

HOUSE BILL No. 2884

By Committee on Federal and State Affairs

2-10

9 AN ACT concerning wards and guardians; relating to the duties and pow-
10 ers of guardians; concerning nutrition and hydration; amending K.S.A.
11 59-3051, 59-3068, 59-3075 and 59-3078 and repealing the existing
12 sections.
13

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

15 New Section 1. (a) It shall be presumed that every ward incapable
16 of making health care decisions has directed such ward's guardian to
17 direct the ward's health care providers to provide such ward with nutrition
18 or hydration or both to a degree that is sufficient to sustain life.

19 (b) No guardian, court or any other person shall have the authority
20 to make a decision on behalf of a ward who is legally incapable of making
21 health care decisions to withhold or withdraw nutrition or hydration or
22 both from such ward except in the circumstances and under the condi-
23 tions specifically provided for in subsection (c).

24 (c) The presumption established in subsection (a) shall not apply:

25 (1) If, in the reasonable medical judgment of the ward's treating phy-
26 sician, such physician certifies in writing to the guardian that:

27 (A) Provision of nutrition or hydration or both to the ward is not
28 medically possible;

29 (B) provision of nutrition or hydration or both to the ward would
30 hasten death; or

31 (C) the ward would be incapable of digesting or absorbing the nutri-
32 tion or hydration or both so that its provision would not contribute to
33 sustaining the ward's life; or

34 (2) if the ward, when legally capable of making health care decisions,
35 executed, expressly and with informed consent, a written directive spe-
36 cifically authorizing the withholding or withdrawal of nutrition or hydra-
37 tion or both under the ward's current circumstances. Such directive shall
38 include, but not be limited to, a declaration executed pursuant to K.S.A.
39 65-28,101 et seq., and amendments thereto, and a durable power of at-
40 torney for health care decisions executed pursuant to K.S.A. 58-625 et
41 seq., and amendments thereto.

42 (d) Prior to withholding or withdrawing nutrition or hydration or both
43 under subsection (c)(1), such written certification shall be presented to a

1 court of competent jurisdiction and such court shall afford the ward full
2 and complete due process including, but not limited to, the right to court
3 appointed counsel, notice, hearing, subpoena power, discovery and pay-
4 ment of costs for experts if the ward is deemed indigent. At such hearing
5 the guardian shall show, by clear and convincing evidence, that the written
6 certification is objectively true in all that it attests.

7 (e) A cause of action for injunctive relief may be maintained:

8 (1) Against any person who is reasonably believed to be about to
9 violate or who is in the course of violating this section; or

10 (2) to secure a court determination, notwithstanding the position of
11 a guardian, whether there is clear and convincing evidence that the ward
12 legally incapable of making health care decisions, when legally capable of
13 making such decisions, executed expressly and with informed consent, a
14 written directive to withdrawing or withholding hydration or nutrition or
15 both in the applicable circumstances.

16 (f) The action may be brought by any person who is:

17 (1) The spouse, parent, child or sibling of the person;

18 (2) a current or former health care provider of the person;

19 (3) a legally appointed guardian of the person;

20 (4) the state protection and advocacy agency designated pursuant to
21 42 U.S.C. 15043, 42 U.S.C. 10805 or 29 U.S.C. 794e; or

22 (5) a public official with appropriate jurisdiction to prosecute or en-
23 force the laws of this state.

24 (g) Pending the final determination of the court, the court shall direct
25 that nutrition or hydration or both be provided such person unless the
26 court determines that subsection (c)(1) is applicable.

27 (h) This section shall be part of and supplemental to the act for ob-
28 taining a guardian or conservator, or both.

29 Sec. 2. K.S.A. 59-3051 is hereby amended to read as follows: 59-
30 3051. When used in the act for obtaining a guardian or a conservator, or
31 both:

32 (a) "Adult with an impairment in need of a guardian or a conservator,
33 or both" means a person 18 years of age or older, or a minor who is
34 considered to be of the age of majority pursuant to K.S.A. 38-101, and
35 amendments thereto, or upon whom the rights of majority have been
36 conferred pursuant to K.S.A. 38-108, and amendments thereto, whose
37 ability to receive and evaluate relevant information, or to effectively com-
38 municate decisions, or both, even with the use of assistive technologies
39 or other supports, is impaired such that the person lacks the capacity to
40 manage such person's estate, or to meet essential needs for physical
41 health, safety or welfare, and who is in need of a guardian or a conservator,
42 or both. No person who is being treated by prayer in the practice of the
43 religion of any church which teaches reliance on spiritual means alone

1 through prayer for healing shall be determined to be an adult with an
2 impairment in need of a guardian under this act for that reason alone,
3 nor considered to lack the capacity to meet essential needs for physical
4 health, safety or welfare because of such person's reliance upon such
5 treatment.

6 (b) "Appropriate alternative" means any program or service, or the
7 use of a legal device or representative, which enables a person with an
8 impairment to adequately meet essential needs for physical health, safety
9 or welfare, or to reasonably manage such person's estate. Appropriate
10 alternatives may include, but are not limited to, a power of attorney, a
11 durable power of attorney, a power of attorney for health care decisions,
12 a living will, a trust, a joint tenancy or a representative payee.

13 (c) "Conservatee" means a person who has a conservator.

14 (d) "Conservator" means an individual or a corporation who or which
15 is appointed by the court to act on behalf of a conservatee and who or
16 which is possessed of some or all of the powers and duties set out in
17 K.S.A. 59-3078, and amendments thereto.

18 (e) "Guardian" means an individual or a corporation certified in ac-
19 cordance with K.S.A. 59-3070, and amendments thereto, who or which
20 is appointed by a court to act on behalf of a ward, and who or which is
21 possessed of some or all of the powers and duties set out in K.S.A. 59-
22 3075, amendments thereto. "Guardian" does not mean a "natural guard-
23 ian" unless specified.

24 (f) "In need of a guardian" means a person who because of both an
25 impairment and the lack of appropriate alternatives for meeting essential
26 needs, requires the appointment of a guardian.

27 (g) "In need of a conservator" means a person who because of both
28 an impairment and the lack of appropriate alternatives for managing such
29 person's estate, requires the appointment of a conservator.

30 (h) "Manage such person's estate" means making those determina-
31 tions and taking those actions which are reasonably necessary in order for
32 a person to receive and account for personal or business income, benefits
33 and property, whether real, personal or intangible, and except for reasons
34 of indigency, to purchase or otherwise obtain necessary goods or services,
35 to pay debts and expenses, to sell, exchange or otherwise dispose of prop-
36 erty, and to plan for future accumulation, conservation, utilization, in-
37 vestment, and other disposition of financial resources.

38 (i) "Meet essential needs for physical health, safety or welfare" means
39 making those determinations and taking those actions which are reason-
40 ably necessary in order for a person to obtain or be provided with shelter,
41 sustenance, personal hygiene or health care, and without which serious
42 illness or injury is likely to occur.

43 (j) "Minor" means any person defined by K.S.A. 38-101, and amend-

1 ments thereto, as being within the period of minority.

2 (k) “Minor with an impairment in need of a guardian or a conservator,
3 or both” means a person under 18 years of age who otherwise meets the
4 definition of an “adult with an impairment in need of a guardian or con-
5 servator, or both” and whose impairment is expected to continue beyond
6 the age of 18.

7 (l) “Natural guardian” means both the biological or adoptive mother
8 and father of a minor if neither parent has been found to be an adult with
9 an impairment in need of a guardian or has had parental rights terminated
10 by a court of competent jurisdiction. If either parent of a minor is de-
11 ceased, or has been found to be an adult with an impairment in need of
12 a guardian or has had parental rights terminated by a court of competent
13 jurisdiction, then the other parent shall be the natural guardian, unless
14 also deceased, or found to be an adult with an impairment in need of a
15 guardian, or has had parental rights terminated by a court of competent
16 jurisdiction, in which case no person shall qualify as the natural guardian.

17 (m) “Person who has been previously adjudged as impaired in an-
18 other state” means a person who has been duly adjudged by a court of
19 competent jurisdiction of any other state to be unable to meet essential
20 needs for physical health, safety or welfare or to manage such person’s
21 estate and for whom a guardian or a conservator, or other similarly em-
22 powered fiduciary, has been appointed by that court, but who now resides
23 within Kansas or for whom plans have been made by such person’s guard-
24 ian or other fiduciary to relocate the person to Kansas.

25 (n) “Person in need of an ancillary conservator” means a person not
26 residing within Kansas, who has been duly adjudged by a court of com-
27 petent jurisdiction of another state to be unable to manage such person’s
28 estate and for whom a conservator or other fiduciary of the person’s estate
29 has been appointed by that court, and who has property in Kansas for
30 which a conservator is required.

31 (o) “Proposed ward” means a person for whom a petition for the
32 appointment of a guardian pursuant to K.S.A. 59-3058, 59-3059, 59-3060
33 or 59-3061, and amendments thereto, has been filed.

34 (p) “Proposed conservatee” means a person for whom a petition for
35 the appointment of a conservator pursuant to K.S.A. 59-3058, 59-3059,
36 59-3060, 59-3061 or 59-3062, and amendments thereto, has been filed.

37 (q) “Ward” means a person who has a guardian.

38 (r) The terms defined in K.S.A. 59-2946 and 59-29b46, and amend-
39 ments thereto, have the meanings provided by those statutes.

40 (s) *“Expressly and with informed consent” means consent voluntarily*
41 *given with sufficient knowledge of the subject matter involved, including*
42 *a general understanding of the procedure, the medically acceptable alter-*
43 *native procedures or treatments, and the substantial risks and hazards*

- 1 *inherent in the proposed treatment or procedures, to enable the person*
2 *giving consent to make an understanding and enlightened decision with-*
3 *out any element of force, fraud, deceit, duress or other form of constraint*
4 *or coercion.*
- 5 (t) *“Nutrition” means sustenance administered in any manner.*
- 6 (u) *“Person legally incapable of making health care decisions” or*
7 *“ward legally incapable of making health care decisions” means any per-*
8 *son or ward who:*
- 9 (A) (i) *Has been declared legally incompetent to make decisions af-*
10 *fecting medical treatment or care; and*
- 11 (ii) *in the reasonable medical judgment of the attending physician, is*
12 *unable to make decisions affecting medical treatment or other health care*
13 *services; or*
- 14 (B) *is a minor.*
- 15 (v) *“Reasonable medical judgment” means a medical judgment that*
16 *would be made by a reasonably prudent physician, knowledgeable about*
17 *the case and the treatment possibilities with respect to the medical con-*
18 *ditions involved.*
- 19 (w) *“Hydration” means providing water or fluids in any manner.*
- 20 Sec. 3. K.S.A. 59-3068 is hereby amended to read as follows: 59-
21 3068. (a) The court in appointing a guardian or conservator shall give
22 priority in the following order to:
- 23 (1) The nominee of the proposed ward or proposed conservatee, if
24 such nomination is made within any durable power of attorney;
- 25 (2) the nominee of a natural guardian;
- 26 (3) the nominee of a minor who is the proposed ward or proposed
27 conservatee, if the minor is over 14 years of age;
- 28 (4) the nominee of the spouse, adult child or other close family mem-
29 ber of the proposed ward or proposed conservatee; or
- 30 (5) the nominee of the petitioner.
- 31 (b) (1) The court, in appointing a guardian or conservator, shall con-
32 sider the workload, capabilities and potential conflicts of interest of the
33 proposed guardian or conservator, or both, before making such appoint-
34 ment, and the court shall give particular attention in making such ap-
35 pointment to the number of other cases in which the proposed guardian
36 or conservator, other than a corporation, is currently serving as guardian
37 or conservator, or both, particularly if that number is more than 15 or
38 more wards or conservatees, or both.
- 39 (2) *The court shall not appoint an unrelated person, institution, as-*
40 *sociation or corporation to be the guardian or conservator of a ward or*
41 *conservatee if the unrelated person, institution, association or*
42 *corporation:*
- 43 (A) *Provides during the guardianship or conservatorship, goods or*

1 *services for a fee to the ward or conservatee in a professional or business*
2 *capacity;*

3 *(B) is during the guardianship or conservatorship period a creditor*
4 *of the ward or conservatee;*

5 *(C) has during the guardianship or conservatorship period interests*
6 *that may conflict with interest of the ward or conservatee;*

7 *(D) is an employee of a treatment or residential facility where a ward*
8 *or conservatee is an inpatient in or resident of the facility; or*

9 *(E) is employed by an unrelated person, institution, association or*
10 *corporation who or which would be disqualified under paragraphs (A)*
11 *through (D).*

12 *(3) Nothing in this section shall prohibit a guardian or conservator*
13 *from collecting a:*

14 *(A) Reasonable fee, as approved by the court, for carrying out the*
15 *duties of a guardian or conservator; or*

16 *(B) stipend from the Kansas guardianship program.*

17 *(4) This section shall not apply to a:*

18 *(A) Guardian or conservator of a minor appointed pursuant to K.S.A.*
19 *59-3059, and amendments thereto; or*

20 *(B) a financial institution serving as a conservator.*

21 *(c) In appointing a guardian for a person who is an adherent of a*
22 *religion whose tenets and practices call for reliance on prayer alone for*
23 *healing, the court shall consider, but shall not be limited to, the appoint-*
24 *ment of an individual as guardian who is sympathetic to and willing to*
25 *support this system of healing.*

26 *Sec. 4. K.S.A. 59-3075 is hereby amended to read as follows: 59-*
27 *3075. (a) (1) The individual or corporation appointed by the court to serve*
28 *as the guardian shall carry out diligently and in good faith, the general*
29 *duties and responsibilities, and shall have the general powers and au-*
30 *thorities, provided for in this section as well as any specific duties, re-*
31 *sponsibilities, powers and authorities assigned to the guardian by the*
32 *court. In doing so, a guardian shall at all times be subject to the control*
33 *and direction of the court, and shall act in accordance with the provisions*
34 *of any guardianship plan filed with the court pursuant to K.S.A. 59-3076,*
35 *and amendments thereto. The court shall have the authority to appoint*
36 *counsel for the guardian, and the fees of such attorney may be assessed*
37 *as costs pursuant to K.S.A. 59-3094, and amendments thereto.*

38 *(2) A guardian shall become and remain personally acquainted with*
39 *the ward, the spouse of the ward and with other interested persons as-*
40 *sociated with the ward and who are knowledgeable about the ward, the*
41 *ward's needs and the ward's responsibilities. A guardian shall exercise*
42 *authority only as necessitated by the ward's limitations. A guardian shall*
43 *encourage the ward to participate in making decisions affecting the ward.*

1 A guardian shall encourage the ward to act on the ward's own behalf to
2 the extent the ward is able. A guardian shall encourage the ward to de-
3 velop or regain the skills and abilities necessary to meet the ward's own
4 essential needs and to otherwise manage the ward's own affairs. In making
5 decisions on behalf of the ward, a guardian shall consider the expressed
6 desires and personal values of the ward to the extent known to the guard-
7 ian. A guardian shall strive to assure that the personal, civil and human
8 rights of the ward are protected. A guardian shall at all times act in the
9 best interests of the ward and shall exercise reasonable care, diligence
10 and prudence.

11 *(3) A guardian who is an unrelated person shall avoid a conflict of*
12 *interest or even the appearance of a conflict of interest. Impropriety or*
13 *conflict of interest occurs where the guardian has some personal or agency*
14 *interest that can be perceived as self-serving or adverse to the position or*
15 *best interest of the ward. The guardian who is an unrelated person shall:*

16 *(A) Not provide direct services for a fee, except as provided in sub-*
17 *section (b)(3) of K.S.A. 59-3068, and amendments thereto;*

18 *(B) be independent from all providers of services to the ward to en-*
19 *sure that the guardian remains free to challenge inappropriate or poorly*
20 *delivered services and to advocate vigorously on behalf of the ward;*

21 *(C) not concurrently represent both the ward and the service*
22 *provider;*

23 *(D) not employ such guardian's friends or family to provide services*
24 *for a profit or fee unless no alternative is available and the guardian*
25 *discloses this arrangement to the court;*

26 *(E) petition or assist the ward to petition the court for limitation or*
27 *termination of the guardianship when the ward is no longer a person with*
28 *a disability in need of a guardian, or when there are effective alternatives*
29 *available; and*

30 *(F) assist the ward in preparing and filing a petition for restoration*
31 *upon request.*

32 (b) A guardian shall have the following general duties, responsibili-
33 ties, powers and authorities:

34 (1) If the ward is a minor, to have the custody and control of the
35 minor, and to provide for the minor's care, treatment, habilitation, edu-
36 cation, support and maintenance;

37 (2) if the ward is an adult, to take charge of the person of the ward,
38 and to provide for the ward's care, treatment, habilitation, education,
39 support and maintenance;

40 (3) to consider and either provide on behalf of the ward necessary or
41 required consents or refuse the same;

42 (4) to assure that the ward resides in the least restrictive setting ap-
43 propriate to the needs of the ward and which is reasonably available;

- 1 (5) to assure that the ward receives any necessary and reasonably
2 available medical care, consistent with the provisions of K.S.A. 59-3077,
3 and amendments thereto, when applicable, and any reasonably available
4 nonmedical care or other services as may be needed to preserve the health
5 of the ward or to assist the ward to develop or retain skills and abilities;
- 6 (6) to promote and protect the comfort, safety, health and welfare of
7 the ward;
- 8 (7) to make necessary determinations and arrangements for, and to
9 give the necessary consents in regard to, the ward's funeral arrangements,
10 burial or cremation, the performance of an autopsy upon the body of the
11 ward, and anatomical gifts of the ward, subject to the provisions and
12 limitations provided for in K.S.A. 65-2893 and 65-3210 and K.S.A. 65-
13 1734, and amendments thereto; and
- 14 (8) to exercise all powers and to discharge all duties necessary or
15 proper to implement the provisions of this section.
- 16 (c) A guardian shall not be obligated by virtue of the guardian's ap-
17 pointment to use the guardian's own financial resources for the support
18 of the ward.
- 19 (d) A guardian shall not be liable to a third person for the acts of the
20 ward solely by virtue of the guardian's appointment, nor shall a guardian
21 who exercises reasonable care in selecting a third person to provide any
22 medical or other care, treatment or service for the ward be liable for any
23 injury to the ward resulting from the wrongful conduct of that third
24 person.
- 25 (e) A guardian shall not have the power:
- 26 (1) To prohibit the marriage or divorce of the ward;
- 27 (2) to consent, on behalf of the ward, to the termination of the ward's
28 parental rights;
- 29 (3) to consent to the adoption of the ward, unless approved by the
30 court;
- 31 (4) to consent, on behalf of the ward, to any psychosurgery, removal
32 of any bodily organ, or amputation of any limb, unless such surgery, re-
33 moval or amputation has been approved in advance by the court, except
34 in an emergency and when necessary to preserve the life of the ward or
35 to prevent serious and irreparable impairment to the physical health of
36 the ward;
- 37 (5) to consent, on behalf of the ward, to the sterilization of the ward,
38 unless approved by the court following a due process hearing held for
39 the purposes of determining whether to approve such, and during which
40 hearing the ward is represented by an attorney appointed by the court;
- 41 (6) to consent, on behalf of the ward, to the performance of any
42 experimental biomedical or behavioral procedure on the ward, or for the
43 ward to be a participant in any biomedical or behavioral experiment, with-

1 out the prior review and approval of such by either an institutional review
2 board as provided for in title 45, part 46 of the code of federal regulations,
3 or if such regulations do not apply, then by a review committee estab-
4 lished by the agency, institution or treatment facility at which the pro-
5 cedure or experiment is proposed to occur, composed of members se-
6 lected for the purposes of determining whether the proposed procedure
7 or experiment:

8 (A) Does not involve any significant risk of harm to the physical or
9 mental health of the ward, or the use of aversive stimulants, and is in-
10 tended to preserve the life or health of the ward or to assist the ward to
11 develop or regain skills or abilities; or

12 (B) involves a significant risk of harm to the physical or mental health
13 of the ward, or the use of an aversive stimulant, but that the conducting
14 of the proposed procedure or experiment is intended either to preserve
15 the life of the ward, or to significantly improve the quality of life of the
16 ward, or to assist the ward to develop or regain significant skills or abilities,
17 and that the guardian has been fully informed concerning the potential
18 risks and benefits of the proposed procedure or experiment or of any
19 aversive stimulant proposed to be used, and as to how and under what
20 circumstances the aversive stimulant may be used, and has specifically
21 consented to such;

22 (7) to consent, on behalf of the ward, to the withholding or with-
23 drawal of life-saving or life sustaining medical care, treatment, services
24 or procedures, except:

25 (A) In accordance with the provisions of any declaration of the ward
26 made pursuant to the provisions of K.S.A. 65-28,101 through 65-28,109,
27 and amendments thereto; or

28 (B) if the ward, prior to the court's appointment of a guardian pur-
29 suant to K.S.A. 59-3067, and amendments thereto, shall have executed a
30 durable power of attorney for health care decisions pursuant to K.S.A.
31 58-629, and amendments thereto, and such shall not have been revoked
32 by the ward prior thereto, and there is included therein any provision
33 relevant to the withholding or withdrawal of life-saving or life-sustaining
34 medical care, treatment, services or procedures, then the guardian shall
35 have the authority to act as provided for therein, even if the guardian has
36 revoked or otherwise amended that power of attorney pursuant to the
37 authority of K.S.A. 58-627, and amendments thereto, or the guardian may
38 allow the agent appointed by the ward to act on the ward's behalf if the
39 guardian has not revoked or otherwise amended that power of attorney;
40 or

41 (C) in the circumstances where the ward's treating physician shall
42 certify in writing to the guardian that the ward is ~~in a persistent vegetative~~
43 ~~state or is suffering from an illness or other medical condition for which~~

1 further treatment, other than for the relief of pain, would not likely pro-
2 long the life of the ward other than by artificial means, nor would be likely
3 to restore to the ward any significant degree of capabilities beyond those
4 the ward currently possesses likely to be permanently comatose and suf-
5 fering from a severe illness such that life sustaining medical care is objec-
6 tively futile and would only prolong the dying process, and which opinion
7 is concurred in by either a second physician or by any medical ethics or
8 similar committee to which the health care provider has access established
9 for the purposes of reviewing such circumstances and the appropriateness
10 of any type of physician's order which would have the effect of withhold-
11 ing or withdrawing life-saving or life sustaining medical care, treatment,
12 services or procedures. Such written certification shall be approved by an
13 order issued by the court, presented to a court of competent jurisdiction
14 and such court shall afford the ward full and complete due process in-
15 cluding, but not limited to, the right to court appointed counsel, notice,
16 hearing, subpoena power, discovery and payment of costs for experts if
17 the ward is deemed indigent. At such hearing the guardian shall show,
18 by clear and convincing evidence, that the: (1) Written certification is
19 objectively true in all that it attests; and (2) that the ward, when legally
20 capable of making health care decisions, expressed informed consent to
21 withhold or withdraw medical care under the ward's current circum-
22 stances. In assessing the ward's intent there shall be a presumption in
23 favor of the treatment or continued treatment of the ward.

24 As used in subsection (e)(7), "medical care" shall not include nutrition
25 and hydration. Nutrition or hydration or both may only be withheld or
26 withdrawn as permitted by section 1, and amendments thereto.

27 Every person with a disability is presumed to have capacity and be
28 legally capable of making any decision, including, but not limited to,
29 health care and medical care, unless such person has been expressly de-
30 clared to be incapable to make such decision through a specific portion
31 of the guardianship order.

32 (8) To exercise any control or authority over the ward's estate, except
33 if the court shall specifically authorize such. The court may assign such
34 authority to the guardian, including the authority to establish certain
35 trusts as provided in K.S.A. 59-3080, and amendments thereto, and may
36 waive the requirement of the posting of a bond, only if:

37 (A) Initially, the combined value of any funds and property in the
38 possession of the ward or in the possession of any other person or entity,
39 but which the ward is otherwise entitled to possess, equals \$10,000 or
40 less; and

41 (B) either the court requires the guardian to report to the court the
42 commencement of the exercising of such authority, or requires the guard-
43 ian to specifically request of the court the authority to commence the

1 exercise of such authority, as the court shall specify; and
2 (C) the court also requires the guardian, whenever the combined
3 value of such funds and property exceeds \$10,000, to:
4 (i) File a guardianship plan as provided for in K.S.A. 59-3076, and
5 amendments thereto, which contains elements similar to those which
6 would be contained in a conservatorship plan as provided for in K.S.A.
7 59-3078, and amendments thereto;
8 (ii) petition the court for appointment of a conservator as provided
9 for in K.S.A. 59-3058, 59-3059 or 59-3060, and amendments thereto; or
10 (iii) notify the court as the court shall specify that the value of the
11 conservatee's estate has equaled or exceeded \$10,000, if the court has
12 earlier appointed a conservator but did not issue letters of conservatorship
13 pending such notification; and
14 (9) to place the ward in a treatment facility as defined in K.S.A. 59-
15 3077, and amendments thereto, except if authorized by the court as pro-
16 vided for therein.
17 (f) The guardian shall file with the court reports concerning the status
18 of the ward and the actions of the guardian as the court shall direct
19 pursuant to K.S.A. 59-3083, and amendments thereto.
20 Sec. 5. K.S.A. 59-3078 is hereby amended to read as follows: 59-
21 3078. (a) (1) The individual or corporation appointed by the court to serve
22 as the conservator shall carry out diligently and in good faith the general
23 duties and responsibilities, and shall have the general powers and au-
24 thorities, provided for in this section, as well as any specific duties, re-
25 sponsibilities, powers and authorities assigned to the conservator by the
26 court. In doing so, a conservator at all times shall be subject to the control
27 and direction of the court, and shall act in accordance with the provisions
28 of any conservatorship plan filed with the court pursuant to K.S.A. 59-
29 3079, and amendments thereto. The court shall have the authority to
30 appoint counsel for the conservator, and the fees of such attorney may
31 be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.
32 (2) A conservator, in the exercise of the conservator's responsibilities
33 and authorities, should become aware of the conservatee's needs and
34 responsibilities. A conservator shall exercise authority only as necessitated
35 by the conservatee's limitations. A conservator shall encourage the con-
36 servatee to participate in the making of decisions affecting the conser-
37 vatee's estate. A conservator shall encourage the conservatee to manage
38 as much of the conservatee's estate as the conservatee is able to manage.
39 A conservator shall consider and, to the extent possible, act in accordance
40 with the expressed desires and personal values of the conservatee. A con-
41 servator shall assist the conservatee in developing or regaining the skills
42 and abilities necessary in order for the conservatee to be able to manage
43 the conservatee's own estate. A conservator shall strive to assure that the

1 personal, civil and human rights of the conservatee are protected. A con-
2 servator shall at all times act in the best interests of the conservatee and
3 shall exercise reasonable care, diligence and prudence.

4 (3) *A conservator who is an unrelated person shall avoid a conflict of*
5 *interest or even the appearance of a conflict of interest. Impropriety or*
6 *conflict of interest occurs where the conservator has some personal or*
7 *agency interest that can be perceived as self-serving or adverse to the*
8 *position or best interest of the conservatee. The conservator who is an*
9 *unrelated person and who is not a financial institution serving as a con-*
10 *servator, shall:*

11 (A) *Not provide direct services for a fee, except as provided in sub-*
12 *section (b)(3) of K.S.A. 59-3068, and amendments thereto;*

13 (B) *be independent from all providers of services to the conservatee*
14 *to ensure that the conservator remains free to challenge inappropriate or*
15 *poorly delivered services and to advocate vigorously on behalf of the*
16 *conservatee;*

17 (C) *not concurrently represent both the conservatee and the service*
18 *provider;*

19 (D) *not employ such conservator's friends or family to provide serv-*
20 *ices for a profit or fee unless no alternative is available and the conservator*
21 *discloses this arrangement to the court;*

22 (E) *petition or assist the conservatee to petition the court for limita-*
23 *tion or termination of the conservatorship when the conservatee is no*
24 *longer a person with a disability in need of a conservator, or when there*
25 *are effective alternatives available; and*

26 (F) *assist the conservatee in preparing and filing a petition for res-*
27 *toration upon request.*

28 (b) A conservator shall have the following general duties, responsi-
29 bilities, powers and authorities:

30 (1) To pay the reasonable charges for the support, maintenance, care,
31 treatment, habilitation and education of the conservatee in a manner suit-
32 able to the conservatee's station in life and the value of the conservatee's
33 estate; but nothing herein shall be construed to release a natural guardian
34 from the ordinary obligations imposed by law for the support, mainte-
35 nance, care, treatment, habilitation and education of the natural guard-
36 ian's minor children;

37 (2) to pay all just and lawful debts of the conservatee and the reason-
38 able charges for the support, maintenance, care, treatment, habilitation
39 and education of the conservatee's spouse and minor children;

40 (3) to separately possess and manage all the assets of the estate of
41 the conservatee and to collect all debts and assert all claims in favor of
42 the conservatee, and with the approval of the court, to compromise the
43 same. The conservator shall keep any property of the conservatee's estate

- 1 insured against theft, other loss or damage, in reasonable amounts based
2 upon the value of the estate, and for the benefit of the conservatee or
3 the conservatee's estate;
- 4 (4) to prosecute and defend all actions in the name of the conservatee
5 or as necessary to protect the interests of the conservatee;
- 6 (5) to sell assets of the conservatee's estate when the interests of the
7 conservatee or conservatee's estate require the sale thereof;
- 8 (6) to possess and manage any ongoing business that the conservatee
9 was managing and operating prior to the appointment of the conservator,
10 and to divest the conservatee's estate of any interests therein, with the
11 approval of the court, when the conservator deems it in the best interests
12 of the conservatee or the conservatee's estate to do so; and
- 13 (7) to invest all funds in a manner which is reasonably prudent in
14 view of the value of the conservatee's estate, except as may be currently
15 needed for payment of any debts and charges as provided for herein. If
16 the conservator shall expend or invest any funds from the conservatee's
17 estate for the purchase of any policy of insurance or annuity contract, the
18 conservator shall reserve to the conservatee the right to change the ben-
19 eficiary thereof upon the termination of the conservatorship and of any
20 guardianship which may have been established for the conservatee.
- 21 (c) A conservator shall not be obligated by virtue of the conservator's
22 appointment to use the conservator's own financial resources for the sup-
23 port of the conservatee.
- 24 (d) A conservator shall not be personally liable:
- 25 (1) To a third person for the acts of the conservatee solely by virtue
26 of the conservator's appointment, nor shall a conservator who exercises
27 reasonable care in selecting a third person to provide any service to the
28 conservatee's estate be liable for any loss to the conservatee's estate re-
29 sulting from the wrongful conduct of that third person;
- 30 (2) on any mortgage note or by reason of the covenants in any in-
31 strument of conveyance duly executed by the conservator in the conser-
32 vator's representative capacity as authorized by the court;
- 33 (3) on a contract properly entered into in a fiduciary capacity in the
34 course of administration of the estate unless the conservator fails to reveal
35 in the contract the representative capacity and to identify the estate;
- 36 (4) for obligations arising from ownership or control of property of
37 the estate or for other acts or omissions occurring in the course of ad-
38 ministration of the estate unless the conservator is personally at fault;
- 39 (5) for any environmental condition on or injury resulting from any
40 environmental condition on land owned or acquired by the conservatee's
41 estate; or
- 42 (6) for retaining, until maturity, any security or investment which is
43 included in the conservatee's estate at the time of the establishment of

1 the conservatorship, even though such security or investment may not be
2 considered prudent or reasonable.

3 (e) A conservator shall be entitled to receive on behalf of the con-
4 servatee's estate any distributive share of the assets of an estate or trust,
5 and shall have the same right as any other distributee or beneficiary to
6 accept or demand distribution in kind, and may retain, until maturity, any
7 security or investment so distributed to the conservator, even though such
8 security or investment may not be considered prudent or reasonable.

9 (f) A conservator shall not have the power:

10 (1) To use the assets of a minor's estate to pay any obligation imposed
11 by law upon the minor's natural guardian or natural guardians, including
12 the support, maintenance, care, treatment, habilitation or education of
13 the minor, except with the specific approval of the court granted upon a
14 showing of extreme hardship;

15 (2) to sell, convey, lease or mortgage the conservatee's interest in the
16 homestead of the conservatee, except with the approval of the court, and
17 no conservator's deed or other instrument executed by virtue of the
18 court's approval shall be valid unless the spouse, or if the spouse has been
19 adjudicated a person with an impairment in need of a conservator, the
20 conservator appointed for the spouse, shall join therein as one of the
21 grantors thereof;

22 (3) to lease, except with the approval of the court, the possession or
23 use of any real estate within the conservatee's estate for any period of
24 greater than three years;

25 (4) to sell, convey or mortgage, except with approval of the court, any
26 real estate within the conservatee's estate;

27 (5) to sell, convey, lease or mortgage, except with approval of the
28 court, any oil, gas or other mineral interest within the conservatee's estate;

29 (6) to sell, convey, lease or mortgage, except with the approval of the
30 court, the inchoate interest of the conservatee in any real estate the title
31 to which is in the spouse of the conservatee, and no conservator's deed
32 or other instrument executed by virtue of the court's approval shall be
33 valid unless the spouse, or if the spouse has been adjudicated a person
34 with an impairment in need of a conservator, the conservator appointed
35 for the spouse, shall join therein as one of the grantors thereof;

36 (7) to extend, except with the approval of the court, an existing mort-
37 gage in favor of the conservatee or conservatee's estate, for a period of
38 more than five years;

39 (8) to extend, except with the approval of the court, an existing mort-
40 gage which obligates the conservatee or the conservatee's estate, unless
41 the extension agreement contains the same prepayment privileges, the
42 rate of interest does not exceed the lowest rate in the mortgage extended,
43 and the extension does not exceed five years; or

- 1 (9) to make any gift on behalf of the conservatee, except with the
2 approval of the court upon a finding that:
- 3 (A) The conservatee had either in the past as a habit made similar
4 gifts or declared an intent to make such a gift, or under the circumstances,
5 would have made such a gift or gifts;
- 6 (B) sufficient funds and assets will remain in the conservatee's estate
7 after the making of such a gift to meet the expected needs and respon-
8 sibilities of the conservatee; and
- 9 (C) any person or entity who would have received the property to be
10 gifted had the conservatee died at the time of the gift, but who is not the
11 person or entity receiving the gift, has either consented to or agreed with
12 the giving of the gift, in writing, or has received notice of the proposal to
13 make the gift and been given the opportunity to request a hearing thereon
14 by the court to be held prior to the court's approving the gift.
- 15 (g) The conservator shall file with the court, within 30 days of the
16 court's issuance of letters of conservatorship as provided for in K.S.A. 59-
17 3069, and amendments thereto, an initial inventory of all of the property
18 and assets of the conservatee's estate, including any sources of regular
19 income to the estate.
- 20 (h) The conservator shall file with the court accountings and other
21 reports concerning the status of the estate and the actions of the conser-
22 vator as the court shall direct pursuant to K.S.A. 59-3083, and amend-
23 ments thereto.
- 24 Sec. 6. K.S.A. 59-3051, 59-3068, 59-3075 and 59-3078 are hereby
25 repealed.
- 26 Sec. 7. This act shall take effect and be in force from and after its
27 publication in the statute book.