

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 *to a designated recipient* or not to disclose some or all of the
24 user's digital assets, including the content of electronic communications.
25 If the online tool allows the user to modify or delete a direction at all
26 times, a direction regarding disclosure using an online tool overrides a
27 contrary direction by the user in a will, trust, power of attorney or other
28 record.

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

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

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

42 (b) This act does not give a fiduciary *or designated recipient* any new
43 or expanded rights other than those held by the user for whom, or for

1 whose estate, the fiduciary *or designated recipient* acts or represents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and

2 (e) 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 user's account;

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

6 (3) a finding by the court that:

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

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

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

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

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

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

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

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

26 (d) if requested by the custodian:

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

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

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

32 (4) a finding by the court that:

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

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

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

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

43 (b) an original or copy of the power of attorney expressly granting the

1 agent authority over the content of electronic communications of the
2 principal;

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

5 (d) if requested by the custodian:

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

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

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

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

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

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

23 (d) if requested by the custodian:

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

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

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

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

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

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

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

3 (d) if requested by the custodian:

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

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

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

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

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

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

20 (d) if requested by the custodian:

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

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

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

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

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

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

38 (3) if requested by the custodian:

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

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

43 (c) A guardian or conservator with general authority to manage the

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

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

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

12 (b) A fiduciary's *or designated recipient's* authority with respect to a
13 digital asset of a user:

- 14 (1) Except as otherwise provided in section 4, and amendments
15 thereto, is subject to the applicable terms of service;
- 16 (2) is subject to other applicable laws, including copyright laws;
- 17 (3) *in the case of a fiduciary*, is limited by the scope of the
18 fiduciary's duties; and
- 19 (4) may not be used to impersonate the user.

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

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

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

- 32 (1) Has the right to access the property and any digital asset stored in
33 it; and
- 34 (2) is an authorized user for the purpose of computer fraud and
35 unauthorized computer access laws, including K.S.A. 2016 Supp. 21-5839,
36 and amendments thereto.

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

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

- 43 (1) If the user is deceased, a certified copy of the death certificate of

1 the user;

2 (2) a certified copy of the letter of appointment of the representative
3 or a small estate affidavit or court order, court order, power of attorney or
4 trust giving the fiduciary authority over the account; and

5 (3) if requested by the custodian:

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

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

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

11 New Sec. 16. (a) Not later than 60 days after receipt of the
12 information required under sections 7 through—14 15, and amendments
13 thereto, a custodian shall comply with a request under this act from a
14 fiduciary or designated recipient to disclose digital assets or terminate an
15 account. If the custodian fails to comply, the fiduciary or designated
16 recipient may apply to the court for an order directing compliance.

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

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

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

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

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

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

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

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

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

39 New Sec. 18. This act modifies, limits or supersedes the electronic
40 signatures in global and national commerce act, 15 U.S.C. § 7001 et seq.,
41 but does not modify, limit or supersede § 101(c) of that act, 15 U.S.C. §
42 7001(c), or authorize electronic delivery of any of the notices described in
43 § 103(b) of that act, 15 U.S.C. § 7003(b).

1 New Sec. 19. If any provision of this act or its application to any
2 person or circumstance is held invalid, the invalidity does not affect other
3 provisions or applications of this act which can be given effect without the
4 invalid provision or application, and to this end the provisions of this act
5 are severable.

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

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

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

40 (d) Except as provided in subsections (f) and (g), an attorney in fact
41 with general powers has, with respect to the subjects or purposes for which
42 the powers are conferred, all rights, power and authority to act for the
43 principal that the principal would have with respect to the principal's own

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

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

43 (f) Any power of attorney, whether or not it grants general powers for

1 all subjects and purposes or with respect to express subjects or purposes,
2 shall be construed to grant power or authority to an attorney in fact to
3 carry out any of the actions described in this subsection only if the actions
4 are expressly enumerated and authorized in the power of attorney. Any
5 power of attorney may grant power or authority to an attorney in fact to
6 carry out any of the following actions if the actions are expressly
7 authorized in the power of attorney:

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

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

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

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

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

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

28 (7) to give or withhold consent to an autopsy or postmortem
29 examination;

30 (8) to make a gift of, or decline to make a gift of, the principal's body
31 parts under the revised uniform anatomical gift act, K.S.A. 2016 Supp. 65-
32 3220 through 65-3244, and amendments thereto;

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

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

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

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

43 (C) the principal's spouse, in a written document duly acknowledged

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

12 (11) to designate one or more substitute or successor or additional
13 attorneys in fact;

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

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

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

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

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

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

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

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

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

1 without regard to whether the power of attorney expressly authorizes the
2 specific act, transaction or decision by the attorney in fact.

3 (i) It is the policy of this state that an attorney in fact acting pursuant
4 to the provisions of a power of attorney granting general powers shall be
5 accorded the same rights and privileges with respect to the personal
6 welfare, property and business interests of the principal, and if the power
7 of attorney enumerate some express subjects or purposes, with respect to
8 those subjects or purposes, as if the principal was personally present and
9 acting or seeking to act; and any provision of law and any purported
10 waiver, consent or agreement executed or granted by the principal to the
11 contrary shall be void and unenforceable.

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

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

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

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

28 (3) exchange, partition, or otherwise change the character of trust
29 property;

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

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

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

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

43 (A) Vote, or give proxies to vote, with or without power of

1 substitution, or enter into or continue a voting trust agreement;

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

4 (C) pay calls, assessments, and other sums chargeable or accruing
5 against the securities, and sell or exercise stock subscription or conversion
6 rights; and

7 (D) deposit the securities with a depository or other regulated
8 financial-service institution;

9 (8) with respect to an interest in real property, construct, or make
10 ordinary or extraordinary repairs to, alterations to, or improvements in,
11 buildings or other structures, demolish improvements, raze existing or
12 erect new party walls or buildings, subdivide or develop land, dedicate
13 land to public use or grant public or private easements and make or vacate
14 plats and adjust boundaries;

15 (9) enter into a lease for any purpose as lessor or lessee, including a
16 lease or other arrangement for exploration and removal of natural
17 resources, with or without the option to purchase or renew, for a period
18 within or extending beyond the duration of the trust;

19 (10) grant an option involving a sale, lease, or other disposition of
20 trust property or acquire an option for the acquisition of property,
21 including an option exercisable beyond the duration of the trust and
22 exercise an option so acquired;

23 (11) insure the property of the trust against damage or loss and insure
24 the trustee, the trustee's agents, and beneficiaries against liability arising
25 from the administration of the trust;

26 (12) abandon or decline to administer property of no value or of
27 insufficient value to justify its collection or continued administration;

28 (13) with respect to possible liability for violation of environmental
29 law:

30 (A) Inspect or investigate property the trustee holds or has been asked
31 to hold, or property owned or operated by an organization in which the
32 trustee holds or has been asked to hold an interest, for the purpose of
33 determining the application of environmental law with respect to the
34 property;

35 (B) take action to prevent, abate, or otherwise remedy any actual or
36 potential violation of any environmental law affecting property held
37 directly or indirectly by the trustee, whether taken before or after the
38 assertion of a claim or the initiation of governmental enforcement;

39 (C) decline to accept property into trust or disclaim any power with
40 respect to property that is or may be burdened with liability for violation of
41 environmental law;

42 (D) compromise claims against the trust which may be asserted for an
43 alleged violation of environmental law; and

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

1 valuation;

2 (23) resolve a dispute concerning the interpretation of the trust or its
3 administration by mediation, arbitration, or other procedure for alternative
4 dispute resolution;

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

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

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

12 (27) on termination of the trust, exercise the powers appropriate to
13 wind up the administration of the trust and distribute the trust property to
14 the persons entitled to it.

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

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

43 (b) A guardian shall have the following general duties,

1 responsibilities, powers and authorities:

- 2 (1) If the ward is a minor, to have the custody and control of the
3 minor, and to provide for the minor's care, treatment, habilitation,
4 education, support and maintenance;
- 5 (2) if the ward is an adult, to take charge of the person of the ward,
6 and to provide for the ward's care, treatment, habilitation, education,
7 support and maintenance;
- 8 (3) to consider and either provide on behalf of the ward necessary or
9 required consents or refuse the same;
- 10 (4) to assure that the ward resides in the least restrictive setting
11 appropriate to the needs of the ward and which is reasonably available;
- 12 (5) to assure that the ward receives any necessary and reasonably
13 available medical care, consistent with the provisions of K.S.A. 59-3077,
14 and amendments thereto, when applicable, and any reasonably available
15 nonmedical care or other services as may be needed to preserve the health
16 of the ward or to assist the ward to develop or retain skills and abilities;
- 17 (6) to promote and protect the comfort, safety, health and welfare of
18 the ward;
- 19 (7) to make necessary determinations and arrangements for, and to
20 give the necessary consents in regard to, the ward's funeral arrangements,
21 burial or cremation, the performance of an autopsy upon the body of the
22 ward, and anatomical gifts of the ward, subject to the provisions and
23 limitations provided for in K.S.A. 2016 Supp. 65-3228, K.S.A. 65-2893
24 and 65-1734, and amendments thereto; and
- 25 (8) to exercise all powers and to discharge all duties necessary or
26 proper to implement the provisions of this section.
- 27 (c) A guardian shall not be obligated by virtue of the guardian's
28 appointment to use the guardian's own financial resources for the support
29 of the ward.
- 30 (d) A guardian shall not be liable to a third person for the acts of the
31 ward solely by virtue of the guardian's appointment, nor shall a guardian
32 who exercises reasonable care in selecting a third person to provide any
33 medical or other care, treatment or service for the ward be liable for any
34 injury to the ward resulting from the wrongful conduct of that third person.
- 35 (e) A guardian shall not have the power:
- 36 (1) To prohibit the marriage or divorce of the ward;
- 37 (2) to consent, on behalf of the ward, to the termination of the ward's
38 parental rights;
- 39 (3) to consent to the adoption of the ward, unless approved by the
40 court;
- 41 (4) to consent, on behalf of the ward, to any psychosurgery, removal
42 of any bodily organ, or amputation of any limb, unless such surgery,
43 removal or amputation has been approved in advance by the court, except

1 in an emergency and when necessary to preserve the life of the ward or to
2 prevent serious and irreparable impairment to the physical health of the
3 ward;

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

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

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

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

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

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
39 pursuant to K.S.A. 59-3067, and amendments thereto, shall have executed
40 a durable power of attorney for health care decisions pursuant to K.S.A.
41 58-629, and amendments thereto, and such shall not have been revoked by
42 the ward prior thereto, and there is included therein any provision relevant
43 to the withholding or withdrawal of life-saving or life-sustaining medical

1 care, treatment, services or procedures, then the guardian shall have the
2 authority to act as provided for therein, even if the guardian has revoked or
3 otherwise amended that power of attorney pursuant to the authority of
4 K.S.A. 58-627, and amendments thereto, or the guardian may allow the
5 agent appointed by the ward to act on the ward's behalf if the guardian has
6 not revoked or 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 persistent vegetative
9 state or is suffering from an illness or other medical condition for which
10 further treatment, other than for the relief of pain, would not likely prolong
11 the life of the ward other than by artificial means, nor would be likely to
12 restore to the ward any significant degree of capabilities beyond those the
13 ward currently possesses, and which opinion is concurred in by either a
14 second physician or by any medical ethics or similar committee to which
15 the health care provider has access established for the purposes of
16 reviewing such circumstances and the appropriateness of any type of
17 physician's order which would have the effect of withholding or
18 withdrawing life-saving or life sustaining medical care, treatment, services
19 or procedures. Such written certification shall be approved by an order
20 issued by the court;

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

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

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

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

36 (i) File a guardianship plan as provided for in K.S.A. 59-3076, and
37 amendments thereto, which contains elements similar to those which
38 would be contained in a conservatorship plan as provided for in K.S.A. 59-
39 3078, and amendments thereto;

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

42 (iii) notify the court as the court shall specify that the value of the
43 conservatee's estate has equaled or exceeded \$10,000, if the court has

1 earlier appointed a conservator but did not issue letters of conservatorship
2 pending such notification; ~~and~~

3 (9) to place the ward in a treatment facility as defined in K.S.A. 59-
4 3077, and amendments thereto, except if authorized by the court as
5 provided for therein; *or*

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

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

11 Sec. 23. K.S.A. 59-3078 is hereby amended to read as follows: 59-
12 3078. (a) (1) The individual or corporation appointed by the court to serve
13 as the conservator shall carry out diligently and in good faith the general
14 duties and responsibilities, and shall have the general powers and
15 authorities, provided for in this section, as well as any specific duties,
16 responsibilities, powers and authorities assigned to the conservator by the
17 court. In doing so, a conservator at all times shall be subject to the control
18 and direction of the court, and shall act in accordance with the provisions
19 of any conservatorship plan filed with the court pursuant to K.S.A. 59-
20 3079, and amendments thereto. The court shall have the authority to
21 appoint counsel for the conservator, and the fees of such attorney may be
22 assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

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

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

40 (1) To pay the reasonable charges for the support, maintenance, care,
41 treatment, habilitation and education of the conservatee in a manner
42 suitable to the conservatee's station in life and the value of the
43 conservatee's estate; but nothing herein shall be construed to release a

1 natural guardian from the ordinary obligations imposed by law for the
2 support, maintenance, care, treatment, habilitation and education of the
3 natural guardian's minor children;

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

7 (3) to separately possess and manage all the assets of the estate of the
8 conservatee and to collect all debts and assert all claims in favor of the
9 conservatee, and with the approval of the court, to compromise the same.

10 The conservator shall keep any property of the conservatee's estate insured
11 against theft, other loss or damage, in reasonable amounts based upon the
12 value of the estate, and for the benefit of the conservatee or the
13 conservatee's estate;

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

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

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

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

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

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

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

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

43 (3) on a contract properly entered into in a fiduciary capacity in the

1 course of administration of the estate unless the conservator fails to reveal
2 in the contract the representative capacity and to identify the estate;

3 (4) for obligations arising from ownership or control of property of
4 the estate or for other acts or omissions occurring in the course of
5 administration of the estate unless the conservator is personally at fault;

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

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

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

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

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

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

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

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

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

39 (6) to sell, convey, lease or mortgage, except with the approval of the
40 court, the inchoate interest of the conservatee in any real estate the title to
41 which is in the spouse of the conservatee, and no conservator's deed or
42 other instrument executed by virtue of the court's approval shall be valid
43 unless the spouse, or if the spouse has been adjudicated a person with an

1 impairment in need of a conservator, the conservator appointed for the
2 spouse, shall join therein as one of the grantors thereof;

3 (7) to extend, except with the approval of the court, an existing
4 mortgage in favor of the conservatee or conservatee's estate, for a period of
5 more than five years;

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

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

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

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

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

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

27 (g) The conservator shall file with the court, within 30 days of the
28 court's issuance of letters of conservatorship as provided for in K.S.A. 59-
29 3069, and amendments thereto, an initial inventory of all of the property
30 and assets of the conservatee's estate, including any sources of regular
31 income to the estate.

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

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

41 *First.* The repeal of a statute does not revive a statute previously
42 repealed, nor does the repeal affect any right which accrued, any duty
43 imposed, any penalty incurred or any proceeding commenced, under or by

1 virtue of the statute repealed. The provisions of any statute, so far as they
2 are the same as those of any prior statute, shall be construed as a
3 continuation of the prior provisions and not as a new enactment.

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

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

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

16 *Fifth.* "Highway" and "road" include public bridges and may be
17 construed to be equivalent to "county way," "county road," "common
18 road," "state road" and "territorial road."

19 *Sixth.* "Incompetent person" includes disabled persons and
20 incapacitated persons as defined herein.

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

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

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

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

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

34 *Twelfth.* "Oath" includes an affirmation in all cases where an
35 affirmation may be substituted for an oath, and in similar cases "swear"
36 includes affirm.

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

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

1 process.

2 *Fifteenth.* "State," when applied to the different parts of the United
3 States, includes the District of Columbia and the territories. "United
4 States" may include that district and those territories.

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

7 *Seventeenth.* "Will" includes codicils.

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

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

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

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

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

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

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

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

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

41 *Twenty-seventh.* "Under legal disability" includes persons who are
42 within the period of minority, or who are incapacitated, incompetent or
43 imprisoned.

1 *Twenty-eighth.* When a person is required to be disinterested or
2 indifferent in acting on any question or matter affecting other parties,
3 relationship within the degree of second cousin, inclusive, shall disqualify
4 the person from acting, except by consent of parties.

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

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

9 *Thirty-first.* "Incapacitated person" means an individual whose ability
10 to receive and evaluate relevant information, or to effectively
11 communicate decisions, or both, even with the use of assistive
12 technologies or other supports, is impaired to the degree that the person
13 lacks the capacity to manage the person's estate, or to meet essential needs
14 for the person's physical health, safety or welfare, as defined in K.S.A. 59-
15 3051, and amendments thereto, whether or not a guardian or a conservator
16 has been appointed for that person.

17 *Thirty-second.* "Guardian" means an individual or a nonprofit
18 corporation certified in accordance with K.S.A. 59-3070, and amendments
19 thereto, which has been appointed by a court to act on behalf of a ward and
20 possessed of some or all of the powers and duties set out in K.S.A. 59-
21 3075, and amendments thereto. "Guardian" does not mean natural
22 guardian unless specified.

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

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

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

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

1 *Thirty-seventh.* "Proposed conservatee" means a person for whom a
2 petition for the appointment of a conservator pursuant to K.S.A. 59-3058,
3 59-3059, 59-3060 or 59-3061, and amendments thereto, has been filed.

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

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

6 *Fortieth.* "Manufactured 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 or 40 body feet or more in length,
9 or, when erected on site, is 320 or more square feet, and which is built on a
10 permanent chassis and designed to be used as a dwelling, with or without
11 permanent foundation, when connected to the required utilities, and
12 includes the plumbing, heating, air conditioning and electrical systems
13 contained therein; and

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

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

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

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

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

27 Sec. 25. K.S.A. 58a-816 and 59-3078 and K.S.A. 2016 Supp. 58-654,
28 59-3075 and 77-201 are hereby repealed.

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