he or she is aware that under K.S.A. 59-6a201 through 59-6a217, and amendments thereto, he or she may have a right to take a share of property owned by the decedent at death, in whole or in part, and of transfers of property made by the decedent prior to death is:

- (A) included in the petition for letters of administration, the petition for probate of a will, the petition for an order refusing to grant letters of administration or the affidavit pursuant to K.S.A. 59-618a, or
- (B) included in an affidavit filed in the matter within 10 days after issuance of letters of administration, issuance of letters testamentary, issuance of an order refusing to grant letters of administration or the filing of an affidavit pursuant to K.S.A. 59-618a.

-3-

59-6a211

Chapter 59.--PROBATE CODE

Article 6a.--ELECTIVE SHARE OF SURVIVING SPOUSE

59-6a211. Proceeding for elective share; time limit. (a) Except as provided in subsection (b), the election shall be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six months after the date of the decedent's death, or within six months after the notice of the right to the elective share pursuant to K.S.A. 59-2233, and amendments thereto, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing, in such manner as ordered by the court, to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than six months after the decedent's death.

(b) Within six months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within six months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for good cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw the petition for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under K.S.A. 59-6a209 and 59-6a210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than such person would have been under K.S.A. 59-6a209 and 59-6a210 had relief been secured against all persons subject to contribution.

(e) An order or judgment of the court may be enforced by the surviving spouse, as necessary, to obtain contribution or payment in other courts of this state or other jurisdictions. The decedent's personal representative shall not be required to enforce contributions from the assets of the reclaimable estate.

History: L. 1994, ch. 132, § 11; Jan. 1, 1995.

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January 11, 2006

To: Chairman John Vratil

**Senate Bill 40
Notice to Surviving Spouse**

Thank you for allowing me as a representative of the Kansas Association of District Court Clerks and Administrators to speak to you today concerning Senate Bill 40 relating to the Notice to Surviving Spouse in K.S.A. 59-2233.

Our purpose is to change the responsibility as to who sends the notice statement along with a copy of the will. We believe the responsibility should be the administrator filing on behalf of his or her client as they are representing the surviving spouse and have the necessary information to follow through with this notice.

Therefore, we are requesting that K.S.A. 59-618a be amended as written in the bill.

Thank you for your time and allowing us to appear before you today. I will be happy to answer any questions that you may have regarding this bill.

Pam Moses
Chief Clerk of District Court
Twenty-seventh Judicial District
Reno County, Kansas

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Senate Judiciary
1-11-06
Attachment 4