

## HOUSE BILL No. 2509

By Committee on Appropriations

2-13

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

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

14 Section 1. K.S.A. 59-3068 is hereby amended to read as follows: 59-  
15 3068. (a) The court in appointing a guardian or conservator shall give  
16 priority in the following order to:

17 (1) The nominee of the proposed ward or proposed conservatee, if  
18 such nomination is made within any durable power of attorney;

19 (2) the nominee of a natural guardian;

20 (3) the nominee of a minor who is the proposed ward or proposed  
21 conservatee, if the minor is over 14 years of age;

22 (4) the nominee of the spouse, adult child or other close family mem-  
23 ber of the proposed ward or proposed conservatee; or

24 (5) the nominee of the petitioner.

25 (b) (1) The court, in appointing a guardian or conservator, shall con-  
26 sider the workload, capabilities and potential conflicts of interest of the  
27 proposed guardian or conservator, or both, before making such appoint-  
28 ment, and the court shall give particular attention in making such ap-  
29 pointment to the number of other cases in which the proposed guardian  
30 or conservator, other than a corporation, is currently serving as guardian  
31 or conservator, or both, particularly if that number is more than 15 or  
32 more wards or conservatees, or both.

33 (2) *The court shall not appoint an unrelated person, institution, as-*  
34 *sociation or corporation to be the guardian or conservator of a ward or*  
35 *conservatee if the unrelated person, institution, association or*  
36 *corporation:*

37 (A) *Provides during the guardianship or conservatorship, goods or*  
38 *services for a fee to the ward or conservatee in a professional or business*  
39 *capacity;*

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

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

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

3     (E) is employed by an unrelated person, institution, association or  
4 corporation who or which would be disqualified under paragraphs (A)  
5 through (D).

6     (3) Nothing in this section shall prohibit a guardian or conservator  
7 from collecting a:

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

10     (B) stipend from the Kansas guardianship program.

11     (4) This section shall not apply to a:

12     (A) Guardian or conservator of a minor appointed pursuant to K.S.A.  
13 59-3059, and amendments thereto; or

14     (B) a financial institution serving as a conservator.

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

20     Sec. 2. K.S.A. 59-3075 is hereby amended to read as follows: 59-  
21 3075. (a) (1) The individual or corporation appointed by the court to serve  
22 as the guardian 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 guardian by the  
26 court. In doing so, a guardian shall at all times be subject to the control  
27 and direction of the court, and shall act in accordance with the provisions  
28 of any guardianship plan filed with the court pursuant to K.S.A. 59-3076,  
29 and amendments thereto. The court shall have the authority to appoint  
30 counsel for the guardian, and the fees of such attorney may be assessed  
31 as costs pursuant to K.S.A. 59-3094, and amendments thereto.

32     (2) A guardian shall become and remain personally acquainted with  
33 the ward, the spouse of the ward and with other interested persons as-  
34 sociated with the ward and who are knowledgeable about the ward, the  
35 ward's needs and the ward's responsibilities. A guardian shall exercise  
36 authority only as necessitated by the ward's limitations. A guardian shall  
37 encourage the ward to participate in making decisions affecting the ward.  
38 A guardian shall encourage the ward to act on the ward's own behalf to  
39 the extent the ward is able. A guardian shall encourage the ward to de-  
40 velop or regain the skills and abilities necessary to meet the ward's own  
41 essential needs and to otherwise manage the ward's own affairs. In making  
42 decisions on behalf of the ward, a guardian shall consider the expressed  
43 desires and personal values of the ward to the extent known to the guard-

1     ian. A guardian shall strive to assure that the personal, civil and human  
2     rights of the ward are protected. A guardian shall at all times act in the  
3     best interests of the ward and shall exercise reasonable care, diligence  
4     and prudence.

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

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

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

15    (C) *not concurrently represent both the ward and the service*  
16    *provider;*

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

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

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

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

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

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

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

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

38    (5) to assure that the ward receives any necessary and reasonably  
39    available medical care, consistent with the provisions of K.S.A. 59-3077,  
40    and amendments thereto, when applicable, and any reasonably available  
41    nonmedical care or other services as may be needed to preserve the health  
42    of the ward or to assist the ward to develop or retain skills and abilities;

43    (6) to promote and protect the comfort, safety, health and welfare of

1 the ward;

2 (7) to make necessary determinations and arrangements for, and to  
3 give the necessary consents in regard to, the ward's funeral arrangements,  
4 burial or cremation, the performance of an autopsy upon the body of the  
5 ward, and anatomical gifts of the ward, subject to the provisions and  
6 limitations provided for in K.S.A. 65-2893 and 65-3210 and K.S.A. 65-  
7 1734, and amendments thereto; and

8 (8) to exercise all powers and to discharge all duties necessary or  
9 proper to implement the provisions of this section.

10 (c) A guardian shall not be obligated by virtue of the guardian's ap-  
11 pointment to use the guardian's own financial resources for the support  
12 of the ward.

13 (d) A guardian shall not be liable to a third person for the acts of the  
14 ward solely by virtue of the guardian's appointment, nor shall a guardian  
15 who exercises reasonable care in selecting a third person to provide any  
16 medical or other care, treatment or service for the ward be liable for any  
17 injury to the ward resulting from the wrongful conduct of that third  
18 person.

19 (e) A guardian shall not have the power:

20 (1) To prohibit the marriage or divorce of the ward;

21 (2) to consent, on behalf of the ward, to the termination of the ward's  
22 parental rights;

23 (3) to consent to the adoption of the ward, unless approved by the  
24 court;

25 (4) to consent, on behalf of the ward, to any psychosurgery, removal  
26 of any bodily organ, or amputation of any limb, unless such surgery, re-  
27 moval or amputation has been approved in advance by the court, except  
28 in an emergency and when necessary to preserve the life of the ward or  
29 to prevent serious and irreparable impairment to the physical health of  
30 the ward;

31 (5) to consent, on behalf of the ward, to the sterilization of the ward,  
32 unless approved by the court following a due process hearing held for  
33 the purposes of determining whether to approve such, and during which  
34 hearing the ward is represented by an attorney appointed by the court;

35 (6) to consent, on behalf of the ward, to the performance of any  
36 experimental biomedical or behavioral procedure on the ward, or for the  
37 ward to be a participant in any biomedical or behavioral experiment, with-  
38 out the prior review and approval of such by either an institutional review  
39 board as provided for in title 45, part 46 of the code of federal regulations,  
40 or if such regulations do not apply, then by a review committee estab-  
41 lished by the agency, institution or treatment facility at which the pro-  
42 cedure or experiment is proposed to occur, composed of members se-  
43 lected for the purposes of determining whether the proposed procedure

1 or experiment:

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

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

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

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

22 (B) if the ward, prior to the court's appointment of a guardian pur-  
23 suant to K.S.A. 59-3067, and amendments thereto, shall have executed a  
24 durable power of attorney for health care decisions pursuant to K.S.A.  
25 58-629, and amendments thereto, and such shall not have been revoked  
26 by the ward prior thereto, and there is included therein any provision  
27 relevant to the withholding or withdrawal of life-saving or life-sustaining  
28 medical care, treatment, services or procedures, then the guardian shall  
29 have the authority to act as provided for therein, even if the guardian has  
30 revoked or otherwise amended that power of attorney pursuant to the  
31 authority of K.S.A. 58-627, and amendments thereto, or the guardian may  
32 allow the agent appointed by the ward to act on the ward's behalf if the  
33 guardian has not revoked or otherwise amended that power of attorney;  
34 or

35 (C) in the circumstances where the ward's treating physician shall  
36 certify in writing to the guardian that the ward is in a persistent vegetative  
37 state or is suffering from an illness or other medical condition for which  
38 further treatment, other than for the relief of pain, would not likely pro-  
39 long the life of the ward other than by artificial means, nor would be likely  
40 to restore to the ward any significant degree of capabilities beyond those  
41 the ward currently possesses, and which opinion is concurred in by either  
42 a second physician or by any medical ethics or similar committee to which  
43 the health care provider has access established for the purposes of re-

1 viewing such circumstances and the appropriateness of any type of phy-  
2 sician's order which would have the effect of withholding or withdrawing  
3 life-saving or life sustaining medical care, treatment, services or proce-  
4 dures. Such written certification shall be approved by an order issued by  
5 the court;

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

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

15 (B) either the court requires the guardian to report to the court the  
16 commencement of the exercising of such authority, or requires the guard-  
17 ian to specifically request of the court the authority to commence the  
18 exercise of such authority, as the court shall specify; and

19 (C) the court also requires the guardian, whenever the combined  
20 value of such funds and property exceeds \$10,000, to:

21 (i) File a guardianship plan as provided for in K.S.A. 59-3076, and  
22 amendments thereto, which contains elements similar to those which  
23 would be contained in a conservatorship plan as provided for in K.S.A.  
24 59-3078, and amendments thereto;

25 (ii) petition the court for appointment of a conservator as provided  
26 for in K.S.A. 59-3058, 59-3059 or 59-3060, and amendments thereto; or

27 (iii) notify the court as the court shall specify that the value of the  
28 conservatee's estate has equaled or exceeded \$10,000, if the court has  
29 earlier appointed a conservator but did not issue letters of conservatorship  
30 pending such notification; and

31 (9) to place the ward in a treatment facility as defined in K.S.A. 59-  
32 3077, and amendments thereto, except if authorized by the court as pro-  
33 vided for therein.

34 (f) The guardian shall file with the court reports concerning the status  
35 of the ward and the actions of the guardian as the court shall direct  
36 pursuant to K.S.A. 59-3083, and amendments thereto.

37 Sec. 3. K.S.A. 59-3078 is hereby amended to read as follows: 59-  
38 3078. (a) (1) The individual or corporation appointed by the court to serve  
39 as the conservator shall carry out diligently and in good faith the general  
40 duties and responsibilities, and shall have the general powers and au-  
41 thorities, provided for in this section, as well as any specific duties, re-  
42 sponsibilities, powers and authorities assigned to the conservator by the  
43 court. In doing so, a conservator at all times shall be subject to the control

1 and direction of the court, and shall act in accordance with the provisions  
2 of any conservatorship plan filed with the court pursuant to K.S.A. 59-  
3 3079, and amendments thereto. The court shall have the authority to  
4 appoint counsel for the conservator, and the fees of such attorney may  
5 be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

6 (2) A conservator, in the exercise of the conservator's responsibilities  
7 and authorities, should become aware of the conservatee's needs and  
8 responsibilities. A conservator shall exercise authority only as necessitated  
9 by the conservatee's limitations. A conservator shall encourage the con-  
10 servatee to participate in the making of decisions affecting the conser-  
11 vatee's estate. A conservator shall encourage the conservatee to manage  
12 as much of the conservatee's estate as the conservatee is able to manage.  
13 A conservator shall consider and, to the extent possible, act in accordance  
14 with the expressed desires and personal values of the conservatee. A con-  
15 servator shall assist the conservatee in developing or regaining the skills  
16 and abilities necessary in order for the conservatee to be able to manage  
17 the conservatee's own estate. A conservator shall strive to assure that the  
18 personal, civil and human rights of the conservatee are protected. A con-  
19 servator shall at all times act in the best interests of the conservatee and  
20 shall exercise reasonable care, diligence and prudence.

21 (3) *A conservator who is an unrelated person shall avoid a conflict of*  
22 *interest or even the appearance of a conflict of interest. Impropriety or*  
23 *conflict of interest occurs where the conservator has some personal or*  
24 *agency interest that can be perceived as self-serving or adverse to the*  
25 *position or best interest of the conservatee. The conservator who is an*  
26 *unrelated person and who is not a financial institution serving as a con-*  
27 *servator, shall:*

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

30 (B) *be independent from all providers of services to the conservatee*  
31 *to ensure that the conservator remains free to challenge inappropriate or*  
32 *poorly delivered services and to advocate vigorously on behalf of the*  
33 *conservatee;*

34 (C) *not concurrently represent both the conservatee and the service*  
35 *provider;*

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

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

43 (F) *assist the conservatee in preparing and filing a petition for res-*

1 *toration upon request.*

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

4 (1) To pay the reasonable charges for the support, maintenance, care,  
5 treatment, habilitation and education of the conservatee in a manner suit-  
6 able to the conservatee's station in life and the value of the conservatee's  
7 estate; but nothing herein shall be construed to release a natural guardian  
8 from the ordinary obligations imposed by law for the support, mainte-  
9 nance, care, treatment, habilitation and education of the natural guard-  
10 ian's minor children;

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

14 (3) to separately possess and manage all the assets of the estate of  
15 the conservatee and to collect all debts and assert all claims in favor of  
16 the conservatee, and with the approval of the court, to compromise the  
17 same. The conservator shall keep any property of the conservatee's estate  
18 insured against theft, other loss or damage, in reasonable amounts based  
19 upon the value of the estate, and for the benefit of the conservatee or  
20 the conservatee's estate;

21 (4) to prosecute and defend all actions in the name of the conservatee  
22 or as necessary to protect the interests of the conservatee;

23 (5) to sell assets of the conservatee's estate when the interests of the  
24 conservatee or conservatee's estate require the sale thereof;

25 (6) to possess and manage any ongoing business that the conservatee  
26 was managing and operating prior to the appointment of the conservator,  
27 and to divest the conservatee's estate of any interests therein, with the  
28 approval of the court, when the conservator deems it in the best interests  
29 of the conservatee or the conservatee's estate to do so; and

30 (7) to invest all funds in a manner which is reasonably prudent in  
31 view of the value of the conservatee's estate, except as may be currently  
32 needed for payment of any debts and charges as provided for herein. If  
33 the conservator shall expend or invest any funds from the conservatee's  
34 estate for the purchase of any policy of insurance or annuity contract, the  
35 conservator shall reserve to the conservatee the right to change the ben-  
36 efiiciary thereof upon the termination of the conservatorship and of any  
37 guardianship which may have been established for the conservatee.

38 (c) A conservator shall not be obligated by virtue of the conservator's  
39 appointment to use the conservator's own financial resources for the sup-  
40 port of the conservatee.

41 (d) A conservator shall not be personally liable:

42 (1) To a third person for the acts of the conservatee solely by virtue  
43 of the conservator's appointment, nor shall a conservator who exercises



- 1 reasonable care in selecting a third person to provide any service to the  
2 conservatee's estate be liable for any loss to the conservatee's estate re-  
3 sulting from the wrongful conduct of that third person;
- 4 (2) on any mortgage note or by reason of the covenants in any in-  
5 strument of conveyance duly executed by the conservator in the conser-  
6 vator's representative capacity as authorized by the court;
- 7 (3) on a contract properly entered into in a fiduciary capacity in the  
8 course of administration of the estate unless the conservator fails to reveal  
9 in the contract the representative capacity and to identify the estate;
- 10 (4) for obligations arising from ownership or control of property of  
11 the estate or for other acts or omissions occurring in the course of ad-  
12 ministration of the estate unless the conservator is personally at fault;
- 13 (5) for any environmental condition on or injury resulting from any  
14 environmental condition on land owned or acquired by the conservatee's  
15 estate; or
- 16 (6) for retaining, until maturity, any security or investment which is  
17 included in the conservatee's estate at the time of the establishment of  
18 the conservatorship, even though such security or investment may not be  
19 considered prudent or reasonable.
- 20 (e) A conservator shall be entitled to receive on behalf of the con-  
21 servatee's estate any distributive share of the assets of an estate or trust,  
22 and shall have the same right as any other distributee or beneficiary to  
23 accept or demand distribution in kind, and may retain, until maturity, any  
24 security or investment so distributed to the conservator, even though such  
25 security or investment may not be considered prudent or reasonable.
- 26 (f) A conservator shall not have the power:
- 27 (1) To use the assets of a minor's estate to pay any obligation imposed  
28 by law upon the minor's natural guardian or natural guardians, including  
29 the support, maintenance, care, treatment, habilitation or education of  
30 the minor, except with the specific approval of the court granted upon a  
31 showing of extreme hardship;
- 32 (2) to sell, convey, lease or mortgage the conservatee's interest in the  
33 homestead of the conservatee, except with the approval of the court, and  
34 no conservator's deed or other instrument executed by virtue of the  
35 court's approval shall be valid unless the spouse, or if the spouse has been  
36 adjudicated a person with an impairment in need of a conservator, the  
37 conservator appointed for the spouse, shall join therein as one of the  
38 grantors thereof;
- 39 (3) to lease, except with the approval of the court, the possession or  
40 use of any real estate within the conservatee's estate for any period of  
41 greater than three years;
- 42 (4) to sell, convey or mortgage, except with approval of the court, any  
43 real estate within the conservatee's estate;

- 1 (5) to sell, convey, lease or mortgage, except with approval of the  
2 court, any oil, gas or other mineral interest within the conservatee's estate;
- 3 (6) to sell, convey, lease or mortgage, except with the approval of the  
4 court, the inchoate interest of the conservatee in any real estate the title  
5 to which is in the spouse of the conservatee, and no conservator's deed  
6 or other instrument executed by virtue of the court's approval shall be  
7 valid unless the spouse, or if the spouse has been adjudicated a person  
8 with an impairment in need of a conservator, the conservator appointed  
9 for the spouse, shall join therein as one of the grantors thereof;
- 10 (7) to extend, except with the approval of the court, an existing mort-  
11 gage in favor of the conservatee or conservatee's estate, for a period of  
12 more than five years;
- 13 (8) to extend, except with the approval of the court, an existing mort-  
14 gage which obligates the conservatee or the conservatee's estate, unless  
15 the extension agreement contains the same prepayment privileges, the  
16 rate of interest does not exceed the lowest rate in the mortgage extended,  
17 and the extension does not exceed five years; or
- 18 (9) to make any gift on behalf of the conservatee, except with the  
19 approval of the court upon a finding that:
- 20 (A) The conservatee had either in the past as a habit made similar  
21 gifts or declared an intent to make such a gift, or under the circumstances,  
22 would have made such a gift or gifts;
- 23 (B) sufficient funds and assets will remain in the conservatee's estate  
24 after the making of such a gift to meet the expected needs and respon-  
25 sibilities of the conservatee; and
- 26 (C) any person or entity who would have received the property to be  
27 gifted had the conservatee died at the time of the gift, but who is not the  
28 person or entity receiving the gift, has either consented to or agreed with  
29 the giving of the gift, in writing, or has received notice of the proposal to  
30 make the gift and been given the opportunity to request a hearing thereon  
31 by the court to be held prior to the court's approving the gift.
- 32 (g) The conservator shall file with the court, within 30 days of the  
33 court's issuance of letters of conservatorship as provided for in K.S.A. 59-  
34 3069, and amendments thereto, an initial inventory of all of the property  
35 and assets of the conservatee's estate, including any sources of regular  
36 income to the estate.
- 37 (h) The conservator shall file with the court accountings and other  
38 reports concerning the status of the estate and the actions of the conser-  
39 vator as the court shall direct pursuant to K.S.A. 59-3083, and amend-  
40 ments thereto.
- 41 Sec. 4. K.S.A. 59-3068, 59-3075 and 59-3078 are hereby repealed.
- 42 Sec. 5. This act shall take effect and be in force from and after its  
43 publication in the statute book.