

HOUSE BILL No. 2655

AN ACT concerning the uniform trust code; relating to modification or termination of non-charitable irrevocable trusts; certification of trusts; amending K.S.A. 58a-1013 and K.S.A. 2011 Supp. 58a-411 and repealing the existing sections.

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

Section 1. K.S.A. 2011 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 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 *not* 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. 2. K.S.A. 58a-1013 is hereby amended to read as follows: 58a-1013. (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; *and*

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

~~(8)(7) 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. 3. K.S.A. 58a-1013 and K.S.A. 2011 Supp. 58a-411 are hereby repealed.

Sec. 4. 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.