SENATE BILL No. 261

By Committee on Judiciary

AN ACT concerning the uniform trust code; relating to trust distribution to spouse or relative of the grantor; creditor claims against settlors; amending K.S.A. 58a-505 and 59-103 and K.S.A. 2013 Supp. 58a-105 and repealing the existing sections; also repealing K.S.A. 58a-818.

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

New Section 1. (a) If a trust distribution is directed by the trust instrument to be made to a spouse of the grantor or to any relative of the grantor by lineal descent or within the sixth degree, whether by blood or adoption, and such spouse or relative dies before the date of the distribution directed by the trust instrument, leaving issue who survive, such issue shall take the same distribution which such spouse or relative would have taken if such spouse or relative had survived, unless a different disposition is made or required by the trust instrument.

(b) Unless the provisions of such trust specifically provide to the contrary, the term "issue" means offspring, progeny or lineal descendants, by blood or adoption, in whatever degree.

(c) This section applies only to trusts executed on or after January 1, 2015.

(d) This section shall be a part of and supplemental to the Kansas uniform trust code.

Sec. 2. K.S.A. 2013 Supp. 58a-105 is hereby amended to read as follows: 58a-105. (a) Except as otherwise provided in the terms of the trust, this code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this code except:

(1) The requirements for creating a trust;

(2) the duty of a trustee to act in good faith and administer the trust in accordance with K.S.A. 58a-801, and amendments thereto;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve;

(4) the power of the court to modify or terminate a trust under K.S.A. 58a-410 through 58a-416, and amendments thereto;

(5) the effect of the rights of creditors to reach a trust as provided in
article 5 of chapter 58a of the Kansas Statutes Annotated, and amendments thereto;

(6) the power of the court under K.S.A. 58a-702, and amendments thereto, to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of K.S.A. 58a-708, and amendments thereto, to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under K.S.A. 58a-1008, and amendments thereto;

(9) the rights under K.S.A. 58a-1010 through 58a-1013, and amendments thereto;

(10) periods of limitation for commencing a judicial proceeding under K.S.A. 58a-604, and amendments thereto; and

(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the barring of claims against trusts and trustees under K.S.A. 58a-818, and amendments thereto.

(c) Notwithstanding any provisions of the Kansas uniform trust code to the contrary, any trust created by will and admitted to probate shall be subject to the requirements of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 3. K.S.A. 58a-505 is hereby amended to read as follows: 58a-505. (a) Except as provided by K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto, whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

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

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

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

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

(B) If the trustee of the revocable trust has not been given notice of the hearing on the claim in the proceeding under chapter 59 of the Kansas Statutes Annotated, and amendments thereto, the finding of the court in such proceeding, although binding on the estate, shall not be binding on the revocable trust. In such event, the property of the revocable trust shall only be subject to the claim if the creditor making the claim files a petition for a de novo hearing on such claim in the court pursuant to the proceeding under chapter 59 of the Kansas Statutes Annotated, and amendments thereto, and gives notice of such hearing to the trustee of the revocable trust within one year of the decedent's death, and the trustee may raise any defenses the trustee has to such claim at that hearing, but in no event may the amount of the claim exceed that allowed in the prior hearing.

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

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

(E) When the revocable trust designates property to be appropriated
for the payment of claims it shall be applied to such purpose. Otherwise
the property in the revocable trust which is properly subject to payment of
claims shall be appropriated in the following order:
(1) Personal property not disposed of by the trust;
(2) real estate not disposed of by the trust;
(3) personal property given to a residuary beneficiary;
(4) real estate given to a residuary beneficiary;
(5) property not specifically given; and
(6) property specifically given.
The property of each class shall be exhausted before resorting to that
of the next class, and all of one class shall contribute ratably if all the
property of that class is not required for the payment of claims.

(b) For purposes of this section:
(1) During the period the power may be exercised, the holder of a
power of withdrawal is treated in the same manner as the settlor of a
revocable trust to the extent of the property subject to the power;
(2) upon the lapse, release, or waiver of the power, the holder is
treated as the settlor of the trust only to the extent the value of the property
affected by the lapse, release, or waiver exceeds the greater of the amount
specified in section 2041(b)(2) or 2514(e) of the federal internal revenue
code of 1986, as in effect on December 31, 2002; or section 2503(b) of the
federal internal revenue code of 1986, as in effect on December 31, 2002;
and
(3) this subsection shall not apply to the lapse of powers held by the
spouse of a person occurring upon the death of such person.

Sec. 4. K.S.A. 59-103 is hereby amended to read as follows: 59-103.
(a) Chapter 59 of the Kansas Statutes Annotated, and amendments thereto,
may be used:
(1) To admit last wills and testaments to probate.
(2) To grant and revoke letters testamentary and of administration.
(3) To direct and control the official acts of executors and
administrators, to settle their accounts, and to order the distribution of
estates.
(4) To administer partnership estates as provided in this act.
(5) To determine the heirs, devisees, and legatees of decedents.
(6) To appoint and remove guardians and conservators for minors,
voluntary conservatees and incapacitated persons, to make all necessary
orders relating to their estates, to direct and control the official acts of such
guardians and conservators and to settle their accounts.
(7) To supervise the administration of trusts and powers created by
wills admitted to probate, and trusts and powers created by written
instruments other than by wills in favor of persons subject to
conservatorship; to appoint and remove trustees for such trusts, to make all
necessary orders relating to such trust estates, to direct and control the
official acts of such trustees, and to settle their accounts.
(8) To appoint and remove trustees of estates of convicts imprisoned
in a correctional institution under sentence of imprisonment for life, to
make all necessary orders relating to their estates, to direct and control the
official acts of such trustees, and to settle their accounts.
(9) To hold hearings respecting mentally ill persons, and to order their
referral for treatment.
(10) To determine the validity and payment of claims.
(b) Every petition to commence an action pursuant to this chapter 59
shall state, immediately below the clause showing the name of the court,
parties and case docket number, the following: "Petition pursuant to
chapter 59 of the Kansas Statutes Annotated."
Sec. 5. K.S.A. 58a-505, 58a-818 and 59-103 and K.S.A. 2013 Supp.
58a-105 are hereby repealed.
Sec. 6. This act shall take effect and be in force from and after its
publication in the statute book.