



Date: February 2, 2022
To: Senate Committee on Financial Institutions & Insurance
Senator Jeff Longbine, Chairman
From: Will Bergman, In-House Counsel
Midwest Trust Company
RE: Verbal Proponent Testimony – SB 400

Mr. Chairman and committee members, I am Will Bergman appearing on behalf of Midwest Trust Company (Midwest Trust), a non-depository Kansas trust company with its headquarters in Overland Park. Thank you for this chance to provide proponent testimony on SB 400. This bill, if passed, will help modernize the Kansas Trust Code, bring high quality jobs to Kansas and will ensure Kansas fiduciaries are competing fairly with other states.

Background on Corporate Trustees

The Kansas Office of the State Bank Commissioner currently regulates 12 active independent state-chartered trust companies and 33 Commercial Banks with trust powers. These organizations provide valuable services to Kansans and to residents of other states acting as corporate trustee for trusts, private foundations and administrator for estates. As trustees, we are Fiduciaries, obligated to do what is best for our clients.

Sections 1 and 2

Regarding New Sections 1 and 2, after recent conversations with other interested parties we have learned that the Judicial Council is studying these subjects. We would like to collaborate with them and report back to this committee at a different time on these two proposals. Therefore, we request that these sections are stricken from the bill. I deeply appreciate all the work staff has done in preparing this draft and look forward to working with them in the future on sections 1 and 2.



Section 3 Nonjudicial Settlement Agreement

Nonjudicial settlement agreements are contracts made by the interested parties of a trust agreement, the settlor, beneficiaries, and trustee, to aid in the administration of the trust. A nonjudicial settlement agreement must be unanimous with all parties agreeing. This agreement is a preferred method to resolving issues with trust administration because it is more expedient and cheaper. The alternative is to go through the court system. This statute maintains a safe harbor provision; at any time, an interested party can request the court to approve the agreement. Overall, legal fees are smaller, and the court system does not get bogged down. The best part is that since all the parties agree, lawsuits are unlikely.

New Paragraphs 5, 6, and 7 expand the use of nonjudicial settlement agreements. The main purpose of these new provisions is to solve vague or confusing provisions of trust documents as a result of the drafting. These new provisions have been taken from Missouri and Tennessee law.

Section 4 Uneconomic Trusts

Section 4 on uneconomic trusts, if passed will make it easier to administer trusts within Kansas. The purpose of Statute 58a-414 was to allow for the uneconomic termination of trusts. The trustee maintains the right, but not the obligation to terminate a trust and to distribute the funds to the beneficiaries if the cost of administering the trust is too expensive. Originally, the bill was passed with \$100,000 being the threshold in 2002. With inflation over the last 20 years, it is necessary to increase that amount. This provision is entirely within the trustee's discretion, so free-spending beneficiaries cannot request this termination to occur.

Section 5 Resident Trust Definition

The current definition of resident trust is overly broad in Kansas. A resident trust as currently defined is "a trust which is administered in this state". Thus, if any trust is administered in the state, a fiduciary income tax return must be filed. This hinders Kansas corporate trustees from providing services to residents of other states. Most states link the definition of resident trust to either the location of the settlor or beneficiaries, not the trustee. If Kansas trust companies provide services for residents of other states, double taxation can occur, a Kansas fiduciary income



tax return will be filed and the state at which the client is a resident may require a return.

Midwest Trust maintains Trust Service Offices in Washington, Colorado, Kansas, Missouri, Tennessee, and Ohio, where trust administration occurs. Midwest Trust is a preferred trust provider for Morgan Stanley and Fidelity. Each year they send us hundreds of accounts to be administered. As fiduciaries, we have started to open our new accounts to be administered in Missouri, where the resident trust definition benefits these new clients. Because of the new influx of accounts, we have been hiring trust offices and employees in our Clayton and downtown Kansas City offices, to avail ourselves of this preferential tax treatment.

With people working from home and clients becoming more comfortable with video conferencing, our trust officers do not need to be located near their clients. We can hire them anywhere, but we have not been hiring them in Kansas because the Kansas definition of Resident Trust is too broad.

Following conversations with other interested parties, we do ask for a friendly amendment. This change is to ensure that no adverse effects occur resulting from this change in definition. We request the following change:

“Resident Trust” means a trust, which is administered in this state and was created by or consisting of property owned by a person domiciled in this state on the date the trust or portion of the trust became irrevocable.

This definition will allow for us to provide services to residents from other states without overhauling the definition for residents of Kansas.

I would like to thank you all for the opportunity to provide proponent testimony on behalf of SB 400. With the passage of this bill, Kansas trust companies will become more competitive and bring jobs to our state.

As the Committee considers this bill, I respectfully ask for favorable consideration so that we can provide the best service to our clients, from our headquarters in Kansas. Mr. Chairman, thank you, and I would be happy to stand for questions at the appropriate time. If at a later time you have questions or require additional information, don't hesitate to get in touch with me at will.bergman@midwesttrust.com or (913) 319-0329.