



**KANSAS BAR
ASSOCIATION**

TO: **The Honorable Tim Owens**
And Members of the Senate Judiciary Committee

FROM: **Tim O'Sullivan**
On Behalf of the Kansas Bar Association

RE: **SB 404, spendthrift and discretionary trusts**

DATE: **February 13, 2012**

Chairman Owens and Members of the Senate Judiciary Committee:

I am Tim O'Sullivan. I am an attorney in Wichita specializing in probate and trust matters. I am appearing on behalf of the Kansas Bar Association (KBA) in support of SB 404, which amends K.S.A. 58a-502(d). The Bill was proposed by the KBA Real Property, Probate and Trust Section, approved by the KBA Legislative Committee and then subsequently approved by the KBA Board of Governors.

SB 404 would amend K.S.A. 58a-502(d) by clarifying confusing and ambiguous language concerning a creditor's ability to compel a distribution from a trust. The KBA is concerned that the present language in K.S.A. 58a-502(d) could be misconstrued to allow a court to compel a trustee to distribute trust property to a creditor. The basic premise here is to protect against a creditor standing in the shoes of a beneficiary when a specific set of standards determine when a distribution of trust assets is allowed or if the trustee has the discretion to distribute those assets.

The current status of K.S.A. 58a-502(d) could be interpreted to allow the creation of an interest in trust property if the beneficiary is to gain control of that property at an ascertainable time or if the trustee has the discretion to distribute trust property. The amended language makes it clear that even a beneficiary's interest in a trust cannot be reached by a creditor because the beneficiary's interest does not translate to an interest in reachable property.

The fear is that current language could create a situation where a creditor attaches property held within a trust, knowing that the trustee will be distributing those assets, thereby violating the intent of the settlor. It has been long standing Kansas policy to adhere to the intent of the settlor first, the interest of the beneficiary's second and above those interests of a beneficiary's creditors.

This does not remove the ability of a creditor to compel a distribution of trust asset should the trustee also be the sole beneficiary of the trust and is authorized to make a distribution but did not make a distribution.

For the reasons stated the Kansas Bar Association believes that K.S.A. 58a-502 should be amended.

We respectfully ask that you give it your support.

On behalf of the Kansas Bar Association, I thank you for your time this morning and would be available to respond to questions.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals.
www.ksbar.org