

SENATE BILL No. 291

By Committee on Judiciary

1-18

1 AN ACT concerning the uniform trust code; relating to modification or
2 termination of noncharitable irrevocable trust; creditor claims against
3 settlors; certification of trusts; amending K.S.A. 58a-505, 58a-1013 and
4 59-103 and K.S.A. 2011 Supp. 58a-411 and repealing the existing
5 sections; also repealing K.S.A. 58a-818.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2011 Supp. 58a-411 is hereby amended to read as
9 follows: 58a-411. (a) A noncharitable irrevocable trust may be modified or
10 terminated upon consent of the settlor and all qualified beneficiaries, even
11 if the modification or termination is inconsistent with a material purpose of
12 the trust. A settlor's power to consent to a trust's modification or
13 termination may be exercised by an attorney in fact under a power of
14 attorney only to the extent expressly authorized by the power of attorney
15 or the terms of the trust; by the settlor's conservator with the approval of
16 the court supervising the conservatorship if an agent is not so authorized;
17 or by the settlor's guardian with the approval of the court supervising the
18 guardianship if an agent is not so authorized and a conservator has not
19 been appointed. This subsection does not apply to irrevocable trusts
20 created before, or to revocable trusts that became irrevocable before,
21 January 1, 2003.

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

28 (c) A spendthrift provision in the terms of the trust ~~is presumed to~~
29 **may is not presumed to** constitute a material purpose of the trust.

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

32 (e) If not all of the qualified beneficiaries consent to a proposed
33 modification or termination of the trust under subsection (a) or (b), the
34 modification or termination may be approved by the court if the court is
35 satisfied that:

36 (1) If all of the qualified beneficiaries had consented, the trust could

1 have been modified or terminated under this section; and

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

4 Sec. 2. K.S.A. 58a-505 is hereby amended to read as follows: 58a-
5 505. (a) Except as provided by K.S.A. 33-101 *et seq.* and 33-201 *et seq.*,
6 and amendments thereto, whether or not the terms of a trust contain a
7 spendthrift provision, the following rules apply:

8 (1) During the lifetime of the settlor, the property of a revocable trust
9 is subject to claims of the settlor's creditors.

10 (2) With respect to an irrevocable trust, a creditor or assignee of the
11 settlor may reach the maximum amount that can be distributed to or for the
12 settlor's benefit. If a trust has more than one settlor, the amount the creditor
13 or assignee of a particular settlor may reach may not exceed the settlor's
14 interest in the portion of the trust attributable to that settlor's contribution,
15 *except that the provisions of subsection (a)(3) shall apply to a creditor or*
16 *an assignee of the settlor of a trust that becomes irrevocable solely due to*
17 *the death of the settlor.*

18 (3) After the death of a settlor, ~~and subject to the settlor's right to~~
19 ~~direct the source from which liabilities will be paid, :~~

20 (A) *Except as provided further,* the property of a trust that was
21 revocable ~~at~~ *immediately prior to* the settlor's death is subject to claims of
22 the settlor's creditors, costs of administration of the settlor's estate, the
23 expenses of the settlor's funeral and disposal of remains, the homestead,
24 homestead allowance, the elective share rights of the surviving spouse
25 pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory
26 allowance to a surviving spouse and children ~~to the extent the settlor's~~
27 ~~probate estate is inadequate to satisfy those claims, costs, expenses, and~~
28 ~~allowances. , each referred to as a "claim." A revocable trust shall not be~~
29 *liable for any claim unless: (i) A petition is filed for probate of the settlor's*
30 *will pursuant to K.S.A. 59-2220, and amendments thereto, or for the*
31 *administration of the decedent's estate pursuant to K.S.A. 59-2219, and*
32 *amendments thereto, within six months after the death of the decedent; (ii)*
33 *the settlor's probate estate is inadequate to satisfy the claim, unless the*
34 *settlor has specifically directed otherwise; and (iii) the claim has been*
35 *properly exhibited in the settlor's probate estate, allowed by the court in*
36 *the proceeding under chapter 59 of the Kansas Statutes Annotated, and*
37 *not otherwise barred by K.S.A. 59-2239, and amendments thereto.*

38 (B) *If the trustee of the revocable trust has not been given notice of*
39 *the hearing on the claim in the proceeding under chapter 59 of the Kansas*
40 *Statutes Annotated, the finding of the court in such proceeding, although*
41 *binding on the estate, shall not be binding on the revocable trust. In such*
42 *event, the property of the revocable trust shall only be subject to the claim*
43 *if the creditor making the claim files a petition for a de novo hearing on*

1 *such claim in the court pursuant to the proceeding under chapter 59 of the*
2 *Kansas Statutes Annotated and gives notice of such hearing to the trustee*
3 *of the revocable trust within one year of the decedent's death, and the*
4 *trustee may raise any defenses the trustee has to such claim at that*
5 *hearing, but in no event may the amount of the claim exceed that allowed*
6 *in the prior hearing.*

7 *(C) If the trustee of a revocable trust receives notice of a claim within*
8 *the nonclaim period, the trustee may pay such claim from the revocable*
9 *trust after determining such payment is otherwise appropriate,*
10 *notwithstanding that a probate estate has not been opened within six*
11 *months after death or the claim has not been properly exhibited therein.*
12 *This shall not relieve the requirements above for any claim not so paid by*
13 *the trustee.*

14 *(D) Notwithstanding the other provisions of subsection (a)(3), and*
15 *except as otherwise provided in subsection (g) of K.S.A. 39-709, and*
16 *amendments thereto, to the extent property owned by, payable to or*
17 *otherwise passing under a revocable trust on the settlor's death was*
18 *exempt from the claims of the settlor's creditors under applicable law*
19 *immediately prior to the settlor's death, such property, as well as any*
20 *proceeds thereof, and whether or not comingled with nonexempt assets*
21 *after death, shall remain exempt from the claims of the settlor's creditors*
22 *following the settlor's death.*

23 *(E) When the revocable trust designates property to be appropriated*
24 *for the payment of claims it shall be applied to such purpose. Otherwise*
25 *the property in the revocable trust which is properly subject to payment of*
26 *claims shall be appropriated in the following order:*

- 27 *(1) Personal property not disposed of by the trust;*
- 28 *(2) real estate not disposed of by the trust;*
- 29 *(3) personal property given to a residuary beneficiary;*
- 30 *(4) real estate given to a residuary beneficiary;*
- 31 *(5) property not specifically given; and*
- 32 *(6) property specifically given.*

33 *The property of each class shall be exhausted before resorting to that*
34 *of the next class, and all of one class shall contribute ratably if all the*
35 *property of that class is not required for the payment of claims.*

36 *(b) For purposes of this section:*

37 *(1) During the period the power may be exercised, the holder of a*
38 *power of withdrawal is treated in the same manner as the settlor of a*
39 *revocable trust to the extent of the property subject to the power;*

40 *(2) upon the lapse, release, or waiver of the power, the holder is*
41 *treated as the settlor of the trust only to the extent the value of the property*
42 *affected by the lapse, release, or waiver exceeds the greater of the amount*
43 *specified in section 2041(b)(2) or 2514(e) of the federal internal revenue*

1 code of 1986, as in effect on December 31, 2002; or section 2503(b) of the
2 federal internal revenue code of 1986, as in effect on December 31, 2002;
3 and

4 (3) this subsection shall not apply to the lapse of powers held by the
5 spouse of a person occurring upon the death of such person.

6 Sec. 3. K.S.A. 58a-1013 is hereby amended to read as follows: 58a-
7 1013. (a) Instead of furnishing a copy of the trust instrument to a person
8 other than a qualified beneficiary, the trustee may furnish to the person an
9 acknowledged certification of trust containing the following information:

10 (1) That the trust exists and the date the trust instrument was
11 executed;

12 (2) the identity of the settlor;

13 (3) the identity and address of the currently acting trustee;

14 (4) the powers of the trustee;

15 (5) the revocability or irrevocability of the trust and the identity of
16 any person holding a power to revoke the trust;

17 (6) the authority of cotrustees to sign or otherwise authenticate and
18 whether all or less than all are required in order to exercise powers of the
19 trustee; *and*

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

21 ~~(8) (7) the manner of taking title to trust property.~~

22 (b) A certification of trust may be signed or otherwise authenticated
23 by any trustee.

24 (c) A certification of trust must state that the trust has not been
25 revoked, modified, or amended in any manner that would cause the
26 representations contained in the certification of trust to be incorrect.

27 (d) A certification of trust need not contain the dispositive terms of a
28 trust.

29 (e) A recipient of a certification of trust may require the trustee to
30 furnish copies of those excerpts from the original trust instrument and later
31 amendments which designate the trustee and confer upon the trustee the
32 power to act in the pending transaction.

33 (f) A person who acts in reliance upon a certification of trust without
34 knowledge that the representations contained therein are incorrect is not
35 liable to any person for so acting and may assume without inquiry the
36 existence of the facts contained in the certification. Knowledge of the
37 terms of the trust may not be inferred solely from the fact that a copy of all
38 or part of the trust instrument is held by the person relying upon the
39 certification.

40 (g) A person who in good faith enters into a transaction in reliance
41 upon a certification of trust may enforce the transaction against the trust
42 property as if the representations contained in the certification were
43 correct.

1 (h) A person making a demand for the trust instrument in addition to
2 a certification of trust or excerpts is liable for damages if the court
3 determines that the person did not act in good faith in demanding the trust
4 instrument.

5 (i) This section does not limit the right of a person to obtain a copy of
6 the trust instrument in a judicial proceeding concerning the trust.

7 Sec. 4. K.S.A. 59-103 is hereby amended to read as follows: 59-103.

8 (a) Chapter 59 of the Kansas Statutes Annotated may be used:

9 (1) To admit last wills and testaments to probate.

10 (2) To grant and revoke letters testamentary and of administration.

11 (3) To direct and control the official acts of executors and
12 administrators, to settle their accounts, and to order the distribution of
13 estates.

14 (4) To administer partnership estates as provided in this act.

15 (5) To determine the heirs, devisees, and legatees of decedents.

16 (6) To appoint and remove guardians and conservators for minors,
17 voluntary conservatees and incapacitated persons, to make all necessary
18 orders relating to their estates, to direct and control the official acts of such
19 guardians and conservators and to settle their accounts.

20 (7) To supervise the administration of trusts and powers created by
21 wills admitted to probate, and trusts and powers created by written
22 instruments other than by wills in favor of persons subject to
23 conservatorship; to appoint and remove trustees for such trusts, to make all
24 necessary orders relating to such trust estates, to direct and control the
25 official acts of such trustees, and to settle their accounts.

26 (8) To appoint and remove trustees of estates of convicts imprisoned
27 in a correctional institution under sentence of imprisonment for life, to
28 make all necessary orders relating to their estates, to direct and control the
29 official acts of such trustees, and to settle their accounts.

30 (9) To hold hearings respecting mentally ill persons, and to order their
31 referral for treatment.

32 (10) *To determine the validity and payment of claims.*

33 (b) Every petition to commence an action pursuant to *this* chapter ~~59~~
34 shall state, immediately below the clause showing the name of the court,
35 parties and case docket number, the following: "Petition pursuant to
36 chapter 59 of the Kansas Statutes Annotated."

37 Sec. 5. K.S.A. 58a-505, 58a-818, 58a-1013 and 59-103 and K.S.A.
38 2011 Supp. 58a-411 are hereby repealed.

39 Sec. 6. This act shall take effect and be in force from and after its
40 publication in the statute book.

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