

HOUSE BILL No. 2556

AN ACT concerning the Kansas uniform trust code; amending K.S.A. 2003 Supp. 58a-103, 58a-105, 58a-401, 58a-406, 58a-411, 58a-502, 58a-505, 58a-602, 58a-603, 58a-802, 58a-810, 58a-813 and 58a-815 and repealing the existing sections.

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

New Section 1. (1) Any trustee who has a duty or power to pay the debts of a deceased settlor may give notice to creditors thereof. Such notice shall be published once a week for three consecutive weeks in a newspaper, authorized by law to publish legal notices, of the county in which the deceased settlor was a resident. The publication notice to creditors shall be to all persons concerned. It shall state the name and address of the trustee, the name of the deceased settlor, the name of the trust from which the debts of the decedent may be paid upon receipt of proper proof thereof, and shall notify the creditors to present such claims to the trustee within the later of:

(a) Four months from the date of the first published notice; or
(b) thirty days after receipt of the actual notice directed by subsection (2), or be forever barred as against the trustee and the trust property.

(2) Any trustee publishing a notice to creditors under the provisions of subsection (1) shall also give actual notice to known or reasonably ascertainable creditors prior to the expiration of the period described in subsection (1) (a).

(3) The claim of a creditor of a deceased settlor shall be forever barred as against the trustee and the trust property unless the claim is presented to the trustee within the later of:

(a) Four months from the date of the first publication of the notice under subsection (1); or

(b) if the creditor is known or reasonably ascertainable, 30 days after actual notice was given.

(4) Nothing in this section shall affect or prevent the enforcement of a claim arising out of tort against the decedent within the period of the statute of limitations provided for an action on such claim. Any recovery by the claimant in such action shall not affect the distribution of the assets of the trust unless a claim was presented to the trustee within the time allowed for filing claims under subsection (1). The action may be filed in any court of competent jurisdiction and the rules of pleading and procedure in the action shall be the same as apply in civil actions. The trust may be terminated and the trustee promptly discharged when the statute of limitations for filing such actions has expired and no action has been filed or upon conclusion of any action filed.

(c) This section shall be part of and supplemental to the Kansas uniform trust code.

Sec. 2. K.S.A. 2003 Supp. 58a-103 is hereby amended to read as follows: 58a-103. As used in this code:

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

(2) "Beneficiary" means a person that:

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

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

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection (a) of K.S.A. 2003 Supp. 58a-405, and amendments thereto.

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

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

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

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

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

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture,

government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) “Power of withdrawal” means a presently exercisable general 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 *to be either*:

(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) “Spenthrift 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. 3. K.S.A. 2003 Supp. 58a-105 is hereby amended to read as follows: 58a-105. (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 K.S.A. 2003 Supp. 58a-410 through 58a-416, and amendments thereto;

(5) *the effect of the rights of creditors to reach a trust as provided in article 5 of chapter 58a of the Kansas Statutes Annotated, and amendments thereto;*

(6) the power of the court under K.S.A. 2003 Supp. 58a-702, and amendments thereto, to require, dispense with, or modify or terminate a bond;

~~(6)~~ (7) the power of the court under subsection (b) of K.S.A. 2003 Supp. 58a-708, and amendments thereto, to adjust a trustee’s compensation specified in the terms of the trust which is unreasonably low or high;

~~(7)~~ (8) the effect of an exculpatory term under K.S.A. 2003 Supp. 58a-1008, and amendments thereto;

~~(8)~~ (9) the rights under K.S.A. 2003 Supp. 58a-1010 through 58a-1013, and amendments thereto, of a person other than a trustee or beneficiary;

~~(9)~~ (10) periods of limitation for commencing a judicial proceeding under K.S.A. 2003 Supp. 58a-604, and amendments thereto; ~~and~~

~~(10)~~ (11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; *and*

(12) *the barring of claims against trusts and trustees under section 1, and amendments thereto.*

(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. 4. K.S.A. 2003 Supp. 58a-401 is hereby amended to read as follows: 58a-401. A trust may be created by:

(1) Transfer of property to another person as trustee *or to the trust in the trusts' name* 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. 5. K.S.A. 2003 Supp. 58a-406 is hereby amended to read as follows: 58a-406. (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~~ *writer or preparer* or the ~~scrivener's~~ *writer or preparer's* parent, children, issue, sibling or spouse any direct or indirect ~~gift benefit~~ is invalid unless: (1) The ~~scrivener~~ *writer or preparer* is related to the settlor by blood ~~or~~, *marriage or adoption and the benefit is not more than the writer or preparer or the writer or preparer's parent, children, issue, sibling or spouse would receive under the laws of intestate succession, if the transfer or benefit passed in that manner;* or (2) it affirmatively appears that the settlor had read ~~and~~ *or* 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. 6. K.S.A. 2003 Supp. 58a-411 is hereby amended to read as follows: 58a-411. (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 *modification* or termination may be exercised by an ~~agent~~ *attorney in fact* 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. 7. K.S.A. 2003 Supp. 58a-502 is hereby amended to read as follows: 58a-502. (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 suffi-

cient 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 *even if: (1) The discretion is expressed in the form of a standard for distribution; or (2) the trustee has abused the discretion.*

(e) *This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.*

Sec. 8. K.S.A. 2003 Supp. 58a-505 is hereby amended to read as follows: 58a-505. (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, ~~and~~ *the* elective share rights of the surviving spouse *pursuant to K.S.A. 59-6a209, and amendments thereto*, 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~~ 2002; or section 2503(b) of the federal internal revenue code of 1986, as in effect on December 31, ~~2000~~ 2002; *and*

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

Sec. 9. K.S.A. 2003 Supp. 58a-602 is hereby amended to read as follows: 58a-602. (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 January 1, 2003.

(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; *and*

(3) *upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.*

(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~~ *attorney in fact* under a power of attorney only to the extent expressly authorized by the power of attorney.

(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. 10. K.S.A. 2003 Supp. 58a-603 is hereby amended to read as follows: 58a-603. (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. 11. K.S.A. 2003 Supp. 58a-802 is hereby amended to read as follows: 58a-802. (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 K.S.A. 2003 Supp. 58a-1012, 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 K.S.A. 2003 Supp. 58a-1005, and amendments thereto;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with K.S.A. 2003 Supp. 58a-1009, 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. *In addition to its compensation for acting as trustee*, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust ~~if~~. ~~If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services~~, the trustee ~~must~~ at least annually ~~notifies~~ *notify* the persons entitled ~~under K.S.A. 2003 Supp. 58a-813, and amendments thereto~~, to receive a copy of the trustee's annual report, *under K.S.A. 2003 Supp. 58a-813, and amendments thereto*, of the rate, formula or method by which ~~the~~ *that* 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. 12. K.S.A. 2003 Supp. 58a-810 is hereby amended to read as follows: 58a-810. (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 of the trust or in the name of the trustee. Title acquired~~ *Property titled* in the trust name may be conveyed only in the trust name.

Sec. 13. K.S.A. 2003 Supp. 58a-813 is hereby amended to read as follows: 58a-813. (a) A trustee shall keep the qualified beneficiaries *and permissible current distributees* of the trust *income or principal* 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 *and a permissible current distributee's* request for information related to the administration of the trust.

(b) A trustee:

- (1) Upon request of a qualified beneficiary *or a permissible current distributee*, shall promptly furnish to the qualified beneficiary *or permissible current distributee* a copy of the trust instrument;
- (2) within 60 days after accepting a trusteeship, shall notify the qual-

ified beneficiaries *and permissible current distributees* 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 *and permissible current distributees* 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 *and permissible current distributees* 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 *current* 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 cotrustee 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 *and permissible current distributees* a report on behalf of a deceased or incapacitated trustee.

(d) A qualified beneficiary *or permissible current distributee* may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary *or permissible current distributee*, 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.

(f) *As used in this section "permissible current distributee" means a person presently entitled to receive, subject to the discretion of the trustee, income or principal.*

Sec. 14. K.S.A. 2003 Supp. 58a-815 is hereby amended to read as follows: 58a-815. (a) A trustee, without authorization by the court, may exercise:

- (1) Powers conferred by the terms of the trust; ~~or~~ *and*
- (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.

New Sec. 15. (a) The transfer by warranty deed of real property into an inter vivos trust shall not affect the coverage of any title insurance if the settlor of such trust is and remains a beneficiary of such trust during the settlor's lifetime.

(b) Upon the transfer taking effect: (1) The trustee shall be deemed to be insured; and

(2) the insurance coverage for such trust shall be subject to the defenses which the insurance company has under the policy against the original named insured.

(c) If the settlor is a beneficiary of such trust at the time of the transfer, the transfer of such property into such trust shall not: (1) Affect any homestead exemption or redemption rights; or

(2) cause a due on sale or similar clause to be effective under a mortgage or security interest.

(d) This section shall be a part of and supplemental to the Kansas uniform trust code.

Sec. 16. K.S.A. 2003 Supp. 58a-103, 58a-105, 58a-401, 58a-406, 58a-

411, 58a-502, 58a-505, 58a-602, 58a-603, 58a-802, 58a-810, 58a-813 and 58a-815 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

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

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.