

**SENATE BILL No. 74**

By Committee on Judiciary

1-11

10 AN ACT relating to the probate code; concerning the recovery of certain  
11 medical assistance; amending K.S.A. 59-2222, 59-2247 and 59-3086  
12 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 59-2222 is hereby amended to read as follows: 59-  
16 2222. (a) When a petition is filed for the probate of a will, for the deter-  
17 mination that the consent of a spouse to a will is a valid and binding  
18 consent, for administration or for refusal to grant letters of administration,  
19 the court shall fix the time and place for the hearing thereof. Notice of  
20 the hearing shall be given pursuant to K.S.A. 59-2209, *and amendments*  
21 *thereto*, unless the court makes an order to the contrary. If notice is by  
22 order of the court not required to be given pursuant to K.S.A. 59-2209,  
23 *and amendments thereto*, the court shall order notice of the hearing to  
24 be given, unless waived, in such manner as the court directs.

25 (b) When the petition seeks simplified administration, the notice shall  
26 advise all persons that under provisions for simplified administration the  
27 court need not supervise administration of the estate, and no notice of  
28 any action of the executor or administrator or other proceedings in the  
29 administration will be given, except for notice of final settlement of de-  
30 cedent's estate. The notice shall further advise all persons that if written  
31 objections to simplified administration are filed with the court, the court  
32 may order that supervised administration ensue.

33 (c) When a petition has been filed for the refusal of letters of admin-  
34 istration, pursuant to K.S.A. 59-2287, *and amendments thereto*, the notice  
35 given shall advise all persons that at such hearing exempt property and a  
36 reasonable allowance will be set aside to the surviving spouse and minor  
37 children, or both, and that no further notice of the proceeding will be  
38 given.

39 (d) When the state is a ~~proper~~ party, the notice shall be served upon  
40 the attorney general and the county or district attorney of the county.

41 (e) *If the decedent or a predeceased spouse of the decedent received*  
42 *medical assistance payment under subsection (e) of K.S.A. 39-709, and*  
43 *amendments thereto, or the laws of any other state, the state or states*

1 *providing such payment or payments shall be considered a party. Notice*  
2 *shall be given to the agency or department responsible for the recovery*  
3 *of medical assistance in Kansas or, if a state other than Kansas, to the*  
4 *attorney general of such state or states; and the notice required by sub-*  
5 *section (d) shall not be given.*

6 Sec. 2. K.S.A. 59-2247 is hereby amended to read as follows: 59-  
7 2247. (a) The petition of an executor or an administrator for a final set-  
8 tlement and accounting, and a determination of the persons entitled to  
9 the estate of a decedent, shall, in addition to other requirements, contain:

- 10 (1) A statement of the account;  
11 (2) the names, residences, and addresses of the heirs, devisees, and  
12 legatees;  
13 (3) a description of the real estate and the interest of the decedent  
14 therein at the time of the decedent's death; ~~and~~  
15 (4) the nature and character of the respective claims of the heirs,  
16 devisees, and legatees of the decedent; *and*  
17 (5) *a statement that neither the decedent nor a predeceased spouse of*  
18 *the decedent were paid medical assistance under subsection (e) of K.S.A.*  
19 *39-709, and amendments thereto, or the laws of any other state, or, in the*  
20 *event that such assistance was paid for or to the decedent or a predeceased*  
21 *spouse of the decedent under subsection (e) of K.S.A. 39-709, and amend-*  
22 *ments thereto, or the laws of any other state, that the state making such*  
23 *payments was duly notified of the filing of the petition as required by*  
24 *K.S.A. 59-2222, and amendments thereto.*

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

30 Sec. 3. K.S.A. 59-3086 is hereby amended to read as follows: 59-  
31 3086. (a) At the time of or at any time after the filing of an accounting  
32 by the conservator, the conservator may file with the court a verified  
33 petition requesting a hearing on that accounting for the purposes of al-  
34 lowance and settlement. The petition shall include:

- 35 (1) The conservator's name and address, and if the conservator is also  
36 the guardian, that fact;  
37 (2) the conservatee's name, age, date of birth, address of permanent  
38 residence, and present address or whereabouts, if different from the con-  
39 servatee's permanent residence;  
40 (3) the name and address of the court appointed guardian, if different  
41 from the conservator;  
42 (4) the names and addresses of any spouse, adult children and adult sib-  
43 grandchildren of the conservatee, and those of any parent and adult sib-

1 lings of the conservatee, or if no such names or addresses are known to  
2 the petitioner, the name and address of at least one adult who is nearest  
3 in kinship to the conservatee, or if none, that fact. If no such names or  
4 addresses are known to the conservator, but the conservator has reason  
5 to believe that such persons exist, then the petition shall state that fact  
6 and that the conservator has made diligent inquiry to learn those names  
7 and addresses;

8 (5) the names and addresses of other persons, if any, whom the con-  
9 servator knows to have an interest in the matter, or a statement that the  
10 petitioner knows of no other persons having an interest in the matter;

11 (6) designation of the accounting period for which allowance and set-  
12 tlement is sought; and

13 (7) a request that this accounting be accepted and that the court issue  
14 an order providing that all matters related thereto are finally allowed and  
15 settled.

16 (b) Upon the filing of such a petition, the court shall issue an order  
17 fixing the date, time and place of a hearing on the petition, which hearing  
18 may be held forthwith and without further notice if those persons named  
19 within the petition pursuant to the requirement of subsections (a)(3),  
20 (a)(4) and (a)(5), as applicable, have entered their appearances, waived  
21 notice, and agreed to the court's accepting the accounting and issuing an  
22 order of final allowance and settlement. Otherwise, the court shall require  
23 the conservator to give notice of this hearing to such persons in such  
24 manner as the court may specify, including therewith a copy of the con-  
25 servator's petition and a copy or copies of the accounting or accountings  
26 for which the conservator requests an order of final allowance and settle-  
27 ment. This notice shall advise such persons that if they have any objections  
28 to the accounting or accountings for which final allowance and settlement  
29 is sought that they must file their written objections with the court prior  
30 to the scheduled hearing or that they must appear at the hearing to pres-  
31 ent those objections. The court may appoint an attorney to represent the  
32 conservatee in this matter similarly as provided for in subsection (a)(3) of  
33 K.S.A. 59-3063, and amendments thereto, and in such event, the court  
34 shall require the conservator to also give this notice to that attorney.

35 (c) In the absence of a petition having been filed by the conservator  
36 pursuant to this section, the court may set a hearing to determine whether  
37 an order of final allowance and settlement should be issued with regard  
38 to any accounting which has been previously filed by the conservator, and  
39 may require the conservator or some other person to give notice thereof  
40 as provided for herein.

41 (d) The hearing shall be conducted in as informal a manner as may  
42 be consistent with orderly procedure. The court shall have the authority  
43 to receive all relevant and material evidence which may be offered, in-

1 cluding the testimony or written report, findings or recommendations of  
2 any professional or other person who has familiarity with the conservatee  
3 or the conservatee's estate. The court may review the court's prior orders,  
4 any conservatorship plan which has been filed pursuant to K.S.A. 59-3079,  
5 and amendments thereto, and any reports and accountings which have  
6 been filed by the guardian or conservator, or both, even if previously  
7 approved or allowed, to determine whether the current accounting seems  
8 reasonable in light of the past reports or accountings, and to determine  
9 whether any further proceedings under this act may be appropriate. The  
10 court shall give to the conservator, to the conservatee, and to other in-  
11 terested persons, the opportunity to present evidence to the court con-  
12 cerning the actions of the conservator, the conservatee's estate and the  
13 recommendations of such persons.

14 (e) At the conclusion of the hearing, if the court finds, by a prepon-  
15 derance of the evidence, that the accounting accurately accounts for the  
16 conservatee's estate, shows appropriate administration on the part of the  
17 conservator, that any fees of the conservator are reasonable, and that due  
18 notice and an opportunity to be heard has been provided to any interested  
19 parties, the court shall approve the accounting and order that it is allowed  
20 and settled. Such allowance and settlement shall relieve the conservator  
21 and the conservator's sureties from liability for all acts and omissions  
22 which are fully and accurately described in the accounting, including the  
23 investments of the assets of the conservatee's estate.

24 (f) If the court finds by a preponderance of the evidence that the  
25 conservator has innocently misused any funds or assets of the conserva-  
26 tee's estate, the court shall order the conservator to repay such funds or  
27 return such assets to the conservatee's estate. If the court finds that the  
28 conservator has embezzled or converted for the conservator's own per-  
29 sonal use any funds or assets of the conservatee's estate, the court shall  
30 find the conservator liable for double the value of those funds or assets,  
31 as provided for in K.S.A. 59-1704, and amendments thereto. In either  
32 case, the court may order the forfeiture of the conservator's bond, or such  
33 portion thereof as equals the value of such funds or assets, including any  
34 lost earnings and the costs of recovering those funds or assets, including  
35 reasonable attorney fees, as the court may allow, and may require of the  
36 surety satisfaction thereof. Neither the conservator, nor the conservator's  
37 estate or surety, shall be finally released from such bond until the satis-  
38 faction thereof.

39 (g) At no time shall the conservator, or the conservator's estate or  
40 surety, be finally released from the bond required by the court pursuant  
41 to K.S.A. 59-3069, and amendments thereto until a final accounting has  
42 been filed, allowed and settled as provided for herein.

43 (h) ~~Upon the filing of a final accounting, reimbursement to the ap-~~

1 ~~appropriate agency for medical assistance payments, if any, received under~~  
2 ~~subsection (e) of K.S.A. 39-709, and amendments thereto, or similar laws~~  
3 ~~of any other state for or on behalf of conservatee or a predeceased spouse~~  
4 ~~of the conservatee, but only to the extent allowed by law, delivery of any~~  
5 ~~remaining funds and assets of the conservatee's estate to the person or~~  
6 ~~persons entitled thereto, and presentation to the court of a receipt for~~  
7 ~~such, the court may issue a final order of allowance and settlement as~~  
8 ~~provided for herein, and only thereby finally shall release the conservator,~~  
9 ~~the conservator's estate and the conservator's surety. **The court may**~~  
10 ~~**issue a final order of allowance and settlement upon the filing of a**~~  
11 ~~**final accounting and a finding by the court that the following have**~~  
12 ~~**occurred:**~~

13 ~~(1) **Reimbursement to the appropriate agency for any medical**~~  
14 ~~**assistance payments, if any, received under subsection (e) of K.S.A.**~~  
15 ~~**39-709, and amendment thereto, or any similar laws of any other**~~  
16 ~~**state for or on behalf of a conservatee or a predeceased spouse of**~~  
17 ~~**the conservatee, but only to the extent allowed by law;**~~

18 ~~(2) **delivery of any remaining funds and assets of the conser-**~~  
19 ~~**vatee's estate to the person or persons entitled to such funds or**~~  
20 ~~**assets; and**~~

21 ~~(3) **presentation to the court of receipts for subsections (1) and**~~  
22 ~~**(2).**~~

23 ~~**The conservator, the conservator's estate and the conservator's**~~  
24 ~~**surety shall be released upon the issuance of the court's final order**~~  
25 ~~**of allowance and settlement.**~~

26 Sec. 4. K.S.A. 59-2222, 59-2247 and 59-3086 are hereby repealed.

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