

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 26, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Dean Newton - Excused

Representative Candy Ruff - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research

Jill Wolters, Department of Revisor of Statutes

Sherman Parks, Department of Revisor of Statutes

Cindy O'Neal, Committee Secretary

HB 2487 - Technical amendment to the Uniform Commercial Code Article 9

Representative DeCastro made the motion to adopt the balloon amendment (Attachment 1) proposed by the Office of Secretary of State. Representative Owens seconded the motion. The motion carried.

Representative DeCastro made the motion to report **Substitute HB 2487** favorably for passage. Representative Owens seconded the motion. The motion carried.

HB 2763 - Repealing two statutes that require certain size counties to provide courtroom and supplies for district courts as judges deem necessary

Representative O'Neal made the motion to adopt the balloon amendment (Attachment 2) which would repeal existing sections and add "adequately fund the operation of the district courts". Representative Loyd seconded the motion. The motion carried.

Representative Loyd made the motion to report **HB 2763** favorably for passage, as amended. Representative Owen seconded the motion. The motion carried.

HB 2802 - Kansas Law Enforcement Training Center Fund; increase on municipal court fee and remove the sunset on district court fees

Representative Pauls made the motion to report **HB 2802** favorably for passage. Representative Long seconded the motion.

Representative Klein worried that the proposed bill might be over funding the KLET and maybe some of the money should go to the courts. Chairman O'Neal pointed out that the "extra monies" would allow the KLET to operate until 2006 without requesting additional funds.

The motion carried.

HB 2979 - Storage fees, notice

Representative Long made the motion to report **HB 2979** favorably for passage. Representative Lloyd seconded the motion.

Representative DeCastro made a substitute motion to adopt the Kansas Bankers Association amendment (Attachment 3). Representative Crow seconded the motion. The motion carried.

Representative Long made the motion to make the following changes in the KBA amendment: change (2) to read "The person in possession of such vehicle can ascertain, by verification from the division of vehicles the name and address of the owner and any lienholders of record." Also, allow for the revisor to clean up grammar. Representative DeCastro seconded the motion. The motion carried.

CONTINUATION SHEET

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Representative Long made the motion to report **Substitute HB 2979** favorably for passage. Representative DiVita seconded the motion. The motion carried.

HB 2488 - Phasing in the use of the office of administration hearings over five year

Representative Long made the motion to report **HB 2488** favorably for passage. Representative Owens seconded the motion.

Representative Loyd made the motion to amend in the Attorney Generals amendment which would allow agency heads make an appointment to act on their behalf. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to restore the language on page 46, section 47-50, and amend the Department of Ag language on page 7. Representative Long seconded the motion. The motion carried.

Jill Wolters informed the committee that the dates need to be mover back one year and on page 37, line 17 the term "consumer credit commissioner" needs to be struck.

Representative Loyd made the motion to accept the revisors suggestions. Representative Owens seconded the motion. The motion carried.

Representative Loyd made the motion to report **Substitute HB 2488** favorably for passage. Representative Owens seconded the motion. The motion carried.

HB 2400 - Adoption; the genetic parents shall have independent legal advice; an attorney can not represent the parents and the petitioner or child agency

Committee discussion centered around the fact that attorneys already have the proposed responsibility. Therefore, no interest was shown in working the bill.

HB 2880 - Collection of DNA

Representative Shriver made the motion to report **HB 2880** favorably for passage. Representative Howell seconded the motion.

Representative Loyd made the motion to amend the Kansas Bureau of Investigation proposed balloon. Representative DeCastro seconded the motion. The motion carried

Representative Long made the motion to report **HB 2880** favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

HB 2399 - Kansas offender registration; juvenile offender adjudicated of a sex offense must register

Representative Pauls made the motion to amend in the decay factor for those under the age of 18 or after their first adjudication, or whichever is longest. Representative Klein seconded the motion. The motion carried.

Representative Lloyd made the motion to report **HB 2399** favorably for passage, as amended. Representative Loyd seconded the motion. The motion carried.

HB 2469 - The act for obtaining a guardian or a conservator or both

The committee was provided with a copy of the subcommittees balloon draft.(Attachment 4)

Representative Patterson made the motion to adopt the subcommittee balloon. Representative Owens seconded the motion. The motion carried.

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Representative Patterson made the motion to strike lines 20, 21, 22, & 23 on page 56. The affect of which would be each person would be responsible to pay their own attorney fees. Representative DeCastro seconded the motion. The motion carried

Representative Patterson made the motion have the bill state that in medical procedures the durable power or directive trumps, otherwise a court order would be needed. Representative Owens seconded the motion. The motion carried.

Representative Patterson made the motion to report **Substitute HB 2469** favorably for passage. Representative Pauls seconded the motion. The motion carried.

HB 2751 - Identity theft, identity of fictitious person and defrauding for any benefit

Representative Long made the motion to report **HB 2751** favorably for passage. Representative Dillmore seconded the motion.

Representative Long made the substitute motion to strike the words "real or fictitious" in line 19. Representative Loyd seconded the motion. The motion carried.

Representative Klein made the motion to have bifurcated sentences: one using an ID with the intention for economic benefit being a severity level 7 and the other using an ID with the intent of a non-economic benefit being a class A non-person misdemeanor. The motion carried.

Representative Dillmore made the motion to report **HB 2751** favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

HB 2774 - Participants in the sexual predator treatment program; annual examination by the secretary of SRS and the court; conditions of release

Representative Swenson made the motion to report **HB 2774** favorably for passage. Representative Shriver seconded the motion.

Representative Long made the substitute motion to table the bill. Representative Crow seconded the motion. The motion carried.

HB 2752 - Crimes of tampering with pipelines and theft of products from pipelines

Representative Owens made the motion to change on line 27 & 29, the severity level to a 5 non person felony. Representative Lloyd seconded the motion. The motion carried.

Representative Loyd made the motion to add in line 17 "gathering" and delete in lines 14, 15 & 19 "natural gas gathering lines". Representative Owens seconded the motion. The motion carried

Representative Owens made the motion to report **HB 2752** favorably for passage. Representative Crow seconded the motion. The motion carried.

HB 2735 - Aggravated battery includes unintentionally causing bodily harm while driving under the influence

Representative Dillmore made the motion to change the severity level in line 29 from 4 to 5 and in line 33 from 7 to 8. Representative Swenson seconded the motion. The motion carried.

Representative Long made the motion to report **HB 2735** favorably for passage, as amended. Representative Dillmore seconded the motion. The motion carried.

HB 2085 - Increasing juror compensation to \$25 for first five days, \$50 for any days thereafter

CONTINUATION SHEET

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Representative Long made the motion to table the bill. No second was received.

Representative Crow made the motion to amend the bill so there would be no compensation for the first day and increase the amount to \$25 for one day for jury service. Representative Rehorn seconded the motion. The motion failed 7-8.

Representative DiVita made the motion to have jurors receive \$10 for the first two days of service and then once they are selected receive \$20. Representative Lloyd seconded the motion.

Representative Rehorn made the substitute motion to have jurors receive no compensation for the first day and then \$25 per day for any day the person serves on a jury panel. Representative Crow seconded the motion. With permission of the second Representative Rehorn amended his motion to have the person receive \$10 for the first day and then \$25 for any day thereafter. The motion carried.

Representative Lloyd made the motion to amend in **HB 2778 - breastfeeding exemption**.

Representative Swenson made a substitute motion to report **HB 2085** favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

The committee meeting adjourned at 6:15 p.m.

Substitute for HOUSE BILL NO. 2487

By Committee on Judiciary

AN ACT concerning the uniform commercial code; relating to secured transactions; amending K.S.A. 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-702 and 84-9-705 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 17-630 is hereby amended to read as follows: 17-630. Every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state, made to secure the payment of bonds issued or to be issued thereafter by any corporation which is an interstate gas pipeline company, or by any public utility as defined in K.S.A. 66-104 and amendments thereto except nothing herein shall apply to or affect railroad corporations, and every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state made to secure any indebtedness incurred under the rural electrification act of 1936, as amended (U.S. code, title 7, chapter 31), shall be executed and duly acknowledged and certified, as other instruments affecting real estate. Such mortgage or deed of trust, or satisfaction thereof shall be filed in the office of the secretary of state accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the instrument is filed in accordance with this section. The secretary shall certify that the instrument has been filed in the secretary's office by endorsing upon the original signed instrument the word "filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon file and index the endorsed instrument in accordance with part 5 of article 9 of the uniform commercial code, and amendments thereto. The instrument shall be effective upon the record until terminated and the secretary of state shall

remove the record one year after termination. The filing of such instrument in the office of the secretary of state shall be notice to all persons of the contents thereof and to all subsequent purchasers and encumbrancers of the rights and interests of the parties thereto as to property described in the filed instrument and property acquired subsequent to the execution thereof if the instrument so provides. Notwithstanding any provision of law to the contrary, no other filing of any such instrument shall be necessary. Any such mortgage or deed of trust filed in the office of the register of deeds of any county in this state may be refiled in the office of the secretary of state in the manner provided in this section. Such refiling shall thereafter as to any property not previously released from such mortgage or deed of trust be of the same effect as if the instrument had been originally filed in the office of the secretary of state. The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code, and amendments thereto.

Sec. 2. K.S.A. 58-244 is hereby amended to read as follows:
58-244. (a) To be perfected, the lien must have attached and the supplier entitled to the lien must have filed a lien-notification statement in the form provided for in K.S.A. 58-242, and amendments thereto, accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section, with the appropriate filing office under K.S.A. ~~84-9-401~~ 84-9-501 and amendments thereto within 20 days after the last date that agricultural production input was furnished. A lien-notification statement filed pursuant to this section shall include the date which notice was mailed to the lender and a statement signed by the supplier indicating that the lender did not respond to the lien-notification statement.

(b) Subject to the provisions of subsection (d) of K.S.A. 58-242, and amendments thereto, a lien that is not perfected

shall be entitled to the same priority as an unperfected security interest as determined by ~~K.S.A.-84-9-312~~ part 3 of article 9 of the uniform commercial code and amendments thereto.

(c) The filing officer shall file, index, amend, maintain, remove and destroy the lien-notification statement in the same manner as a financing statement filed under part ~~4~~ 5 of article 9 of the uniform commercial code and amendments thereto. The ~~secretary-of-state~~ filing officer shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part ~~4~~ 5 of article 9 of the uniform commercial code and amendments thereto.

Sec. 3. K.S.A. 66-1217 is hereby amended to read as follows:
66-1217. Any mortgage of real property or of both real property and personal property, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad company as defined in K.S.A. 66-180, and amendments thereto, or a public utility as defined in K.S.A. 66-104, and amendments thereto, shall be recorded in the office of the register of deeds of the county or counties in which the real property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording ~~and~~7. If the instrument so provides, the instrument shall be a lien on any real property and fixtures thereafter acquired subject to the mortgage or security agreement from the time of acquisition. If ~~said~~ such mortgage or security agreement includes personal property, a copy of ~~said~~ such mortgage or security agreement certified as true by the debtor or creditor, or an officer of either, shall also be filed with the secretary of state~~7-and-when~~ in accordance with part 5 of article 9 of the uniform commercial code and amendments thereto and accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section. When so filed the mortgage or security agreement shall be a lien on ~~said~~ such property described in ~~said~~ such mortgage or security

agreement from the time of said such filing, and if the instrument so provides, shall be a lien on any property thereafter acquired subject to the mortgage or security agreement from the time of acquisition~~7--and~~. The lien thereon shall be enforceable in accordance with the laws of this state governing mortgages of real estate. No other recording or filing of any such instrument shall be necessary, notwithstanding the provisions of any other statute. The instrument shall be effective upon the record until terminated and the filing officer shall remove the record one year after termination.

Sec. 4. K.S.A. 66-1219 is hereby amended to read as follows: 66-1219. The secretary of state shall maintain a file for mortgages, security agreements, and releases thereof of railroads and public utilities filed pursuant to this act~~7--and-he-shall receive-for-such-filing-a-fee-of-five-dollars-(\$5)~~. The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 or article 9 of the uniform commercial code and amendments thereto.

Sec. 5. K.S.A. 79-2616 is hereby amended to read as follows: 79-2616. (a) If a notice of federal lien, a refiling of a notice of federal lien or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) The secretary of state, the secretary shall cause the notice to be marked, held and indexed in accordance with ~~the provisions of subsection (4) of K.S.A. 84-9-403~~ part 5 of article 9 of the uniform commercial code, and amendments thereto, as if the notice were a financing statement within the meaning of the uniform commercial code, except the notice shall remain filed for 10 years from the date of filing, if the date of filing was on or after November 5, 1990, and liens filed prior to November 5, 1990, shall remain on file for a period of four years from the close of the preceding required refiling period; or

(2) any other officer described in K.S.A. 79-2614, and

amendments thereto, the officer shall endorse thereon the officer's identification and the date and time of receipt and file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice; the date and time of receipt, the title and address of the official or entity certifying the lien and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code; and

(2) cause a certificate of discharge or subordination to be marked, held and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in K.S.A. 79-2614, and amendments thereto, such officer shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index.

(d) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed pursuant to this act or pursuant to the uniform federal tax lien registration act, K.S.A. 79-2608 et seq., and amendments thereto, as it existed prior to the effective date of this act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. ~~The fee for a certificate is \$5. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of \$.25 per page, unless the filing officer is the secretary of state, in which case the fee shall~~

~~be--an-amount-fixed-by-the-secretary-of-state-and-approved-by-the
director-of-accounts-and-reports-pursuant-to-K.S.A.--45-2047--and
amendments-thereto.~~

Sec. 6. K.S.A. 79-2617 is hereby amended to read as follows:
79-2617. ~~The--fee-for-filing-and-indexing-each-notice-of-lien-or
certificate-or-notice-affecting-the-lien-is:~~

~~(1)--For-a-lien-on-real-estate, \$5;~~

~~(2)--for-a-lien-on-tangible-and-intangible-personal-property,
\$5;~~

~~(3)--for-a-certificate-of-discharge-or-subordination, \$5; and~~

~~(4)--for-all-other--notices,--except--for--a--certificate--of
release-or-nonattachment, \$2.~~ The filing officer shall charge the
same filing and information retrieval fees and credit the amounts
in the same manner as financing statements filed under part 5 of
article 9 of the uniform commercial code and amendments thereto.

Sec. 7. K.S.A. 2001 Supp. 84-9-102 is hereby amended to read
as follows: 84-9-102. (a) Definitions. In this article:

(1) "Accession" means goods that are physically united with
other goods in such a manner that the identity of the original
goods is not lost.

(2) "Account," except as used in "account for," means a
right to payment of a monetary obligation, whether or not earned
by performance, (A) for property that has been or is to be sold,
leased, licensed, assigned, or otherwise disposed of, (B) for
services rendered or to be rendered, (C) for a policy of
insurance issued or to be issued, (D) for a secondary obligation
incurred or to be incurred, (E) for energy provided or to be
provided, (F) for the use or hire of a vessel under a charter or
other contract, (G) arising out of the use of a credit or charge
card or information contained on or for use with the card, or (H)
as winnings in a lottery or other game of chance operated or
sponsored by a state, governmental unit of a state, or person
licensed or authorized to operate the game by a state or
governmental unit of a state. The term includes
health-care-insurance receivables. The term does not include:

(A) rights to payment evidenced by chattel paper or an instrument, (B) commercial tort claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit rights or letters of credit, or (F) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products: (A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property. Agricultural lien shall not include statutory liens.

(6) "As-extracted collateral" means: (A) Oil, gas, or other

minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii)

records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) Proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

- (A) The claimant is an organization; or
- (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

- (A) Is registered as a futures commission merchant under

federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and: (A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer

transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in ~~section--(2)~~ K.S.A. 84-7-201 (2), and

amendments thereto.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are: (A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to K.S.A. 2001 Supp. 84-9-519(a) and amendments thereto.

(37) "Filing office" means an office designated in K.S.A. 2001 Supp. 84-9-501 and amendments thereto as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to K.S.A. 2001 Supp. 84-9-526 and amendments thereto.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing

statement covering goods that are or are to become fixtures and satisfying K.S.A. 2001 Supp. 84-9-502(a) and (b) and amendments thereto. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (A) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument, a writing that would otherwise qualify as a certificate of deposit (defined in subsection (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the writing contains a limitation on transfer, or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service;
or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as

inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as a debtor under K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor" except as used in K.S.A. 2001 Supp. 84-9-310(c) and amendments thereto means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual,

means:

- (A) The spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds" except as used in K.S.A. 2001 Supp. 84-9-609(b) and amendments thereto means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) to the extent of the value of collateral and to the

extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to K.S.A. 2001 Supp. 84-9-620, 84-9-621 and 84-9-622 and amendments thereto.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must

maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under K.S.A. 84-2-401, 84-2-505, 84-2-711(3), 84-2a-508(5), 84-4-210 and 84-5-118 and amendments thereto.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to

the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Statutory lien" means liens created by K.S.A. 2-1319, 2-2608, 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220, 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and 84-7-209, and amendments thereto.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** The following definitions in other articles apply to this article:

"Applicant"	K.S.A. 84-5-102
"Beneficiary"	K.S.A. 84-5-102
"Broker"	K.S.A. 84-8-102
"Certificated security"	K.S.A. 84-8-102
"Check"	K.S.A. 84-3-104
"Clearing corporation"	K.S.A. 84-8-102
"Contract for sale"	K.S.A. 84-2-106
"Customer"	K.S.A. 84-4-104
"Entitlement holder"	K.S.A. 84-8-102
"Financial asset"	K.S.A. 84-8-102
"Holder in due course"	K.S.A. 84-3-302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	K.S.A. 84-5-102
"Issuer" (with respect to a security)	K.S.A. 84-8-102
"Lease"	K.S.A. 84-2a-103
"Lease agreement"	K.S.A. 84-2a-103
"Lease contract"	K.S.A. 84-2a-103
"Leasehold interest"	K.S.A. 84-2a-103
"Lessee"	K.S.A. 84-2a-103
"Lessee in ordinary course of business"	K.S.A. 84-2a-103
"Lessor"	K.S.A. 84-2a-103
"Lessor's residual interest"	K.S.A. 84-2a-103
"Letter of credit"	K.S.A. 84-5-102
"Merchant"	K.S.A. 84-2-104
"Negotiable instrument"	K.S.A. 84-3-104
"Nominated person"	K.S.A. 84-5-102
"Note"	K.S.A. 84-3-104
"Proceeds of a letter of credit"	K.S.A. 84-5-114
"Prove"	K.S.A. 84-3-103
"Sale"	K.S.A. 84-2-106
"Securities account"	K.S.A. 84-8-501

"Securities intermediary"	K.S.A. 84-8-102
"Security"	K.S.A. 84-8-102
"Security certificate"	K.S.A. 84-8-102
"Security entitlement"	K.S.A. 84-8-102
"Uncertificated security"	K.S.A. 84-8-102

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 8. K.S.A. 2001 Supp. 84-9-104 is hereby amended to read as follows: 84-9-104. **Requirements for control.** (a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account.

(b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Sec. 9. K.S.A. 2001 Supp. 84-9-306 is hereby amended to read as follows: 84-9-306. (a) **Governing law: issuers issuer's or nominated person's jurisdiction.** Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the

liability of the issuer or nominated person with respect to the letter-of-credit right as provided in K.S.A. 84-5-116 and amendments thereto.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under K.S.A. 2001 Supp. 84-9-308(d) and amendments thereto.

Sec. 10. K.S.A. 2001 Supp. 84-9-311 is hereby amended to read as follows: 84-9-311. (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt K.S.A. 2001 Supp. 84-9-310(a) and amendments thereto;

(2) any certificate-of-title law of this state covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and K.S.A. 2001 Supp. 84-9-313 and 84-9-316(d) and (e) and amendments thereto for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use

or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and K.S.A. 2001 Supp. 84-9-316(d) and (e) and amendments thereto, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling ~~or-leasing~~ goods of that kind, this section does not apply to a security interest in that collateral created by that person ~~as-debtor~~.

Sec. 11. K.S.A. 2001 Supp. 84-9-316 is hereby amended to read as follows: 84-9-316. (a) **General rule: effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in K.S.A. 2001 Supp. 84-9-301(1) or 84-9-305(c) and amendments thereto remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction

before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. A possessory security interest in collateral, other than goods covered by a certificate of title and as extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this state. Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interests interest becomes unperfected against purchasers. A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under K.S.A. 2001 Supp. 84-9-311(b) or 84-9-313 and amendments thereto are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four months after the goods had become

so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Sec. 12. K.S.A. 2001 Supp. 84-9-317 is hereby amended to read as follows: 84-9-317. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under K.S.A. 2001 Supp. 84-9-322 and amendments thereto; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected;
or

(B) on the conditions specified in K.S.A. 2001 Supp. 84-9-203 (b)(3) and amendments thereto, is met and a financing

statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-320 and 84-9-321 and amendments thereto, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 13. K.S.A. 2001 Supp. 84-9-331 is hereby amended to read as follows: 84-9-331. (a) **Rights under Articles 3, 7, and 8 not limited.** This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers

take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, and 8.

(b) **Protection under Article 8.** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an-adverse a claim under article 8.

(c) **Filing not notice.** Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

Sec. 14. K.S.A. 2001 Supp. 84-9-334 is hereby amended to read as follows: 84-9-334. (a) **Security interest in fixtures under this article.** A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing

before the goods become fixtures or within 20 days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if: (1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) the security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in K.S.A. 2001 Supp. 84-9-311(a)(2) and amendments thereto.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of ~~subsection (f)~~ paragraph (f)(2) priority. The priority of the security interest under ~~subsection (f)~~ paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails. Subsection (i) prevails over any inconsistent provisions of law of this state.

Sec. 15. K.S.A. 2001 Supp. 84-9-406 is hereby amended to read as follows: 84-9-406. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge the account debtor's obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of

the notification, the account debtor may discharge the account debtor's obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or ~~general~~ payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e), K.S.A. 84-2a-303 and K.S.A. 2001 Supp. 84-9-407, and amendments thereto, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the

account, chattel paper, payment intangible, or promissory note;
or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in K.S.A. 84-2a-303 and K.S.A. 2001 Supp. 84-9-407 and amendments thereto, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a

different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 16. K.S.A. 2001 Supp. 84-9-509 is hereby amended to read as follows: 84-9-509. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto, whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under K.S.A. 2001 Supp. 84-9-315(a)(1) and amendments thereto, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto.

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

- (1) The secured party of record authorizes the filing; or
- (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or (c) and amendments thereto, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

Sec. 17. K.S.A. 2001 Supp. 84-9-513 is hereby amended to read as follows: 84-9-513. (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

- (1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (2) the debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a).** To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

- (1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection

(a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510 and amendments thereto, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510, and amendments thereto, for purposes of K.S.A. 2001 Supp. 84-9-519(g), K.S.A. 2001 Supp. 84-9-522(a), and K.S.A. 2001 Supp. 84-9-523(c), and amendments thereto, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Sec. 18. K.S.A. 2001 Supp. 84-9-525 is hereby amended to read as follows: 84-9-525. ~~(a)~~ **Initial financing statement or other record: general rule.** The fee for filing and indexing a record under this part shall be provided by the secretary of

state.

Sec. 19. K.S.A. 2001 Supp. 84-9-608 is hereby amended to read as follows: 84-9-608. (a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~this-section~~ K.S.A. 2001 Supp. 84-9-607, and amendments thereto, in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under ~~this--section~~ K.S.A. 2001 Supp. 84-9-607, and amendments thereto, unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for

any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Sec. 20. K.S.A. 2001 Supp. 84-9-613 is hereby amended to read as follows: 84-9-613. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public ~~sale~~ disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in K.S.A. 2001 Supp. 84-9-614(3) and amendments thereto, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To:

Name of debtor, obligor, or other person to which
the notification is sent

From:

Name, address, and telephone number of secured
party

Name of Debtor(s):

Include only if debtor(s) are not an addressee

For a public disposition:

We will sell [or lease or license, as applicable] the describe collateral [to the highest qualified bidder] in public as follows:

Day and Date:

Time:

Place:

For a private disposition:

We will sell [or lease or license, as applicable] the describe collateral privately sometime after; [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$_____]. You may request an accounting by calling us at [telephone number].

Sec. 21. K.S.A. 2001 Supp. 84-9-615 is hereby amended to read as follows: 84-9-615. (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under K.S.A. 2001 Supp. 84-9-610, and amendments thereto, in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any

subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under ~~this--section~~ K.S.A. 2001 Supp. 84-9-610, and amendments thereto, unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

- (1) The debtor is not entitled to any surplus; and
- (2) the obligor is not liable for any deficiency.

(f) **Calculation of surplus or deficiency in disposition to person related to secured party.** The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Sec. 22. K.S.A. 2001 Supp. 84-9-625 is hereby amended to read as follows: 84-9-625. (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not

proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply with ~~a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto~~ may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-628 and amendments thereto:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under K.S.A. 2001 Supp. 84-9-626 and amendments thereto may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under K.S.A. 2001 Supp. 84-9-626 and amendments thereto may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) **Statutory damages: noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in

each case from a person that:

(1) Fails to comply with K.S.A. 2001 Supp. 84-9-208 and amendments thereto;

(2) fails to comply with K.S.A. 2001 Supp. 84-9-209 and amendments thereto;

(3) files a record that the person is not entitled to file under K.S.A. 2001 Supp. 84-9-509(a) and amendments thereto;

(4) fails to cause the secured party of record to file or send a termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or (c) and amendments thereto;

(5) fails to comply with K.S.A. 2001 Supp. 84-9-616(b)(1) and amendments thereto, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with K.S.A. 2001 Supp. 84-9-616(b)(2) and amendments thereto.

(f) **Statutory damages: noncompliance with K.S.A. 2001 Supp. 84-9-210 and amendments thereto.** A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto. A recipient of a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: noncompliance with K.S.A. 2001 Supp. 84-9-210 and amendments thereto.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under K.S.A. 2001 Supp. 84-9-210 and amendments thereto, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Sec. 23. K.S.A. 2001 Supp. 84-9-628 is hereby amended to read as follows: 84-9-628. (a) **Limitation of liability to--debtor**

or--obligor of secured party for noncompliance with article.

Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability to--debtor,--obligor,--another secured-party,--or-lienholder based on status as secured party. A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for

which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under K.S.A. 2001 Supp. 84-9-625(c)(2) and amendments thereto, for its failure to comply with K.S.A. 2001 Supp. 84-9-616 and amendments thereto.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under K.S.A. 2001 Supp. 84-9-625(c)(2) and amendments thereto, more than once with respect to any one secured obligation.

Sec. 24. K.S.A. 2001 Supp. 84-9-702 is hereby amended to read as follows: 84-9-702. (a) **Pre-effective date transactions or liens.** Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) and K.S.A. 2001 Supp. 84-9-304 and 84-9-703 through 84-9-709 and amendments thereto:

(1) Transactions and liens that were not governed by former article 9, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) **Pre-effective date proceedings.** This act does not affect an action, case, or proceeding commenced before this act takes effect.

Sec. 25. K.S.A. 2001 Supp. 84-9-705 is hereby amended to read as follows: 84-9-705. (a) **Pre-effective date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before this

act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one year after this act takes effect. An attached security interest becomes unperfected one year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) **Pre-effective date filing.** The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) **Pre-effective date filing in jurisdiction formerly governing perfection.** This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act. However, except as otherwise provided in subsections (d) and (e) and K.S.A. 2001 Supp. 84-9-706 and amendments thereto, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that

jurisdiction.

(e) **Application of subsection (c)(2) to transmitting utility financing statement.** Subsection (c)(2) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) **Application of Part 5.** A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

New Sec. 26. (a) **Pre-effective-date financing statement.** In this section, "pre-effective-date financing statement" means a financing statement filed before this act takes effect.

(b) **Applicable law.** After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: general rule.** Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in K.S.A. 2001 Supp.

84-9-501, and amendments thereto;

(2) an amendment is filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto, concurrently with, or after the filing in that office of, an initial financing statement that satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto; or

(3) an initial financing statement that provides the information as amended and satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto, is filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto.

(d) **Method of amending: continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under K.S.A. 2001 Supp. 84-9-705(d) and (f), and amendments thereto.

(e) **Method of amending: additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

Sec. 27. K.S.A. 2001 Supp. 84-1-105 is hereby amended to read as follows: 84-1-105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this act

specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. K.S.A. 84-2-402 and amendments thereto.

Applicability of the article on leases. K.S.A. 84-2a-105 and 84-2a-106, and amendments thereto.

Applicability of the article on bank deposits and collections. K.S.A. 84-4-102 and amendments thereto.

Applicability of the article on investment securities. K.S.A. 84-8-110 and amendments thereto.

Governing law in the article on funds transfers. K.S.A. 84-4a-507 and amendments thereto.

Letters of credit. K.S.A. 84-5-116 and amendments thereto.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. K.S.A. 2001 Supp. 84-9-301 through 84-9-307 and amendments thereto.

Sec. 28. K.S.A. 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-702 and 84-9-705 are hereby repealed.

Sec. 29. This act shall take effect and be in force from and after its publication in the Kansas Register

HOUSE BILL No. 2763

By Committee on Judiciary

House Judiciary
Attachment 2
2-26-02

2-4

9 AN ACT concerning courts; relating to courtrooms and supplies; re-
10 pealing K.S.A. 20-613a and 20-713.

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

12 Section 1. ~~K.S.A. 20-613a and 20-713 are hereby repealed.~~
13
14 Sec. 2. This act shall take effect and be in force from and after its
15 publication in the statute book.

amending K.S.A. 20-348 and K.S.A. 2001 Supp. 20-349
and repealing the existing sections;

K.S.A. 20-348 (See attached)

Sec. 2. K.S.A. 2001 Supp. 20-349 (See attached)

20-348,

and K.S.A. 2001 Supp. 20-349

Renumber remaining sections accordingly

K.S.A. 20-348 is hereby amended to read as follows: 20-348. Except for expenses required by law to be paid by the state, ~~from and after January 10, 1977,~~ the board of county commissioners of each county shall be responsible for all expenses incurred for the operation of the district court in the county.

have an obligation to adequately fund the operation of the district court in the county and

Sec. 2. K.S.A. 2001 Supp. 20-349 is hereby amended to read as follows: 20-349. The chief judge in each judicial district shall be responsible for the preparation of the budget to be submitted to the board of county commissioners of each county. The board of county commissioners shall then have final authority to determine and approve the budget for district court operations payable by their county. The judicial administrator of the courts shall prescribe the form upon which such budgets shall be submitted. The budget shall include all expenditures payable by the county for operations of the district court in such county. A separate budget shall be prepared for each county within the district and the judges of the district court shall approve the budget for the county in which such judges are regularly assigned prior to submission of such budget to the board of county commissioners. The compensation to be paid to district court personnel excluded from the judicial personnel classification system pursuant to subsection (b) of K.S.A. 20-162, and amendments thereto, shall be listed in the budget as a separate item for each job position. After the amount of such district court budget is established, the expenditures under such budget, other than expenditures for job positions contained in the budget, shall be under the control and supervision of the chief judge, subject to supreme court rules relating thereto, and the board of county commissioners shall approve all claims submitted by the chief judge within the

limits of such district court budget. ~~No~~
board of county commissioners shall decrease
such budget for district court operations to
a level below the amount of the 1978 calendar
year budget approved by the board of county
commissioners less the amount of compensation
and fringe benefits provided in such budget
for judges and other personnel positions
which are assumed by the state pursuant to
this act. The financial affairs of the
district court in each county including, but
not limited to, nonexpendable trust funds,
law library funds and court trustee
operations shall be subject to audit pursuant
to the provisions of K.S.A. 75-1122, and
amendments thereto, as part of the annual
county audit. Reports of fiscal or managerial
discrepancies or noncompliance with
applicable law shall be made to the judicial
administrator of the courts as well as the
board of county commissioners.

Vehicle Storage Notice Provisions

(a) Whenever any person, while lawfully in possession of a vehicle renders any service or otherwise charges a fee for the protection, storage or safekeeping of such vehicle and such storage fees remain unpaid for 30 days, that person shall provide notice to the owner and the lienholder of such vehicle if:

- (1) The name and address of the owner and lienholder are known to the person in possession of such vehicle; or
- (2) The person in possession of such vehicle can ~~easily~~ ascertain, by verification from the division of vehicles the name and address of the owner and any lienholders. *of record*

Notice shall be mailed by certified mail to the owner and any such lienholder identified. Failure to give such notice shall stop the imposition of storage fees until the notice provisions described in this section are complied with. Provided, however, such notice shall not be given if such owner ^{and} ~~or~~ lienholder has prior notice or actual knowledge by agreement or otherwise that such fees could be charged or imposed or were in fact being charged or imposed.

(b) The provisions of this section shall not apply to storage fees governed by KSA 8-1103 and amendments thereto.

HOUSE BILL No. 2469

By Committee on Judiciary

2-9

① Change all references to 2000 Supp. to 2001 Supp.

AN ACT concerning guardians and conservators; amending K.S.A. 17-2263, 17-2264, 17-5828, 17-5829, 38-1505, 39-789, 39-970, 44-513a, 58-629, 59-1701, 73-507, 76-12b04 and 77-201 and K.S.A. 2000 Supp. 9-1215, 9-1216, 58-24a15, 59-2946, 59-2948, 59-2949, 59-2951, 59-2960, 59-29b46, 59-29b48, 59-29b49, 59-29b51, 59-29b60, 60-304, 61-3004, 65-516, 65-5117 and 76-729 and repealing the existing sections; also repealing K.S.A. 59-3001, 59-3003, 59-3004, 59-3006, 59-3007, 59-3008, 59-3011, 59-3012, 59-3015, 59-3016, 59-3017, 59-3018, 59-3019, 59-3020, 59-3021, 59-3022, 59-3023, 59-3024, 59-3025, 59-3027, 59-3028, 59-3030, 59-3031, 59-3032, 59-3034, 59-3035, 59-3037 and 59-3038 and K.S.A. 2000 Supp. 59-3002, 59-3009, 59-3010, 59-3013, 59-3014, 59-3018a and 59-3026, 59-3029, 59-3036, 59-3039 and 60-304a.

59-2203;
39-970,
59-2401,

HOUSE BILL No. 2469

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

New Section 1. The act shall be known and may be cited as the act for obtaining a guardian or a conservator, or both.

New Sec. 2. When used in the act for obtaining a guardian or a conservator, or both:

(a) "Adult with an impairment in need of a guardian or a conservator, or both" means a person 18 years of age or older, or a minor who is considered to be of the age of majority pursuant to K.S.A. 38-101, and amendments thereto, or upon whom the rights of majority have been conferred pursuant to K.S.A. 38-108, and amendments thereto, whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired such that the person lacks the capacity to manage such person's estate, or to meet essential needs for physical health, safety or welfare, and who is in need of a guardian or a conservator, or both.

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

(c) "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 section 29, and amendments thereto.

Change all references to 2000 Supp. to 2001 Supp.

HOUSE BILL No. 2469

By Committee on Judiciary

4-2
A

9 AN ACT concerning guardians and conservators; amending K.S.A. 17-
10 2263, 17-2264, 17-5828, 17-5829, 38-1505, 39-789, 39-970, 44-513a,
11 58-629, 59-1701, 73-507, 76-12b04 and 77-201 and K.S.A. 2000 Supp.
12 9-1215, 9-1216, 58-24a15, 59-2946, 59-2948, 59-2949, 59-2951, 59-
13 2960, 59-29b46, 59-29b48, 59-29b49, 59-29b51, 59-29b60, 60-304, 61-
14 3004, 65-516, 65-5117 and 76-729 and repealing the existing sections;
15 also repealing K.S.A. 59-3001, 59-3003, 59-3004, 59-3006, 59-3007,
16 59-3008, 59-3011, 59-3012, 59-3015, 59-3016, 59-3017, 59-3018, 59-
17 3019, 59-3020, 59-3021, 59-3022, 59-3023, 59-3024, 59-3025, 59-3027,
18 59-3028, 59-3030, 59-3031, 59-3032, 59-3034, 59-3035, 59-3037 and
19 59-3038 and K.S.A. 2000 Supp. 59-3002, 59-3009, 59-3010, 59-3013,
20 59-3014, 59-3018a and 59-3026, 59-3029, 59-3036, 59-3039 and 60-
21 304a.

22
23 *Be it enacted by the Legislature of the State of Kansas:*

24 New Section 1. The act shall be known and may be cited as the act
25 for obtaining a guardian or a conservator, or both.

26 New Sec. 2. When used in the act for obtaining a guardian or a con-
27 servator, or both:

28 (a) "Adult with an impairment in need of a guardian or a conservator,
29 or both" means a person 18 years of age or older, or a minor who is
30 considered to be of the age of majority pursuant to K.S.A. 38-101, and
31 amendments thereto, or upon whom the rights of majority have been
32 conferred pursuant to K.S.A. 38-108, and amendments thereto, whose
33 ability to receive and evaluate relevant information, or to effectively com-
34 municate decisions, or both, even with the use of assistive technologies
35 or other supports, is impaired such that the person lacks the capacity to
36 manage such person's estate, or to meet essential needs for physical
37 health, safety or welfare, and who is in need of a guardian or a conservator,
38 or both.

39 (b) "Conservatee" means a person who has a conservator.

40 (c) "Conservator" means an individual or a corporation who is ap-
41 pointed by the court to act on behalf of a conservatee and who is possessed
42 of some or all of the powers and duties set out in section 29, and amend-
43 ments thereto.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be an adult with an impairment in need of a guardian under this act for that reason alone, nor considered to lack the capacity to meet essential needs for physical health, safety or welfare because of such person's reliance upon such treatment.

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

or which
or which

[reletter all subsequent subsections]

1 (d) "Guardian" means an individual, ~~a corporation~~ or a ~~nonprofit~~ cor-
 2 poration certified in accordance with section 21, and amendments
 3 thereto, who or which ~~has been~~ appointed by a court to act on behalf of
 4 a ward, and who or which is possessed of some or all of the powers and
 5 duties set out in section 26, amendments thereto. "Guardian" does not
 6 mean a "natural guardian" unless specified.

7 (e) "In need of a guardian" means a person who because of both an
 8 impairment and the lack of appropriate alternatives for meeting essential
 9 needs, requires the appointment of a guardian.

10 (f) "In need of a conservator" means a person who because of both
 11 an impairment and the lack of appropriate alternatives for managing such
 12 person's estate, requires the appointment of a conservator.

13 (g) "Manage such person's estate" means making those determina-
 14 tions and taking those actions which are reasonably necessary in order for
 15 a person to receive and account for personal or business income, benefits
 16 and property, whether real, personal or intangible, and except for reasons
 17 of indigency, to purchase or otherwise obtain necessary goods or services,
 18 to pay debts and expenses, to sell, exchange or otherwise dispose of prop-
 19 erty, and to plan for future accumulation, conservation, utilization, in-
 20 vestment, and other disposition of financial resources.

21 (h) "Meet essential needs for physical health, safety or welfare"
 22 means making those determinations and taking those actions which are
 23 reasonably necessary in order for a person to obtain or be provided with
 24 shelter, sustenance, personal hygiene or ~~medical~~ care, and without which
 25 serious illness or injury is likely to occur.

26 (i) "Minor" means any person defined by K.S.A. 38-101, and amend-
 27 ments thereto, as being within the period of minority.

28 (j) "Minor with an impairment in need of a guardian or a conservator,
 29 or both" means a person under 18 years of age who otherwise meets the
 30 definition of an "adult with an impairment in need of a guardian or con-
 31 servator, or both" and whose impairment is expected to continue beyond
 32 the age of 18.

33 (k) "Natural guardian" means both the biological or adoptive mother
 34 and father of a minor if neither parent has been found to be an adult with
 35 an impairment in need of a guardian or has had parental rights terminated
 36 by a court of competent jurisdiction. If either parent of a minor is de-
 37 ceased, or has been found to be an adult with an impairment in need of
 38 a guardian or has had parental rights terminated by a court of competent
 39 jurisdiction, then the other parent shall be the natural guardian, unless
 40 also deceased, or found to be an adult with an impairment in need of a
 41 guardian, or has had parental rights terminated by a court of competent
 42 jurisdiction, in which case no person shall qualify as the natural guardian.

43 (l) "Person who has been previously adjudged as impaired in another

is

health

1 state" means a person who has been duly adjudged by a court of com-
2 petent jurisdiction of any other state to be unable to meet essential needs
3 for physical health, safety or welfare or to manage such person's estate
4 and for whom a guardian or a conservator, or other similarly empowered
5 fiduciary, has been appointed by that court, but who now resides within
6 Kansas or for whom plans have been made by such person's guardian or
7 other fiduciary to relocate the person to Kansas.

8 (m) "Person in need of an ancillary conservator" means a person not
9 residing within Kansas, who has been duly adjudged by a court of com-
10 petent jurisdiction of another state to be unable to manage such person's
11 estate and for whom a conservator or other fiduciary of the person's estate
12 has been appointed by that court.

13 (n) "Proposed ward" means a person for whom a petition for the
14 appointment of a guardian pursuant to section 9, 10, 11 or 12, and amend-
15 ments thereto, has been filed.

16 (o) "Proposed conservatee" means a person for whom a petition for
17 the appointment of a conservator pursuant to section 9, 10, 11, 12 or 13,
18 and amendments thereto, has been filed.

19 (p) "Ward" means a person who has a guardian.

20 (q) The terms defined in K.S.A. 2000 Supp. 59-2946 and 59-29b46,
21 and amendments thereto, have the meanings provided by those statutes.

22 New Sec. 3. In computing the date upon or by which any act must
23 be done or hearing held under provisions of this article, the day on which
24 an act or event occurred and from which a designated period of time is
25 to be calculated shall not be included, but the last day in a designated
26 period of time shall be included unless that day falls on a Saturday, Sunday
27 or legal holiday, in which case the next day which is not a Saturday, Sunday
28 or legal holiday shall be considered to be the last day.

29 New Sec. 4. (a) A natural guardian shall have the right to the custody
30 of the natural guardian's minor child and the right to exercise control over
31 the person of the natural guardian's minor child as provided by law, unless
32 a guardian has been appointed for the minor. The natural guardian of
33 such minor has the right and responsibility to hold in trust and manage
34 such person's estate for such person's benefit all of the personal and real
35 property vested in such minor when the total of such property does not
36 exceed \$10,000 in value, unless a guardian or conservator has been ap-
37 pointed for the minor.

38 (b) Nothing in this act shall be construed to relieve a natural guardian
39 of any obligation imposed by law for the support, maintenance, care,
40 treatment, habilitation or education of that natural guardian's minor child.

41 New Sec. 5. (a) Any natural guardian, by last will, may nominate a
42 conservator of only that portion of the estate of such guardian's minor
43 child, whether born at the time of the execution of the will or afterwards,

, and who has property in Kansas for which a conservator is required.

1 which is devised or bequeathed by such natural guardian to the child.

2 (b) A surviving natural guardian, by last will or by a trust instrument
3 establishing an inter vivos trust, may nominate a guardian or conservator,
4 or both, for any of such guardian's minor children, whether born at the
5 time of the execution of the will or trust instrument or afterwards.

6 (c) The nominated guardian or conservator, if a fit and proper person,
7 shall be ~~strongly considered~~ by the district court to be appointed pursuant appointed
8 to section 19, and amendments thereto, if it is found, during the trial held 18
9 pursuant to section ~~17~~ and amendments thereto, that a guardian or con-
10 servator, or both, should be appointed for the minor child of the testator
11 or settlor.

12 New Sec. 6. (a) Any court having either control over or possession
13 of any amount of money not exceeding ~~\$50,000~~ \$100,000 the right to which is
14 vested in a minor, shall have the discretion to authorize, without the
15 appointment of a conservator or the giving of bond, and notwithstanding
16 the authority of a natural guardian as provided for in section 4, and
17 amendments thereto, the deposit of the money in a savings account of a
18 bank, credit union or savings and loan association, payable either to a
19 conservator, if one shall be appointed for the minor, or to the minor upon
20 attaining the age of 18 years.

21 (b) Any court having either control over or possession of any amount
22 of money not exceeding \$10,000, the right to which is vested in a minor,
23 shall have the discretion to order the payment of the money to any person,
24 including the natural guardian of the minor, or the minor. If the person
25 is the conservator for the minor, the court may waive or recommend the
26 waiver of the requirement of a bond. If the person is anyone other than
27 the minor, the court shall order that person to hold in trust and manage
28 such person's estate for such person's benefit.

29 (c) Any court having either control over or possession of any amount
30 of money not exceeding \$10,000, the right to which is vested in a person
31 for whom a guardian has been appointed, shall have the discretion to
32 authorize, without the appointment of a conservator or the giving of bond,
33 the deposit of the money in a savings account of a bank, credit union or
34 savings and loan association, payable to the guardian for the benefit of
35 the ward if authorized pursuant to subsection (e) ~~(9)~~ (8) of section 26, and
36 amendments thereto, payable to a conservator, if one shall be appointed
37 for the person, or payable to the ward on restoration to capacity.

38 New Sec. 7. An adult person for whom no guardian or conservator
39 has been appointed, and who is not a proposed ward or a proposed con-
40 servatee may file in the district court of the county of residence of such
41 person a verified petition requesting the appointment of a conservator
42 for the petitioner. The petition shall include:

43 (a) The person's name, age, date of birth, address of permanent res-

1 or proposed conservatee has requested. The proposed ward or proposed
 2 conservatee, if an adult, shall have the right to engage an attorney of the
 3 proposed ward's or proposed conservatee's own choice and, in such case,
 4 the attorney appointed by the court shall be relieved of all duties. Any
 5 appointment made by the court shall terminate upon a final determina-
 6 tion of the petition and any appeal therefrom, unless the court continues
 7 the appointment by further order. Thereafter, an attorney may be ap-
 8 pointed by the court if requested, in writing, by the ward, conservatee,
 9 guardian or conservator, or upon the court's own motion.

10 (4) An order fixing the date, time and a place that is in the best
 11 interests of the proposed ward or proposed conservatee, at which the
 12 proposed ward or proposed conservatee shall have the opportunity to
 13 consult with the court appointed attorney. This consultation shall be
 14 scheduled to occur not later than five days prior to the scheduled trial on
 15 the petition, provided that if an examination and evaluation as provided
 16 for in section 15, and amendments thereto, is ordered, then this consul-
 17 tation shall be scheduled to occur prior to the time at which that exami-
 18 nation and evaluation is scheduled to occur.

19 (5) A notice as provided for in section 17, and amendments thereto.

20 (6) An order for an examination and evaluation as provided for in
 21 section 15, and amendments thereto. If the petition is accompanied by a
 22 report of an examination and evaluation of the proposed ward or proposed
 23 conservatee, as provided for in section 9 or 11, and amendments thereto,
 24 and the court determines that such report meets the requirements of
 25 section 15, and amendments thereto, the court may determine that no
 26 additional examination or evaluation is required and that none shall be
 27 ordered unless requested by the proposed ward or proposed conservatee
 28 pursuant to subsection ~~(c)~~ of section 15, and amendments thereto.

29 (b) Upon the filing of a petition as provided for in section 10, and (d)
 30 amendments thereto, alleging that the proposed ward or proposed con-
 31 servatee is a minor in need of a guardian or conservator, or both, the
 32 court shall issue an order fixing the date, time and place of the trial on
 33 the petition. If the petition is filed on behalf of the minor by the minor's
 34 natural guardian, the time of the hearing designated in the order may be
 35 forthwith and without notice. In all other cases the trial shall be held no
 36 earlier than seven days or later than 21 days after the date of the filing
 37 of the petition, unless those persons or agencies entitled to notice pur-
 38 suant to subsection (d) of section 17, and amendments thereto, have en-
 39 tered their appearances, waived notice and consented to the appointment
 40 of the suggested guardian or conservator, or both, in which case the trial
 41 may be held forthwith and without notice.

42 (c) Upon the filing of a petition as provided for in section 12, and
 43 amendments thereto, alleging that the proposed ward or proposed con-

1 proposed conservatee's cognitive and functional abilities and limitations,
2 including adaptive behaviors and social skills, and, as appropriate, edu-
3 cational and developmental potential;

4 (4) a prognosis for any improvement and, as appropriate, any rec-
5 ommendation for treatment or rehabilitation;

6 (5) a list and description of any prior assessments, evaluations or ex-
7 aminations of the proposed ward or proposed conservatee, including the
8 dates thereof, which were relied upon in the preparation of this
9 evaluation;

10 (6) the date and location where this examination and evaluation oc-
11 curred, and the name or names of the professional or professionals per-
12 forming the examination and evaluation and such professional's
13 qualifications;

14 (7) a statement by the professional that the professional has person-
15 ally completed an independent examination and evaluation of the pro-
16 posed ward or proposed conservatee, or by a professional on behalf of
17 the professionals who have together completed an independent exami-
18 nation and evaluation of the proposed ward or proposed conservatee that
19 they have done so, and that the report submitted to the court contains
20 the results of that examination and evaluation, and the professional's or
21 professionals' opinion with regard to the issues of whether or not the
22 proposed ward or proposed conservatee is an adult or a minor with an
23 impairment in need of a guardian or conservator, or both, and, if ascer-
24 tainable, whether it would be injurious to the proposed ward or proposed
25 conservatee to be required to be present at the trial on the petition, or
26 whether the proposed ward or proposed conservatee could meaningfully
27 participate in those proceedings; and

who may be

28 (8) the signature of the professional who prepared the report.

29 (c) The professional shall file with the court, at least five days prior
30 to the date of the trial, such professional's written report concerning the
31 examination and evaluation ordered by the court. The report shall be
32 made available by the court to counsel for all parties.

33 (d) In lieu of entering an order for an examination and evaluation as
34 provided for herein, the court may determine that the report accompa-
35 nying the petition as provided for in subsection (c) of section 9 or sub-
36 section (c) of section 11, and amendments thereto, is in compliance with
37 the requirements of this section and that no further examination or eval-
38 uation should be required, unless the proposed ward or proposed con-
39 servatee, or such person's attorney, requests such an examination and
40 evaluation in writing. Any such request shall be filed with the court, and
41 a copy thereof delivered to the petitioner, at least four days prior to the
42 date of the trial. Accompanying the request shall be a statement of the
43 reasons why an examination and evaluation is requested and the name

1 and address of a qualified professional or facility willing and able to con-
2 duct this examination and evaluation. If the court orders a further ex-
3 amination and evaluation, the court may continue the trial and fix a new
4 date, time and place of the trial at a time not to exceed 30 days from the
5 date of the filing of the request.

6 New Sec. 16. (a) Upon the filing of a petition as provided for in
7 section 9, 10, 11, 12 or 13, and amendments thereto, or at any time
8 thereafter until the trial provided for in section 18, and amendments
9 thereto, the court may enter any of the following:

10 (1) An order for an investigation and report concerning the proposed
11 ward's or proposed conservatee's family relationships, past conduct, the
12 nature and extent of any property or income of the proposed ward or
13 proposed conservatee; whether the proposed ward or proposed conser-
14 vatee is likely to injure self or others, or other matters as the court may
15 specify. If requested to do so by the court, the secretary of social and
16 rehabilitation services shall conduct this investigation. Otherwise, the
17 court may appoint any other person who is qualified to conduct this in-
18 vestigation, and the costs of this investigation shall be assessed as provided
19 for in section ~~44~~ and amendments thereto.

§45

20 (2) Any orders requested or authorized pursuant to section ~~13~~ and
21 amendments thereto.

24

22 (3) For good cause shown, an order of continuance of the trial set
23 pursuant to section 14, and amendments thereto.

24 (4) For good cause shown, an order of advancement of the trial set
25 pursuant to section 14, and amendments thereto.

26 (5) For good cause shown, an order changing the place of the trial
27 set pursuant to section 14, and amendments thereto.

28 (6) A notice in the manner provided for in section 17, and amend-
29 ments thereto.

30 (b) Upon the filing of a petition as provided for in section 10, and
31 amendments thereto, alleging that the proposed ward or proposed con-
32 servatee is a minor in need of a guardian or conservator, or both, the
33 court may issue any of the following:

34 (1) An order of temporary custody of the minor.

35 (2) An order requiring that the minor appear at the time and place
36 of the trial set pursuant to subsection (b) of section 14, and amendments
37 thereto. If an order to appear is entered, but is later rescinded, the court
38 shall enter in the record of the proceedings the facts upon which the
39 court found subsequent to the issuance of the order that the presence of
40 the minor should be excused.

41 (3) An order appointing an attorney to represent the minor. The court
42 shall give preference, in the appointment of the attorney, to any attorney
43 who has represented the minor in other matters if the court has knowl-

1 vatee should be excused.

2 (3) An order for an examination and evaluation of the proposed ward
3 or proposed conservatee as may be specified by the court. The court may
4 order the proposed ward or proposed conservatee to submit to such an
5 examination and evaluation to be conducted through a general hospital,
6 psychiatric hospital, community mental health center, community devel-
7 opmental disability organization, or by a private physician, psychiatrist,
8 psychologist or other person appointed by the court who is qualified to
9 examine and evaluate the proposed ward or proposed conservatee. The
10 costs of this examination and evaluation shall be assessed as provided for
11 in section 44, and amendments thereto.

12 (4) A notice in the manner provided for in section 17, and amendments
13 thereto.

14 (e) Upon the filing of a petition as provided for in section 13, and
15 amendments thereto, alleging that the proposed conservatee is a person
16 in need of an ancillary conservator and requesting the appointment of an
17 ancillary conservator in Kansas, the court may issue any of the following:

18 (1) An order appointing an attorney to represent the proposed con-
19 servatee. In making this appointment, the court shall consider the ap-
20 pointment of any attorney who has represented the proposed conservatee
21 in other matters if the court has knowledge of that prior representation.
22 Any appointment made by the court shall terminate upon a final deter-
23 mination of the petition and any appeal therefrom, unless the court con-
24 tinues the appointment by further order. Thereafter, an attorney may be
25 appointed at any time if requested, in writing, by the conservatee or con-
26 servator, or upon the court's own motion.

27 (2) A notice in the manner provided for in section 17, and amendments
28 thereto.

29 New Sec. 17. (a) The notice required by subsection (a) (5) of ~~sections~~ *section*
30 ~~14 and 16~~ *[]*, and amendments thereto, and any notice which the court may
31 require pursuant to section 16, and amendments thereto, shall state:

32 (1) That a petition has been filed alleging that the proposed ward or
33 proposed conservatee is either an adult with an impairment in need of a
34 guardian or conservator, or both, or a minor in need of a guardian or
35 conservator, or both, or a minor with an impairment in need of a guardian
36 or conservator, or both, or a person who has been previously adjudged as
37 impaired in another state, or a person in need of an ancillary conservator,
38 and requesting the appointment of a guardian or a conservator, or both,
39 or an ancillary conservator in this state;

40 (2) the date, time and place when the trial upon the petition shall be
41 held;

42 (3) whether the proposed ward or proposed conservatee has been
43 ordered to appear at this trial, or whether the court has made any finding

1 made to the court by the person serving this notice. If the proposed ward
2 or proposed conservatee cannot be personally served with this notice
3 within Kansas, the court shall direct how this notice shall be served upon
4 the proposed ward or proposed conservatee.

5 (2) This notice shall be served on the attorney of the proposed ward
6 or proposed conservatee as soon as possible, but in no case later than 10
7 days prior to the date of the trial and immediate return thereof shall be
8 made to the court by the person serving this notice.

9 (3) The court may order that a copy of this notice shall be served on
10 such other persons as the court determines and in such manner as the
11 court directs.

12 (d) If the proposed ward or proposed conservatee is alleged to be a
13 minor in need of a guardian or conservator, or both, or a minor with an
14 impairment in need of a guardian or conservator, or both:

15 (1) This notice shall be served on the attorney appointed by the court
16 to represent the minor, if one has been appointed, and on those persons
17 and agencies, if any, required to be named by the petitioner pursuant to
18 subsection (b)(5) of section 10, and amendments thereto, as soon as pos-
19 sible, but in no case later than 10 days prior to the date of the trial and
20 immediate return thereof shall be made to the court by the person serving
21 this notice.

either
6
or subsection (b)(6) of section 11, and amendments
thereto,

22 (2) The court may order that a copy of this notice shall be served on
23 such other persons, including the minor, as the court determines and in
24 such manner as the court directs.

25 (e) If the proposed ward or proposed conservatee is alleged to be a
26 person who has been previously adjudged as impaired in another state:

27 (1) This notice shall be served on the attorney appointed by the court
28 to represent the proposed ward or proposed conservatee, if one has been
29 appointed, and on those persons and agencies, if any, required to be
30 named by the petitioner pursuant to subsections (b)(6) and (b)(7) of sec-
31 tion 12, and amendments thereto, as soon as possible, but in no case later
32 than 10 days prior to the date of the trial and immediate return thereof
33 shall be made to the court by the person serving this notice.

34 (2) The court may order that a copy of this notice shall be served on
35 such other persons, including the proposed ward or proposed conserva-
36 tee, as the court determines and in such manner as the court directs.

37 (f) If the proposed conservatee is alleged to be a person in need of
38 an ancillary conservator:

39 (1) This notice shall be served on the attorney appointed by the court
40 to represent the proposed conservatee, if one has been appointed, and
41 on those persons and agencies, if any, required to be named by the pe-
42 titioner pursuant to subsections (b)(5), (b)(6) and (b)(7) of section 13, and
43 amendments thereto as soon as possible, but in no case later than 10 days

6

1 with a trial being held pursuant to either the care and treatment act for
 2 mentally ill persons or the care and treatment act for persons with an
 3 alcohol or substance abuse problem persons not necessary for the conduct
 4 of the proceedings may be excluded as provided for in those Acts. The
 5 trial shall be conducted in as informal a manner as may be consistent with
 6 orderly procedure. The court shall have the authority to receive all rele-
 7 vant and material evidence which may be offered, including the testimony
 8 or written report, findings or recommendations of any professional or
 9 other person who has examined or evaluated the proposed ward or pro-
 10 posed conservatee and the testimony and written findings and recom-
 11 mendations of the secretary of social and rehabilitation services or any
 12 other person appointed by the court to conduct an investigation pursuant
 13 to section 19, and amendments thereto. Such evidence shall not be priv-
 14 ileged for the purpose of this trial.

16

15 (e) Upon completion of the trial:

16 (1) If the court finds by clear and convincing evidence that the pro-
 17 posed ward or proposed conservatee is an adult with an impairment in
 18 need of a guardian or a conservator, or both, or a minor in need of a
 19 guardian or a conservator, or both, or a minor with an impairment in need
 20 of a guardian or a conservator, or both, or a person who has been previ-
 21 ously adjudged as impaired in another state, the court, pursuant to section
 22 19, and amendments thereto, shall appoint a qualified and suitable indi-
 23 vidual or corporation as the guardian or conservator, or both, and shall
 24 specify what duties, responsibilities, powers and authorities as provided
 25 for in section 26, 27, 28, 29 or 30, and amendments thereto, the guardian
 26 or conservator shall have. If the court appoints co-guardians or co-con-
 27 servators, or both, the court shall specify whether such co-guardians or
 28 co-conservators, or both, shall have the authority to act independently, to
 29 act only in concert, or under what circumstances or with regard to what
 30 matter they may act independently and when they may act only in concert.

31 (2) If a jury has been demanded in the case of an adult and the jury
 32 finds by clear and convincing evidence that the proposed ward or pro-
 33 posed conservatee is unable to meet essential needs for physical health,
 34 safety or welfare, or is unable to manage such person's estate, then the
 35 court shall determine if the proposed ward or proposed conservatee is in
 36 need of a guardian or a conservator, or both, and if so, the court, pursuant
 37 to section 19, and amendments thereto, shall appoint a qualified and
 38 suitable individual or corporation as the guardian or conservator, or both,
 39 and shall specify what duties, responsibilities, powers and authorities as
 40 provided for in section 26, 27, 28, 29 or 30, and amendments thereto, the
 41 guardian or conservator shall have. If the court appoints co-guardians or
 42 co-conservators, or both, the court shall specify whether such co-guard-
 43 ians or co-conservators, or both, shall have the authority to act indepen-

1 dently or whether they shall be required to act only in concert.
 2 (3) If the court finds by clear and convincing evidence that the pro-
 3 posed conservatee is a person in need of an ancillary conservator, the
 4 court, pursuant to section 19, and amendments thereto, shall appoint a
 5 qualified and suitable individual or corporation as the ancillary conser-
 6 vator, and shall specify what duties, responsibilities, powers and author-
 7 ities as provided for in section 29 or 30, and amendments thereto, the
 8 ancillary conservator shall have. If the court appoints co-ancillary conser-
 9 vators, the court shall specify whether such co-ancillary conservators shall
 10 have the authority to act independently or whether they shall be required
 11 to act only in concert.

12 (f) If the court does not find by clear and convincing evidence that
 13 the proposed ward or proposed conservatee is an adult with an impair-
 14 ment in need of a guardian or a conservator, or both, or a minor in need
 15 of a guardian or a conservator, or both, or a minor with an impairment
 16 in need of a guardian or a conservator, or both, or a person who has been
 17 previously adjudged as impaired in another state, or a person in need of
 18 an ancillary conservator, or does not find that the proposed ward or pro-
 19 posed conservatee is in need of a guardian or a conservator, even though
 20 the jury has determined that the proposed ward or proposed conservatee
 21 is unable to meet essential needs for physical health, safety or welfare, or
 22 is unable to manage such person's estate, because other alternative means
 23 exist and are sufficient to meet those needs of the proposed ward or
 24 proposed conservatee, then the court shall deny the requested
 25 appointments.

1 appropriate alternatives

26 New Sec. 19. (a) The court in appointing a guardian or conservator
 27 shall give consideration to the individual or corporation suggested by:

- 28 (1) The petitioner;
- 29 (2) a natural guardian if such suggestion is made pursuant to section
- 30 5, and amendments thereto, or made in any other manner;

31 ~~(3) the proposed ward or proposed conservatee, if such suggestion is~~
 32 ~~made within any power of attorney or made in any other manner;~~

33 ~~(4) a minor who is the proposed ward or proposed conservatee, if~~
 34 ~~over 14 years of age; or~~

35 ~~(5) the spouse, adult child or other close family member of the pro-~~
 36 ~~posed ward or proposed conservatee;~~

37 (b) The court, in appointing a guardian or conservator, shall consider
 38 the workload and capabilities of any suggested guardian or conservator
 39 before making such appointment, and the court shall give particular at-
 40 tention in making such appointment to the number of other cases in
 41 which the suggested guardian or conservator, other than a corporation, is
 42 currently serving as guardian or conservator, or both, particularly if that
 43 number is more than 15 or more wards or conservatees, or both.

Priority in the following
 order to:
 (1)

nomination

(2) to the nominee of a
 natural guardian;

durable

or

(5) the petitioner

[and potential conflicts of
 interest of
 the proposed

proposed

, or both,

37
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Subject to KSA 59-3004, and amendments thereto,

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

6 New Sec. 20. (a) When the court appoints an individual or a corpo-
7 ration as a guardian, the court shall require that the individual or a rep-
8 resentative on behalf of the corporation file with the court an oath or
9 affirmation as required by K.S.A. 59-1702, and amendments thereto.

10 (b) When the court appoints an individual or a corporation as a con-
11 servator, except as provided for in subsections (c), (d) or (e), or in section
12 6, and amendments thereto, the court shall require that the individual or
13 a representative on behalf of the corporation file with the court a bond
14 in the amount of 125% of the combined value of the tangible and intan-
15 gible personal property in the conservatee's estate and the total of any
16 annual income from any source which the conservator may be expected
17 to receive on behalf of the conservatee, minus any reasonably expected
18 expenses, conditioned upon the faithful discharge of all the duties of the
19 conservator's trust according to law, and with sufficient sureties as deter-
20 ~~mined by the court.~~

may determine necessary or appropriate

21 (c) When the court appoints an individual or a corporation as a con-
22 servator pursuant to a request for a voluntary conservatorship as provided
23 for in section 7, and amendments thereto, and the person for whom the
24 voluntary conservatorship is established has requested that the individual
25 or corporation appointed not be required to file a bond, the court may
26 waive the filing of a bond; provided that the court may later require the
27 filing of a bond if circumstances so require.

28 (d) If, at the time of the appointment of a conservator, there is no
29 property in the possession of the conservatee requiring a conservatorship,
30 but the court finds that there is likely to be such at some point in time,
31 the court may waive the filing of a bond ~~at this time,~~ and order that the
32 conservator shall immediately file a report with the court upon either
33 coming into possession of any property of the conservatee; or if the con-
34 servatee becomes entitled to receive any property which ~~should require~~
35 ~~a conservatorship.~~ Upon the filing of such a report, the court, following
36 any hearing the court may determine appropriate, may require the con-
37 servator to file a bond as provided for herein.

the conservator
the conservator believes
be placed within the

38 (e) If the conservator appointed is the individual or corporation sug-
39 gested by a testator or settlor as provided for in section 5, and amend-
40 ments thereto, and the testator or settlor has provided by will or trust
41 that no bond should be required of such conservator, the court may waive
42 the filing of a bond; provided that the court ~~later~~ may require the filing
43 of a bond if circumstances so require.

later

1 (f) If the conservator is a bank having trust authority or a trust com-
2 pany organized and having its principal place of business within the state
3 of Kansas, the court may waive the filing of a bond.

4 (g) If the conservator appointed is under contract with the Kansas
5 guardianship program, the ~~Kansas guardianship program~~ shall act as sur-
6 ety on the bond. The court shall order that a certified copy of the order
7 appointing a conservator who is under contract with the Kansas guardi-
8 anship program be sent to the director of the Kansas guardianship
9 program.

department of SRS

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10 (h) If the individual appointed as the guardian or as the conservator,
11 or both, resides outside of Kansas, the court shall require that person,
12 and in the case of a corporation being appointed as the guardian or the
13 conservator, or both, the court shall require a representative of the cor-
14 poration, to appoint, in writing, a resident agent pursuant to K.S.A. 59-
15 1706, and amendments thereto.

16 (i) Upon the filing of the required oath or bond, and appointment
17 and consent of a resident agent, the court shall issue letters of guardi-
18 anship to the guardian or letters of conservatorship to the conservator, or
19 both. The court may order that a certified copy of these letters be sent
20 to such persons or agencies as the court specifies.

Any

21 New Sec. 21. (a) ~~A private, nonprofit~~ corporation organized under
22 the Kansas general corporation code may act as guardian for an individual
23 found to be in need of a guardian under the act for obtaining a guardian
24 or conservator, or both, if the ~~private, nonprofit~~ corporation has been
25 certified by the secretary of social and rehabilitation services as a suitable
26 agency to perform the duties of a guardian.

27 (b) The secretary of social and rehabilitation services shall establish
28 criteria for determining whether a ~~private, nonprofit~~ corporation should
29 be certified as a suitable agency to perform the duties of a guardian. The
30 criteria shall be designed for the protection of the ward and shall include,
31 but not be limited to, the following:

32 (1) Whether the ~~private, nonprofit~~ corporation is capable of perform-
33 ing the duties of a guardian;

34 (2) whether the staff of the ~~private, nonprofit~~ corporation is accessible
35 and available to wards and to other persons concerned about their well-
36 being and is adequate in number to properly perform the duties and
37 responsibilities of a guardian;

38 (3) whether the ~~private, nonprofit~~ corporation is a stable organization
39 which is likely to continue in existence for some time; and

40 (4) whether the ~~private, nonprofit~~ corporation will agree to submit
41 such reports and answer such questions as the secretary may require in
42 monitoring corporate guardianships.

43 (c) Application for certification under this section shall be made to

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1 the secretary of social and rehabilitation services in such manner as the
2 secretary may direct. The secretary of social and rehabilitation services
3 may suspend or revoke certification of a ~~private, nonprofit~~ corporation
4 under this section, after notice and hearing, upon a finding that such
5 corporation has failed to comply with the criteria established by rules and
6 regulations under subsection (b). Such corporation shall not be appointed
7 as a guardian during the period of time the certificate is suspended or
8 revoked.

9 (d) No ~~private, nonprofit~~ corporation shall be eligible for certification
10 ~~under this section~~ if such corporation provides residential care ~~in an in-~~
11 ~~stitution or community based program~~ or is the owner, part owner or
12 operator of ~~an adult care home, lodging establishment or institution en-~~
13 ~~gaged in the care, treatment or housing of any person who is physically~~
14 ~~or mentally disabled or aged.~~

appointment as provided for in section 19
as the guardian of any person
, treatment or housing to that person
any

15 (e) The secretary of social and rehabilitation services may adopt rules
16 and regulations necessary to administer the provisions of this section.

utilized for

17 New Sec. 22. (a) At any time after the filing of the petition provided
18 for in section 9, 10, 11 or 12, and amendments thereto, but prior to the
19 trial thereon, the court, upon the request of the proposed ward or pro-
20 posed conservatee, or upon the court's own motion, may issue an order
21 of referral for trial to the district court of:

that
written

22 (1) The county of residence of the proposed ward or proposed
23 conservatee;

24 (2) the county wherein the proposed ward or proposed conservatee
25 may be found; or

26 (3) any other county, if the referral has been requested by the pro-
27 posed ward or proposed conservatee and the court finds that the proposed
28 ward or proposed conservatee cannot obtain a fair trial otherwise.

29 (b) If the petition filed pursuant to section 9, 10, 11 or 12, and amend-
30 ments thereto, is filed in a county in which the proposed ward or proposed
31 conservatee is found because the proposed ward or proposed conservatee
32 is confined to a psychiatric hospital, the court may not issue an order of
33 referral for trial pursuant to this section unless the proposed ward or
34 proposed conservatee has requested or consented to this referral.

35 (c) When any order of referral for trial has been issued pursuant to
36 this section, the court shall transmit to the district court to which the
37 referral has been made a certified copy of all pleadings and orders in the
38 case.

39 (d) Upon receipt of an order of referral for trial and certified copies
40 of the pleadings and orders in the case, the district court to which a
41 referral has been made shall cause notice of the referral for trial to be
42 given to all persons entitled to notice pursuant to section 17, and amend-
43 ments thereto, and shall thereafter proceed in the case as if the petition

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1 the trial provided for in section 18, and amendments thereto, any person
 2 may file in addition to that original petition, or as a part thereof, a verified
 3 petition requesting the appointment of a temporary guardian or a tem-
 4 porary conservator, or both, except if the petition alleges that the pro-
 5 posed conservatee is a person in need of an ancillary conservator, and
 6 requests the appointment of an ancillary conservator in Kansas, in which
 7 case the petition may request the appointment of a temporary ancillary
 8 conservator. The petition shall include:

- 9 (1) The petitioner's name and address;
- 10 (2) the proposed ward's or proposed conservatee's name, age, date
 11 of birth, address of permanent residence, and present address or where-
 12 abouts, if different from the proposed ward's or proposed conservatee's
 13 permanent residence;
- 14 (3) a statement that it is the petitioner's belief that there is an im-
 15 minent danger to the physical health or safety of the proposed ward re-
 16 quiring immediate action to be taken to protect the proposed ward, or
 17 that there is an imminent danger that the estate of the proposed conser-
 18 vatee will be significantly depleted unless immediate action is taken to
 19 protect the estate, or both;
- 20 (4) the factual basis upon which the petitioner alleges this imminent
 21 danger;
- 22 (5) the names and addresses of witnesses by whom the truth of this
 23 petition may be proved;
- 24 (6) the name, address and relationship to the proposed ward or pro-
 25 posed conservatee, if any, of the individual or corporation whom the pe-
 26 titioner suggests that the court appoint as the temporary guardian or tem-
 27 porary conservator, or both, and if the proposed temporary guardian or
 28 temporary conservator is under contract with the Kansas guardianship
 29 program, that fact; and
- 30 (7) a request that the court make an ex parte determination that there
 31 exists such imminent danger, and that the court appoint a temporary
 32 guardian or a temporary conservator, or both, with such powers as the
 33 court deems necessary to protect the proposed ward or the estate of the
 34 proposed conservatee.

if it appears that there may be an imminent
 danger to the physical health or safety of
 the proposed ward requiring immediate act-
 ion to be taken to protect the proposed
 ward, or that there may be an imminent dan-
 ger that the estate of the proposed conser-
 vatee will be significantly depleted unless
 immediate action is taken to protect the
 estate, or both,

(1)

good

35 (b) / If the court determines that there is ~~probable~~ cause to believe
 36 that the proposed ward or proposed conservatee is an adult with an im-
 37 pairment in need of a guardian or a conservator, or both, or is a minor in
 38 need of a guardian or a conservator, or both, or is a minor with an im-
 39 pairment in need of a guardian or a conservator, or both, or is a person
 40 who has been previously adjudged as impaired in another state, or is a
 41 person in need of an ancillary conservator, as alleged in the original pe-
 42 tition, and that there exists an imminent danger to the physical health or
 43 safety of the proposed ward, or that there exists an imminent danger that

17
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1 the estate of the proposed conservatee will be significantly depleted, the
2 court may enter an ex parte emergency order appointing a temporary
3 guardian or a temporary conservator, or both, and the court shall specify
4 what powers and duties as provided for in section 26, 27, 28, 29, 30 or
5 31, and amendments thereto, the temporary guardian or temporary con-
6 servator shall have. The court may further authorize the temporary guard-
7 ian or temporary conservator to seek appropriate injunctive or other im-
8 mediate relief from any appropriate court or other authority.

9 (c) If the court enters an ex parte order appointing a temporary
10 guardian or a temporary conservator, or both, the proposed ward or pro-
11 posed conservatee, the attorney for the proposed ward or proposed con-
12 servatee, the spouse of the proposed ward or proposed conservatee, or
13 in the case of a minor, the natural guardian of the minor, may request a
14 hearing on the matter if a written request for such is filed with the court
15 not later than the third day following the entry of the ex parte order, or
16 of service of the ex parte order upon the proposed ward or proposed
17 conservatee, if later. Upon receipt of such a request, the court shall fix
18 the time and place for a hearing upon the request and shall direct how
19 and to whom notice of such hearing shall be given.

20 (d) In lieu of entering an ex parte emergency order of appointment
21 of a temporary guardian or a temporary conservator, or both, the court
22 may deny the relief requested or set the time and place for a hearing to
23 be held on the request for the appointment of a temporary guardian or
24 a temporary conservator, or both, which hearing shall be held not later
25 than the second day following the filing of the petition, excluding any
26 Saturday, Sunday or legal holiday. The court may direct that notice
27 thereof be given to the petitioner, the original petitioner, if different, the
28 proposed ward or proposed conservatee, the spouse of the proposed ward
29 or proposed conservatee, in the case of a minor, the natural guardian of
30 the minor, and such other persons as the court determines appropriate.
31 The court shall determine by whom and in what manner such notice shall
32 be given. The court may enter an order requiring that the proposed ward
33 or proposed conservatee appear at the time and place of the hearing
34 unless the court makes a finding prior to the hearing that the presence
35 of the proposed ward or proposed conservatee will be injurious to the
36 person's health or welfare, or that the proposed ward's or proposed con-
37 servatee's impairment is such that the person could not participate in the
38 proceedings, or that the proposed ward or proposed conservatee has filed
39 with the court a written waiver of such person's right to appear in person.
40 In any such case, the court shall enter in the record of the proceedings
41 the facts upon which the court has found that the presence of the pro-
42 posed ward or proposed conservatee at the hearing should be excused.

43 (e) Any hearing held pursuant to subsection (c) or (d) shall be con-

(2) The

(3) Subject to the provisions of subsec-
tion (g), the court shall specify within its
order when the authority of the temporary
guardian or temporary conservator, or both,
shall expire, but in no case shall the court
specify a date beyond 30 days following the
issuance of the order. The court may issue
successive orders extending the authority of
a temporary guardian or temporary conserva-
tor, or both, only upon the filing of a
written request for such, and following a
hearing held similarly as provided for in
subsection (e) to determine the need for and
appropriateness of any such extension.

(4) The court shall order that a copy of
any order issued pursuant to this subsection
be promptly served upon the proposed ward or
proposed conservatee, the attorney for the
proposed ward or proposed conservatee, the
spouse of the proposed ward or proposed con-
servatee, and in the case of a minor, the
natural guardian of the minor, along with
notice. Such notice shall specify the rights
of the proposed ward or proposed conservatee,
and of others, consistent with the provisions
of subsection (c).

, which hearing shall be held not later than
the second day following the filing of the
request, excluding any Saturday, Sunday or
legal holiday,

(b) (3),

1 ducted in as informal a manner as may be consistent with orderly pro-
2 cedure. The rules governing evidentiary and procedural matters shall be
3 applied in a manner so as to facilitate informal, efficient presentation of
4 all relevant, probative evidence and resolution of the issues with due
5 regard for the interests of all parties.

6 (f) If after any hearing held pursuant to subsection (c) or (d) the court
7 determines that there is ~~probable~~ cause to believe that the proposed ward
8 or proposed conservatee is an adult with an impairment in need of a *good*
9 guardian or a conservator, or both, or a minor in need of a guardian or a
10 conservator, or both, or a minor with an impairment in need of a guardian
11 or a conservator, or both, or a person who has been previously adjudged
12 as impaired in another state, or a person in need of an ancillary conser-
13 vator, as alleged in the original petition, and that there exists an imminent
14 danger to the physical health or safety of the proposed ward, or that there
15 exists an imminent danger that the estate of the proposed conservatee
16 will be significantly depleted, the court may appoint, or continue the
17 appointment of, a temporary guardian or a temporary conservator, or
18 both, and the court shall specify what duties, responsibilities, powers and
19 authorities as provided for in section 26, 27, 28, 29 or 30, and amendments
20 thereto, the temporary guardian or temporary conservator shall have. The
21 court may further authorize the temporary guardian or temporary con-
22 servator to seek appropriate injunctive or other immediate relief from any
23 appropriate court or other authority. Otherwise, if the court determines
24 that there is ~~probable~~ cause to believe that the proposed ward or proposed *good*
25 conservatee is an adult with an impairment in need of a guardian or a

26 conservator, or both, or a minor in need of a guardian or a conservator,
27 or both, or a minor with an impairment in need of a guardian or a con-
28 servator, or both, or a person who has been previously adjudged as im-
29 paired in another state, or a person in need of an ancillary conservator,
30 as alleged in the original petition, but that there is not ~~probable~~ cause to *good*
31 believe that there exists an imminent danger to the physical health or
32 safety of the proposed ward, or that there exists an imminent danger that
33 the estate of the proposed conservatee will be significantly depleted, the
34 court shall deny the request for the appointment of a temporary guardian
35 or a temporary conservator, or both, or shall terminate the earlier ap-
36 pointment of the temporary guardian or temporary conservator, or both,
37 but shall continue the matter to trial on the original petition provided for
38 in section 18, and amendments thereto.

39 (g) The appointment and authority of any temporary guardian or tem-
40 porary conservator shall expire at the conclusion of the trial provided for
41 in section 18, and amendments thereto, if the petition is denied, or upon
42 the issuance of appropriate letters to any guardian or conservator ap-
43 pointed by the court at the conclusion of the trial, or as otherwise ordered

1 specify if the absence or impairment of the conservator is expected to be
 2 only temporary, the date by which it is expected that the conservator shall
 3 be able to reassume such duties, responsibilities, powers and authorities,
 4 and the reasons why the standby conservator believes it is necessary for
 5 the standby conservator to assume the duties, responsibilities, powers and
 6 authorities of the conservator. Otherwise, the notice shall advise the court
 7 that proceedings pursuant to section 39, and amendments thereto, to
 8 appoint a successor conservator are required, or the notice may be ac-
 9 companied by or include a petition requesting the appointment of a suc-
 10 cessor conservator. Upon receipt of such notice, the court may specify a
 11 bond that the standby conservator shall file with the court before assum-
 12 ing such duties, responsibilities, powers and authorities, or may authorize
 13 the standby conservator to assume such of the conservator's duties, re-
 14 sponsibilities, powers and authorities as the court shall specify.

15 (g) Upon receipt of a notice as provided for in subsection (e) or (f),
 16 the court may set a hearing to review the circumstances of the ward or
 17 conservatee as provided for in section 35 or 36, and amendments thereto,
 18 or may otherwise proceed pursuant to section 39, and amendments
 19 thereto, to remove the guardian or conservator, or both, and to appoint
 20 a successor guardian or conservator, or both.

21 (h) If before proceedings pursuant to section 39, and amendments
 22 thereto, to remove the guardian or conservator, or both, or to appoint a
 23 successor guardian or conservator, or both, have been commenced, the
 24 guardian or conservator is able to reassume the duties, responsibilities,
 25 powers and authorities of such appointment, the guardian or conservator,
 26 or both, shall so notify the court, in writing, of that reassumption and
 27 appropriately shall report to the court within the next scheduled report
 28 or accounting as required pursuant to section 34, and amendments
 29 thereto. Such report or accounting may include or attach a report or
 30 accounting of the standby guardian or standby conservator.

31 New Sec. 26. (a) (1) The individual or corporation appointed by the
 32 court to serve as the guardian shall carry out diligently and in good faith,
 33 the general duties and responsibilities, and shall have the general powers
 34 and authorities, provided for in this section as well as any specific duties,
 35 responsibilities, powers and authorities assigned to the guardian by the
 36 court. In doing so, a guardian shall at all times be subject to the control
 37 and direction of the court, and shall act in accordance with the provisions
 38 of any guardianship plan filed with the court pursuant to section 27, and
 39 amendments thereto. The court shall have the authority to appoint coun-
 40 sel for the guardian, and the fees of such attorney may be assessed as
 41 costs pursuant to section ~~44~~ and amendments thereto.

42 (2) A guardian shall ~~become and remain personally acquainted with~~
 43 the ward, the spouse of the ward and with other interested persons as-

45
 strive to meet the following
 goals:

1 risks and benefits of the proposed procedure or experiment or of any
2 aversive stimulant proposed to be used, and as to how and under what
3 circumstances the aversive stimulant may be used, and has specifically
4 consented to such;

or withdrawal

5 (7) to consent, on behalf of the ward, to the withholding of life-saving
6 medical care, treatment, services or procedures, except:

or life-sustaining

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

10 (B) if the ward, prior to the court's appointment of a guardian pur-
11 suant to section 18, and amendments thereto, shall have executed a du-
12 rable power of attorney for health care decisions pursuant to K.S.A. 58-
13 629, and amendments thereto, and such shall not have been revoked by
14 the ward prior thereto, and there is included therein any provision rele-
15 vant to the withholding of life-saving medical care, treatment, services or
16 procedures, then the guardian shall have the authority to act as provided
17 for therein, even if the guardian has revoked or otherwise amended that
18 power of attorney pursuant to the authority of K.S.A. 58-627, and amend-
19 ments thereto, or the guardian may allow the agent appointed by the
20 ward to act on the ward's behalf if the guardian has not revoked or oth-
21 erwise amended that power of attorney; or

or withdrawal

or life-sustaining

22 (C) in the circumstances where the ward's treating physician shall
23 certify in writing to the guardian that the ward is suffering from an illness
24 for which further treatment, other than for the relief of pain, would not
25 likely prolong the life of the ward other than by artificial means, nor would
26 be likely to restore to the ward any significant degree of capabilities be-
27 yond those the ward currently possesses, and which opinion is concurred
28 in by either a second physician or by any "medical ethics" or similar
29 committee established by the hospital or treatment facility at which the
30 ward is being treated, for the purposes of reviewing such circumstances
31 and the appropriateness of any type of "comfort care only" physician's
32 order;

is in a persistent vegetative state or
or other medical condition

33 (8) to consent, on behalf of the ward, to the withdrawal of life-sus-
34 taining medical care, treatment, services or procedures, except:

to which the healthcare provider caring
for the ward has access
established

which would have the effect of withholding or
withdrawing life-saving or life-sustaining care

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

38 (B) if the ward, prior to the court's appointment of a guardian pur-
39 suant to section 18, and amendments thereto, shall have executed a du-
40 rable power of attorney for health care decisions pursuant to K.S.A. 58-
41 629, and amendments thereto, and such shall not have been revoked by
42 the ward prior thereto, and there is included therein any provision rele-
43 vant to the withdrawal of life-sustaining medical care, treatment, services

21
4-20

1 or procedures, then the guardian shall have the authority to act as pro-
2 vided for therein, even if the guardian has revoked or otherwise amended
3 that power of attorney pursuant to the authority of K.S.A. 58-627, and
4 amendments thereto, or the guardian may allow the agent appointed by
5 the ward to act on the ward's behalf if the guardian has not revoked or
6 otherwise amended that power of attorney; or

7 (C) in the circumstances where the ward's treating physician shall
8 certify in writing to the guardian that the ward is in a vegetative state
9 without likelihood of reversal or is suffering from an illness for which
10 further treatment, other than for the relief of pain, would not likely pro-
11 long the life of the ward other than by artificial means, nor would be likely
12 to restore to the ward any significant degree of capabilities beyond those
13 the ward currently possesses, and which opinion is concurred in by either
14 a second physician or by any "medical ethics" or similar committee es-
15 tablished by the hospital or treatment facility at which the ward is being
16 treated, for the purposes of reviewing such circumstances and the appro-
17 priateness of any type of physician's order which would have the effect
18 of withdrawing life-sustaining care;

19 ~~8~~ ⁸ to exercise any control or authority over the ward's estate, except
20 if the court shall specifically authorize such. The court may assign such
21 authority to the guardian, including the authority to establish certain
22 trusts as provided in section 31, and amendments thereto, and may waive
23 the requirement of the posting of a bond, only if:

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

28 (B) either the court requires the guardian to report to the court the
29 commencement of the exercising of such authority, or requires the guard-
30 ian to specifically request of the court the authority to commence the
31 exercise of such authority, as the court shall specify; and

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

34 (i) File a guardianship plan as provided for in section 27, and amend-
35 ments thereto, which contains elements similar to those which would be
36 contained in a conservatorship plan as provided for in section 29, and
37 amendments thereto;

38 (ii) petition the court for appointment of a conservator as provided
39 for in section 9, 10 or 11, and amendments thereto; or

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

1 (10) to place the ward in a treatment facility as defined in section 28,
2 and amendments thereto, except if authorized by the court as provided
3 for therein.

4 (f) The guardian shall file with the court reports concerning the status
5 of the ward and the actions of the guardian as the court shall direct
6 pursuant to section 35, and amendments thereto.

7 New Sec. 27. (a) At any time, the court may require the guardian
8 or the guardian may at any time choose, to develop and file with the court
9 a plan for the care of the ward. This plan shall be developed consistent
10 with the provisions of subsection (a) of section 26, and amendments
11 thereto. This plan may provide for, but need not be limited to providing
12 for:

for good cause shown

13 (1) Where the ward will reside, including any proposal to admit the
14 ward to any nursing facility;

15 (2) what degree of autonomy the ward will have with regard to mak-
16 ing choices concerning such matters as attending any educational or vo-
17 cational training, employment, volunteering for any type of service or
18 activity, traveling independently, and obtaining either routine or specified
19 medical care without the guardian's consent, and what restrictions the
20 guardian will place upon the ward with regard to such choices; and

21 (3) what restrictions, if any, the guardian will place on whom the ward
22 may associate with, and if so, the names of any persons the guardian will
23 restrict from association with the ward.

24 (b) If the court has not also appointed a conservator for the ward,
25 the court may further require the guardian, or the guardian may choose,
26 to include as a part of the guardian's plan, what restrictions, if any, the
27 guardian will place upon the ward's use of the ward's financial assets or
28 the ward's access to those assets. In any case, the court shall not approve
29 any guardianship plan which does not comply with the provisions of sub-
30 section (e) ~~(9)~~ of section 26, and amendments thereto, if applicable.

(8)

31 (c) If required by the court, the court may set a date by which this
32 guardianship plan shall be filed with the court. Otherwise, the guardian
33 may at any time file a plan with the court. Upon the filing of a plan, the
34 court may require the guardian to give notice thereof to such persons as
35 the court directs. Any interested party may request that the court conduct
36 a hearing concerning any plan filed with the court. The court may require
37 the guardian to amend or withdraw any plan filed.

38 (d) Any guardianship plan filed with the court shall be effectuated by
39 the guardian to the maximum extent possible consistent with any changing
40 circumstances of the ward. Within each report concerning the status of
41 the ward submitted to the court as the court directs pursuant to section
42 35, and amendments thereto, the guardian shall explain any actions taken
43 in deviance from the plan and the reasons therefor.

1 (e) At any time deemed appropriate by the guardian, the guardian
2 may file a revised guardianship plan consistent with the provisions of this
3 section.

4 New Sec. 28. (a) At any time after the filing of the petition provided
5 for in section 9, 10, 11 or 12, and amendments thereto, any person may
6 file in addition to that original petition, or as a part thereof, or at any time
7 after the appointment of a temporary guardian as provided for in section
8 24, and amendments thereto, or a guardian as provided for in section 18,
9 and amendments thereto, the temporary guardian or guardian may file,
10 a verified petition requesting that the court grant authority to the tem-
11 porary guardian or guardian to admit the proposed ward or ward to a
12 treatment facility and to consent to the care and treatment of the pro-
13 posed ward or ward therein. The petition shall include:

*as defined in
subsection (h),*

14 (1) The petitioner's name and address, and if the petitioner is the
15 proposed ward's or ward's court appointed temporary guardian or guard-
16 ian, that fact;

17 (2) the proposed ward's or ward's name, age, date of birth, address
18 of permanent residence, and present address or whereabouts, if different
19 from the proposed ward's or ward's permanent residence;

20 (3) the name and address of the proposed ward's or ward's court
21 appointed temporary guardian or guardian, if different from the
22 petitioner;

23 (4) the factual basis upon which the petitioner alleges the need for
24 the proposed ward or ward to be admitted to and treated at a treatment
25 facility, or for the proposed ward or ward to continue to be treated at the
26 treatment facility to which the proposed ward or ward has already been
27 admitted, or for the guardian to have continuing authority to admit the
28 ward for care and treatment at a treatment facility pursuant to subsection
29 (b)(3) of K.S.A. 2000 Supp. 59-2949, or subsection (b)(3) of K.S.A. 2000
30 Supp. 59-29b49, and amendments thereto;

31 (5) the names and addresses of witnesses by whom the truth of this
32 petition may be proved; and

33 (6) a request that the court find that the proposed ward or ward is in
34 need of being admitted to and treated at a treatment facility, and that the
35 court grant to the temporary guardian or guardian the authority to admit
36 the proposed ward or ward to a treatment facility and to consent to the
37 care and treatment of the proposed ward or ward therein.

*KSA
39-1803,*

38 (b) The petition may be accompanied by a report of an examination
39 and evaluation of the proposed ward or ward conducted by an appropri-
40 ately qualified professional, ~~which shows that the criteria set out in sub-~~
41 ~~section (e) of K.S.A. [2000] Supp. 59-2946 and amendments thereto,~~ or
42 K.S.A. 76-12b03, and amendments thereto, are met.

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43 (c) Upon the filing of such a petition, the court shall issue the

1 or evaluated the proposed ward or ward pursuant to any order issued by
2 the court pursuant to subsection (d). Such evidence shall not be privileged
3 for the purpose of this hearing.

4 (f) Upon completion of the hearing, if the court finds by clear and
5 convincing evidence that the criteria set out in subsection (e) of K.S.A.
6 2000 Supp. 59-2946 or K.S.A. 76-12b03, and amendments thereto, are
7 met, and after a careful consideration of reasonable alternatives to ad-
8 mission of the proposed ward or ward to a treatment facility, the court
9 may enter an order granting such authority to the temporary guardian or
10 guardian as is appropriate, including continuing authority to the guardian
11 to readmit the ward to an appropriate treatment facility as may later
12 become necessary. Any such grant of continuing authority shall expire
13 two years after the date of final discharge of the ward from such a treat-
14 ment facility if the ward has not had to be readmitted to a treatment
15 facility during that two-year period of time. Thereafter, any such grant of
16 continuing authority may be renewed only after the filing of another pe-
17 tition seeking authority in compliance with the provision of this section.

KSA 39-1803,

18 (g) Nothing herein shall be construed so as to prohibit the head of a
19 treatment facility from admitting a proposed ward or ward to that facility
20 as a voluntary patient if the head of the treatment facility is satisfied that
21 the proposed ward or ward at that time has the capacity to understand
22 such ward's illness and need for treatment, and to consent to such ward's
23 admission and treatment. Upon any such admission, the head of the treat-
24 ment facility shall give notice to the temporary guardian or guardian as
25 soon as possible of the ward's admission, and shall provide to the tem-
26 porary guardian or guardian copies of any consents the proposed ward or
27 ward has given. Thereafter, the temporary guardian or guardian shall
28 timely either seek to obtain proper authority pursuant to this section to
29 admit the proposed ward or ward to a treatment facility and to consent
30 to further care and treatment, or shall otherwise assume responsibility
31 for the care of the proposed ward or ward, consistent with the authority
32 of the temporary guardian or guardian, and may arrange for the discharge
33 from the facility of the proposed ward or ward, unless the head of the
34 treatment facility shall file a petition requesting the involuntary commit-
35 ment of the proposed ward or ward to that or some other facility.

36 (h) As used herein, "treatment facility" means the Kansas neurolog-
37 ical institute, Larned state hospital, Osawatomie state hospital, Parsons
38 state hospital and training center, the rainbow mental health facility, any
39 intermediate care facility for the mentally retarded, any psychiatric hos-
40 pital licensed pursuant to K.S.A. 75-3307b, and amendments thereto, and
41 any other facility for mentally ill persons or mentally retarded or devel-
42 opmentally disabled persons licensed pursuant to K.S.A. 75-3307b, and
43 amendments thereto, if the proposed ward or ward is to be admitted as

1 an inpatient or resident of that facility.

2 New Sec. 29. (a) (1) The individual or corporation appointed by the
3 court to serve as the conservator shall carry out diligently and in good
4 faith the general duties and responsibilities, and shall have the general
5 powers and authorities, provided for in this section, as well as any specific
6 duties, responsibilities, powers and authorities assigned to the conservator
7 by the court. In doing so, a conservator at all times shall be subject to the
8 control and direction of the court, and shall act in accordance with the
9 provisions of any conservatorship plan filed with the court pursuant to
10 section 30, and amendments thereto. The court shall have the authority
11 to appoint counsel for the conservator, and the fees of such attorney may
12 be assessed as costs pursuant to section ~~44~~ and amendments thereto.

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

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

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

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

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

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4-24

1 (9) to make any gift on behalf of the conservatee, except with the
2 approval of the court upon a finding that:

3 (A) The conservatee had either in the past as a habit made similar
4 gifts or declared an intent to make such a gift, _____, or under the circumstances, would have made such
5 a gift or gifts

6 (B) sufficient funds and assets will remain in the conservatee's estate
7 after the making of such a gift to meet the expected needs and respon-
8 sibilities of the conservatee; and

9 (C) any person or entity who would have received the property to be
10 gifted had the conservatee died at the time of the gift, but who is not the
11 person or entity giving the gift, has either consented to or agreed with _____ receiving
12 the giving of the gift, in writing, or has received notice of the proposal to
13 make the gift and been given the opportunity to request a hearing thereon
14 by the court to be held prior to the court's approving the gift.

15 (g) The conservator shall file with the court, within 30 days of the
16 court's issuance of letters of conservatorship as provided for in section
17 20, and amendments thereto, an initial inventory of all of the property
18 and assets of the conservatee's estate, including any sources of regular
19 income to the estate.

20 (h) The conservator shall file with the court accountings and other
21 reports concerning the status of the estate and the actions of the conser-
22 vator as the court shall direct pursuant to section 34, and amendments
23 thereto.

24 New Sec. 30. (a) At any time, the court may require the conservator,
25 or the conservator may at any time choose, to develop and file with the
26 court a plan for the administration of the conservatee's estate. This plan
27 shall be developed consistent with the provisions of section 29, and
28 amendments thereto. This plan may provide for, but need not be limited
29 to providing for:

30 (1) What autonomy the conservatee will have with regard to keeping
31 and utilizing any earnings from employment or gifts which the conser-
32 vatee may have or receive; and

33 (2) what responsibility the conservator shall have with regard to pro-
34 tecting the eligibility of the conservatee for any type of public or other
35 benefit.

36 (b) If required by the court, the court may set a date by which this
37 conservatorship plan shall be filed with the court. Otherwise, the conser-
38 vator may at any time file a plan with the court. Upon the filing of a plan,
39 the court may require the conservator to give notice thereof to such per-
40 sons as the court directs. Any interested party may request that the court
41 conduct a hearing concerning any plan filed with the court. The court
42 may require the conservator to amend or withdraw any plan filed.

43 (c) Any conservatorship plan filed with the court shall be effectuated
by the conservator to the maximum extent possible consistent with any

for good cause shown

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1 changing circumstances of the conservatee. Within each accounting sub-
2 mitted to the court as the court directs pursuant to section 34, and amend-
3 ments thereto, the conservator shall explain any actions taken in deviance
4 from the plan and the reasons therefor.

5 (d) At any time deemed appropriate by the conservator, the conser-
6 vator may file a revised conservatorship plan consistent with the provi-
7 sions of this section.

8 New Sec. 31. (a) At any time the conservator, or the guardian if the
9 guardian has been granted the authority to exercise control or authority
10 over the ward's estate pursuant to subsection ~~(a)(9)~~ of section 26, and
11 amendments thereto, may file a verified petition requesting that the court
12 grant authority to the conservator or guardian to establish an irrevocable
13 trust which will enable the conservatee or ward to qualify for benefits
14 from any federal, state or local government program, or which will ac-
15 celerate the conservatee's or ward's qualification for such benefits.

(e)(8)

16 (b) The petition shall include:

17 (1) The conservator's or guardian's name and address, and if the con-
18 servator is the petitioner and is both the conservator and the guardian, a
19 statement of that fact, or if the guardian is the petitioner, a statement that
20 the court has previously granted to the guardian the authority to exercise
21 control or authority over the ward's estate;

22 (2) the conservatee's or ward's name, age, date of birth, address of
23 permanent residence, and present address or whereabouts, if different
24 from the conservatee's or ward's permanent residence;

25 (3) the name and address of the conservatee's court appointed guard-
26 ian, if a guardian has been appointed by the court and is different from
27 the conservator;

28 (4) the names and addresses of any spouse, adult children and adult
29 grandchildren of the conservatee or ward, and those of any parents and
30 adult siblings of the conservatee or ward, or if no such names or addresses
31 are known to the petitioner, the name and address of at least one adult
32 who is nearest in kinship to the conservatee, or if none, that fact. If no
33 such names and addresses are known to the petitioner, but the petitioner
34 has reason to believe such persons exist, then the petition shall state that
35 fact and that the petitioner has made diligent inquiry to learn those names
36 and addresses;

37 (5) a statement of whether the secretary of social and rehabilitation
38 services has an interest in the matter by virtue of the purpose of the trust
39 being to enable the conservatee or ward to qualify for benefits from any
40 program administered by the secretary;

41 (6) the names and addresses of other persons, if any, whom the pe-
42 titioner knows to have an interest in the matter, or a statement that the
43 petitioner knows of no other persons having an interest in the matter;

1 (7) a description of the funds or assets of the conservatee or ward
2 which the petitioner proposes to transfer to a trust;

3 (8) the factual basis upon which the petitioner alleges the need for
4 such a trust;

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

7 (10) a request that the court find that the conservator or guardian
8 should be granted such authority, and that the court grant to the conser-
9 vator or guardian the authority to establish such a trust.

10 (c) The petition shall be accompanied by a draft of the instrument
11 by which the trust is proposed to be established.

12 (d) Upon the filing of such a petition, the court shall issue an order
13 fixing the date, time and place of a hearing upon the petition, which
14 hearing may be held forthwith and without further notice if those persons
15 named within the petition pursuant to the requirements of subsections
16 (b)(4), (b)(5) and (b)(6), as applicable, have entered their appearances,
17 waived notice and agreed to the court's granting to the conservator or
18 guardian the authority to establish the proposed trust. Otherwise, the
19 court shall require the petitioner to give notice of this hearing to such
20 persons and in such manner as the court may direct, including therewith
21 a copy of the proposed trust instrument. This notice shall advise such
22 persons that if they have any objections to this authority being granted to
23 the conservator or guardian, that they must file their written objections
24 with the court prior to the scheduled hearing or that they must appear at
25 the hearing to present those objections. The court may appoint an attor-
26 ney to represent the conservatee or ward in this matter similarly as pro-
27 vided for in subsection (a)(3) of section 14, and amendments thereto, and
28 in such event, the court shall require the petitioner to also give this notice
29 to that attorney.

30 (e) At the conclusion of the hearing, if the court finds by a prepon-
31 derance of the evidence that:

32 (1) The establishment of such a trust will enable the conservatee or
33 ward to qualify for benefits from any federal, state or local government
34 program, or will accelerate the qualification of the conservatee or ward
35 for such benefits;

36 (2) the conservatee or ward will be the sole beneficiary of such trust;

37 (3) the term of the trust will not extend beyond the lifetime of the
38 conservatee or ward;

39 (4) the provisions of the trust will provide for the distribution of the
40 trust estate for the benefit of the conservatee or ward for special needs
41 not satisfied from governmental benefits and that distributions will be
42 made in compliance with any requirements of the governmental program
43 from which the conservatee or ward receives such benefits, and further

Such
made for special needs not
satisfied from governmental
benefits

1 ~~that distributions will~~ only be made in similar manner and under similar
2 circumstances as the conservatee's or ward's estate would otherwise have
3 been distributed by the conservator or guardian for the benefit of the
4 conservatee or ward had the trust not been established; and

5 (5) the provisions of the trust will provide that, upon termination of
6 the trust, the remaining trust estate will first be expended to reimburse
7 the governmental entities for the benefits which have been provided to
8 the conservatee or ward, if required as a condition for the conservatee's
9 or ward's qualification for such benefits, and then shall be paid over and
10 assigned to:

11 (A) The conservator, should this termination of the trust occur during
12 any time the conservatorship remains open, or the guardian, should this
13 termination of the trust occur during any time the guardianship remains
14 open;

15 (B) the conservatee or ward, should this termination of the trust oc-
16 cur during any time the conservatorship or guardianship has been ter-
17 minated and the conservatee or ward restored to capacity; or

18 (C) the legal representative of the conservatee's or ward's estate,
19 should this termination of the trust occur by virtue of the conservatee's
20 or ward's death, then the court may grant to the conservator or guardian
21 the authority to establish such a trust and to transfer specified property
22 or assets from the conservatee's or ward's estate to the trust. The court
23 shall order the conservator or guardian to report any such transfer within
24 the conservator's or guardian's next accounting as required by section 34,
25 and amendments thereto.

26 (f) The court may require as a condition of the court's granting to the
27 conservator or guardian the authority to establish such a trust that the
28 sole trustee of the trust be the court appointed conservator or guardian,
29 and that the conservator or guardian, acting as the trustee, shall be subject
30 to the same requirements and limitations as provided for in this act con-
31 cerning conservatorships and shall report and account to the court con-
32 cerning the trust estate the same as if the trust estate remained within
33 the conservatee's or ward's estate.

34 New Sec. 32. (a) At any time after the 17th birthday of a minor con-
35 servatee who has not been adjudged to be a minor with an impairment
36 in need of a guardian or conservator, or both, but before 30 days prior to
37 the minor's 18th birthday, the conservator may file a verified petition
38 requesting that the court grant authority to the conservator to establish a
39 plan for the extended distribution of the minor's estate to the minor after
40 the minor's 18th birthday. The petition shall include:

41 (1) The conservator's name and address, and if the conservator is also
42 the minor's court appointed guardian, that fact;

43 (2) the minor's name, age, date of birth, address of permanent resi-

1 quire the conservator to also give this notice to that attorney.
2 (c) At the conclusion of the hearing, if the court finds by a prepon-
3 derance of the evidence that:

4 (1) ~~It is~~ in the best interests of the minor to grant this authority to
5 the conservator;

6 (2) the plan approved by the court will fully distribute all of the funds
7 and assets of the minor's estate to the minor by the minor's 25th birthday;
8 and

9 (3) the plan approved by the court adequately provides for meeting
10 the expected needs of the minor from the minor's 18th birthday until the
11 final distribution of the funds or assets which the court authorizes to be
12 set aside or transferred from the estate are paid over to the minor, in-
13 cluding provisions for accelerated distribution in extraordinary circum-
14 stances, which may require court approval, then the court may grant to
15 the conservator the authority to establish such a plan and to effectuate it.
16 The court shall order the conservator to report any expenditure or transfer
17 of funds or assets from the minor's estate for the purposes of effectuating
18 this plan within the conservator's next accounting as required by section
19 34, and amendments thereto.

20 (d) The court may require that the conservator continue to administer
21 the plan after the minor becomes 18 years of age. The court may extend
22 the conservatorship with regard to the funds or assets of the minor's estate
23 which are set aside to effectuate the plan and in such case the conservator
24 shall continue to be subject to the same requirements and limitations as
25 provided for in this act concerning conservatorships and shall report and
26 account to the court concerning the plan's execution, even though other
27 funds or assets of the minor's estate are paid over to the minor upon the
28 minor's becoming 18 years of age.

29 (e) The minor shall be without the power, voluntarily or involuntarily,
30 to sell, mortgage, pledge, hypothecate, assign, alienate, anticipate, trans-
31 fer or convey any interest in the principal or the income from any funds
32 or assets of the minor's estate set aside or transferred to effectuate a plan
33 for extended distribution as herein provided until such is actually paid to
34 the minor.

35 New Sec. 33. (a) Any person having a claim for payment against the
36 conservatee or the conservatee's estate, other than for any tort for which
37 the claimant has not been awarded judgment, or any person having a
38 claim for payment for any goods or services provided to the conservatee
39 or the conservatee's estate by the claimant in reliance upon actions or the
40 authority of the conservator, may file with the court a verified petition
41 requesting payment for such. The petition shall include:

- 42 (1) The petitioner's name and address;
43 (2) the conservator's name and address;

Based upon the value, nature and character of the assets within the minor's estate, the minor does not possess the maturity and judgment to make determinations and act responsibly with regard to such estate, and that therefore it

that the court

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1 (b) Upon the filing of any report, or based upon other information
2 which comes to the court's attention concerning matters contained within
3 the report or which should be contained within the report, the court may
4 set a hearing upon the matter and may require the guardian to appear
5 before the court. The court may require the guardian to give notice of
6 this hearing to such persons and in such manner as the court may direct.
7 The court may appoint an attorney to represent the ward in this matter
8 similarly as provided for in subsection (a)(3) of section 14, and amend-
9 ments thereto. The court may require the guardian, and may allow the
10 ward, the conservator, if a conservator has been appointed, and other
11 interested persons, to present evidence concerning the actions of the
12 guardian or the recommendations of such persons.

13 (c) At the conclusion of the court's review of the guardian's report,
14 or following any hearing held as provided for in subsection (b), the court
15 shall issue an order either approving or disapproving the guardian's re-
16 port. The court may approve a reasonable guardian's fee which shall be
17 assessed to the ward's estate. The court within its order may grant to or
18 withdraw from the guardian specified duties, responsibilities, powers or
19 authorities as provided for in section 26, and amendments thereto, may
20 specifically order the guardian with regard to the performance of assigned
21 duties, responsibilities, powers or authorities, including requiring the
22 guardian to file an amended report, may require the guardian to develop
23 and file with the court a guardianship plan as provided for in section 27,
24 and amendments thereto, or the court may proceed pursuant to section
25 39, and amendments thereto, to remove the guardian and to appoint a
26 successor guardian, or the court may proceed pursuant to section 41 or
27 42, and amendments thereto, to restore the ward to capacity or terminate
28 the guardianship.

29 (d) If the court, pursuant to subsection (e)~~(9)~~ of section 26, and ~~(8)~~
30 amendments thereto, has authorized the guardian to exercise any control
31 or authority over the ward's estate, then, in addition to or as a part of
32 each report filed by the guardian pursuant to this section, the guardian
33 also shall account for the ward's estate. In reviewing the guardian's report,
34 the court also shall review the guardian's accounting and at the conclusion
35 thereof, if the court finds that the accounting accurately accounts for the
36 ward's estate and shows appropriate administration on the part of the
37 guardian, the court shall issue an order approving the accounting.

38 New Sec. 36. (a) Upon the filing of a report or accounting by the
39 conservator pursuant to section 34, and amendments thereto, the court
40 or a designee of the court shall review the report or accounting, the court's
41 prior orders, any conservatorship plan which has been filed with the court
42 pursuant to section 30, and amendments thereto, and which remains in
43 effect, and any reports and accountings which the conservator has pre-

1 sonal use any funds or assets of the conservatee's estate, the court shall
 2 find the conservator liable for double the value of those funds or assets,
 3 as provided for in K.S.A. 59-1704, and amendments thereto. The court
 4 may order the forfeiture of the conservator's bond, or such portion
 5 thereof as equals the value of such funds or assets, including any lost
 6 earnings and the costs of recovering those funds or assets, including rea-
 7 sonable attorney fees, as the court may allow, and may require of the
 8 surety satisfaction thereof. Neither the conservator, nor the conservator's
 9 estate or surety, shall be finally released from such bond until the satis-
 10 faction thereof.

In either case,

11 (g) At no time shall the conservator, or the conservator's estate or
 12 surety, be finally released from the bond required by the court pursuant
 13 to section 20, and amendments thereto until a final accounting has been
 14 filed, allowed and settled as provided for herein.

15 (h) Upon the filing of a final accounting, delivery of any remaining
 16 funds and assets of the conservatee's estate to the person entitled thereto,
 17 and presentation to the court of a receipt for such, the court may issue a
 18 final order of allowance and settlement as provided for herein, and only
 19 thereby finally shall release the conservator, the conservator's estate and
 20 the conservator's surety.

21 New Sec. 38. (a) A verified petition requesting the court to modify
 22 its prior order appointing co-guardians or co-conservators, or both, by
 23 either changing the authority of the co-guardians or co-conservators, or
 24 both, to act independently, to act only in concert, or to act only in concert
 25 with regard to certain matters, or to remove one or both of the co-guard-
 26 ians or co-conservators, or both, and to appoint only a single guardian or
 27 a single conservator, or both, shall include:

28 (1) The petitioner's name and address, and if the petitioner is one of
 29 the ward's or conservatee's court appointed co-guardians or co-conser-
 30 vators, that fact;

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

34 (3) the names and addresses of each of the court appointed co-guard-
 35 ians or co-conservators, or both, who are not the petitioner;

36 (4) the factual basis upon which the petitioner alleges the need for
 37 the court to modify its prior order of appointment, and whether the pe-
 38 titioner requests that the court require the co-guardians or co-conser-
 39 vators, or both, to act independently, to act only in concert, or to act only
 40 in concert with regard to certain matters, or whether the petitioner re-
 41 quests that the court remove one of the co-guardians or co-conservators,
 42 or both, and appoint only a single guardian or a single conservator, or
 43 both;

1 any reports or accountings which have been filed by the co-guardians or
2 co-conservators, or both, even if previously approved or allowed. The
3 court shall give to the co-guardians or co-conservators, or both, to the
4 ward or conservatee, and to other interested persons, the opportunity to
5 present information to the court concerning the actions of the co-guard-
6 ians or co-conservators, or both, and of the recommendations of such
7 persons.

8 (e) At the conclusion of the hearing, if the court finds that it is in the
9 best interests of the ward or conservatee to do so, the court may modify
10 its prior orders to provide that the co-guardians or co-conservators, or
11 both, shall have the authority to act independently, to act only in concert,
12 in certain circumstances or with regard to certain matters to act indepen-
13 dently and in certain other circumstances or with regard to certain other
14 matters to act only in concert, or the court may remove the co-guardians
15 or co-conservators, or both, and appoint a single guardian or a single
16 conservator, or both. In making any such appointments, the court shall
17 act in accordance with sections 19 and 20, and amendments thereto.

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

33 (g) No co-conservator, nor the co-conservator's estate or surety, shall
34 be finally released from their bond until a final accounting has been filed,
35 allowed and settled as provided for in section 37, and amendments
36 thereto.

37 New Sec. 39. (a) A verified petition may be filed requesting the court
38 to accept the resignation of the guardian or the conservator, or both, to
39 remove the guardian or conservator, or both, or to appoint a successor
40 guardian or conservator, or both, and shall include:

- 41 (1) The petitioner's name and address, and if the petitioner is the
- 42 ward's or conservatee's court appointed guardian or conservator, that fact;
- 43 (2) the ward's or conservatee's name, age, date of birth, address of

In either case,

1 construed such that the court does not have the authority to suspend
2 immediately the powers and authorities of a guardian or conservator, or
3 both, whenever the court determines that it is in the best interests of the
4 ward or conservatee to do so.

5 (d) The hearing shall be conducted in as informal a manner as may
6 be consistent with orderly procedure. The court shall have the authority
7 to receive all relevant and material evidence which may be offered, in-
8 cluding the testimony or written report, findings or recommendations of
9 any professional or other person who has familiarity with the ward or
10 conservatee or the conservatee's estate. The court may review the courts
11 prior orders, any guardianship plan or conservatorship plan filed pursuant
12 to section 27 or 30, and amendments thereto, which is in effect, and any
13 reports or accountings which have been filed by the guardian or conser-
14 vator, or both, even if previously approved or allowed. The court shall
15 give to the guardian or conservator, or both, to the ward or conservatee,
16 and to other interested persons, the opportunity to present evidence to
17 the court concerning the actions of the guardian or conservator, or both,
18 and of the recommendations of such persons.

19 (e) At the conclusion of the hearing, if the court finds, by a prepon-
20 derance of the evidence, that the guardian or conservator, or both, should
21 be permitted to resign, or should be removed for failure to fulfill the
22 duties or responsibilities of being a guardian or conservator, or for the
23 manner in which the guardian or conservator has exercised the powers
24 or authorities granted to the guardian or conservator, the court may so
25 order and in such case shall revoke the letters of guardianship or conser-
26 vatorship, or both, previously issued pursuant to section 20, and amend-
27 ments thereto. The court may appoint a successor guardian or conser-
28 vator, or both. In making any such appointments, the court shall act in
29 accordance with sections 19 and 20, and amendments thereto.

30 (f) If the court finds that the conservator has innocently misused any
31 funds or assets of the conservatee's estate, the court shall order the con-
32 servator to repay such funds or return such assets to the conservatee's
33 estate. If the court finds that the conservator has embezzled or converted
34 for the conservator's personal use any funds or assets of the conservatee's
35 estate, the court shall find the conservator liable for double the value of
36 those funds or assets, as provided for in K.S.A. 59-1704, and amendments
37 thereto. ~~The court may order the forfeiture of the conservator's bond, or
38 such portion thereof as equals the value of such funds or assets, including
39 any lost earnings and the costs of recovering those funds or assets, in-
40 cluding reasonable attorney fees, as the court may allow, and may require
41 of the surety satisfaction thereof. Neither the conservator, nor the con-
42 servator's estate or surety, shall be finally released from such bond until
43 the satisfaction thereof.~~

In either case,

1 New Sec. 40. (a) At any time the court has reason to believe that the
2 guardian or conservator, or both, has failed to faithfully or diligently carry
3 out such person's duties or responsibilities or to properly exercise such
4 person's powers or authorities in a manner consistent with the provisions
5 of section 26 or 29, and amendments thereto, or with any prior order of
6 the court, the court may issue to the guardian or conservator, or both, an
7 order to appear before the court at a specified date, time and place to
8 show just cause why the court should not find that such person has failed
9 to faithfully or diligently carry out such person's duties or responsibilities
10 or to properly exercise such person's powers or authorities.

11 (b) At such hearing, the court shall give to the guardian or conser-
12 vator, or both, the opportunity to present evidence concerning their ac-
13 tions. The court shall also have the authority to receive all relevant and
14 material evidence which may be offered by other interested parties, in-
15 cluding the testimony or written report, findings or recommendations of
16 any professional or other person who has familiarity with the ward or
17 conservatee, or the conservatee's estate. The court may review the court's
18 prior orders, any guardianship plan or conservatorship plan filed pursuant
19 to section 27 or 30, and amendments thereto, which is in effect, and any
20 reports or accountings which have been filed by the guardian or conser-
21 vator, or both, even if previously approved or allowed.

22 (c) At the conclusion of the hearing, if the court finds, by a prepon-
23 derance of the evidence, that the guardian or conservator, or both, has
24 failed to faithfully or diligently carry out such person's duties or respon-
25 sibilities or to properly exercise such person's powers or authorities, the
26 court may remove the guardian or conservator, or both, and in such case,
27 the court shall revoke the letters of guardianship or conservatorship, or
28 both, previously issued pursuant to section 20, and amendments thereto.
29 Otherwise, the court may issue appropriate orders further directing the
30 guardian or conservator, or both, with regard to the performance of such
31 person's duties or responsibilities or the exercise of such person's powers
32 or authorities, or the court may dismiss the proceedings.

33 (d) If the court finds that the guardian or conservator has innocently
34 misused any funds or assets of the ward's or conservatee's estate, the court
35 shall order the guardian or conservator to repay such funds or return such
36 assets to the ward's or conservatee's estate. If the court finds that the
37 guardian or conservator has embezzled or converted for such person's
38 personal use any funds or assets of the ward's or conservatee's estate, the
39 court shall find the guardian or conservator liable for double the value of
40 those funds or assets, as provided for in K.S.A. 59-1704, and amendments
41 thereto, and in such case, neither the guardian or conservator, or the
42 guardian's or conservator's estate, shall be finally released until the sat-
43 isfaction thereof. ~~The court may order the forfeiture of the conservator's~~

In either case,

1 bond, or such portion thereof as equals the value of such funds or assets,
2 including any lost earnings and the costs of recovering those funds or
3 assets, including reasonable attorney fees, as the court may allow, and
4 may require of the surety satisfaction thereof, and in such case the court
5 shall not finally release the conservator's surety until such order has been
6 satisfied.

7 (e) If the guardian or conservator, or both, fail or refuse to appear as
8 ordered, the court may proceed as provided for in article 12 of chapter
9 20 of the Kansas Statutes Annotated or K.S.A. 59- 2217a, and amend-
10 ments thereto.

11 New Sec. 41. (a) The ward or conservatee may at any time file a
12 verified petition with the court requesting that the court find that the
13 ward or conservatee is no longer impaired, and request that the court
14 restore the ward or conservatee to capacity.

15 (b) The petition shall include:

16 (1) The ward's or conservatee's name, age, date of birth, address of
17 permanent residence, and present address or whereabouts, if different
18 from the ward's or conservatee's permanent residence;

19 (2) the name and address of the ward's or conservatee's court ap-
20 pointed guardian or conservator, or both;

21 (3) the factual basis upon which the ward or conservatee alleges that
22 they are no longer impaired;

23 (4) the names and addresses of the witnesses by whom the truth of
24 the petition may be proved; and

25 (5) a request that the court find that the ward or conservatee is no
26 longer impaired, and therefore entitled to be restored to capacity.

27 (c) (1) Upon the filing of such a petition, the court shall review the
28 petition to determine whether ~~probable~~ cause exists to warrant further
29 proceedings. If the court finds ~~probable~~ cause to warrant further pro-
30 ceedings, the court shall issue an order fixing the date, time and place of
31 a hearing on the petition, which hearing shall be held not later than 30
32 days following the filing of the petition. If the court does not find within
33 the petition facts sufficient to constitute ~~probable~~ cause to warrant further
34 proceedings, the court nonetheless may issue an order for an examination
35 and evaluation of the ward or conservatee to determine if there is suffi-
36 cient cause for further proceedings. The court may order the ward or
37 conservatee to submit to such an examination and evaluation to be con-
38 ducted through a general hospital, psychiatric hospital, community mental
39 health center, community developmental disability organization, or by a
40 private physician, psychiatrist, psychologist or other person appointed by
41 the court who is qualified to examine and evaluate the ward or conser-
42 vatee. The costs of this examination and evaluation shall be assessed as
43 provided for in section ~~44~~ and amendments thereto.

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1 (2) If the court does not find ~~probable~~ cause to warrant further pro-
 2 ceedings and the court does not issue an order for an examination and
 3 evaluation, or if the court has within the past six months conducted either
 4 the trial upon the original petition provided for in section 18, and amend-
 5 ments thereto, or a hearing on a previous petition for restoration, the
 6 court may decline to set a hearing on the petition and may dismiss the
 7 petition without further proceedings.

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8 (d) If the court orders an examination and evaluation, and the report
 9 of that examination and evaluation contains information upon which the
 10 court finds ~~probable~~ cause to warrant further proceedings, the court shall
 11 issue an order fixing the date, time and place of a hearing on the petition,
 12 which hearing shall be held not later than 30 days following receipt of
 13 the report of the examination and evaluation. Otherwise, the court may
 14 dismiss the petition without further proceedings.

15 (e) The court may at any time on its own motion issue an order fixing
 16 the date, time and place of a hearing on whether the ward or conservatee
 17 should be restored to capacity.

18 (f) If the court issues an order setting the petition for a hearing, or
 19 issues an order on its own motion, the court may issue the following:

20 (1) An order appointing an attorney to represent the ward or conser-
 21 vatee in this matter, similarly as provided for in subsection (a)(3) of section
 22 14, and amendments thereto;

23 (2) an order requiring that the ward or conservatee appear at the time
 24 and place of the hearing on the petition. If an order to appear is entered,
 25 but is later rescinded, the court shall enter in the record of the proceed-
 26 ings the facts upon which the court found subsequent to the issuance of
 27 the order that the presence of the ward or conservatee should be excused;

28 (3) a notice of the hearing to the guardian or conservator, or both,
 29 and to other interested parties. The court may order the attorney for the
 30 ward or conservatee, or another appropriate person, to serve this notice
 31 as the court may direct;

32 (4) an order of referral for hearing to the district court of the county
 33 of residence of the ward or conservatee, or of the county wherein the
 34 ward or conservatee may be found, except that no order of referral for
 35 hearing shall be issued if objected to by the ward or conservatee. The
 36 district court to which an order of referral for hearing is made shall pro-
 37 ceed in the case as if the petition for restoration had been filed therein,
 38 except that upon completion of the hearing the court shall transmit the
 39 findings of the court, along with any statement of the costs incurred, and
 40 a certified copy of all pleadings filed and orders entered during the course
 41 of the referral, to the original court having venue. Thereafter, the original
 42 court shall proceed as provided for under this act;

43 (5) for good cause shown, an order of continuance of the hearing;

1 (6) for good cause shown, an order of advancement of the hearing;
2 and

3 (7) for good cause shown, an order changing the place of the hearing.

4 (g) The hearing upon the petition, or the court's own motion, shall
5 be conducted in as informal a manner as may be consistent with orderly
6 procedure. The court shall have the authority to receive all relevant and
7 material evidence which may be offered, including the testimony or writ-
8 ten report, findings or recommendations of any professional or other per-
9 son who has familiarity with the ward or conservatee.

10 (h) At the conclusion of the hearing, if the court does not find, by
11 clear and convincing evidence, that the ward or conservatee is impaired,
12 the court shall order that the ward or conservatee is restored to capacity
13 and shall proceed to terminate the guardianship or conservatorship, or
14 both, as provided for in subsection (i) or (j) of section 43, and amendments
15 thereto. Otherwise, the court shall make such further orders in the guard-
16 ianship or conservatorship, or both, as may be appropriate under this act.

42

17 New Sec. 42. (a) At any time following the appointment of a guardian
18 or a conservator, any person, including the ward or conservatee, may file
19 a verified petition with the court requesting that the court find that the
20 ward or conservatee is no longer in need of a guardian or a conservator,
21 or both, and requesting that the court terminate the guardianship or con-
22 servatorship, or both.

23 (b) The petition shall include:

24 (1) The petitioner's name and address, and if the petitioner is the
25 ward's or conservatee's court appointed guardian or conservator, or both,
26 that fact;

27 (2) the ward's or conservatee's name, age, date of birth, address of
28 permanent residence, and present address or whereabouts, if different
29 from the ward's or conservatee's permanent residence;

30 (3) the name and address of the ward's or conservatee's court ap-
31 pointed guardian or conservator, or both, if different from the petitioner;

32 (4) the factual basis upon which the petitioner alleges that the ward
33 or conservatee is no longer in need of a guardian or conservator, or both;

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

36 (6) a request that the court find that the ward or conservatee is no
37 longer in need of a guardian or conservator, or both, and that the court
38 terminate the guardianship or conservatorship, or both.

39 (c) (1) Upon the filing of such a petition, the court shall review the
40 petition to determine whether ~~probable~~ cause exists to warrant further
41 proceedings. If the court finds ~~probable~~ cause to warrant further pro-
42 ceedings, the court shall issue an order fixing the date, time and place of
43 a hearing on the petition, which hearing shall be held not later than 30

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1 days following the filing of the petition. If the court does not find within
 2 the petition facts sufficient to constitute ~~probable~~ cause to warrant further
 3 proceedings, the court nonetheless may issue an order for an investigation
 4 and report concerning the circumstances of the ward or conservatee. The
 5 court may appoint any qualified person to conduct this investigation. The
 6 costs of this investigation shall be assessed as provided for in section ~~44~~
 7 and amendments thereto.

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8 (2) If the court does not find ~~probable~~ cause to warrant further pro-
 9 ceedings and the court does not issue an order for an investigation and
 10 report, or if the court has within the past six months conducted either
 11 the trial upon the original petition provided for in section 18, and amend-
 12 ments thereto, or a hearing on a previous petition for termination, the
 13 court may decline to set a hearing on the petition and may dismiss the
 14 petition without further proceedings.

15 (d) If the court orders an investigation, and the report of that inves-
 16 tigation contains information upon which the court finds ~~probable~~ cause
 17 to warrant further proceedings, the court shall issue an order fixing the
 18 date, time and place of a hearing on the petition, which hearing shall be
 19 held not later than 30 days following receipt of the report of the inves-
 20 tigation. Otherwise, the court may dismiss the petition without further
 21 proceedings.

22 (e) The court may at any time on its own motion issue an order fixing
 23 the date, time and place of a hearing on whether the guardianship or
 24 conservatorship, or both, should be terminated.

25 (f) If the court issues an order setting the petition for a hearing, or
 26 issues an order on its own motion, the court may issue the following:

27 (1) An order appointing an attorney to represent the ward or conser-
 28 vatee in this matter, similarly as provided for in subsection (a) (3) of section
 29 14, and amendments thereto;

30 (2) a notice of the hearing to the guardian or conservator, or both,
 31 and to other interested parties. The court may order the petitioner, or
 32 another appropriate person, to serve this notice as the court may direct;

33 (3) for good cause shown, an order of continuance of the hearing;

34 (4) for good cause shown, an order of advancement of the hearing;
 35 and

36 (5) for good cause shown, an order changing the place of the hearing.

37 (g) The hearing upon the petition, or the court's own motion, shall
 38 be conducted in as informal a manner as may be consistent with orderly
 39 procedure. The court shall have the authority to receive all relevant and
 40 material evidence which may be offered, including the testimony or writ-
 41 ten report, findings or recommendations of any professional or other per-
 42 son who has familiarity with the ward or conservatee or the conservatee's
 43 estate.

40
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1 (h) At the conclusion of the hearing, if the court does not find, by
 2 clear and convincing evidence, that the ward or conservatee is in need of
 3 a guardian or conservator, or both, the court shall order that the guardi-
 4 anship or conservatorship, or both, be terminated as provided for herein.
 5 The court may assign to the guardian or conservator additional respon-
 6 sibilities, duties, powers or authorities as the court determines appropri-
 7 ate to facilitate the closure of the guardianship or conservatorship, or
 8 both, including, if the ward or conservatee is deceased, authority to the
 9 guardian or conservator to pay from the ward's or conservatee's estate
 10 any reasonable funeral expenses, any medical expenses from the ward's
 11 or conservatee's last illness, and any claim for medical assistance paid for
 12 pursuant to K.S.A. 39-709, and amendments thereto, with due regard to
 13 the rights of a surviving spouse, if any, and creditors.

14 (i) Upon the court ordering that the guardianship be terminated, the
 15 guardian shall give any necessary notices with regard to the termination
 16 of the guardian's authority, shall assist the ward to establish an independ-
 17 ent residence, if applicable, and shall file a final report with the court
 18 concerning the actions of the guardian. The court shall review the report
 19 and if the court finds matters in order, the court shall approve this final
 20 report and shall finally discharge the guardian.

21 (j) Upon the court ordering that the conservatorship be terminated,
 22 the conservator shall take any necessary action to close the conservator's
 23 administration of the conservatee's estate, and to deliver the property and
 24 assets of the conservatee's estate to the conservatee or otherwise as the
 25 court may direct. If the conservatee is deceased, and the funeral and last
 26 illness expenses, payment of any claim for medical expenses paid for pur-
 27 suant to K.S.A. 39-709, and amendments there, payment of the fees of
 28 the conservator as the court may allow, and payment of the costs of the
 29 final accounting and closing of the conservatee's estate, will deplete the
 30 estate, the conservator shall show such depletion on the final accounting.
 31 ~~If the court approves, allows and settles this final accounting pursuant to~~
 32 ~~the provisions of section 37, and amendments thereto, the court finally~~
 33 ~~shall discharge the conservator and the conservator's surety.~~ If such ex-
 34 penses will not deplete the estate, the remaining property and assets of
 35 the conservatee's estate shall be delivered by the conservator to the ap-
 36 propriate person or agency as determined by the court, and the conser-
 37 vator shall report such fact to the court in a final accounting. Upon the
 38 filing of a final accounting, and presentation to the court of a receipt for
 39 such property and assets, if the court approves, allows and settles this
 40 final accounting pursuant to the provisions of section 37, and amendments
 41 thereto, the court ~~finally~~ shall discharge the conservator and the conser-
 42 vator's surety. Neither the conservator, nor the conservator's estate or
 43 surety, shall be finally discharged until all of the property and assets of

finally

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the conservatee's estate have been dispersed as directed by the court.

New Sec. 43. (a) The court at any time, upon the request of any party or upon the court's own motion, may issue a written order directing that any medical or treatment records, evaluations or investigative reports filed with the court, attached to any pleading, produced in response to any order issued by the court, or introduced in evidence, shall be separately maintained in a confidential manner, to be disclosed only:

(1) Upon the written consent or request of the proposed ward or proposed conservatee, if no guardian or conservator is appointed by the court;

(2) upon the written consent of the guardian or conservator;

(3) upon the written consent of the former ward or former conservatee, if restored to capacity pursuant to section 41, and amendments thereto;

(4) upon the order of any court of record after a determination has been made by the court that such records or reports are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence;

(5) to any state or national accreditation agency or for a scholarly study, but the court shall require, before such disclosure is made, a pledge from that state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information; or

(6) in proceedings under this act, upon the written request of any attorney representing any party.

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, or K.S.A. 2000 Supp. 59-2979 or 59-29b79, and amendments thereto, are applicable to medical or treatment records of any patient or former patient who may be the subject of proceedings under this act, the provisions of K.S.A. 65-5601 through 65-5605 or K.S.A. 59-2979 or 59-29b79, and amendments thereto, as applicable, shall control the disposition of information contained in such records. Willful violation of this section is a class C misdemeanor.

New Sec. 44. (a) In each proceeding the court shall allow and order paid to any individual or institution as a part of the costs thereof a reasonable fee and expenses for any professional services ordered performed by the court pursuant to this act other than those performed by any individual or institution under the jurisdiction of the department of social and rehabilitation services, but including the fee of counsel for the proposed ward or proposed conservatee or ward or conservatee when counsel is appointed by the court. The court may allow and order paid the fee of counsel for the petitioner. Other costs and fees may be allowed and paid

ADD (NEW) NEW SECTION 43 (and re-number all remaining sections in the Bill)

(a) At any time the court may enter an order summarily terminating the guardianship in any of the following circumstances:

(1) the ward is deceased;

(2) the ward, who was a minor and not adjudicated to be a minor with an impairment which would otherwise make that minor an adult with an impairment in need of a guardian, has become 18 years of age, has had the rights of majority conferred upon them pursuant to K.S.A. 38-108 and amendments thereto, or is now considered to be of the age of majority pursuant to K.S.A. 38-101 and amendments thereto; or

(3) no further need for the guardianship exists.

(b) At any time the court may enter an order summarily terminating the conservatorship in any of the following circumstances:

(1) the conservatee is deceased and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable; or

(2) no further need for the conservatorship exists and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto.

(c) At any time the court may enter an order summarily terminating the voluntary conservatorship in any of the following circumstances:

(1) the conservatee has filed a verified petition pursuant to new section 42 and amendments thereto, requesting the termination of the conservatorship and the court has issued orders consistent with the requirements (cont. on page 73a)

and any respondent

of subsection (j) of new section 42 and amendments thereto, as applicable;

(2) the conservatee has been adjudicated an adult with an impairment in need of a conservator by a court of competent jurisdiction either within this or another state, and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable;

(3) no further need for the conservatorship exists and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable; or

(4) the conservatee is deceased and the court has issued orders consistent with the requirements of subsection (j) of new section 42 and amendments thereto, as applicable.

1 as are allowed by law for similar services in other cases. The costs shall
2 be taxed to the estate of the proposed ward or proposed conservatee or
3 ward or conservatee, to those bound by law to support the proposed ward
4 or proposed conservatee or ward or conservatee, to other parties when-
5 ever it would be just and equitable to do so, or to the county of residence
6 of the proposed ward or proposed conservatee or ward or conservatee as
7 the court having venue shall direct.

8 (b) In any contested proceeding or matter the court, in its discretion,
9 may require one or more parties to give security for the costs thereof, or
10 in lieu thereof to file a poverty affidavit as provided for in the code of
11 civil procedure.

12 (c) Any district court receiving a statement of costs from another
13 district court shall approve the same for payment out of the general fund
14 of its county except that it may refuse to approve the same for payment
15 only on the grounds that the proposed ward or proposed conservatee or
16 ward or conservatee is not a resident of that county. In such case it shall
17 transmit the statement of costs to the secretary of social and rehabilitation
18 services who shall determine the question of residence and certify those
19 findings to each district court. If the claim for costs is not paid within 30
20 days after such certification, an action may be maintained thereon by the
21 claimant county in the district court of the claimant county against the
22 debtor county. The findings made by the secretary of social and rehabil-
23 itation services as to the residence of the proposed ward or proposed
24 conservatee or ward or conservatee shall be applicable only to the as-
25 sessment of costs. Any county of residence which pays from its general
26 fund court costs to the district court of another county may recover the
27 same in any court of competent jurisdiction from the estate of the pro-
28 posed ward or proposed conservatee or ward or conservatee or from those
29 bound by law to support the proposed ward or proposed conservatee or
30 ward or conservatee, unless the court finds that the proceedings in which
31 such costs were incurred were instituted without ~~probable~~ cause and not
32 in good faith.

good

33 New Sec. 45. (a) Any person who has been adjudged a disabled per-
34 son prior to the effective date of this act and who has not been restored
35 to capacity, for the purposes of this act, shall be considered to be either:

36 (1) An adult with an impairment in need of a guardian or conservator,
37 or both;

38 (2) a minor in need of a guardian or conservator, or both;

39 (3) a minor with an impairment in need of a guardian or conservator,
40 or both;

41 (4) a person previously adjudged as impaired in another state; or

42 (5) a person in need of an ancillary conservator.

43 (b) Within one year from the effective date of this act, any person

1 person seeking home and community based services who would otherwise
 2 qualify for assistance under this act but who, by reason of ~~disability~~ *being*
 3 *a disabled person* as defined by K.S.A. ~~59-3002~~ *77-201*, and amendments
 4 thereto, is unable to give the consent prerequisite to the property and
 5 income transfers described in this act, provided that the spouse of the
 6 individual seeking assistance seeks a court order of maintenance, an order
 7 of conservatorship or of property and income division pursuant to this act
 8 within one year from the beginning of the first benefit period.

9 Sec. 54. K.S.A. 39-970 is hereby amended to read as follows: 39-970.

10 (a) (1) On and after July 1, 1998, no person shall knowingly operate an
 11 adult care home if, in the adult care home, there works any person who
 12 has been convicted of or has been adjudicated a juvenile offender because
 13 of having committed an act which if done by an adult would constitute
 14 the commission of capital murder, pursuant to K.S.A. 21-3439 and
 15 amendments thereto, first degree murder, pursuant to K.S.A. 21-3401
 16 and amendments thereto, second degree murder, pursuant to subsection
 17 (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter,
 18 pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide
 19 pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a
 20 dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto,
 21 rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent lib-
 22 erties with a child, pursuant to K.S.A. 21-3503 and amendments thereto,
 23 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and
 24 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
 25 3506 and amendments thereto, indecent solicitation of a child, pursuant
 26 to K.S.A. 21-3510 and amendments thereto, aggravated indecent solici-
 27 tation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,
 28 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amend-
 29 ments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amend-
 30 ments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518
 31 and amendments thereto, or similar statutes of other states or the federal
 32 government.

33 (2) On and after July 1, 1998, a person operating an adult care home
 34 may employ an applicant who has been convicted of any of the following
 35 if five or more years have elapsed since the applicant satisfied the sen-
 36 tence imposed or was discharged from probation, a community correc-
 37 tional services program, parole, postrelease supervision, conditional re-
 38 lease or a suspended sentence; or if five or more years have elapsed since
 39 the applicant has been finally discharged from the custody of the com-
 40 missioner of juvenile justice or from probation or has been adjudicated a
 41 juvenile offender, whichever time is longer: A felony conviction for a
 42 crime which is described in: (A) article 34 of chapter 21 of the Kansas
 43 Statutes Annotated and amendments thereto, except those crimes listed

Section was amended
 in 2001 session, needs
 current version.

1 (6) as provided in K.S.A. 59-1707 and 59-1708, and amendments
2 thereto.

3 (b) No officer, employee or agent of a bank, savings and loan asso-
4 ciation or corporation which is not authorized to act as a fiduciary in this
5 state shall be permitted to act as a fiduciary, whether such officer, em-
6 ployee or agent is a resident or a nonresident of this state, when in fact
7 such officer, employee or agent is acting as a fiduciary on behalf of such
8 bank, savings and loan association or corporation.

9 (c) No bank, savings and loan association or other corporation, other
10 than a nonprofit corporation certified in accordance with ~~K.S.A. 59-3037~~
11 *section 21*, and amendments thereto, shall be appointed guardian of the
12 person of a ward.

13 Sec. 59. K.S.A. 2000 Supp. 59-2946 is hereby amended to read as
14 follows: 59-2946. When used in the care and treatment act for mentally
15 ill persons:

16 (a) "Discharge" means the final and complete release from treat-
17 ment, by either the head of a treatment facility acting pursuant to K.S.A.
18 2000 Supp. 59-2950 and amendments thereto or by an order of a court
19 issued pursuant to K.S.A. 2000 Supp. 59-2973 and amendments thereto.

20 (b) "Head of a treatment facility" means the administrative director
21 of a treatment facility or such person's designee.

22 (c) "Law enforcement officer" shall have the meaning ascribed to it
23 in K.S.A. 22-2202, and amendments thereto.

24 (d) (1) "Mental health center" means any community mental health
25 center organized pursuant to the provisions of K.S.A. 19-4001 through
26 19-4015 and amendments thereto, or mental health clinic organized pur-
27 suant to the provisions of K.S.A. 65-211 through 65-215 and amendments
28 thereto, or a mental health clinic organized as a not-for-profit or a for-
29 profit corporation pursuant to K.S.A. 17-1701 through 17-1775 and
30 amendments thereto or K.S.A. 17-6001 through 17-6010 and amend-
31 ments thereto, and licensed in accordance with the provisions of K.S.A.
32 75-3307b and amendments thereto.

33 (2) "Participating mental health center" means a mental health center
34 which has entered into a contract with the secretary of social and reha-
35 bilitation services pursuant to the provisions of K.S.A. 39-1601 through
36 39-1612 and amendments thereto.

37 (e) "Mentally ill person" means any person who is suffering from a
38 mental disorder which is manifested by a clinically significant behavioral
39 or psychological syndrome or pattern and associated with either a painful
40 symptom or an impairment in one or more important areas of functioning,
41 and involving substantial behavioral, psychological or biological dysfunc-
42 tion, to the extent that the person is in need of treatment.

43 (f) (1) "Mentally ill person subject to involuntary commitment for

Section was amended
in 2001 session, needs
current version.

Section was amended in 2001 session, needs current version.

1 Sec. 69. K.S.A. 2000 Supp. 60-304 is hereby amended to read as
2 follows: 60-304. As used in this section, "serving" means making service
3 by any of the methods described in K.S.A. 60-303, and amendments
4 thereto, unless a specific method of making service is prescribed in this
5 section. Except for service by publication under K.S.A. 60-307, and
6 amendments thereto, service of process under this article shall be made
7 as follows:

8 (a) *Individual.* Upon an individual other than a minor or a disabled
9 person, by serving the individual or by serving an agent authorized by
10 appointment or by law to receive service of process, but if the agent is
11 one designated by statute to receive service, such further notice as the
12 statute requires shall be given. Service by certified mail shall be addressed
13 to an individual at the individual's dwelling house or usual place of abode
14 and to an authorized agent at the agent's usual or designated address. If
15 service by certified mail to the individual's dwelling house or usual place
16 of abode is refused or unclaimed, the sheriff, party or party's attorney
17 seeking service may complete service by certified mail, restricted delivery,
18 by serving the individual at a business address after filing a return on
19 service stating the certified mailing to the individual at such individual's
20 dwelling house or usual place of abode has been refused or unclaimed
21 and a business address is known for such individual.

22 (b) *Minor.* Upon a minor, by serving the minor and also either the
23 minor's guardian or conservator if the minor has one within the state or
24 the minor's father or mother or other person having the minor's care or
25 control or with whom such minor resides, or if service cannot be made
26 upon any of them, then as provided by order of the judge. Service by
27 certified mail shall be addressed to an individual at the individual's dwell-
28 ing house or usual place of abode and to a corporate guardian or conser-
29 vator at such guardian or conservator's usual place of business.

30 (c) *Disabled person.* Upon a disabled person, as defined in K.S.A.
31 ~~59-3002~~ 77-201, and amendments thereto, by serving (1) such person's
32 guardian, conservator or a competent adult member of such person's
33 family with whom the person resides, or if such person is living in an
34 institution, then the director or chief executive officer of the institution
35 or, if service cannot be made upon any of them, then as provided by order
36 of the judge, and (2) unless the judge otherwise orders, the disabled
37 person. Service by certified mail shall be addressed to a director or chief
38 executive officer of an institution at the institution, to any other individual
39 at the individual's dwelling house or usual place of abode, and to a cor-
40 porate guardian or conservator at such guardian or conservator's usual
41 place of business.

42 (d) *Governmental bodies.* (1) Upon a county, by serving one of the
43 county commissioners or the county clerk or the county treasurer; (2)

1 (e) No child care facility or family day care home or the employees
2 thereof, shall be liable for civil damages to any person refused employ-
3 ment or discharged from employment by reason of such facility's or
4 home's compliance with the provisions of this section if such home acts
5 in good faith to comply with this section.

6 (f) For the purpose of subsection (a)(3), an act of abuse or neglect
7 shall not be considered to have been validated by the department of social
8 and rehabilitation services unless the alleged perpetrator has: (1) Had an
9 opportunity to be interviewed and present information during the inves-
10 tigation of the alleged act of abuse or neglect; and (2) been given notice
11 of the agency decision and an opportunity to appeal such decision to the
12 secretary and to the courts pursuant to the act for judicial review and civil
13 enforcement of agency actions.

14 Sec. 72. K.S.A. 2000 Supp. 65-5117 is hereby amended to read as
15 follows: 65-5117. (a) (1) On and after July 1, 1998, no person shall know-
16 ingly operate a home health agency if, for the home health agency, there
17 works any person who has been convicted of or has been adjudicated a
18 juvenile offender because of having committed an act which if done by
19 an adult would constitute the commission of capital murder, pursuant to
20 K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant
21 to K.S.A. 21-3401 and amendments thereto, second degree murder, pur-
22 suant to subsection (a) of K.S.A. 21-3402 and amendments thereto, vol-
23 untary manslaughter, pursuant to K.S.A. 21-3403 and amendments
24 thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments
25 thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437
26 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amend-
27 ments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503
28 and amendments thereto, aggravated indecent liberties with a child, pur-
29 suant to K.S.A. 21-3504 and amendments thereto, aggravated criminal
30 sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent
31 solicitation of a child, pursuant to K.S.A. 21-3510 and amendments
32 thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-
33 3511 and amendments thereto, sexual exploitation of a child, pursuant to
34 K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to
35 K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery,
36 pursuant to K.S.A. 21-3518 and amendments thereto, or similar statutes
37 of other states or the federal government.

38 (2) On and after July 1, 1998, a person operating a home health
39 agency may employ an applicant who has been convicted of any of the
40 following if five or more years have elapsed since the applicant satisfied
41 the sentence imposed or was discharged from probation, a community
42 correctional services program, parole, postrelease supervision, conditional
43 release or a suspended sentence; or if five or more years have elapsed

Section was amended in 2001 session, needs current version.

1 without permanent foundation, when connected to the required utilities,
2 and includes the plumbing, heating, air conditioning and electrical sys-
3 tems contained therein; and

4 (2) is subject to the federal manufactured home construction and
5 safety standards established pursuant to 42 U.S.C. § 5403.

6 *Forty-first.* "Mobile home" means a structure which:

7 (1) Is transportable in one or more sections which, in the traveling
8 mode, is 8 body feet or more in width and 36 body feet or more in length
9 and is built on a permanent chassis and designed to be used as a dwelling,
10 with or without a permanent foundation, when connected to the required
11 utilities, and includes the plumbing, heating, air conditioning and elec-
12 trical systems contained therein; and

13 (2) is not subject to the federal manufactured home construction and
14 safety standards established pursuant to 42 U.S.C. § 5403.

15 *Forty-second.* "Disabled person" includes incapacitated persons and
16 incompetent persons as defined herein.

17 *New Sec. 77.* If any provision of this act for obtaining a guardian or
18 a conservator, or both, or the application thereof to any person or cir-
19 cumstances is held invalid, the invalidity shall not affect other provisions
20 or applications of this act which can be given effect with the invalid pro-
21 vision or application, and to this end the provisions of this act are
22 severable.

23 *Sec. 78.* K.S.A. 17-2263, 17-2264, 17-5828, 17-5829, 38-1505, 39-
24 789, ~~39-970~~, 44-513a, 58-629, 59-1701, ~~59-3001~~, 59-3003, 59-3004, 59-
25 3006, 59-3007, 59-3008, 59-3011, 59-3012, 59-3015, 59-3016, 59-3017,
26 59-3018, 59-3019, 59-3020, 59-3021, 59-3022, 59-3023, 59-3024, 59-
27 3025, 59-3027, 59-3028, 59-3030, 59-3031, 59-3032, 59-3034, 59-3035,
28 59-3037, 59-3038, 73-507, 76-12b04 and 77-201 and K.S.A. 2000 Supp.
29 9-1215, 9-1216, ~~58-24a15~~, ~~59-2946~~, 59-2948, 59-2949, 59-2951, 59-2960,
30 59-29b46, 59-29b48, 59-29b49, 59-29b51, 59-29b60, 59-3002, 59-3009,
31 59-3010, 59-3013, 59-3014, 59-3018a, 59-3026, 59-3029, 50-3036, 59-
32 3039, 60-304, 60-304a, 61-3004, 65-516, 65-5117 and 76-729 are hereby
33 repealed.

34 *Sec. 79.* This act shall take effect and be in force from and after its
35 publication in the statute book.
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Sec. 77. KSA 59 - 2203

*Sec. 78. KSA 2001 Supp. 59-2401
renumber*

59-2203,

39-970,

59-2401,

59-2203. Venue. Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of such decedent's death if the decedent owned an interest in real property in such county, or, if the decedent did not own an interest in real property in the decedent's county of residence at the time of such decedent's death, in such county of the residence of the decedent at the time of such decedent's death or in any county where the decedent owned an interest in real property; if the decedent was not a resident of this state, proceedings may be had in any county where such decedent left any estate to be administered as provided in K.S.A. 59-805 and amendments thereto. ~~Proceedings for the appointment of a guardian may be had in the county of the proposed ward's residence or where the proposed ward may be found. Proceedings for the appointment of a conservator shall be had in the county of the proposed conservatee's residence; if the proposed conservatee resides without this state, proceedings may be had in any county in which any of the proposed conservatee's property is situated.~~ Proceedings for the administration of a partnership estate by the surviving partner shall be had in the county of the residence of the deceased partner at the time. If the deceased partner is a nonresident of the state the proceedings may be had in any county in which any of the partnership property is situated. Such proceedings first legally commenced shall extend to all of the property of the decedent or proposed conservatee in this state.

If the proceedings are instituted in more than one county, they shall be stayed except in the county where first commenced until final determination of venue. If the proper venue is determined to be in another county, the district court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county.

- (16) An order adjudging a person in contempt.
- (17) An order adjudging or refusing to adjudge a person an ~~incapacitated~~ person. _____ impaired
- (18) The granting or refusing to grant an order for treatment.
- (19) An order granting or denying restoration to capacity.
- (20) An order granting or denying discharge.
- (21) An order finding or refusing to find that there is a valid consent to a will.
- (22) An order finding or refusing to find that there is a valid settlement agreement.
- (23) An order decreeing or refusing to decree an adoption.
- (24) A final order, decision or judgment in any probate proceeding.

(b) Notwithstanding the provisions of K.S.A. 60-2103 and amendments thereto relating to bonds, the appellant, other than the state or municipality or a fiduciary appealing on behalf of the estate, shall file in the court from which the appeal is taken a bond in such sum and with such sureties as may be fixed and approved by the court, conditioned that the appellant will without unnecessary delay prosecute the appeal and pay all sums, damages and costs that may be adjudged against the appellant.

(c) Except as otherwise provided in this section, appeals taken pursuant to this section shall be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil cases.