

HOUSE BILL No. 2290

By Committee on Judiciary

2-11

AN ACT concerning the Kansas uniform trust code; amending K.S.A. 2002 Supp. 58a-103, 58a-505 and 58a-813 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 58a-103 is hereby amended to read as follows: 58a-103. As used in this code:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection (a) of K.S.A. 2002 Supp. 58a-405, and amendments thereto.

(4) "Conservator" means a person appointed by the court pursuant to K.S.A. 59-3001 *et seq.*, and amendments thereto, to administer the estate of a minor or adult individual.

(5) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) "Guardian" means a person appointed by the court pursuant to K.S.A. 59-3001 *et seq.*, and amendments thereto, to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(7) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(8) "Jurisdiction," with respect to a geographic area, includes a state or country.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Power of withdrawal" means a presently exercisable general

1 power of appointment other than a power exercisable only upon consent
2 of the trustee or a person holding an adverse interest.

3 (11) "Property" means anything that may be the subject of owner-
4 ship, whether real or personal, legal or equitable, or any interest therein.

5 (12) "Qualified beneficiary" means a beneficiary who, on the date of
6 the beneficiary's qualification is determined *to be either*:

7 (A) ~~Is~~ A distributee of trust income or principal; or

8 (B) ~~would be~~ a distributee of trust income or principal if the trust
9 terminated on that date.

10 (13) "Revocable," as applied to a trust, means revocable by the settlor
11 without the consent of the trustee or a person holding an adverse interest.

12 (14) "Settlor" means a person, including a testator, who creates, or
13 contributes property to, a trust. If more than one person creates or con-
14 tributes property to a trust, each person is a settlor of the portion of the
15 trust property attributable to that person's contribution except to the ex-
16 tent another person has the power to revoke or withdraw that portion.

17 (15) "Spendthrift provision" means a term of a trust which restrains
18 either voluntary or involuntary transfer of a beneficiary's interest.

19 (16) "State" means a state of the United States, the District of Co-
20 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or
21 insular possession subject to the jurisdiction of the United States. The
22 term includes an Indian tribe or band recognized by federal law or for-
23 mally acknowledged by a state.

24 (17) "Terms of a trust" means the manifestation of the settlor's intent
25 regarding a trust's provisions as expressed in the trust instrument or as
26 may be established by other evidence that would be admissible in a ju-
27 dicial proceeding.

28 (18) "Trust instrument" means an instrument executed by the settlor
29 that contains terms of the trust, including any amendments thereto.

30 (19) "Trustee" includes an original, additional, and successor trustee,
31 and a cotrustee.

32 Sec. 2. K.S.A. 2002 Supp. 58a-505 is hereby amended to read as
33 follows: 58a-505. (a) Except as provided by K.S.A. 33-101 *et seq.* and 33-
34 201 *et seq.*, and amendments thereto, whether or not the terms of a trust
35 contain a spendthrift provision, the following rules apply:

36 (1) During the lifetime of the settlor, the property of a revocable trust
37 is subject to claims of the settlor's creditors.

38 (2) With respect to an irrevocable trust, a creditor or assignee of the
39 settlor may reach the maximum amount that can be distributed to or for
40 the settlor's benefit. If a trust has more than one settlor, the amount the
41 creditor or assignee of a particular settlor may reach may not exceed the
42 settlor's interest in the portion of the trust attributable to that settlor's
43 contribution.

1 (3) After the death of a settlor, and subject to the settlor's right to
2 direct the source from which liabilities will be paid, the property of a trust
3 that was revocable at the settlor's death is subject to claims of the settlor's
4 creditors, costs of administration of the settlor's estate, the expenses of
5 the settlor's funeral and disposal of remains, the homestead, homestead
6 allowance, all elective share rights of the surviving spouse and statutory
7 allowance to a surviving spouse and children to the extent the settlor's
8 probate estate is inadequate to satisfy those claims, costs, expenses, and
9 allowances.

10 (b) For purposes of this section:

11 (1) During the period the power may be exercised, the holder of a
12 power of withdrawal is treated in the same manner as the settlor of a
13 revocable trust to the extent of the property subject to the power; and

14 (2) *except as provided further*, upon the lapse, release, or waiver of
15 the power, the holder is treated as the settlor of the trust only to the
16 extent the value of the property affected by the lapse, release, or waiver
17 exceeds the greater of the amount specified in section 2041(b)(2) or
18 2514(e) of the federal internal revenue code of 1986, as in effect on
19 December 31, 2000, or section 2503(b) of the federal internal revenue
20 code of 1986, as in effect on December 31, 2000. *This paragraph shall*
21 *not apply to the lapse of a power held by the spouse of a person occurring*
22 *upon the death of such person.*

23 Sec. 3. K.S.A. 2002 Supp. 58a-813 is hereby amended to read as
24 follows: 58a-813. (a) A trustee shall keep the qualified beneficiaries of the
25 trust reasonably informed about the administration of the trust and of the
26 material facts necessary for them to protect their interests. Unless unrea-
27 sonable under the circumstances, a trustee shall promptly respond to a
28 qualified beneficiary's request for information related to the administra-
29 tion of the trust.

30 (b) A trustee:

31 (1) Upon request of a qualified beneficiary, shall promptly furnish to
32 the qualified beneficiary a copy of the trust instrument;

33 (2) within 60 days after accepting a trusteeship, shall notify the qual-
34 ified beneficiaries of the acceptance and of the trustee's name, address,
35 and telephone number;

36 (3) within 60 days after the date the trustee acquires knowledge of
37 the creation of an irrevocable trust, or the date the trustee acquires knowl-
38 edge that a formerly revocable trust has become irrevocable, whether by
39 the death of the settlor or otherwise, shall notify the qualified benefi-
40 ciaries of the trust's existence, of the identity of the settlor or settlors, of
41 the right to request a copy of the trust instrument and of the right to a
42 trustee's report as provided in subsection (c); and

43 (4) shall notify the qualified beneficiaries in advance of any change

1 in the method or rate of the trustee's compensation.

2 (c) A trustee shall send to the distributees or permissible distributees
3 of trust income or principal, and to other qualified beneficiaries who
4 request it, at least annually and at the termination of the trust, a report
5 of the trust property including liabilities, receipts and disbursements, in-
6 cluding the source and amount of the trustee's compensation, a listing of
7 the trust assets and, if feasible, their respective market values, and if
8 requested, the trust's association of investment management and research
9 compliant rate of return. Upon a vacancy in a trusteeship, unless a co-
10 trustee remains in office, a report must be sent to the qualified benefi-
11 ciaries by the former trustee. A personal representative, conservator, or
12 guardian may send the qualified beneficiaries a report on behalf of a
13 deceased or incapacitated trustee.

14 (d) A qualified beneficiary may waive the right to a trustee's report
15 or other information otherwise required to be furnished under this sec-
16 tion. A qualified beneficiary, with respect to future reports and other
17 information, may withdraw a waiver previously given.

18 (e) The provisions of this section are inapplicable ~~as to notice~~ to per-
19 sons other than a surviving spouse so long as a surviving spouse is or may
20 be entitled to receive income or principal distributions from a trust, or
21 holds any power of appointment therein, and where any or all qualified
22 beneficiaries are the issue of the surviving spouse.

23 Sec. 4. K.S.A. 2002 Supp. 58a-103, 58a-505 and 58a-813 are hereby
24 repealed.

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

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