

Substitute for SENATE BILL No. 400

AN ACT concerning trusts; relating to the creation, modification and termination thereof; adding to the list of matters that may be resolved by nonjudicial settlement agreements; increasing the threshold at which an uneconomic trust may be terminated; updating the definition of resident trust; amending K.S.A. 58a-414 and 79-32,109 and K.S.A. 2021 Supp. 58a-111 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2021 Supp. 58a-111 is hereby amended to read as follows: 58a-111. (a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c), interested persons may enter into a binding nonjudicial settlement agreement with respect to the matters listed in subsection (d).

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this code or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement are limited to:

- (1) The approval of a trustee's report or accounting;
- (2) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (3) transfer of a trust's principal place of administration; ~~and~~
- (4) liability of a trustee for an action relating to the trust;
- (5) *the interpretation or construction of the terms of the trust;*
- (6) *direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power; and*
- (7) *the governing law of the trust.*

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in article 3 of this code was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Sec. 2. K.S.A. 58a-414 is hereby amended to read as follows: 58a-414. (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than ~~\$100,000~~ \$250,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

~~(d) This section does not apply to an easement for conservation or preservation.~~

~~(e) This section does not apply to:~~

- ~~(1) An easement for conservation or preservation; or~~
- ~~(2) any trust if its assets are distributable to the trustee or anyone the trustee is obligated to support.~~

Sec. 3. K.S.A. 79-32,109 is hereby amended to read as follows: 79-32,109. As used in this act, unless the context otherwise requires:

(a) (1) Any term used in this act shall have the same meaning as when used in a comparable context in the federal internal revenue code. Any reference in this act to the "federal internal revenue code" shall mean the provisions of the federal internal revenue code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the taxable year.

(2) Any reference in this act to a federal form or schedule, or to a line number on a federal form or schedule, shall be to such form, schedule and line number as they existed for tax year 2011 and as revised thereafter by the internal revenue service. Any such reference shall include comparable federal forms, schedules, and line numbers used by non-United States residents when filing their federal income tax return with the internal revenue service.

(b) "Resident individual" means a natural person who is domiciled in this state. A natural person who spends in the aggregate more than six months of the taxable year within this state shall be presumed to be a resident for purposes of this act in absence of proof to the contrary. A nonresident individual means an individual other than a resident individual.

(c) "Resident estate" means the estate of a deceased person whose domicile was in this state at the time of such person's death. "Nonresident estate" means an estate other than a resident estate.

(d) "Resident trust" means a trust ~~which~~ *that* is administered in this state. ~~A trust shall not be deemed to be administered in this state solely because it is subject to the jurisdiction of a district court within this state.~~ "Nonresident trust" means a trust ~~other than a resident trust and that was created by or consists of property owned by a person domiciled in this state on the date the trust or portion of the trust became irrevocable.~~

(e) "Resident partner" means a partner who is a resident individual, a resident estate, or a resident trust. "Nonresident partner" means a partner other than a resident partner.

(f) "Resident beneficiary" means a beneficiary of an estate or trust which beneficiary is a resident individual, a resident estate, or a resident trust. "Nonresident beneficiary" means a beneficiary other than a resident beneficiary.

(g) "Director" means the director of taxation.

(h) (1) "Modified Kansas source income" means that part of a nonresident individual's Kansas adjusted gross income as set forth in K.S.A. 79-32,117, and amendments thereto, derived from sources in Kansas. Items of income including unemployment compensation, gain, loss or deduction reflected in Kansas adjusted gross income shall be considered derived from sources in Kansas to the extent that they are attributable to:

(1)(A) The ownership of any interest in real or tangible personal property in this state;

(2)(B) a business, trade, profession or occupation carried on in this state;

(3)(C) a business, trade, profession or occupation carried on partly within and partly without this state as determined by the uniform division of income for tax purposes act as set forth in K.S.A. 79-3271 through K.S.A. 79-3293, and amendments thereto;

(4)(D) the distributive share of partnership income, gain, loss and deduction determined under this section as if the partnership were a nonresident individual;

(5)(E) the share of estate or trust income, gain, loss and deduction determined under K.S.A. 79-32,137, and amendments thereto;

(6)(F) prizes won from lottery games conducted by the Kansas lottery;

(7)(G) any winnings from parimutuel wagering derived from the conduct of parimutuel activities within this state; or

(8)(H) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession or occupation

carried on in Kansas. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of such dealer's trade or business, shall not be deemed to carry on a business, trade, profession or occupation in Kansas solely by reason of the purchase and sale of property for such nonresident's own account.

(2) "Modified Kansas source income" ~~shall~~ *does* not include:

(1)(A) Compensation paid by the United States for service in the armed forces of the United States, performed during an induction period by an individual not domiciled in this state; or

(2)(B) such individual's share of distributed or undistributed taxable income or net operating loss of a corporation which is an electing small business corporation unless an agreement is filed as provided in K.S.A. 79-32,139, and amendments thereto, in which event, the "modified Kansas source income" of such nonresident individual shall include such individual's share of such corporation's distributed and undistributed taxable income or net operating loss as such share is determined under the internal revenue code only to the extent, however, that such income, gain or loss is at the corporate level, derived from sources within Kansas.

Sec. 4. K.S.A. 58a-414 and 79-32,109 and K.S.A. 2021 Supp. 58a-111 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.