

## HOUSE BILL No. 2144

By Committee on Judiciary

1-24

1 AN ACT concerning trusts; authorizing modification of a noncharitable  
2 irrevocable trust to provide that the rule against perpetuities is  
3 inapplicable; providing that the Kansas uniform statutory rule against  
4 perpetuities is inapplicable to trusts under certain circumstances;  
5 modifying the definition of resident trust in the Kansas income tax act;  
6 amending K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-  
7 32,109 and repealing the existing sections.  
8

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

10 Section 1. K.S.A. 2022 Supp. 58a-411 is hereby amended to read as  
11 follows: 58a-411. (a) A noncharitable irrevocable trust may be modified or  
12 terminated upon consent of the settlor and all qualified beneficiaries, even  
13 if the modification or termination is inconsistent with a material purpose of  
14 the trust. A settlor's power to consent to a trust's modification or  
15 termination may be exercised by an attorney in fact under a power of  
16 attorney only to the extent expressly authorized by the power of attorney  
17 or the terms of the trust; by the settlor's conservator with the approval of  
18 the court supervising the conservatorship if an agent is not so authorized;  
19 or by the settlor's guardian with the approval of the court supervising the  
20 guardianship if an agent is not so authorized and a conservator has not  
21 been appointed. This subsection does not apply to irrevocable trusts  
22 created before, or to revocable trusts that became irrevocable before,  
23 January 1, 2003.

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

30 (c) (1) A spendthrift provision in the terms of the trust is not  
31 presumed to constitute a material purpose of the trust.

32 (2) *Application of the rule against perpetuities is not presumed to*  
33 *constitute a material purpose of the trust.*

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

36 (e) If not all of the qualified beneficiaries consent to a proposed

1 modification or termination of the trust under subsection (a) or (b), the  
 2 modification or termination may be approved by the court if the court is  
 3 satisfied that:

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

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

8 Sec. 2. K.S.A. 59-3404 is hereby amended to read as follows: 59-  
 9 3404. K.S.A. 59-3401, *and amendments thereto*, statutory rule against  
 10 perpetuities, does not apply to:

11 (1) A nonvested property interest or a power of appointment arising  
 12 out of a nondonative transfer, except a nonvested property interest or a  
 13 power of appointment arising out of *a*:

14 (i)-~~a~~ Premarital or postmarital agreement;;

15 (ii)-~~a~~ separation or divorce settlement;;

16 (iii)-~~a~~ spouse's election;;

17 (iv)-~~a~~ similar arrangement arising out of a prospective, existing or  
 18 previous marital relationship between the parties;;

19 (v)-~~a~~ contract to make or not to revoke a will or trust;;

20 (vi)-~~a~~ contract to exercise or not to exercise a power of appointment;;

21 (vii)-~~a~~ transfer in satisfaction of a duty of support; or

22 (viii)-~~a~~ reciprocal transfer;

23 (2) a fiduciary's power relating to the administration or management  
 24 of assets, including the power of a fiduciary to sell, lease or mortgage  
 25 property, and the power of a fiduciary to determine principal and income;

26 (3) a power to appoint a fiduciary;

27 (4) a discretionary power of a trustee to distribute principal before  
 28 termination of a trust to a beneficiary having an indefeasibly vested  
 29 interest in the income and principal;

30 (5) a nonvested property interest held by a charity, government or  
 31 governmental agency or subdivision, if the nonvested property interest is  
 32 preceded by an interest held by another charity, government or  
 33 governmental agency or subdivision;

34 (6) a nonvested property interest in or a power of appointment with  
 35 respect to a trust or other property arrangement forming part of a pension,  
 36 profit-sharing, stock bonus, health, disability, death benefit, income  
 37 deferral or other current or deferred benefit plan for one or more  
 38 employees, independent contractors or the beneficiaries or spouses, to  
 39 which contributions are made for the purpose of distributing to or for the  
 40 benefit of the participants or their beneficiaries or spouses the property,  
 41 income or principal in the trust or other property arrangement, except a  
 42 nonvested property interest or a power of appointment that is created by an  
 43 election of a participant or a beneficiary or spouse; ~~or~~

1 (7) a property interest, power of appointment or arrangement that was  
 2 not subject to the common-law rule against perpetuities or is excluded by  
 3 another statute of this state; or

4 (8) *a trust in which the governing instrument states that the rule*  
 5 *against perpetuities does not apply to the trust and under which the trustee*  
 6 *or other person to whom the power is properly granted or delegated has*  
 7 *power under the governing instrument, any applicable statute or the*  
 8 *common law to sell, lease or mortgage property for any period of time*  
 9 *beyond the period which would otherwise be required for an interest*  
 10 *created under the governing instrument to vest. This subsection shall*  
 11 *apply to all trusts created by will or inter vivos agreement executed or*  
 12 *amended on or after July 1, 2023, and to all trusts created by exercise of*  
 13 *power of appointment granted under instruments executed or amended on*  
 14 *or after July 1, 2023.*

15 Sec. 3. K.S.A. 2022 Supp. 79-32,109 is hereby amended to read as  
 16 follows: 79-32,109. As used in this act, unless the context otherwise  
 17 requires:

18 (a) (1) Any term used in this act shall have the same meaning as  
 19 when used in a comparable context in the federal internal revenue code.  
 20 Any reference in this act to the "federal internal revenue code" shall mean  
 21 the provisions of the federal internal revenue code of 1986, and  
 22 amendments thereto, and other provisions of the laws of the United States  
 23 relating to federal income taxes, as the same may be or become effective at  
 24 any time, or from time to time, for the taxable year.

25 (2) Any reference in this act to a federal form or schedule, or to a line  
 26 number on a federal form or schedule, shall be to such form, schedule and  
 27 line number as they existed for tax year 2011 and as revised thereafter by  
 28 the internal revenue service. Any such reference shall include comparable  
 29 federal forms, schedules, and line numbers used by non-United States  
 30 residents when filing their federal income tax return with the internal  
 31 revenue service.

32 (b) "Resident individual" means a natural person who is domiciled in  
 33 this state. A natural person who spends in the aggregate more than six  
 34 months of the taxable year within this state shall be presumed to be a  
 35 resident for purposes of this act in absence of proof to the contrary. A  
 36 nonresident individual means an individual other than a resident  
 37 individual.

38 (c) "Resident estate" means the estate of a deceased person whose  
 39 domicile was in this state at the time of such person's death. "Nonresident  
 40 estate" means an estate other than a resident estate.

41 (d) "Resident trust" means a trust that:

42 (1)- Is administered in this state ~~and that;~~

43 (2)- was created by or consists of property owned by a person

1 domiciled in this state on the date the trust or portion of the trust became  
2 irrevocable; *and*

3 (3) *has at least one income beneficiary who, on the last day of the*  
4 *taxable year, was a resident of this state.*

5 (e) "Resident partner" means a partner who is a resident individual, a  
6 resident estate, or a resident trust. "Nonresident partner" means a partner  
7 other than a resident partner.

8 (f) (1) "Resident beneficiary" means a beneficiary of an estate or trust  
9 which beneficiary is a resident individual, a resident estate, or a resident  
10 trust.

11 (2) "Nonresident beneficiary" means a beneficiary other than a  
12 resident beneficiary.

13 (g) "Director" means the director of taxation.

14 (h) (1) "Modified Kansas source income" means that part of a  
15 nonresident individual's Kansas adjusted gross income as set forth in  
16 K.S.A. 79-32,117, and amendments thereto, derived from sources in  
17 Kansas. Items of income including unemployment compensation, gain,  
18 loss or deduction reflected in Kansas adjusted gross income shall be  
19 considered derived from sources in Kansas to the extent that they are  
20 attributable to:

21 (A) The ownership of any interest in real or tangible personal  
22 property in this state;

23 (B) a business, trade, profession or occupation carried on in this state;

24 (C) a business, trade, profession or occupation carried on partly  
25 within and partly without this state as determined by the uniform division  
26 of income for tax purposes act as set forth in K.S.A. 79-3271 through 79-  
27 3293, and amendments thereto;

28 (D) the distributive share of partnership income, gain, loss and  
29 deduction determined under this section as if the partnership were a  
30 nonresident individual;

31 (E) the share of estate or trust income, gain, loss and deduction  
32 determined under K.S.A. 79-32,137, and amendments thereto;

33 (F) prizes won from lottery games conducted by the Kansas lottery;

34 (G) any winnings from parimutuel wagering derived from the  
35 conduct of parimutuel activities within this state; or

36 (H) income from intangible personal property, including annuities,  
37 dividends, interest, and gains from the disposition of intangible personal  
38 property to the extent that such income is from property employed in a  
39 trade, business, profession or occupation carried on in Kansas. A  
40 nonresident, other than a dealer holding property primarily for sale to  
41 customers in the ordinary course of such dealer's trade or business, shall  
42 not be deemed to carry on a business, trade, profession or occupation in  
43 Kansas solely by reason of the purchase and sale of property for such

1 nonresident's own account.

2 (2) "Modified Kansas source income" does not include:

3 (A) Compensation paid by the United States for service in the armed  
4 forces of the United States, performed during an induction period by an  
5 individual not domiciled in this state; or

6 (B) such individual's share of distributed or undistributed taxable  
7 income or net operating loss of a corporation which is an electing small  
8 business corporation unless an agreement is filed as provided in K.S.A.  
9 79-32,139, and amendments thereto, in which event, the "modified Kansas  
10 source income" of such nonresident individual shall include such  
11 individual's share of such corporation's distributed and undistributed  
12 taxable income or net operating loss as such share is determined under the  
13 internal revenue code only to the extent, however, that such income, gain  
14 or loss is at the corporate level, derived from sources within Kansas.

15 Sec. 4. K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-  
16 32,109 are hereby repealed.

17 Sec. 5. This act shall take effect and be in force from and after its  
18 publication in the statute book.