

SENATE BILL No. 235

By Committee on Judiciary

2-6

9 AN ACT enacting the uniform adult guardianship and protective pro-
10 ceedings jurisdiction act; amending K.S.A. 59-3063 and K.S.A. 2008
11 Supp. 59-3058, 59-3061 and 59-3062 and repealing the existing
12 sections.
13

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

15 New Section 1. Sections 1 through 23, and amendments thereto,
16 may be cited as the uniform adult guardianship and protective proceed-
17 ings jurisdiction act.

18 New Sec. 2. In this act:

- 19 (1) "Adult" means an individual who has attained 18 years of age.
20 (2) "Conservator" means a person appointed by the court to admin-
21 ister the property of an adult, including a person appointed under the act
22 for obtaining a guardian or conservator, or both.
23 (3) "Guardian" means a person appointed by the court to make deci-
24 sions regarding the person of an adult, including a person appointed
25 under the act for obtaining a guardian or conservator, or both.
26 (4) "Guardianship order" means an order appointing a guardian.
27 (5) "Guardianship proceeding" means a judicial proceeding in which
28 an order for the appointment of a guardian is sought or has been issued.
29 (6) "Incapacitated person" means an adult for whom a guardian has
30 been appointed.
31 (7) "Party" means the respondent, petitioner, guardian, conservator,
32 or any other person allowed by the court to participate in a guardianship
33 or protective proceeding.
34 (8) "Person," except in the term incapacitated person or protected
35 person, means an individual, corporation, business trust, estate, trust,
36 partnership, limited liability company, association, joint venture, public
37 corporation, government or governmental subdivision, agency, or instru-
38 mentality, or any other legal or commercial entity.
39 (9) "Protected person" means an adult for whom a protective order
40 has been issued.
41 (10) "Protective order" means an order appointing a conservator or
42 other order related to management of an adult's property.
43 (11) "Protective proceeding" means a judicial proceeding in which a

1 protective order is sought or has been issued.

2 (12) "Record" means information that is inscribed on a tangible me-
3 dium or that is stored in an electronic or other medium and is retrievable
4 in perceivable form.

5 (13) "Respondent" means an adult for whom a protective order or
6 the appointment of a guardian is sought.

7 (14) "State" means a state of the United States, the District of Co-
8 lumbia, Puerto Rico, the United States Virgin Islands, a federally recog-
9 nized Indian tribe, or any territory or insular possession subject to the
10 jurisdiction of the United States.

11 New Sec. 3. A court of this state may treat a foreign country as if it
12 were a state for the purpose of applying sections 1 through 17 and 21
13 through 23, and amendments thereto.

14 New Sec. 4. (a) A court of this state may communicate with a court
15 in another state concerning a proceeding arising under this act. The court
16 may allow the parties to participate in the communication. Except as
17 otherwise provided in subsection (b), the court shall make a record of the
18 communication. The record may be limited to the fact that the commu-
19 nication occurred.

20 (b) Courts may communicate concerning schedules, calendars, court
21 records, and other administrative matters without making a record.

22 New Sec. 5. (a) In a guardianship or protective proceeding in this
23 state, a court of this state may request the appropriate court of another
24 state to do any of the following:

25 (1) Hold an evidentiary hearing;

26 (2) order a person in that state to produce evidence or give testimony
27 pursuant to procedures of that state;

28 (3) order that an evaluation or assessment be made of the respondent;

29 (4) order any appropriate investigation of a person involved in a
30 proceeding;

31 (5) forward to the court of this state a certified copy of the transcript
32 or other record of a hearing under paragraph (1) or any other proceeding,
33 any evidence otherwise produced under paragraph (2) and any evaluation
34 or assessment prepared in compliance with an order under paragraph (3)
35 or (4);

36 (6) issue any order necessary to assure the appearance in the pro-
37 ceeding of a person whose presence is necessary for the court to make a
38 determination, including the respondent or the incapacitated or protected
39 person;

40 (7) issue an order authorizing the release of medical, financial, crim-
41 inal, or other relevant information in that state, including protected health
42 information as defined in 45 C.F.R. 164.504, as amended.

43 (b) If a court of another state in which a guardianship or protective

1 proceeding is pending requests assistance of the kind provided in sub-
2 section (a), a court of this state has jurisdiction for the limited purpose
3 of granting the request or making reasonable efforts to comply with the
4 request.

5 New Sec. 6. (a) In a guardianship or protective proceeding, in ad-
6 dition to other procedures that may be available, testimony of a witness
7 who is located in another state may be offered by deposition or other
8 means allowable in this state for testimony taken in another state. The
9 court on its own motion may order that the testimony of a witness be
10 taken in another state and may prescribe the manner in which and the
11 terms upon which the testimony is to be taken.

12 (b) In a guardianship or protective proceeding, a court in this state
13 may permit a witness located in another state to be deposed or to testify
14 by telephone or audiovisual or other electronic means. A court of this
15 state shall cooperate with the court of the other state in designating an
16 appropriate location for the deposition or testimony.

17 (c) Documentary evidence transmitted from another state to a court
18 of this state by technological means that do not produce an original writing
19 may not be excluded from evidence on an objection based on the best
20 evidence rule.

21 New Sec. 7. (a) In this section and sections 8 through 15, and amend-
22 ments thereto:

23 (1) "Emergency" means a circumstance that likely will result in sub-
24 stantial harm to a respondent's health, safety, or welfare, and for which
25 the appointment of a guardian is necessary because no other person has
26 authority and is willing to act on the respondent's behalf;

27 (2) "Home state" means the state in which the respondent was phys-
28 ically present, including any period of temporary absence, for at least six
29 consecutive months immediately before the filing of a petition for a pro-
30 tective order or the appointment of a guardian; or if none, the state in
31 which the respondent was physically present, including any period of
32 temporary absence, for at least six consecutive months ending within the
33 six months prior to the filing of the petition.

34 (3) "Significant-connection state" means a state, other than the home
35 state, with which a respondent has a significant connection other than
36 mere physical presence and in which substantial evidence concerning the
37 respondent is available.

38 (b) In determining under section 9 and subsection (e) of section 16,
39 and amendments thereto, whether a respondent has a significant con-
40 nection with a particular state, the court shall consider:

41 (1) The location of the respondent's family and other persons re-
42 quired to be notified of the guardianship or protective proceeding;

43 (2) the length of time the respondent at any time was physically pres-

1 ent in the state and the duration of any absence;
2 (3) the location of the respondent's property; and
3 (4) the extent to which the respondent has ties to the state such as
4 voting registration, state or local tax return filing, vehicle registration,
5 driver's license, social relationship, and receipt of services.
6 New Sec. 8. Sections 7 through 15, and amendments thereto, pro-
7 vide the exclusive jurisdictional basis for a court of this state to appoint a
8 guardian or issue a protective order for an adult.
9 New Sec. 9. A court of this state has jurisdiction to appoint a guard-
10 ian or issue a protective order for a respondent if:
11 (1) this state is the respondent's home state;
12 (2) on the date the petition is filed, this state is a significant-con-
13 nection state and:
14 (A) the respondent does not have a home state or a court of the
15 respondent's home state has declined to exercise jurisdiction because this
16 state is a more appropriate forum; or
17 (B) the respondent has a home state, a petition for an appointment
18 or order is not pending in a court of that state or another significant-
19 connection state, and, before the court makes the appointment or issues
20 the order:
21 (i) a petition for an appointment or order is not filed in the respon-
22 dent's home state;
23 (ii) an objection to the court's jurisdiction is not filed by a person
24 required to be notified of the proceeding; and;
25 (iii) the court in this state concludes that it is an appropriate forum
26 under the factors set forth in section 12, and amendments thereto;
27 (3) this state does not have jurisdiction under either paragraph (1) or
28 (2), the respondent's home state and all significant-connection states have
29 declined to exercise jurisdiction because this state is the more appropriate
30 forum, and jurisdiction in this state is consistent with the constitutions of
31 this state and the United States; or
32 (4) the requirements for special jurisdiction under section 10, and
33 amendments thereto, are met.
34 New Sec. 10. (a) A court of this state lacking jurisdiction under par-
35 agraphs (1) through (3) of section 9, and amendments thereto, has special
36 jurisdiction to do any of the following:
37 (1) Appoint a guardian in an emergency for a term not exceeding 90
38 days for a respondent who is physically present in this state;
39 (2) issue a protective order with respect to real or tangible personal
40 property located in this state;
41 (3) appoint a guardian or conservator for an incapacitated or pro-
42 tected person for whom a provisional order to transfer the proceeding
43 from another state has been issued under procedures similar to section

1 16, and amendments thereto.

2 (b) If a petition for the appointment of a guardian in an emergency
3 is brought in this state and this state was not the respondent's home state
4 on the date the petition was filed, the court shall dismiss the proceeding
5 at the request of the court of the home state, if any, whether dismissal is
6 requested before or after the emergency appointment.

7 New Sec. 11. Except as otherwise provided in section 10, and
8 amendments thereto, a court that has appointed a guardian or issued a
9 protective order consistent with this act has exclusive and continuing ju-
10 risdiction over the proceeding until it is terminated by the court or the
11 appointment or order expires by its own terms.

12 New Sec. 12. (a) A court of this state having jurisdiction under sec-
13 tion 9, and amendments thereto, to appoint a guardian or issue a protec-
14 tive order may decline to exercise its jurisdiction if it determines at any
15 time that a court of another state is a more appropriate forum.

16 (b) If a court of this state declines to exercise its jurisdiction under
17 subsection (a), it shall either dismiss or stay the proceeding. The court
18 may impose any condition the court considers just and proper, including
19 the condition that a petition for the appointment of a guardian or issuance
20 of a protective order be filed promptly in another state.

21 (c) In determining whether it is an appropriate forum, the court shall
22 consider all relevant factors, including:

23 (1) Any expressed preference of the respondent;

24 (2) whether abuse, neglect, or exploitation of the respondent has oc-
25 curred or is likely to occur and which state could best protect the re-
26 spondent from the abuse, neglect, or exploitation;

27 (3) the length of time the respondent was physically present in or was
28 a legal resident of this or another state;

29 (4) the distance of the respondent from the court in each state;

30 (5) the financial circumstances of the respondent's estate;

31 (6) the nature and location of the evidence;

32 (7) the ability of the court in each state to decide the issue expedi-
33 tiously and the procedures necessary to present evidence;

34 (8) the familiarity of the court of each state with the facts and issues
35 in the proceeding; and

36 (9) if an appointment were made, the court's ability to monitor the
37 conduct of the guardian or conservator.

38 New Sec. 13. (a) If at any time a court of this state determines that
39 it acquired jurisdiction to appoint a guardian or issue a protective order
40 because of unjustifiable conduct, the court may:

41 (1) Decline to exercise jurisdiction;

42 (2) exercise jurisdiction for the limited purpose of fashioning an ap-
43 propriate remedy to ensure the health, safety, and welfare of the respon-

1 dent or the protection of the respondent's property or prevent a repetition
2 of the unjustifiable conduct, including staying the proceeding until a pe-
3 tition for the appointment of a guardian or issuance of a protective order
4 is filed in a court of another state having jurisdiction; or

5 (3) continue to exercise jurisdiction after considering:

6 (A) The extent to which the respondent and all persons required to
7 be notified of the proceedings have acquiesced in the exercise of the
8 court's jurisdiction;

9 (B) whether it is a more appropriate forum than the court of any
10 other state under the factors set forth in subsection (c) of section 12, and
11 amendments thereto; and

12 (C) whether the court of any other state would have jurisdiction un-
13 der factual circumstances in substantial conformity with the jurisdictional
14 standards of section 9, and amendments thereto.

15 (b) If a court of this state determines that it acquired jurisdiction to
16 appoint a guardian or issue a protective order because a party seeking to
17 invoke its jurisdiction engaged in unjustifiable conduct, it may assess
18 against that party necessary and reasonable expenses, including attorney's
19 fees, investigative fees, court costs, communication expenses, witness fees
20 and expenses, and travel expenses. The court may not assess fees, costs,
21 or expenses of any kind against this state or a governmental subdivision,
22 agency, or instrumentality of this state unless authorized by law other
23 than this act.

24 New Sec. 14. If a petition for the appointment of a guardian or is-
25 suance of a protective order is brought in this state and this state was not
26 the respondent's home state on the date the petition was filed, in addition
27 to complying with the notice requirements of this state, notice of the
28 petition must be given to those persons who would be entitled to notice
29 of the petition if a proceeding were brought in the respondent's home
30 state. The notice must be given in the same manner as notice is required
31 to be given in this state.

32 New Sec. 15. Except for a petition for the appointment of a guardian
33 in an emergency or issuance of a protective order limited to property
34 located in this state under subsection (a)(1) or (a)(2) of section 10, and
35 amendments thereto, if a petition for the appointment of a guardian or
36 issuance of a protective order is filed in this state and in another state
37 and neither petition has been dismissed or withdrawn, the following rules
38 apply:

39 (1) If the court in this state has jurisdiction under section 9, and
40 amendments thereto, it may proceed with the case unless a court in an-
41 other state acquires jurisdiction under provisions similar to section 9, and
42 amendments thereto, before the appointment or issuance of the order.

43 (2) If the court in this state does not have jurisdiction under section

1 9, and amendments thereto, whether at the time the petition is filed or
2 at any time before the appointment or issuance of the order, the court
3 shall stay the proceeding and communicate with the court in the other
4 state. If the court in the other state has jurisdiction, the court in this state
5 shall dismiss the petition unless the court in the other state determines
6 that the court in this state is a more appropriate forum.

7 New Sec. 16. (a) A guardian or conservator appointed in this state
8 may petition the court to transfer the guardianship or conservatorship to
9 another state.

10 (b) Notice of a petition under subsection (a) must be given to the
11 persons that would be entitled to notice of a petition in this state for the
12 appointment of a guardian or conservator.

13 (c) On the court's own motion or on request of the guardian or con-
14 servator, the incapacitated or protected person, or other person required
15 to be notified of the petition, the court shall hold a hearing on a petition
16 filed pursuant to subsection (a).

17 (d) The court shall issue an order provisionally granting a petition to
18 transfer a guardianship and shall direct the guardian to petition for guard-
19 ianship in the other state if the court is satisfied that the guardianship
20 will be accepted by the court in the other state and the court finds that:

21 (1) The incapacitated person is physically present in or is reasonably
22 expected to move permanently to the other state;

23 (2) an objection to the transfer has not been made or, if an objection
24 has been made, the objector has not established that the transfer would
25 be contrary to the interests of the incapacitated person; and

26 (3) plans for care and services for the incapacitated person in the
27 other state are reasonable and sufficient.

28 (e) The court shall issue a provisional order granting a petition to
29 transfer a conservatorship and shall direct the conservator to petition for
30 conservatorship in the other state if the court is satisfied that the conser-
31 vatorship will be accepted by the court of the other state and the court
32 finds that:

33 (1) The protected person is physically present in or is reasonably ex-
34 pected to move permanently to the other state, or the protected person
35 has a significant connection to the other state considering the factors in
36 subsection (b) of section 7, and amendments thereto;

37 (2) an objection to the transfer has not been made or, if an objection
38 has been made, the objector has not established that the transfer would
39 be contrary to the interests of the protected person; and

40 (3) adequate arrangements will be made for management of the pro-
41 tected person's property.

42 (f) The court shall issue a final order confirming the transfer and
43 terminating the guardianship or conservatorship upon its receipt of:

- 1 (1) A provisional order accepting the proceeding from the court to
2 which the proceeding is to be transferred which is issued under provisions
3 similar to section 17, and amendments thereto; and
- 4 (2) the documents required to terminate a guardianship or conser-
5 vatorship in this state.
- 6 New Sec. 17. (a) To confirm transfer of a guardianship or conser-
7 vatorship transferred to this state under provisions similar to section 16,
8 and amendments thereto, the guardian or conservator must petition the
9 court in this state to accept the guardianship or conservatorship. The
10 petition must include a certified copy of the other state's provisional order
11 of transfer.
- 12 (b) Notice of a petition under subsection (a) must be given to those
13 persons that would be entitled to notice if the petition were a petition for
14 the appointment of a guardian or issuance of a protective order in both
15 the transferring state and this state. The notice must be given in the same
16 manner as notice is required to be given in this state.
- 17 (c) On the court's own motion or on request of the guardian or con-
18 servator, the incapacitated or protected person, or other person required
19 to be notified of the proceeding, the court shall hold a hearing on a
20 petition filed pursuant to subsection (a).
- 21 (d) The court shall issue an order provisionally granting a petition
22 filed under subsection (a) unless:
- 23 (1) An objection is made and the objector establishes that transfer of
24 the proceeding would be contrary to the interests of the incapacitated or
25 protected person; or
- 26 (2) the guardian or conservator is ineligible for appointment in this
27 state.
- 28 (e) The court shall issue a final order accepting the proceeding and
29 appointing the guardian or conservator as guardian or conservator in this
30 state upon its receipt from the court from which the proceeding is being
31 transferred of a final order issued under provisions similar to section 16,
32 and amendments thereto, transferring the proceeding to this state.
- 33 (f) Not later than 90 days after issuance of a final order accepting
34 transfer of a guardianship or conservatorship, the court shall determine
35 whether the guardianship or conservatorship needs to be modified to
36 conform to the law of this state.
- 37 (g) In granting a petition under this section, the court shall recognize
38 a guardianship or conservatorship order from the other state, including
39 the determination of the incapacitated or protected person's incapacity
40 and the appointment of the guardian or conservator.
- 41 (h) The denial by a court of this state of a petition to accept a guard-
42 ianship or conservatorship transferred from another state does not affect
43 the ability of the guardian or conservator to seek appointment as guardian

1 or conservator in this state under K.S.A. 59-3058, and amendments
2 thereto, if the court has jurisdiction to make an appointment other than
3 by reason of the provisional order of transfer.

4 New Sec. 18. If a guardian has been appointed in another state and
5 a petition for the appointment of a guardian is not pending in this state,
6 the guardian appointed in the other state, after giving notice to the ap-
7 pointing court of an intent to register, may register the guardianship order
8 in this state by filing as a foreign judgment in a court, in any appropriate
9 county of this state, certified copies of the order and letters of office.

10 New Sec. 19. If a conservator has been appointed in another state
11 and a petition for a protective order is not pending in this state, the
12 conservator appointed in the other state, after giving notice to the ap-
13 pointing court of an intent to register, may register the protective order
14 in this state by filing as a foreign judgment in a court of this state, in any
15 county in which property belonging to the protected person is located,
16 certified copies of the order and letters of office and of any bond.

17 New Sec. 20. (a) Upon registration of a guardianship or protective
18 order from another state, the guardian or conservator may exercise in this
19 state all powers authorized in the order of appointment except as prohib-
20 ited under the laws of this state, including maintaining actions and pro-
21 ceedings in this state and, if the guardian or conservator is not a resident
22 of this state, subject to any conditions imposed upon nonresident parties.

23 (b) A court of this state may grant any relief available under this act
24 and other law of this state to enforce a registered order.

25 New Sec. 21. In applying and construing this uniform act, consid-
26 eration must be given to the need to promote uniformity of the law with
27 respect to its subject matter among states that enact it.

28 New Sec. 22. This act modifies, limits, and supersedes the federal
29 electronic signatures in global and national commerce act, 15 U.S.C.
30 7001, et seq., but does not modify, limit, or supersede section 101(c) of
31 that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
32 notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

33 New Sec. 23. (a) This act applies to guardianship and protective pro-
34 ceedings begun on or after July 1, 2010.

35 (b) Sections 1 through 6 and 16 through 22, and amendments thereto,
36 apply to proceedings begun before July 1, 2010, regardless of whether a
37 guardianship or protective order has been issued.

38 Sec. 24. K.S.A. 2008 Supp. 59-3058 is hereby amended to read as
39 follows: 59-3058. (a) (1) Any person may file in the district court of the
40 county of residence of the proposed ward or proposed conservatee *who*
41 *is a minor* or of any county wherein ~~the~~ *such* proposed ward or proposed
42 conservatee may be found, a verified petition requesting the appointment
43 of a guardian or a conservator, or both, for ~~an adult~~ *a minor* with an

1 impairment in need of a guardian or conservator, or both. If the proposed
2 conservatee is not a resident of or present within the state of Kansas, such
3 petition may be filed in the district court of any county in which any
4 property of the proposed conservatee is situated.

5 (2) If a petition is filed in the district court of a county other than the
6 county of residence of the proposed ward or proposed conservatee *who*
7 *is a minor*, the court may consider whether it is in the best interests of
8 ~~the~~ *such* proposed ward or proposed conservatee or in the interests of
9 justice for the proceedings to take place in that county.

10 (3) If the court finds it is not in the best interests of the proposed
11 ward or proposed conservatee *who is a minor* or in the interests of justice
12 that the proceedings take place in that county and ~~the~~ *such* proposed
13 ward or proposed conservatee is a nonresident of the state of Kansas, the
14 court may dismiss the matter immediately, or may continue the matter
15 for a specific period of time not to exceed 60 days to allow for the filing
16 of proceedings in the state of residence. After the expiration of that period
17 of time, or upon the filing of proceedings in the state of residence, the
18 court shall dismiss the petition without prejudice.

19 (4) If the court finds it is not in the best interests of the proposed
20 ward or proposed conservatee or in the interests of justice that the pro-
21 ceedings take place in that county and the proposed ward or proposed
22 conservatee is a resident of a different county in Kansas, the court may
23 dismiss the matter immediately, or may transfer venue to the county of
24 residence, or may continue the matter for a specific period of time not
25 to exceed 60 days to allow for the filing of proceedings in the county of
26 residence. After the expiration of that period of time, or upon the filing
27 of proceedings in the county of residence, the court shall dismiss the
28 petition without prejudice.

29 (b) The petition shall include:

30 (1) The petitioner's name and address;

31 (2) the proposed ward's or proposed conservatee's name, age, date
32 of birth, address of permanent residence, and present address or where-
33 abouts, if different from the proposed ward's or proposed conservatee's
34 permanent residence;

35 (3) if the proposed ward or proposed conservatee is a nonresident of
36 the county in which the petition is filed, a statement of why it is in the
37 best interests of the proposed ward or proposed conservatee or in the
38 interests of justice for the proceedings to take place in that county;

39 (4) if the proposed ward or proposed conservatee is under the age of
40 18 years, the factual circumstances under which the petitioner alleges
41 that the minor should be considered to be of the age of majority pursuant
42 to the provisions of K.S.A. 38-101, and amendments thereto, or concern-
43 ing when and where the rights of majority were conferred upon the minor

- 1 pursuant to the provisions of K.S.A. 38-108, and amendments thereto;
- 2 (5) a statement that it is the petitioner's belief that the proposed ward
3 or proposed conservatee is an adult with an impairment in need of a
4 guardian or a conservator, or both;
- 5 (6) the factual basis upon which the petitioner makes that allegation;
- 6 (7) the names and addresses of any spouse, adult children and adult
7 grandchildren of the proposed ward or proposed conservatee, and those
8 of any parent and adult siblings of the proposed ward or proposed con-
9 servatee, or if no such names or addresses are known to the petitioner,
10 the name and address of at least one adult who is nearest in kinship to
11 the proposed ward or proposed conservatee, or if none, that fact. If no
12 such names or addresses are known to the petitioner, but the petitioner
13 has reason to believe such persons exist, then the petition shall state that
14 fact and that the petitioner has made diligent inquiry to learn those names
15 and addresses;
- 16 (8) the name and address of any person or agency having custody of
17 the proposed ward or proposed conservatee, or any other person or
18 agency who has assumed responsibility for the proposed ward or proposed
19 conservatee, and the circumstances under which the proposed ward or
20 proposed conservatee came into such person's or agency's care or control;
- 21 (9) the name and address of any person or corporation acting for or
22 nominated to act on behalf of the proposed ward or proposed conservatee
23 pursuant to any power of attorney, trust or other fiduciary relationship
24 established by any court order, and a description of that authority or
25 relationship. If not known, the petition shall state that the petitioner has
26 made diligent inquiry to learn this information;
- 27 (10) a list and description of all court proceedings in which the pro-
28 posed ward or proposed conservatee is a party, or is the subject of, or
29 may be a beneficiary of, or in which any rights of the proposed ward or
30 proposed conservatee may be determined or affected, and the name and
31 address of any attorney who represents the proposed ward or proposed
32 conservatee in such matter. If not known, the petition shall state that the
33 petitioner has made diligent inquiry to learn this information;
- 34 (11) in general terms, the location, type, and value of any real or
35 personal property of the proposed ward or proposed conservatee, includ-
36 ing the amount and sources of any income of the proposed ward or pro-
37 posed conservatee. If not known, the petition shall state that the peti-
38 tioner has made diligent inquiry to learn this information;
- 39 (12) the names and addresses of witnesses by whom the truth of the
40 petition may be proved;
- 41 (13) the name, age, date of birth, gender, address, place of employ-
42 ment, relationship to the proposed ward or proposed conservatee, if any,
43 of the individual or corporation whom the petitioner suggests that the

1 court appoint as guardian or conservator, or both, and any personal or
2 agency interest of the proposed guardian or proposed conservator that
3 may be perceived as self-serving or adverse to the position or best interest
4 of the proposed ward or proposed conservatee, and if the suggested
5 guardian or conservator is under contract with the Kansas guardianship
6 program, that fact;

7 (14) if the petitioner suggests the appointment of co-guardians or co-
8 conservators, or both, a statement of the reasons why such appointment
9 is sought and whether the petitioner suggests that the co-guardians or co-
10 conservators, if appointed, should be able to act independently or whether
11 they should be required to act only in concert or only in concert with
12 regard to specified matters; and

13 (15) a request that the court make a determination that the proposed
14 ward or proposed conservatee is an adult with an impairment in need of
15 a guardian or a conservator, or both, that the court enter one or more of
16 the orders provided for in K.S.A. 59-3063, 59-3064 and 59-3065, and
17 amendments thereto, and that the court appoint a guardian or a conser-
18 vator, or both, for the proposed ward or proposed conservatee.

19 (c) Any such petition may be accompanied by, or the court may re-
20 quire that such petition be accompanied by, a report of an examination
21 and evaluation which meets the requirements of K.S.A. 59-3064, and
22 amendments thereto. In such case, the petition may include a request
23 that the court accept this report in lieu of ordering any additional exam-
24 ination and evaluation pursuant to K.S.A. 59-3064, and amendments
25 thereto.

26 (d) Any such petition may be accompanied by, or the court may re-
27 quire that such petition be accompanied by, a proposed guardianship plan
28 as provided for in K.S.A. 59-3076, and amendments thereto, or a pro-
29 posed conservatorship plan as provided for in K.S.A. 59-3079, and amend-
30 ments thereto, or both.

31 Sec. 25. K.S.A. 2008 Supp. 59-3061 is hereby amended to read as
32 follows: 59-3061. (a) The guardian, conservator or other similarly empow-
33 ered fiduciary appointed in any other state for a ~~person~~ *minor* who has
34 been previously adjudged as impaired in another state may file in the
35 district court of the county wherein the proposed ward or proposed con-
36 servatee *who is a minor* may be found or wherein the petitioner plans to
37 relocate ~~the such~~ proposed ward or proposed conservatee, a verified pe-
38 tition requesting that the court give full faith and credit to the prior ad-
39 judication and appoint a guardian or a conservator, or both, in Kansas.
40 The petition shall also declare that immediately upon such appointment,
41 the petitioner will take the necessary action to terminate the proceedings
42 in the other state.

43 (b) The petition shall include:

- 1 (1) The petitioner's name and address;
- 2 (2) the proposed ward's or proposed conservatee's name, age, date
3 of birth, address of permanent residence, and present address or where-
4 abouts, if different from the proposed ward's or proposed conservatee's
5 permanent residence;
- 6 (3) if the proposed ward or proposed conservatee is not already pres-
7 ent within Kansas, the address and nature of the place located within
8 Kansas to which the petitioner plans to relocate the proposed ward or
9 proposed conservatee if the court does appoint a guardian or conservator,
10 or both, in Kansas;
- 11 (4) the place where and the date upon which the petitioner was ap-
12 pointed as the guardian, conservator or other similarly empowered fidu-
13 ciary for the proposed ward or proposed conservatee and a statement that
14 this appointment remains in full force and effect;
- 15 (5) the factual basis upon which the petitioner alleges the need for
16 the appointment of a guardian or conservator, or both, in Kansas;
- 17 (6) the names and addresses of any spouse, ~~adult children and adult~~
18 ~~grandchildren~~ of the proposed ward or proposed conservatee, and those
19 of any parent and adult siblings of the proposed ward or proposed con-
20 servatee, or if no such names or addresses are known to the petitioner,
21 the name and address of at least one adult who is nearest in kinship to
22 the proposed ward or proposed conservatee, or if none, that fact. If no
23 such names or addresses are known to the petitioner, but the petitioner
24 has reason to believe such persons exist, then the petition shall state that
25 fact and that the petitioner has made diligent inquiry to learn those names
26 and addresses;
- 27 (7) the name and address of any person or corporation acting for or
28 nominated to act on behalf of the proposed ward or proposed conservatee
29 pursuant to any power of attorney, trust or other fiduciary relationship
30 established by any court order, other than the appointment in the other
31 state of the petitioner as the guardian, conservator or other similarly em-
32 powered fiduciary for the proposed ward or proposed conservatee, and a
33 description of that authority or relationship. If not known, the petition
34 shall state that the petitioner has made diligent inquiry to learn this
35 information;
- 36 (8) a list and description of all court proceedings in which the propo-
37 sed ward or proposed conservatee is a party, or is the subject of, or
38 may be a beneficiary of, or in which any rights of the proposed ward or
39 proposed conservatee may be determined or affected, and the name and
40 address of any attorney who represents the proposed ward or proposed
41 conservatee in such matter. If not known, the petition shall state that the
42 petitioner has made diligent inquiry to learn this information;
- 43 (9) in general terms, the location, type and value of any real or per-

1 sonal property of the proposed ward or proposed conservatee, including
2 the amount and sources of any income of the proposed ward or proposed
3 conservatee. If not known, the petition shall state that the petitioner has
4 made diligent inquiry to learn this information;

5 (10) the names and addresses of the witnesses by whom the truth of
6 the petition may be proved;

7 (11) the name, age, date of birth, gender, address, place of employ-
8 ment, relationship to the proposed ward or proposed conservatee, if any,
9 of the individual or corporation whom the petitioner suggests that the
10 court appoint as guardian or conservator, or both, and any personal or
11 agency interest of the proposed guardian or proposed conservator that
12 may be perceived as self-serving or adverse to the position or best interest
13 of the proposed ward or proposed conservatee, and if the suggested
14 guardian or conservator is under contract with the Kansas guardianship
15 program, that fact;

16 (12) if the petitioner suggests the appointment of co-guardians or co-
17 conservators, or both, a statement of the reasons why such appointment
18 is sought and whether the petitioner suggests that the co-guardians or co-
19 conservators, if appointed, should be able to act independently or whether
20 they should be required to act only in concert or only in concert with
21 regard to specified matters;

22 (13) a declaration that, immediately upon the appointment of a
23 guardian or conservator in this state, the petitioner will take the necessary
24 action to terminate the proceedings in the other state; and

25 (14) a request that the court make a determination that the proposed
26 ward or proposed conservatee is a ~~person~~ *minor* who has been previously
27 adjudged as impaired in another state, that the court enter one or more
28 of the orders provided for in K.S.A. 59-3063 and 59-3065, and amend-
29 ments thereto, and that the court appoint a guardian or conservator, or
30 both, for the proposed ward or proposed conservatee in Kansas.

31 (c) Any such petition shall be accompanied by a duly authenticated
32 copy of the order of adjudication and appointment and documents show-
33 ing the continuing authority of the petitioner in the other state.

34 (d) Any such petition may be accompanied by, or the court may re-
35 quire that such petition be accompanied by, a proposed guardianship plan
36 as provided for in K.S.A. 59-3076, and amendments thereto, or a pro-
37 posed conservatorship plan as provided for in K.S.A. 59-3079, and amend-
38 ments thereto, or both.

39 Sec. 26. K.S.A. 2008 Supp. 59-3062 is hereby amended to read as
40 follows: 59-3062. (a) The conservator or other similarly empowered fi-
41 duciary appointed in any other state for a ~~person~~ *minor* in need of an
42 ancillary conservator may file in the district court of any county in which
43 any property of the proposed conservatee *who is a minor* is situated a

1 verified petition requesting the appointment of an ancillary conservator
2 in Kansas.

3 (b) The petition shall include:

4 (1) The petitioner's name and address, and a statement that the pe-
5 titioner is the conservator or other similarly empowered fiduciary ap-
6 pointed in another state, and that this appointment remains in full force
7 and effect;

8 (2) the proposed conservatee's name, age, date of birth, address of
9 permanent residence, and present address or whereabouts, if different
10 from the proposed conservatee's permanent residence;

11 (3) a statement that the proposed conservatee is a person in need of
12 an ancillary conservator;

13 (4) the factual basis upon which the petitioner alleges the need for
14 an ancillary conservatorship in this state;

15 (5) the names and addresses of any spouse, ~~adult children and adult~~
16 ~~grandchildren~~ of the proposed conservatee, and those of any parent and
17 adult siblings of the proposed conservatee, or if no such names or ad-
18 dresses are known to the petitioner, the name and address of at least one
19 adult who is nearest in kinship to the proposed conservatee. If no such
20 names or addresses are known to the petitioner, but the petitioner has
21 reason to believe such persons exist, then the petition shall state that fact
22 and that the petitioner has made diligent inquiry to learn those names
23 and addresses;

24 (6) the name and address of any person or corporation acting for or
25 nominated to act on behalf of the proposed conservatee in this state pur-
26 suant to any power of attorney, trust or other fiduciary relationship es-
27 tablished by any court order, and a description of that authority or rela-
28 tionship. If not known, the petition shall state that the petitioner has made
29 diligent inquiry to learn this information;

30 (7) the location and value of the property within Kansas for which an
31 ancillary conservatorship is being sought;

32 (8) the names and addresses of witnesses by whom the truth of the
33 petition may be proved;

34 (9) the name, age, date of birth, gender, address, place of employ-
35 ment, relationship to the proposed conservatee, if any, of the individual
36 or corporation whom the petitioner suggests that the court appoint as the
37 ancillary conservator, and any personal or agency interest of the proposed
38 conservator that may be perceived as self-serving or adverse to the po-
39 sition or best interest of the proposed conservatee, and if the suggested
40 ancillary conservator is under contract with the Kansas guardianship pro-
41 gram, that fact;

42 (10) if the petitioner suggests the appointment of co-ancillary con-
43 servators, a statement of the reasons why such appointment is sought and

1 whether the petitioner suggests that the co-ancillary conservators, if ap-
2 pointed, should be able to act independently or whether they should be
3 required to act only in concert or only in concert with regard to specified
4 matters; and

5 (11) a request that the court make a determination that the proposed
6 conservatee is a ~~person~~ *minor* in need of an ancillary conservator, that
7 the court enter one or more of the orders provided for in K.S.A. 59-3063
8 and 59-3065, and amendments thereto, and that the court appoint an
9 ancillary conservator for the proposed conservatee in this state.

10 (c) The petition shall be accompanied by a duly authenticated copy
11 of the order of adjudication and appointment and documents showing
12 the continuing authority of the petitioner in the other state.

13 (d) Any such petition may be accompanied by, or the court may re-
14 quire that such petition be accompanied by, a proposed conservatorship
15 plan as provided for in K.S.A. 59-3079, and amendments thereto.

16 Sec. 27. K.S.A. 59-3063 is hereby amended to read as follows: 59-
17 3063. (a) Upon the filing of a petition as provided for in K.S.A. 59-3058,
18 and amendments thereto, alleging that the proposed ward or proposed
19 conservatee is an adult with an impairment in need of a guardian or
20 conservator, or both, or as provided for in K.S.A. 59-3060, and amend-
21 ments thereto, alleging that the proposed ward or proposed conservatee
22 is a minor with an impairment in need of a guardian or conservator, or
23 both, the district court shall issue the following:

24 (1) An order fixing the date, time and place of the trial on the petition.
25 Such trial, in the court's discretion, may be conducted in a courtroom, a
26 treatment facility or at some other suitable place. The time fixed in the
27 order shall in no event be earlier than seven days or later than 21 days
28 after the date of the filing of the petition. If a demand for a trial by jury
29 is filed pursuant to subsection (b) of K.S.A. 59-3067, and amendments
30 thereto, by the proposed ward or proposed conservatee, the court may
31 continue the trial and fix a new time and place of the trial at a time beyond
32 the 21 days but within a reasonable time not to exceed 30 days from the
33 date of the filing of the demand.

34 (2) An order requiring that the proposed ward or proposed conser-
35 vatee appear at the time and place of the trial unless the court makes a
36 finding prior to the trial that the presence of the proposed ward or pro-
37 posed conservatee will be injurious to the person's health or welfare, or
38 that the proposed ward's or proposed conservatee's impairment is such
39 that the person could not meaningfully participate in the proceedings, or
40 that the proposed ward or proposed conservatee has filed with the court
41 a written waiver of such person's right to appear in person. In any such
42 case, the court shall enter in the record of the proceedings the facts upon
43 which the court has found that the presence of the proposed ward or

1 proposed conservatee at the trial should be excused. Notwithstanding the
2 foregoing provisions of this subsection, if the proposed ward or proposed
3 conservatee files with the court at least one day prior to the date of the
4 trial a written notice stating the person's desire to be present at the trial,
5 the court shall order that the proposed ward or proposed conservatee
6 must be present at the trial.

7 (3) An order appointing an attorney to represent the proposed ward
8 or proposed conservatee. The court shall give preference, in the appoint-
9 ment of this attorney, to any attorney who has represented the proposed
10 ward or proposed conservatee in other matters if the court has knowledge
11 of that prior representation, or to an attorney whom the proposed ward
12 or proposed conservatee has requested. The proposed ward or proposed
13 conservatee, if an adult, shall have the right to engage an attorney of the
14 proposed ward's or proposed conservatee's own choice and, in such case,
15 the attorney appointed by the court shall be relieved of all duties. Any
16 appointment made by the court shall terminate upon a final determina-
17 tion of the petition and any appeal therefrom, unless the court continues
18 the appointment by further order. Thereafter, an attorney may be ap-
19 pointed by the court if requested, in writing, by the ward, conservatee,
20 guardian or conservator, or upon the court's own motion.

21 (4) An order fixing the date, time and a place that is in the best
22 interests of the proposed ward or proposed conservatee, at which the
23 proposed ward or proposed conservatee shall have the opportunity to
24 consult with the court appointed attorney. This consultation shall be
25 scheduled to occur not later than five days prior to the scheduled trial on
26 the petition, provided that if an examination and evaluation as provided
27 for in K.S.A. 59-3064, and amendments thereto, is ordered, then this
28 consultation shall be scheduled to occur prior to the time at which that
29 examination and evaluation is scheduled to occur.

30 (5) A notice as provided for in K.S.A. 59-3066, and amendments
31 thereto.

32 (6) An order for an examination and evaluation as provided for in
33 K.S.A. 59-3064, and amendments thereto. If the petition is accompanied
34 by a report of an examination and evaluation of the proposed ward or
35 proposed conservatee, as provided for in K.S.A. 59-3058 or 59-3060, and
36 amendments thereto, and the court determines that such report meets
37 the requirements of K.S.A. 59-3064, and amendments thereto, the court
38 may determine that no additional examination or evaluation is required
39 and that none shall be ordered unless requested by the proposed ward
40 or proposed conservatee pursuant to subsection (d) of K.S.A. 59-3064,
41 and amendments thereto.

42 (b) Upon the filing of a petition as provided for in K.S.A. 59-3059,
43 and amendments thereto, alleging that the proposed ward or proposed

1 conservatee is a minor in need of a guardian or conservator, or both, the
2 court shall issue an order fixing the date, time and place of the trial on
3 the petition. If the petition is filed on behalf of the minor by the minor's
4 natural guardian, the time of the hearing designated in the order may be
5 forthwith and without notice. In all other cases the trial shall be held no
6 earlier than seven days or later than 21 days after the date of the filing
7 of the petition, unless those persons or agencies entitled to notice pur-
8 suant to subsection (d) of K.S.A. 59-3066, and amendments thereto, have
9 entered their appearances, waived notice and consented to the appoint-
10 ment of the suggested guardian or conservator, or both, in which case
11 the trial may be held forthwith and without notice.

12 (c) Upon the filing of a petition as provided for in K.S.A. 59-3061,
13 and amendments thereto, alleging that the proposed ward or proposed
14 conservatee is a ~~person~~ *minor* who has been previously adjudged as im-
15 paired in another state, the court shall issue an order fixing the date, time
16 and place of the trial on the petition, which trial shall be held no earlier
17 than seven days or later than 21 days after the date of the filing of the
18 petition, unless those persons or agencies entitled to notice pursuant to
19 subsection (f) of K.S.A. 59-3066, and amendments thereto, have entered
20 their appearances, waived notice, agreed to the court's accepting juris-
21 diction of the case if transferred from the other state, and consented to
22 the appointment in Kansas of the suggested guardian or conservator, or
23 both, in which case the trial may be held forthwith and without notice.

24 (d) Upon the filing of a petition as provided for in K.S.A. 59-3062,
25 and amendments thereto, alleging that the proposed conservatee is a ~~per-~~
26 ~~son~~ *minor* in need of an ancillary conservator and requesting the appoint-
27 ment of an ancillary conservator in Kansas, the court shall issue an order
28 fixing the date, time and place of the trial on the petition, which trial shall
29 be held no earlier than seven days or later than 21 days after the date of
30 the filing of the petition, unless those persons or agencies entitled to
31 notice pursuant to subsection (e) of K.S.A. 59-3066, and amendments
32 thereto, have entered their appearances, waived notice and consented to
33 the appointment in Kansas of the suggested ancillary conservator, in
34 which case the trial may be held forthwith and without notice.

35 Sec. 28. K.S.A. 59-3063 and K.S.A. 2008 Supp. 59-3058, 59-3061 and
36 59-3062 are hereby repealed.

37 Sec. 29. This act shall take effect and be in force from and after its
38 publication in the statute book.