

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2144

As Recommended by House Committee on
Judiciary

Brief*

HB 2144 would amend law in the Kansas Uniform Trust Code, Kansas Probate Code, and Kansas Income Tax Act with respect to the statutory rule against perpetuities (RAP). [Note: The Uniform Statutory RAP contained in the Kansas Probate Code states that a nonvested property interest is invalid unless such property is certain to vest or terminate no later than 21 years after the death of an individual that is alive when the interest is created, or unless such interest either vests or terminates within 90 years after its creation.]

Modification or Termination of Noncharitable Irrevocable Trust by Consent

The bill would amend a provision in the Kansas Uniform Trust Code governing modification or termination of noncharitable irrevocable trusts by consent to specify application of the RAP would not be presumed to constitute a material purpose of the trust, [Note: Under current law, noncharitable irrevocable trusts may be terminated or modified upon consent of all of the qualified beneficiaries if the court concludes that termination or modification is not inconsistent with a material purpose of the trust.]

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Exclusion from the Statutory RAP

The bill would amend law in the Uniform Statutory RAP governing exclusions to the RAP to add an exclusion for trusts created or amended by will, *inter vivos* agreement, or exercise of power of appointment on or after July 1, 2023, that meet the following criteria:

- The governing instrument has specified the RAP does not apply; and
- The trustee or other person to whom proper power has been granted or delegated has power to sell, lease, or mortgage property for a period of time beyond the period that would otherwise be required for an interest created under the governing instrument to vest.

Kansas Income Tax Act Definitions

The bill would expand the definition of “resident trust” in the Kansas Income Tax Act to include the requirement that such resident trust has at least one income beneficiary who was a resident of the state on the last day of the taxable year.

Background

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Judicial Council.

House Committee on Judiciary

In the House Committee hearing on February 1, 2023, a representative of Midwest Trust testified as a **proponent** of the bill, stating the protections afforded by the rule against perpetuities are not as strong as they were historically, and that allowing trustors to choose whether the rule will apply

allows more flexibility for Kansas trust companies to administer these types of trusts and compete with other states in the market. A representative of the Kansas Bankers Association provided written-only proponent testimony.

A representative of the Kansas Judicial Council provided written-only neutral testimony. No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on the operations of the Judicial Branch, and the Department of Revenue states enactment would have no fiscal effect on State General Fund receipts.

Kansas Judicial Council; rule against perpetuities; noncharitable irrevocable trust; resident trust