

SENATE BILL No. 297

AN ACT enacting the Kansas uniform trust code; repealing K.S.A. 58-1201, 58-1202, 58-1203, 58-1205, 58-1206, 58-1207, 58-1208, 58-1209, 58-1210, 58-1211, 58-2404, 58-2405, 58-2409, 58-2410, 58-2411, 58-2412, 58-2413, 58-2415, 58-2417, 58-2420, 59-2295 and 59-2296 and K.S.A. 2001 Supp. 58-1204, 58-12a01, 58-12a02, 58-12a03, 58-12a04, 58-12a05 and 58-12a06.

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

Section 1. **(UTC 101) SHORT TITLE.** This act may be cited as the Kansas uniform trust code.

Sec. 2. **(UTC 102) SCOPE.** This code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

Sec. 3. **(UTC 103) DEFINITIONS.** 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 section 26, 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 power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

(11) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(12) “Qualified beneficiary” means a beneficiary who, on the date of the beneficiary’s qualification is determined:

(A) Is a distributee of trust income or principal; or

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

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

(14) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(15) “Spendthrift provision” means a term of a trust which restrains either voluntary or involuntary transfer of a beneficiary’s interest.

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(17) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

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

(19) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

Sec. 4. **(UTC 104) KNOWLEDGE.** (a) Subject to subsection (b), a person has knowledge of a fact if the person:

- (1) Has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual’s regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Sec. 5. **(UTC 105) DEFAULT AND MANDATORY RULES.** (a) Except as otherwise provided in the terms of the trust, this code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this code except:

- (1) The requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve;
- (4) the power of the court to modify or terminate a trust under sections 31 through 37, and amendments thereto;
- (5) the power of the court under section 50, and amendments thereto, to require, dispense with, or modify or terminate a bond;
- (6) the power of the court under subsection (b) of section 56, and amendments thereto, to adjust a trustee’s compensation specified in the terms of the trust which is unreasonably low or high;
- (7) the effect of an exculpatory term under section 83, and amendments thereto;
- (8) the rights under sections 85 through 88, and amendments thereto, of a person other than a trustee or beneficiary;
- (9) periods of limitation for commencing a judicial proceeding under section 48, and amendments thereto; and
- (10) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

(c) Notwithstanding any provisions of the Kansas uniform trust code to the contrary, any trust created by will and admitted to probate shall be subject to the requirements of chapter 59 of the Kansas Statutes Annotated.

Sec. 6. **(UTC 106) COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.** The common law of trusts and principles of equity supplement this code, except to the extent modified by this code or another statute of this state.

Sec. 7. **(UTC 107) GOVERNING LAW.** The meaning and effect of the terms of a trust are determined by:

- (1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction’s law is contrary to the law of the jurisdiction having the most significant relationship to the matter at issue; or
- (2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

Sec. 8. **(UTC 108) PRINCIPAL PLACE OF ADMINISTRATION.** (a) Without precluding other means for establishing a sufficient

connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 52, and amendments thereto.

Sec. 9. (UTC 109) METHODS AND WAIVER OF NOTICE. (a) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this code or a document otherwise required to be sent under this code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this code or the sending of a document under this code may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the code of civil procedure.

Sec. 10. (UTC 110) OTHERS TREATED AS QUALIFIED BENEFICIARIES. (a) A charitable organization expressly mandated to receive distributions under the terms of a trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 29 or 30, and amendments thereto, has the rights of a qualified beneficiary under this code.

(b) The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

Sec. 11. (UTC 111) NONJUDICIAL SETTLEMENT AGREEMENTS. (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 any matter involving a trust.

(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.

(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. 12. **(UTC 112) RULES OF CONSTRUCTION.** The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

Sec. 13. **(UTC 201) ROLE OF COURT IN ADMINISTRATION OF TRUST.** (a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including an action for declaratory judgment pursuant to K.S.A. 60-1701 *et seq.*, and amendments thereto.

Sec. 14. **(UTC 202) JURISDICTION OVER TRUSTEE AND BENEFICIARY.** (a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

Sec. 15. **(UTC 203) SUBJECT-MATTER JURISDICTION.** The district court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

Sec. 16. **(UTC 204) VENUE.** (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration has been, is or will be located or in the county in which any real property in which the trust has an interest is located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

Sec. 17. **(UTC 301) REPRESENTATION: BASIC EFFECT.** (a) Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this article is binding on the person represented unless the

person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 32 and 46, and amendments thereto, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Sec. 18. (UTC 302) REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Sec. 19. (UTC 303) REPRESENTATION BY FIDUCIARIES AND PARENTS. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- (1) A conservator may represent and bind the estate that the conservator controls;
- (2) a guardian may represent and bind the ward within the scope of the guardian's powers and duties;
- (3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) a trustee may represent and bind the beneficiaries of the trust;
- (5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- (6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

Sec. 20. (UTC 304) REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Sec. 21. (UTC 305) APPOINTMENT OF REPRESENTATIVE. (a) If the court or trustee determines that an interest is not represented under this article, or that the otherwise available representation might be inadequate, the court may appoint or the trustee may retain a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this code, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

Sec. 22. (UTC 401) METHODS OF CREATING TRUST. A trust may be created by:

- (1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) declaration by the owner of property that the owner holds property as trustee, so long as such property would not otherwise pass at the owner's death by a beneficiary designation to a party other than the trust; or
- (3) exercise of a power of appointment in favor of a trustee.

Sec. 23. (UTC 402) REQUIREMENTS FOR CREATION. (a) A trust is created only if:

- (1) The settlor has capacity to create a trust;
- (2) the settlor indicates an intention to create the trust;
- (3) the trust has a definite beneficiary or is:
 - (A) A charitable trust;

(B) a trust for the care of an animal, as provided in section 29, and amendments thereto; or

(C) a trust for a noncharitable purpose, as provided in section 30, and amendments thereto;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Sec. 24. (UTC 403) TRUSTS CREATED IN OTHER JURISDICTIONS. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

Sec. 25. (UTC 404) TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Sec. 26. (UTC 405) CHARITABLE PURPOSES; ENFORCEMENT. (a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Sec. 27. (UTC 406) CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE. (a) A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

(b) Any provision in a trust, written or prepared for another person, that transfers property and that gives the scrivener or the scrivener's parent, children, issue, sibling or spouse any direct or indirect gift is invalid unless: (1) The scrivener is related to the settlor by blood or marriage; or (2) it affirmatively appears that the settlor had read and knew the contents of the trust and had independent legal advice with reference thereto. The words "children" and "issue" as used in this section, are defined in K.S.A. 59-501, and amendments thereto.

Sec. 28. (UTC 407) EVIDENCE OF ORAL TRUST. Except as required by K.S.A. 59-606, and amendments thereto, with respect to testamentary trusts or K.S.A. 33-105, 33-106 and 58-2401, and amendments thereto, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

Sec. 29. (UTC 408) TRUST FOR CARE OF ANIMAL. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended

use. Except as otherwise provided in the terms of the trust, property not required for the intended use may be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Sec. 30. **(UTC 409) NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY.** Except as otherwise provided in section 29, and amendments thereto, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use may be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Sec. 31. **(UTC 410) MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.**

(a) In addition to the methods of termination prescribed by sections 32 through 35, and amendments thereto, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 32 through 37, and amendments thereto, or trust combination or division under section 38, and amendments thereto, may be commenced by a trustee or qualified beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 32, and amendments thereto, may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 34, and amendments thereto.

Sec. 32. **(UTC 411) MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.**

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

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

(c) A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

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

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

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

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

Sec. 33. **(UTC 412) MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.** (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's 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.

Sec. 34. **(UTC 413) CY PRES.** If a charitable trust is or becomes illegal or impossible or impracticable of fulfillment or if a devise or bequest for charity, at the time it was intended to become effective is illegal or impossible or impracticable of fulfillment, and if the settlor, manifested a general intention to devote the property to charity, any judge, on application of any trustee, any interested party or the attorney general, may order an administration of the trust, as nearly as possible to fulfill the manifested general charitable intention of the settlor. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard. The provisions of this act shall not be applicable if the settlor has provided, either directly or indirectly, for an alternative plan in the event the charitable trust is or becomes illegal or impossible or impracticable of fulfillment. If the alternative plan is also a charitable trust, the intention shown in the original plan shall prevail in the application of this act.

(b) If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in section 2055(a) of the federal internal revenue code of 1986, as in effect on December 31, 2000, to meet the requirements of section 170(f)(3)(B) or 2055(e)(2) of the federal internal revenue code of 1986, as in effect on December 31, 2000, then in order that such deduction shall nevertheless be allowable under section 2055(a) of the federal internal revenue code of 1986, as in effect on December 31, 2000, any judge, on application of any trustee, or any interested party may:

(1) With the written consent of the charitable beneficiaries, the non-charitable beneficiaries not under any legal disability and duly appointed guardians or guardians ad litem acting on behalf of any beneficiaries under legal disability or conservator; or

(2) upon a finding that the interest of such beneficiaries is substantially preserved, order a change to the trust by reformation, amendment, construction or otherwise, which changes a reformable interest into a qualified interest within the meaning of section 2055(e)(3) of the federal internal revenue code of 1986, as in effect on December 31, 2000. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard.

(c) As used in this act "impracticable of fulfillment" includes, but is not limited to, the failure of any charitable trust, testamentary or inter vivos, including, without limitation, trusts described in section 509 of the federal internal revenue code of 1986, as in effect on December 31, 2000, and charitable remainder trusts described in section 664 of the federal internal revenue code of 1986, as in effect on December 31, 2000, to include, if required to do so by section 508(e) or section 4947(a) of the federal internal revenue code of 1986, as in effect on December 31, 2000, the provisions relating to governing instruments set forth in section 508(e) of the federal internal revenue code of 1986, as in effect on December 31, 2000.

(d) The provisions of this section shall be effective as to all trusts not construed prior to the effective date of this act.

Sec. 35. **(UTC 414) TERMINATION OF UNECONOMIC TRUST.** (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000

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 any trust if its assets are distributable to the trustee or anyone the trustee is obligated to support.

Sec. 36. (UTC 415) REFORMATION TO CORRECT MISTAKES. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Sec. 37. (UTC 416) MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

Sec. 38. (UTC 417) COMBINATION AND DIVISION OF TRUSTS. (a) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The trustee may make a division under this section by:

(1) Giving written notice of the division, not later than the 30th day before the date of a division under this subsection, to each qualified beneficiary; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been divided pursuant to this section and that the notice requirements of this subsection have been satisfied.

(b) A trustee, in the written instrument dividing a trust, shall allocate trust property among the separate trusts on a fractional basis by identifying the assets and liabilities passing to each separate trust, or on any other reasonable basis. The trustee shall allocate undesignated trust property received after the trustee has divided the trust into separate trusts in the manner provided by the written instrument dividing the trust, or, in the absence of a provision in the written instrument, in a manner determined by the trustee.

(c) The trustee may combine two or more trusts under this section by:

(1) Giving a written notice of the combination, not later than the 30th day before the effective date of the combination, to each qualified beneficiary; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been combined pursuant to this section and that the notice requirements of this subsection have been satisfied.

(d) The trustee may divide or combine a testamentary trust after the will establishing the trust has been admitted to probate, even if the trust will not be funded until a later date. The trustee may divide or combine any other trust before it is funded if the instrument establishing the trust is not revocable at the time of the division or combination.

Sec. 39. REFERENCE TO WRITTEN STATEMENT OR LIST. A trust instrument which establishes an inter vivos trust and which directs the trustee to distribute trust assets may refer to a separate written statement or list of items of personal property, other than money, evidences of debt, documents of title, securities, and properties used in trade or business, which are assets of the trust estate, and may direct the trustee to make distribution of such items as indicated in the written statement

or list. The trustee may distribute such items in accordance with the written statement or list. Such written statement or list either must be in the handwriting of the settlor or be signed by the settlor, and must describe the items with reasonable certainty. The writing may be referred to in the trust instrument as one to be in existence at the time of the settlor's death, prepared before or after execution of the trust instrument, and altered by the settlor after its preparation. Transfer of items of personal property pursuant to this section shall not be considered testamentary or be invalidated due to nonconformity with the provisions of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 40. **(UTC 501) RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE.** To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Sec. 41. **(UTC 502) SPENDTHRIFT PROVISION.** (a) A spendthrift provision is valid.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

(d) 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.

Sec. 42. **(UTC 505) CREDITOR'S CLAIM AGAINST SETTLOR.** (a) Except as provided by K.S.A. 33-101 *et seq.* and 33-201 *et seq.*, and amendments thereto, whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

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

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

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

(b) For purposes of this section:

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

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the federal internal revenue code of 1986, as in effect on December 31, 2000, or section 2503(b) of the federal internal revenue code of 1986, as in effect on December 31, 2000.

Sec. 43. **(UTC 506) OVERDUE DISTRIBUTION.** Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has

not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

Sec. 44. **(UTC 507) PERSONAL OBLIGATIONS OF TRUSTEE.** Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Sec. 45. **(UTC 601) CAPACITY OF SETTLOR OF REVOCABLE TRUST.** The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Sec. 46. **(UTC 602) REVOCATION OR AMENDMENT OF REVOCABLE TRUST.** (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this code.

(b) If a revocable trust is created or funded by more than one settlor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Sec. 47. **(UTC 603) SETTLOR'S POWERS; POWERS OF WITHDRAWAL.** (a) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Sec. 48. **(UTC 604) LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.** (a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) One year after the settlor's death; or

(2) four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property

in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

- (1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or
 - (2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.
- (c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Sec. 49. (UTC 701) ACCEPTING OR DECLINING TRUSTEESHIP. (a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

- (1) By substantially complying with a method of acceptance provided in the terms of the trust; or
- (2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

- (1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and
- (2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Sec. 50. (UTC 702) TRUSTEE'S BOND. (a) A trustee shall give bond to secure performance of the trustee's duties unless otherwise waived or modified by the terms of the trust.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A regulated financial-service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

Sec. 51. (UTC 703) COTRUSTEES. (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

- (1) Prevent a cotrustee from committing a breach of trust; and
- (2) compel a cotrustee to redress a breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent, in writing, at or before the time of the action is not liable for the action.

Sec. 52. (UTC 704) VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR. (a) A vacancy in a trusteeship occurs if:

- (1) A person designated as trustee rejects the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or

(3) by a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Sec. 53. (UTC 705) RESIGNATION OF TRUSTEE. (a) A trustee may resign:

(1) Upon at least 30 days' notice to the qualified beneficiaries and all cotrustees; or

(2) with the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Sec. 54. (UTC 706) REMOVAL OF TRUSTEE. (a) The settlor, if living, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) The trustee has committed a breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries and is consistent with the terms of the trust; or

(4) there has been a substantial change of circumstances and the court finds that removal of the trustee best serves the interests of all of the beneficiaries, is consistent with the terms of the trust, is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection (b) of section 76, and amendments thereto, as may be necessary to protect the trust property or the interests of the beneficiaries.

Sec. 55. (UTC 707) DELIVERY OF PROPERTY BY FORMER TRUSTEE. (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

Sec. 56. **(UTC 708) COMPENSATION OF TRUSTEE.** (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as provided, except as such compensation may be increased or decreased upon approval by the trustee and by unanimous consent of the qualified beneficiaries who do not have a conflict of interest.

(c) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

Sec. 57. **(UTC 709) REIMBURSEMENT OF EXPENSES.** (a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Sec. 58. **(UTC 801) DUTY TO ADMINISTER TRUST.** Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this code.

Sec. 59. **(UTC 802) DUTY OF LOYALTY.** (a) A trustee shall administer the trust consistent with the terms of the trust and solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 87, and amendments thereto, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 80, and amendments thereto;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 84, and amendments thereto; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) The trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary

unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of article 9 of this code. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under section 70, and amendments thereto, to receive a copy of the trustee's annual report of the rate, formula or method by which the compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries and consistent with the terms of the trust. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Sec. 60. **(UTC 803) IMPARTIALITY.** If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Sec. 61. **(UTC 804) PRUDENT ADMINISTRATION.** A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

Sec. 62. **(UTC 805) COSTS OF ADMINISTRATION.** In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

Sec. 63. **(UTC 806) TRUSTEE'S SKILLS.** A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

Sec. 64. **(UTC 807) DELEGATION BY TRUSTEE.** (a) A trustee may delegate duties and powers, other than investment and management functions, that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) A trustee may delegate investment and management functions in accord with K.S.A. 2000 Supp. 58-24a01 *et seq.*, and amendments thereto.

(c) In performing a delegated function, an agent owes a duty to the

trust to exercise reasonable care to comply with the terms of the delegation.

(d) A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(e) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Sec. 65. **(UTC 808) POWERS TO DIRECT.** (a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Sec. 66. **(UTC 809) CONTROL AND PROTECTION OF TRUST PROPERTY.** A trustee shall take reasonable steps to take control of and protect the trust property.

Sec. 67. **(UTC 810) RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY.** (a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

(e) Any estate in real property may be acquired in the trust name. Title acquired in the trust name may be conveyed only in the trust name.

Sec. 68. **(UTC 811) ENFORCEMENT AND DEFENSE OF CLAIMS.** A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Sec. 69. **(UTC 812) COLLECTING TRUST PROPERTY.** A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

Sec 70. **(UTC 813) DUTY TO INFORM AND REPORT.** (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

(b) A trustee:

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

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of

the right to request a copy of the trust instrument and of the right to a trustee's report as provided in subsection (c); and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

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

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

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

Sec. 71. **(UTC 814) DISCRETIONARY POWERS.** Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Sec 72. **(UTC 815) GENERAL POWERS OF TRUSTEE.** (a) A trustee, without authorization by the court, may exercise:

- (1) Powers conferred by the terms of the trust; or
- (2) except as limited by the terms of the trust:
 - (A) All powers over the trust property which an unmarried competent owner has over individually owned property;
 - (B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and
 - (C) any other powers conferred by this code.
- (b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

Sec. 73. **(UTC 816) SPECIFIC POWERS OF TRUSTEE.** Without limiting the authority conferred by section 72, and amendments thereto, a trustee may:

- (1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition, or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial-service institution;
- (5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by pay-

ing it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian, attorney-in-fact, custodial trustee or other person with legal authority to receive such funds for the benefit of the beneficiary;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Sec. 74. (UTC 817) DISTRIBUTION UPON TERMINATION.

(a) Upon termination or partial termination of a trust, the trustee may send to the qualified beneficiaries a proposal for distribution. The right of any qualified beneficiary to object to the proposed distribution terminates if the qualified beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the qualified beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release, upon termination or partial termination of a trust, by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) It was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Sec. 75. (UTC 901) APPLICATION OF UNIFORM PRUDENT INVESTOR ACT. Notwithstanding any provisions of the Kansas uniform trust act to the contrary, K.S.A. 2000 Supp. 59-24a01 *et seq.*, and amendments thereto shall govern the investment and management of trust assets.

Sec. 76. (UTC 1001) REMEDIES FOR BREACH OF TRUST.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

(1) Compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided in section 54, and amendments thereto;

(8) reduce or deny compensation to the trustee;

(9) subject to section 87, and amendments thereto, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) order any other appropriate relief.

Sec. 77. (UTC 1002) DAMAGES FOR BREACH OF TRUST. (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred;

(2) the profit the trustee made by reason of the breach; or

(3) if the trustee embezzles or knowingly converts to the trustee's own use any of the personal property of the trust, the trustee shall be liable for double the value of the property so embezzled or converted.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

(c) The provisions of this section shall not exclude an award of punitive damages.

Sec. 78. (UTC 1003) DAMAGES IN ABSENCE OF BREACH.

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee, other than compensation earned, arising from the administration of the trust, even absent a breach of trust.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Sec. 79. (UTC 1004) ATTORNEY FEES AND COSTS. In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Sec. 80. (UTC 1005) LIMITATION OF ACTION AGAINST TRUSTEE. (a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within two years after the first to occur of:

(1) The removal, resignation, or death of the trustee;

(2) the termination of the beneficiary's interest in the trust; or

(3) the termination of the trust.

Sec. 81. (UTC 1006) RELIANCE ON TRUST INSTRUMENT.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Sec. 82. (UTC 1007) EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION. If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has

exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

Sec. 83. **(UTC 1008) EXCULPATION OF TRUSTEE.** (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

Sec. 84. **(UTC 1009) BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION.** A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Sec. 85. **(UTC 1010) LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.** (a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Sec. 86. **(UTC 1011) INTEREST AS GENERAL PARTNER.** (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Kansas uniform partnership act, K.S.A. 2000 Supp. 56a-101 *et seq.*, and amendments thereto, or the revised uniform limited partnership act, K.S.A. 56-1a101 *et seq.*, and amendments thereto.

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Sec. 87. **(UTC 1012) PROTECTION OF PERSON DEALING WITH TRUSTEE.** (a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Sec. 88. **(UTC 1013) CERTIFICATION OF TRUST.** (a) Instead of furnishing a copy of the trust instrument to a person other than a qualified beneficiary, the trustee may furnish to the person an acknowledged certification of trust containing the following information:

(1) That the trust exists and the date the trust instrument was executed;

(2) the identity of the settlor;

(3) the identity and address of the currently acting trustee;

(4) the powers of the trustee;

(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

(7) the trust's taxpayer identification number; and

(8) the manner of taking title to trust property.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Sec. 89. **(UTC 1101) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 90. **(UTC 1102) ELECTRONIC RECORDS AND SIGNATURES.** The provisions of this code governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the electronic signatures in global and national commerce act (15 U.S.C. § 7002) and supersede,

modify, and limit the requirements of the electronic signatures in global and national commerce act.

Sec. 91. **(UTC 1103) SEVERABILITY CLAUSE.** If any provision of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Sec. 92. **(UTC 1106) APPLICATION TO EXISTING RELATIONSHIPS.** (a) Except as otherwise provided in this act, on the effective date of this act:

(1) This act applies to all trusts created before, on, or after its effective date;

(2) this act applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this act applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

(4) any rule of construction or presumption provided in this act applies to trust instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done before the effective date of the act is not affected by this act.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. 93. K.S.A. 58-1201, 58-1202, 58-1203, 58-1205, 58-1206, 58-1207, 58-1208, 58-1209, 58-1210, 58-1211, 58-2404, 58-2405, 58-2409, 58-2410, 58-2411, 58-2412, 58-2413, 58-2415, 58-2417, 58-2420, 59-2295 and 59-2296 and K.S.A. 2001 Supp. 58-1204, 58-12a01, 58-12a02, 58-12a03, 58-12a04, 58-12a05 and 58-12a06 are hereby repealed.

Sec. 94. This act shall take effect and be in force from and after January 1, 2003, and its publication in the statute book.

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

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.