

Approved: Feb. 6, 1997  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice Chairperson Keith Schraad at 10:07 a.m. on February 5, 1997 in Room 514-S of the Capitol.

All members were present except: Senator Harris (excused)  
Senator Steffes (excused)

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: Shirley Moses, Department of Administration  
Richard Harmon, Kansas Bar Association  
Natalie Coe, Attorney

Minutes of the February 4 meeting were approved on a motion by Senator Bond and seconded by Senator Oleen. Motion carried

**SB 101 - Garnishment; responses to answer of garnishee**

Conferee Shirley Moses testified on behalf of the Department of Administration in favor of **SB 101** concerning garnishment answers and holding of funds. She explained that **SB 101** is an attempt to streamline the garnishment process for all employers. (Attachment 1) Senator Oleen moved to pass the bill out favorably, Senator Goodwin seconded. Motion carried.

**SB 105 - Creation of trusts by conservators in certain circumstances**

Conferee Richard Harmon testified on behalf of the Kansas Bar Association in favor of **SB 105**. The bill relates to the ability of conservators to create trusts. Mr. Harmon gave an overview of K.S.A. 59-3002 and 59-3019 (Attachment 2) and reviewed the Requirements of a "Pay-Back" Trust [42 USC S1396p(d) (4) (A)]. (Attachment 3). There were considerable questions asked by committee members and extensive discussion during which time, guest Natalie Coe, an attorney, requested to speak and testified in favor of **SB 105**.

**SB 106** was rescheduled for 2/6/97

The Chair adjourned the meeting at 11:02 a.m. The next scheduled meeting is Thursday February 6, 1997.



**TESTIMONY REGARDING SENATE BILL 101  
SENATE JUDICIARY COMMITTEE  
February 5, 1997, 10:00 a.m., Room 514-S**

Presented by Shirley A. Moses  
Director of Accounts and Reports

Mr. Chairman, Members of the Committee:

I am testifying today on behalf of the Department of Administration in support of SB 101 concerning garnishment answers and holding of funds.

SB 101 amends Chapter 60, Article 7 and Chapter 61, Article 20, concerning attachment and garnishment, and Chapter 61, Article 26 containing the appendix of forms. The bill affects all employers in the State of Kansas and establishes a time limit for responses to the "Answer of Garnishee" in order to eliminate old garnishments awaiting disposition. On behalf of the State of Kansas as an employer, the Division of Accounts and Reports expends considerable effort in processing garnishment documents, in excess of 2,500 annually. In a fairly significant number of cases the State, as garnishee, has filed its answer indicating that it is withholding funds but never receives an order disposing of the garnishment proceeds. Currently no time limit exists for the party initiating the garnishment to respond to the "Answer of Garnishee" and the employer may be required to hold garnished funds for an extended period of time. Continually monitoring the withheld moneys and the effort involved in attempting to dispose of these funds is burdensome to employers. The proposed legislation would allow the garnishee to return the withheld funds to the employee/defendant after 180 days have passed from the date the garnishee filed its answer. The amendments are an attempt to streamline the garnishment process for all employers.

Thank you for the opportunity to appear before the Committee today. I would be happy to answer any questions the Committee may have.

*Senate Judiciary*  
*Attachment 1*  
*2-5-97*

**History:** L. 1994, ch. 316, § 10; L. 1995, ch. 193, § 8; May 4.

**59-29a16. Same; confidential or privileged information and records.** In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in K.S.A. 59-29a03 and amendments thereto and determining whether a person is or continues to be a sexually violent predator. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.

**History:** L. 1995, ch. 193, § 9; May 4.

**59-29a17. Same; court records; sealed and opened by court order.** Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence under this act shall be part of the record but shall be sealed and opened only on order of the court or as provided in K.S.A. 59-29a01 et seq. and amendments thereto. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.

**History:** L. 1995, ch. 193, § 10; May 4.

**Article 30.—GUARDIANS OR CONSERVATORS**

**Cross References to Related Sections:**

Kansas guardianship program, see 74-9601 et seq.

**59-3002. Definitions.** When used in the act for obtaining a guardian or conservator, or both:

(a) "Disabled person" means any adult person whose ability to receive and evaluate information effectively or to communicate decisions, or both, is impaired to such an extent that the person lacks the capacity to manage such person's financial resources or, except for reason of indigency, to meet essential requirements for such person's physical health or safety, or both. A person shall not be considered to be disabled or to lack capacity to meet the essential requirements for physical health or safety for the sole reason such person relies upon or is being furnished treatment by spiritual means through prayer, in lieu of medical

treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which such person is a member or adherent.

(b) "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(c) "Meet essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is more likely than not to occur.

(d) "Guardian" means an individual or a non-profit corporation certified in accordance with K.S.A. 59-3037 and amendments thereto which has been appointed by a court to act on behalf of a ward and possessed of some or all of the powers and duties set out in K.S.A. 59-3018 and amendments thereto. "Guardian" does not mean natural guardian unless specified.

(e) "Natural guardian" means both the father and mother of a minor if neither parent has been found to be a disabled person or had parental rights terminated by a court of competent jurisdiction. If either parent of a minor dies, has been found to be a disabled person or has had parental rights terminated by a court of competent jurisdiction, the other shall be the natural guardian.

(f) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(g) "Minor" means any person defined by K.S.A. 38-101 and amendments thereto as being within the period of minority.

(h) "Proposed ward" means a person for whom a petition for the appointment of a guardian pursuant to K.S.A. 59-3006 and amendments thereto has been filed.

(i) "Proposed conservatee" means a person for whom a petition for the appointment of a conservator pursuant to K.S.A. 59-3006 and amendments thereto has been filed.

(j) "Ward" means a person who has a guardian.

(k) "Conservatee" means a person who has a conservator.

(l) The terms defined in K.S.A. 1996 Supp. 59-2946 and amendments thereto have the meanings provided by that statute.

*Senate Judiciary  
attachment 2  
2-5-97*

**59-3019. Conservator; rights and duties.** A conservator shall be subject to the control and direction of the court at all times and in all things. Such conservator shall: (1) Prosecute and defend for the conservatee; (2) sell assets of the estate when the interests of the conservatee and the estate require the sale thereof; (3) pay the reasonable charges for the support, maintenance, and education of the conservatee in a manner suitable to the conservatee's station in life and the value of the conservatee's estate; but nothing herein contained shall release a natural guardian from obligations imposed by law as to the support, maintenance, and education of such guardian's minor children; (4) pay all just and lawful debts of the conservatee and the reasonable charges incurred for the support, maintenance, and education of the conservatee's spouse and children; (5) possess and manage the estate, collect all debts and claims in favor of the conservatee, or with the approval of the court compromise the same; (6) possess and manage any going business that the conservatee was managing and operating prior to appointment of a conservator, when such conservator deems it in the best interest of the conservatee's estate; and (7) invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in: (A) Such securities as are proper for the investment of trust funds, including securities approved by the comptroller of the currency of the United States for the investment of trust funds by national banks; (B) direct obligations of this state, any county or city or school district in this state; (C) direct obligations of the United States government, and obligations, the interest and principal of which are both unconditionally guaranteed by the United States government; (D) legally issued notes of the owner of unencumbered real property located in this state secured by first mortgage or deed of trust thereon, if the total debt secured by such encumbrance does not exceed 50% of the actual cash value of such real property at the time of such investment; (E) the entire fee simple title to real estate or an interest therein, and also, with the approval of the court, the conservator may acquire title to real estate whenever necessary to reasonably protect the investment or interest of the conservatee in such property. The title to real property acquired by the conservator shall in all cases be taken in the name of the conservatee; (F) shares or savings deposits in a

federally insured savings and loan association; (G) insured time deposits or savings accounts in a bank within the state of Kansas, including such deposits or accounts in a bank operated by a conservator; (H) shares of investment trusts or mutual funds; (I) a contract or contracts for annuities or for life, health or accident insurance on the person of the ward, or of another in whom the ward has an insurable interest, or a combination of any such contracts, as long as any such contract is approved by the court, payable to the ward or to such ward's estate and is in the usual form and is issued by an insurance company authorized to do business in the state of Kansas. Any such contract shall reserve the right in the ward to change the beneficiary thereof after termination of such ward's disability or incompetency; (J) any other investment as may be otherwise now authorized by the laws of the state of Kansas.

Whenever and so long as the funds of the conservatee shall be invested as provided under (D) and (E) it shall be the duty of the conservator to cause to be insured and to keep insured any and all buildings or other improvements located on such real property against loss or damage by fire, lightning, windstorm or hail, or any combination thereof, in a reasonable amount for the benefit of the conservatee as such conservatee's interest may appear.

**History:** L. 1965, ch. 347, § 19; L. 1972, ch. 220, § 1; L. 1974, ch. 99, § 2; L. 1976, ch. 244, § 2; L. 1988, ch. 200, § 2; July 1.

**Research and Practice Aids:**

Guardian and Ward ⇐ 28 et seq.; Mental Health ⇐ 211 et seq.

C.J.S. Guardian and Ward §§ 69, 70; Insane Persons § 78.

**Law Review and Bar Journal References:**

Survey of decedents' estates, Frank Diehl, 15 W.L.J. 358, 362 (1976).

"Legislation 1978," David J. Heinemann, 47 J.B.A.K. 81, 86 (1978).

"Conservatorship: Mentally Competent Voluntary Conservatee Forfeits Power to Contract," Garry J. McCubbin, 19 W.L.J. 572 (1980).

"Minimizing Taxes at the Death of the Surviving Spouse," H. Joseph Price, Jr., 53 J.K.B.A. 164 (1984).

**Attorney General's Opinions:**

Management and investment of freeway funds; prudent person standard. 89-123.

**CASE ANNOTATIONS**

1. Controlling as to courts construction of instrument; intent of testator determined; trust created. *Schauf v. Thomas*, 209 K. 592, 601, 498 P.2d 256.

2. Cited in holding probate court not authorized to determine ownership and distribute assets in settling conser-

**REQUIREMENTS OF A "PAY-BACK" TRUST**

**[ 42 USC §1396p(d)(4)(A) ]**

1. Requirements of the Beneficiary:

- A. Beneficiary must be a "disabled person" (as defined by the Social Security Act;
- B. Beneficiary must be under the age of sixty-five (65) years when the Trust is established;

2. Requirements of the Trust:

- A. Trust must be funded with assets of the disabled person;
- B. Trust must be for the benefit of the disabled person;
- C. Trust can only be established by the disabled person's:
  - parent;
  - grandparent;
  - legal guardian; or
  - Court
- D. Upon the death of the disabled person, the assets remaining in the Trust must be paid to reimburse the State in the amount of Medicaid benefits which the disabled person received during his/her lifetime.

*Senate Judiciary*  
*Attachment 3*  
 2-5-77

A. INTENT

It is my intention by this trust to create a purely discretionary supplemental care fund for the benefit of \_\_\_\_\_.

It is not my intention to displace public or private financial assistance that may otherwise be available to [him or her]. The following enumerates the kinds of supplemental, non-support disbursements that are appropriate for my Trustee to make from this trust to or for my beneficiary. Such examples are not exclusive: medical, dental and diagnostic work and treatment for which there are no private or public funds otherwise available. Medical procedures that are desirable in my Trustee's discretion, even though they may not be necessary or life saving, may be appropriate care needs. Further, supplemental nursing care, and rehabilitative services are reasonably considered by my Trustee. Differentials in cost between housing and shelter for shared and private rooms in institutional settings may be paid by my Trustee in [his, her or its]

discretion.\* Care appropriate for my beneficiaries that assistance programs may not or do not otherwise provide are legitimately considered by my Trustee as well. Expenditures for travel, companionship, cultural experiences, and expenses in bringing my beneficiary's siblings and others for visitation with [him or her] are expenditures that may benefit my [child or parent] and may be considered by my Trustee.