

**SENATE BILL No. 63**

By Committee on Judiciary

1-23

1 AN ACT enacting the revised uniform fiduciary access to digital assets  
2 act; amending K.S.A. 58a-816 and 59-3078 and K.S.A. 2016 Supp. 58-  
3 654, 59-3075 and 77-201 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. This act may be cited as the revised uniform fiduciary  
7 access to digital assets act (2015).

8 New Sec. 2. In this act:

9 (a) "Account" means an arrangement under a terms-of-service  
10 agreement in which a custodian carries, maintains, processes, receives or  
11 stores a digital asset of the user or provides goods or services to the user.

12 (b) "Agent" means an attorney-in-fact granted authority under a  
13 durable or nondurable power of attorney.

14 (c) "Carries" means engages in the transmission of an electronic  
15 communication.

16 (d) "Catalogue of electronic communications" means information that  
17 identifies each person with which a user has had an electronic  
18 communication, the time and date of the communication and the electronic  
19 address of the person.

20 (e) "Conservatee" means an individual for whom a conservator has  
21 been appointed.

22 (f) "Conservator" means a person appointed by a court pursuant to  
23 K.S.A. 59-3050 et seq., and amendments thereto, to manage the estate of a  
24 minor or adult individual. The term includes a temporary conservator.

25 (g) "Content of an electronic communication" means information  
26 concerning the substance or meaning of the communication which:

27 (1) Has been sent or received by a user;

28 (2) is in electronic storage by a custodian providing an electronic  
29 communication service to the public or is carried or maintained by a  
30 custodian providing a remote computing service to the public; and

31 (3) is not readily accessible to the public.

32 (h) "Court" means the district court.

33 (i) "Custodian" means a person that carries, maintains, processes,  
34 receives or stores a digital asset of a user.

35 (j) "Designated recipient" means a person chosen by a user using an  
36 online tool to administer digital assets of the user.

1 (k) "Digital asset" means an electronic record in which an individual  
2 has a right or interest. The term does not include an underlying asset or  
3 liability unless the asset or liability is itself an electronic record.

4 (l) "Electronic" means relating to technology having electrical,  
5 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

6 (m) "Electronic communication" has the meaning set forth in 18  
7 U.S.C. § 2510(12).

8 (n) "Electronic communication service" means a custodian that  
9 provides to a user the ability to send or receive an electronic  
10 communication.

11 (o) "Fiduciary" means an original, additional or successor personal  
12 representative, guardian, conservator, agent or trustee.

13 (p) "Guardian" means a person appointed by the court pursuant to  
14 K.S.A. 59-3050 et seq., and amendments thereto, to make decisions  
15 regarding the support, care, education, health and welfare of a minor or  
16 adult individual. The term includes a temporary guardian but does not  
17 include a guardian ad litem.

18 (q) "Information" means data, text, images, videos, sounds, codes,  
19 computer programs, software, databases or the like.

20 (r) "Online tool" means an electronic service provided by a custodian  
21 that allows the user, in an agreement distinct from the terms-of-service  
22 agreement between the custodian and user, to provide directions for  
23 disclosure or nondisclosure of digital assets to a third person.

24 (s) "Person" means an individual, estate, business or nonprofit entity,  
25 public corporation, government or governmental subdivision, agency or  
26 instrumentality, or other legal entity.

27 (t) "Personal representative" means an executor, administrator, special  
28 administrator or person that performs substantially the same function  
29 under law of this state other than this act.

30 (u) "Power of attorney" means a record that grants an agent authority  
31 to act on behalf of a principal.

32 (v) "Principal" means an individual who grants authority to an agent  
33 in a power of attorney.

34 (w) "Record" means information that is inscribed on a tangible  
35 medium or that is stored in an electronic or other medium and is  
36 retrievable in perceivable form.

37 (x) "Remote computing service" means a custodian that provides to a  
38 user computer-processing services or the storage of digital assets by means  
39 of an electronic communications system, as defined in 18 U.S.C. §  
40 2510(14).

41 (y) "Terms of service agreement" means an agreement that controls  
42 the relationship between a user and a custodian.

43 (z) "Trustee" means a fiduciary with legal title to property under an

1 agreement or declaration that creates a beneficial interest in another. The  
2 term includes a successor trustee.

3 (aa) "User" means a person that has an account with a custodian.

4 (bb) "Ward" means an individual for whom a guardian has been  
5 appointed.

6 (cc) "Will" includes a codicil, a testamentary instrument that only  
7 appoints an executor and an instrument that revokes or revises a  
8 testamentary instrument.

9 New Sec. 3. (a) This act applies to:

10 (1) A fiduciary acting under a will or power of attorney executed  
11 before, on or after July 1, 2017;

12 (2) a personal representative acting for a decedent who died before,  
13 on or after July 1, 2017;

14 (3) a guardianship or conservatorship proceeding commenced before,  
15 on or after July 1, 2017; and

16 (4) a trustee acting under a trust created before, on or after July 1,  
17 2017.

18 (b) This act applies to a custodian if the user resides in this state or  
19 resided in this state at the time of the user's death.

20 (c) This act does not apply to a digital asset of an employer used by  
21 an employee in the ordinary course of the employer's business.

22 New Sec. 4. (a) A user may use an online tool to direct the custodian  
23 to disclose or not to disclose some or all of the user's digital assets,  
24 including the content of electronic communications. If the online tool  
25 allows the user to modify or delete a direction at all times, a direction  
26 regarding disclosure using an online tool overrides a contrary direction by  
27 the user in a will, trust, power of attorney or other record.

28 (b) If a user has not used an online tool to give direction under  
29 subsection (a) or if the custodian has not provided an online tool, the user  
30 may allow or prohibit in a will, trust, power of attorney or other record,  
31 disclosure to a fiduciary of some or all of the user's digital assets,  
32 including the content of electronic communications sent or received by the  
33 user.

34 (c) A user's direction under subsection (a) or (b) overrides a contrary  
35 provision in a terms-of-service agreement that does not require the user to  
36 act affirmatively and distinctly from the user's assent to the terms of  
37 service.

38 New Sec. 5. (a) This act does not change or impair a right of a  
39 custodian or a user under a terms-of-service agreement to access and use  
40 digital assets of the user.

41 (b) This act does not give a fiduciary any new or expanded rights  
42 other than those held by the user for whom, or for whose estate, the  
43 fiduciary acts or represents.

1 (c) A fiduciary's access to digital assets may be modified or  
2 eliminated by a user, by federal law or by a terms-of-service agreement if  
3 the user has not provided direction under section 4, and amendments  
4 thereto.

5 New Sec. 6. (a) When disclosing digital assets of a user under this  
6 act, the custodian may at its sole discretion:

7 (1) Grant a fiduciary or designated recipient full access to the user's  
8 account;

9 (2) grant a fiduciary or designated recipient partial access to the user's  
10 account sufficient to perform the tasks with which the fiduciary or  
11 designated recipient is charged; or

12 (3) provide a fiduciary or designated recipient a copy in a record of  
13 any digital asset that, on the date the custodian received the request for  
14 disclosure, the user could have accessed if the user were alive and had full  
15 capacity and access to the account.

16 (b) A custodian may assess a reasonable administrative charge for the  
17 cost of disclosing digital assets under this act.

18 (c) A custodian need not disclose under this act a digital asset deleted  
19 by a user.

20 (d) If a user directs or a fiduciary requests a custodian to disclose  
21 under this act some, but not all, of the user's digital assets, the custodian  
22 need not disclose the assets if segregation of the assets would impose an  
23 undue burden on the custodian. If the custodian believes the direction or  
24 request imposes an undue burden, the custodian or fiduciary may seek an  
25 order from the court to disclose:

26 (1) A subset limited by date of the user's digital assets;

27 (2) all of the user's digital assets to the fiduciary or designated  
28 recipient;

29 (3) none of the users digital assets; or

30 (4) all of the user's digital assets to the court for review in camera.

31 New Sec. 7. If a deceased user consented or a court directs disclosure  
32 of the contents of electronic communications of the user, the custodian  
33 shall disclose to the personal representative of the estate of the user the  
34 content of an electronic communication sent or received by the user if the  
35 representative gives the custodian:

36 (a) A written request for disclosure in physical or electronic form;

37 (b) a certified copy of the death certificate of the user;

38 (c) a certified copy of the letter of appointment of the representative  
39 or a small estate affidavit or court order;

40 (d) unless the user provided direction using an online tool, a copy of  
41 the user's will, trust, power of attorney or other record evidencing the  
42 user's consent to disclosure of the content of electronic communications;  
43 and

1 (e) if requested by the custodian:

2 (1) A number, username, address or other unique subscriber or  
3 account identifier assigned by the custodian to identify the user's account;

4 (2) evidence linking the account to the user; or

5 (3) a finding by the court that:

6 (A) The user had a specific account with the custodian, identifiable  
7 by the information specified in subsection (e)(1);

8 (B) disclosure of the content of electronic communications of the user  
9 would not violate 18 U.S.C. § 2701 et seq., 47 U.S.C. § 222 or other  
10 applicable law;

11 (C) unless the user provided direction using an online tool, the user  
12 consented to disclosure of the content of electronic communications; or

13 (D) disclosure of the content of electronic communications of the user  
14 is reasonably necessary for administration of the estate.

15 New Sec. 8. Unless the user prohibited disclosure of digital assets or  
16 the court directs otherwise, a custodian shall disclose to the personal  
17 representative of the estate of a deceased user a catalogue of electronic  
18 communications sent or received by the user and digital assets, other than  
19 the content of electronic communications, of the user, if the representative  
20 gives the custodian:

21 (a) A written request for disclosure in physical or electronic form;

22 (b) a certified copy of the death certificate of the user;

23 (c) a certified copy of the letter of appointment of the representative  
24 or a small estate affidavit or court order; and

25 (d) if requested by the custodian:

26 (1) A number, username, address or other unique subscriber or  
27 account identifier assigned by the custodian to identify the user's account;

28 (2) evidence linking the account to the user;

29 (3) an affidavit stating that disclosure of the user's digital assets is  
30 reasonably necessary for administration of the estate; or

31 (4) a finding by the court that:

32 (A) The user had a specific account with the custodian, identifiable  
33 by the information specified in subsection (d)(1); or

34 (B) disclosure of the user's digital assets is reasonably necessary for  
35 administration of the estate.

36 New Sec. 9. To the extent a power of attorney expressly grants an  
37 agent authority over the content of electronic communications sent or  
38 received by the principal and unless directed otherwise by the principal or  
39 the court, a custodian shall disclose to the agent the content if the agent  
40 gives the custodian:

41 (a) A written request for disclosure in physical or electronic form;

42 (b) an original or copy of the power of attorney expressly granting the  
43 agent authority over the content of electronic communications of the

1 principal;

2 (c) a certification by the agent, under penalty of perjury, that the  
3 power of attorney is in effect; and

4 (d) if requested by the custodian:

5 (1) A number, username, address or other unique subscriber or  
6 account identifier assigned by the custodian to identify the principal's  
7 account; or

8 (2) evidence linking the account to the principal.

9 New Sec. 10. Unless otherwise ordered by the court, directed by the  
10 principal or provided by a power of attorney, a custodian shall disclose to  
11 an agent with specific authority over digital assets or general authority to  
12 act on behalf of a principal a catalogue of electronic communications sent  
13 or received by the principal and digital assets, other than the content of  
14 electronic communications, of the principal if the agent gives the  
15 custodian:

16 (a) A written request for disclosure in physical or electronic form;

17 (b) an original or a copy of the power of attorney that gives the agent  
18 specific authority over digital assets or general authority to act on behalf of  
19 the principal;

20 (c) a certification by the agent, under penalty of perjury, that the  
21 power of attorney is in effect; and

22 (d) if requested by the custodian:

23 (1) A number, username, address or other unique subscriber or  
24 account identifier assigned by the custodian to identify the principal's  
25 account; or

26 (2) evidence linking the account to the principal.

27 New Sec. 11. Unless otherwise ordered by the court or provided in a  
28 trust, a custodian shall disclose to a trustee that is an original user of an  
29 account any digital asset of the account held in trust, including a catalogue  
30 of electronic communications of the trustee and the content of electronic  
31 communications.

32 New Sec. 12. Unless otherwise ordered by the court, directed by the  
33 user or provided in a trust, a custodian shall disclose to a trustee that is not  
34 an original user of an account the content of an electronic communication  
35 sent or received by an original or successor user and carried, maintained,  
36 processed, received or stored by the custodian in the account of the trust if  
37 the trustee gives the custodian:

38 (a) A written request for disclosure in physical or electronic form;

39 (b) a certified copy of the trust instrument or a certification of the  
40 trust under K.S.A. 58a-1013, and amendments thereto, that includes  
41 consent to disclosure of the content of electronic communications to the  
42 trustee;

43 (c) a certification by the trustee, under penalty of perjury, that the

1 trust exists and the trustee is a currently acting trustee of the trust; and

2 (d) if requested by the custodian:

3 (1) A number, username, address or other unique subscriber or  
4 account identifier assigned by the custodian to identify the trust's account;  
5 or

6 (2) evidence linking the account to the trust.

7 New Sec. 13. Unless otherwise ordered by the court, directed by the  
8 user or provided in a trust, a custodian shall disclose, to a trustee that is not  
9 an original user of an account, a catalogue of electronic communications  
10 sent or received by an original or successor user and stored, carried or  
11 maintained by the custodian in an account of the trust and any digital  
12 assets, other than the content of electronic communications, in which the  
13 trust has a right or interest if the trustee gives the custodian:

14 (a) A written request for disclosure in physical or electronic form;

15 (b) a certified copy of the trust instrument or a certification of the  
16 trust under K.S.A. 58a-1013, and amendments thereto;

17 (c) a certification by the trustee, under penalty of perjury, that the  
18 trust exists and the trustee is a currently acting trustee of the trust; and

19 (d) if requested by the custodian:

20 (1) A number, username, address or other unique subscriber or  
21 account identifier assigned by the custodian to identify the trust's account;  
22 or

23 (2) evidence linking the account to the trust.

24 New Sec. 14. (a) After an opportunity for a hearing under K.S.A. 59-  
25 3050 et seq., and amendments thereto, the court may grant a guardian or  
26 conservator access to the digital assets of a ward or conservatee.

27 (b) Unless otherwise ordered by the court or directed by the user, a  
28 custodian shall disclose to a guardian or conservator the catalogue of  
29 electronic communications sent or received by a ward or conservatee and  
30 any digital assets, other than the content of electronic communications, in  
31 which the ward or conservatee has a right or interest if the guardian or  
32 conservator gives the custodian:

33 (1) A written request for disclosure in physical or electronic form;

34 (2) a certified copy of the court order that gives the guardian or  
35 conservator authority over the digital assets of the ward or conservatee;  
36 and

37 (3) if requested by the custodian:

38 (A) A number, username, address or other unique subscriber or  
39 account identifier assigned by the custodian to identify the account of the  
40 ward or conservatee; or

41 (B) evidence linking the account to the ward or conservatee.

42 (c) A guardian or conservator with general authority to manage the  
43 assets of a ward or conservatee may request a custodian of the digital

1 assets of the ward or conservatee to suspend or terminate an account of the  
2 ward or conservatee for good cause. A request made under this section  
3 must be accompanied by a certified copy of the court order giving the  
4 guardian or conservator authority over the ward or conservatee's property.

5 New Sec. 15. (a) The legal duties imposed on a fiduciary charged  
6 with managing tangible property apply to the management of digital  
7 assets, including:

- 8 (1) The duty of care;
- 9 (2) the duty of loyalty; and
- 10 (3) the duty of confidentiality.

11 (b) A fiduciary's authority with respect to a digital asset of a user:

12 (1) Except as otherwise provided in section 4, and amendments  
13 thereto, is subject to the applicable terms of service;

14 (2) is subject to other applicable laws, including copyright laws;

15 (3) is limited by the scope of the fiduciary's duties; and

16 (4) may not be used to impersonate the user.

17 (c) A fiduciary with authority over the property of a decedent, ward  
18 or conservatee, principal or settlor has the right to access any digital asset  
19 in which the decedent, ward or conservatee, principal or settlor had a right  
20 or interest and that is not held by a custodian or subject to a terms-of-  
21 service agreement.

22 (d) A fiduciary acting within the scope of the fiduciary's duties is an  
23 authorized user of the property of the decedent, ward or conservatee,  
24 principal or settlor for the purpose of applicable computer fraud and  
25 unauthorized computer access laws, including K.S.A. 2016 Supp. 21-5839,  
26 and amendments thereto.

27 (e) A fiduciary with authority over the tangible, personal property of  
28 a decedent, ward or conservatee, principal or settlor:

29 (1) Has the right to access the property and any digital asset stored in  
30 it; and

31 (2) is an authorized user for the purpose of computer fraud and  
32 unauthorized computer access laws, including K.S.A. 2016 Supp. 21-5839,  
33 and amendments thereto.

34 (f) A custodian may disclose information in an account to a fiduciary  
35 of the user when the information is required to terminate an account used  
36 to access digital assets licensed to the user.

37 (g) A fiduciary of a user may request a custodian to terminate the  
38 user's account. A request for termination must be in writing, in either  
39 physical or electronic form, and accompanied by:

40 (1) If the user is deceased, a certified copy of the death certificate of  
41 the user;

42 (2) a certified copy of the letter of appointment of the representative  
43 or a small estate affidavit or court order, court order, power of attorney or



1 trust giving the fiduciary authority over the account; and

2 (3) if requested by the custodian:

3 (A) A number, username, address or other unique subscriber or  
4 account identifier assigned by the custodian to identify the user's account;

5 (B) evidence linking the account to the user; or

6 (C) a finding by the court that the user had a specific account with the  
7 custodian, identifiable by the information specified in subparagraph (A).

8 New Sec. 16. (a) Not later than 60 days after receipt of the  
9 information required under sections 7 through 14, and amendments  
10 thereto, a custodian shall comply with a request under this act from a  
11 fiduciary or designated recipient to disclose digital assets or terminate an  
12 account. If the custodian fails to comply, the fiduciary or designated  
13 recipient may apply to the court for an order directing compliance.

14 (b) An order under subsection (a) directing compliance must contain  
15 a finding that compliance is not in violation of 18 U.S.C. § 2702.

16 (c) A custodian may notify the user that a request for disclosure or to  
17 terminate an account was made under this act.

18 (d) A custodian may deny a request under this act from a fiduciary or  
19 designated recipient for disclosure of digital assets or to terminate an  
20 account if the custodian is aware of any lawful access to the account  
21 following the receipt of the fiduciary's request.

22 (e) This act does not limit a custodian's ability to obtain or require a  
23 fiduciary or designated recipient requesting disclosure or termination  
24 under this act to obtain a court order which:

25 (1) Specifies that an account belongs to the ward, conservatee or  
26 principal;

27 (2) specifies that there is sufficient consent from the ward,  
28 conservatee or principal to support the requested disclosure; and

29 (3) contains a finding required by law other than this act.

30 (f) A custodian and its officers, employees and agents are immune  
31 from liability for an act or omission done in good faith in compliance with  
32 this act.

33 New Sec. 17. In applying and construing this uniform act,  
34 consideration must be given to the need to promote uniformity of the law  
35 with respect to its subject matter among states that enact it.

36 New Sec. 18. This act modifies, limits or supersedes the electronic  
37 signatures in global and national commerce act, 15 U.S.C. § 7001 et seq.,  
38 but does not modify, limit or supersede § 101(c) of that act, 15 U.S.C. §  
39 7001(c), or authorize electronic delivery of any of the notices described in  
40 § 103(b) of that act, 15 U.S.C. § 7003(b).

41 New Sec. 19. If any provision of this act or its application to any  
42 person or circumstance is held invalid, the invalidity does not affect other  
43 provisions or applications of this act which can be given effect without the

1 invalid provision or application, and to this end the provisions of this act  
2 are severable.

3 Sec. 20. K.S.A. 2016 Supp. 58-654 is hereby amended to read as  
4 follows: 58-654. (a) A principal may delegate to an attorney in fact in a  
5 power of attorney general powers to act in a fiduciary capacity on the  
6 principal's behalf with respect to all lawful subjects and purposes or with  
7 respect to one or more express subjects or purposes. A power of attorney  
8 with general powers may be durable or nondurable.

9 (b) If the power of attorney states that general powers are granted to  
10 the attorney in fact and further states in substance that it grants power to  
11 the attorney in fact to act with respect to all lawful subjects and purposes  
12 or that it grants general powers for general purposes or does not by its  
13 terms limit the power to the specific subject or purposes set out in the  
14 instrument, then the authority of the attorney in fact acting under the  
15 power of attorney shall extend to and include each and every action or  
16 power which an adult who is not disabled may carry out through an agent  
17 specifically authorized in the premises, with respect to any and all matters  
18 whatsoever, except as provided in subsection (f) and (g). When a power of  
19 attorney grants general powers to an attorney in fact to act with respect to  
20 all lawful subjects and purposes, the enumeration of one or more specific  
21 subjects or purposes does not limit the general authority granted by that  
22 power of attorney, unless otherwise provided in the power of attorney. An  
23 attorney in fact vested with general powers shall be authorized to execute a  
24 power of attorney required by any governmental agency or other legal  
25 entity on behalf of the principal, naming such attorney in fact as the  
26 attorney in fact authorized to enter into any transaction with such agency  
27 or legal entity.

28 (c) If the power of attorney states that general powers are granted to  
29 an attorney in fact with respect to one or more express subjects or purposes  
30 for which general powers are conferred, then the authority of the attorney  
31 in fact acting under the power of attorney shall extend to and include each  
32 and every action or power, but only with respect to the specific subjects or  
33 purposes expressed in the power of attorney that an adult who is not  
34 disabled may carry out through an agent specifically authorized in the  
35 premises, with respect to any and all matters whatsoever, except as  
36 provided in subsection (f) and (g).

37 (d) Except as provided in subsections (f) and (g), an attorney in fact  
38 with general powers has, with respect to the subjects or purposes for which  
39 the powers are conferred, all rights, power and authority to act for the  
40 principal that the principal would have with respect to the principal's own  
41 person or property, including property owned jointly or by the entireties  
42 with another or others, as an adult who is not disabled. Without limiting  
43 the foregoing an attorney in fact with general powers has, with respect to

1 the subject or purposes of the power, complete discretion to make a  
2 decision for the principal, to act or not act, to consent or not consent to, or  
3 withdraw consent for, any act, and to execute and deliver or accept any  
4 deed, bill of sale, bill of lading, assignment, contract, note, security  
5 instrument, consent, receipt, release, proof of claim, petition or other  
6 pleading, tax document, notice, application, acknowledgment or other  
7 document necessary or convenient to implement or confirm any act,  
8 transaction or decision. An attorney in fact with general powers, whether  
9 power to act with respect to all lawful subjects and purposes, or only with  
10 respect to one or more express subjects or purposes, shall have the power,  
11 unless specifically denied by the terms of the power of attorney, to make,  
12 execute and deliver to or for the benefit of or at the request of a third  
13 person, who is requested to rely upon an action of the attorney in fact, an  
14 agreement indemnifying and holding harmless any third person or persons  
15 from any liability, claims or expenses, including legal expenses, incurred  
16 by any such third person by reason of acting or refraining from acting  
17 pursuant to the request of the attorney in fact. Such indemnity agreement  
18 shall be binding upon the principal who has executed such power of  
19 attorney and upon the principal's successor or successors in interest. No  
20 such indemnity agreement shall protect any third person from any liability,  
21 claims or expenses incurred by reason of the fact that, and to the extent  
22 that, the third person has honored the power of attorney for actions outside  
23 the scope of authority granted by the power of attorney. In addition, the  
24 attorney in fact has complete discretion to employ and compensate real  
25 estate agents, brokers, attorneys, accountants and subagents of all types to  
26 represent and act for the principal in any and all matters, including tax  
27 matters involving the United States government or any other government  
28 or taxing entity, including, but not limited to, the execution of  
29 supplemental or additional powers of attorney in the name of the principal  
30 in form that may be required or preferred by any such taxing entity or  
31 other third person, and to deal with any or all third persons in the name of  
32 the principal without limitation. No such supplemental or additional power  
33 of attorney shall broaden the scope of authority granted to the attorney in  
34 fact in the original power of attorney executed by the principal.

35 (e) An attorney in fact, who is granted general powers for all subjects  
36 and purposes or with respect to any express subjects or purposes, shall  
37 exercise the powers conferred according to the principal's instructions, in  
38 the principal's best interest, in good faith, prudently and in accordance with  
39 K.S.A. 58-655 and 58-656, and amendments thereto.

40 (f) Any power of attorney, whether or not it grants general powers for  
41 all subjects and purposes or with respect to express subjects or purposes,  
42 shall be construed to grant power or authority to an attorney in fact to  
43 carry out any of the actions described in this subsection only if the actions

1 are expressly enumerated and authorized in the power of attorney. Any  
2 power of attorney may grant power or authority to an attorney in fact to  
3 carry out any of the following actions if the actions are expressly  
4 authorized in the power of attorney:

5 (1) To execute, amend or revoke any trust agreement;

6 (2) to fund with the principal's assets any trust not created by the  
7 principal;

8 (3) to make or revoke a gift of the principal's property in trust or  
9 otherwise;

10 (4) to disclaim a gift or devise of property to or for the benefit of the  
11 principal;

12 (5) to create or change survivorship interests in the principal's  
13 property or in property in which the principal may have an interest. The  
14 inclusion of the authority set out in this paragraph shall not be necessary in  
15 order to grant to an attorney in fact acting under a power of attorney  
16 granting general powers with respect to all lawful subjects and purposes  
17 the authority to withdraw funds or other property from any account,  
18 contract or other similar arrangement held in the names of the principal  
19 and one or more other persons with any financial institution, brokerage  
20 company or other depository to the same extent that the principal would be  
21 authorized to do if the principal were present, not disabled and seeking to  
22 act in the principal's own behalf;

23 (6) to designate or change the designation of beneficiaries to receive  
24 any property, benefit or contract right on the principal's death;

25 (7) to give or withhold consent to an autopsy or postmortem  
26 examination;

27 (8) to make a gift of, or decline to make a gift of, the principal's body  
28 parts under the revised uniform anatomical gift act, K.S.A. 2016 Supp. 65-  
29 3220 through 65-3244, and amendments thereto;

30 (9) to nominate a guardian or conservator for the principal; and if so  
31 stated in the power of attorney, the attorney in fact may nominate such  
32 attorney in fact's self as such;

33 (10) to give consent on behalf of the principal to the sale, gift,  
34 transfer, mortgage or other alienation of the principal's homestead or  
35 interest therein if:

36 (A) The principal's spouse, personally or through such spouse's  
37 attorney in fact, has also consented to such alienation;

38 (B) the power of attorney specifically describes the homestead by  
39 reference to a legal description and the street address of the property; and

40 (C) the principal's spouse, in a written document duly acknowledged  
41 by the spouse, has stated such spouse's consent that the attorney in fact  
42 may alienate the interests, in whole or in part, of the principal in the  
43 described homestead and, further, the spouse agrees that the consent of the

1 attorney in fact will constitute the consent of the principal required by  
2 ~~Article 15, Section 9 of the Kansas Constitution~~ *section 9 of article 15 of*  
3 *the constitution of the state of Kansas*. Nothing herein shall be construed  
4 as a limitation or abridgement of the right of the spouse of the principal to  
5 consent or withhold such spouse's consent to the alienation of the spouse's  
6 homestead, or any rights therein, under ~~Article 15, section 9 of the Kansas~~  
7 ~~Constitution~~ *section 9 of article 15 of the constitution of the state of*  
8 *Kansas*;

9 (11) to designate one or more substitute or successor or additional  
10 attorneys in fact;

11 (12) to delegate any or all powers granted in a power of attorney  
12 pursuant to ~~subsection (a) of K.S.A. 58-660(a)~~, and amendments thereto;  
13 ~~or~~

14 (13) *to exercise authority over the content of an electronic*  
15 *communication of the principal pursuant to section 9, and amendments*  
16 *thereto; or*

17 (14) to pay reasonable expenses incurred for the funeral and burial or  
18 other disposition of the body of the principal.

19 (g) No power of attorney, whether or not it delegates general powers,  
20 may delegate or grant power or authority to an attorney in fact to do or  
21 carry out any of the following actions for the principal:

22 (1) To make, publish, declare, amend or revoke a will for the  
23 principal;

24 (2) to make, execute, modify or revoke a declaration under K.S.A.  
25 65-28,101 et seq., and amendments thereto, for the principal or to make,  
26 execute, modify or revoke a do not resuscitate directive under K.S.A. 65-  
27 4941, and amendments thereto, for the principal or to make, execute,  
28 modify or revoke a durable power of attorney for health care decisions  
29 pursuant to K.S.A. 58-625 et seq., and amendments thereto, for the  
30 principal;

31 (3) to require the principal, against the principal's will, to take any  
32 action or to refrain from taking any action; or

33 (4) to carry out any actions specifically forbidden by the principal  
34 while not under any disability or incapacity.

35 (h) A third person may freely rely on, contract and deal with an  
36 attorney in fact delegated general powers with respect to the subjects and  
37 purposes encompassed or expressed in the power of attorney without  
38 regard to whether the power of attorney expressly identifies the specific  
39 property, account, security, storage facility or matter as being within the  
40 scope of a subject or purpose contained in the power of attorney, and  
41 without regard to whether the power of attorney expressly authorizes the  
42 specific act, transaction or decision by the attorney in fact.

43 (i) It is the policy of this state that an attorney in fact acting pursuant

1 to the provisions of a power of attorney granting general powers shall be  
2 accorded the same rights and privileges with respect to the personal  
3 welfare, property and business interests of the principal, and if the power  
4 of attorney enumerate some express subjects or purposes, with respect to  
5 those subjects or purposes, as if the principal was personally present and  
6 acting or seeking to act; and any provision of law and any purported  
7 waiver, consent or agreement executed or granted by the principal to the  
8 contrary shall be void and unenforceable.

9 (j) K.S.A. 58-650 through 58-665, and amendments thereto, shall not  
10 be construed to preclude any person or business enterprise from providing  
11 in a contract with the principal as to the procedure that thereafter must be  
12 followed by the principal or the principal's attorney in fact in order to give  
13 a valid notice to the person or business enterprise of any modification or  
14 termination of the appointment of an attorney in fact by the principal. Any  
15 such contractual provision for notice shall be valid and binding on the  
16 principal and the principal's successors so long as such provision is  
17 reasonably capable of being carried out.

18 Sec. 21. K.S.A. 58a-816 is hereby amended to read as follows: 58a-  
19 816. Without limiting the authority conferred by K.S.A. 58a-815, and  
20 amendments thereto, a trustee may:

21 (1) Collect trust property and accept or reject additions to the trust  
22 property from a settlor or any other person;

23 (2) acquire or sell property, for cash or on credit, at public or private  
24 sale;

25 (3) exchange, partition, or otherwise change the character of trust  
26 property;

27 (4) deposit trust money in an account in a regulated financial-service  
28 institution;

29 (5) borrow money, with or without security, and mortgage or pledge  
30 trust property for a period within or extending beyond the duration of the  
31 trust;

32 (6) with respect to an interest in a proprietorship, partnership, limited  
33 liability company, business trust, corporation, or other form of business or  
34 enterprise, continue the business or other enterprise and take any action  
35 that may be taken by shareholders, members, or property owners,  
36 including merging, dissolving, or otherwise changing the form of business  
37 organization or contributing additional capital;

38 (7) with respect to stocks or other securities, exercise the rights of an  
39 absolute owner, including the right to:

40 (A) Vote, or give proxies to vote, with or without power of  
41 substitution, or enter into or continue a voting trust agreement;

42 (B) hold a security in the name of a nominee or in other form without  
43 disclosure of the trust so that title may pass by delivery;

- 1 (C) pay calls, assessments, and other sums chargeable or accruing  
2 against the securities, and sell or exercise stock subscription or conversion  
3 rights; and
- 4 (D) deposit the securities with a depository or other regulated  
5 financial-service institution;
- 6 (8) with respect to an interest in real property, construct, or make  
7 ordinary or extraordinary repairs to, alterations to, or improvements in,  
8 buildings or other structures, demolish improvements, raze existing or  
9 erect new party walls or buildings, subdivide or develop land, dedicate  
10 land to public use or grant public or private easements and make or vacate  
11 plats and adjust boundaries;
- 12 (9) enter into a lease for any purpose as lessor or lessee, including a  
13 lease or other arrangement for exploration and removal of natural  
14 resources, with or without the option to purchase or renew, for a period  
15 within or extending beyond the duration of the trust;
- 16 (10) grant an option involving a sale, lease, or other disposition of  
17 trust property or acquire an option for the acquisition of property,  
18 including an option exercisable beyond the duration of the trust and  
19 exercise an option so acquired;
- 20 (11) insure the property of the trust against damage or loss and insure  
21 the trustee, the trustee's agents, and beneficiaries against liability arising  
22 from the administration of the trust;
- 23 (12) abandon or decline to administer property of no value or of  
24 insufficient value to justify its collection or continued administration;
- 25 (13) with respect to possible liability for violation of environmental  
26 law:
- 27 (A) Inspect or investigate property the trustee holds or has been asked  
28 to hold, or property owned or operated by an organization in which the  
29 trustee holds or has been asked to hold an interest, for the purpose of  
30 determining the application of environmental law with respect to the  
31 property;
- 32 (B) take action to prevent, abate, or otherwise remedy any actual or  
33 potential violation of any environmental law affecting property held  
34 directly or indirectly by the trustee, whether taken before or after the  
35 assertion of a claim or the initiation of governmental enforcement;
- 36 (C) decline to accept property into trust or disclaim any power with  
37 respect to property that is or may be burdened with liability for violation of  
38 environmental law;
- 39 (D) compromise claims against the trust which may be asserted for an  
40 alleged violation of environmental law; and
- 41 (E) pay the expense of any inspection, review, abatement, or remedial  
42 action to comply with environmental law;
- 43 (14) pay or contest any claim, settle a claim by or against the trust,

- 1 and release, in whole or in part, a claim belonging to the trust;
- 2 (15) pay taxes, assessments, compensation of the trustee and of  
3 employees and agents of the trust and other expenses incurred in the  
4 administration of the trust;
- 5 (16) exercise elections with respect to federal, state, and local taxes;
- 6 (17) select a mode of payment under any employee benefit or  
7 retirement plan, annuity, or life insurance payable to the trustee, exercise  
8 rights thereunder, including exercise of the right to indemnification for  
9 expenses and against liabilities, and take appropriate action to collect the  
10 proceeds;
- 11 (18) make loans out of trust property, including loans to a beneficiary  
12 on terms and conditions the trustee considers to be fair and reasonable  
13 under the circumstances, and the trustee has a lien on future distributions  
14 for repayment of those loans;
- 15 (19) pledge trust property to guarantee loans made by others to the  
16 beneficiary;
- 17 (20) appoint a trustee to act in another jurisdiction with respect to  
18 trust property located in the other jurisdiction, confer upon the appointed  
19 trustee all of the powers and duties of the appointing trustee, require that  
20 the appointed trustee furnish security, and remove any trustee so  
21 appointed;
- 22 (21) pay an amount distributable to a beneficiary who is under a legal  
23 disability or who the trustee reasonably believes is incapacitated, by  
24 paying it directly to the beneficiary or applying it for the beneficiary's  
25 benefit, or by:
- 26 (A) Paying it to the beneficiary's conservator or, if the beneficiary  
27 does not have a conservator, the beneficiary's guardian;
- 28 (B) paying it to the beneficiary's custodian, attorney-in-fact, custodial  
29 trustee or other person with legal authority to receive such funds for the  
30 benefit of the beneficiary;
- 31 (C) if the trustee does not know of a conservator, guardian, custodian,  
32 or custodial trustee, paying it to an adult relative or other person having  
33 legal or physical care or custody of the beneficiary, to be expended on the  
34 beneficiary's behalf; or
- 35 (D) managing it as a separate fund on the beneficiary's behalf, subject  
36 to the beneficiary's continuing right to withdraw the distribution;
- 37 (22) on distribution of trust property or the division or termination of  
38 a trust, make distributions in divided or undivided interests, allocate  
39 particular assets in proportionate or disproportionate shares, value the trust  
40 property for those purposes, and adjust for resulting differences in  
41 valuation;
- 42 (23) resolve a dispute concerning the interpretation of the trust or its  
43 administration by mediation, arbitration, or other procedure for alternative



1 dispute resolution;

2 (24) prosecute or defend an action, claim or judicial proceeding in  
3 any jurisdiction to protect trust property and the trustee in the performance  
4 of the trustee's duties;

5 (25) sign and deliver contracts and other instruments that are useful to  
6 achieve or facilitate the exercise of the trustee's powers; ~~and~~

7 (26) *access digital assets held in trust pursuant to sections 11, 12 and*  
8 *13, and amendments thereto; and*

9 (27) on termination of the trust, exercise the powers appropriate to  
10 wind up the administration of the trust and distribute the trust property to  
11 the persons entitled to it.

12 Sec. 22. K.S.A. 2016 Supp. 59-3075 is hereby amended to read as  
13 follows: 59-3075. (a) (1) The individual or corporation appointed by the  
14 court to serve as the guardian shall carry out diligently and in good faith,  
15 the general duties and responsibilities, and shall have the general powers  
16 and authorities, provided for in this section as well as any specific duties,  
17 responsibilities, powers and authorities assigned to the guardian by the  
18 court. In doing so, a guardian shall at all times be subject to the control and  
19 direction of the court, and shall act in accordance with the provisions of  
20 any guardianship plan filed with the court pursuant to K.S.A. 59-3076, and  
21 amendments thereto. The court shall have the authority to appoint counsel  
22 for the guardian, and the fees of such attorney may be assessed as costs  
23 pursuant to K.S.A. 59-3094, and amendments thereto.

24 (2) A guardian shall become and remain personally acquainted with  
25 the ward, the spouse of the ward and with other interested persons  
26 associated with the ward and who are knowledgeable about the ward, the  
27 ward's needs and the ward's responsibilities. A guardian shall exercise  
28 authority only as necessitated by the ward's limitations. A guardian shall  
29 encourage the ward to participate in making decisions affecting the ward.  
30 A guardian shall encourage the ward to act on the ward's own behalf to the  
31 extent the ward is able. A guardian shall encourage the ward to develop or  
32 regain the skills and abilities necessary to meet the ward's own essential  
33 needs and to otherwise manage the ward's own affairs. In making  
34 decisions on behalf of the ward, a guardian shall consider the expressed  
35 desires and personal values of the ward to the extent known to the  
36 guardian. A guardian shall strive to assure that the personal, civil and  
37 human rights of the ward are protected. A guardian shall at all times act in  
38 the best interests of the ward and shall exercise reasonable care, diligence  
39 and prudence.

40 (b) A guardian shall have the following general duties,  
41 responsibilities, powers and authorities:

42 (1) If the ward is a minor, to have the custody and control of the  
43 minor, and to provide for the minor's care, treatment, habilitation,

1 education, support and maintenance;

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

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

7 (4) to assure that the ward resides in the least restrictive setting  
8 appropriate to the needs of the ward and which is reasonably available;

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

14 (6) to promote and protect the comfort, safety, health and welfare of  
15 the ward;

16 (7) to make necessary determinations and arrangements for, and to  
17 give the necessary consents in regard to, the ward's funeral arrangements,  
18 burial or cremation, the performance of an autopsy upon the body of the  
19 ward, and anatomical gifts of the ward, subject to the provisions and  
20 limitations provided for in K.S.A. 2016 Supp. 65-3228, K.S.A. 65-2893  
21 and 65-1734, and amendments thereto; and

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

24 (c) A guardian shall not be obligated by virtue of the guardian's  
25 appointment to use the guardian's own financial resources for the support  
26 of the ward.

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

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

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

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

36 (3) to consent to the adoption of the ward, unless approved by the  
37 court;

38 (4) to consent, on behalf of the ward, to any psychosurgery, removal  
39 of any bodily organ, or amputation of any limb, unless such surgery,  
40 removal or amputation has been approved in advance by the court, except  
41 in an emergency and when necessary to preserve the life of the ward or to  
42 prevent serious and irreparable impairment to the physical health of the  
43 ward;

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

5 (6) to consent, on behalf of the ward, to the performance of any  
6 experimental biomedical or behavioral procedure on the ward, or for the  
7 ward to be a participant in any biomedical or behavioral experiment,  
8 without the prior review and approval of such by either an institutional  
9 review board as provided for in title 45, part 46 of the code of federal  
10 regulations, or if such regulations do not apply, then by a review  
11 committee established by the agency, institution or treatment facility at  
12 which the procedure or experiment is proposed to occur, composed of  
13 members selected for the purposes of determining whether the proposed  
14 procedure or experiment:

15 (A) Does not involve any significant risk of harm to the physical or  
16 mental health of the ward, or the use of aversive stimulants, and is  
17 intended to preserve the life or health of the ward or to assist the ward to  
18 develop or regain skills or abilities; or

19 (B) involves a significant risk of harm to the physical or mental  
20 health of the ward, or the use of an aversive stimulant, but that the  
21 conducting of the proposed procedure or experiment is intended either to  
22 preserve the life of the ward, or to significantly improve the quality of life  
23 of the ward, or to assist the ward to develop or regain significant skills or  
24 abilities, and that the guardian has been fully informed concerning the  
25 potential risks and benefits of the proposed procedure or experiment or of  
26 any aversive stimulant proposed to be used, and as to how and under what  
27 circumstances the aversive stimulant may be used, and has specifically  
28 consented to such;

29 (7) to consent, on behalf of the ward, to the withholding or  
30 withdrawal of life-saving or life sustaining medical care, treatment,  
31 services or procedures, except:

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

35 (B) if the ward, prior to the court's appointment of a guardian  
36 pursuant to K.S.A. 59-3067, and amendments thereto, shall have executed  
37 a durable power of attorney for health care decisions pursuant to K.S.A.  
38 58-629, and amendments thereto, and such shall not have been revoked by  
39 the ward prior thereto, and there is included therein any provision relevant  
40 to the withholding or withdrawal of life-saving or life-sustaining medical  
41 care, treatment, services or procedures, then the guardian shall have the  
42 authority to act as provided for therein, even if the guardian has revoked or  
43 otherwise amended that power of attorney pursuant to the authority of

1 K.S.A. 58-627, and amendments thereto, or the guardian may allow the  
2 agent appointed by the ward to act on the ward's behalf if the guardian has  
3 not revoked or otherwise amended that power of attorney; or

4 (C) in the circumstances where the ward's treating physician shall  
5 certify in writing to the guardian that the ward is in a persistent vegetative  
6 state or is suffering from an illness or other medical condition for which  
7 further treatment, other than for the relief of pain, would not likely prolong  
8 the life of the ward other than by artificial means, nor would be likely to  
9 restore to the ward any significant degree of capabilities beyond those the  
10 ward currently possesses, and which opinion is concurred in by either a  
11 second physician or by any medical ethics or similar committee to which  
12 the health care provider has access established for the purposes of  
13 reviewing such circumstances and the appropriateness of any type of  
14 physician's order which would have the effect of withholding or  
15 withdrawing life-saving or life sustaining medical care, treatment, services  
16 or procedures. Such written certification shall be approved by an order  
17 issued by the court;

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

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

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

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

33 (i) File a guardianship plan as provided for in K.S.A. 59-3076, and  
34 amendments thereto, which contains elements similar to those which  
35 would be contained in a conservatorship plan as provided for in K.S.A. 59-  
36 3078, and amendments thereto;

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

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

43 (9) to place the ward in a treatment facility as defined in K.S.A. 59-

1 3077, and amendments thereto, except if authorized by the court as  
2 provided for therein; or

3 (10) *to access digital assets of the ward except if authorized by the*  
4 *court pursuant to section 14, and amendments thereto.*

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

8 Sec. 23. K.S.A. 59-3078 is hereby amended to read as follows: 59-  
9 3078. (a) (1) The individual or corporation appointed by the court to serve  
10 as the conservator shall carry out diligently and in good faith the general  
11 duties and responsibilities, and shall have the general powers and  
12 authorities, provided for in this section, as well as any specific duties,  
13 responsibilities, powers and authorities assigned to the conservator by the  
14 court. In doing so, a conservator at all times shall be subject to the control  
15 and direction of the court, and shall act in accordance with the provisions  
16 of any conservatorship plan filed with the court pursuant to K.S.A. 59-  
17 3079, and amendments thereto. The court shall have the authority to  
18 appoint counsel for the conservator, and the fees of such attorney may be  
19 assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

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

35 (b) A conservator shall have the following general duties,  
36 responsibilities, powers and authorities:

37 (1) To pay the reasonable charges for the support, maintenance, care,  
38 treatment, habilitation and education of the conservatee in a manner  
39 suitable to the conservatee's station in life and the value of the  
40 conservatee's estate; but nothing herein shall be construed to release a  
41 natural guardian from the ordinary obligations imposed by law for the  
42 support, maintenance, care, treatment, habilitation and education of the  
43 natural guardian's minor children;

1 (2) to pay all just and lawful debts of the conservatee and the  
2 reasonable charges for the support, maintenance, care, treatment,  
3 habilitation and education of the conservatee's spouse and minor children;

4 (3) to separately possess and manage all the assets of the estate of the  
5 conservatee and to collect all debts and assert all claims in favor of the  
6 conservatee, and with the approval of the court, to compromise the same.  
7 The conservator shall keep any property of the conservatee's estate insured  
8 against theft, other loss or damage, in reasonable amounts based upon the  
9 value of the estate, and for the benefit of the conservatee or the  
10 conservatee's estate;

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

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

15 (6) to possess and manage any ongoing business that the conservatee  
16 was managing and operating prior to the appointment of the conservator,  
17 and to divest the conservatee's estate of any interests therein, with the  
18 approval of the court, when the conservator deems it in the best interests of  
19 the conservatee or the conservatee's estate to do so; and

20 (7) to invest all funds in a manner which is reasonably prudent in  
21 view of the value of the conservatee's estate, except as may be currently  
22 needed for payment of any debts and charges as provided for herein. If the  
23 conservator shall expend or invest any funds from the conservatee's estate  
24 for the purchase of any policy of insurance or annuity contract, the  
25 conservator shall reserve to the conservatee the right to change the  
26 beneficiary thereof upon the termination of the conservatorship and of any  
27 guardianship which may have been established for the conservatee.

28 (c) A conservator shall not be obligated by virtue of the conservator's  
29 appointment to use the conservator's own financial resources for the  
30 support of the conservatee.

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

32 (1) To a third person for the acts of the conservatee solely by virtue of  
33 the conservator's appointment, nor shall a conservator who exercises  
34 reasonable care in selecting a third person to provide any service to the  
35 conservatee's estate be liable for any loss to the conservatee's estate  
36 resulting from the wrongful conduct of that third person;

37 (2) on any mortgage note or by reason of the covenants in any  
38 instrument of conveyance duly executed by the conservator in the  
39 conservator's representative capacity as authorized by the court;

40 (3) on a contract properly entered into in a fiduciary capacity in the  
41 course of administration of the estate unless the conservator fails to reveal  
42 in the contract the representative capacity and to identify the estate;

43 (4) for obligations arising from ownership or control of property of

1 the estate or for other acts or omissions occurring in the course of  
2 administration of the estate unless the conservator is personally at fault;

3 (5) for any environmental condition on or injury resulting from any  
4 environmental condition on land owned or acquired by the conservatee's  
5 estate; or

6 (6) for retaining, until maturity, any security or investment which is  
7 included in the conservatee's estate at the time of the establishment of the  
8 conservatorship, even though such security or investment may not be  
9 considered prudent or reasonable.

10 (e) A conservator shall be entitled to receive on behalf of the  
11 conservatee's estate any distributive share of the assets of an estate or trust,  
12 and shall have the same right as any other distributee or beneficiary to  
13 accept or demand distribution in kind, and may retain, until maturity, any  
14 security or investment so distributed to the conservator, even though such  
15 security or investment may not be considered prudent or reasonable.

16 (f) A conservator shall not have the power:

17 (1) To use the assets of a minor's estate to pay any obligation imposed  
18 by law upon the minor's natural guardian or natural guardians, including  
19 the support, maintenance, care, treatment, habilitation or education of the  
20 minor, except with the specific approval of the court granted upon a  
21 showing of extreme hardship;

22 (2) to sell, convey, lease or mortgage the conservatee's interest in the  
23 homestead of the conservatee, except with the approval of the court, and  
24 no conservator's deed or other instrument executed by virtue of the court's  
25 approval shall be valid unless the spouse, or if the spouse has been  
26 adjudicated a person with an impairment in need of a conservator, the  
27 conservator appointed for the spouse, shall join therein as one of the  
28 grantors thereof;

29 (3) to lease, except with the approval of the court, the possession or  
30 use of any real estate within the conservatee's estate for any period of  
31 greater than three years;

32 (4) to sell, convey or mortgage, except with approval of the court, any  
33 real estate within the conservatee's estate;

34 (5) to sell, convey, lease or mortgage, except with approval of the  
35 court, any oil, gas or other mineral interest within the conservatee's estate;

36 (6) to sell, convey, lease or mortgage, except with the approval of the  
37 court, the inchoate interest of the conservatee in any real estate the title to  
38 which is in the spouse of the conservatee, and no conservator's deed or  
39 other instrument executed by virtue of the court's approval shall be valid  
40 unless the spouse, or if the spouse has been adjudicated a person with an  
41 impairment in need of a conservator, the conservator appointed for the  
42 spouse, shall join therein as one of the grantors thereof;

43 (7) to extend, except with the approval of the court, an existing

1 mortgage in favor of the conservatee or conservatee's estate, for a period of  
2 more than five years;

3 (8) to extend, except with the approval of the court, an existing  
4 mortgage which obligates the conservatee or the conservatee's estate,  
5 unless the extension agreement contains the same prepayment privileges,  
6 the rate of interest does not exceed the lowest rate in the mortgage  
7 extended, and the extension does not exceed five years; ~~or~~

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

10 (A) The conservatee had either in the past as a habit made similar  
11 gifts or declared an intent to make such a gift, or under the circumstances,  
12 would have made such a gift or gifts;

13 (B) sufficient funds and assets will remain in the conservatee's estate  
14 after the making of such a gift to meet the expected needs and  
15 responsibilities of the conservatee; and

16 (C) any person or entity who would have received the property to be  
17 gifted had the conservatee died at the time of the gift, but who is not the  
18 person or entity receiving the gift, has either consented to or agreed with  
19 the giving of the gift, in writing, or has received notice of the proposal to  
20 make the gift and been given the opportunity to request a hearing thereon  
21 by the court to be held prior to the court's approving the gift; *or*

22 (10) *to access digital assets of the conservatee except if authorized by*  
23 *the court pursuant to section 14, and amendments thereto.*

24 (g) The conservator shall file with the court, within 30 days of the  
25 court's issuance of letters of conservatorship as provided for in K.S.A. 59-  
26 3069, and amendments thereto, an initial inventory of all of the property  
27 and assets of the conservatee's estate, including any sources of regular  
28 income to the estate.

29 (h) The conservator shall file with the court accountings and other  
30 reports concerning the status of the estate and the actions of the  
31 conservator as the court shall direct pursuant to K.S.A. 59-3083, and  
32 amendments thereto.

33 Sec. 24. K.S.A. 2016 Supp. 77-201 is hereby amended to read as  
34 follows: 77-201. In the construction of the statutes of this state the  
35 following rules shall be observed, unless the construction would be  
36 inconsistent with the manifest intent of the legislature or repugnant to the  
37 context of the statute:

38 *First.* The repeal of a statute does not revive a statute previously  
39 repealed, nor does the repeal affect any right which accrued, any duty  
40 imposed, any penalty incurred or any proceeding commenced, under or by  
41 virtue of the statute repealed. The provisions of any statute, so far as they  
42 are the same as those of any prior statute, shall be construed as a  
43 continuation of the prior provisions and not as a new enactment.



1       *Second.* Words and phrases shall be construed according to the context  
2 and the approved usage of the language, but technical words and phrases,  
3 and other words and phrases that have acquired a peculiar and appropriate  
4 meaning in law, shall be construed according to their peculiar and  
5 appropriate meanings.

6       *Third.* Words importing the singular number only may be extended to  
7 several persons or things, and words importing the plural number only  
8 may be applied to one person or thing. Words importing the masculine  
9 gender only may be extended to females.

10       *Fourth.* Words giving a joint authority to three or more public officers  
11 or other persons shall be construed as given that authority to a majority of  
12 them, unless it is otherwise expressed in the act giving the authority.

13       *Fifth.* "Highway" and "road" include public bridges and may be  
14 construed to be equivalent to "county way," "county road," "common  
15 road," "state road" and "territorial road."

16       *Sixth.* "Incompetent person" includes disabled persons and  
17 incapacitated persons as defined herein.

18       *Seventh.* "Issue," as applied to the descent of estates, includes all the  
19 lawful lineal descendants of the ancestor.

20       *Eighth.* "Land," "real estate" and "real property" include lands,  
21 tenements and hereditaments, and all rights to them and interest in them,  
22 equitable as well as legal.

23       *Ninth.* "Personal property" includes money, goods, chattels, evidences  
24 of debt and things in action, *and digital assets as defined in the revised*  
25 *uniform fiduciary access to digital assets act, sections 1 through 19, and*  
26 *amendments thereto.*

27       *Tenth.* "Property" includes personal and real property.

28       *Eleventh.* "Month" means a calendar month, unless otherwise  
29 expressed. "Year" alone, and also the abbreviation "A.D.," is equivalent to  
30 the expression "year of our Lord."

31       *Twelfth.* "Oath" includes an affirmation in all cases where an  
32 affirmation may be substituted for an oath, and in similar cases "swear"  
33 includes affirm.

34       *Thirteenth.* "Person" may be extended to bodies politic and corporate.

35       *Fourteenth.* If the seal of a court or public office or officer is required  
36 by law to be affixed to any paper, "seal" includes an impression of the seal  
37 upon the paper alone, as well as upon wax or a wafer affixed to the paper.  
38 "Seal" also includes both a rubber stamp seal used with permanent ink and  
39 the word "seal" printed on court documents produced by computer  
40 systems, so that the seal may be legibly reproduced by photographic  
41 process.

42       *Fifteenth.* "State," when applied to the different parts of the United  
43 States, includes the District of Columbia and the territories. "United

1 States" may include that district and those territories.

2 *Sixteenth.* "Town" may mean a civil township, unless a different  
3 meaning is plainly intended.

4 *Seventeenth.* "Will" includes codicils.

5 *Eighteenth.* "Written" and "in writing" may include printing, engraving,  
6 lithography and any other mode of representing words and letters,  
7 excepting those cases where the written signature or the mark of any  
8 person is required by law.

9 *Nineteenth.* "Sheriff" may be extended to any person performing the  
10 duties of the sheriff, either generally or in special cases.

11 *Twentieth.* "Deed" is applied to an instrument conveying lands but does  
12 not imply a sealed instrument. "Bond" and "indenture" do not necessarily  
13 imply a seal but in other respects mean the same kind of instruments as  
14 above. "Undertaking" means a promise or security in any form where  
15 required by law.

16 *Twenty-first.* "Executor" includes an administrator where the subject-  
17 matter applies to an administrator.

18 *Twenty-second.* Roman numerals and Arabic figures are to be taken as a  
19 part of the English language.

20 *Twenty-third.* "Residence" means the place which is adopted by a  
21 person as the person's place of habitation and to which, whenever the  
22 person is absent, the person has the intention of returning. When a person  
23 eats at one place and sleeps at another, the place where the person sleeps  
24 shall be considered the person's residence.

25 *Twenty-fourth.* "Usual place of residence" and "usual place of abode,"  
26 when applied to the service of any process or notice, means the place  
27 usually occupied by a person. If a person has no family, or does not have  
28 family with the person, the person's office or place of business or, if the  
29 person has no place of business, the room or place where the person  
30 usually sleeps shall be construed to be the person's place of residence or  
31 abode.

32 *Twenty-fifth.* "Householder" means a person who is 18 or more years of  
33 age and who owns or occupies a house as a place of residence and not as a  
34 boarder or lodger.

35 *Twenty-sixth.* "General election" refers to the election required to be  
36 held on the Tuesday following the first Monday in November of each  
37 even-numbered year.

38 *Twenty-seventh.* "Under legal disability" includes persons who are  
39 within the period of minority, or who are incapacitated, incompetent or  
40 imprisoned.

41 *Twenty-eighth.* When a person is required to be disinterested or  
42 indifferent in acting on any question or matter affecting other parties,  
43 relationship within the degree of second cousin, inclusive, shall disqualify

1 the person from acting, except by consent of parties.

2 *Twenty-ninth.* "Head of a family" shall include any person who has  
3 charge of children, relatives or others living with the person.

4 *Thirtieth.* "Mentally ill person" means a mentally ill person as defined  
5 in K.S.A. 59-2946, and amendments thereto.

6 *Thirty-first.* "Incapacitated person" means an individual whose ability  
7 to receive and evaluate relevant information, or to effectively  
8 communicate decisions, or both, even with the use of assistive  
9 technologies or other supports, is impaired to the degree that the person  
10 lacks the capacity to manage the person's estate, or to meet essential needs  
11 for the person's physical health, safety or welfare, as defined in K.S.A. 59-  
12 3051, and amendments thereto, whether or not a guardian or a conservator  
13 has been appointed for that person.

14 *Thirty-second.* "Guardian" means an individual or a nonprofit  
15 corporation certified in accordance with K.S.A. 59-3070, and amendments  
16 thereto, which has been appointed by a court to act on behalf of a ward and  
17 possessed of some or all of the powers and duties set out in K.S.A. 59-  
18 3075, and amendments thereto. "Guardian" does not mean natural  
19 guardian unless specified.

20 *Thirty-third.* "Natural guardian" means both the biological or adoptive  
21 mother and father of a minor if neither parent has been found to be an  
22 adult with an impairment in need of a guardian or has had parental rights  
23 terminated by a court of competent jurisdiction. If either parent of a minor  
24 is deceased, or has been found to be an adult with an impairment in need  
25 of a guardian, as provided for in K.S.A. 59-3050 through 59-3095, and  
26 amendments thereto, or has had parental rights terminated by a court of  
27 competent jurisdiction, then the other parent shall be the natural guardian,  
28 unless also deceased, or found to be an adult with an impairment in need  
29 of a guardian, or has had parental rights terminated by a court of  
30 competent jurisdiction, in which case no person shall qualify as the natural  
31 guardian.

32 *Thirty-fourth.* "Conservator" means an individual or corporation  
33 appointed by the court to act on behalf of a conservatee and possessed of  
34 some or all of the powers and duties set out in K.S.A. 59-3078, and  
35 amendments thereto.

36 *Thirty-fifth.* "Minor" means any person defined by K.S.A. 38-101, and  
37 amendments thereto, as being within the period of minority.

38 *Thirty-sixth.* "Proposed ward" means a person for whom a petition for  
39 the appointment of a guardian pursuant to K.S.A. 59-3058, 59-3059, 59-  
40 3060 or 59-3061, and amendments thereto, has been filed.

41 *Thirty-seventh.* "Proposed conservatee" means a person for whom a  
42 petition for the appointment of a conservator pursuant to K.S.A. 59-3058,  
43 59-3059, 59-3060 or 59-3061, and amendments thereto, has been filed.

1       *Thirty-eighth.* "Ward" means a person who has a guardian.

2       *Thirty-ninth.* "Conservatee" means a person who has a conservator.

3       *Fortieth.* "Manufactured home" means a structure which:

4       (1) Is transportable in one or more sections which, in the traveling  
5 mode, is 8 body feet or more in width or 40 body feet or more in length,  
6 or, when erected on site, is 320 or more square feet, and which is built on a  
7 permanent chassis and designed to be used as a dwelling, with or without  
8 permanent foundation, when connected to the required utilities, and  
9 includes the plumbing, heating, air conditioning and electrical systems  
10 contained therein; and

11       (2) is subject to the federal manufactured home construction and  
12 safety standards established pursuant to 42 U.S.C. § 5403.

13       *Forty-first.* "Mobile home" means a structure which:

14       (1) Is transportable in one or more sections which, in the traveling  
15 mode, is 8 body feet or more in width and 36 body feet or more in length  
16 and is built on a permanent chassis and designed to be used as a dwelling,  
17 with or without a permanent foundation, when connected to the required  
18 utilities, and includes the plumbing, heating, air conditioning and electrical  
19 systems contained therein; and

20       (2) is not subject to the federal manufactured home construction and  
21 safety standards established pursuant to 42 U.S.C. § 5403.

22       *Forty-second.* "Disabled person" includes incapacitated persons and  
23 incompetent persons as defined herein.

24       Sec. 25. K.S.A. 58a-816 and 59-3078 and K.S.A. 2016 Supp. 58-654,  
25 59-3075 and 77-201 are hereby repealed.

26       Sec. 26. This act shall take effect and be in force from and after its  
27 publication in the statute book.