

HOUSE BILL No. 2607

AN ACT concerning trusts; amending K.S.A. 58a-103, 58a-105, 58a-108, 58a-110, 58a-111, 58a-411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-802, 58a-813 and 58a-1008 and repealing the existing sections.

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

Section 1. K.S.A. 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. 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:

(A) *Exercisable by a trustee and limited by an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514 (c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2006; or*

(B) *exercisable by another person 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) (A) “Qualified beneficiary” means a beneficiary who, ~~on the date of the beneficiary's qualification is determined to be either:~~

~~—(A) a distributee of trust income or principal, or~~

~~—(B) a distributee of trust income or principal if the trust terminated on that date as of the date in question, either is eligible to receive mandatory or discretionary distributions of trust income or principal, or would be so eligible if the trust terminated on that date.~~

(B) *For the purpose of trustee determining “qualified beneficiaries” of a trust in which a beneficial interest is subject to a power of appointment of any nature, the trustee may conclusively presume such power of appointment has not been exercised unless the trustee has been furnished by the powerholder or the legal representative of the powerholder or the powerholder's estate with the original or a copy of an instrument validly exercising such power of appointment, in which event the qualified beneficiaries shall be subsequently determined by giving due consideration to such exercise unless and until the trustee has been given notification in a similar manner of an instrument which validly revokes or modifies such exercise.*

(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. 2. K.S.A. 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 *administer the trust* in accordance with ~~the purposes of the trust~~ K.S.A. 58a-801, and *amendments thereto*;

(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. 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. 58a-702, and amendments thereto, to require, dispense with, or modify or terminate a bond;

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

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

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

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

(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 K.S.A. 58a-818, 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. 3. K.S.A. 58a-108 is hereby amended to read as follows: 58a-108. (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. *In determining the appropriate place for the administration of the trust, consideration shall be given to the designation of the settlor, the purposes of the trust, the interests of the beneficiaries and the manner and costs of trust administration.*

(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 K.S.A. 58a-704, and amendments thereto.

Sec. 4. K.S.A. 58a-110 is hereby amended to read as follows: 58a-110. (a) A charitable organization expressly mandated to receive distributions under the terms of a trust ~~or~~ *has the rights of a qualified beneficiary under this code, if the charitable organization, on the date the charitable organization's qualification is being determined:*

- (1) *Is a distributee of trust income or principal;*
- (2) *would be a distributee of trust income or principal upon the termination of the interests of other distributees then receiving or eligible to receive distributions; or*
- (3) *would be a distributee of trust income or principal if the trust terminated on that date.*

(b) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in K.S.A. 58a-408 or 58a-409, and amendments thereto, has the rights of a qualified beneficiary under this code.

~~(c)~~ (c) 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. 5. K.S.A. 58a-111 is hereby amended to read as follows: 58a-111. (a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

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

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

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

- (1) The approval of a trustee's report or accounting;
- (2) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (3) transfer of a trust's principal place of administration; and
- (4) liability of a trustee for an action relating to the trust.

(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. 6. K.S.A. 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 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. *This subsection does not apply to irrevocable trusts created before, or to revocable trusts that became irrevocable before, January 1, 2003.*

(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. 58a-417 is hereby amended to read as follows: 58a-417. (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 terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its combination as authorized by this section.* 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. 8. K.S.A. 58a-501 is hereby amended to read as follows: 58a-501. To the extent a beneficiary's interest is not ~~protected by~~ *subject to* 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. 9. K.S.A. 58a-506 is hereby amended to read as follows: 58a-506. (a) *As used in this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term excludes a distribution subject to the exercise of the trustee's discretion whether or not the terms of the trust: (1) Include a support or other standard to guide the trustee in making distribution decisions; or (2) provide that the trustee "may" or "shall" make discretionary distributions, including distributions pursuant to a support or other standard.*

(b) 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. 10. K.S.A. 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) During the period ~~the a power of withdrawal~~ may be exercised, the holder of ~~a the 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.

(c) (1) *If a settlor of a revocable trust is or becomes an incapacitated person, on petition of the settlor's legal representative, an adult member of the settlor's family or any interested person, including a person interested in the welfare of the settlor, for good cause shown, the court may: Order the trustee to exercise or refrain from exercising the trustee's authority in a manner inconsistent with the trustee's fiduciary responsibilities under the provisions of the trust; remove the trustee; require the trustee to account; and issue such other orders as the court finds will be in the best interests of the settlor.*

(2) (A) *The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the trustee or the trust estate for the expenses, including attorney fees, incurred with respect to such proceeding.*

(B) *None of the actions described in this section shall be taken by the court until after hearing upon reasonable notice to the trustee, the settlor, and any legal representative of the settlor, such as a conservator or attorney-in-fact under a durable power of attorney authorizing the attorney-in-fact to act on the behalf of the settlor in such matters.*

(C) *If there is no legal representative of the settlor, the court shall appoint a guardian ad litem to represent the settlor in such proceeding.*

(D) *In the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.*

Sec. 11. K.S.A. 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. 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. 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. 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 *otherwise* complies with the prudent investor rule of article 9 of this code. In addition to its compensation for acting as trustee, the trustee, *or its affiliate*, may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee, *or its affiliate*, receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee ~~must~~ *shall* at least annually notify the persons entitled to receive a copy of the trustee's annual report, under K.S.A. 58a-813, and amendments thereto, of the rate, formula or method by which 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. 58a-813 is hereby amended to read as follows: 58a-813. (a) *As provided in this section*, 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) *Except as otherwise provided under the terms of the trust*, a trustee shall:

(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 *portions of the trust instrument relating to the interest of the qualified beneficiary, or a copy of the trust instrument if specifically so requested by the qualified beneficiary*;

(2) within 60 days after accepting a trusteeship, shall notify the qualified 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 *relevant portions 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; *and*

(5) *At least annually, send a trust report for the trust's most recent fiscal year to each qualified beneficiary who actually received a distribution during such fiscal year, except a beneficiary who received a specific bequest. The trustee shall also send a trust report to any additional qualified beneficiary who would have been eligible to receive a distribution during the fiscal year and who requests a copy of the trust report. The trust report shall include a list of the trust assets, and, if feasible, their market values; liabilities, receipts and disbursements; the source and amount of the trustee's compensation; and if requested, the trust's investment rate of return and whether the method for calculating the rate complies with standards established by the association of investment management and research (AIMR). Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a trust report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a trust report on behalf of a deceased or incapacitated trustee.*

(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 per-~~

~~missible current distributee~~, with respect to future reports and other information, may withdraw a waiver previously given.

~~(c)~~ (d) The provisions of this section are inapplicable to ~~persons qualified beneficiaries~~ other than a surviving spouse so long as ~~a~~ the surviving spouse is ~~or may be entitled to receive income or principal distributions from~~ a *qualified beneficiary of the trust*, or holds any power of appointment ~~therein over the entire trust estate~~, and where ~~any or all other~~ 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.~~

(e) *At the termination of a trust, the trustee shall send a trust report to each qualified beneficiary who is entitled to receive a distribution from the trust, except a beneficiary who received a specific bequest. Such trust report shall include the information required by subsection (b)(5), except information relating to receipts and disbursements need only be prepared for the period from the date of the event that caused the termination of the trust.*

Sec. 13. K.S.A. 58a-1008 is hereby amended to read as follows: 58a-1008. (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:

(1) Trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor; or

(2) *the settlor was represented by an attorney not employed by the trustee with respect to the trust and such attorney has reviewed the exculpatory term and provided independent legal advice regarding such term.*

Sec. 14. K.S.A. 58a-103, 58a-105, 58a-108, 58a-110, 58a-111, 58a-411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-802, 58a-813 and 58a-1008 are hereby repealed.

Sec. 15. 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

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.