

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on February 9, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:38 A.M.

Les Donovan- excused

Derek Schmidt- excused

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department

Bruce Kinzie, Office of Revisor of Statutes

Nobuko Folmsbee, Office of Revisor of Statutes

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

John C. Peterson, Kansas Land Title Association

Others attending:

See attached list.

Chairman Vratil opened the hearing on **SB 58--Conveying trust property.**

John Peterson appeared in support, indicating the bill would clarify the legislative intent regarding conveyance of trust property (Attachment 1).

Written testimony in support of **SB 58** was submitted by:

James W. Clark, Kansas Bar Association (Attachment 2)

There being no further conferees, the hearing on **SB 58** was closed.

Senator Vratil indicated that he had referred this bill to the Judicial Council's Probate Law Advisory Committee after it was filed and had received a reply indicating the committee had reviewed the bill and saw no problem with it whatsoever. The Chairman noted that since this was a straightforward bill with no opposition that the committee would work the bill today.

Senator Bruce moved, Senator Umbarger seconded, to recommend **SB 58** favorably for passage. Motion carried.

Chairman Vratil indicated that Senator Bruce had introduced a bill concerning judges and billing process with respect to class action suits. Senator Bruce moved, Senator Vratil seconded, to revoke the bill. Motion carried.

The Chairman called for final action on **SB 17--Docket fees; eliminating certain funds from receiving part of docket fees.**

Senator Vratil distributed a balloon amendment he had developed by working with interested parties. The amendment addresses concerns presented during testimony on January 18 (Attachment 3). The balloon retains each one of the funds currently in existence but requires appearance year before the appropriate legislative committees to report on funds used and budgets for the upcoming year. The balloon has the support of all of the affected agencies. Following discussion, Senator Umbarger moved, Senator Goodwin seconded, to adopt the balloon amendment presented. Motion carried.

Following further discussion, several committee members indicated they would like to delay final action to a later date.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on February 9, 2007, in Room 123-S of the Capitol.

The Chairman called for final action on **SB 32--Health care; medical assistance repayment; discretionary trusts.**

Senator Vratil distributed a balloon amendment recommended by Mr. John Mize during his testimony on January 29 (Attachment 4). Senator Journey moved, Senator Bruce seconded, to adopt the balloon amendment. Motion carried.

The bill will be further considered at a later date.

The Chairman called for final action on **SB 35--DUI, computation of time to request administrative hearing.**

Senator Journey distributed a balloon amendment (Attachment 5). Following discussion, Senator Vratil moved, Senator Journey seconded, to amend SB 35 as reflected in Senator journey's balloon with the exception of subsection (a) and subsection (e) and give the staff latitude to make any technical changes and include the narrative. Motion carried.

Senator Journey moved, Senator Bruce seconded, to recommend SB 35 as amended favorably for passage. Motion carried.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 12, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-9-07

NAME	REPRESENTING
Dan Gibb	KSAG
Sharon Dugg	CASA / KCA
Melissa Ness	CASA /
Katie Dubauz	Kearney and Associates
Lisa Wilson	OJA
Christy Molzen	Judicial Council
JIM CLARK	KBA
Kathy Dunn	YMCA's of KS
Luke Thompson	KHPA
JOYCE GROVER	KCSOV
Kim Brown	KFMC
Rosanne Rutkowski	KDHE
Carolyn Muddendorf	*SOT No Assn
John BROWN	Professional, Small & Assoc
Kid May	LGR
Dorrie Wellshoar	KCSOV
TK Shively	KCS

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-9-07

NAME	REPRESENTING
John Petelson	Ks Land Title Assn

**TESTIMONY OF
JOHN C. PETERSON
KANSAS LAND TITLE ASSOCIATION
SENATE BILL 58
SENATE JUDICIARY COMMITTEE
FEBRUARY 9, 2007**

Mr. Chairman and Senators:

My name is John Peterson and I am pleased to present testimony this morning in support of HB 58 on behalf of the Kansas Land Title Association.

Several years ago the legislature passed KSA 58a-810(e), which permits a deed to name the trust as a grantee, with no reference to the trustee(s) of the trust (i.e. The John Doe Revocable Trust, dated 1/1/06).

Prior to that legislative enactment, a trust was not recognized as legal entity, and a conveyance had to be to the trustee(s) of the trust (i.e. John Doe, Trustee of The John Doe Revocable Trust, dated 1/1/06). However, many lawyers did not follow this rule and many deeds were made directly to the trust with the validity of those deeds always in question. 58a-801(e) has made a trust a legal entity, like a corporation or a limited liability company, at least for the purpose of taking title to and conveying real estate.

The problem with the new 58a-810(e) is that it requires a property titled in the trust name to be conveyed only in the trust name. It is a little unclear what the legislative intent was, but taken literally, a conveyance to The John Doe Revocable Trust, dated 1/1/06, means that a conveyance from that trust must show the grantor as The John Doe Revocable Trust, dated 1/1/06, and then signed by the trustee(s). Showing the grantor as John Doe, Trustee of The John Doe Revocable Trust, dated 1/1/06, would be an incorrect and possibly an invalid transfer, since the conveyance is from the trustee rather than from the trust.

In order to resolve confusion and any question concerning the validity of deeds from trusts, the Kansas Land Title Association would urge you to support SB 58 to amend 810(e) to read as follows: "Property titled in the trust name may be conveyed in the trust name or in the name of the trustee of that trust, provided that the trust name is clearly set forth in the conveyance".

We are pleased that the Judicial Council has had the opportunity to review this proposal over the past few weeks, and that they are supportive of this change.

Senate Judiciary

2-9-07

Attachment 1



KANSAS BAR
ASSOCIATION

Testimony in Support of
Senate Bill No. 58

Presented to the Senate Judiciary Committee
February 9, 2007

The Kansas Bar Association is a voluntary, professional association of over 6,700 members dedicated to serving Kansas lawyers, their clients, and the people of Kansas.

The KBA is in support of Senate Bill No. 58 because it simplifies the method of transferring trust property and reduces the perceived need to revisit transfer of property prior to 2004, when the current language was enacted.

The current language was enacted in the 2004 Session with passage of HB 2556. While that bill initially dealt with UTC amendments, it later included medical recovery provisions, and, eventually, the language of SB 424, a KBA requested bill that gave protection of title insurance and homestead exemption to residential property transferred to an *inter vivos* trust. Because the Conference Committee Report is silent on the change involving KSA 58a-810, we are unclear how the language in KSA 58a-810 got changed. With the passage of SB 58, the pre-2004 language is restored.

The Kansas Bar Association respectfully requests that the Committee recommend the bill favorably for passage.

James W. Clark
KBA Legislative Counsel

* * *

Senate Judiciary

2-9-07
Attachment 2

engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of article 9 of this code. *In addition to its compensation for acting as trustee*, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. *If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services*, the trustee must at least annually ~~notify~~ *notify* the persons entitled under K.S.A. 2003 Supp. 58a-813, and amendments thereto, to receive a copy of the trustee's annual report, *under K.S.A. 2003 Supp. 58a-813, and amendments thereto*, of the rate, formula or method by which ~~the~~ *that* compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries and consistent with the terms of the trust. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

- (1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
- (2) payment of reasonable compensation to the trustee;
- (3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;
- (4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or
- (5) an advance by the trustee of money for the protection of the trust.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Sec. 12. K.S.A. 2003 Supp. 58a-810 is hereby amended to read as follows: 58a-810. (a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

(e) ~~Any estate in real property may be acquired in the trust name of the trust or in the name of the trustee.~~ ~~Title acquired~~ *Property titled in the trust name may be conveyed only in the trust name.* *

Sec. 13. K.S.A. 2003 Supp. 58a-813 is hereby amended to read as follows: 58a-813. (a) A trustee shall keep the qualified beneficiaries *and permissible current distributees* of the trust *income or principal* reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's *and a permissible current distributee's* request for information related to the administration of the trust.

(b) A trustee:

(1) Upon request of a qualified beneficiary *or a permissible current distributee*, shall promptly furnish to the qualified beneficiary *or permissible current distributee* a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qual-

SENATE BILL No. 17

By Special Committee on Judiciary

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Senate Judiciary
2-9-07
Attachment 3

9 AN ACT concerning docket fees; amending K.S.A. 74-7325 and 74-7334
10 and K.S.A. 2006 Supp. 20-362, 20-367, 28-170, 28-172a, 28-172b, 59-
11 104, 60-1621, 75-5670 and 75-7021 and repealing the existing sections;
12 also repealing K.S.A. 2006 Supp. 28-170c, 28-170d, 28-170e, 28-172e,
13 28-172f, 59-104, as amended by section 18 of chapter 210 of the 2006
14 Session Laws of Kansas, 59-104a and 60-1621a.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2006 Supp. 20-362 is hereby amended to read as
18 follows: 20-362. The clerk of the district court shall remit all revenues
19 received from docket fees as follows:

20 (a) At least monthly to the county treasurer, for deposit in the county
21 treasury and credit to the county general fund:

22 (1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A.
23 60-2001 and 60-3005, and amendments thereto, during the preceding
24 calendar month;

25 (2) a sum equal to \$10 for each \$46 or \$76 docket fee paid pursuant
26 to K.S.A. 61-4001, or K.S.A. 61-2704 or 61-2709, and amendments
27 thereto; and

28 (3) a sum equal to \$5 for each \$26 docket fee paid pursuant to K.S.A.
29 61-4001 or K.S.A. 61-2704, and amendments thereto, during the preced-
30 ing calendar month.

31 (b) At least monthly to the board of trustees of the county law library
32 fund, for deposit in the fund, a sum equal to the library fees paid during
33 the preceding calendar month for cases filed in the county.

34 (c) At least monthly to the county treasurer, for deposit in the county
35 treasury and credit to the prosecuting attorneys' training fund, a sum
36 equal to \$1 for each docket fee paid pursuant to K.S.A. 28-172a, and
37 amendments thereto, during the preceding calendar month for cases filed
38 in the county and for each fee paid pursuant to subsection (c) of K.S.A.
39 28-170, and amendments thereto, during the preceding calendar month
40 for cases filed in the county.

41 ~~(d) To the state treasurer, in accordance with the provisions of K.S.A.~~
42 ~~75-4215, and amendments thereto, for deposit in the state treasury and~~
43 ~~credit to the indigents' defense services fund, a sum equal to \$.50 for~~

3-2

1 each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of
2 K.S.A. 28-170, and amendments thereto, during the preceding calendar
3 month.

4 ~~—(c) To the state treasurer, in accordance with the provisions of K.S.A.~~
5 ~~75-4215, and amendments thereto, for deposit in the state treasury and~~
6 ~~credit to the law enforcement training center fund a sum equal to \$15~~
7 ~~for each docket fee paid pursuant to K.S.A. 28-172a, and amendments~~
8 ~~thereto, during the preceding calendar month.~~

9 ~~—(f) ~~(4)~~ To the state treasurer, in accordance with the provisions of~~
10 ~~K.S.A. 75-4215, and amendments thereto, for deposit in the state treasury~~
11 ~~and distribution according to K.S.A. 20-367, and amendments thereto, a~~
12 ~~sum equal to the balance which remains from all docket fees paid during~~
13 ~~the preceding calendar month after deduction of the amounts specified~~
14 ~~in subsections (a), (b), (c), (d) and (e) ~~and (e).~~~~

15 Sec. 2. K.S.A. 2006 Supp. 20-367 is hereby amended to read as fol-
16 lows: 20-367. (a) On and after July 1, 2006 through June 30, 2010, of the
17 remittance of the balance of docket fees received by the state treasurer
18 from clerks of the district court pursuant to subsection ~~(f) ~~(4)~~~~ of K.S.A.
19 20-362, and amendments thereto, the state treasurer shall deposit and
20 credit to the judicial performance fund, a sum equal to 3.54% of the
21 remittances of docket fees; to the access to justice fund, a sum equal to
22 4.92% of the remittances of docket fees; to the juvenile detention facilities
23 fund, a sum equal to 2.73% of the remittances of docket fees; to the
24 judicial branch education fund, the state treasurer shall deposit and credit
25 a sum equal to 2.10% of the remittances of docket fees; to the crime
26 victims assistance fund, the state treasurer shall deposit and credit a sum
27 equal to .56% of the remittances of the docket fees; to the protection
28 from abuse fund, the state treasurer shall deposit and credit a sum equal
29 to 2.68% of the remittances of the docket fees; to the judiciary technology
30 fund, the state treasurer shall deposit and credit a sum equal to 4.25% of
31 the remittances of docket fees; to the dispute resolution fund, the state
32 treasurer shall deposit and credit a sum equal to .34% of the remittances
33 of docket fees; to the Kansas juvenile delinquency prevention trust fund,
34 the state treasurer shall deposit and credit a sum equal to 1.24% of the
35 remittances of docket fees; to the permanent families account in the fam-
36 ily and children investment fund, the state treasurer shall deposit and
37 credit a sum equal to .21% of the remittances of docket fees; to the trauma
38 fund, a sum equal to 1.48% of the remittance of docket fees; to the judicial
39 council fund, a sum equal to 1.11% of the remittance of docket fees; to
40 the child exchange and visitation centers fund, a sum equal to .67% of
41 the remittance of docket fees; and to the judicial branch nonjudicial salary
42 initiative fund, the state treasurer shall deposit and credit a sum equal to
43 17.85% of the remittance of docket fees. The balance remaining of the

(d) To the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to \$.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.
(e) To the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, for deposit in the state treasury and credit to the law enforcement training center fund a sum equal to \$15 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month.
(f) Prior to any of the moneys credited to each fund in subsection (d) or (e) being appropriated during any regular legislative session for the ensuing fiscal year, the agency administering such fund shall provide to the committee on ways and means of the senate and the committee on appropriations of the house of representatives:
(1) A detailed explanation of how such moneys in the fund are being expended in the current fiscal year;
(2) a detailed explanation of how such moneys will be expended in the next fiscal year; and
(3) justification for such fund to continue to receive moneys from docket fees.

(g)

(c), (d) and (e)

(g)

1 remittances of docket fees shall be deposited and credited to the state
2 general fund.

3 (b) On and after July 1, 2010, of the remittance of the balance of
4 docket fees received by the state treasurer from clerks of the district court
5 pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the
6 state treasurer shall deposit and credit to the access to justice fund, a sum
7 equal to 5.10% of the remittances of docket fees; to the juvenile detention
8 facilities fund, a sum equal to 2.83% of the remittances of docket fees;
9 to the judicial branch education fund, the state treasurer shall deposit
10 and credit a sum equal to 2.18% of the remittances of docket fees; to the
11 crime victims assistance fund, the state treasurer shall deposit and credit
12 a sum equal to .58% of the remittances of the docket fees; to the protec-
13 tion from abuse fund, the state treasurer shall deposit and credit a sum
14 equal to 2.78% of the remittances of the docket fees; to the judiciary
15 technology fund, the state treasurer shall deposit and credit a sum equal
16 to 4.41% of the remittances of docket fees; to the dispute resolution fund;
17 the state treasurer shall deposit and credit a sum equal to .35% of the
18 remittances of docket fees; to the Kansas juvenile delinquency prevention
19 trust fund, the state treasurer shall deposit and credit a sum equal to
20 1.29% of the remittances of docket fees; to the permanent families ac-
21 count in the family and children investment fund, the state treasurer shall
22 deposit and credit a sum equal to .22% of the remittances of docket fees;
23 to the trauma fund, a sum equal to 1.53% of the remittance of docket
24 fees; to the judicial council fund, a sum equal to 1.15% of the remittance
25 of docket fees; to the child exchange and visitation centers fund, a sum
26 equal to .69% of the remittance of docket fees; and to the judicial branch
27 nonjudicial salary initiative fund, the state treasurer shall deposit and
28 credit a sum equal to 18.51% of the remittance of docket fees. The bal-
29 ance remaining of the remittances of docket fees shall be deposited and
30 credited to the state general fund *an amount equal to:*

- 31 (1) 3.54% to the judicial performance fund;
- 32 (2) 2.10% to the judicial branch education fund;
- 33 (3) 4.25% to the judiciary technology fund;
- 34 (4) 0.34% to the dispute resolution fund;
- 35 (5) 17.85% to the judicial branch nonjudicial salary initiative fund;
- 36 (6) 1.11% to the judicial council fund;
- 37 (7) 4.92% to the access to justice fund; ~~and~~

38 ~~(8)~~ the balance to the state general fund.

39 (b) On and after July 1, 2010, of the remittance of the balance of
40 docket fees received by the state treasurer from clerks of the district court
41 pursuant to subsection ~~(4)~~ of K.S.A. 20-362, and amendments thereto, the
42 state treasurer shall deposit and credit an amount equal to:

- 43 (1) 2.18% to the judicial branch education fund;

- (8) 2.73% to the juvenile detention facilities fund;
- (9) 0.56% to the crime victims assistance fund;
- (10) 1.24% to the Kansas juvenile delinquency prevention trust fund;
- (11) 0.21% to the permanent families account in the family and children investment fund;
- (12) 1.48% to the trauma fund;
- (13) 0.67% to the child exchange and visitation centers fund;
- (14) 2.68% to the protection from abuse fund; and

(15)

(9)

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- 1 (2) 4.41% to the judiciary technology fund;
- 2 (3) 0.35% to the dispute resolution fund;
- 3 (4) 18.51% to the judicial branch nonjudicial salary initiative fund;
- 4 (5) 1.15% to the judicial council fund;
- 5 (6) 5.10% to the access to justice fund; ~~and~~
- 6 ~~(7)~~ the balance to the state general fund.

7 Sec. 3. K.S.A. 2006 Supp. 28-170 is hereby amended to read as follows:
 8 28-170. (a) The docket fee prescribed by K.S.A. 60-2001 and
 9 amendments thereto and the fees for service of process, shall be the only
 10 costs assessed for services of the clerk of the district court and the sheriff
 11 in any case filed under chapter 60 or chapter 61 of the Kansas Statutes
 12 Annotated, and amendments thereto, except that no fee shall be charged
 13 for an action filed under K.S.A. 60-3101 et seq., and under K.S.A. 60-
 14 31a01 et seq., and amendments thereto. For services in other matters in
 15 which no other fee is prescribed by statute, the following fees shall be
 16 charged and collected by the clerk. Only one fee shall be charged for each
 17 bond, lien or judgment:

- 18 1. For filing, entering and releasing a bond, mechanic's lien, notice of intent to
 19 perform, personal property tax judgment or any judgment on which execution
 20 process cannot be issued \$5
- 21 2. For filing, entering and releasing a judgment of a court of this state on which
 22 execution or other process can be issued \$15
- 23 3. For a certificate, or for copying or certifying any paper or writ, such fee as shall
 24 be prescribed by the district court.

25 (b) The fees for entries, certificates and other papers required in
 26 naturalization cases shall be those prescribed by the federal government
 27 and, when collected, shall be disbursed as prescribed by the federal gov-
 28 ernment. The clerk of the court shall remit to the state treasurer at least
 29 monthly all moneys received from fees prescribed by subsection (a) or
 30 (b) or received for any services performed which may be required by law.
 31 The state treasurer shall deposit the remittance in the state treasury and
 32 credit the entire amount to the state general fund.

33 (c) In actions pursuant to the *revised* Kansas code for care of children
 34 (K.S.A. ~~38-1501~~ 2006 Supp. 38-2201 et seq. and amendments thereto),
 35 the *revised* Kansas juvenile justice code (K.S.A. ~~38-1601~~ 2006 Supp. 38-
 36 2301 et seq. and amendments thereto), the act for treatment of alcoholism
 37 (K.S.A. 65-4001 et seq. and amendments thereto), the act for treatment
 38 of drug abuse (K.S.A. 65-5201 et seq. and amendments thereto) or the
 39 care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq.
 40 and amendments thereto), the clerk shall charge an additional fee of \$1
 41 which shall be deducted from the docket fee and credited to the prose-
 42 cuting attorneys' training fund as provided in K.S.A. 28-170a and amend-
 43 ments thereto.

- (7) 2.83% to the juvenile detention facilities fund;
- (8) 0.58% to the crime victims assistance fund;
- (9) 2.78% to the protection from abuse fund;
- (10) 1.29% to the Kansas juvenile delinquency prevention trust fund;
- (11) 0.22% to the permanent families account in the family and children investment fund;
- (12) 1.53% to the trauma fund;
- (13) 0.69% to the child exchange and visitation centers fund;
- and

(14)

(c) Prior to any moneys credited to each fund in paragraphs (8) through (14) of subsection (a) and paragraphs (7) through (13) of subsection (b) being appropriated during any regular legislative session for the ensuing fiscal year, the agency administering such fund shall provide the committee on ways and means of the senate and the committee on appropriations of the house of representatives:

- (1) A detailed explanation of how such moneys are being expended in the current fiscal year;
- (2) a detailed explanation of how such moneys will be expended in the next fiscal year; and
- (3) justification for such fund to continue to receive moneys from docket fees.

SENATE BILL No. 32

By Senator Emler

1-8

9 AN ACT concerning health care; relating to medical and other care and
10 services assistance repayment; discretionary trusts; amending K.S.A.
11 2006 Supp. 39-709 and repealing the existing section; also repealing
12 K.S.A. 2006 Supp. 39-709d.

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

15 Section 1. K.S.A. 2006 Supp. 39-709 is hereby amended to read as
16 follows: 39-709. (a) *General eligibility requirements for assistance for*
17 *which federal moneys are expended.* Subject to the additional require-
18 ments below, assistance in accordance with plans under which federal
19 moneys are expended may be granted to any needy person who:

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

40 (2) Is a citizen of the United States or is an alien lawfully admitted
41 to the United States and who is residing in the state of Kansas.

42 (b) *Assistance to families with dependent children.* Assistance may be
43 granted under this act to any dependent child, or relative, subject to the

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Senate Judiciary
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Attachment 4

4-2

1 to complete such a work assignment requirement shall result in a period
2 fixed by such rules and regulations of ineligibility of not more than six
3 calendar months.

4 (4) If any person is found guilty of the crime of theft under the pro-
5 visions of K.S.A. 39-720, and amendments thereto, such person shall
6 thereby become forever ineligible to receive any form of general assis-
7 tance under the provisions of this subsection (d) unless the conviction is
8 the person's first conviction under the provisions of K.S.A. 39-720, and
9 amendments thereto, or the law of any other state concerning welfare
10 fraud. First time offenders convicted of a misdemeanor under the pro-
11 visions of such statute shall become ineligible to receive any form of
12 general assistance for a period of 12 calendar months from the date of
13 conviction. First time offenders convicted of a felony under the provisions
14 of such statute shall become ineligible to receive any form of general
15 assistance for a period of 60 calendar months from the date of conviction.
16 If any person is found guilty by a court of competent jurisdiction of any
17 state other than the state of Kansas of a crime involving welfare fraud,
18 such person shall thereby become forever ineligible to receive any form
19 of general assistance under the provisions of this subsection (d) unless
20 the conviction is the person's first conviction under the law of any other
21 state concerning welfare fraud. First time offenders convicted of a mis-
22 demeanor under the law of any other state concerning welfare fraud shall
23 become ineligible to receive any form of general assistance for a period
24 of 12 calendar months from the date of conviction. First time offenders
25 convicted of a felony under the law of any other state concerning welfare
26 fraud shall become ineligible to receive any form of general assistance for
27 a period of 60 calendar months from the date of conviction.

28 (e) *Requirements for medical assistance for which federal moneys or*
29 *state moneys or both are expended.* (1) When the secretary has adopted
30 a medical care plan under which federal moneys or state moneys or both
31 are expended, medical assistance in accordance with such plan shall be
32 granted to any person who is a citizen of the United States or who is an
33 alien lawfully admitted to the United States and who is residing in the
34 state of Kansas, whose resources and income do not exceed the levels
35 prescribed by the secretary. In determining the need of an individual, the
36 secretary may provide for income and resource exemptions and protected
37 income and resource levels. Resources from inheritance shall be counted.
38 A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amend-
39 ments thereto, shall constitute a transfer of resources. The secretary shall
40 exempt principal and interest held in irrevocable trust pursuant to sub-
41 section (c) of K.S.A. 16-303, and amendments thereto, from the eligibility
42 requirements of applicants for and recipients of medical assistance. Such
43 assistance shall be known as medical assistance.

H-3

1 (2) For the purposes of medical assistance eligibility determinations
 2 on or after July 1, 2004, if an applicant or recipient owns property in joint
 3 tenancy with some other party and the applicant or recipient of medical
 4 assistance has restricted or conditioned their interest in such property to
 5 a specific and discrete property interest less than 100%, then such des-
 6 ignation will cause the full value of the property to be considered an
 7 available resource to the applicant or recipient.

8 (3) Resources from trusts shall be considered when determining el-
 9 igibility of a trust beneficiary for medical assistance. Medical assistance is
 10 to be secondary to all resources, including trusts, that may be available
 11 to an applicant or recipient of medical assistance. If a trust, *executed on*
 12 *or after July 1, 2004*, has discretionary language, the trust shall be con-
 13 sidered to be an available resource to the extent, using the full extent of
 14 discretion, the trustee may make any of the income or principal available
 15 to the applicant or recipient of medical assistance. ~~Any such discretionary~~
 16 ~~trust, executed on or after July 1, 2004, shall be considered an available~~
 17 ~~resource] unless: (1) The trust is funded exclusively from resources of a~~
 18 ~~person who, at the time of creation of the trust, owed no duty of support~~
 19 ~~to the applicant or recipient; and (2) the trust contains specific contem-~~
 20 ~~poraneous language that states an intent that the trust be supplemental~~
 21 ~~to public assistance and the trust makes specific reference to medical,~~
 22 ~~medical assistance or title XIX of the social security act.~~

more than nominally

. Any applicant for medical assistance whose application has been denied due to the existence of a trust executed after July 1, 2004, but which trust was determined to be an excess resource according to the July 1, 2004, version of this statute, may apply to have such medical assistance reinstated retroactive to the date that such medical assistance was terminated

23 (4) (A) When an applicant or recipient of medical assistance is a party
 24 to a contract, agreement or accord for personal services being provided
 25 by a nonlicensed individual or provider and such contract, agreement or
 26 accord involves health and welfare monitoring, pharmacy assistance, case
 27 management, communication with medical, health or other professionals,
 28 or other activities related to home health care, long term care, medical
 29 assistance benefits, or other related issues, any moneys paid under such
 30 contract, agreement or accord shall be considered to be an available re-
 31 source unless the following restrictions are met: (i) The contract, agree-
 32 ment or accord must be in writing and executed prior to any services
 33 being provided; (ii) the moneys paid are in direct relationship with the
 34 fair market value of such services being provided by similarly situated and
 35 trained nonlicensed individuals; (iii) if no similarly situated nonlicensed
 36 individuals or situations can be found, the value of services will be based
 37 on federal hourly minimum wage standards; (iv) such individual providing
 38 the services will report all receipts of moneys as income to the appropriate
 39 state and federal governmental revenue agencies; (v) any amounts due
 40 under such contract, agreement or accord shall be paid after the services
 41 are rendered; (vi) the applicant or recipient shall have the power to revoke
 42 the contract, agreement or accord; and (vii) upon the death of the appli-
 43 cant or recipient, the contract, agreement or accord ceases.

4-4

covery program under this subsection (g).

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

(A) If an individual receives any medical assistance before July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim is limited to the individual's probatable estate as defined by applicable law; and

(B) if an individual receives any medical assistance on or after July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim shall apply to the individual's medical assistance estate. The medical assistance estate is defined as including all real and personal property and other assets ~~in which the deceased individual had any legal title or interest immediately before or~~ at the time of death ~~to the extent of that interest or title. The medical assistance estate includes, without limitation assets conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common, survivorship, transfer on death deed, payable on death contract, life estate, trust, annuities or similar arrangements~~

that the deceased individual owned in such individual's name

(4) The secretary of social and rehabilitation services or the secretary's designee is authorized to file and enforce a lien against the real property of a recipient of medical assistance in certain situations, subject to all prior liens of record. The lien must be filed in the office of the register of deeds of the county where the real property is located and must contain the legal description of all real property in the county subject to the lien. This lien is for payments of medical assistance made by the department of social and rehabilitation services to the recipient who is an inpatient in a nursing home or other medical institution. Such lien may be filed only after notice and an opportunity for a hearing has been given. Such lien may be enforced only upon competent medical testimony that the recipient cannot reasonably be expected to be discharged and returned home. A six-month period of compensated inpatient care at a nursing home, nursing homes or other medical institution shall constitute a determination by the department of social and rehabilitation services that the recipient cannot reasonably be expected to be discharged and returned home. To return home means the recipient leaves the nursing or medical facility and resides in the home on which the lien has been placed for a period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. The amount of the lien shall be

SENATE BILL No. 35

By Senator Journey

1-9

relating to the computation of time;

8-1002 and

sections

See attached

Sec. 2

or

9 AN ACT relating to driving under the influence of alcohol or drugs; con-
10 cerning administrative hearings; amending K.S.A. 8-1020 and repeal-
11 ing the existing ~~section~~

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

14 ~~Section 1~~ K.S.A. 8-1020 is hereby amended to read as follows: 8-
15 1020. (a) Any licensee served with an officer's certification and notice of
16 suspension pursuant to K.S.A. 8-1002, and amendments thereto, may
17 request an administrative hearing. Such request may be made either by:

18 (1) Mailing a written request which is postmarked 10 ~~calendar~~ days
19 after service of notice, ~~if such notice was given by personal service;~~

20 (2) ~~mailing a written request which is postmarked 13 calendar days~~
21 ~~after service of notice, if such notice was given by mail;~~

22 (3) ~~transmitting a written request by electronic facsimile which is re-~~
23 ~~ceived by the division within 10 calendar days after service of notice, if~~
24 ~~such notice was given by personal service; or~~

25 (4) ~~transmitting a written request by electronic facsimile which is re-~~
26 ~~ceived by the division within 13 calendar days after service, if such notice~~
27 ~~was given by mail.~~

28 (b) If the licensee makes a timely request for an administrative hear-
29 ing, any temporary license issued pursuant to K.S.A. 8-1002, and amend-
30 ments thereto, shall remain in effect until the 30th ~~calendar~~ day after the
31 effective date of the decision made by the division.

32 (c) If the licensee fails to make a timely request for an administrative
33 hearing, the licensee's driving privileges shall be suspended or suspended
34 and then restricted in accordance with the notice of suspension served
35 pursuant to K.S.A. 8-1002, and amendments thereto.

36 (d) Upon receipt of a timely request for a hearing, the division shall
37 forthwith set the matter for hearing before a representative of the director
38 and provide notice of the extension of temporary driving privileges. Ex-
39 cept for a hearing conducted by telephone or video conference call, the
40 hearing shall be conducted in the county where the arrest occurred or a
41 county adjacent thereto. If the licensee requests, the hearing may be
42 conducted by telephone or video conference call.

43 (e) Except as provided in subsection (f), prehearing discovery shall

1 be limited to the following documents, which shall be provided to the
2 licensee or the licensee's attorney no later than five ~~calendar~~ days prior
3 to the date of hearing:

- 4 (1) The officer's certification and notice of suspension;
5 (2) in the case of a breath or blood test failure, copies of documents
6 indicating the result of any evidentiary breath or blood test administered
7 at the request of a law enforcement officer;
8 (3) in the case of a breath test failure, a copy of the affidavit showing
9 certification of the officer and the instrument; and
10 (4) in the case of a breath test failure, a copy of the Kansas depart-
11 ment of health and environment testing protocol checklist.

12 (f) At or prior to the time the notice of hearing is sent, the division
13 shall issue an order allowing the licensee or the licensee's attorney to
14 review any video or audio tape record made of the events upon which
15 the administrative action is based. Such review shall take place at a rea-
16 sonable time designated by the law enforcement agency and shall be
17 made at the location where the video or audio tape is kept. The licensee
18 may obtain a copy of any such video or audio tape upon request and upon
19 payment of a reasonable fee to the law enforcement agency, not to exceed
20 \$25 per tape.

21 (g) Witnesses at the hearing shall be limited to the licensee, to any
22 law enforcement officer who signed the certification form and to one
23 other witness who was present at the time of the issuance of the certifi-
24 cation and called by the licensee. The presence of the certifying officer
25 or officers shall not be required, unless requested by the licensee at the
26 time of making the request for the hearing. The examination of a law
27 enforcement officer shall be restricted to the factual circumstances relied
28 upon in the officer's certification.

29 (h) (1) If the officer certifies that the person refused the test, the
30 scope of the hearing shall be limited to whether:

31 (A) A law enforcement officer had reasonable grounds to believe the
32 person was operating or attempting to operate a vehicle while under the
33 influence of alcohol or drugs, or both, or had been driving a commercial
34 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
35 while having alcohol or other drugs in such person's system;

36 (B) the person was in custody or arrested for an alcohol or drug re-
37 lated offense or was involved in a vehicle accident or collision resulting
38 in property damage, personal injury or death;

39 (C) a law enforcement officer had presented the person with the oral
40 and written notice required by K.S.A. 8-1001, and amendments thereto;
41 and

42 (D) the person refused to submit to and complete a test as requested
43 by a law enforcement officer.

5-3

1 may enter an order restricting the driving privileges allowed by the tem-
2 porary license provided for in K.S.A. 8-1002, and amendments thereto,
3 and in this section. The temporary license also shall be subject to restric-
4 tion, suspension, revocation or cancellation, as set out in K.S.A. 8-1014,
5 and amendments thereto, or for other cause.

6 (t) The facts found by the hearing officer or by the district court upon
7 a petition for review shall be independent of the determination of the
8 same or similar facts in the adjudication of any criminal charges arising
9 out of the same occurrence. The disposition of those criminal charges
10 shall not affect the suspension or suspension and restriction to be imposed
11 under this section.

12 (u) All notices affirming or canceling a suspension under this section,
13 all notices of a hearing held under this section and all issuances of tem-
14 porary driving privileges pursuant to this section shall be sent by first-
15 class mail and a United States post office certificate of mailing shall be
16 obtained therefor. All notices so mailed shall be deemed received three
17 days after mailing, except that this provision shall not apply to any licensee
18 where such application would result in a manifest injustice.

19 (v) The provisions of K.S.A. 60-206, and amendments thereto, re-
20 garding the computation of time shall ~~not~~ be applicable in determining
21 the time for requesting an administrative hearing as set out in subsection
22 (a) but shall apply *and* to the time for filing a petition for review pursuant
23 to subsection (o) and K.S.A. 8-259, and amendments thereto. "Calendar
24 day" shall mean that every day shall be included in computations of time
25 whether a weekday, Saturday, Sunday or holiday.

26 Sec. ~~2~~ K.S.A. ~~8-1020~~ is hereby repealed.

27 Sec. ~~3~~ This act shall take effect and be in force from and after its
28 publication in the statute book.

3.

8-1002 and 8-1021 are

4.

Section 1. K.S.A. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto, shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2)

the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th ~~calendar~~ day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30th ~~calendar~~ day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within five days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon

so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

(g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

(h) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall not be applicable in determining the effective date of suspension set out in subsection (d). ~~"Calendar-day" when used in this section shall mean that every day shall be included in computations of time whether a week-day, Saturday, Sunday or holiday.~~