

HOUSE BILL No. 2742

By Committee on Judiciary

2-10

1 AN ACT concerning real and personal property; relating to the medical
2 assistance recovery program; amending K.S.A. 39-702, 58-3957, 58a-
3 818, 59-1501, 59-2239 and 59-2250 and K.S.A. 2011 Supp. 39-709,
4 59-1507b, 59-2222 and 59-2247 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 39-702 is hereby amended to read as follows: 39-
8 702. The following words and phrases when used in this act shall, for the
9 purposes of this act, have the meanings respectively ascribed to them in
10 this section:

11 (a) "Secretary" means the secretary of social and rehabilitation
12 services, *unless otherwise specified*.

13 (b) "Applicants" means all persons who, as individuals, or in whose
14 behalf requests are made of the secretary for aid or assistance.

15 (c) "Social welfare service" may include such functions as giving
16 assistance, the prevention of public dependency, and promoting the
17 rehabilitation of dependent persons or those who are approaching public
18 dependency.

19 (d) "Assistance" includes such items or functions as the giving or
20 providing of money, food stamps or coupons, food, clothing, shelter,
21 medicine or other materials, the giving of any service, including
22 instructive or scientific, and the providing of institutional care, which may
23 be necessary or helpful to the recipient in providing the necessities of life
24 for the recipient and the recipient's dependents. The definitions of social
25 welfare service and assistance in this section shall be deemed as partially
26 descriptive and not limiting.

27 (e) "Aid to families with dependent children" means financial
28 assistance with respect to or on behalf of a dependent child or dependent
29 children and includes financial assistance for any month to meet the needs
30 of the relative with whom any dependent child is living.

31 (f) "Medical assistance" means the payment of all or part of the cost
32 of necessary: (1) Medical, remedial, rehabilitative or preventive care and
33 services which are within the scope of services to be provided under a
34 medical care plan developed by the secretary pursuant to this act and
35 furnished by health care providers who have a current approved provider
36 agreement with the secretary; and (2) transportation to obtain care and

1 services which are within the scope of services to be provided under a
2 medical care plan developed by the secretary pursuant to this act.

3 (g) "Dependent children" means needy children under the age of 18,
4 or who are under the age of 19 and are full-time students in secondary
5 schools or the equivalent educational program or are full-time students in a
6 program of vocational or technical training if they may be reasonably
7 expected to complete the training before attaining age 19, who have been
8 deprived of parental or guardian support or care by reasons of the death,
9 continued absence from the home, or physical or mental incapacity of a
10 parent or guardian, and who are living with any blood relative, including
11 those of the half-blood, and including first cousins, uncles, aunts, and
12 persons of preceding generations are denoted by prefixes of grand, great,
13 or great-great, and including the spouses or former spouses of any persons
14 named in the above groups, in a place of residence maintained by one or
15 more of such relatives as their own home. The secretary may adopt rules
16 and regulations which extend the deprivation requirement under this
17 definition to include being deprived of parental or guardian support or care
18 by reason of the unemployment of a parent or guardian. The term
19 "dependent children" also includes children who would meet the foregoing
20 requirements except for their removal from the home of a relative as a
21 result of judicial determination to the effect that continuation therein
22 would be contrary to the welfare of such children, for whose placement
23 and care the secretary is responsible, who have been placed in a foster
24 family home or child care institution as a result of such determination
25 who received aid to dependent children in or for the month in which court
26 proceedings leading to such determination were initiated, or would have
27 received such aid in or for such month if application had been made
28 therefor, or in the case of a child who had been living with a relative
29 specified above within six months prior to the month in which such
30 proceedings were initiated, would have received such aid in or for such
31 month if in such month such child had been living with and removed from
32 the home of such a relative and application had been made therefor.

33 (h) "The blind" means not only those who are totally and permanently
34 devoid of vision, but also those persons whose vision is so defective as to
35 prevent the performance of ordinary activities for which eyesight is
36 essential.

37 (i) "General assistance" means financial assistance in which the cost
38 of such financial assistance is not participated in by the federal
39 government. General assistance may be limited to transitional assistance in
40 some instances as specified by rules and regulations adopted by the
41 secretary.

42 (j) "Recipient" means a person who has received assistance under the
43 terms of this act.

1 (k) "Intake office" means the place where the secretary shall maintain
2 an office for receiving applications.

3 (l) "Adequate consideration" means consideration equal, or
4 reasonably proportioned to the value of that for which it is given.

5 (m) "Transitional assistance" means a form of general assistance in
6 which as little financial assistance as one payment may be made during
7 each period of 12 consecutive calendar months to an eligible and needy
8 person and all other persons for whom such person is legally responsible.

9 (n) "Title IV-D" means part D of title IV of the federal social security
10 act (42 U.S.C. § 651, *et seq.*), ~~or acts amendatory thereof or supplemental~~
11 ~~thereto~~ as in effect on May 1, 1997.

12 Sec. 2. K.S.A. 2011 Supp. 39-709 is hereby amended to read as
13 follows: 39-709. (a) *General eligibility requirements for assistance for*
14 *which federal moneys are expended.* Subject to the additional requirements
15 below, assistance in accordance with plans under which federal moneys
16 are expended may be granted to any needy person who:

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

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

39 (b) *Assistance to families with dependent children.* Assistance may be
40 granted under this act to any dependent child, or relative, subject to the
41 general eligibility requirements as set out in subsection (a), who resides in
42 the state of Kansas or whose parent or other relative with whom the child
43 is living resides in the state of Kansas. Such assistance shall be known as

1 aid to families with dependent children. Where husband and wife are
2 living together both shall register for work under the program
3 requirements for aid to families with dependent children in accordance
4 with criteria and guidelines prescribed by rules and regulations of the
5 secretary.

6 (c) *Aid to families with dependent children; assignment of support*
7 *rights and limited power of attorney.* By applying for or receiving aid to
8 families with dependent children such applicant or recipient shall be
9 deemed to have assigned to the secretary on behalf of the state any
10 accrued, present or future rights to support from any other person such
11 applicant may have in such person's own behalf or in behalf of any other
12 family member for whom the applicant is applying for or receiving aid. In
13 any case in which an order for child support has been established and the
14 legal custodian and obligee under the order surrenders physical custody of
15 the child to a caretaker relative without obtaining a modification of legal
16 custody and support rights on behalf of the child are assigned pursuant to
17 this section, the surrender of physical custody and the assignment shall
18 transfer, by operation of law, the child's support rights under the order to
19 the secretary on behalf of the state. Such assignment shall be of all
20 accrued, present or future rights to support of the child surrendered to the
21 caretaker relative. The assignment of support rights shall automatically
22 become effective upon the date of approval for or receipt of such aid
23 without the requirement that any document be signed by the applicant,
24 recipient or obligee. By applying for or receiving aid to families with
25 dependent children, or by surrendering physical custody of a child to a
26 caretaker relative who is an applicant or recipient of such assistance on the
27 child's behalf, the applicant, recipient or obligee is also deemed to have
28 appointed the secretary, or the secretary's designee, as an attorney in fact to
29 perform the specific act of negotiating and endorsing all drafts, checks,
30 money orders or other negotiable instruments representing support
31 payments received by the secretary in behalf of any person applying for,
32 receiving or having received such assistance. This limited power of
33 attorney shall be effective from the date the secretary approves the
34 application for aid and shall remain in effect until the assignment of
35 support rights has been terminated in full.

36 (d) *Eligibility requirements for general assistance, the cost of which*
37 *is not shared by the federal government.* (1) General assistance may be
38 granted to eligible persons who do not qualify for financial assistance in a
39 program in which the federal government participates and who satisfy the
40 additional requirements prescribed by or under this subsection (d).

41 (A) To qualify for general assistance in any form a needy person must
42 have insufficient income or resources to provide a reasonable subsistence
43 compatible with decency and health and, except as provided for

1 transitional assistance, be a member of a family in which a minor child or
2 a pregnant woman resides or be unable to engage in employment. The
3 secretary shall adopt rules and regulations prescribing criteria for
4 establishing when a minor child may be considered to be living with a
5 family and whether a person is able to engage in employment, including
6 such factors as age or physical or mental condition. Eligibility for general
7 assistance, other than transitional assistance, is limited to families in which
8 a minor child or a pregnant woman resides or to an adult or family in
9 which all legally responsible family members are unable to engage in
10 employment. Where a husband and wife are living together the combined
11 income or resources of both shall be considered in determining the
12 eligibility of either or both for such assistance unless otherwise prohibited
13 by law. The secretary in determining need of any applicant for or recipient
14 of general assistance shall not take into account the financial responsibility
15 of any individual for any applicant or recipient of general assistance unless
16 such applicant or recipient is such individual's spouse or such individual's
17 minor child or a minor stepchild if the stepchild is living with such
18 individual. In determining the need of an individual, the secretary may
19 provide for income and resource exemptions.

20 (B) To qualify for general assistance in any form a needy person must
21 be a citizen of the United States or an alien lawfully admitted to the United
22 States and must be residing in the state of Kansas.

23 (2) General assistance in the form of transitional assistance may be
24 granted to eligible persons who do not qualify for financial assistance in a
25 program in which the federal government participates and who satisfy the
26 additional requirements prescribed by or under this subsection (d), but who
27 do not meet the criteria prescribed by rules and regulations of the secretary
28 relating to inability to engage in employment or are not a member of a
29 family in which a minor or a pregnant woman resides.

30 (3) In addition to the other requirements prescribed under this
31 subsection (d), the secretary shall adopt rules and regulations which
32 establish community work experience program requirements for eligibility
33 for the receipt of general assistance in any form and which establish
34 penalties to be imposed when a work assignment under a community work
35 experience program requirement is not completed without good cause. The
36 secretary may adopt rules and regulations establishing exemptions from
37 any such community work experience program requirements. A first time
38 failure to complete such a work assignment requirement shall result in
39 ineligibility to receive general assistance for a period fixed by such rules
40 and regulations of not more than three calendar months. A subsequent
41 failure to complete such a work assignment requirement shall result in a
42 period fixed by such rules and regulations of ineligibility of not more than
43 six calendar months.

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

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

41 (2) For the purposes of medical assistance eligibility determinations
42 ~~on or after July 1, 2004~~, if an applicant or recipient owns property in joint
43 tenancy with some other party and the applicant or recipient of medical

1 assistance has restricted or conditioned their interest in such property to a
2 specific and discrete property interest less than 100%, then such
3 designation will cause the full value of the property to be considered an
4 available resource to the applicant or recipient.

5 (3) (A) Resources from trusts shall be considered when determining
6 eligibility of a trust beneficiary for medical assistance. Medical assistance
7 is to be secondary to all resources, including trusts, that may be available
8 to an applicant or recipient of medical assistance.

9 (B) If a trust has discretionary language, the trust shall be considered
10 to be an available resource to the extent, using the full extent of discretion,
11 the trustee may make any of the income or principal available to the
12 applicant or recipient of medical assistance. Any such discretionary trust
13 shall be considered an available resource unless: (i) At the time of creation
14 or amendment of the trust, the trust states a clear intent that the trust is
15 supplemental to public assistance; and (ii) the trust: (a) Is funded from
16 resources of a person who, at the time of such funding, owed no duty of
17 support to the applicant or recipient of medical assistance; or (b) is funded
18 not more than nominally from resources of a person while that person
19 owed a duty of support to the applicant or recipient of medical assistance.

20 (C) For the purposes of this paragraph, "public assistance" includes,
21 but is not limited to, medicaid, medical assistance or title XIX of the social
22 security act.

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

1 (B) When an applicant or recipient of medical assistance is a party to
2 a written contract for personal services being provided by a licensed health
3 professional or facility and such contract involves health and welfare
4 monitoring, pharmacy assistance, case management, communication with
5 medical, health or other professionals, or other activities related to home
6 health care, long term care, medical assistance benefits or other related
7 issues, any moneys paid in advance of receipt of services for such
8 contracts shall be considered to be an available resource.

9 (5) Any trust may be amended if such amendment is permitted by the
10 Kansas uniform trust code.

11 (f) *Eligibility for medical assistance of resident receiving medical*
12 *care outside state.* A person who is receiving medical care including long-
13 term care outside of Kansas whose health would be endangered by the
14 postponement of medical care until return to the state or by travel to return
15 to Kansas, may be determined eligible for medical assistance if such
16 individual is a resident of Kansas and all other eligibility factors are met.
17 Persons who are receiving medical care on an ongoing basis in a long-term
18 medical care facility in a state other than Kansas and who do not return to
19 a care facility in Kansas when they are able to do so, shall no longer be
20 eligible to receive assistance in Kansas unless such medical care is not
21 available in a comparable facility or program providing such medical care
22 in Kansas. For persons who are minors or who are under guardianship, the
23 actions of the parent or guardian shall be deemed to be the actions of the
24 child or ward in determining whether or not the person is remaining
25 outside the state voluntarily.

26 (g) *Medical assistance; assignment of rights to medical support and*
27 *limited power of attorney; recovery from estates of deceased recipients.*(1)
28 Except as otherwise provided in K.S.A. 39-786 and 39-787, and
29 amendments thereto, or as otherwise authorized ~~on and after September~~
30 ~~30, 1989,~~ under section 303, and amendments thereto, of the federal
31 medicare catastrophic coverage act of 1988, whichever is applicable, by
32 applying for or receiving medical assistance under a medical care plan in
33 which federal funds are expended, any accrued, present or future rights to
34 support and any rights to payment for medical care from a third party of an
35 applicant or recipient and any other family member for whom the
36 applicant is applying shall be deemed to have been assigned to the
37 secretary on behalf of the state. The assignment shall automatically
38 become effective upon the date of approval for such assistance without the
39 requirement that any document be signed by the applicant or recipient. By
40 applying for or receiving medical assistance the applicant or recipient is
41 also deemed to have appointed the secretary, or the secretary's designee, as
42 an attorney in fact to perform the specific act of negotiating and endorsing
43 all drafts, checks, money orders or other negotiable instruments,

1 representing payments received by the secretary in behalf of any person
2 applying for, receiving or having received such assistance. This limited
3 power of attorney shall be effective from the date the secretary approves
4 the application for assistance and shall remain in effect until the
5 assignment has been terminated in full. The assignment of any rights to
6 payment for medical care from a third party under this subsection shall not
7 prohibit a health care provider from directly billing an insurance carrier for
8 services rendered if the provider has not submitted a claim covering such
9 services to the secretary for payment. Support amounts collected on behalf
10 of persons whose rights to support are assigned to the secretary only under
11 this subsection and no other shall be distributed pursuant to subsection (d)
12 of K.S.A. 39-756, and amendments thereto, except that any amounts
13 designated as medical support shall be retained by the secretary for
14 repayment of the unreimbursed portion of assistance. Amounts collected
15 pursuant to the assignment of rights to payment for medical care from a
16 third party shall also be retained by the secretary for repayment of the
17 unreimbursed portion of assistance.

18 (2) The amount of any medical assistance paid ~~after June 30, 1992,~~
19 under the provisions of subsection (e) is (A) a claim against the property or
20 any interest therein belonging to and a part of the estate of any deceased
21 recipient or, if there is no estate, the estate of the surviving spouse, if any,
22 shall be charged for such medical assistance paid to either or both, and (B)
23 a claim against any funds of such recipient or spouse in any account under
24 K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and
25 amendments thereto. There shall be no recovery of medical assistance
26 correctly paid to or on behalf of an individual under subsection (e) except
27 after the death of the surviving spouse of the individual, if any, and only at
28 a time when the individual has no surviving child who is under 21 years of
29 age or is blind or permanently and totally disabled. Transfers of real or
30 personal property by recipients of medical assistance without adequate
31 consideration are voidable and may be set aside. Except where there is a
32 surviving spouse, or a surviving child who is under 21 years of age or is
33 blind or permanently and totally disabled, the amount of any medical
34 assistance paid under subsection (e) is a claim against the estate in any
35 guardianship or conservatorship proceeding. The monetary value of any
36 benefits received by the recipient of such medical assistance under long-
37 term care insurance, as defined by K.S.A. 40-2227, and amendments
38 thereto, shall be a credit against the amount of the claim provided for such
39 medical assistance under this subsection (g). The secretary *of health and*
40 *environment* is authorized to enforce each claim provided for under this
41 subsection (g). The secretary *of health and environment* shall not be
42 required to pursue every claim, but is granted discretion to determine
43 which claims to pursue. All moneys received by the secretary *of health*

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

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

10 (A) If an individual receives any medical assistance before July 1,
11 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
12 which forms the basis for a claim under subsection (g)(2), such claim is
13 limited to the individual's probatable estate as defined by applicable law;
14 and

15 (B) if an individual receives any medical assistance on or after July 1,
16 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
17 which forms the basis for a claim under subsection (g)(2), such claim shall
18 apply to the individual's medical assistance estate. The medical assistance
19 estate is defined as including all real and personal property and other
20 assets in which the deceased individual had any legal title or interest
21 immediately before or at the time of death to the extent of that interest or
22 title. The medical assistance estate includes, without limitation assets
23 conveyed to a survivor, heir or assign of the deceased recipient through
24 joint tenancy, tenancy in common, survivorship, transfer-on-death deed,
25 payable-on-death contract, life estate, trust, annuities or similar
26 arrangement.

27 (4) The secretary of ~~social and rehabilitation services~~ *health and*
28 *environment* or the secretary's designee is authorized to file and enforce a
29 lien against the real property of a recipient of medical assistance in certain
30 situations, subject to all prior liens of record. The lien must be filed in the
31 office of the register of deeds of the county where the real property is
32 located and must contain the legal description of all real property in the
33 county subject to the lien. This lien is for payments of medical assistance
34 made by the department of social and rehabilitation services to the
35 recipient who is an inpatient in a nursing home or other medical
36 institution. Such lien may be filed only after notice and an opportunity for
37 a hearing has been given. Such lien may be enforced only upon competent
38 medical testimony that the recipient cannot reasonably be expected to be
39 discharged and returned home. A six-month period of compensated
40 inpatient care at a nursing home, ~~nursing homes~~ or other medical
41 institution shall constitute a determination by the department of social and
42 rehabilitation services that the recipient cannot reasonably be expected to
43 be discharged and returned home. To return home means the recipient

1 leaves the nursing or medical facility and resides in the home on which the
2 lien has been placed for a period of at least 90 days without being
3 readmitted as an inpatient to a nursing or medical facility. The amount of
4 the lien shall be for the amount of assistance paid by the department of
5 social and rehabilitation services after the expiration of six months from
6 the date the recipient became eligible for compensated inpatient care at a
7 nursing home, nursing homes or other medical institution until the time of
8 the filing of the lien and for any amount paid thereafter for such medical
9 assistance to the recipient.

10 (5) The lien filed by the secretary *of health and environment* or the
11 secretary's designee for medical assistance correctly received may be
12 enforced before or after the death of the recipient by the filing of an action
13 to foreclose such lien in the Kansas district court or through an estate
14 probate court action in the county where the real property of the recipient
15 is located. However, it may be enforced only:

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

17 (B) when there is no child of the recipient, natural or adopted, who is
18 20 years of age or less residing in the home;

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

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

25 (6) The lien remains on the property even after a transfer of the title
26 by conveyance, sale, succession, inheritance or will unless one of the
27 following events occur:

28 (A) The lien is satisfied. The recipient, the heirs, personal
29 representative or assigns of the recipient may discharge such lien at any
30 time by paying the amount of the lien to the secretary *of health and*
31 *environment* or the secretary's designee;

32 (B) the lien is terminated by foreclosure of prior lien of record or
33 settlement action taken in lieu of foreclosure;

34 (C) the value of the real property is consumed by the lien, at which
35 time the secretary *of health and environment* or the secretary's designee
36 may force the sale for the real property to satisfy the lien; or

37 (D) after a lien is filed against the real property, it will be dissolved if
38 the recipient leaves the nursing or medical facility and resides in the
39 property to which the lien is attached for a period of more than 90 days
40 without being readmitted as an inpatient to a nursing or medical facility,
41 even though there may have been no reasonable expectation that this
42 would occur. If the recipient is readmitted to a nursing or medical facility
43 during this period, and does return home after being released, another 90

1 days must be completed before the lien can be dissolved.

2 (7) If the secretary of ~~social and rehabilitation services~~ *health and*
3 *environment* or the secretary's designee has not filed an action to foreclose
4 the lien in the Kansas district court in the county where the real property is
5 located within 10 years from the date of the filing of the lien, then the lien
6 shall become dormant, and shall cease to operate as a lien on the real estate
7 of the recipient. Such dormant lien may be revived in the same manner as
8 a dormant judgment lien is revived under K.S.A. 60-2403 *et seq.*, and
9 amendments thereto.

10 (8) *The secretary of health and environment shall adopt by rules and*
11 *regulations the value of expressly created life estates or other interests in*
12 *real or personal property or other assets measured by or valued with*
13 *respect to a life span. Such property interests shall be valued at the time of*
14 *death, irrespective of the actual life span of the measuring life, and shall*
15 *be the only evidence considered for the purpose of recovery from deceased*
16 *recipients of medical assistance under this subsection.*

17 (h) *Placement under the revised Kansas code for care of children or*
18 *revised Kansas juvenile justice code; assignment of support rights and*
19 *limited power of attorney.* In any case in which the secretary of social and
20 rehabilitation services pays for the expenses of care and custody of a child
21 pursuant to K.S.A. 2011 Supp. 38-2201 *et seq.* or 38-2301 *et seq.*, and
22 amendments thereto, including the expenses of any foster care placement,
23 an assignment of all past, present and future support rights of the child in
24 custody possessed by either parent or other person entitled to receive
25 support payments for the child is, by operation of law, conveyed to the
26 secretary. Such assignment shall become effective upon placement of a
27 child in the custody of the secretary or upon payment of the expenses of
28 care and custody of a child by the secretary without the requirement that
29 any document be signed by the parent or other person entitled to receive
30 support payments for the child. When the secretary pays for the expenses
31 of care and custody of a child or a child is placed in the custody of the
32 secretary, the parent or other person entitled to receive support payments
33 for the child is also deemed to have appointed the secretary, or the
34 secretary's designee, as attorney in fact to perform the specific act of
35 negotiating and endorsing all drafts, checks, money orders or other
36 negotiable instruments representing support payments received by the
37 secretary on behalf of the child. This limited power of attorney shall be
38 effective from the date the assignment to support rights becomes effective
39 and shall remain in effect until the assignment of support rights has been
40 terminated in full.

41 (i) No person who voluntarily quits employment or who is fired from
42 employment due to gross misconduct as defined by rules and regulations
43 of the secretary or who is a fugitive from justice by reason of a felony

1 conviction or charge shall be eligible to receive public assistance benefits
2 in this state. Any recipient of public assistance who fails to timely comply
3 with monthly reporting requirements under criteria and guidelines
4 prescribed by rules and regulations of the secretary shall be subject to a
5 penalty established by the secretary by rules and regulations.

6 (j) If the applicant or recipient of aid to families with dependent
7 children is a mother of the dependent child, as a condition of the mother's
8 eligibility for aid to families with dependent children the mother shall
9 identify by name and, if known, by current address the father of the
10 dependent child except that the secretary may adopt by rules and
11 regulations exceptions to this requirement in cases of undue hardship. Any
12 recipient of aid to families with dependent children who fails to cooperate
13 with requirements relating to child support enforcement under criteria and
14 guidelines prescribed by rules and regulations of the secretary shall be
15 subject to a penalty established by the secretary by rules and regulations
16 which penalty shall progress to ineligibility for the family after three
17 months of noncooperation.

18 (k) By applying for or receiving child care benefits or food stamps,
19 the applicant or recipient shall be deemed to have assigned, pursuant to
20 K.S.A. 39-756, and amendments thereto, to the secretary on behalf of the
21 state only accrued, present or future rights to support from any other
22 person such applicant may have in such person's own behalf or in behalf of
23 any other family member for whom the applicant is applying for or
24 receiving aid. The assignment of support rights shall automatically become
25 effective upon the date of approval for or receipt of such aid without the
26 requirement that any document be signed by the applicant or recipient. By
27 applying for or receiving child care benefits or food stamps, the applicant
28 or recipient is also deemed to have appointed the secretary, or the
29 secretary's designee, as an attorney in fact to perform the specific act of
30 negotiating and endorsing all drafts, checks, money orders or other
31 negotiable instruments representing support payments received by the
32 secretary in behalf of any person applying for, receiving or having
33 received such assistance. This limited power of attorney shall be effective
34 from the date the secretary approves the application for aid and shall
35 remain in effect until the assignment of support rights has been terminated
36 in full. An applicant or recipient who has assigned support rights to the
37 secretary pursuant to this subsection shall cooperate in establishing and
38 enforcing support obligations to the same extent required of applicants for
39 or recipients of aid to families with dependent children.

40 Sec. 3. K.S.A. 58-3957 is hereby amended to read as follows: 58-
41 3957. (a)(1) A person, excluding another state, claiming an interest in any
42 property paid or delivered to the administrator may file with the
43 administrator a claim on a form prescribed by the administrator and

1 verified by the claimant.

2 (2) *The department of health and environment may claim an interest*
3 *in any property paid or delivered to the administrator if the deceased*
4 *owner of such property received medical assistance under K.S.A. 39-709,*
5 *and amendments thereto, except that such claim shall not exceed the*
6 *amount of medical assistance received by the deceased owner.*

7 (3) The administrator may hold a hearing on the claim in accordance
8 with the provisions of the Kansas administrative procedure act. The
9 decision resulting from any hearing shall be a public record.

10 (b) The administrator shall consider each claim within 90 days after it
11 is filed and give written notice to the claimant if the claim is denied in
12 whole or in part. The notice may be given by mailing it to the last address,
13 if any, stated in the claim as the address to which notices are to be sent. If
14 no address for notices is stated in the claim, the notice may be mailed to
15 the last address, if any, of the claimant as stated in the claim. No notice of
16 denial need be given if the claim fails to state either the last address to
17 which notices are to be sent or the address of the claimant.

18 (c) If a claim is allowed, the administrator shall pay over or deliver to
19 the claimant the property or the amount the administrator actually received
20 or the net proceeds if it has been sold by the administrator, together with
21 any additional amount required by K.S.A. 58-3954, and amendments
22 thereto. Interest reported under the previous disposition of unclaimed
23 property act shall not be computed, paid or delivered to the claimant after
24 enactment of this act. If the claim is for property presumed abandoned
25 under K.S.A. 58-3943, and amendments thereto, which was sold by the
26 administrator within three years after the date of delivery, the amount
27 payable for that claim is the value of the property at the time the claim was
28 made or the net proceeds of sale, whichever is greater.

29 (d) Any holder who pays the owner for property that has been
30 delivered to the state and which, if claimed from the administrator, would
31 be subject to subsection (c) shall add any additional amount as provided in
32 K.S.A. 58-3954, and amendments thereto. The additional amount shall be
33 repaid to the holder by the administrator in the same manner as the
34 principal.

35 Sec. 4. K.S.A. 58a-818 is hereby amended to read as follows: 58a-
36 818. (†) (a) Any trustee who has a duty or power to pay the debts of a
37 deceased settlor may give notice to creditors thereof. Such notice shall be
38 published once a week for three consecutive weeks in a newspaper,
39 authorized by law to publish legal notices, of the county in which the
40 deceased settlor was a resident. The publication notice to creditors shall be
41 to all persons concerned. It shall state the name and address of the trustee,
42 the name of the deceased settlor, the name of the trust from which the
43 debts of the decedent may be paid upon receipt of proper proof thereof,

1 and shall notify the creditors to present such claims to the trustee within
2 the later of:

3 ~~(a)~~ (1) Four months from the date of the first published notice; or

4 ~~(b)~~ (2) thirty days after receipt of the actual notice directed by *this*
5 subsection ~~(2)~~, or be forever barred as against the trustee and the trust
6 property.

7 ~~(2)~~ Any trustee publishing a notice to creditors under the provisions
8 of *this* subsection ~~(1)~~ shall also give actual notice to known or reasonably
9 ascertainable creditors prior to the expiration of the period described in
10 *this* subsection ~~(1)~~~~(a)~~.

11 *(b) Any trustee who has a duty or power to pay the debts of a*
12 *deceased settlor shall give notice to the department of health and*
13 *environment if the deceased settlor or a deceased trust beneficiary of such*
14 *settlor received medical assistance under K.S.A. 39-709, and amendments*
15 *thereto. Such notice shall be provided to the department of health and*
16 *environment within 90 days after the death of the settlor or trust*
17 *beneficiary of the settlor. The department of health and environment shall*
18 *recover upon any claim to the trustee against such trust property if the*
19 *deceased settlor or deceased beneficiary of such settlor received medical*
20 *assistance under K.S.A. 39-709, and amendments thereto. The amount of*
21 *recovery by the department of health and environment under this section*
22 *shall not exceed the amount of medical assistance received by the settlor*
23 *or trust beneficiary of such settlor.*

24 ~~(3)~~ (c) The claim of a creditor of a deceased settlor *under subsection*
25 *(a)* shall be forever barred as against the trustee and the trust property
26 unless the claim is presented to the trustee within the later of:

27 ~~(a)~~ (1) Four months from the date of the first publication of the notice
28 under subsection ~~(1)~~ (a); or

29 ~~(b)~~ (2) if the creditor is known or reasonably ascertainable, 30 days
30 after actual notice was given.

31 ~~(4)~~ (d) Nothing in this section shall affect or prevent the enforcement
32 of a claim arising out of tort against the decedent within the period of the
33 statute of limitations provided for an action on such claim. any recovery by
34 the claimant in such action shall not affect the distribution of the assets of
35 the trust unless a claim was presented to the trustee within the time
36 allowed for filing claims under subsection ~~(1)~~ (a). The action may be filed
37 in any court of competent jurisdiction and the rules of pleading and
38 procedure in the action shall be the same as apply in civil actions. The trust
39 may be terminated and the trustee promptly discharged when the statute of
40 limitations for filing such actions has expired and no action has been filed
41 or upon conclusion of any action filed.

42 ~~(e)~~ (e) This section shall be part of and supplemental to the Kansas
43 uniform trust code.

1 Sec. 5. K.S.A. 59-1501 is hereby amended to read as follows: 59-
2 1501. (a) Every executor and administrator shall have nine (9) months
3 from the date of ~~his or her~~ *such* appointment for the settlement of the
4 estate. An administrator *de bonis non* shall have such time, not exceeding
5 nine (9) months as the court may determine. For cause shown the period
6 herein limited may be extended by the court, not exceeding nine (9)
7 months at a time. The executor or administrator shall not be disqualified
8 thereafter in any way, unless removed, but ~~he or she~~ *such executor or*
9 *administrator* shall not be relieved from any loss, liability, or penalty
10 incurred by failure to settle the estate within the time limited.

11 That in case any executor or administrator shall fail or refuse for a
12 period of ~~thirty~~ 30 days after the expiration of ~~said~~ nine (9) months to
13 make such settlement, ~~he or she~~ *such executor or administrator* may be
14 cited by the court for the purpose of making such settlement unless the
15 time therefor has been extended by the court, and all costs connected with
16 such citation and the hearing thereon shall be assessed against such
17 executor or administrator, and not against the estate: ~~Provided~~. In the
18 event the return of ~~said~~ *such* citation shows that the executor or
19 administrator is not within the jurisdiction of ~~said~~ the court, ~~said~~ the estate
20 may be closed by the order of the court without a publication notice when
21 there has been no prosecution thereon for a period of five (5) years. ~~Said~~
22 *Such* estate may be reopened within one (1) year thereafter upon petition
23 by a direct heir, executor or administrator who shall be charged with the
24 costs thereof.

25 (b) *Every executor or administrator of any estate where the decedent*
26 *was 55 or more years of age or a resident of a facility licensed under the*
27 *adult care home licensure act, K.S.A. 39-923 et seq., and amendments*
28 *thereto, shall file with the clerk of the district court exercising probate*
29 *jurisdiction a release from the department of health and environment*
30 *before any probate estate may be closed under subsection (a). Such*
31 *release shall provide:*

32 (1)(A) *That the decedent had not received medical assistance under*
33 *K.S.A. 39-709, and amendments thereto;*

34 (B) *that the decedent had received medical assistance under K.S.A.*
35 *39-709, and amendments thereto, and the department of health and*
36 *environment has waived any claim against such decedent's estate; or*

37 (C) *that the decedent had received medical assistance under K.S.A.*
38 *39-709, and amendments thereto, and that no amount is due against such*
39 *decedent's estate;*

40 (2) *whether the decedent was 55 or more years of age; and*

41 (3) *whether the decedent had been a resident of a facility licensed*
42 *under the adult care home licensure act, K.S.A. 39-923 et seq., and*
43 *amendments thereto.*

1 Sec. 6. K.S.A. 2011 Supp. 59-1507b is hereby amended to read as
2 follows: 59-1507b. When a resident of the state dies, whether testate or
3 intestate, if the total assets of the estate of the decedent subject to probate
4 do not exceed \$40,000 in value, any personal property of whatever nature
5 transferable to the decedent's estate by any entity or person shall be
6 transferred to *the department of health and environment, if such decedent*
7 *was a recipient of medical assistance under K.S.A. 39-709, and*
8 *amendments thereto, except that such transfer shall not exceed the amount*
9 *of medical assistance received by the decedent. The department of health*
10 *and environment shall have a claim upon any personal property of the*
11 *decedent under this section, upon furnishing the entity or person with an*
12 *affidavit from the department of health and environment showing*
13 *entitlement thereto. Transfer of such personal property to the department*
14 *of health and environment shall constitute a full discharge and release*
15 *from any further claim for such transfer to the same extent as if the*
16 *transfer had been made to an executor or administrator of the decedent's*
17 *estate. If such decedent was not a recipient of medical assistance under*
18 *K.S.A. 39-709, and amendments thereto, any personal property of*
19 *whatever nature transferable to the decedent's estate by any entity or*
20 *person shall be transferred to the successor or successors of the decedent,*
21 *if entitled thereto by will or by intestate succession, without having been*
22 *granted letters of administration or letters testamentary, upon such*
23 *successor's or successors' furnishing the entity or person with an affidavit*
24 *showing entitlement thereto. Transfer of such personal property to the*
25 *successor or successors shall be deemed to be a transfer to the personal*
26 *representative of the decedent, and the receipt of the successor or*
27 *successors shall constitute a full discharge and release from any further*
28 *claim for such transfer to the same extent as if the transfer had been made*
29 *to an executor or administrator of the decedent's estate. The affidavit*
30 *required herein shall be deemed sufficient if in substantial compliance with*
31 *the form set forth by the judicial council.*

32 Sec. 7. K.S.A. 2011 Supp. 59-2222 is hereby amended to read as
33 follows: 59-2222. (a) When a petition is filed for the probate of a will, for
34 the determination that the consent of a spouse to a will is a valid and
35 binding consent, for administration or for refusal to grant letters of
36 administration, the court shall fix the time and place for the hearing
37 thereof. Notice of the hearing shall be given pursuant to K.S.A. 59-2209,
38 and amendments thereto, unless the court makes an order to the contrary.
39 If notice is by order of the court not required to be given pursuant to
40 K.S.A. 59-2209, and amendments thereto, the court shall order notice of
41 the hearing to be given, unless waived, in such manner as the court directs.

42 (b) When the petition seeks simplified administration, the notice shall
43 advise all persons that under provisions for simplified administration the

1 court need not supervise administration of the estate, and no notice of any
2 action of the executor or administrator or other proceedings in the
3 administration will be given, except for notice of final settlement of
4 decedent's estate. The notice shall further advise all persons that if written
5 objections to simplified administration are filed with the court, the court
6 may order that supervised administration ensue.

7 (c) When a petition has been filed for the refusal of letters of
8 administration, pursuant to K.S.A. 59-2287, and amendments thereto, the
9 notice given shall advise all persons that at such hearing exempt property
10 and a reasonable allowance will be set aside to the surviving spouse and
11 minor children, or both, and that no further notice of the proceeding will
12 be given.

13 (d) When the state is a party, the notice shall be served upon the
14 attorney general and the county or district attorney of the county.

15 (e) *(1)* ~~If the decedent or a predeceased spouse of the decedent~~
16 ~~received medical assistance payment under subsection (c) of K.S.A. 39-~~
17 ~~709, and amendments thereto, or the laws of any other state, the state or~~
18 ~~states providing such payment or payments shall be entitled to notice.~~
19 ~~Such notice shall be given to the agency or department responsible for the~~
20 ~~recovery of medical assistance in Kansas or, if a state other than Kansas, to~~
21 ~~the attorney general of such state or states: was 55 or more years of age or~~
22 ~~a resident of a facility licensed under the adult care home licensure act,~~
23 ~~K.S.A. 39-923 et seq., and amendments thereto, the department of health~~
24 ~~and environment shall be entitled to notice for the purpose of determining~~
25 ~~whether such decedent or predeceased spouse of the decedent received~~
26 ~~medical assistance under K.S.A. 39-709, and amendments thereto. A copy~~
27 ~~of such notice shall be filed with the court within 90 days after notice is~~
28 ~~provided to the department of health and environment.~~

29 *(2)* ~~If the decedent or a predeceased spouse of the decedent received~~
30 ~~medical assistance from a program operated by another state or the~~
31 ~~District of Columbia under title XIX of the federal social security act, the~~
32 ~~attorney general of such other state or the District of Columbia shall be~~
33 ~~entitled to notice.~~

34 Sec. 8. K.S.A. 59-2239 is hereby amended to read as follows: 59-
35 2239. (1) All demands, including demands of the state, against a decedent's
36 estate, whether due or to become due, whether absolute or contingent,
37 including any demand arising from or out of any statutory liability of
38 decedent or on account of or arising from any liability as surety, guarantor
39 or indemnitor, and including the individual demands of executors and
40 administrators, shall be forever barred from payment unless the demand is
41 presented within the later of: (a) four months from the date of first
42 publication of notice under K.S.A. 59-2236, and amendments thereto; or
43 (b) if the identity of the creditor is known or reasonably ascertainable, 30

1 days after actual notice was given, except that the provisions of the
2 testator's will requiring the payment of a demand exhibited later shall
3 control. No creditor shall have any claim against or lien upon the property
4 of a decedent other than liens existing at the date of the decedent's death,
5 unless a petition is filed for the probate of the decedent's will pursuant to
6 K.S.A. 59-2220, and amendments thereto, or for the administration of the
7 decedent's estate pursuant to K.S.A. 59-2219, and amendments thereto,
8 within six months after the death of the decedent, *or within two years after*
9 *the death of the decedent or the decedent's deceased spouse if such*
10 *decedent or decedent's deceased spouse was a recipient of medical*
11 *assistance under K.S.A. 39-709, and amendments thereto, and such*
12 *creditor has exhibited the creditor's demand in the manner and within the*
13 *time prescribed by this section, except as otherwise provided by this*
14 *section.*

15 (2) Nothing in this section shall affect or prevent the enforcement of a
16 claim arising out of tort against the personal representative of a decedent
17 within the period of the statute of limitations provided for an action on
18 such claim. For the purpose of enforcing such claims, the estate of the
19 decedent may be opened or reopened, a special administrator appointed,
20 and suit filed against the administrator within the period of the statute of
21 limitations for such action. Any recovery by the claimant in such action
22 shall not affect the distribution of the assets of the estate of the decedent
23 unless a claim was filed in the district court within the time allowed for
24 filing claims against the estate under subsection (1) or an action
25 commenced as provided in subsection (2) of K.S.A. 59-2238, and
26 amendments thereto. The action may be filed in any court of competent
27 jurisdiction and the rules of pleading and procedure in the action shall be
28 the same as apply in civil actions. Any such special administration shall be
29 closed and the special administrator promptly discharged when the statute
30 of limitations for filing such actions has expired and no action has been
31 filed or upon conclusion of any action filed. All court costs incurred in a
32 proceeding under this subsection shall be taxed to the petitioner.

33 Sec. 9. K.S.A. 2011 Supp. 59-2247 is hereby amended to read as
34 follows: 59-2247. (a) The petition of an executor or an administrator for a
35 final settlement and accounting, and a determination of the persons entitled
36 to the estate of a decedent, shall, in addition to other requirements, contain:

- 37 (1) A statement of the account;
- 38 (2) the names, residences, and addresses of the heirs, devisees, and
39 legatees;
- 40 (3) a description of the real estate and the interest of the decedent
41 therein at the time of the decedent's death;
- 42 (4) the nature and character of the respective claims of the heirs,
43 devisees, and legatees of the decedent; ~~and~~

1 (5) a statement that neither the decedent nor a predeceased spouse of
2 the decedent were paid medical assistance under subsection (e) of K.S.A.
3 39-709, and amendments thereto, or the laws of any other state, or, in the
4 event that such assistance was paid for or to the decedent or a predeceased
5 spouse of the decedent under subsection (e) of K.S.A. 39-709, and
6 amendments thereto, or the laws of any other state, that the state making
7 such payments was duly notified of the filing of the petition as required by
8 K.S.A. 59-2222, and amendments thereto; *and*

9 (6) *a copy of the release required by K.S.A. 59-1501, and*
10 *amendments thereto.*

11 Notice of the hearing on a petition of an executor or administrator for a
12 final settlement and accounting in which title to real estate is to be
13 assigned by the court shall be given pursuant to K.S.A. 59-2209, and
14 amendments thereto. In all other cases, notice shall be given or waived as
15 provided in K.S.A. 59-2208, and amendments thereto.

16 Sec. 10. K.S.A. 59-2250 is hereby amended to read as follows: 59-
17 2250. Whenever any person has been dead for more than ~~six months~~ *two*
18 *years* and has left property or any interest in property, any person
19 interested in the estate or claiming an interest in such property may
20 petition the district court of the county of the decedent's residence, or of
21 any county where property or any interest in property of the decedent is
22 situated, to determine its descent under the laws of intestate succession or
23 under the terms of a valid settlement agreement if:

24 (a) No will has been filed under K.S.A. 59-618a, and amendments
25 thereto, within six months after death;

26 (b) no petition has been filed for the probate of a will in this state; and

27 (c) no petition for administration has been filed in this state or
28 administration has been had without a determination of the descent of the
29 property.

30 Sec. 11. K.S.A. 39-702, 58-3957, 58a-818, 59-1501, 59-2239 and 59-
31 2250 and K.S.A. 2011 Supp. 39-709, 59-1507b, 59-2222 and 59-2247 are
32 hereby repealed.

33 Sec. 12. This act shall take effect and be in force from and after its
34 publication in the statute book.