Approved: April 25, 2007
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:31 A.M. on March 13, 2007, in Room 123-S of the Capitol.

All members were present except:
Barbara Allen- excused
Les Donovan arrived, 9:43 A.M.
Derek Schmidt arrived, 9:37 A.M.
Dwayne Umbarger arrived, 9:50 A.M.

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:
Eric N. Anderson, Attorney, Salina
Kathy Olson, Kansas Bankers Association
Matthew Goddard, Vice President, Heartland Community Bankers Association

Others attending:
See attached list.

The hearing on **SB 32--Health care; medical assistance repayment; discretionary trusts** was opened.

Eric Anderson appeared as a proponent, indicating he has met with the Kansas Health Authority regarding **SB 32** (Attachment 1). Mr. Anderson stated that there has been limited agreement on items of concern and submitted four recommended changes.

Neutral written testimony was submitted by:
Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority (Attachment 2)

Following testimony, the Chairman indicated that the committee had heard **SB 32** earlier in the session, worked it, and passed it out of committee, but the same day the bill was passed out and before the Chairman turned in the committee report, he received a rather frantic letter from the Kansas Public Health Authority indicating they had just heard about the bill and they had problems with it. So the Chairman did not turn in the committee report, and kept the bill in committee in order that the committee may consider the concerns of the Kansas Public Health Authority.

The Chairman directed the revisor to prepare a balloon amendment reflecting the amendments proposed by Mr. Anderson.

There being no further conferees, the hearing on **SB 32** was closed.

The Chairman opened the hearing on **HB 2282--Perfection of security interests on certificates of title**.

Kathy Olsen appeared in support, indicating the bill will re-instate language that will protect a lender's security interest in vehicles and manufactured homes (Attachment 3). Enactment of this bill will ensure that future lenders are not left in the lurch by failure of the Division of Motor Vehicles to note liens on titles. Ms. Olson provided a balloon amendment developed in meetings with the Department of Revenue, Division of Motor Vehicles and explained the changes.

Matthew Goddard spoke in favor, indicating **HB 2283** addresses a problem that has surfaced in several bankruptcy cases (Attachment 4).

Written testimony in support of **HB 2283** was submitted by:
Martha Neu Smith, Executive Director, Kansas Manufactured Housing Assn. (Attachment 5)

MINUTES OF THE Senate Judiciary Committee at 9:31 A.M. on March 13, 2007, in Room 123-S of the Capitol.

There being no further conferees, the hearing on **HB 2283** was closed.

Final action continued on **SB 296–Eminent domain; blighted property defined**.

The Chairman distributed an updated version of **SB 296** containing all changes made to date (Attachment 6) and a proposed balloon amendment from Patrick DeLapp (Attachment 7). Following discussion, there was no action on the DeLapp amendment.

Senator Journey moved, to recommend **SB 296**, as amended, favorably for passage. There was no second.

Senator Haley moved, Senator Lynn seconded, to table **SB 296**. Senator Journey made a substitute motion to request the Chairman to refer **SB 296** for an interim study, Senator Betts seconded. Motion carried. Senators Lynn and Haley voted "no" and requested their votes recorded.

The Chairman called for final action on **Sub HB 2035--Scrap metal dealers; theft of scrap metal** .

Senator Vratil distributed a proposed substitute bill. He explained the proposed bill would create a new section in the statutes creating a scrap metal provision making them complimentary to the existing junk dealer statutes rather than repealing the junk dealer statutes (Attachment 8).

Senator Schmidt suggested in Section 2 (a) (1) strike the word "full" and insert the word "only" following the word "therefore" and in Section 4 strike the word intentionally in the second sentence.

Senator Goodwin moved, Senator Donovan seconded, to recommend **Senate Substitute for Sub HB 2035**, with changes made by Senator Schmidt, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2393--Municipal courts; fines, restitution, costs; collection agents; judgments enforceable in district court**.

The Chairman distributed a balloon amendment and explained the changes to the bill (Attachment 9).

Senator Journey moved, Senator Schmidt seconded, to amend **HB 2393** as reflected in the balloon amendment.

Senator Schmidt distributed a balloon amendment and described the changes (Attachment 10). Senator Haley requested time to look over the proposed changes. The Chairman indicated final action would continue at a later date.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 14, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-07

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Aaron Cattin	KS. Livestock Assoc.
Monica Barone	N/A
Matt Bryant	TCG
Carmen Alldritt	KDOR
Michael McGinn	KDOR
Shannon Bell	LGR
Shelley Hushbough	N/A
Eric Hopkins	
Jenny Dixon	
Melanie Dixon	N/A
Jeanne Anders-Jones	
Brenda Blackford	—
Mary Jane Stankiewicz	KARA
Brad Harrelson	KFB
Dallas Bauer	SRS
Kathy Olsen	Ks Bankers Assoc
Matthew Goddard	Heartland Community Bankers Assoc.
Dan Murray	Federico Consulting

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-07

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Emily Jacquot	LKM
Nancy Strouse	Kansas Judicial Council
Angie Glover	
Kristi Hale	
Susan Pritchett	
Ashley Jones	Greater Kansas City LISC
Dale Goter	City of Wichita
Richard Sumner	KCDAA
Lana Walsh	OJA
Susie Grimes	
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AUBREY G. LINVILLE
L.O. BENGTSON
RETIRED

March 9, 2007

To: Kansas Senate Judiciary Committee
From: Eric N. Anderson, Esq.
RE: Senate Bill 32

Thank you for a second opportunity to submit testimony on SB 32. Since the last time I was in front of you, I've had an opportunity to meet with the Kansas Health Policy Authority to determine if we could work out some revisions to the legislation as proposed that would allow the goals and policies of the KHPA to be met, along with a reasonable interpretation and implementation by practitioners and courts. I can report marginal success.

Recommendation #1: Eliminate the word "exclusively" in (e)(3)(1) in favor of the words "more than nominally."

Reason for change: KHPA and I agree that by eliminating the word "exclusively" in favor of adding the words "more than nominally," we will be cleaning up unintended consequences of special needs trusts not being exempt from Medicaid issues due solely on the fact that the trust was funded with as little as $1.00 when the grantors (parents) owed a duty of support to the beneficiary (their minor child) when the trust was created.

Recommendation #2: Eliminate the word "contemporaneous" in Subsection (e)(3)(2).

Reason for change: To what does "contemporaneous" refer? To the time of application for/receipt of assistance? To the time the trust was drafted? If it is contemporaneous to the time of initial execution, do the grantors have to dissolve the trust and make a new one rather than just amend their trust? Does "contemporaneous" only refer to the fact that the trust is intended to be supplemental to public assistance or does it also relate to the reference to "Medicaid, medical assistance or title XIX of the social security act" at the end of (e)(3)(2)?

Instead, if the statute requires that the supplemental needs trust include language "specifically stating" that the intent of the trust is to be supplemental to public assistance, that requirement, alone, gets the statute where it needs to be. It will also eliminate needless litigation concerning supplemental needs trusts that were clearly intended by the language in the trust to be supplemental to public assistance, but were drafted before July 1, 2004.

You may hear testimony from representatives of KHPA suggesting that eliminating the word "contemporaneous" will allow improper parole evidence or trust reformation as a way to make a trust one that qualifies the corpus to be excluded from being counted for Medicaid eligibility purposes. You may also hear reference to a 1994 case of *Myers v. Kansas Dept of SRS*, 254, Kan. 467 (1994) as authority for the proposition that eliminating the word "contemporaneous" will cause trusts whereby the grantor had no apparent intent that it be supplemental to public assistance to be determined by the court to be just that – supplemental to public assistance. I disagree.

Senate Judiciary
3-13-07
Attachment 1

In 1994, when the *Myers* case was decided, there was no statute available to direct the Kansas Supreme Court as to Kansas policy concerning what language should appear in a supplemental needs trust to support the claim that the grantor of the trust intended the corpus of the trust to be supplemental to public assistance. With no such direction, the Kansas Supreme Court in *Myers* determined that the trust could not be considered as available resources in determining the son's eligibility for medical assistance.

Today, we have the 2004 version of K.S.A. 39-709(e) to provide that direction. By removing the word "contemporaneous," we are left with the following language:

> . . . the trust contains specific language that states an intent that the trust be supplemental to public assistance and makes specific reference to Medicaid, medical assistance or title XIX of the social security act.

I submit that if such a statute would have been in place in 1994, the *Myers* Court would have come to a different conclusion because no where in the trust language in *Myers* was there "specific reference" to an intent that the trust be supplemental to public assistance.

So, what value does the word "contemporaneous" bring to the statute? In my opinion, that word only serves to confuse the practitioner, or the court, who is trying to interpret the statute. As stated above, to what does "contemporaneous" refer? To the time of application for/receipt of assistance? To the time the trust was drafted? If it is contemporaneous to the time of initial execution, do the grantors have to dissolve the trust and make a new one rather than just amend their trust? Does "contemporaneous" only refer to the fact that the trust is intended to be supplemental to public assistance or does it also relate to the reference to "Medicaid, medical assistance or title XIX of the social security act" at the end of (e)(3)(2)?

I have absolutely no problem with the proposition that a supplemental needs trust must, when created, have language indicating a clear intent by the grantor that the corpus of the trust be supplemental to public assistance. However, does that also mean that for a trust to meet that test it must also contain the reference to Medicaid, medical assistance or title XIX of the social security act?

Clearly, prior to 2004, there existed grantors who wanted to create trusts for the benefit of disabled adult children who wanted the corpus of such trusts to be supplemental to public resources. And, in accordance with Kansas policy, they had that right. As you probably know, in Kansas,

- there is no duty of financial support from a parent to an adult child;
- there is no duty of an adult child to financially support a parent;
- upon the death of a parent, there is no duty impressed upon the parent under Kansas law to leave any portion of the parent's estate to the child.

Similarly, a parent can create a trust for the benefit of his or her child, using the parent's money and, through the terms of the trust, dictate how those funds are to be used by the trustee for the benefit of the parent's child.

Critical to the analysis of this issue is the realization that the funds left by the parent in trust for the child are not, and never will be, the child's funds. Thus, we are not dealing with people who are transferring their own wealth so that they, themselves, become eligible for Medicaid. We're dealing with situations where people are choosing how to distribute their own funds for someone else's use.

You need to know that during the course of my meeting with the KPHA staff, the issue of amending a trust to include the phrase "Medicaid, medical assistance or title XIX of the social security act" (from Subsection (e)(3)(2) was discussed. It was the position of KHPA staff that such an amendment would not be possible because that would mean that such language was not in the trust when it was created, and that would violate the "contemporaneous" requirement of the statute.

How were grantors to know that such a phrase would be required when they created their trusts before 2004? Clearly, the answer is that they could not have had any idea that such language would be

specifically required. But, they could also take solace in the fact that the Uniform Trust Code (or its predecessor, the Uniform Trustees' Powers Act) permitted an otherwise irrevocable trust to be revised consistent with changes in statutes as long as the court could be convinced that the change was consistent with the grantor's specific intent for the trust.

However, notwithstanding the long-standing rule that irrevocable trusts can be amended to come into compliance with current statutes as long as such a change is not inconsistent with the grantor's intent, the KHPA staff told me that in their opinion, no such amendment is possible because it would violate the "contemporaneous" concept of the statute. How can this be? The Kansas Uniform Trust Code specifically permits a trust to be amended if, among other things, the amendment is consistent with the grantor's original intent. **Analyzing supplemental needs trusts in light of changes to K.S.A. 39-709 should be no different.** If a statute changes to add a requirement concerning the eligibility of the supplemental needs trust to be exempt from being counted for Medicaid purposes, one of two things **must** be present: (1) the statute specifically "grandfathers" all trusts in existence at the time the statute changed; **or** (2) the trustee of the trust must be given the opportunity to amend the trust accordingly.

Please note that I would have no philosophical problem with the concept of not grandfathering older trusts. But, I fail to see the detriment to the State of Kansas by allowing a trustee of a trust the opportunity to convince a court that the trust should be amended. In such a situation, the **burden of proof is on the trustee, not KHPA**, to prove that the trust should be amended. And, if a court is convinced that the intent of the grantor was that the trust was to be supplemental to public assistance, all that will have occurred is that the court upheld the right of the grantor to dispose of his or her property in the manner he or she deemed appropriate, which is consistent with long-standing Kansas law and policy. **To not allow such an amendment, however, is squarely in conflict with other Kansas laws.**

You might hear testimony from KHPA staff that references 42 U.S.C. §1396p(d)(4)(A) as authority for the proposition that federal law is already in place to allow parents to provide for their disabled children. This statute is not germane to the issue at hand. The referenced federal law was put in place to address the possible disposition of funds owned by the Medicaid applicant/recipient to a trust so that such person could maintain eligibility for Medicaid and other public assistance programs. The *quid pro quo* was that such a trust must contain a provision allowing the local estate recovery unit to be the primary beneficiary of the trust upon the death of the Medicaid recipient to the extent of funds paid to that person by the State. The reason this reference is totally misplaced is that it deals with the disposition of funds of the disabled beneficiary. **Again, critical to the analysis of SB 32 is that the context of K.S.A. 39-709(e) deals solely with the funds of a person other than the disabled beneficiary.**

The only issues at hand, therefore, are how to address the problems created by the use of the word "contemporaneous" in the current version of K.S.A. 39-709(e)(2) regarding trusts created prior to July 1, 2004 (the effective date of that statute) and how SB 32 can be modified to solve those problems. **In my opinion, removing the word "contemporaneous" will not cause a problem. In fact, it will solve the problem.** A trustee of an older deficient trust must still go to court and attempt to convince a judge that the grantor intended the trust to be supplemental to public assistance. And, if that can be done, then justice is served because the intent of the grantor was preserved. If the trustee cannot make a compelling argument that the grantor intended the trust to be supplemental to public assistance, then justice is served because the court will not have super-imposed its intent for that of the grantor. The big difference between these new cases to be brought and those, like *Myers*, that were brought in years past is that we would now have a specific statute creating the standard by which the courts must make their decisions. In my opinion, the existence of that statute will have the effect of "weeding out" the trusts from which the true intent of the grantor is not clearly stated, which in turn, solves the problem.

Recommendation #3. Eliminate the phrase "Medicaid, medical assistance or title XIX of the social security act" at the end of (e)(3)(2).

As I stated in prior testimony, there is not any good reason that I can fathom that a supplemental needs trust must make specific reference to "Medicaid, medical assistance or title XIX of the social security act." There are many different aspects of public assistance, for example, aid for dependent children, food stamps, etc. What does the phrase "Medicaid, medical assistance or title XIX of the social security act" add to the

definition of "public assistance." Either the grantor intends that a trust be supplemental to public assistance, or he/she does not have that intent. If such intent exists, then "public assistance" will take into account all types of public assistance, including without limitation, Medicaid, medical assistance or title XIX of the social security act. Thus, removing that reference will not, in my opinion, have any adverse effect on the State.

Having said that, I would have no problem leaving that phrase in place as long as the word "contemporaneous" was removed because that would clearly imply that a trust can be amended to be in compliance with the statute.

Recommendation #4. Add the following phrase to the end of 39-709(e): Any trust created before July 1, 2004, can be amended if such amendment is permitted by the Kansas Uniform Trust Code.

Reason for change: It is critical to the practical application to any statute concerning trusts that trustees of trusts drafted prior to 2004 be permitted to take the appropriate steps to amend the trust as permitted by the Kansas Uniform Trust Code.

Thank you very much for your re-consideration on this matter. If there is anything I can to do clarify any of these points, please don't hesitate to contact me.

Very truly yours,

CLARK, MIZE & LINVILLE, CHTD.

Eric N. Anderson

KHPA
Kansas Health Policy Authority
Coordinating health & health care for a thriving Kansas

MARCIA J. NIELSEN, PhD, MPH
Executive Director

ANDREW ALLISON, PhD
Deputy Director

SCOTT BRUNNER
Chief Financial Officer

Testimony on:

Senate Bill 32 – Medical Assistance and Discretionary Trusts

presented to:
Senate Committee on Judiciary

by:
Dr. Marcia Nielsen
Executive Director

March 13, 2007

For additional information contact:
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Senate Judiciary
3-13-07
Attachment 2

Senate Committee on Judiciary
March 13, 2007

Senate Bill 32 – Medical Assistance and Discretionary Trusts

Thank you, Chairman Vratil, for the opportunity to present written testimony on SB 32. Since the last hearing of the bill by the Senate Committee on Judiciary, the Kansas Health Policy Authority has met with Mr. Eric Anderson of the Clark, Mize & Linville firm in Salina who suggested amendments to SB 32. Although the KHPA has taken a neutral position on the legislation, the KHPA would like to provide explanation as to the possible impact of changes that would be made by this legislation and the suggested amendments.

History of the Law

Current law for discretionary trusts came out of recommendations of the 2003 President's Task Force on Medicaid Reform, appointed by Senate President Dave Kerr with the late Senator Stan Clark as chair. The Task Force proposed changes to eligibility and recovery statutes. The Kansas Judicial Council, Kansas Bar Association, Kansas Title Examiners, Kansas Register of Deeds Association and other various proponents and opponents offered testimony. The Task Force's recommendations were embodied in SB 272, which was introduced in the 2003 Session, was passed in 2004, and has been effective for two and a half years. These changes included three eligibility amendments found now in K.S.A. 39-709(e)(2 - 4) and two estate recovery amendments found in K.S.A. 39-709(g)(3 – 7).

Suggested Amendments

The suggested amendments are designed to deal with three main issues related to Medicaid eligibility and discretionary trusts:

i. The law, as amended in 2004, does not grandfather older trusts;
ii. The law requires a specific reference to Medicaid for a trust to be considered a Medicaid-sheltering trust;
iii. The overly restrictive phrase, "funded exclusively," in K.S.A. 39-709(e)(3).

I. Impact of amending the law to "Grandfather old trusts" by deleting the word "contemporaneous"

Current law provides a way that caring parents of adult disabled children can provide for them after death without undermining Medicaid eligibility. Congress, in 1993, in response to the testimony of parents who did not want to have to "disinherit" their disabled adult children, created a special exemption for trust established by parents or grandparents of disabled individuals under 65. This is in 42 U.S.C. Sec. 1396p(d)(4)(A). Kansas specifically allows for guardians and conservators to establish these trusts, under K.S.A. 59-3080. K.S.A. 39-701 lays out the state's intent in establishing a safe haven for these trusts: " . . . It is not the policy of the state to discourage or interfere with the universally recognized moral obligations of kindred to provide, when possible, for the support of dependent relatives, but rather it is the policy of the state to assist the needy and where necessary, the relatives in providing the necessary assistance for dependents." Under the federal law, these trusts must be irrevocable, must be used for the sole benefit of the disabled individual, and must repay the state Medicaid agency for any Medicaid benefits paid to the individual if there are any funds remaining at the disabled individual's death.

SB 272 (2004) required those who set up trusts for their children to be specific about whether they intended to create a Medicaid shelter. The intent of this law was to override the Myers case, Myers v. Kansas Dept. of

SRS, 254 Kan. 467, 866 P.2d 1052 (1994). The Myers court presumed that the mother intended to shelter her son's inheritance from Medicaid even though she did not express that in her will when she wrote it.

The suggested amendment grandfathers trusts created prior to the 2004 amendments to K.S.A. 39-709(e) that do not meet the new and specific requirements for special needs trusts. To the extent that it allows trusts that did not explicitly create a Medicaid shelter at the time they were created to now be considered to meet the shelter requirements, removal of the word "contemporaneous" would appear to overturn the intent of SB 272 (2004).

KHPA estimates that taking the word "contemporaneous" out of the current law will increase Medicaid expenditures by about $450,400, as reflected in the fiscal note prepared in response to the bill. It is common for the Medicaid-planning bar to presume that people must have intended to create a Medicaid shelter when they wrote a trust, and it has been shown that lawyers can convince local courts to presume that is what must have been intended. Without the word "contemporaneous," lawyers may go to courts and get existing trusts "reformed" to add language that will create a Medicaid shelter. In these cases, the courts will effectively determine trust-related qualification for Medicaid[1].

II. Impact of deleting language requiring a "Specific reference to Medicaid"

One reason that old trusts may not meet the 2004 requirements is that they lack a specific reference to Medicaid rules, i.e., they may not, as non-required, require that the special needs trust specify its intent to comply with Medicaid eligibility rules. Essentially, the terms "specific contemporaneous language" and "specific reference to Medicaid" were both intended to prevent an assumption that a trust settler intended to create a Medicaid-sheltering trust. Removing either phrase would likely make it easier for trusts to qualify, or be changed to qualify, individuals for Medicaid.

III. Amending "funded exclusively" to read "funded more than nominally"

KHPA does not see harm to the state's position in ensuring appropriate trusts from allowing the creation of Medicaid-sheltering trusts with funding at nominal levels. That is, the words "funded more than nominally" could be substituted for the words "funded exclusively."

IV. "Expanded Definition"

Through discussion with Mr. Anderson, KHPA ascertained that the request for repealing the "expanded definition" for estate recovery purposes in K.S.A. 39-709(g)(3)(B) was a technical question that might not have any practical effect, and that the expanded definition had not caused him any specific problems.

As a result, KHPA would urge the Committee to forego any amendments to K.S.A. 39-709(g)(3).

Conclusion

Thank you for the opportunity to outline the various aspects of SB 32, amendments to SB 32, and their possible impact. For any state, the Legislature is the body that determines who is eligible for Medicaid and weighs various public policy issues when determining that eligibility. Thus, the KHPA position on this legislation is neutral. The 2003 President's Task Force on Medicaid Reform dealt with many issues, one being proper construction of a Medicaid sheltering discretionary trust. Based on KHPA's interpretation of the 2004 amendments that followed, grandfathering trusts written prior to 2004 would allow some trusts not originally intended to be Medicaid sheltering trusts to be altered to become Medicaid sheltering trusts. This may have the effect of diluting eligibility requirements where trusts are involved.

[1] This following case is a actual example of what can happen if the word "contemporaneous" is removed from K.S.A. 2006 Supp. 39-709(e)(3). The case is from a public record in Douglas County District Court. We have not used the woman's name, her daughter's name, specific dates, and other identifying information to avoid unnecessarily drawing attention to a living individual resident of Kansas.

In February 2004, a woman created a revocable trust. The woman died in May 2005, and so the trust became irrevocable.

Under the terms of the trust, upon the woman's death the trust funds would be divided between a son and a daughter, who both reside in Kansas. The accounting on the trust shows an estimate of over $455,000 in the trust, consisting of a money market account, certificates of deposit, bonds, unit trusts, and mutual funds. The trust paperwork also refers to a "cooperative ownership contract" in an apartment complex in Washington, D.C. that, if sold, would be used to maintain the daughter's "standard of living." It provides that a two pieces of valuable art would go to the son. When the daughter dies, anything left in the trust would go to the son.

In April, 2006, a lawyer filed a petition in Douglas County District Court asking that the court modify the trust under K.S.A. 58a-410 of the Uniform Trust Code. The lawyer asked the judge to modify the trust to insert language in the trust that stated:

> "The assets hereinabove set forth are not intended for the primary support of [the daughter]. They are to supplement said beneficiary's needs . . . the trustee shall take into consideration the amounts which [the daughter] shall be entitled to from any government agency, including, but not limited to, Title XIX of the Social Security Act . . . Medicaid, medical assistance."

The court granted the petition and modified the trust in April 2006.

If the daughter applied for Medicaid under current Kansas law, Medicaid would deny the application because the language added by the court was not "contemporaneous." If the law did not have that word, Medicaid would likely have to grant her application and be responsible from dollar one for her medical care.

Without that word, lawyers could turn trust beneficiaries in Kansas into needy persons and qualify them for Medicaid. It is also possible that Kansas could become a destination for residents of other states who are beneficiaries of trusts. There is no "durational residency" requirement in Medicaid. That is, Kansas Medicaid cannot require a person to have lived in the state of Kansas for any specific period of time. See 42 U.S.C. Sec. 1396a(b)(2) and 42 C.F.R. Sec. 435.403(j)(1). Thus, it is possible that a Missouri or Colorado resident who is the beneficiary of a large trust can move to Kansas, ask a court to modify the trust, and immediately qualify for Medicaid, if they meet other eligibility requirements (such as age or disability).

Kansas Bankers Association

March 13, 2007

To: Members of the Senate Judiciary Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2283: Security Interest in Vehicles and Manufactured Homes

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2283**. This bill is intended to assure that a lender's security interest in vehicles and manufactured homes remains perfected when challenged in court by a third party.

As you know, the perfection of security interests is governed by Article 9 of the Uniform Commercial Code (UCC). According to Article 9, the proper method for a lender to perfect its security interest in vehicles and manufactured homes is to get the lien recorded on the certificate-of- title representing the vehicle or manufactured home.

In order to accomplish this, the lender must send certain documents along with a fee to the Department of Revenue, Division of Motor Vehicles. The Division of Motor Vehicles (the Division) is then responsible for actually noting the lender's lien on the title of the vehicle or manufactured home. If the title is a paper title, the title is then mailed to the owner of the property. If the title is electronic, it is kept on the Division's data base until the lien is released, upon which event a clear title is then mailed to the owner of the vehicle.

This bill request comes as a result of three recent bankruptcy court cases in which the lender followed the rules of perfection with regard to its security interest in vehicles and a manufactured home: that is, the lender delivered the appropriate documents to the Division, paid the required fee and assumed that its lien would be properly noted on the title of the property taken as collateral. Unbeknownst to the lender, the lien was not properly noted on the title by the Division as it should have been.

All three cases ended up in Bankruptcy Court where the Bankruptcy Trustee challenged the lender's perfection of the security interest. The basis of the challenge was that Article 9 and the lien statutes for vehicles and manufactured homes require a lender's lien to be noted on the title and since it was not done properly, the lender's security interest was not perfected and the lender should be considered an unsecured creditor. The bankruptcy court judges agreed despite the evidence produced by the lenders of their compliance with the law.

In one of the cases (*In re: Anderson*, portions attached), Judge Nugent lent very helpful insight into his rationale for the holding. He indicated that there was language in an earlier version of Article 9 that might have protected the lender in this instance. That "old" language was found in former K.S.A. 84-9-302(3), which I have attached. This language indicates that presentation of the documents and tender of the required fee are effective to perfect a security interest in vehicles. Unfortunately, that language did not survive the revision of Article 9 which took place in the 2000 legislative session.

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This bill is our attempt to re-instate the language from "old" Article 9 that we believe would have helped to protect the lender who has done everything within its power to assure its security interest is perfected and thus valid in court.

On page 12, begins the amendment to K.S.A. 84-9-311, the section in Article 9 which covers the perfection of a security interest in property subject to a certificate-of-title law. We have re-instated the guts of the language found in old Article 9, which states that perfection occurs upon the mailing or delivery of the appropriate documents and the tender of the required fee to the appropriate agency.

We have also inserted a reference to the certificate-of-title statutes covering vehicle and manufactured home liens, and have referenced this provision of Article 9 in those statutes to bring the subject full circle. Our amendments appear at the very bottom of Page 4, the bottom of Page 5, the middle of Page 10, and the middle of Page 11. These amendments cover the instances of a purchase money security interest as well as a later refinancing transaction.

Interestingly enough, with one exception these lien statutes already contained language to the effect that the proper completion and timely mailing of the proper documents perfected a security interest in these types of property. It is our belief that a reference to the Article 9 provision in the lien statutes will leave no doubt as to the status of a lender who has properly completed its duties under the law.

Since the hearing in the House Judiciary committee, we have had a meeting with the legal staff at the Department of Revenue, Division of Motor Vehicles (Division). They suggested several amendments which I have attached in the form of balloon amendments for your consideration. The first is a technical amendment appearing on Page 4, Line 43, reinstating "described". The second appears on Page 5, Line 35, and would define "immediately" to mean a lender must within 30 days of the surrender of the original title, make application for a mortgage title. The third amendment appears on Page 12, lines 32-33, and strikes language requiring "acceptance of the (title) documents by" the Division, as being outdated and unnecessary.

In conclusion, it is our intent in re-instating the language of "old" Article 9 and referencing that language in the lien statutes governing vehicles and manufactured homes, that with regard to the perfection of their security interests, future lenders will not be left in the lurch by the failure of the Division to properly complete its duties.

Thank you, again, for allowing me the opportunity to appear in support of this bill, and the KBA respectfully requests your favorable consideration of **HB 2283**.

property description. In re Roberts, 38 B.R. 128, 129, 132 (1984).

14. Buyer not in ordinary course of business without actual knowledge of security interest has priority over unperfected interest (84-9-103(1)(d)). Broadway National Bank v. G & L Athletic Supplies, Inc., 10 K.A.2d 43, 45, 46, 691 P.2d 400 (1984).

15. Cited; entrustment doctrine (84-2-403(2)) examined and applied. Executive Financial Services, Inc. v. Pagel, 238 K. 809, 812, 715 P.2d 381 (1986).

16. Cited; UCC rather than federal common law determines whether FmHA's interest inferior to rights of purchaser for value. United States v. Central Livestock Corp., 616 F.Supp. 629, 634 (1985).

17. Unperfected secured creditor may recover from auction company for unauthorized sale of encumbered collateral. First Nat. Bank of Amarillo v. SW Livestock, Inc., 616 F.Supp. 1515, 1517, 1521 (1985).

18. Cited; bank's prior interest in crops not diminished by lease between debtor and third party. First Nat'l Bank v. Milford, 239 K. 151, 155, 718 P.2d 1291 (1986).

19. Security interest created in inventory but not perfected is subordinated to intervening claim of bankruptcy trustee. Maxl Sales Co. v. Critiques, Inc., 796 F.2d 1293, 1299, 62 B.R. [168] [169] [174] (1986).

20. Security interest filed under debtor's trade name bearing no similarity to legal name can be set aside by bankruptcy trustee. Pearson v. Salina Coffee House, Inc., 61 B.R. 538, 541 (1986).

21. Chapter 7 trustee's rights as superior to grain company in possession with unperfected security interest examined. In re Lewis, 70 B.R. 699, 704 (1987).

22. Cited; rules relating to ownership of property under act relative to security interests stated and applied. City of Arkansas City v. Anderson, 242 K. 875, 891, 752 P.2d 673 (1988).

23. Unsecured creditor with knowledge of another's unperfected security interest not entitled to priority. Farmers State Bank v. Production Cred. Ass'n of St. Cloud, 243 K. 87, 97, 755 P.2d 518 (1988).

24. Absent authorization, borrower and seller of excavator could not modify lender's perfected security interest. U.S. v. Ables, 739 F.Supp. 1439, 1446 (1990).

25. Since holder of unsecured security interest in motor vehicle cannot recover from bona fide purchasers, holder damaged thereby. Mid American Credit Union v. Board of Sedgwick County Comm'rs, 15 K.A.2d 216, 224, 806 P.2d 479 (1991).

26. Security interest in wife's interest in equipment unperfected; financial statement not listing her name seriously misleading. In re Griffin, 141 B.R. 207, 209, 214 (1992).

27. Whether creditor could reach secured, perfected assets of debtor who allegedly fraudulently transferred assets examined. Printed Media Services v. Solna Web, Inc., 838 F.Supp. 1453, 1461 (1993).

84-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; assignment of perfected security interest; national and state central filing provisions; vehicles. (1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under K.S.A. 84-9-305 and amendments thereto;

(b) a security interest temporarily perfected in instruments, certificated securities or documents without delivery under K.S.A. 84-9-304 and amendments thereto or in proceeds for a ten-day period under K.S.A. 84-9-306 and amendments thereto;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in a consumer good with a purchase price of $1,000 or less, other than a vehicle in which a security interest is subject to perfection under subsection (3), but filing is required to perfect a security interest in a vessel as defined in K.S.A. 82a-802, and amendments thereto, and a fixture filing is required for priority over conflicting security interests in a fixture as provided in K.S.A. 84-9-313, and amendments thereto;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (K.S.A. 84-4-208 and amendments thereto) or arising under the article on sales (see K.S.A. 84-9-113 and amendments thereto) or covered in subsection (3);

(g) an assignment for the benefits of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(h) a security interest in investment property which is perfected without filing under K.S.A. 84-9-115 or 84-9-116.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) A security interest in:

(a) Property subject to a statute of the United States which provides for national registration or filing of such security interests in such property; or

(b) property subject to a statute of this state which provides for central filing of such property; or

(c) a vehicle (except a vehicle held as inventory for sale) subject to a statute of this state which requires indication on a certificate of title or a du-

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plicate thereof of such security interests in such vehicle:

Can be perfected only by presentation, for the purpose of such registration or such filing or such indication, of the documents appropriate under any such statute to the public official appropriate under any such statute and tender of the required fee to or acceptance of the documents by such public official, or by the mailing or delivery by a dealer or secured party to the appropriate state agency of a notice of security interest as prescribed by K.S.A. 8-135 and amendments thereto. Such presentation and tender or acceptance, or mailing or delivery, shall have the same effect under this article as filing under this article, and such perfection shall have the same effect under this article as perfection by filing under this article.

History: L. 1965, ch. 564, § 369; L. 1967, ch. 519, § 9; L. 1970, ch. 46, § 2; L. 1975, ch. 32, § 2; L. 1975, ch. 514, § 15; L. 1986, ch. 399, § 64; L. 1987, ch. 404, § 1; L. 1989, ch. 313, § 1; L. 1996, ch. 202, § 86; July 1.

OFFICIAL UCC COMMENT

Prior Uniform Statutory Provision:

Section 5, Uniform Conditional Sales Act; Section 8, Uniform Trust Receipts Act.

Purposes:

1. Subsection (1) states the general rule that to perfect a security interest under this Article a financing statement must be filed. Paragraphs (1)(a) through (1)(g) exempt from the filing requirement the transactions described. Subsection (3) further sets out certain transactions to which the filing provisions of this Article do not apply, but it does not defer to another state statute on the filing of inventory security interests. The cases recognized are those where suitable alternative systems for giving public notice of a security interest are available. Subsection (4) states the consequences of such other form of notice.

Section 9-303 states the time when a security interest is perfected by filing or otherwise. Part 4 of the Article deals with the mechanics of filing: place of filing, form of financing statement and so on.

2. As at common law, there is no requirement of filing when the secured party has possession of the collateral in a pledge transaction (paragraph (1)(a)), Section 9-305 should be consulted on what collateral may be pledged and on the requirements of possession.

3. Under this Article, as under the Uniform Trust Receipts Act, filing is not effective to perfect a security interest in instruments. See Section 9-304(1).

4. Where goods subject to a security interest are left in the debtor's possession, the only permanent exception from the general filing requirement is that stated in paragraph (1)(d): purchase money security interests in consumer goods. For temporary exceptions, see Sections 9-304(5)(a) and 9-306.

In many jurisdictions under prior law security interests in consumer goods under conditional sale or bailment leases were not subject to filing requirements. Paragraph (1)(d) follows the policy of those jurisdictions. The paragraph changes prior law in jurisdictions where all conditional sales and bailment leases were subject to a filing requirement, except that filing is required for purchase money security interests in consumer fixtures to attain priority under Section 9-313 against real estate interests.

Although the security interests described in paragraph (1)(d) are perfected without filing, Section 9-307(2) provides that unless a financing statement is filed certain buyers may take free of the security interest even though perfected. See that section and the Comment thereto.

On filing for security interests in motor vehicles under certificate of title laws see subsection (3) of this section.

5. A financing statement must be filed to perfect a security interest in accounts except for the transactions described in paragraphs (1)(e) and (g). It should be noted that this Article applies to sales of accounts and chattel paper as well as to transfers thereof for security (Section 9-102(1)(b)); the filing requirement of this section applies both to sales and to transfers thereof for security. In this respect this Article follows many of the pre-Code statutes regulating assignments of accounts receivable.

Over forty jurisdictions had enacted accounts receivable statutes. About half of these statutes required filing to protect or perfect assignments; of the remainder, one was a so-called "book-marking" statute and the others validated assignments without filing. This Article adopts the filing requirement, on the theory that there is no valid reason why public notice is less appropriate for assignments of accounts than for any other type of nonpossessory interest. Section 9-305, furthermore, excludes accounts from the types of collateral which may be the subject of a possessory security interest: filing is thus the only means of perfection contemplated by this Article. See Section 9-306 on accounts as proceeds.

The purpose of the subsection (1)(e) exemption is to save from ex post facto invalidation casual or isolated assignments: some accounts receivable statutes were so broadly drafted that all assignments, whatever their character or purpose, fell within their filing provisions. Under such statutes many assignments which no one would think of filing might have been subject to invalidation. The paragraph (1)(e) exemption goes to that type of assignment. Any person who regularly takes assignments of any debtor's accounts should file. In this connection Section 9-104(f) which excludes certain transfers of accounts from the Article should be consulted.

Assignments of interests in trusts and estates are not required to be filed because they are often not thought of as collateral comparable to the types dealt with by this Article. Assignments for the benefit of creditors are not required to be filed because they are not financing transactions and the debtor will not ordinarily be engaging in further credit transactions.

6. With respect to the paragraph (1)(f) exemptions, see the sections cited therein and Comments thereto.

7. The following example will explain the operation of subsection (2): Buyer buys goods from seller who retains a security interest in them which he perfects. Seller assigns the perfected security interest to X. The security interest, in X's hands and without further steps on his part, continues perfected against Buyer's transferees and creditors. If, however, the assignment from Seller to X was itself intended for security (or was a sale of accounts or chattel paper), X must take whatever steps may be required for perfection in order to be protected against Seller's transferees and creditors.

8. Subsection (3) exempts from the filing provisions of this Article transactions as to which an adequate system of filing,

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SO ORDERED.

SIGNED this 02 day of October, 2006.

ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:	)	
	)	
BRANDI D. ANDERSON,	)	**Case No. 04-14105**
	)	**Chapter 7**
Debtor.	)	
	)	
J. MICHAEL MORRIS, Trustee	)	
	)	
	)	
Plaintiff,	)	
v.	)	**Adv. No. 04-5341**
	)	
INTRUST BANK, N.A.,	)	
BRANDI D. ANDERSON and	)	
JOHN C. ANDERSON,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

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debtor's case was filed, the trustee contends Intrust's security interests in the vehicles were unperfected and therefore can be avoided and preserved for the benefit of the estate citing KAN. STAT. ANN. § 84-9-311(b), § 8-135(c)(6), and the holding in *Mid American Credit Union v. Board of County Commissioners of Sedgwick County*.[11] Intrust responds that Kansas law resolves perfection issues not only by examining whether the lienholder has its lien listed on the title, but also by reviewing the process undertaken by the lienholder to get its lien noted on the certificate of title. Intrust contends that it "did everything that it was required to do to perfect its lien, and was in fact perfected as of the time it sent in the required documentation and filing fee" and "remained perfected for the interim period until the lien was noted on the electronic certificate of title."[12]

As the trustee points out, under former § 84-9-302(3)(c), there was a plausible argument to be made that compliance with the filing requirements of KAN. STAT. ANN. § 8-135(c)(6) would amount to perfection even if KDR omitted notation of the lender's lien on the title certificate. That statute provided that such a security interest "can be perfected only be presentation . . . of the documents appropriate under [the title statute] . . . and tender of the required fee . . . ."[13] The statute went on to establish that "such presentation and tender . . . shall have the same effect under this article as filing under this article, and such perfection shall have the same effect under this article as perfection by filing under this article." Thus, under the former law, one could argue as Intrust does that mere presentation of the documents and payment of the fee sufficed to perfect a vehicle lien. With the enactment of revised Article 9, and particularly the revisions contained in § 84-9-311,

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[11] 15 Kan. App.2d 216, 806 P.2d 479, *rev. denied* 248 Kan. 996 (1991).

[12] Dkt. 30 at 7.

[13] *See* KAN. STAT. ANN. § 84-9-302(3)(c) (1996).

this argument is untenable. As noted above, § 84-9-311(b) plainly requires "compliance" with the vehicle titling statute, not "presentation and tender" as provided in former § 84-9-302.

As it relates to this case, KAN. STAT. ANN. § 8-135(c)(6) provides that when a person acquires a security agreement on a vehicle after issuance of the first certificate of title on the vehicle (in plain language, a refinance), the acquirer "shall" require the previous certificate of title holder to surrender the certificate. Then the new secured party is to submit the certificate of title, along with an application for secured title and a fee, to KDR. When KDR receives this submission, it "shall issue a new certificate of title showing the liens or encumbrances so created. . . ." As KAN. STAT. ANN. § 8-135d requires, when a title reflects a lien, KDR is to retain the title electronically. All of this presumably promotes the trustworthiness of vehicle titles in commerce and furthers the purpose of providing notice of a creditor's claim against the vehicle, thereby avoiding the attachment and enforcement of secret liens. This serves the bedrock policy of our secured transactions law.

Mid American Credit Union, while decided under former Article 9, still remains a source of valuable guidance on the construction of this statute. In that case, Mid American sued the Sedgwick County Board of County Commissioners, the Sedgwick County Treasurer, and KDR for negligence in failing to note its name as lienholder on a vehicle title. Mid American loaned its customer (Christopher Woods) the money to buy a 1980 Corvette and received a purchase money security interest. Because this was a purchase-money transaction governed by KAN. STAT. ANN. § 8-135(c)(5), Mid American then forwarded a notice of security interest (NOSI) to KDR. After 30 days passed without Woods applying for a title, Mid American repossessed the vehicle and obtained a repossession title. Thereafter, Mid American negotiated a second sale to Woods, assigning the title to him, with Mid American noted on the reverse as a lienholder. Woods in turn applied for a title

at the courthouse. When the application was processed by the treasurer's office, the clerk failed to note Mid America's lien and a "clear" title was issued. When Woods defaulted and disappeared, Mid American sought to recover the vehicle, only to find that its lien had never been listed on the new certificate of title.

In determining that Mid American's interests had been damaged, the Kansas Court of Appeals focused on its prior holding in *Beneficial Finance Co. v. Schroeder,*[14] where the court stated that an interest in a vehicle may be perfected by noting its existence on the certificate of title or, in the case of a purchase-money lien, by mailing a notice of security interest.[15] Stating that holding otherwise would diminish the reliability of certificates of title, the *Mid American* court held that "[t]he lien must be noted on the certificate of title to be perfected."[16] This Court must agree.

While KAN. STAT. ANN. § 8-135(c)(5) provides that presentation of a NOSI shall perfect a purchase-money security interest in the vehicle on the date of such mailing or delivery,[17] nothing in KAN. STAT. ANN. § 8-135(c)(6) provides that the "presentation" of the application for the title alone constitutes perfection of the lien securing a vehicle refinance.[18] The plain language of the statute provides for the security interest to be indicated on the certificate as a condition of

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[14] 12 Kan. App.2d 150, 737 P.2d 52, *rev. denied* 241 Kan. 838 (1987). This case also deals with a purchase-money security interest as opposed to a refinance.

[15] *Id.* at 151.

[16] 15 Kan. App.2d at 223.

[17] *See Beneficial Finance Co.,* 12 Kan. App. 2d at 151 ("Mailing or delivering notice of the security interest perfects the secured party's interest during the period from attachment to notation on the certificate of title.").

[18] *See Davis v. Credit Union of America (In re Lindahl)*, Adv. No. 05-5084, Memorandum Opinion at 10 (Bankr. D. Kan. Mar. 29, 2006) (Nugent, C.J.) (The rules pertaining to the filing of a NOSI apply to the sale and delivery of vehicles, not refinanced vehicles.).

perfection.[19]

Also persuasive here is the fact that, when revised Article 9 was adopted in Kansas in 2000, no corresponding change was made to KAN. STAT. ANN. § 8-135(c)(6), which remains essentially identical to its form and substance in 1991, the year of the *Mid American Credit Union* decision. Official Comment 5 to revised § 84-9-311 is telling, noting that "interplay of this section with certain certificate-of-title statutes may create confusion and uncertainty. . . . Accordingly, the Legislative Note to this section instructs the Legislature to amend the applicable certificate of title statutes to provide the perfection occurs upon receipt . . . of a properly tendered application for a certificate of title on which the security interest is to be indicated."[20] For whatever reason, the Kansas legislature has, so far, declined to follow this "instruction" of the drafters. It is not for this Court to legislate that change, however wise or advisable it may be.[21]

Two previously-decided bankruptcy court cases on secured titles in Kansas bear some mention in the context of this case. First, in *In re Luke,*[22] this Court rejected the "we did all we could" argument raised by Intrust here. Unfortunately, Intrust's papers contain an out-of-context quotation from that opinion, suggesting that this Court has previously held that "submission of the registration, the application, and the fee, had it been accomplished by June 20, 2003, would have

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[19] KAN. STAT. ANN. § 84-9-311(a)(2).

[20] KAN. STAT. ANN. § 84-9-311, Off. Comment 5 (2005 Supp.).

[21] Some legislative attention to this section may be warranted to clarify, once and for all, the means and method of perfecting refinance security interests under KAN. STAT. ANN. § 8-135(c)(6).

[22] *Morris v. Wells Fargo Financial Acceptance Kansas, Inc. (In re Luke)*, 2004 Bankr. Lexis 1832 (Bankr. D. Kan. Nov. 18, 2004) (Nugent, C.J.).

any applicant obtaining a certificate of title for a repossessed vehicle shall pay a fee of $3.

(3) Dealers shall execute, upon delivery to the purchaser of every new vehicle, a manufacturer's statement of origin stating the liens and encumbrances thereon. Such statement of origin shall be delivered to the purchaser at the time of delivery of the vehicle or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays. The agreement of the parties shall be executed on a form approved by the division. In the event delivery of title cannot be made personally, the seller may deliver the manufacturer's statement of origin by restricted mail to the address of purchaser shown on the purchase agreement. The manufacturer's statement of origin may include an attachment containing assignment of such statement of origin on forms approved by the division. Upon the presentation to the division of a manufacturer's statement of origin, by a manufacturer or dealer for a new vehicle, sold in this state, a certificate of title shall be issued if there is also an application for registration, except that no application for registration shall be required for a travel trailer used for living quarters and not operated on the highways.

(4) The fee for each original certificate of title shall be $10 in addition to the fee for registration of such vehicle, trailer or semitrailer. The certificate of title shall be good for the life of the vehicle, trailer or semitrailer while owned or held by the original holder of the certificate of title.

(5) Except for a vehicle registered by a federally recognized Indian tribe, as provided in paragraph (16), upon sale and delivery to the purchaser of every vehicle subject to a purchase money security interest as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, the dealer or secured party may complete a notice of security interest and when so completed, the purchaser shall execute the notice, in a form prescribed by the division, describing the vehicle and showing the name and address of the secured party and of the debtor and other information the division requires. The dealer or secured party, within 30 days of the sale and delivery, may mail or deliver the notice of security interest, together with a fee of $2.50, to the division. The notice of security interest shall be retained by the division until it receives an application for a certificate of title to the vehicle and a certificate of title is issued. The certificate of title shall indicate any security interest in the vehicle. Upon issuance of the certificate of title, the division shall mail or deliver confirmation of the receipt of the notice of security interest, the date the certificate of title is issued and the security interest indicated, to the secured party at the address shown on the notice of security interest. The proper completion and timely mailing or delivery of a notice of security interest by a dealer or secured party shall perfect a security interest in the vehicle ~~described~~, *as referenced in K.S.A. 84-9-311, and amend-*

<reinstate "described">

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ments thereto, on the date of such mailing or delivery. The county treasurers shall mail a copy of the title application to the Kansas lienholder. Each county treasurer shall charge the Kansas lienholder a $1.50 service fee for processing and mailing a copy of the title application to the Kansas lienholder.

(6) It shall be unlawful for any person to operate in this state a vehicle required to be registered under this act, or to transfer the title to any such vehicle to any person or dealer, unless a certificate of title has been issued as herein provided. In the event of a sale or transfer of ownership of a vehicle for which a certificate of title has been issued, which certificate of title is in the possession of the transferor at the time of delivery of the vehicle, the holder of such certificate of title shall endorse on the same an assignment thereof, with warranty of title in a form prescribed by the division and printed thereon and the transferor shall deliver the same to the buyer at the time of delivery to the buyer of the vehicle or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays, after the time of delivery. The agreement of the parties shall be executed on a form provided by the division. The requirements of this paragraph concerning delivery of an assigned title are satisfied if the transferor mails to the transferee by restricted mail the assigned certificate of title within the 30 days, and if the transferor is a dealer, as defined by K.S.A. 8-2401, and amendments thereto, such transferor shall be deemed to have possession of the certificate of title if the transferor has made application therefor to the division. The buyer shall then present such assigned certificate of title to the division at the time of making application for registration of such vehicle. A new certificate of title shall be issued to the buyer, upon payment of the fee of $10. If such vehicle is sold to a resident of another state or country, the dealer or person making the sale shall notify the division of the sale and the division shall make notation thereof in the records of the division. When a person acquires a security agreement on a vehicle subsequent to the issuance of the original title on such vehicle, such person shall require the holder of the certificate of title to surrender the same and sign an application for a mortgage title in form prescribed by the division. ~~Upon such surrender~~ Such person shall ~~immediately~~ deliver the certificate of title, application, and a fee of $10 to the division. *Delivery of the surrendered title, application and tender of the required fee shall perfect a security interest in the vehicle as referenced in K.S.A. 84-9-311, and amendments thereto.* Upon receipt ~~thereof~~ *of the surrendered title, application and fee*, the division shall issue a new certificate of title showing the liens or encumbrances so created, but not more than two liens or encumbrances may be shown upon a title. When a prior lienholder's name is removed from the title, there must be satisfactory evidence presented to

within 30 days of the date of receipt of the surrendered titl

remains in such dealer's possession and at such dealer's established or supplemental place of business for the purpose of sale. Upon the sale of any such manufactured home or mobile home, the dealer immediately shall deliver to the purchaser or transferee the certificate of title issued by the other state, properly endorsed and assigned to the purchaser or transferee, together with an affidavit executed by the dealer setting forth:

(1) That the dealer warrants to the purchaser or transferee and all other persons who claim through the purchaser or transferee that, at the time of the sale transfer and delivery by the dealers, the manufactured home or mobile home was free and clear of all liens, mortgages and other encumbrances, except those otherwise appearing on the title;

(2) the information shown on the title relating to all previous assignments, including the names of all previous titleholders shown thereon; and

(3) that the dealer has the right to sell and transfer the manufactured home or mobile home.

Sec. 3. K.S.A. 2006 Supp. 84-9-311 is hereby amended to read as follows: 84-9-311. (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt K.S.A. 2006 Supp. 84-9-310(a) and amendments thereto;

(2) any certificate-of-title law of this state covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate ~~as a condition or result of perfection~~. *Such security interest shall be deemed perfected upon the mailing or delivery of the notice of security interest to the appropriate state agency, or the delivery of the documents appropriate under any such law to the appropriate state agency and tender of the required fee ~~for or~~ acceptance of the documents by the state agency, as prescribed in K.S.A. 8-135 and 58-4204, and amendments thereto*; or

to

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and K.S.A. 2006 Supp. 84-9-313 and 84-9-316(d) and (e)

HEARTLAND COMMUNITY BANKERS ASSOCIATION

Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
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Office (785) 232-8215 • Fax (785) 232-9320
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To: Senate Judiciary Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 13, 2007

Re: House Bill 2283

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Committee on Judiciary to express our support for House Bill 2283.

House Bill 2283 addresses a problem that has surfaced in several bankruptcy cases. The lender in each case fulfilled its responsibility to send specific documents and the appropriate fee to the Division of Motor Vehicles in the Department of Revenue so that its lien would be recorded on a vehicle title. Unfortunately, the Division of Motor Vehicles subsequently failed to record the lien on the title. When the bankruptcy filings went to court, the lenders were found to be unsecured creditors because their security interest was never recorded on the title and thus was never perfected. In addition to vehicles, this scenario applies equally to manufactured homes.

The bill before the Committee today would add language into the Uniform Commercial Code that was originally stricken when Revised Article 9 was adopted in 2000. House Bill 2283 perfects a security interest upon the mailing or delivering of the notice of a security interest, along with payment of the required fee, to the appropriate state agency. This change would protect the status of auto and manufactured home lenders as secured creditors without diminishing the rights of any other secured parties.

The Heartland Community Bankers Association respectfully requests that the Senate Judiciary Committee recommend House Bill 2283 favorable for passage.

Thank you.

KANSAS
MANUFACTURED HOUSING
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TESTIMONY
BEFORE THE
SENATE
JUDICIARY COMMITTEE

TO: Senator John Vratil, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: March 13, 2007

RE: HB 2283 – Security Interest in Vehicles and Manufactured Homes

Chairman Vratil and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA). KMHA is a statewide trade association, which represents all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners and operators, finance and insurance companies, service and suppliers and transport companies) and I appreciate the opportunity to submit written testimony in support of HB 2283.

The Kansas Bankers Association contacted me in early January regarding a recent bankruptcy court case involving a manufactured home. The case concerned a lender, which followed the rules of perfection with regard to its security interest in the home; however, the Division did not note the lien on the title. The case ended up in Bankruptcy Court where the Bankruptcy Trustee challenged the lender's perfection of the security interest in the home since the lender's lien was not on the title. The bankruptcy court judge agreed with the Trustee that the lender was not perfected.

HB 2283 attempts to correct the situation where the lender follows the rules of perfection but the lien is not properly noted on the title by the Division. KMHA supports HB 2283 and respectfully asks for the Committee's favorable recommendation.

Thank you.

Senate Judiciary
3-13-07
Attachment 5

SENATE BILL No. 296

By Committee on Federal and State Affairs

2-6

AN ACT relating to eminent domain; concerning blighted property; amending K.S.A. 2006 Supp. 26-501b and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 26-501b is hereby amended to read as follows: 26-501b. On and after July 1, 2007, the taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity is authorized if the taking is:

(a) By the Kansas department of transportation or a municipality and the property is deemed excess real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project including, but not limited to a public building, park, recreation facility, water supply project, wastewater and waste disposal project, storm water project and flood control and drainage project;

(b) by any public utility, as defined in K.S.A. 66-104, and amendments thereto, gas gathering service, as defined in K.S.A. 55-1,101, and amendments thereto, pipe-line companies, railroads and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state, but only to the extent such property is used for the operation of facilities necessary for the provision of services;

(c) by any municipality when the private property owner has acquiesced in writing to the taking;

(d) by any municipality for the purpose of acquiring property which has defective or unusual conditions of title including, but not limited to, clouded or defective title or unknown ownership interests in the property;

(e) by any municipality for the purpose of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated;

(f) expressly authorized by the legislature on or after July 1, 2007, by enactment of law that identifies the specific tract or tracts to be taken. If the legislature authorizes eminent domain for private economic development purposes, the legislature shall consider requiring compensation

of at least 200% of fair market value to property owners.;

(g) by any municipality, within the corporate boundary of such municipality, for the purpose of remediating blight. As used in this section, "blighted property," "blighted" or "blight" means any developed property which:

(1) Presents any of the following conditions:

(A) Uninhabitable, unsafe or abandoned structures;

(B) inadequate provisions for ventilation, light, air or sanitation;

(C) an imminent harm to life or other property caused by fire, flood, tornado, storm or other natural catastrophe and the property owner has failed to take reasonable measures to remedy the harm;

(D) a site identified by the federal environmental protection agency as a superfund site pursuant to 42 U.S.C. § 9601, et seq., or environmental contamination to an extent that requires remedial investigation or a feasibility study;

(E) repeated illegal activities involving controlled substances, prostitution or promoting prostitution on the individual property of which the property owner knew or should have known; or

(F) the maintenance of the property remains in violation of state law or municipal nuisance code requirements and has received at least three notices for code violations within one year and such code violations have been abated by the municipality, except that this paragraph shall not apply to the removal or abatement of grass, weeds or other vegetation from such property.

(2) Property shall not be deemed blighted because of esthetic conditions.

(3) In no case shall land that is agricultural land be determined to be in a blighted condition.

(4) For the purposes of this subsection:

(A) "Agricultural land" means any interest in real property that is privately owned and satisfies any one of the following criteria:

(i) Is classified pursuant to article 11, section 1, of the Kansas constitution as devoted to agricultural use;

(ii) is a feedlot, confined feeding facility or public livestock market;

or

(iii) is a farm home.

(B) "Confined feeding facility" means any lot, pen, pool or pond:

(i) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes;

(ii) which is not normally used for raising crops; and

(iii) in which no vegetation intended for animal food is growing.

(C) "Corporate boundary" means the jurisdictional boundary of the municipality, specifically the city limits or county line, and does not in-

danger

(C)

(D)

(E)

is or was

has attempted or completed abatement of such code violations

;

(iv) public grain warehouse; or
(v) agricultural retail facility.
(B) "Agricultural retail facility" means any facility operated by any person, entity or corporation that is licensed or registered with the Kansas department of agriculture to handle, process or sell fertilizer, pesticide, anhydrous ammonia or any other agricultural chemical used in the production of agriculture.

And by relettering the remaining subsections accordingly

clude an urban growth area or area designated by a planning or zoning commission in accordance with K.S.A. 12-754, and amendments thereto.

(D) "Farm home" means any tract of land which contains a single-family residence, is adjacent to agricultural land and is occupied by an individual or individuals engaged in farming operations.

(E) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit, sod, or other horticultural crops, grazing or the production of livestock.

(F) "Feedlot" means a lot, yard, corral, confined feeding facility or other area in which livestock are fed for slaughter and are confined and such additional acreage as is necessary for the operation of the feedlot.

(G) "Livestock" means cattle, sheep, swine, horses, mules, asses, goats, aquatic animals, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas, and any other animal which can or may be used in and for the preparation of meat or meat products.

~~(g)~~ *(h)* This section shall be part of and supplemental to the eminent domain procedure act.

Sec. 2. K.S.A. 2006 Supp. 26-501b is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

(H) "Public grain warehouse" means an elevator or other building in which grain is received for storage or transfer for the public.

New Sec. 2. (a) When a municipality authorizes the taking of private residential property by eminent domain under subsection (g) of K.S.A. 2006 Supp. 26-501b, and amendments thereto, it shall sell or otherwise transfer such property for the purpose of providing single or multi-family residential dwellings to a nonprofit corporation as defined in K.S.A. 17-5903, and amendments thereto, which has been rehabilitating or repairing residences for at least seven years or to a nonprofit corporation meeting the state of Kansas community housing development organization (CHDO) requirements.

(b) When a municipality authorizes the taking of commercial property by eminent domain under subsection (g) of K.S.A. 2006 Supp. 26-501b, and amendments thereto, it must hold a public sale following procedures provided by K.S.A. 3-143, and amendments thereto.

and renumber the following sections accordingly

6-13

Session of 2007

SENATE BILL No. 296

By Committee on Federal and State Affairs

2-6

AN ACT relating to eminent domain; concerning blighted property; amending K.S.A. 2006 Supp. 26-501b and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 26-501b is hereby amended to read as follows: 26-501b. On and after July 1, 2007, the taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity is authorized if the taking is:

(a) By the Kansas department of transportation or a municipality and the property is deemed excess real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project including, but not limited to a public building, park, recreation facility, water supply project, wastewater and waste disposal project, storm water project and flood control and drainage project;

(b) by any public utility, as defined in K.S.A. 66-104, and amendments thereto, gas gathering service, as defined in K.S.A. 55-1,101, and amendments thereto, pipe-line companies, railroads and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state, but only to the extent such property is used for the operation of facilities necessary for the provision of services;

(c) by any municipality when the private property owner has acquiesced in writing to the taking;

(d) by any municipality for the purpose of acquiring property which has defective or unusual conditions of title including, but not limited to, clouded or defective title or unknown ownership interests in the property;

(e) by any municipality for the purpose of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated;

(f) expressly authorized by the legislature on or after July 1, 2007, by enactment of law that identifies the specific tract or tracts to be taken. If the legislature authorizes eminent domain for private economic development purposes, the legislature shall consider requiring compensation

clude an urban growth area or area designated by a planning or zoning commission in accordance with K.S.A. 12-754, and amendments thereto.

(D) "Farm home" means any tract of land which contains a single-family residence, is adjacent to agricultural land and is occupied by an individual or individuals engaged in farming operations.

(E) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit, sod, or other horticultural crops, grazing or the production of livestock.

(F) "Feedlot" means a lot, yard, corral, confined feeding facility or other area in which livestock are fed for slaughter and are confined and such additional acreage as is necessary for the operation of the feedlot.

(G) "Livestock" means cattle, sheep, swine, horses, mules, asses, goats, aquatic animals, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas, and any other animal which can or may be used in and for the preparation of meat or meat products.

~~(g)~~ *(h)* This section shall be part of and supplemental to the eminent domain procedure act.

Sec. 2. K.S.A. 2006 Supp. 26-501b is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

New Sec. 2. Whenever real property is acquired by any condemning authority through negotiation in advance of a condemnation action or through a condemnation action the condemning authority shall provide the owner of the real property to be acquired a copy of the appraisal of such real property done by or for the condemning authority.

And by renumbering the remaining sections accordingly

7-2

SENATE Substitute for Substitute for HOUSE BILL NO. 2035

By Committee on Judiciary

AN ACT concerning scrap metal dealers; relating to the regulation thereof.

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

Section 1. As used in sections 1 through 4, and amendments thereto:

(a) "Scrap metal dealer" means any person that operates a business out of a fixed location, and that is also either:

(1) Engaged in the business of buying and dealing in regulated scrap metal;

(2) purchasing, gathering, collecting, soliciting or procuring regulated scrap metal; or

(3) operating, carrying on, conducting or maintaining a regulated scrap metal yard or place where regulated scrap metal is gathered together and stored or kept for shipment, sale or transfer.

(b) "Regulated scrap metal yard" means any yard, plot, space, enclosure, building or any other place where regulated scrap metal is collected, gathered together and stored or kept for shipment, sale or transfer.

(c) "Regulated scrap metal" shall mean wire, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts or connectors made from aluminum; catalytic converters containing platinum, palladium or rhodium; and copper, titanium, tungsten and nickel in any form; for which the purchase price described in sections 2 and 3, and amendments thereto, was primarily based on the content therein of aluminum, copper, titanium, tungsten, nickel, platinum, palladium or rhodium. Aluminum shall not include food or beverage containers.

Sec. 2. (a) It shall be unlawful for any person to sell any item or items of regulated scrap metal to a scrap metal dealer in this state unless such person:

(1) Receives full payment of the sale price therefor by check; and

(2) presents to such scrap metal dealer, at or before the

time of sale, the information described below regarding such item or items of regulated scrap metal.

Such information shall include the seller's name, address and place of business, if any. Every scrap metal dealer shall keep a register in which the dealer shall at the time of purchase or receipt of any item for which such information is required to be presented, cross-reference to previously received information, or enter the name, residence or place of business, if any, of the person from whom the scrap metal dealer purchased or received the item, a description made in accordance with the commodity code standards of the trade of items purchased, the price paid for such item or items, and a copy of the seller's photo driver's license card or another government-issued photo identification card. The scrap metal dealer's register, including copies of identification cards, may be kept in electronic format.

(b) Notwithstanding the foregoing, this section shall not apply to:

(1) Transactions for which the total sale price for all regulated scrap metal is $25.00 or less;

(2) transactions in which the seller is also a scrap metal dealer; or

(3) transactions for which the seller is known to the purchasing scrap metal dealer to be an established business that operates out of a fixed business location and that can reasonably be expected to generate regulated scrap metal.

Sec. 3. It shall be unlawful for any such scrap metal dealer to purchase any item or items of regulated scrap metal in a transaction for which section 2, and amendments thereto, requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of information obtained in compliance with the requirements in section 2, and amendments thereto. All records kept in accordance with the provisions of this act shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required

information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.

Sec. 4. Any person violating the provisions of sections 1 through 3, and amendments thereto, shall be guilty of a class C misdemeanor. Any person convicted of intentionally violating the provisions of sections 1 through 3, and amendments thereto, for the third and subsequent times within a two-year period shall be guilty of a class A misdemeanor.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

As Amended by House Committee

Session of 2007

HOUSE BILL No. 2393

By Committee on Judiciary

2-5

Bruce Kinzie

Senate Judiciary
3-13-07
Attachment 9

AN ACT concerning municipal courts; relating to collection of fines, restitution and other costs.

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

Section 1. (a) Cities are authorized to enter into contracts for collection services for debts owed to municipal courts or restitution owed under an order of restitution. On and after July 1, 2007, the cost of collection shall be paid by the defendant as an additional court cost in all cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay court debt and restitution.

(b) The following terms shall mean:

(1) "Beneficiary under an order of restitution" means the victim or victims of a crime to whom a municipal court has ordered restitution be paid;

(2) "contracting agent" means a person, firm, agency or other entity who contracts hereunder to provide collection services;

(3) "cost of collection" means the fee specified in contracts hereunder to be paid to or retained by a contracting agent for collection services **and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to municipal courts or restitution**. Cost of collection also includes any filing fee required under K.S.A. 60-4303, and amendments thereto; and

(4) "debts owed to municipal courts" means any assessment of court costs, fines, fees, moneys expended by the city in providing counsel and other defense services to indigent defendants or other charges which a municipal court judgment has ordered to be paid to the court, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law. "Debts owed to municipal courts" also includes the cost of collection when collection services of a contracting agent hereunder are utilized.

judge

(c) Municipal courts are authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding debts owed the municipal courts.

9-2

(c) Any beneficiary under an order of restitution entered by a municipal court is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

(d) Contracts shall provide for the payment of any amounts collected to the clerk of the municipal court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person, the municipal court clerk shall credit the person's amount owed the amount of the net proceeds collected. The clerk shall not reduce the amount owed by any person that portion of any payment which constitutes the cost of collection pursuant to this section.

(e) When the appropriate cost of collection has been paid to the contracting agent as agreed upon in the contract, the municipal clerk shall then distribute amounts collected as follows:

(1) When collection services are utilized pursuant to subsection (c), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt;

(2) when collection services are utilized pursuant to subsection (d), all amounts shall be paid to the beneficiary under the order of restitution designated to receive such restitution, except where that beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312, and amendments thereto, in which case all amounts shall be paid to the board until its subrogation lien is satisfied.

(f) Whenever collection services are being utilized against the same debtor pursuant to both subsections (d) and (e), any amounts collected by a contracting agent shall be first applied to satisfy debts pursuant to an order of restitution. Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy, debts owed to courts.

~~(g) For any defendant convicted in municipal court, all debts owed to the municipal court shall be assessed against the defendant and shall be a judgment against the defendant that may be enforced in the district court serving the jurisdiction in which the city is located. This judgment is enforceable in the district court as a chapter 61 civil judgment for payment of money upon filing the municipal court judgment, affidavit and certificate of mailing as provided in subsection (i).~~

~~(h) Jury fees shall not be considered court costs and shall be paid by the city in all municipal cases appealed for a trial de novo before the district court.~~

~~(i) A copy of any municipal judgment certified by the municipal court in which the judgment was rendered, may be filed in the office of the clerk~~

12-4104. Municipal court; jurisdiction; search warrants proscribed. The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court.

History: L. 1973, ch. 61, § 12-4104; April 1, 1974.

and cases involving juveniles who are 10 or more years of age but less than 18 years of age who have violated a city ordinance that proscribes an act that is not prohibited by state law

Sec. 3. K.S.A. 2006 Supp. 38-2302 is hereby amended to read as follows: 38-2302. As used in this code, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of juvenile justice.

(b) "Conditional release" means release from a term of commitment in a juvenile correctional facility for an aftercare term pursuant to K.S.A. 2006 Supp. 38-2369, and amendments thereto, under conditions established by the commissioner.

(c) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 2006 Supp. 38-2306, and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2006 Supp. 38-2307, and amendments thereto, in a proceeding pursuant to this code.

(d) "Educational institution" means all schools at the elementary and secondary levels.

(e) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsections (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.

(f) "Institution" means the following institutions: the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility, the Topeka juvenile correctional facility and the Kansas juvenile correctional complex.

(g) "Investigator" means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility.

(h) "Jail" means: (1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(i) "Juvenile" means a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

(j) "Juvenile correctional facility" means a facility operated by the commissioner for the commitment of juvenile offenders.

(k) "Juvenile corrections officer" means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the commissioner with responsibility for maintaining custody, security and control of juveniles in the custody of the commissioner at a juvenile correctional facility.

(l) "Juvenile detention facility" means a public or private facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.

(m) "Juvenile intake and assessment worker" means a responsible adult authorized to perform

intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(n) "Juvenile offender" means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include: (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas criminal code;

(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2006 Supp. 38-2364, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2006 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction;

(4) a person under18 years of age who has violated a city ordinance that proscribes an act that is not prohibited by state law .

(o) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(p) "Parent" when used in relation to a juvenile, includes a guardian and every person who is, by law, liable to maintain, care for or support the juvenile.

(q) "Risk assessment tool" means an instrument administered to juveniles which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

(r) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(s) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(t) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.