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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Professor Martin Dickinson

DATE: January 23, 2012

RE: Testimony on 2012 SB 297 Relating to Marital Property

Introduction

Last year, Senator Tim Owens referred two bills relating to probate estates and trusts to the Judicial Council for study. The Council's Probate Law Advisory Committee studied those bills, as well as several others, all of which had originally been drafted by the Real Estate, Probate and Trust Law Section of the Kansas Bar Association. As a result of that study, the Probate Committee recommended three bills, one of which is 2012 SB 297.

SB 297 is identical to last year's SB 44, which was requested by the KBA. Because SB 44 was tabled in this Committee last year, the Judicial Council chose to proceed with a new bill.

Purpose of Amendments

SB 297 would amend K.S.A. 23-2601 to delete the exception for gifts received from a spouse from the list of property that shall remain the person's sole and separate property, notwithstanding the marriage. The references to K.S.A. 33-101 *et seq.* and 33-201 *et seq.* incorporate the exceptions for transfers that violate the Statute of Frauds and Uniform Fraudulent Transfer Act.

The amendment is intended to clarify that a spouse's creditors cannot reach assets given to the other spouse in circumstances where no fraud on creditors was involved. This statute was originally known as the "Married Women's Property Act" and reversed the common law rule that a wife's property was controlled by her husband. The statute was interpreted by the Kansas Supreme Court in *Waltz v. Sheetz*, 144 Kan. 595 (1936), as requiring that any gift between spouses be treated as fraudulent, and therefore voidable, by the creditors of the transferor spouse. The Court has not revisited the issue since that time. The Committee recommends that the *Waltz* interpretation of the statute be reversed by amending the statute.

Committee Members

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