

SENATE BILL No. 47

By Committee on Judiciary

1-24

1 AN ACT concerning the uniform trust code; relating to modification or
2 termination of noncharitable trust by consent; creditor claims against
3 settlor; amending K.S.A. 58a-505 and K.S.A. 2010 Supp. 58a-411 and
4 repealing the existing sections; also repealing K.S.A. 33-101 and 58a-
5 818.

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

8 Section 1. K.S.A. 2010 Supp. 58a-411 is hereby amended to read as
9 follows: 58a-411. (a) A noncharitable irrevocable trust may be modified
10 or terminated upon consent of the settlor and all qualified beneficiaries,
11 even if the modification or termination is inconsistent with a material
12 purpose of the trust. A settlor's power to consent to a trust's modification
13 or termination may be exercised by an attorney in fact under a power of
14 attorney only to the extent expressly authorized by the power of attorney
15 or the terms of the trust; by the settlor's conservator with the approval of
16 the court supervising the conservatorship if an agent is not so authorized;
17 or by the settlor's guardian with the approval of the court supervising the
18 guardianship if an agent is not so authorized and a conservator has not
19 been appointed. This subsection does not apply to irrevocable trusts
20 created before, or to revocable trusts that became irrevocable before,
21 January 1, 2003.

22 (b) A noncharitable irrevocable trust may be terminated upon
23 consent of all of the qualified beneficiaries if the court concludes that
24 continuance of the trust is not necessary to achieve any material purpose
25 of the trust. A noncharitable irrevocable trust may be modified upon
26 consent of all of the qualified beneficiaries if the court concludes that
27 modification is not inconsistent with a material purpose of the trust.

28 (c) A spendthrift provision in the terms of the trust is *not* presumed
29 to constitute a material purpose of the trust.

30 (d) Upon termination of a trust under subsection (a) or (b), the
31 trustee shall distribute the trust property as agreed by the qualified
32 beneficiaries.

33 (e) If not all of the qualified beneficiaries consent to a proposed
34 modification or termination of the trust under subsection (a) or (b), the
35 modification or termination may be approved by the court if the court is
36 satisfied that:

1 (1) If all of the qualified beneficiaries had consented, the trust could
2 have been modified or terminated under this section; and

3 (2) the interests of a qualified beneficiary who does not consent will
4 be adequately protected.

5 Sec. 2. K.S.A. 58a-505 is hereby amended to read as follows: 58a-
6 505. (a) Except as provided by K.S.A. ~~33-101~~ 33-102 *et seq.* and 33-201
7 *et seq.*, and amendments thereto, whether or not the terms of a trust
8 contain a spendthrift provision, the following rules apply:

9 (1) ~~During~~ *For a trust, or any portion of a trust, that is revocable by*
10 *the settlor, during the lifetime of the settlor, the property of a revocable*
11 *such trust is subject to claims of the settlor's creditors. The creditor may*
12 *enforce this right by properly bringing an action against the trustee of the*
13 *trust.*

14 (2) ~~With respect to an irrevocable trust, a creditor or assignee of the~~
15 ~~settlor may reach the maximum amount that can be distributed to or for~~
16 ~~the settlor's benefit. If a trust has more than one settlor, the amount the~~
17 ~~creditor or assignee of a particular settlor may reach may not exceed the~~
18 ~~settlor's interest in the portion of the trust attributable to that settlor's~~
19 ~~contribution.~~

20 (3) (2) *For a trust, or any portion of a trust, that is revocable by the*
21 *settlor, after the death of a settlor, and subject to the settlor's right to*
22 *direct the source from which liabilities will be paid, :*

23 (A) *Except as provided further, the property of a trust that was*
24 *revocable at the settlor's death is subject to claims of the settlor's*
25 *creditors, costs of administration of the settlor's estate, the expenses of the*
26 *settlor's funeral and disposal of remains, the homestead, homestead*
27 *allowance, the elective share rights of the surviving spouse pursuant to*
28 *K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a*
29 *surviving spouse and children to the extent the settlor's probate estate is*
30 *inadequate to satisfy those claims, costs, expenses, and allowances. A*
31 *revocable trust shall not be liable for any claim unless: (i) A petition is*
32 *filed for the probate of the settlor's will pursuant to K.S.A. 59-2220, and*
33 *amendments thereto, or for the administration of the decedent's estate*
34 *pursuant to K.S.A. 59-2219, and amendments thereto, within six months*
35 *after the death of the decedent; (ii) the settlor's probate estate is*
36 *inadequate to satisfy the claim, unless the settlor has specifically directed*
37 *otherwise; (iii) the claim has been properly exhibited in the settlor's*
38 *probate estate, allowed by the probate court, and not otherwise barred by*
39 *K.S.A. 59-2239, and amendments thereto; and (iv) the trustee of the trust*
40 *has been given notice of the hearing on such claim. The executor or*
41 *administrator shall have an affirmative duty to give notice of such*
42 *hearing to the trustee of the trust if the trust is known or reasonably*
43 *ascertainable. If the trustee of the trust has not been given notice of the*

1 *hearing on such claim, the property of the trust shall not be liable unless*
2 *the trustee is thereafter notified of such claim and such claim is allowed*
3 *in a subsequent de novo hearing.*

4 *(B) Notwithstanding the provisions of subsection (a)(2)(A), to the*
5 *extent property owned by, payable to, or otherwise passing under a*
6 *revocable trust on the settlor's death was exempt from the claims of the*
7 *settlor's creditors under applicable law immediately prior to the settlor's*
8 *death, such property, as well as any proceeds thereof, and whether or not*
9 *commingled after death, shall remain exempt from the claims of the*
10 *settlor's creditors following the settlor's death.*

11 *(C) When the revocable trust designates property to be appropriated*
12 *for the payment of claims, it shall be applied to such purpose. Otherwise*
13 *the property in the decedent's probate estate which is properly subject to*
14 *payment of claims shall be appropriated in the following order:*

- 15 *(1) Personal property not disposed of by the trust;*
- 16 *(2) real estate not disposed of by the trust;*
- 17 *(3) personal property bequeathed to the residuary legatee;*
- 18 *(4) real estate devised to the residuary devisee;*
- 19 *(5) property not specifically bequeathed or devised;*
- 20 *(6) property specifically bequeathed or devised.*

21 *Demonstrative legacies shall be classed as specific legacies to the*
22 *extent of the payment thereof from the fund or property out of which*
23 *payment is to be made, and as general legacies upon failure or*
24 *insufficiency of the fund or property out of which payment was to be*
25 *made to the extent of such insufficiency. The property of each class shall*
26 *be exhausted before resorting to that of the next class, and all of one*
27 *class shall contribute ratably if all the property of that class is not*
28 *required for the payment of claims.*

29 *(3) With respect to an irrevocable trust, a creditor or assignee of the*
30 *settlor may reach the maximum amount that can be distributed to or for*
31 *the settlor's benefit. If a trust has more than one settlor, the amount the*
32 *creditor or assignee of a particular settlor may reach may not exceed the*
33 *settlor's interest in the portion of the trust attributable to that settlor's*
34 *contribution. The creditor may enforce this right by properly bringing an*
35 *action against the trustee of the trust.*

36 *(b) For purposes of this section:*

37 *(1) During the period the power may be exercised, the holder of a*
38 *power of withdrawal is treated in the same manner as the settlor of a*
39 *revocable trust to the extent of the property subject to the power;*

40 *(2) upon the lapse, release, or waiver of the power, the holder is*
41 *treated as the settlor of the trust only to the extent the value of the*
42 *property affected by the lapse, release, or waiver exceeds the greater of*
43 *the amount specified in section 2041(b)(2) or 2514(e) of the federal*

1 internal revenue code of 1986, as in effect on December 31, 2002; or
2 section 2503(b) of the federal internal revenue code of 1986, as in effect
3 on December 31, 2002; and

4 (3) this subsection shall not apply to the lapse of powers held by the
5 spouse of a person occurring upon the death of such person.

6 Sec. 3. K.S.A. 33-101, 58a-505 and 58a-818 and K.S.A. 2010 Supp.
7 58a-411 are hereby repealed.

8 Sec. 4. This act shall take effect and be in force from and after its
9 publication in the statute book.

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