

February 13, 2012

The Honorable Tim Owens, Chairperson
Senate Committee on Judiciary
Statehouse, Room 559-S
Topeka, Kansas 66612

Dear Senator Owens:

SUBJECT: Fiscal Note for SB 404 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 404 is respectfully submitted to your committee.

SB 404 would amend the Kansas Uniform Trust code relating to spendthrift trusts. In current law, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if: (1) the discretion is expressed in the form of a standard for distribution; or (2) the trustee has abused the discretion.

SB 404 would replace this provision to state that a beneficiary's interest in a trust that is subject to the trustee's discretion, irrespective of whether the trust has a spendthrift clause, does not constitute an interest in property reachable by any creditor of a beneficiary, whether by compelling a distribution the trustee is legally required to make to the beneficiary, attaching present or future interests of a beneficiary in the trust, or by any other means, even if the distribution is expressed in the form of a standard and the trustee has abused the trustee's discretion.

Under the provisions of the bill, if the beneficiary is serving as a sole trustee and the standard of distribution with regard to the beneficiary is not in the form of an ascertainable standard, a creditor would have the right, while the beneficiary is serving as sole trustee, to:

1. compel any present distribution the trustee is authorized to make to the beneficiary at the time any legal proceeding is initiated by the creditor seeking the compulsion; and

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- 2 attach the beneficiary's interest in the trust, limited to any present or future discretionary distributions, if the beneficiary's interest in the trust is not subject to the spendthrift clause.

According to the Office of Judicial Administration, passage of SB 404 would have no fiscal effect on the state budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Mary Rinehart, Judiciary