



**Date:** March 23, 2023  
**To:** Senate Judiciary Committee  
Senator Kellie Warren, Chair  
**From:** Will Bergman, In-House Counsel  
Midwest Trust Company  
**RE:** Verbal Proponent Testimony – HB 2144

Madam Chair and committee members, I am Will Bergman appearing on behalf of the Midwest Trust Company (Midwest Trust), a non-depository Kansas trust company with its headquarters in Overland Park. Thank you for this chance to provide proponent testimony for HB 2144. This bill, if passed, will bring more high paying jobs to Kansas, allow for Kansas trust companies to better market themselves nationally, and help modernize the Kansas Trust Code.

### **Background on Trust Administration by Kansas Institutions**

The Kansas Office of the State Bank Commissioner currently regulates 12 active independent state-chartered trust companies and 33 Commercial Banks with trust powers. These organizations provide valuable services to Kansans and to residents of other states acting as corporate trustee for trusts, private foundations and administrator for estates. Collectively, those institutions administer accounts with assets over 74 billion dollars.

### **Largest Wealth Transfer in History**

Over the next 30 years, there is an expected 68 trillion dollars of wealth that will be transferred to the next generation as the baby boomers are expected to retire and pass away. This wealth transfer will have a profound impact on both the banking and fiduciary services industry. Additionally, the pandemic greatly affected the manner in which Fiduciaries communicate and meet with clients and prospects. Clients are much more comfortable meeting remotely and potentially never actually meeting their advisors in person. Viewing these two factors together, if Kansas creates a legal framework which is advantageous to clients, high net worth



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individuals will bring their business and wealth to Kansas from around the United States.

### **Section 1 Rule Against Perpetuities**

The Rule Against Perpetuities, (“RAP”), was originally created to ensure that real property would be able to be transferred following an owners death. Developed as a common law principal, the RAP effectively prevents any trust document from being valid 21 years after the last person named in the trust has passed away. As a result, trusts had a roughly predetermined time in which they would end and all of the assets would be dispersed to beneficiaries.

Since 1983, when the South Dakota legislature abolished the RAP entirely, more than 25 states have eliminated the RAP by extending the time period for the RAP or by allowing exceptions to the RAP. For instance, Colorado allows for trusts up to 1,000 years, while Nebraska and Missouri create exceptions. HB 2144 takes the strategy similar to Missouri and Nebraska and allows for the grantor of the trust to voluntarily decide whether the RAP will apply to the trust or it will not. If HB 2144 is passed, then Kansas trust companies can administer these types of trusts and will bring more jobs to Kansas.

Trusts that the RAP does not apply to are dynasty trusts. There are multiple benefits for an ultra-high net worth individual to create a dynasty trust. First, there are some federal tax advantages with the trust avoiding transfer taxes following the first generation. Second, the grantor of the trust will retain controls and the beneficiaries will only be able to receive income or principal under certain circumstances. Third, the trust can protect current and future beneficiaries from creditors.

Overall, with most states already having eliminated the RAP, grantors have started venue shopping for corporate trustees in a state that will allow them to take advantage of the most beneficial laws. With the passage of this HB 2144 Kansas trust companies will be able to administer these types of trusts and compete more fairly with other trusts companies nationally.

### **Section 2 Resident Trust Definition.**

Last year, the definition of resident trust was amended in Kansas to mean “*a trust, which is administered in this state and was created by or consisting of property*”



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*owned by a person domiciled in this state on the date the trust or portion of the trust became irrevocable.”* This has been an important change because it has allowed for Kansas trust companies to provide services to individuals from other states without the risk of double taxation, as had previously been the case.

This year, we are requesting that the additional requirement of “*one income beneficiary who, on the last day of the taxable year, was a resident of the state*”, be added to the definition because in certain older documents, the state of residence for the grantor is not disclosed. We always know where the income beneficiaries are located. This is an important change because Midwest Trust is a preferred trust provider for Morgan Stanley and Fidelity. Each year, they send us hundreds of accounts to be administered. Prior to last year’s change, as fiduciaries, we had started to open new accounts to be administered in Missouri, where the resident trust definition benefits these new clients. Because of the new influx of accounts, we had been hiring trust offices and employees in our Clayton and downtown Kansas City offices to avail ourselves of this preferential tax treatment. Now that the change last year occurred, we had transitioned our hiring practices back to our Kansas locations.

When a Kansas trust company becomes trustee, there is a cascade of positive effects for Kansas. Accountants, estate planning attorneys, and investment managers all receive additional work and jobs are created. Adopting these two changes will modernize our Kansas Trust Code, allow Kansas trust companies to better compete nationally, and stimulate Kansas’s economy.

As the Committee considers this bill, I respectfully ask for favorable consideration so that we can provide the best service to our clients both in Kansas and across the nation from our headquarters in Kansas. Madam Chair, thank you, and I would be happy to stand for questions at the appropriate time. If at a later time you have questions or require additional information, don’t hesitate to get in touch with me at [will.bergman@midwesttrust.com](mailto:will.bergman@midwesttrust.com) or (913)319-0329.

Sincerely,

Will Bergman