

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Judiciary** recommends **SB 141** be amended on page 2, in line 20, by striking "2021" and inserting "2022"; in line 21, by striking "2021" and inserting "2022"; in line 23, by striking "2021" and inserting "2022"; in line 24, by striking "2021" and inserting "2022";

On page 3, in line 15, by striking "2021" and inserting "2022"; in line 35, by striking "2021" and inserting "2022";

On page 6, by striking all in lines 28 through 43;

By striking all on page 7;

On page 8, by striking all in lines 1 through 24 and inserting:

"Sec. 19. K.S.A. 2021 Supp. 58a-103 is hereby amended to read as follows: 58a-103.

As used in this code:

- (1) "Action," with respect to an act of a trustee, includes a failure to act.
- (2) "Beneficiary" means a person that:
 - (A) Has a present or future beneficial interest in a trust, vested or contingent; or
 - (B) in a capacity other than that of trustee, holds a power of appointment over trust property.
- (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in K.S.A. 58a-405(a), and amendments thereto.
- (4) "Conservator" means a person appointed by the court pursuant to K.S.A. 59-3001 et seq., and amendments thereto, to administer the estate of a minor or adult individual.
- (5) "Environmental law" means a federal, state, or local law, rule, regulation, or

ordinance relating to protection of the environment.

(6) "Guardian" means a person appointed by the court pursuant to K.S.A. 59-3001 et seq., and amendments thereto, to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(7) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(8) "Jurisdiction," with respect to a geographic area, includes a state or country.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) Exercisable by a trustee and limited by an ascertainable standard relating to an individuals health, education, support or maintenance within the meaning of section 2041(b)(1) (A) or 2514(c)(1) of the internal revenue code of 1986, as in effect on July 1, ~~2006~~ 2022; or

(B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(11) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(12) (A) "Qualified beneficiary" means a beneficiary who, as of the date in question, either is eligible to receive mandatory or discretionary distributions of trust income or principal, or would be so eligible if the trust terminated on that date.

(B) For the purpose of trustee determining "qualified beneficiaries" of a trust in which a beneficial interest is subject to a power of appointment of any nature, the trustee may

conclusively presume such power of appointment has not been exercised unless the trustee has been furnished by the powerholder or the legal representative of the powerholder or the powerholder's estate with the original or a copy of an instrument validly exercising such power of appointment, in which event the qualified beneficiaries shall be subsequently determined by giving due consideration to such exercise unless and until the trustee has been given notification in a similar manner of an instrument which validly revokes or modifies such exercise.

(13) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(14) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(15) "Spendthrift provision" means a term of a trust which restrains either voluntary or involuntary transfer of a beneficiary's interest.

(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(17) "Terms of a trust" means:

(A) Except as otherwise provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

~~(1)~~(i) Expressed in the trust instrument; or

~~(2)~~(ii) established by other evidence that would be admissible in a judicial proceeding;

or

(B) the trust's provisions as established, determined, or amended by:

~~(1)~~(i) A trustee or person holding a power to direct under K.S.A. 58a-808, and amendments thereto, in accordance with applicable law;

~~(2)~~(ii) court order; or

~~(3)~~(iii) a nonjudicial settlement agreement under K.S.A. 58a-111, and amendments thereto.

(18) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(19) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.";

Also on page 8, in line 25, by striking "2020" and inserting "2021";

On page 9, in line 19, by striking "2020" and inserting "2021";

On page 10, in line 38, by striking "2020" and inserting "2021";

On page 1, in the title, in line 4, by striking "2020" and inserting "2021"; and the bill be passed as amended.

Chairperson