

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:59 a.m. on March 8, 2002 in Room 423 S of the Capitol.

All members were present except: Senator Adkins (excused)  
Senator Schmidt (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council  
Mark Beck, Director of Property Valuation, Kansas Department of Revenue  
Mike Utz, Garden City Police Department  
Senator Ward Loyd  
Jim Kaup, Attorney, City of Garden City, Kansas

Others attending: see attached list

The minutes of the March 7<sup>th</sup>, 2002 meeting were approved on a motion by Senator Haley, seconded by Senator Donovan. Carried.

**SB 522—municipal courts; collection of fines and court costs**

Following a review of **SB 522** by the Chair and discussion by committee, Senator Donovan moved to recommend the bill favorably for passage, Senator Gilstrap seconded. Motion failed.

**SB 297—enacting the Kansas uniform trust code**

Senator Goodwin presented a brief background on the Uniform Trust Code, (attachment 1) and reviewed work done in the subcommittee on **SB 297** applauding the efforts of the Kansas Bankers Association, Probate Division of the Kansas Judicial Council, and the Kansas Bar Association to come to agreement on language in the bill. She briefly discussed the amendments to the bill and stated that the subcommittee recommended the bill favorably for passage. (attachment 2)

Conferee Hearrell reiterated Senator Goodwin's review and briefly discussed the balloon amendments. (attachment 3) Following discussion, Senator Goodwin moved to amend SB 297 as recommended by the subcommittee, Senator Donovan seconded. Carried. Following further discussion, Senator Goodwin moved to pass the bill out favorably as amended, Senator Donovan seconded. Carried.

**HB 2698—concerning real estate validation questionnaires**

Conferee Beck testified in support of **HB 2698**, a bill which amends current law by making a technical adjustment to exclude real estate sales validation questionnaires from being required by transfers of title from a trust. He stated that this bill reduces unnecessary paperwork. (attachment 4)

Written testimony supporting **HB 2698** was submitted by Bob Wunsch, Kingman, Kansas. (attachment 5)

**HB 2769—abatement of common nuisances**

Conferee Utz testified in support of **HB 2769**, a bill which amends the list of unlawful activities considered to be common nuisances, by adding any felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with specific intent to promote, further, or assist in any criminal conduct by gang members. He discussed his agency's problems with increased gang activity in Garden City and urged passage of the bill. (no attachment)

Conferee Representative Loyd testified in support of **HB 2769**. He presented background on this "civil injunctions" bill, discussed why it was necessary, what it would do, and how it related to property law and common nuisance procedures. (attachment 6) He reviewed a detailed outline of certain portions of the bill's provisions. (attachment 7) Lengthy discussion followed.

Conferee Kaup testified in support of **HB 2769**. He discussed Garden City's efforts to deal with the problem of youth gangs and said that while there has been some decrease in the number of gangs much is yet to be done due to drug trafficking and intimidations. He stated that the bill would expand the range of options available to combat gangs by enabling the use of common nuisance laws against gang activity.(attachment 8)

The meeting adjourned at 11:03 a.m. The next meeting is March 11, 2002.



March 5, 2002

## BACKGROUND ON UNIFORM TRUST CODE (SB 297)

SB 297 is the "Kansanized" version of the Uniform Trust Code as prepared by the Judicial Council Probate Law Advisory Committee and approved by the Judicial Council. The Uniform Trust Code was drafted by the Uniform Law Commissioners after considering comprehensive trust codes of several states. The Uniform Law Commissioners prepared the Uniform Trust Code because great use of trusts in recent years has led to a realization that the trust law of most states is not adequate.

The Code is organized into eleven articles as follows:

1. General Provisions and Definitions
2. Judicial Proceedings
3. Representation
4. Creation, Validity, Modification and Termination of Trust
5. Creditor's Claims; Spendthrift and Discretionary Trusts
6. Revocable Trusts
7. Office of Trustee
8. Duties and Powers of Trustee
9. Uniform Prudent Investor Act
10. Liabilities of Trustees and Rights of Persons Dealing with Trustee
11. Miscellaneous Provisions

The Uniform Trust Code is a default code with section 105 describing principals that are mandatory and other sections of the code containing default provisions, which may be "drafted around." Included in section 105 are:

- ✓ the requirements for creating a trust;
- ✓ the rights of third parties in their dealings with the trustee;
- ✓ the power of the court to take certain actions, such as to remove a trusts; and
- ✓ a trustee's obligation to act in good faith, and in accordance with the purposes of the trust and to administer the trust in the interest of the beneficiaries.

The Uniform Trust Code contains a set of basic default rules that govern voluntary trusts. The following are examples of provisions contained in the Uniform Trust Code:

- **Representation in transactions or proceedings relating to a trust.** There are certain specialized agency rules. For example, a minor, incapacitated person, unborn individual, or person whose identity is not known may be represented by someone who has a substantially identical interest with respect to the particular question or dispute.

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att1

- **Creation of a trust.** A trust instrument is not necessary to create a trust; oral trusts are allowed. Also, the UTC allows for the creation of honorary trusts with limited lives for pets or a non-charitable purpose, which are generally not allowed under the common law of trusts.
- **Charitable trusts expressly recognized.** The UTC expressly recognizes that charitable trusts can be created.
- **Creditor claims.** The UTC sets out rules and restrictions on the ways to deal with creditor's claims against the interests of a beneficiary or settlor.
- **Spendthrift provision recognized.** A spendthrift provision is created by general reference to "spendthrift trust" in the trust instrument.
- **Revocable trusts.** The UTC recognizes revocable trusts, a form of trust generally viewed as a will substitute. They are the most popular, modern trust form for estate planning. While a settlor of a revocable trust lives and has capacity, the trustee owes his or her duties to the settlor.
- **Office of the trustee.** The acceptance of the trust by the trustee, bond for the trustee, decision-making by co-trustees, compensation of the trustee, and similar matters are governed by rules provided in the UTC.
- **Removal of trustee.** Upon request to the court by the settlor, co-trustee, beneficiary, or on the court's own initiative, a trustee may be removed. The grounds for removal include breach of trust, lack of cooperation among co-trustees substantially impairing the administration of the trust, as well as other factors that make removal of the trustee in the best interests of the beneficiaries.
- **Trustee's duties and powers.** The UTC articulates some of the basic fiduciary obligations of a trustee to a beneficiary, such as the trustee's duty of loyalty, duty of impartiality, and obligation of prudent administration. A trustee may delegate certain powers; this delegation generally has not been permitted under common law.
- **Liability.** A breach of duty to a beneficiary may lead the court to compel performance by the trustee or to suspend or remove the trustee. The available damages put the beneficiary in the position he or she would have been if there had been no breach.

March 5, 2002

**SUMMARY OF AMENDMENTS TO 2001 SB 297  
APPROVED BY SUBCOMMITTEE**

**Notice.** The definition of "qualified beneficiary" and reference to it in subsection 3 (12) and sections 31, 32, 72 and 76 narrows the persons to whom notice is required to be given to persons with vested interests. In subsection 90 the notice requirement is broadened by reference to "other than a qualified beneficiary."

**Section 105.** Section 105 contains a list of mandatory provisions that cannot be changed by the language of a trust. The striking of subsection 5 relates to spendthrift provisions, the striking of subsections 8 and 9 relates to notice and the striking of section 14 relates to venue. This allows these subjects to be changed by a trust pursuant to the settlor's desires.

**Uniform Trust Code Changes.** 2001 amendments to the 2000 Uniform Trust Code adopted by the Uniform Law Commissioners are found at subsection 5(b)(3), 10, 45, 48, 49, 55, 56 and 86.

**Venue.** Section 16 allows venue to remain in the county even if there is not real estate in the county and the trustee has moved to another jurisdiction.

**Method of Creating Trust.** The Trust Division of the Kansas Bankers' Association requested this change in Section 22 to resolve conflicts between inconsistent beneficiary designations for property that was not titled in the name of the trust.

**Spendthrift.** The KBA proposals relating to spendthrift provisions are found in subsections 5, 41, 42 and 43.

**Bond.** Section 52 retains current Kansas law with regard to bond.

**Section 69.** Additional language was added at the request of the Title Standards Committee and the Kansas Land Title Association to allow real estate to be taken in the name of the trust.

**Section 82.** Section 82 reduces the statute of limitations to one year if notice is given (which is consistent with the Uniform Trust Code's original recommendation) and reduces the statute of limitation from the five years recommended by the Uniform Trust Code to two years in other circumstances.

**Technical and Language Changes.** These changes are found at sections 7, 10, 11, 22, 39, 44, 53, 56 and 61.

**Section 95 - Repealer.** The repealer is amended by adding "K.S.A. 58-12a01 through 58-12a06" which is a certification of trust statute enacted in 2001 and is similar to section 98 of the bill.

*5/5/02  
3-8-02  
att2*

SENATE BILL No. 297

By Committee on Judiciary

2-8

9 AN ACT enacting the Kansas uniform trust code; repealing K.S.A. 58-  
10 1201, 58-1202, 58-1203, 58-1205, 58-1206, 58-1207, 58-1208, 58-1209,  
11 58-1210, 58-1211, 58-2404, 58-2405, 58-2409, 58-2410, 58-2411, 58-  
12 2412, 58-2413, 58-2415, 58-2417, 58-2420, 59-2295 and 59-2296 and  
13 K.S.A. 2000 Supp. 58-1204.

14

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

16 Section 1. (UTC 101) SHORT TITLE. This act may be cited as the  
17 Kansas uniform trust code.

18 Sec. 2. (UTC 102) SCOPE. This code applies to express trusts,  
19 charitable or noncharitable, and trusts created pursuant to a statute, judg-  
20 ment, or decree that requires the trust to be administered in the manner  
21 of an express trust.

22 Sec. 3. (UTC 103) DEFINITIONS. As used in this code:

23 (1) "Action," with respect to an act of a trustee, includes a failure to  
24 act.

25 (2) "Beneficiary" means a person that:

26 (A) Has a present or future beneficial interest in a trust, vested or  
27 contingent; or

28 (B) in a capacity other than that of trustee, holds a power of appoint-  
29 ment over trust property.

30 (3) "Charitable trust" means a trust, or portion of a trust, created for  
31 a charitable purpose described in subsection (a) of section 26, and amend-  
32 ments thereto.

33 (4) "Conservator" means a person appointed by the court pursuant  
34 to K.S.A. 59-3001 *et seq.*, and amendments thereto, to administer the  
35 estate of a minor or adult individual.

36 (5) "Environmental law" means a federal, state, or local law, rule,  
37 regulation, or ordinance relating to protection of the environment.

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

42 (7) "Interests of the beneficiaries" means the beneficial interests pro-  
43 vided in the terms of the trust.

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

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

7 (10) "Power of withdrawal" means a presently exercisable general  
8 power of appointment other than a power exercisable only upon consent  
9 of the trustee or a person holding an adverse interest.

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

12 (12) "Qualified beneficiary" means a beneficiary who, on the date the  
13 beneficiary's qualification is determined,

14 ~~(A) Is a distributee or permissible distributee of trust income or~~  
15 ~~principal,~~

16 ~~(B) would be a distributee or permissible distributee of trust income~~  
17 ~~or principal if the interests of the distributees described in subparagraph~~

18 ~~(A) terminated on that date, or~~

19 ~~(C) would be a distributee or permissible distributee of trust income~~  
20 ~~or principal if the trust terminated on that date.~~

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

23 (14) "Settlor" means a person, including a testator, who creates, or  
24 contributes property to, a trust. If more than one person creates or con-  
25 tributes property to a trust, each person is a settlor of the portion of the  
26 trust property attributable to that person's contribution except to the ex-  
27 tent another person has the power to revoke or withdraw that portion.

28 (15) "Spendthrift provision" means a term of a trust which restrains  
29 both voluntary and involuntary transfer of a beneficiary's interest.

30 (16) "State" means a state of the United States, the District of Co-  
31 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
32 insular possession subject to the jurisdiction of the United States. The  
33 term includes an Indian tribe or band recognized by federal law or for-  
34 mally acknowledged by a state.

35 (17) "Terms of a trust" means the manifestation of the settlor's intent  
36 regarding a trust's provisions as expressed in the trust instrument or as  
37 may be established by other evidence that would be admissible in a ju-  
38 dicial proceeding.

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

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

42 Sec. 4. (UTC 104) KNOWLEDGE. (a) Subject to subsection (b),

" , possesses a vested income interest or vested-  
remainder interest in a trust."

Strike

The current definition creates a broad class of beneficiaries, including anyone who might potentially be a beneficiary, even in the remotest of possibilities. The change defines a class that has a vested interest in current income or future remainder of the trust. It is believed this is more in keeping with the settlor's intent.



Proposed Change

Comment

33

a person has knowledge of a fact if the person:

- (1) Has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information

Sec. 5. (UTC 105) **DEFAULT AND MANDATORY RULES.** (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 in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries;
- (4) the power of the court to modify or terminate a trust under sections 31 through 37, and amendments thereto;

", and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve"

~~(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 5 of this code,~~

Strike

~~(6) the power of the court under section 52, and amendments thereto, to require, dispense with, or modify or terminate a bond;~~

Renumber 5 and 6

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

~~(8) the duty to notify the qualified beneficiaries of an irrevocable trust of the existence of the trust and of their right to request trustee's reports and other information reasonably related to the administration of the trust and to furnish upon request of a qualified beneficiary a copy of the trust instrument;~~

Strike

~~(9) the duty to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related~~

This change was included in the 2001 amendments to the 2000 Uniform Trust Code by the Uniform Law Commissioners.

The Kansas Bar Association proposed this amendment because: "This provision is bad public policy because it places limitations on the power of a spendthrift clause, which is currently recognized by Kansas law."

By striking subsection (8) and (9) from the list of mandatory rules the settlor may determine who is entitled to receive notice and other documents from the trustee. This is consistent with current law.

Proposed Change

Comment

1 ~~to the administration of a trust;~~  
 2 ~~(10) the effect of an exculpatory term under section 85, and amend-~~  
 3 ~~ments thereto;~~  
 4 ~~(11) the rights under sections 87 through 90, and amendments~~  
 5 ~~thereto, of a person other than a trustee or beneficiary;~~  
 6 ~~(12) periods of limitation for commencing a judicial proceeding;~~  
 7 ~~(13) the power of the court to take such action and exercise such~~  
 8 ~~jurisdiction as may be necessary in the interests of justice; and~~  
 9 ~~(14) the subject matter jurisdiction of the court and venue for com-~~  
 10 ~~mencing a proceeding as provided in sections 15 and 16, and amendments~~  
 11 ~~thereto.~~

Renumber 7-10

"under section 50"

Strike

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

16 Sec 6. (UTC 106) COMMON LAW OF TRUSTS; PRINCIPLES  
 17 OF EQUITY. The common law of trusts and principles of equity sup-  
 18 plement this code, except to the extent modified by this code or another  
 19 statute of this state.

20 Sec. 7. (UTC 107) GOVERNING LAW. The meaning and effect  
 21 of the terms of a trust are determined by:

22 (1) The law of the jurisdiction designated in the terms unless the  
 23 designation of that jurisdiction's law is contrary to ~~a strong public policy~~  
 24 of the jurisdiction having the most significant relationship to the matter  
 25 at issue; or

"the law"

26 (2) in the absence of a controlling designation in the terms of the  
 27 trust, the law of the jurisdiction having the most significant relationship  
 28 to the matter at issue.

29 Sec. 8. (UTC 108) PRINCIPAL PLACE OF ADMINISTRA-  
 30 TION. (a) Without precluding other means for establishing a sufficient  
 31 connection with the designated jurisdiction, terms of a trust designating  
 32 the principal place of administration are valid and controlling if:

33 (1) A trustee's principal place of business is located in or a trustee is  
 34 a resident of the designated jurisdiction; or

35 (2) all or part of the administration occurs in the designated  
 36 jurisdiction.

37 (b) A trustee is under a continuing duty to administer the trust at a  
 38 place appropriate to its purposes, its administration, and the interests of  
 39 the beneficiaries.

40 (c) Without precluding the right of the court to order, approve, or  
 41 disapprove a transfer, the trustee, in furtherance of the duty prescribed  
 42 by subsection (b), may transfer the trust's principal place of administration  
 43 to another state or to a jurisdiction outside of the United States.

The Kansas Bar Association proposed this amendment because: "This is a technical amendment that is intended to add clarification to what section of the Code is being referenced."

The Kansas Bar Association proposed this amendment because: "Currently, the jurisdiction of a trust instrument is dictated by the language of the instrument. This would substantially alter this doctrine by not allowing the instrument to determine subject matter jurisdiction and venue. We see no rationale for this departure from current Kansas law. Section 15 states that the district court has exclusive jurisdiction of proceedings in Kansas dealing with administration of a trust while Section 16 outlines the permissible counties in Kansas where venue may be allowed. This change is due to concerns that the bill limits the ability of a trust grantor to place the situs of a trust in another jurisdiction."

The Kansas Bar Association proposed this language because they believe the phrase "a strong public policy" is vague.

35

1 (d) The trustee shall notify the qualified beneficiaries of a proposed  
2 transfer of a trust's principal place of administration not less than 60 days  
3 before initiating the transfer. The notice of proposed transfer must  
4 include:

5 (1) The name of the jurisdiction to which the principal place of ad-  
6 ministration is to be transferred;

7 (2) the address and telephone number at the new location at which  
8 the trustee can be contacted;

9 (3) an explanation of the reasons for the proposed transfer;

10 (4) the date on which the proposed transfer is anticipated to occur;  
11 and

12 (5) the date, not less than 60 days after the giving of the notice, by  
13 which the qualified beneficiary must notify the trustee of an objection to  
14 the proposed transfer.

15 (e) The authority of a trustee under this section to transfer a trust's  
16 principal place of administration terminates if a qualified beneficiary noti-  
17 fies the trustee of an objection to the proposed transfer on or before  
18 the date specified in the notice.

19 (f) In connection with a transfer of the trust's principal place of ad-  
20 ministration, the trustee may transfer some or all of the trust property to  
21 a successor trustee designated in the terms of the trust or appointed  
22 pursuant to section 54, and amendments thereto.

23 Sec. 9. (UTC 109) METHODS AND WAIVER OF NOTICE. (a)  
24 Notice to a person under this code or the sending of a document to a  
25 person under this code must be accomplished in a manner reasonably  
26 suitable under the circumstances and likely to result in receipt of the  
27 notice or document. Permissible methods of notice or for sending a doc-  
28 ument include first-class mail, personal delivery, delivery to the person's  
29 last known place of residence or place of business, or a properly directed  
30 electronic message.

31 (b) Notice otherwise required under this code or a document oth-  
32 erwise required to be sent under this code need not be provided to a  
33 person whose identity or location is unknown to and not reasonably as-  
34 certifiable by the trustee.

35 (c) Notice under this code or the sending of a document under this  
36 code may be waived by the person to be notified or sent the document.

37 (d) Notice of a judicial proceeding must be given as provided in the  
38 code of civil procedure.

39 Sec. 10. (UTC 110) OTHERS TREATED AS QUALIFIED  
40 BENEFICIARIES. (a) ~~Whenever notice to qualified beneficiaries of a~~ ~~trust is required under this code, the trustee must also give notice to any~~  
41 ~~other beneficiary who has sent the trustee a request for notice.~~

42 ~~(b) A charitable organization expressly entitled to receive benefits~~

Strike  
"mandated"  
"distributions"

With the striking of subsection 105 (8) and (9), this subsection is no longer necessary.

These two amendments were included in the 2001 amendments to the 2000 Uniform Trust Code by the Uniform Law Commissioners.

Proposed Change

Comment

36

1 under the terms of a trust or a person appointed to enforce a trust created  
2 for the care of an animal or another noncharitable purpose as provided  
3 in section 29 or 30, and amendments thereto, has the rights of a qualified  
4 beneficiary under this code.

5 ~~(e)~~ The attorney general of this state has the rights of a qualified  
6 beneficiary with respect to a charitable trust having its principal place of  
7 administration in this state.

8 Sec. 11. (UTC 111) **NONJUDICIAL SETTLEMENT AGREE-**  
9 **MENTS.** (a) For purposes of this section, "interested persons" means  
10 persons whose consent would be required in order to achieve a binding  
11 settlement were the settlement to be approved by the court.

12 (b) Except as otherwise provided in subsection (c), interested persons  
13 may enter into a binding nonjudicial settlement agreement with respect  
14 to any matter involving a trust.

15 (c) A nonjudicial settlement agreement is valid only to the extent it  
16 does not violate a material purpose of the trust and includes terms and  
17 conditions that could be properly approved by the court under this code  
18 or other applicable law.

19 (d) Matters that may be resolved by a nonjudicial settlement agree-  
20 ment include:

21 ~~(1) The interpretation or construction of the terms of the trust;~~ \_\_\_\_\_ Strike

22 ~~(2) the approval of a trustee's report or accounting;~~

23 ~~(3) direction to a trustee to refrain from performing a particular act~~ \_\_\_\_\_ Strike  
24 ~~or the grant to a trustee of any necessary or desirable power;~~

25 (4) the resignation or appointment of a trustee and the determination  
26 of a trustee's compensation;

27 (5) transfer of a trust's principal place of administration; and

28 (6) liability of a trustee for an action relating to the trust.

29 (e) Any interested person may request the court to approve a non-  
30 judicial settlement agreement, to determine whether the representation  
31 as provided in article 3 of this code was adequate, and to determine  
32 whether the agreement contains terms and conditions the court could  
33 have properly approved.

34 Sec. 12. (UTC 112) **RULES OF CONSTRUCTION.** The rules of  
35 construction that apply in this state to the interpretation of and disposition  
36 of property by will also apply as appropriate to the interpretation of the  
37 terms of a trust and the disposition of the trust property.

38 Sec. 13. (UTC 201) **ROLE OF COURT IN ADMINISTRATION**  
39 **OF TRUST.** (a) The court may intervene in the administration of a trust  
40 to the extent its jurisdiction is invoked by an interested person or as  
provided by law.

41 (b) A trust is not subject to continuing judicial supervision unless  
42 ordered by the court.  
43

Reletter as "(b)"

Renumber 1-4

The Kansas Bar Association proposed these amendments because: "Section 11 allows a trust beneficiary to resolve a variety of matters without the need for court approval. While this may appear innocuous at first blush, the KBA is very concerned that the existence of this section will undermine the intent of the settlors.

The section states that any such agreement is only valid to the extent it does not violate a material purpose of the trust. In subsection (d)(1), matters that may be resolved by a nonjudicial settlement agreement include "the interpretation or construction of a trust". The KBA believes this is such a broad standard that almost any term or provision of a trust could be altered by the trust beneficiaries without the approval of any court. Subsection (d)(3) goes much deeper than mere administrative changes, it could go into substantive changes that affect the rights of beneficiaries and trustees, and therefore should not be determined without the review of a judge.

The very existence of the need for court approval to modify an irrevocable trust serves as a braking device for potential mischief by beneficiaries. An emotionally strong group of beneficiaries could suggest trust changes that may impair the interests of weaker beneficiaries (such as parents as a class versus their own children) and completely alter the intention of the trust settlor. Further, as a practical matter, the lack of a need for court approval means that any term or provision of a trust can be changed even if it does indeed violate a material purpose of the trust. Without a court to make such determination, the change will be made as a matter of course."

Proposed Change

Comment

3-8

1 (c) A judicial proceeding involving a trust may relate to any matter  
2 involving the trust's administration, including an action for declaratory  
3 judgement pursuant to K.S.A. 60-1701 *et seq.*, and amendments thereto.

4 Sec. 14. (UTC 202) JURISDICTION OVER TRUSTEE AND  
5 BENEFICIARY. (a) By accepting the trusteeship of a trust having its  
6 principal place of administration in this state or by moving the principal  
7 place of administration to this state, the trustee submits personally to the  
8 jurisdiction of the courts of this state regarding any matter involving the  
9 trust.

10 (b) With respect to their interests in the trust, the beneficiaries of a  
11 trust having its principal place of administration in this state are subject  
12 to the jurisdiction of the courts of this state regarding any matter involving  
13 the trust. By accepting a distribution from such a trust, the recipient  
14 submits personally to the jurisdiction of the courts of this state regarding  
15 any matter involving the trust.

16 (c) This section does not preclude other methods of obtaining juris-  
17 diction over a trustee, beneficiary, or other person receiving property  
18 from the trust.

19 Sec. 15. (UTC 203) SUBJECT-MATTER JURISDICTION. The  
20 district court has exclusive jurisdiction of proceedings in this state brought  
21 by a trustee or beneficiary concerning the administration of a trust.

22 Sec. 16. (UTC 204) VENUE. (a) Except as otherwise provided in  
23 subsection (b), venue for a judicial proceeding involving a trust is in the  
24 county of this state in which the trust's principal place of administration  
25 is or will be located or in the county in which any real property in which  
26 the trust has an interest is located and, if the trust is created by will and  
27 the estate is not yet closed, in the county in which the decedent's estate  
28 is being administered.

————— "has been,"

29 (b) If a trust has no trustee, venue for a judicial proceeding for the  
30 appointment of a trustee is in a county of this state in which a beneficiary  
31 resides, in a county in which any trust property is located, and if the trust  
32 is created by will, in the county in which the decedent's estate was or is  
33 being administered.

34 Sec. 17. (UTC 301) REPRESENTATION: BASIC EFFECT. (a)  
35 Notice to a person who may represent and bind another person under  
36 this article has the same effect as if notice were given directly to the other  
37 person.

38 (b) The consent of a person who may represent and bind another  
39 person under this article is binding on the person represented unless the  
40 person represented objects to the representation before the consent  
41 would otherwise have become effective.

42 (c) Except as otherwise provided in sections 32 and 48, and amend-  
43 ments thereto, a person who under this article may represent a settlor

The addition of the phrase "has been," allows venue to remain in a county, even if there is no real estate and the trustee has moved to another jurisdiction.

1 who lacks capacity may receive notice and give a binding consent on the  
2 settlor's behalf.

3 **Sec. 18. (UTC 302) REPRESENTATION BY HOLDER OF**  
4 **GENERAL TESTAMENTARY POWER OF APPOINTMENT.** To  
5 the extent there is no conflict of interest between the holder of a general  
6 testamentary power of appointment and the persons represented with  
7 respect to the particular question or dispute, the holder may represent  
8 and bind persons whose interests, as permissible appointees, takers in  
9 default, or otherwise, are subject to the power.

10 **Sec. 19. (UTC 303) REPRESENTATION BY FIDUCIARIES**  
11 **AND PARENTS.** To the extent there is no conflict of interest between  
12 the representative and the person represented or among those being rep-  
13 resented with respect to a particular question or dispute:

14 (1) A conservator may represent and bind the estate that the conser-  
15 vator controls;

16 (2) a guardian may represent and bind the ward within the scope of  
17 the guardian's powers and duties;

18 (3) an agent having authority to act with respect to the particular  
19 question or dispute may represent and bind the principal;

20 (4) a trustee may represent and bind the beneficiaries of the trust;

21 (5) a personal representative of a decedent's estate may represent and  
22 bind persons interested in the estate; and

23 (6) a parent may represent and bind the parent's minor or unborn  
24 child if a conservator or guardian for the child has not been appointed.

25 **Sec. 20. (UTC 304) REPRESENTATION BY PERSON HAV-**  
26 **ING SUBSTANTIALLY IDENTICAL INTEREST.** Unless otherwise  
27 represented, a minor, incapacitated, or unborn individual, or a person  
28 whose identity or location is unknown and not reasonably ascertainable,  
29 may be represented by and bound by another having a substantially iden-  
30 tical interest with respect to the particular question or dispute, but only  
31 to the extent there is no conflict of interest between the representative  
32 and the person represented.

33 **Sec. 21. (UTC 305) APPOINTMENT OF REPRESENTATIVE.**

34 (a) If the court or trustee determines that an interest is not represented  
35 under this article, or that the otherwise available representation might be  
36 inadequate, the court may appoint or the trustee may retain a represen-  
37 tative to receive notice, give consent, and otherwise represent, bind, and  
38 act on behalf of a minor, incapacitated, or unborn individual, or a person  
39 whose identity or location is unknown. A representative may be appointed  
40 to represent several persons or interests.

41 (b) A representative may act on behalf of the individual represented  
42 with respect to any matter arising under this code, whether or not a  
43 judicial proceeding concerning the trust is pending.

1 (c) In making decisions, a representative may consider general ben-  
2 efit accruing to the living members of the individual's family.

3 Sec. 22. (UTC 401) METHODS OF CREATING TRUST. A trust  
4 may be created by:

5 (1) Transfer of property to another person as trustee during the set-  
6 tlor's lifetime or by will or other disposition taking effect upon the settlor's  
7 death;

8 (2) declaration by the owner of property that the owner holds ~~iden-  
9 tifiable~~ property as trustee; or

10 (3) exercise of a power of appointment in favor of a trustee.

11 Sec. 23. (UTC 402) REQUIREMENTS FOR CREATION. (a) A  
12 trust is created only if:

13 (1) The settlor has capacity to create a trust;

14 (2) the settlor indicates an intention to create the trust;

15 (3) the trust has a definite beneficiary or is:

16 (A) A charitable trust;

17 (B) a trust for the care of an animal, as provided in section 29, and  
18 amendments thereto; or

19 (C) a trust for a noncharitable purpose, as provided in section 30, and  
20 amendments thereto;

21 (4) the trustee has duties to perform; and

22 (5) the same person is not the sole trustee and sole beneficiary.

23 (b) A beneficiary is definite if the beneficiary can be ascertained now  
24 or in the future, subject to any applicable rule against perpetuities.

25 (c) A power in a trustee to select a beneficiary from an indefinite class  
26 is valid. If the power is not exercised within a reasonable time, the power  
27 fails and the property subject to the power passes to the persons who  
28 would have taken the property had the power not been conferred.

29 Sec. 24. (UTC 403) TRUSTS CREATED IN OTHER JURIS-  
30 DICTIONS. A trust not created by will is validly created if its creation  
31 complies with the law of the jurisdiction in which the trust instrument  
32 was executed, or the law of the jurisdiction in which, at the time of  
33 creation:

34 (1) The settlor was domiciled, had a place of abode, or was a national;

35 (2) a trustee was domiciled or had a place of business; or

36 (3) any trust property was located.

37 Sec. 25. (UTC 404) TRUST PURPOSES. A trust may be created  
38 only to the extent its purposes are lawful, not contrary to public policy,  
39 and possible to achieve. A trust and its terms must be for the benefit of  
40 its beneficiaries.

41 Sec. 26. (UTC 405) CHARITABLE PURPOSES; ENFORCE-  
42 MENT, (a) A charitable trust may be created for the relief of poverty,  
43 the advancement of education or religion, the promotion of health, gov-

Strike

" , so long as such property would not  
otherwise pass at the owner's death by a  
beneficiary designation to a party other  
than the trust"

The Trust Division of the Kansas Bankers Association requested this change to resolve conflicts between inconsistent beneficiary designations for property that was not titled in the name of the trust. If the property has a named beneficiary other than the trust, such property will pass to that beneficiary. If the property names no other beneficiary, it will be deemed to be an asset of the trust and will pass to the beneficiaries of the trust.



1 ernmental or municipal purposes, or other purposes the achievement of  
2 which is beneficial to the community.

3 (b) If the terms of a charitable trust do not indicate a particular char-  
4 itable purpose or beneficiary, the court may select one or more charitable  
5 purposes or beneficiaries. The selection must be consistent with the set-  
6 tlor's intention to the extent it can be ascertained.

7 (c) The settlor of a charitable trust, among others, may maintain a  
8 proceeding to enforce the trust.

9 **Sec. 27. (UTC 406) CREATION OF TRUST INDUCED BY**  
10 **FRAUD, DURESS, OR UNDUE INFLUENCE.** (a) A trust is void to  
11 the extent its creation was induced by fraud, duress, or undue influence.

12 (b) Any provision in a trust, written or prepared for another person,  
13 that transfers property and that gives the scrivener or the scrivener's par-  
14 ent, children, issue, sibling or spouse any direct or indirect gift is invalid  
15 unless: (1) The scrivener is related to the settlor by blood or marriage; or  
16 (2) it affirmatively appears that the settlor had read and knew the contents  
17 of the trust and had independent legal advice with reference thereto. The  
18 words "children" and "issue" as used in this section, are defined in K.S.A.  
19 59-501, and amendments thereto.

20 **Sec. 28. (UTC 407) EVIDENCE OF ORAL TRUST.** Except as  
21 required by K.S.A. 59-606, and amendments thereto, with respect to tes-  
22 tamentary trusts or K.S.A. 33-105, 33-106 and 58-2401, and amendments  
23 thereto, a trust need not be evidenced by a trust instrument, but the  
24 creation of an oral trust and its terms may be established only by clear  
25 and convincing evidence.

26 **Sec. 29. (UTC 408) TRUST FOR CARE OF ANIMAL.** (a) A trust  
27 may be created to provide for the care of an animal alive during the  
28 settlor's lifetime. The trust terminates upon the death of the animal or,  
29 if the trust was created to provide for the care of more than one animal  
30 alive during the settlor's lifetime, upon the death of the last surviving  
31 animal.

32 (b) A trust authorized by this section may be enforced by a person  
33 appointed in the terms of the trust or, if no person is so appointed, by a  
34 person appointed by the court. A person having an interest in the welfare  
35 of the animal may request the court to appoint a person to enforce the  
36 trust or to remove a person appointed.

37 (c) Property of a trust authorized by this section may be applied only  
38 to its intended use, except to the extent the court determines that the  
39 value of the trust property exceeds the amount required for the intended  
40 use. Except as otherwise provided in the terms of the trust, property not  
41 required for the intended use may be distributed to the settlor, if then  
42 living, otherwise to the settlor's successors in interest.

43 **Sec. 30. (UTC 409) NONCHARITABLE TRUST WITHOUT**

1 **ASCERTAINABLE BENEFICIARY.** Except as otherwise provided in  
2 section 29, and amendments thereto, or by another statute, the following  
3 rules apply:

4 (1) A trust may be created for a noncharitable purpose without a  
5 definite or definitely ascertainable beneficiary or for a noncharitable but  
6 otherwise valid purpose to be selected by the trustee. The trust may not  
7 be enforced for more than 21 years.

8 (2) A trust authorized by this section may be enforced by a person  
9 appointed in the terms of the trust or, if no person is so appointed, by a  
10 person appointed by the court.

11 (3) Property of a trust authorized by this section may be applied only  
12 to its intended use, except to the extent the court determines that the  
13 value of the trust property exceeds the amount required for the intended  
14 use. Except as otherwise provided in the terms of the trust, property not  
15 required for the intended use may be distributed to the settlor, if then  
16 living, otherwise to the settlor's successors in interest.

17 **Sec. 31. (UTC 410) MODIFICATION OR TERMINATION OF**  
18 **TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.**

19 (a) In addition to the methods of termination prescribed by sections 32  
20 through 35, and amendments thereto, a trust terminates to the extent the  
21 trust is revoked or expires pursuant to its terms, no purpose of the trust  
22 remains to be achieved, or the purposes of the trust have become unlaw-  
23 ful, contrary to public policy, or impossible to achieve.

24 (b) A proceeding to approve or disapprove a proposed modification  
25 or termination under sections 32 through 37, and amendments thereto,  
26 or trust combination or division under section 38, and amendments  
27 thereto, may be commenced by a trustee or beneficiary, and a proceeding  
28 to approve or disapprove a proposed modification or termination under  
29 section 32, and amendments thereto, may be commenced by the settlor.  
30 The settlor of a charitable trust may maintain a proceeding to modify the  
31 trust under section 34, and amendments thereto.

32 **Sec. 32. (UTC 411) MODIFICATION OR TERMINATION OF**  
33 **NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.** (a) A

34 noncharitable irrevocable trust may be modified or terminated upon con-  
35 sent of the settlor and all beneficiaries, even if the modification or ter-  
36 mination is inconsistent with a material purpose of the trust. A settlor's  
37 power to consent to a trust's termination may be exercised by an agent  
38 under a power of attorney only to the extent expressly authorized by the  
39 power of attorney or the terms of the trust; by the settlor's conservator  
40 with the approval of the court supervising the conservatorship if an agent  
41 is not so authorized; or by the settlor's guardian with the approval of the  
42 court supervising the guardianship if an agent is not so authorized and a  
43 conservator has not been appointed.

1 (b) A noncharitable irrevocable trust may be terminated upon con-  
 2 sent of all of the beneficiaries if the court concludes that continuance of  
 3 the trust is not necessary to achieve any material purpose of the trust. A  
 4 noncharitable irrevocable trust may be modified upon consent of all of  
 5 the beneficiaries if the court concludes that modification is not inconsis-  
 6 tent with a material purpose of the trust. "qualified"

7 (c) A spendthrift provision in the terms of the trust is presumed to  
 8 constitute a material purpose of the trust.

9 (d) Upon termination of a trust under subsection (a) or (b), the trust-  
 10 tee shall distribute the trust property as agreed by the beneficiaries. "qualified"

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

14 (1) If all of the beneficiaries had consented, the trust could have been  
 15 modified or terminated under this section; and "qualified"

16 (2) the interests of a beneficiary who does not consent will be ade-  
 17 quately protected.

18 Sec. 33. (UTC 412) MODIFICATION OR TERMINATION BE-  
 19 CAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABIL-  
 20 ITY TO ADMINISTER TRUST EFFECTIVELY. (a) The court may  
 21 modify the administrative or dispositive terms of a trust or terminate the  
 22 trust if, because of circumstances not anticipated by the settlor, modifi-  
 23 cation or termination will further the purposes of the trust. To the extent  
 24 practicable, the modification must be made in accordance with the set-  
 25 tlor's probable intention.

26 (b) The court may modify the administrative terms of a trust if con-  
 27 tinuation of the trust on its existing terms would be impracticable or  
 28 wasteful or impair the trust's administration.

29 (c) Upon termination of a trust under this section, the trustee shall  
 30 distribute the trust property in a manner consistent with the purposes of  
 31 the trust.

32 Sec. 34.. (UTC 413) CY PRES. If a charitable trust is or becomes  
 33 illegal or impossible or impracticable of fulfillment or if a devise or be-  
 34 quest for charity, at the time it was intended to become effective is illegal  
 35 or impossible or impracticable of fulfillment, and if the settlor, manifested  
 36 a general intention to devote the property to charity, any judge, on ap-  
 37 plication of any trustee, any interested party or the attorney general, may  
 38 order an administration of the trust, as nearly as possible to fulfill the  
 39 manifested general charitable intention of the settlor. In every such pro-  
 40 ceeding, the attorney general, as representative of the public interest,  
 41 shall be notified and given an opportunity to be heard. The provisions of  
 42 this act shall not be applicable if the settlor has provided, either directly  
 43 or indirectly, for an alternative plan in the event the charitable trust is or

1 becomes illegal or impossible or impracticable of fulfillment. If the alter-  
2 native plan is also a charitable trust, the intention shown in the original  
3 plan shall prevail in the application of this act.

4 (b) If a federal estate tax deduction is not allowable at the time of a  
5 decedent's death because of the failure of an interest in property which  
6 passes from the decedent to a person, or for a use, described in section  
7 2055(a) of the federal internal revenue code of 1986, as in effect on  
8 December 31, 2000, to meet the requirements of section 170(f)(3)(B) or  
9 2055(e)(2) of the federal internal revenue code of 1986, as in effect on  
10 December 31, 2000, then in order that such deduction shall nevertheless  
11 be allowable under section 2055(a) of the federal internal revenue code  
12 of 1986, as in effect on December 31, 2000, any judge, on application of  
13 any trustee, or any interested party may:

14 (1) With the written consent of the charitable beneficiaries, the non-  
15 charitable beneficiaries not under any legal disability and duly appointed  
16 guardians or guardians ad litem acting on behalf of any beneficiaries un-  
17 der legal disability or conservator; or

18 (2) upon a finding that the interest of such beneficiaries is substan-  
19 tially preserved, order a change to the trust by reformation, amendment,  
20 construction or otherwise, which changes a reformable interest into a  
21 qualified interest within the meaning of section 2055(e)(3) of the federal  
22 internal revenue code of 1986, as in effect on December 31, 2000. In  
23 every such proceeding, the attorney general, as representative of the pub-  
24 lic interest, shall be notified and given an opportunity to be heard.

25 (c) As used in this act "impracticable of fulfillment" includes, but is  
26 not limited to, the failure of any charitable trust, testamentary or inter  
27 vivos, including, without limitation, trusts described in section 509 of the  
28 federal internal revenue code of 1986, as in effect on December 31, 2000,  
29 and charitable remainder trusts described in section 664 of the federal  
30 internal revenue code of 1986, as in effect on December 31, 2000, to  
31 include, if required to do so by section 508(e) or section 4947(a) of the  
32 federal internal revenue code of 1986, as in effect on December 31, 2000,  
33 the provisions relating to governing instruments set forth in section 508(e)  
34 of the federal internal revenue code of 1986, as in effect on December  
35 31, 2000.

36 (d) The provisions of this section shall be effective as to all trusts not  
37 construed prior to the effective date of this act.

38 **Sec. 35. (UTC 414) TERMINATION OF UNECONOMIC**  
39 **TRUST.** (a) After notice to the qualified beneficiaries, the trustee of a  
40 trust consisting of trust property having a total value less than \$100,000  
41 may terminate the trust if the trustee concludes that the value of the trust  
42 property is insufficient to justify the cost of administration.

43 (b) The court may modify or terminate a trust or remove the trustee

1 and appoint a different trustee if it determines that the value of the trust  
2 property is insufficient to justify the cost of administration.

3 (c) Upon termination of a trust under this section, the trustee shall  
4 distribute the trust property in a manner consistent with the purposes of  
5 the trust.

6 (d) This section does not apply to an easement for conservation or  
7 preservation.

8 **Sec. 36. (UTC 415) REFORMATION TO CORRECT MIS-**  
9 **TAKES.** The court may reform the terms of a trust, even if unambiguous,  
10 to conform the terms to the settlor's intention if it is proved by clear and  
11 convincing evidence that both the settlor's intent and the terms of the  
12 trust were affected by a mistake of fact or law, whether in expression or  
13 inducement.

14 **Sec. 37. (UTC 416) MODIFICATION TO ACHIEVE SET-**  
15 **TTLOR'S TAX OBJECTIVES.** To achieve the settlor's tax objectives, the  
16 court may modify the terms of a trust in a manner that is not contrary to  
17 the settlor's probable intention. The court may provide that the modifi-  
18 cation has retroactive effect.

19 **Sec. 38. (UTC 417) COMBINATION AND DIVISION OF**  
20 **TRUSTS.** (a) After notice to the qualified beneficiaries, a trustee may  
21 combine two or more trusts into a single trust or divide a trust into two  
22 or more separate trusts, if the result does not impair rights of any bene-  
23 ficiary or adversely affect achievement of the purposes of the trust. The  
24 trustee may make a division under this section by:

25 (1) Giving written notice of the division, not later than the 30th day  
26 before the date of a division under this subsection, to each qualified ben-  
27 eficiary; and

28 (2) executing a written instrument, acknowledged before a notary  
29 public or other person authorized to take acknowledgments of convey-  
30 ances of real estate stating that the trust has been divided pursuant to  
31 this section and that the notice requirements of this subsection have been  
32 satisfied.

33 (b) A trustee, in the written instrument dividing a trust, shall allocate  
34 trust property among the separate trusts on a fractional basis by identi-  
35 fying the assets and liabilities passing to each separate trust, or on any  
36 other reasonable basis. The trustee shall allocate undesignated trust prop-  
37 erty received after the trustee has divided the trust into separate trusts  
38 in the manner provided by the written instrument dividing the trust, or,  
39 in the absence of a provision in the written instrument, in a manner  
40 determined by the trustee.

41 (c) The trustee may combine two or more trusts under this section  
42 by:

43 (1) Giving a written notice of the combination, not later than the 30th

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3-16

1 day before the effective date of the combination, to each qualified ben-  
2 eficiary; and

3 (2) executing a written instrument, acknowledged before a notary  
4 public or other person authorized to take acknowledgments of convey-  
5 ances of real estate stating that the trust has been combined pursuant to  
6 this section and that the notice requirements of this subsection have been  
7 satisfied.

8 (d) The trustee may divide or combine a testamentary trust after the  
9 will establishing the trust has been admitted to probate, even if the trust  
10 will not be funded until a later date. The trustee may divide or combine  
11 any other trust before it is funded if the instrument establishing the trust  
12 is not revocable at the time of the division or combination.

13 Sec. 39. ~~(UTC 419)~~ REFERENCE TO WRITTEN STATE- \_\_\_\_\_ Strike

14 MENT OR LIST. A trust instrument which establishes an inter vivos  
15 trust and which directs the trustee to distribute trust assets upon the death  
16 of the settlor may refer to a separate written statement or list of items of

17 personal property, other than money, evidences of debt, documents of  
18 title, securities, and properties used in trade or business, which are assets

19 of the trust estate, and may direct the trustee to make distribution of such  
20 items as indicated in the written statement or list. The trustee may dis-

21 tribute such items upon death of the settlor in accordance with the written  
22 statement or list. Such written statement or list either must be in the

23 handwriting of the settlor or be signed by the settlor, and must describe  
24 the items with reasonable certainty. The writing may be referred to in

25 the trust instrument as one to be in existence at the time of the settlor's  
26 death, prepared before or after execution of the trust instrument, and

27 altered by the settlor after its preparation. Transfer of items of personal  
28 property pursuant to this section shall not be considered testamentary or

29 be invalidated due to nonconformity with the provisions of chapter 59 of  
30 the Kansas Statutes Annotated, and amendments thereto.

31 Sec. 40. (UTC 501) RIGHTS OF BENEFICIARY'S CREDITOR

32 OR ASSIGNEE. To the extent a beneficiary's interest is not protected

33 by a spendthrift provision, the court may authorize a creditor or assignee

34 of the beneficiary to reach the beneficiary's interest by attachment of

35 present or future distributions to or for the benefit of the beneficiary or

36 other means. The court may limit the award to such relief as is appropriate

37 under the circumstances.

38 Sec. 41. (UTC 502) SPENDTHRIFT PROVISION. (a) A spend-

39 thrift provision is valid only if it restrains both voluntary and involuntary

40 transfer of a beneficiary's interest. \_\_\_\_\_ Strike

41 (b) A term of a trust providing that the interest of a beneficiary is

42 held subject to a "spendthrift trust," or words of similar import, is suffi-

43 cient to restrain both voluntary and involuntary transfer of the benefi-

This section was not a part of the Uniform Trust Code but is modeled after K.S.A. 59-2296. The references to "death of settlor" should not have been included.

The Kansas Bar Association proposed that subsection (a) be amended to provide that a spendthrift provision is valid if it restrains either voluntary or involuntary transfer of a beneficiary's interest. The Judicial Council is of the opinion that the effect of the KBA proposal would be to allow a settlor to provide that a beneficiary may gift his or her trust interest while at the same time avoiding creditor claims. The compromise was to strike all after the word "valid."

1 ary's interest.

2 (c) A beneficiary may not transfer an interest in a trust in violation of  
3 a valid spendthrift provision and, except as otherwise provided in this  
4 article, a creditor or assignee of the beneficiary may not reach the interest  
5 or a distribution by the trustee before its receipt by the beneficiary.

6 ~~Sec. 42. (UTC 503) EXCEPTIONS TO SPENDTHRIFT PRO-  
7 VISION. (a) As used in this section, "child" includes any person for whom  
8 an order or judgment for child support has been entered in this or another  
9 state.~~

10 (b) Even if a trust contains a spendthrift provision, a beneficiary's  
11 child, spouse, or former spouse who has a judgment or court order against  
12 the beneficiary for support or maintenance, or a judgment creditor who  
13 has provided services for the protection of a beneficiary's interest in the  
14 trust, may obtain from a court an order attaching present or future dis-  
15 tributions to or for the benefit of the beneficiary.

Strike section

16 (c) A spendthrift provision is unenforceable against a claim of this  
17 state, subdivisions thereof, or the United States to the extent a statute of  
18 this state or federal law so provides.

19 ~~Sec. 43. (UTC 504) DISCRETIONARY TRUSTS; EFFECT OF  
20 STANDARD. (a) As used in this section, "child" includes any person  
21 for whom an order or judgment for child support has been entered in  
22 this or another state.~~

23 (b) Except as otherwise provided in subsection (c), whether or not a  
24 trust contains a spendthrift provision, a creditor of a beneficiary may not  
25 compel a distribution that is subject to the trustee's discretion, even if:

- 26 (1) The discretion is expressed in the form of a standard of distri-  
27 bution; or
- 28 (2) the trustee has abused the discretion.

Strike section

29 (c) To the extent a trustee has not complied with a standard of dis-  
30 tribution or has abused a discretion:

31 (1) A distribution may be ordered by the court to satisfy a judgment  
32 or court order against the beneficiary for support or maintenance of the  
33 beneficiary's child, spouse, or former spouse; and

34 (2) the court shall direct the trustee to pay to the child, spouse, or  
35 former spouse such amount as is equitable under the circumstances but  
36 not more than the amount the trustee would have been required to dis-  
37 tribute to or for the benefit of the beneficiary had the trustee complied  
38 with the standard or not abused the discretion.

39 (d) This section does not limit the right of a beneficiary to maintain  
40 a judicial proceeding against a trustee for an abuse of discretion or failure  
41 to comply with a standard for distribution.

42 ~~Sec. 44. (UTC 505) CREDITOR'S CLAIM AGAINST SET-  
43 TLOR. (a) Except as provided by K.S.A. 33-101 and 33-201 *et seq.*, and~~

*et. seq.*

The Kansas Bar Association proposed that sections 42 and 43 be stricken because: "These proposed provisions seriously weakens Kansas spendthrift law as it voids such provisions to the extent the provisions are attempted to be enforced against a beneficiary's child, spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance or a judgment creditor who has provided services for the protection of the beneficiary's interest, and is also void against governmental claims.

The KBA has grave concerns about his proposed erosion of the current law in this regard. Settlers often incorporate spendthrift provisions for the very purpose of cutting off any possible claims of creditors of a child or other beneficiary, especially against spouses and former spouses.

This is a technical change. The phrase "*et. seq.*" should appear after the phrase "K.S.A. 33-101" as well as after "K.S.A. 33-201."

1 amendments thereto, whether or not the terms of a trust contain a spend-  
2 thrift provision, the following rules apply:

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

5 (2) With respect to an irrevocable trust, a creditor or assignee of the  
6 settlor may reach the maximum amount that can be distributed to or for  
7 the settlor's benefit. If a trust has more than one settlor, the amount the  
8 creditor or assignee of a particular settlor may reach may not exceed the  
9 settlor's interest in the portion of the trust attributable to that settlor's  
10 contribution.

11 (3) After the death of a settlor, and subject to the settlor's right to  
12 direct the source from which liabilities will be paid, the property of a trust  
13 that was revocable at the settlor's death is subject to claims of the settlor's  
14 creditors, costs of administration of the settlor's estate, the expenses of  
15 the settlor's funeral and disposal of remains, the homestead, homestead  
16 allowance, all elective share rights of the surviving spouse and statutory  
17 allowance to a surviving spouse and children to the extent the settlor's  
18 probate estate is inadequate to satisfy those claims, costs, expenses, and  
19 allowances.

20 (b) For purposes of this section:

21 (1) During the period the power may be exercised, the holder of a  
22 power of withdrawal is treated in the same manner as the settlor of a  
23 revocable trust to the extent of the property subject to the power; and

24 (2) upon the lapse, release, or waiver of the power, the holder is  
25 treated as the settlor of the trust only to the extent the value of the  
26 property affected by the lapse, release, or waiver exceeds the greater of  
27 the amount specified in section 2041(b)(2) or 2514(e) of the federal in-  
28 ternal revenue code of 1986, as in effect on December 31, 2000, or section  
29 2503(b) of the federal internal revenue code of 1986, as in effect on  
30 December 31, 2000.

31 **Sec. 45. (UTC 506) OVERDUE DISTRIBUTION.** Whether or  
32 not a trust contains a spendthrift provision, a creditor or assignee of a  
33 beneficiary may reach a mandatory distribution of income or principal,  
34 including a distribution upon termination of the trust, if the trustee has  
35 not made the distribution to the beneficiary within a reasonable time after  
36 the ~~required~~ distribution date.

"mandated"

37 **Sec. 46. (UTC 507) PERSONAL OBLIGATIONS OF TRUS-**  
38 **TEE.** Trust property is not subject to personal obligations of the trustee,  
39 even if the trustee becomes insolvent or bankrupt.

40 **Sec. 47. (UTC 601) CAPACITY OF SETTLOR OF REVOCA-**  
41 **BLE TRUST.** The capacity required to create, amend, revoke, or add  
42 property to a revocable trust, or to direct the actions of the trustee of a  
43 revocable trust, is the same as that required to make a will.

This language was included in the 2001  
amendments to the 2000 Uniform Trust Code  
by the Uniform Law Commissioners.



3-19

1 Sec. 48. (UTC 602) REVOCATION OR AMENDMENT OF  
2 REVOCABLE TRUST. (a) Unless the terms of a trust expressly provide  
3 that the trust is irrevocable, the settlor may revoke or amend the trust.  
4 This subsection does not apply to a trust created under an instrument  
5 executed before the effective date of this code.

6 (b) If a revocable trust is created or funded by more than one settlor:  
7 (1) To the extent the trust consists of community property, the trust  
8 may be revoked by either spouse acting alone but may be amended only  
9 by joint action of both spouses; and

10 (2) to the extent the trust consists of property other than community  
11 property, each settlor may revoke or amend the trust with regard to the  
12 portion of the trust property attributable to that settlor's contribution.

13 (c) The settlor may revoke or amend a revocable trust:

14 (1) By ~~substantially complying~~ with a method provided in the terms "substantial compliance"  
15 of the trust; or

16 (2) if the terms of the trust do not provide a method or the method  
17 provided in the terms is not expressly made exclusive, by:

18 (A) ~~Executing~~ a later will or codicil that expressly refers to the trust Strike  
19 or specifically devises property that would otherwise have passed accord-  
20 ing to the terms of the trust; or

21 (B) any other method manifesting clear and convincing evidence of  
22 the settlor's intent.

23 (d) Upon revocation of a revocable trust, the trustee shall deliver the  
24 trust property as the settlor directs.

25 (e) A settlor's powers with respect to revocation, amendment, or dis-  
26 tribution of trust property may be exercised by an agent under a power  
27 of attorney only to the extent expressly authorized by the terms of the  
28 trust or the power.

29 (f) A conservator of the settlor may exercise a settlor's powers with  
30 respect to revocation, amendment, or distribution of trust property only  
31 with the approval of the court supervising the conservatorship.

32 (g) A trustee who does not know that a trust has been revoked or  
33 amended is not liable to the settlor or settlor's successors in interest for  
34 distributions made and other actions taken on the assumption that the  
35 trust had not been amended or revoked.

36 Sec. 49. (UTC 603) SETTLOR'S POWERS; POWERS OF  
37 WITHDRAWAL. (a) While a trust is revocable and the settlor has ca-  
38 pacity to revoke the trust, rights of the beneficiaries are subject to the  
39 control of, and the duties of the trustee are owed exclusively to, the  
40 settlor.

41 (b) ~~While a trust is revocable and the settlor does not have capacity~~  
42 ~~to revoke the trust, rights of the beneficiaries are held by the beneficiaries.~~ Strike

43 (c) If a revocable trust has more than one settlor, the duties of the

These changes were included in the 2001 amendments to the 2000 Uniform Trust Code by the Uniform Law Commissioners.

These changes were included in he 2001 amendments to the 2000 Uniform Trust Code by the Uniform Law Commissioners.

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1 trustee are owed to all of the settlors having capacity to revoke the trust.

2 ~~(d)~~ During the period the power may be exercised, the holder of a  
3 power of withdrawal has the rights of a settlor of a revocable trust under  
4 this section to the extent of the property subject to the power.

"(c)"

5 Sec. 50. (UTC 604) **LIMITATION ON ACTION CONTESTING**  
6 **VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF**  
7 **TRUST PROPERTY.** (a) A person may commence a judicial proceeding  
8 to contest the validity of a trust that was revocable at the settlor's death  
9 within the earlier of:

10 (1) One year after the settlor's death; or

11 (2) four months after the trustee sent the person a copy of the trust  
12 instrument and a notice informing the person of the trust's existence, of  
13 the trustee's name and address, and of the time allowed for commencing  
14 a proceeding.

15 (b) Upon the death of the settlor of a trust that was revocable at the  
16 settlor's death, the trustee may proceed to distribute the trust property  
17 in accordance with the terms of the trust. The trustee is not subject to  
18 liability for doing so unless:

19 (1) The trustee knows of a pending judicial proceeding contesting the  
20 validity of the trust; or

21 (2) a potential contestant has notified the trustee of a possible judicial  
22 proceeding to contest the trust and a judicial proceeding is commenced  
23 within 60 days after the contestant sent the notification.

24 (c) A beneficiary of a trust that is determined to have been invalid is  
25 liable to return any distribution received.

26 Sec. 51. (UTC 701) **ACCEPTING OR DECLINING TRUSTEE-**  
27 **SHIP.** (a) Except as otherwise provided in subsection (c), a person des-  
28 ignated as trustee accepts the trusteeship:

29 (1) By substantially complying with a method of acceptance provided  
30 in the terms of the trust; or

31 (2) if the terms of the trust do not provide a method or the method  
32 provided in the terms is not expressly made exclusive, by accepting de-  
33 livery of the trust property, exercising powers or performing duties as  
34 trustee, or otherwise indicating acceptance of the trusteeship.

35 (b) A person designated as trustee who has not yet accepted the trust-  
36 teeship may reject the trusteeship. A designated trustee who does not  
37 accept the trusteeship within a reasonable time after knowing of the des-  
38 ignation is deemed to have rejected the trusteeship.

39 (c) A person designated as trustee, without accepting the trusteeship,  
40 may:

41 (1) Act to preserve the trust property if, within a reasonable time after  
42 acting, the person sends a rejection of the trusteeship to the settlor or, if  
43 the settlor is dead or lacks capacity, to a qualified beneficiary; and

Proposed Change

Comment

kel

1 (2) inspect or investigate trust property to determine potential liabil-  
2 ity under environmental or other law or for any other purpose.

3 Sec. 52. (UTC 702) TRUSTEE'S BOND. (a) A trustee shall give  
4 bond to secure performance of the trustee's duties ~~only if the court finds~~  
5 ~~that a bond is needed to protect the interests of the beneficiaries or is~~  
6 ~~required by the terms of the trust and the court has not dispensed with~~  
7 ~~the requirement.~~

Strike  
unless otherwise waived or modified by the  
terms of the trust.

As drafted the Uniform Trust Code would change Kansas law. As amended, current Kansas law is not changed.

8 (b) The court may specify the amount of a bond, its liabilities, and  
9 whether sureties are necessary. The court may modify or terminate a  
10 bond at any time.

11 (c) A regulated financial-service institution qualified to do trust busi-  
12 ness in this state need not give bond, even if required by the terms of the  
13 trust.

14 Sec. 53. (UTC 703) COTRUSTEES. (a) Cotrustees who are unable  
15 to reach a unanimous decision may act by majority decision.

16 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees  
17 may act for the trust.

18 (c) A cotrustee must participate in the performance of a trustee's  
19 function unless the cotrustee is unavailable to perform the function be-  
20 cause of absence, illness, disqualification under other law, or other tem-  
21 porary incapacity or the cotrustee has properly delegated the performance  
22 of the function to another trustee.

23 (d) If a cotrustee is unavailable to perform duties because of absence,  
24 illness, disqualification under other law, or other temporary incapacity,  
25 and prompt action is necessary to achieve the purposes of the trust or to  
26 avoid injury to the trust property, the remaining cotrustee or a majority  
27 of the remaining cotrustees may act for the trust.

28 (e) A trustee may not delegate to a cotrustee the performance of a  
29 function the settlor reasonably expected the trustees to perform jointly.  
30 Unless a delegation was irrevocable, a trustee may revoke a delegation  
31 previously made.

32 (f) Except as otherwise provided in subsection (g), a trustee who does  
33 not join in an action of another trustee is not liable for the action.

34 (g) Each trustee shall exercise reasonable care to:

35 (1) Prevent a cotrustee from committing a ~~serious~~ breach of trust;  
36 and

Strike

37 (2) compel a cotrustee to redress a ~~serious~~ breach of trust.

38 (h) A dissenting trustee who joins in an action at the direction of the  
39 majority of the trustees and who notified any cotrustee of the dissent ~~at~~  
40 or before the time of the action is not liable for the action ~~unless the~~  
41 ~~action is a serious breach of trust.~~

" in writing."

Strike

The changes strike reference to "serious" and require the dissent of a cotrustee to be in writing to avoid liability for an action which he or she joined.

42 Sec. 54. (UTC 704) VACANCY IN TRUSTEESHIP; APPOINT-  
43 MENT OF SUCCESSOR. (a) A vacancy in a trusteeship occurs if:

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- 1 (1) A person designated as trustee rejects the trusteeship;
- 2 (2) a person designated as trustee cannot be identified or does not
- 3 exist;
- 4 (3) a trustee resigns;
- 5 (4) a trustee is disqualified or removed;
- 6 (5) a trustee dies; or
- 7 (6) a guardian or conservator is appointed for an individual serving
- 8 as trustee.

9 (b) If one or more cotrustees remain in office, a vacancy in a trustee-  
 10 teeship need not be filled. A vacancy in a trusteeship must be filled if the  
 11 trust has no remaining trustee.

12 (c) A vacancy in a trusteeship required to be filled must be filled in  
 13 the following order of priority:

- 14 (1) By a person designated in the terms of the trust to act as successor
- 15 trustee;
- 16 (2) by a person appointed by unanimous agreement of the qualified
- 17 beneficiaries; or
- 18 (3) by a person appointed by the court.

19 ~~(d)~~ Whether or not a vacancy in a trusteeship exists or is required to  
 20 be filled, the court may appoint an additional trustee or special fiduciary  
 21 whenever the court considers the appointment necessary for the admin-  
 22 istration of the trust.

23 Sec. 55. (UTC 705) RESIGNATION OF TRUSTEE. (a) A trustee  
 24 may resign:

- 25 (1) Upon at least 30 days' notice to the qualified beneficiaries and all
- 26 cotrustees; or
- 27 (2) with the approval of the court.

28 (b) In approving a resignation, the court may issue orders and impose  
 29 conditions reasonably necessary for the protection of the trust property.

30 (c) Any liability of a resigning trustee or of any sureties on the trustee's  
 31 bond for acts or omissions of the trustee is not discharged or affected  
 32 by the trustee's resignation.

33 Sec. 56. (UTC 706) REMOVAL OF TRUSTEE. (a) The settlor, a  
 34 cotrustee, or a beneficiary may request the court to remove a trustee, or  
 35 a trustee may be removed by the court on its own initiative.

36 (b) The court may remove a trustee if:

- 37 (1) The trustee has committed a ~~serious~~ breach of trust;
- 38 (2) lack of cooperation among cotrustees substantially impairs the ad-  
 39 ministration of the trust;
- 40 (3) because of unfitness, unwillingness, or persistent failure of the  
 41 trustee to administer the trust effectively, the court determines that re-  
 42 moval of the trustee best serves the interests of the beneficiaries; or
- 43 (4) there has been a substantial change of circumstances ~~or removal~~

"of a noncharitable trust that is"

"(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:  
(1) by a person designated in the terms of the trust to act as successor trustee;  
(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the [attorney general] concurs in the selection; or  
(3) by a person appointed by the court.  
(e)"

" if living."

"qualified"

Strike

"and is consistent with the terms of the trust"

These changes were included in the 2001 amendments to the 2000 Uniform Trust Code by the Uniform Law Commissioners.

These changes were included in the 2001 amendments to the 2000 Uniform Trust Code by the Uniform Law Commissioners.

This change provides that a beneficiary must possess a vested income interest or vested remainder interest in a trust to have standing to request removal of a trustee.

The Kansas Bar Association proposed that the phrase "is consistent with the terms of the trust" be inserted at section 56 (b)(3), 56 (b)(4), 61 (a) and 61 (g) to emphasize that wishes of the settlor as expressed by the terms of the trust be given consideration."

1 ~~is requested by all of the qualified beneficiaries,~~ the court finds that re-  
 2 moval of the trustee best serves the interests of all of the beneficiaries "and"  
 3 ~~and~~ is not inconsistent with a material purpose of the trust, and a suitable  
 4 cotrustee or successor trustee is available.

5 (c) Pending a final decision on a request to remove a trustee, or in  
 6 lieu of or in addition to removing a trustee, the court may order such  
 7 appropriate relief under subsection (b) of section 78, and amendments  
 8 thereto, as may be necessary to protect the trust property or the interests  
 9 of the beneficiaries.

10 **Sec. 57. (UTC 707) DELIVERY OF PROPERTY BY FORMER**  
 11 **TRUSTEE.** (a) Unless a cotrustee remains in office or the court other-  
 12 wise orders, and until the trust property is delivered to a successor trustee  
 13 or other person entitled to it, a trustee who has resigned or been removed  
 14 has the duties of a trustee and the powers necessary to protect the trust  
 15 property.

16 (b) A trustee who has resigned or been removed shall proceed ex-  
 17 pediently to deliver the trust property within the trustee's possession to  
 18 the cotrustee, successor trustee, or other person entitled to it.

19 **Sec. 58. (UTC 708) COMPENSATION OF TRUSTEE.** (a) If the  
 20 terms of a trust do not specify the trustee's compensation, a trustee is  
 21 entitled to compensation that is reasonable under the circumstances.

22 (b) If the terms of a trust specify the trustee's compensation, the  
 23 trustee is entitled to be compensated as provided, except as such com-  
 24 pensation may be increased or decreased upon approval by the trustee  
 25 and by unanimous consent of the qualified beneficiaries who do not have  
 26 a conflict of interest.

27 (c) If the terms of a trust specify the trustee's compensation, the  
 28 trustee is entitled to be compensated as specified, but the court may allow  
 29 more or less compensation if:

30 (1) The duties of the trustee are substantially different from those  
 31 contemplated when the trust was created; or

32 (2) the compensation specified by the terms of the trust would be  
 33 unreasonably low or high.

34 **Sec. 59. (UTC 709) REIMBURSEMENT OF EXPENSES.** (a) A  
 35 trustee is entitled to be reimbursed out of the trust property, with interest  
 36 as appropriate, for:

37 (1) Expenses that were properly incurred in the administration of the  
 38 trust; and

39 (2) to the extent necessary to prevent unjust enrichment of the trust,  
 40 expenses that were not properly incurred in the administration of the  
 41 trust.

42 (b) An advance by the trustee of money for the protection of the trust  
 43 gives rise to a lien against trust property to secure reimbursement with

322  
 The Kansas Bar Association objected to allowing a trustee to be removed by the court upon the request of all of the qualified beneficiaries.

The Kansas Bar Association proposed that the phrase "is consistent with the terms of the trust" be inserted at section 56 (b)(3), 56 (b)(4), 61 (a) and 61 (g) to emphasize that wishes of the settlor as expressed by the terms of the trust be given consideration."

1 reasonable interest.

2 Sec. 60. (UTC 801) DUTY TO ADMINISTER TRUST. Upon ac-  
3 ceptance of a trusteeship, the trustee shall administer the trust in good  
4 faith, in accordance with its terms and purposes and the interests of the  
5 beneficiaries, and in accordance with this code.

6 Sec. 61. (UTC 802) DUTY OF LOYALTY. (a) A trustee shall ad-  
7 minister the trust solely in the interests of the beneficiaries.

"consistent with the terms of the trust and"

8 (b) Subject to the rights of persons dealing with or assisting the trust-  
9 tee as provided in section 89, and amendments thereto, a sale, encum-  
10 brance, or other transaction involving the investment or management of  
11 trust property entered into by the trustee for the trustee's own personal  
12 account or which is otherwise affected by a conflict between the trustee's  
13 fiduciary and personal interests is voidable by a beneficiary affected by  
14 the transaction unless:

- 15 (1) The transaction was authorized by the terms of the trust;
- 16 (2) the transaction was approved by the court;
- 17 (3) the beneficiary did not commence a judicial proceeding within  
18 the time allowed by section 82, and amendments thereto;
- 19 (4) the beneficiary consented to the trustee's conduct, ratified the  
20 transaction, or released the trustee in compliance with section 86, and  
21 amendments thereto; or
- 22 (5) the transaction involves a contract entered into or claim acquired  
23 by the trustee before the person became or contemplated becoming  
24 trustee.

25 (c) A sale, encumbrance, or other transaction involving the invest-  
26 ment or management of trust property is presumed to be affected by a  
27 conflict between personal and fiduciary interests if it is entered into by  
28 the trustee with:

- 29 (1) The trustee's spouse;
- 30 (2) the trustee's descendants, siblings, parents, or their spouses;
- 31 (3) an agent or attorney of the trustee; or
- 32 (4) a corporation or other person or enterprise in which the trustee,  
33 or a person that owns a significant interest in the trustee, has an interest  
34 that might affect the trustee's best judgment.

35 (d) A transaction between a trustee and a beneficiary that does not  
36 concern trust property but that occurs during the existence of the trust  
37 or while the trustee retains significant influence over the beneficiary and  
38 from which the trustee obtains an advantage is voidable by the beneficiary  
39 unless the trustee establishes that the transaction was fair to the  
40 beneficiary.

41 (e) A transaction not concerning trust property in which the trustee  
42 engages in the trustee's individual capacity involves a conflict between  
43 personal and fiduciary interests if the transaction concerns an opportunity

The Kansas Bar Association proposed that the phrase "is consistent with the terms of the trust" be inserted at section 56 (b)(3), 56 (b)(4), 61 (a) and 61 (g) to emphasize that wishes of the settlor as expressed by the terms of the trust be given consideration.

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1 properly belonging to the trust.

2 (f) An investment by a trustee in securities of an investment company  
3 or investment trust to which the trustee, or its affiliate, provides services  
4 in a capacity other than as trustee is not presumed to be affected by a  
5 conflict between personal and fiduciary interests if the investment complies  
6 with the prudent investor rule of article 9 of this code. The trustee  
7 may be compensated by the investment company or investment trust for  
8 providing those services out of fees charged to the trust if the trustee at  
9 least annually notifies the persons entitled under section 72, and amend-  
10 ments thereto, to receive a copy of the trustee's annual report of the rate  
11 ~~and method by which the compensation was determined.~~

\_\_\_\_\_ "formula or"

\_\_\_\_\_ Strike

12 (g) In voting shares of stock or in exercising powers of control over  
13 similar interests in other forms of enterprise, the trustee shall act in the  
14 best interests of the beneficiaries. ~~If the trust is the sole owner of a cor-~~  
15 ~~poration or other form of enterprise, the trustee shall elect or appoint~~  
16 ~~directors or other managers who will manage the corporation or enter-~~  
17 ~~prise in the best interests of the beneficiaries.~~

\_\_\_\_\_ "and consistent with the terms of the trust"

18 (h) This section does not preclude the following transactions, if fair  
19 to the beneficiaries:

20 (1) An agreement between a trustee and a beneficiary relating to the  
21 appointment or compensation of the trustee;

22 (2) payment of reasonable compensation to the trustee;

23 (3) a transaction between a trust and another trust, decedent's estate,  
24 or conservatorship of which the trustee is a fiduciary or in which a ben-  
25 eficiary has an interest;

26 (4) a deposit of trust money in a regulated financial-service institution  
27 operated by the trustee; or

28 (5) an advance by the trustee of money for the protection of the trust.

29 (i) The court may appoint a special fiduciary to make a decision with  
30 respect to any proposed transaction that might violate this section if en-  
31 tered into by the trustee.

32 Sec. 62. (UTC 803) IMPARTIALITY. If a trust has two or more  
33 beneficiaries, the trustee shall act impartially in investing, managing, and  
34 distributing the trust property, giving due regard to the beneficiaries'  
35 respective interests.

36 Sec. 63. (UTC 804) PRUDENT ADMINISTRATION. A trustee  
37 shall administer the trust as a prudent person would, by considering the  
38 purposes, terms, distributional requirements, and other circumstances of  
39 the trust. In satisfying this standard, the trustee shall exercise reasonable  
40 care, skill, and caution.

41 Sec. 64. (UTC 805) COSTS OF ADMINISTRATION. In admin-  
42 istering a trust, the trustee may incur only costs that are reasonable in  
43 relation to the trust property, the purposes of the trust, and the skills of

This change conforms this section to current Kansas Law.

The Kansas Bar Association proposed that the phrase "is consistent with the terms of the trust" be inserted at section 56 (b)(3), 56 (b)(4), 61 (a) and 61 (g) to emphasize that wishes of the settlor as expressed by the terms of the trust be given consideration."

1 the trustee.

2 Sec. 65. (UTC 806) **TRUSTEE'S SKILLS.** A trustee who has spe-  
3 cial skills or expertise, or is named trustee in reliance upon the trustee's  
4 representation that the trustee has special skills or expertise, shall use  
5 those special skills or expertise.

6 Sec. 66. (UTC 807) **DELEGATION BY TRUSTEE.** (a) A trustee  
7 may delegate duties and powers, other than investment and management  
8 functions, that a prudent trustee of comparable skills could properly del-  
9 egate under the circumstances. The trustee shall exercise reasonable care,  
10 skill, and caution in:

11 (1) Selecting an agent;

12 (2) establishing the scope and terms of the delegation, consistent with  
13 the purposes and terms of the trust; and .

14 (3) periodically reviewing the agent's actions in order to monitor the  
15 agent's performance and compliance with the terms of the delegation.

16 (b) A trustee may delegate investment and management functions in  
17 accord with K.S.A. 2000 Supp. 58-24a01 *et seq.*, and amendments thereto.

18 (c) In performing a delegated function, an agent owes a duty to the  
19 trust to exercise reasonable care to comply with the terms of the  
20 delegation.

21 (d) A trustee who complies with subsection (a) is not liable to the  
22 beneficiaries or to the trust for an action of the agent to whom the func-  
23 tion was delegated.

24 (e) By accepting a delegation of powers or duties from the trustee of  
25 a trust that is subject to the law of this state, an agent submits to the  
26 jurisdiction of the courts of this state.

27 Sec. 67. (UTC 808) **POWERS TO DIRECT.** (a) While a trust is  
28 revocable, the trustee may follow a direction of the settlor that is contrary  
29 to the terms of the trust.

30 (b) If the terms of a trust confer upon a person other than the settlor  
31 of a revocable trust power to direct certain actions of the trustee, the  
32 trustee shall act in accordance with an exercise of the power unless the  
33 attempted exercise is manifestly contrary to the terms of the trust or the  
34 trustee knows the attempted exercise would constitute a serious breach  
35 of a fiduciary duty that the person holding the power owes to the bene-  
36 ficiaries of the trust.

37 (c) The terms of a trust may confer upon a trustee or other person a  
38 power to direct the modification or termination of the trust.

39 (d) A person, other than a beneficiary, who holds a power to direct  
40 is presumptively a fiduciary who, as such, is required to act in good faith  
41 with regard to the purposes of the trust and the interests of the benefi-  
42 ciaries. The holder of a power to direct is liable for any loss that results  
43 from breach of a fiduciary duty.

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22

1 Sec. 68. (UTC 809) CONTROL AND PROTECTION OF  
2 TRUST PROPERTY. A trustee shall take reasonable steps to take con-  
3 trol of and protect the trust property.

4 Sec. 69. (UTC 810) RECORDKEEPING AND IDENTIFICA-  
5 TION OF TRUST PROPERTY. (a) A trustee shall keep adequate re-  
6 cords of the administration of the trust.

7 (b) A trustee shall keep trust property separate from the trustee's own  
8 property.

9 (c) Except as otherwise provided in subsection (d), a trustee shall  
10 cause the trust property to be designated so that the interest of the trust,  
11 to the extent feasible, appears in records maintained by a party other than  
12 a trustee or beneficiary.

13 (d) If the trustee maintains records clearly indicating the respective  
14 interests, a trustee may invest as a whole the property of two or more  
15 separate trusts.

16 Sec. 70. (UTC 811) ENFORCEMENT AND DEFENSE OF  
17 CLAIMS. A trustee shall take reasonable steps to enforce claims of the  
18 trust and to defend claims against the trust.

19 Sec. 71. (UTC 812) COLLECTING TRUST PROPERTY. A trus-  
20 tee shall take reasonable steps to compel a former trustee or other person  
21 to deliver trust property to the trustee, and to redress a breach of trust  
22 known to the trustee to have been committed by a former trustee.

23 Sec 72. (UTC 813) DUTY TO INFORM AND REPORT. (a) A  
24 trustee shall keep the qualified beneficiaries of the trust reasonably in-  
25 formed about the administration of the trust and of the material facts  
26 necessary for them to protect their interests. Unless unreasonable under  
27 the circumstances, a trustee shall promptly respond to a beneficiary's  
28 request for information related to the administration of the trust.

29 (b) A trustee:

30 (1) Upon request of a beneficiary, shall promptly furnish to the ben-  
31 eficiary a copy of the trust instrument;

32 (2) within 60 days after accepting a trusteeship, shall notify the qual-  
33 ified beneficiaries of the acceptance and of the trustee's name, address,  
34 and telephone number;

35 (3) within 60 days after the date the trustee acquires knowledge of  
36 the creation of an irrevocable trust, or the date the trustee acquires knowl-  
37 edge that a formerly revocable trust has become irrevocable, whether by  
38 the death of the settlor or otherwise, shall notify the qualified benefi-  
39 ciaries of the trust's existence, of the identity of the settlor or settlors, of  
40 the right to request a copy of the trust instrument and of the right to a  
trustee's report as provided in subsection (c); and

42 (4) shall notify the qualified beneficiaries in advance of any change  
43 in the method or rate of the trustee's compensation.

"(e) Any estate in real property may be acquired  
in the trust name. Title acquired in the trust name  
can be conveyed only in the trust name."

"qualified"

"qualified"

"qualified"

This change was made at the request of the Title Standards Committee and Kansas Land Title Association to allow real estate to be taken in the name of the trust.

The addition of the word "qualified" several places in the section limits its application to persons who possess a vested income or remainder interest in a trust.

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1 (c) A trustee shall send to the distributees or permissible distributees  
 2 of trust income or principal, and to other qualified ~~or nonqualified~~ ben-  
 3 efi- cians who request it, at least annually and at the termination of the  
 4 trust, a report of the trust property including ~~its rate of return~~, liabilities,  
 5 receipts and disbursements, including the source and amount of the trust-  
 6 tee's compensation, a listing of the trust assets and, if feasible, their re-  
 7 spective market values. Upon a vacancy in a trusteeship, unless a cotrustee  
 8 remains in office, a report must be sent to the qualified beneficiaries by  
 9 the former trustee. A personal representative, conservator, or guardian  
 10 may send the qualified beneficiaries a report on behalf of a deceased or  
 11 incapacitated trustee.

Strike

" and if requested, the trust's Association of  
 Investment Management and Research compliant  
 rate of return"

"qualified"

"qualified"

12 (d) A beneficiary may waive the right to a trustee's report or other  
 13 information otherwise required to be furnished under this section. A ben-  
 14 efi- cary, with respect to future reports and other information, may with-  
 15 draw a waiver previously given.

"(e) Those Provisions are inapplicable as to  
 notice to persons other than a surviving spouse  
 so long as a surviving spouse is or may be  
 entitled to receive income or principal  
 distributions from a trust, or holds any power  
 of appointment therein, and where any or all  
 qualified beneficiaries are the issue of the  
 surviving spouse."

Strike

16 ~~Sec. 73. (UTC 814) DISCRETIONARY POWERS, TAX SAV-~~  
 17 ~~INGS.~~ Notwithstanding the breadth of discretion granted to a trustee in  
 18 the terms of the trust, including the use of such terms as "absolute,"  
 19 "sole," or "uncontrolled," the trustee shall exercise a discretionary power  
 20 in good faith and in accordance with the terms and purposes of the trust  
 21 and the interests of the beneficiaries.

22 Sec 74. (UTC 815) GENERAL POWERS OF TRUSTEE. (a) A  
 23 trustee, without authorization by the court, may exercise:

- 24 (1) Powers conferred by the terms of the trust; or
- 25 (2) except as limited by the terms of the trust:
- 26 (A) All powers over the trust property which an unmarried competent
- 27 owner has over individually owned property;
- 28 (B) any other powers appropriate to achieve the proper investment,
- 29 management, and distribution of the trust property; and
- 30 (C) any other powers conferred by this code.

31 (b) The exercise of a power is subject to the fiduciary duties pre-  
 32 scribed by this article.

33 Sec. 75. (UTC 816) SPECIFIC POWERS OF TRUSTEE. With-  
 34 out limiting the authority conferred by section 74, and amendments  
 35 thereto, a trustee may:

- 36 (1) Collect trust property and accept or reject additions to the trust
- 37 property from a settlor or any other person;
- 38 (2) acquire or sell property, for cash or on credit, at public or private
- 39 sale;
- 40 (3) exchange, partition, or otherwise change the character of trust
- 41 property;
- 42 (4) deposit trust money in an account in a regulated financial-service
- 43 institution;

This section is amended to require the trustee to provide a rate of return only upon request. In addition, it makes reference to the Association of Investment Management and Research which sets the industry standard for reporting.

The Kansas Bar Association proposed that new subsection "(e)" be added because "...the KBA believes this section could easily cause practical problems and cause family tensions for trusts drafted by husband and wife as a unit. Traditional trust planning calls for the use of A/B trust drafting so that when the first spouse dies, those assets are held in trust for the benefit of the survivor in the marital and family trust plan. It is the usual intention of the husband and wife that the trust reports not be given to the children during the lifetime of the survivor for privacy reasons. However, under the requirements of this section, the trustee would be required to provide full notice to the children at the time of the death of the first spouse. The KBA believes this is bad policy for trusts drafted as a unit plan between spouses."

The headnote relating to tax savings has been stricken because the language to which it refers is not a part of the bill.

1 (5) borrow money, with or without security, and mortgage or pledge  
2 trust property for a period within or extending beyond the duration of  
3 the trust;

4 (6) with respect to an interest in a proprietorship, partnership, limited  
5 liability company, business trust, corporation, or other form of business  
6 or enterprise, continue the business or other enterprise and take any  
7 action that may be taken by shareholders, members, or property owners,  
8 including merging, dissolving, or otherwise changing the form of business  
9 organization or contributing additional capital;

10 (7) with respect to stocks or other securities, exercise the rights of an  
11 absolute owner, including the right to:

12 (A) Vote, or give proxies to vote, with or without power of substitu-  
13 tion, or enter into or continue a voting trust agreement;

14 (B) hold a security in the name of a nominee or in other form without  
15 disclosure of the trust so that title may pass by delivery;

16 (C) pay calls, assessments, and other sums chargeable or accruing  
17 against the securities, and sell or exercise stock subscription or conversion  
18 rights; and

19 (D) deposit the securities with a depository or other regulated finan-  
20 cial-service institution;

21 (8) with respect to an interest in real property, construct, or make  
22 ordinary or extraordinary repairs to, alterations to, or improvements in,  
23 buildings or other structures, demolish improvements, raze existing or  
24 erect new party walls or buildings, subdivide or develop land, dedicate  
25 land to public use or grant public or private easements and make or vacate  
26 plats and adjust boundaries;

27 (9) enter into a lease for any purpose as lessor or lessee, including a  
28 lease or other arrangement for exploration and removal of natural re-  
29 sources, with or without the option to purchase or renew, for a period  
30 within or extending beyond the duration of the trust;

31 (10) grant an option involving a sale, lease, or other disposition of  
32 trust property or acquire an option for the acquisition of property, in-  
33 cluding an option exercisable beyond the duration of the trust and exer-  
34 cise an option so acquired;

35 (11) insure the property of the trust against damage or loss and insure  
36 the trustee, the trustee's agents, and beneficiaries against liability arising  
37 from the administration of the trust;

38 (12) abandon or decline to administer property of no value or of in-  
39 sufficient value to justify its collection or continued administration;

40 (13) with respect to possible liability for violation of environmental  
law:

41 (A) Inspect or investigate property the trustee holds or has been  
42 asked to hold, or property owned or operated by an organization in which  
43

33

1 the trustee holds or has been asked to hold an interest, for the purpose  
2 of determining the application of environmental law with respect to the  
3 property;

4 (B) take action to prevent, abate, or otherwise remedy any actual or  
5 potential violation of any environmental law affecting property held di-  
6 rectly or indirectly by the trustee, whether taken before or after the as-  
7 sertion of a claim or the initiation of governmental enforcement;

8 (C) decline to accept property into trust or disclaim any power with  
9 respect to property that is or may be burdened with liability for violation  
10 of environmental law;

11 (D) compromise claims against the trust which may be asserted for  
12 an alleged violation of environmental law; and

13 (E) pay the expense of any inspection, review, abatement, or remedial  
14 action to comply with environmental law;

15 (14) pay or contest any claim, settle a claim by or against the trust,  
16 and release, in whole or in part, a claim belonging to the trust;

17 (15) pay taxes, assessments, compensation of the trustee and of em-  
18 ployees and agents of the trust and other expenses incurred in the ad-  
19 ministration of the trust;

20 (16) exercise elections with respect to federal, state, and local taxes;

21 (17) select a mode of payment under any employee benefit or retire-  
22 ment plan, annuity, or life insurance payable to the trustee, exercise rights  
23 thereunder, including exercise of the right to indemnification for ex-  
24 penses and against liabilities, and take appropriate action to collect the  
25 proceeds;

26 (18) make loans out of trust property, including loans to a beneficiary  
27 on terms and conditions the trustee considers to be fair and reasonable  
28 under the circumstances, and the trustee has a lien on future distributions  
29 for repayment of those loans;

30 (19) pledge trust property to guarantee loans made by others to the  
31 beneficiary;

32 (20) appoint a trustee to act in another jurisdiction with respect to  
33 trust property located in the other jurisdiction, confer upon the appointed  
34 trustee all of the powers and duties of the appointing trustee, require that  
35 the appointed trustee furnish security, and remove any trustee so  
36 appointed;

37 (21) pay an amount distributable to a beneficiary who is under a legal  
38 disability or who the trustee reasonably believes is incapacitated, by pay-  
39 ing it directly to the beneficiary or applying it for the beneficiary's benefit,  
40 or by:

41 (A) Paying it to the beneficiary's conservator or, if the beneficiary  
42 does not have a conservator, the beneficiary's guardian;

43 (B) paying it to the beneficiary's custodian, attorney-in-fact, custodial

3-31

1 trustee or other person with legal authority to receive such funds for the  
2 benefit of the beneficiary;

3 (C) if the trustee does not know of a conservator, guardian, custodian,  
4 or custodial trustee, paying it to an adult relative or other person having  
5 legal or physical care or custody of the beneficiary, to be expended on  
6 the beneficiary's behalf; or

7 (D) managing it as a separate fund on the beneficiary's behalf, subject  
8 to the beneficiary's continuing right to withdraw the distribution;

9 (22) on distribution of trust property or the division or termination  
10 of a trust, make distributions in divided or undivided interests, allocate  
11 particular assets in proportionate or disproportionate shares, value the  
12 trust property for those purposes, and adjust for resulting differences in  
13 valuation;

14 (23) resolve a dispute concerning the interpretation of the trust or its  
15 administration by mediation, arbitration, or other procedure for alterna-  
16 tive dispute resolution;

17 (24) prosecute or defend an action, claim or judicial proceeding in  
18 any jurisdiction to protect trust property and the trustee in the perform-  
19 ance of the trustee's duties;

20 (25) sign and deliver contracts and other instruments that are useful  
21 to achieve or facilitate the exercise of the trustee's powers; and

22 (26) on termination of the trust, exercise the powers appropriate to  
23 wind up the administration of the trust and distribute the trust property  
24 to the persons entitled to it.

25 Sec. 76. (UTC 817) DISTRIBUTION UPON TERMINATION.

26 (a) Upon termination or partial termination of a trust, the trustee may  
27 send to the beneficiaries a proposal for distribution. The right of any  
28 beneficiary to object to the proposed distribution terminates if the ben-  
29 eficiary does not notify the trustee of an objection within 30 days after  
30 the proposal was sent but only if the proposal informed the beneficiary  
31 of the right to object and of the time allowed for objection.

"qualified"

"qualified"

32 (b) Upon the occurrence of an event terminating or partially termi-  
33 nating a trust, the trustee shall proceed expeditiously to distribute the  
34 trust property to the persons entitled to it, subject to the right of the  
35 trustee to retain a reasonable reserve for the payment of debts, expenses,  
36 and taxes.

37 (c) A release, upon termination or partial termination of a trust, by a  
38 beneficiary of a trustee from liability for breach of trust is invalid to the  
39 extent:

40 (1) It was induced by improper conduct of the trustee; or

41 (2) the beneficiary, at the time of the release, did not know of the  
42 beneficiary's rights or of the material facts relating to the breach.

43 Sec. 77. (UTC 901) APPLICATION OF UNIFORM PRUDENT

1 INVESTOR ACT. Notwithstanding any provisions of the Kansas uniform  
2 trust act to the contrary, K.S.A. 2000 Supp. 59-24a01 *et seq.*, and amend-  
3 ments thereto shall govern the investment and management of trust  
4 assets.

5 Sec. 78. (UTC 1001) REMEDIES FOR BREACH OF TRUST.

6 (a) A violation by a trustee of a duty the trustee owes to a beneficiary is  
7 a breach of trust.

8 (b) To remedy a breach of trust that has occurred or may occur, the  
9 court may:

- 10 (1) Compel the trustee to perform the trustee's duties;
- 11 (2) enjoin the trustee from committing a breach of trust;
- 12 (3) compel the trustee to redress a breach of trust by paying money,  
13 restoring property, or other means;
- 14 (4) order a trustee to account;
- 15 (5) appoint a special fiduciary to take possession of the trust property  
16 and administer the trust;
- 17 (6) suspend the trustee;
- 18 (7) remove the trustee as provided in section 56, and amendments  
19 thereto;
- 20 (8) reduce or deny compensation to the trustee;
- 21 (9) subject to section 89, and amendments thereto, void an act of the  
22 trustee, impose a lien or a constructive trust on trust property or trace  
23 trust property wrongfully disposed of and recover the property or its pro-  
24 ceeds; or
- 25 (10) order any other appropriate relief.

26 Sec. 79. (UTC 1002) DAMAGES FOR BREACH OF TRUST. (a)  
27 A trustee who commits a breach of trust is liable to the beneficiaries  
28 affected for the greater of:

- 29 (1) The amount required to restore the value of the trust property  
30 and trust distributions to what they would have been had the breach not  
31 occurred;
- 32 (2) the profit the trustee made by reason of the breach; or
- 33 (3) if the trustee embezzles or knowingly converts to the trustee's  
34 own use any of the personal property of the trust, the trustee shall be  
35 liable for double the value of the property so embezzled or converted.

36 (b) Except as otherwise provided in this subsection, if more than one  
37 trustee is liable to the beneficiaries for a breach of trust, a trustee is  
38 entitled to contribution from the other trustee or trustees. A trustee is  
39 not entitled to contribution if the trustee was substantially more at fault  
40 than another trustee or if the trustee committed the breach of trust in  
41 bad faith or with reckless indifference to the purposes of the trust or the  
42 interests of the beneficiaries. A trustee who received a benefit from the  
43 breach of trust is not entitled to contribution from another trustee to the

3-33

1 extent of the benefit received.

2 (c) The provisions of this section shall not exclude an award of pu-  
3 nitive damages.

4 Sec. 80. (UTC 1003) **DAMAGES IN ABSENCE OF BREACH.**

5 (a) A trustee is accountable to an affected beneficiary for any profit made  
6 by the trustee, other than compensation earned, arising from the admin-  
7 istration of the trust, even absent a breach of trust.

8 (b) Absent a breach of trust, a trustee is not liable to a beneficiary  
9 for a loss or depreciation in the value of trust property or for not having  
10 made a profit.

11 Sec. 81. (UTC 1004) **ATTORNEY FEES AND COSTS.** In a ju-  
12 dicial proceeding involving the administration of a trust, the court, as  
13 justice and equity may require, may award costs and expenses, including  
14 reasonable attorney fees, to any party, to be paid by another party or from  
15 the trust that is the subject of the controversy.

16 Sec. 82. (UTC 1005) **LIMITATION OF ACTION AGAINST**  
17 **TRUSTEE.** (a) A beneficiary may not commence a proceeding against a  
18 trustee for breach of trust more than ~~two years~~ after the date the bene-  
19 ficiary or a representative of the beneficiary was sent a report that ade-  
20 quately disclosed the existence of a potential claim for breach of trust and  
21 informed the beneficiary of the time allowed for commencing a  
22 proceeding.

"one year"

23 (b) A report adequately discloses the existence of a potential claim  
24 for breach of trust if it provides sufficient information so that the bene-  
25 ficiary or representative knows of the potential claim or should have in-  
26 quired into its existence.

27 (c) If subsection (a) does not apply, a judicial proceeding by a ben-  
28 eficiary against a trustee for breach of trust must be commenced within  
29 ~~five~~ years after the first to occur of:

"two"

30 (1) The removal, resignation, or death of the trustee;

31 (2) the termination of the beneficiary's interest in the trust; or

32 (3) the termination of the trust.

33 Sec. 83. (UTC 1006) **RELIANCE ON TRUST INSTRUMENT.**

34 A trustee who acts in reasonable reliance on the terms of the trust as  
35 expressed in the trust instrument is not liable to a beneficiary for a breach  
36 of trust to the extent the breach resulted from the reliance.

37 Sec. 84 (UTC 1007) **EVENT AFFECTING ADMINISTRA-**  
38 **TION OR DISTRIBUTION.** If the happening of an event, including  
39 marriage, divorce, performance of educational requirements, or death,  
40 affects the administration or distribution of a trust, a trustee who has  
41 exercised reasonable care to ascertain the happening of the event is not  
42 liable for a loss resulting from the trustee's lack of knowledge.

43 Sec. 85. (UTC 1008) **EXCULPATION OF TRUSTEE.** (a) A term

The change in subsection (a) reduces the statute of limitations to one year, which is consistent with the Uniform Trust Code recommendation. In subsection (c) the statute of Limitations is reduced from the five years recommended by the Uniform Trust Code to two years.

PCB

1 of a trust relieving a trustee of liability for breach of trust is unenforceable  
2 to the extent that it:

3 (1) Relieves the trustee of liability for breach of trust committed in  
4 bad faith or with reckless indifference to the purposes of the trust or the  
5 interests of the beneficiaries; or

6 (2) was inserted as the result of an abuse by the trustee of a fiduciary  
7 or confidential relationship to the settlor.

8 (b) An exculpatory term drafted or caused to be drafted by the trustee  
9 is invalid as an abuse of a fiduciary or confidential relationship unless the  
10 trustee proves that the exculpatory term is fair under the circumstances  
11 and that its existence and contents were adequately communicated to the  
12 settlor.

13 Sec. 86. (UTC 1009) **BENEFICIARY'S CONSENT, RELEASE,**  
14 **OR RATIFICATION.** A trustee is not liable to a beneficiary for breach  
15 of trust if the beneficiary, ~~while having capacity,~~ consented to the conduct  
16 constituting the breach, released the trustee from liability for the breach,  
17 or ratified the transaction constituting the breach, unless:

Strike

18 (1) The consent, release, or ratification of the beneficiary was induced  
19 by improper conduct of the trustee; or

20 (2) at the time of the consent, release, or ratification, the beneficiary  
21 did not know of the beneficiary's rights or of the material facts relating  
22 to the breach.

23 Sec. 87. (UTC 1010) **LIMITATION ON PERSONAL LIABIL-**  
24 **ITY OF TRUSTEE.** (a) Except as otherwise provided in the contract, a  
25 trustee is not personally liable on a contract properly entered into in the  
26 trustee's fiduciary capacity in the course of administering the trust if the  
27 trustee in the contract disclosed the fiduciary capacity.

28 (b) A trustee is personally liable for torts committed in the course of  
29 administering a trust, or for obligations arising from ownership or control  
30 of trust property, including liability for violation of environmental law,  
31 only if the trustee is personally at fault.

32 (c) A claim based on a contract entered into by a trustee in the trust-  
33 tee's fiduciary capacity, on an obligation arising from ownership or control  
34 of trust property or on a tort committed in the course of administering a  
35 trust, may be asserted in a judicial proceeding against the trustee in the  
36 trustee's fiduciary capacity, whether or not the trustee is personally liable  
37 for the claim.

38 Sec. 88. (UTC 1011) **INTEREST AS GENERAL PARTNER.** (a)  
39 Except as otherwise provided in subsection (c) or unless personal liability  
40 is imposed in the contract, a trustee who holds an interest as a general  
41 partner in a general or limited partnership is not personally liable on a  
42 contract entered into by the partnership after the trust's acquisition of  
43 the interest if the fiduciary capacity was disclosed in the contract or in a

This change was included in the 2001  
amendments to the 2000 Uniform Trust Code  
by the Uniform Law Commissioners.



9/23/04

1 statement previously filed pursuant to the Kansas uniform partnership  
2 act, K.S.A. 2000 Supp. 56a-101 *et seq.*, and amendments thereto, or the  
3 revised uniform limited partnership act, K.S.A. 56-1a101 *et seq.*, and  
4 amendments thereto.

5 (b) Except as otherwise provided in subsection (c), a trustee who  
6 holds an interest as a general partner is not personally liable for torts  
7 committed by the partnership or for obligations arising from ownership  
8 or control of the interest unless the trustee is personally at fault.

9 (c) The immunity provided by this section does not apply if an inter-  
10 est in the partnership is held by the trustee in a capacity other than that  
11 of trustee or is held by the trustee's spouse or one or more of the trustee's  
12 descendants, siblings, or parents, or the spouse of any of them.

13 (d) If the trustee of a revocable trust holds an interest as a general  
14 partner, the settlor is personally liable for contracts and other obligations  
15 of the partnership as if the settlor were a general partner.

16 Sec. 89. (UTC 1012) PROTECTION OF PERSON DEALING  
17 WITH TRUSTEE. (a) A person other than a beneficiary who in good  
18 faith assists a trustee, or who in good faith and for value deals with a  
19 trustee, without knowledge that the trustee is exceeding or improperly  
20 exercising the trustee's powers is protected from liability as if the trustee  
21 properly exercised the power.

22 (b) A person other than a beneficiary who in good faith deals with a  
23 trustee is not required to inquire into the extent of the trustee's powers  
24 or the propriety of their exercise.

25 (c) A person who in good faith delivers assets to a trustee need not  
26 ensure their proper application.

27 (d) A person other than a beneficiary who in good faith assists a former  
28 trustee, or who in good faith and for value deals with a former trustee,  
29 without knowledge that the trusteeship has terminated is protected from  
30 liability as if the former trustee were still a trustee.

31 (e) Comparable protective provisions of other laws relating to com-  
32 mercial transactions or transfer of securities by fiduciaries prevail over  
33 the protection provided by this section.

34 Sec. 90. (UTC 1013) CERTIFICATION OF TRUST. (a) Instead  
35 of furnishing a copy of the trust instrument to a person other than a qualified  
36 beneficiary, the trustee may furnish to the person a certification of trust "an acknowledged"  
37 containing the following information:

38 (1) That the trust exists and the date the trust instrument was  
39 executed;

40 (2) the identity of the settlor;

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

42 (4) the powers of the trustee;

43 (5) the revocability or irrevocability of the trust and the identity of

The addition of "qualified" allows the providing of a certification of trust to contingent beneficiaries and holders of powers of appointment.

Current Kansas Law requires the certification of trust to be acknowledged.

2/26

1 any person holding a power to revoke the trust;

2 (6) the authority of cotrustees to sign or otherwise authenticate and  
3 whether all or less than all are required in order to exercise powers of  
4 the trustee;

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

6 (8) the manner of taking title to trust property.

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

9 (c) A certification of trust must state that the trust has not been re-  
10 voked, modified, or amended in any manner that would cause the rep-  
11 resentations contained in the certification of trust to be incorrect.

12 (d) A certification of trust need not contain the dispositive terms of  
13 a trust.

14 (e) A recipient of a certification of trust may require the trustee to  
15 furnish copies of those excerpts from the original trust instrument and  
16 later amendments which designate the trustee and confer upon the trust-  
17 tee the power to act in the pending transaction.

18 (f) A person who acts in reliance upon a certification of trust without  
19 knowledge that the representations contained therein are incorrect is not  
20 liable to any person for so acting and may assume without inquiry the  
21 existence of the facts contained in the certification. Knowledge of the  
22 terms of the trust may not be inferred solely from the fact that a copy of  
23 all or part of the trust instrument is held by the person relying upon the  
24 certification.

25 (g) A person who in good faith enters into a transaction in reliance  
26 upon a certification of trust may enforce the transaction against the trust  
27 property as if the representations contained in the certification were  
28 correct.

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

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

35 **Sec. 91. (UTC 1101) UNIFORMITY OF APPLICATION AND**  
36 **CONSTRUCTION.** In applying and construing this uniform act, consid-  
37 eration must be given to the need to promote uniformity of the law with  
38 respect to its subject matter among states that enact it.

39 **Sec. 92. (UTC 1102) ELECTRONIC RECORDS AND SIGNA-**  
40 **TURES.** The provisions of this code governing the legal effect, validity  
41 or enforceability of electronic records or electronic signatures, and of  
42 contracts formed or performed with the use of such records or signatures,  
43 conform to the requirements of section 102 of the electronic signatures

1 in global and national commerce act (15 U.S.C. § 7002) and supersede,  
 2 modify, and limit the requirements of the electronic signatures in global  
 3 and national commerce act.

4 Sec. 93. (UTC 1103) SEVERABILITY CLAUSE. If any provision  
 5 of this code or its application to any person or circumstances is held  
 6 invalid, the invalidity does not affect other provisions or applications of  
 7 this code which can be given effect without the invalid provision or ap-  
 8 plication, and to this end the provisions of this code are severable.

9 Sec. 94. (UTC 1106) APPLICATION TO EXISTING RELA-  
 10 TIONSHIPS. (a) Except as otherwise provided in this act, on the effec-  
 11 tive date of this act:

12 (1) This act applies to all trusts created before, on, or after its effective  
 13 date;

14 (2) this act applies to all judicial proceedings concerning trusts com-  
 15 menced on or after its effective date;

16 (3) this act applies to judicial proceedings concerning trusts com-  
 17 menced before its effective date unless the court finds that application of  
 18 a particular provision of this act would substantially interfere with the  
 19 effective conduct of the judicial proceedings or prejudice the rights of  
 20 the parties, in which case the particular provision of this act does not  
 21 apply and the superseded law applies;

22 (4) any rule of construction or presumption provided in this act ap-  
 23 plies to trust instruments executed before the effective date of the act  
 24 unless there is a clear indication of a contrary intent in the terms of the  
 25 trust; and

26 (5) an act done before the effective date of the act is not affected by  
 27 this act.

28 (b) If a right is acquired, extinguished, or barred upon the expiration  
 29 of a prescribed period that has commenced to run under any other statute  
 30 before the effective date of the act, that statute continues to apply to the  
 31 right even if it has been repealed or superseded.

32 Sec. 95. K.S.A. 58-1201, 58-1202, 58-1203, 58-1205, 58-1206, 58-  
 33 1207, 58-1208, 58-1209, 58-1210, 58-1211, 58-2404, 58-2405, 58-2409,  
 34 58-2410, 58-2411, 58-2412, 58-2413, 58-2415, 58-2417, 58-2420, 59-2295  
 35 and 59-2296 and K.S.A. 2000 Supp. 58-1204 are hereby repealed.

36 Sec. 96. This act shall take effect and be in force from and after  
 37 January 1, 2003, and its publication in the statute book.

"58-12a01, 58-12a02, 58-12a03, 58-12a04,  
 58-12a05, 58-12a06."

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 Repeal of 58-12a01 through 58-12a06 repeals a certification of trust statute which was enacted in 2001 and is similar to Uniform Trust Code section 1013.

Mark S. Beck, Director  
Department of Revenue  
Division of Property Valuation  
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Division of Property Valuation

MEMORANDUM

**TO:** Honorable John Vratil, Chairman Senate Judiciary Committee

**FROM:** Mark S. Beck, Director of Property Valuation 

**DATE:** March 8, 2002

**SUBJECT:** HB 2698 – Amend Sales Validation Questionnaire Statute

Thank you for the opportunity to provide input regarding House Bill 2698.

This bill would amend K.S.A. 79-1437e. This statute sets forth the exceptions to the general rule that a sales validation questionnaire is required in order to file a document with the register of deeds office that transfers an interest in real estate.

The purpose of K.S.A. 79-1437e and this bill is to avoid requiring the public to file unnecessary paperwork. The purpose of the sales validation questionnaire is to collect information about sales that may potentially reflect the fair market value of property, in order to promote accurate valuations for property tax purposes. K.S.A. 79-1437e and this bill recognize that certain transactions simply have no potential to provide useful information, and eliminate the need for a sales validation questionnaire under those circumstances.

Currently, a sales validation questionnaire is not required when property is transferred to a trust without consideration (K.S.A. 79-1437e (7)). This bill would adopt a similar provision for transfers made from a trust without consideration, which makes perfect sense.

In addition, a sales validation questionnaire is presently required two times when an affidavit of equitable interest associated with a contract for sale is filed on a property. Once when the affidavit is initially filed, and yet again when the title to the property is actually transferred at a later date. (K.S.A. 79-1437c).

The agreed-upon purchase price in a contract for sale may reflect a property's fair market value; therefore, it makes sense to collect the first sales validation questionnaire. However, the second sales validation questionnaire is duplicative and unnecessary. Therefore, we also support the amendment added by the House Judiciary Committee.

I appreciate the opportunity to convey our support for House Bill 2698.

55ud  
3-8-02  
att

March 8, 2002

**HOUSE BILL NO. 2698**

Honorable Chairman and Members of the Senate Judiciary Committee:

I am Bob Wunsch and live in Kingman, which is 40 miles West of Wichita. I have been engaged in the general practice of law for the past 44 years. I am here to testify in support of House Bill No. 2698 which offers an amendment to K.S.A. 79-1437(e).

Some time ago in conversation with Representative Mike O'Neal, I commented about an experience I had in transferring real estate from a trust to the entitled beneficiaries where there was no consideration. I found out that a transfer from a trust is not an exemption from the Kansas Real Estate Sales Validation Questionnaire, when transferring "to" a trust is exempt. K.S.A. 79-1437 provides a laundry list of transfers that are exempt from the requirement of completing the said Questionnaire. An exemption of a transfer "to" a trust was amended into the statute in Senate Bill 598 of the 1992 Session. Why the amendment did not include an exemption "from" a trust, I do not know. It seems to me the exemption should work both ways, *i.e.* "to" or "from" a trust when there is no consideration.

I certainly stand amenable to any knowledgeable explanation of why House Bill 2698 should not be passed and become law, but without such a revealing explanation I would urge the Committee to recommend for passage HB 2698.

Thank you.

WARD LOYD

123RD DISTRICT

"THE HEART OF GARDEN CITY"

1304 CLOUD CIRCLE, P.O. BOX 834  
GARDEN CITY, KS 67846  
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TOPEKA

HOUSE OF  
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JUSTICE OVERSIGHT  
SELECT COMMITTEE ON  
TOBACCO SECURITIZATION

TESTIMONY OF WARD LOYD  
IN SUPPORT OF HB 2769

March 8, 2002

Chairman Vratil and Committee Members:

I appear today on behalf of the City of Garden City, Kansas, and its residents, in support of favorable consideration of House Bill 2769. House Bill 2769 is identical to measures (House Bill 2775 and House Bill 2207) that was recommended for passage without amendment by the House Judiciary Committee in each 2000 and 2001, and then favorably acted upon (House Bill 2207) and passed out of the House of Representatives. Timing did not permit the issue to be scheduled for hearing in the Senate in 2000, and the Senate killed the bill during floor debate last year for reasons not yet identified to me. Thus, the matter is again submitted for consideration.

I provide you with testimony submitted from 2000 on HB 2775 by a representative of the City of Garden City, including a memorandum from the Investigations Division Commander of the Garden City Police Department. There is further submitted an issue paper, "Civil Approaches to Gang Abatement."

House Bill 2769 is modeled after a section of the California Penal Code (Section 186.20-186.28) known popularly as the "California Street Terrorism Enforcement and Prevention Act." The California code provision has been tested in court action, and upheld.

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Chairman Vratil and Members  
Senate Judiciary Committee  
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A review by Garden City officials of various intervention strategies designed to abate gang problems indicate two approaches that have been successful in other areas of the country. These primarily involve an anti-nuisance injunctive strategy against gangs or landlords or both, initiated by either the government or citizens. A secondary strategy involves educational efforts involving landlords, citizens, and students. HB 2769 addresses the former, and will be used as a part of the educational efforts.

The concept behind HB 2769 is "gang abatement" through the use of civil injunctions. Injunctions are easier to use, more efficient, and less costly than criminal prosecutions. Burdens of proof move from beyond a reasonable doubt to more likely true than not, and the need for and expense of providing appointed legal counsel avoided. Injunctions can be tailor-made to attack the specific gang conduct causing a public nuisance, and can target an area or a single locale – a flexibility that our judges do not presently enjoy. Injunctions serve as a vehicle to empower and mobilize neighborhoods, and provide a shelter to those who wish to take their neighborhood's back.

Neighbors must be contacted, and their support and declarations (affidavits) obtained. It is difficult to refute the declarations of residents or business owners who describe how their lives have been disrupted by gun shots, loud and vulgar language, fights or assaults, threats of violence, drinking alcohol in public, drug sales or abuse, and similar items. These declarations can be sealed by the Court and protect the residents from retaliation. All of this engenders cooperation between citizen and police, and build trust through establishment of partnerships.

Civil abatements do not replace criminal prosecutions, they complement them. This bill, if passed, will provide a tool by which to involve neighbors and neighborhoods in the process of community policing. If there is any incident in your communities of an increase in gang activity, this is a measure you should support and recommend to your local law enforcement officials and civil leaders.

In Session 2000 House Bill 2775 passed on final action by a vote of 123-0. Last year

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the final action vote on House Bill 2207 was 114-10. The measure came out of Senate Judiciary with a favorable recommendation, but was killed by a vote of 17-23.

It has been suggested to me that the measure was the subject of a spirited floor debate over the issue of "civil forfeitures," given that the ultimate remedy in a civil nuisance action is the taking and razing of an offending structure. If so, it is my take that a few may have taken advantage of a lack of knowledge on the part of a number of the members of the body about the intent of this measure and the public policy which supports the civil nuisance laws, which would be unfortunate. BH 2769 is not a "forfeiture" measure, but rather a community policing concept. Under the statutory scheme the possibility of a forfeiture does not arise until the very end, after all else has failed – and then only in a situation where the action is effectively for contempt, for failure to abide by the injunction order of the court.

Further, as you are aware, the Special Judiciary Committee looked at the issue of forfeitures this past interim, and unanimously agreed that there is no evidence or suggestion that problems exist with the forfeiture laws in Kansas, and that current statutory scheme is indicative of a reasonable public policy benefitting the common good, balancing civil liberties. As a result, no legislative action was recommended.

Thank you.



House Bill No. 2769

An Act concerning criminal procedure; relating to abatement of common nuisances; amending K.S.A. 22-3901 and repealing the existing section.

Section 1. The following unlawful activities and the use of real and personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

*(j) Any felony committed for the benefit of, at the direction of, or in association with*

*Any criminal street gang,  
with specific intent to*

*Promote, further or assist in any criminal conduct by gang members  
"criminal street gang" means any organization, association or group of three or more persons having as primary activities [yada] definition taken from Kansas Sentencing Guidelines*

Any real property used as a place where such activities are carried on or permitted to be carried on

and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises with such unlawful activities

Subject to provisions of K.S.A. 22-3902, 22-3903, and 22-3904

[parts not italicized is existing law]

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**22-3902. Procedure.** (1) Unless otherwise provided by law, proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be governed by the provisions of the Kansas code of civil procedure relating to the abatement of common nuisances.

(2) In *addition* to the procedure established by this section,

- ✓ if a person is arrested for an unlawful act listed in K.S.A. 22-3901, and amendments thereto,
- ✓ the attorney general, city, county or district attorney may
- ✓ petition the court for a hearing to determine whether an unlawful activity is or has been occurring on such owner's property.
- ✓ The owner of the property on which such person is or was committing an unlawful activity may be given notice of such hearing.

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- ✓ A hearing **shall be held** before the court within 30 days of the notification.
- ✓ If the court determines by a preponderance of the evidence that an unlawful act occurred,
- ✓ such act shall render void any lease under which a tenant holds possession, and shall cause the right of possession to revert to the owner who may evict the tenant.

If the owner does not commence eviction proceedings against the tenant within 30 days of the court determination, the attorney general or the city, county or district attorney may proceed to file a petition pursuant to subsection (3). The provisions of this subsection are in addition to any remedy provided pursuant to the residential landlord and tenant act.

- (3) Proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be instituted **only** in the name of the state of Kansas upon the petition of the attorney general or the city, county or district attorney to enjoin a nuisance within the city, county or district. *[no private remedy]*
- (4) The petition **shall**
  - ✓ describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted, and
  - ✓ shall identify the owner or person in charge of such real estate.
  - ✓ It shall describe any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used in such unlawful activity.
  - ✓ It shall pray for the particular relief sought with respect to such property.
- (5) The petition for injunction **may**
  - ✓ include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia, fixtures, appliances, musical instruments **or other personal property described** in the petition. *[notice, does not permit real estate seizure]*
  - ✓ If the court finds that there is probable cause to believe that the personal property described is or has been used for any of the unlawful purposes set forth in K.S.A. 22-3901 and amendments thereto,
  - ✓ the court may order the sheriff or other law enforcement officer to seize such personalty and to hold it in custody pending further order of the court.
  - ✓ An order for seizure **shall** particularly describe the personal property to be seized.
- (6) An order for seizure of materials alleged to be obscene *[would not be applicable in proceeding under HB 2769, since if that was the target or offense, could be done under current law]*
- (8) The provisions of K.S.A. 22-3901 through 22-3904, and amendments thereto, **shall not limit nor otherwise affect** proceedings under K.S.A. 60-908 *[civil injunction statute, which must be additionally complied with]* and amendments thereto, but shall be supplemental and in addition to, and not in lieu of, the remedy provided by that statute.

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(9) The attorney general or the city, county or district attorney *shall give notice of proceedings* under K.S.A. 22-3901 through 22-3904 and amendments thereto

- ✓ by sending a copy of the petition to enjoin a nuisance by certified mail, return receipt requested,
- ✓ to each person having ownership of or a security interest in the property if: (a) The property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact at the time of seizure; or (c) the property is subject to a security interest perfected in accordance with the uniform commercial code.

History: L. 1970, ch. 129, § 22-3902; L. 1990, ch. 114, § 2; L. 1994, ch. 271, § 1; July 1.

**22-3903. Proceedings in rem.** [*i.e., against property only, and not against the person*]

The real or personal property against which the order of abatement is sought may be named as a party defendant in a proceeding under this article.

In such case, summons shall be served on the owner or person in possession of such property.

Any person claiming an interest in the property shall, upon application be permitted to intervene as a party defendant.

History: L. 1970, ch. 129, § 22-3903; July 1.

**22-3904. Judgment.**

(1) Upon final judgment that any real property is being or has been used as a place where any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto are carried on or permitted to be carried on,

the court *may* order

- ✓ that any house, building, room or other structure located on such real estate be closed and padlocked for a period of not more than two years,
- ✓ subject to modification in the manner provided by K.S.A. 60-910 and amendments thereto,

if the court finds that the owner of the property knew or should have known under the circumstances of the maintenance of a common nuisance on the property and did not make a bona fide attempt to abate such nuisance under the circumstances.

The court *may* require, as part of the judgment,

- ✓ that the owner, lessee, tenant or occupant enter into a bond to the state of Kansas, in such amount and with security as the court may require,
- ✓ conditioned that such owner, lessee, tenant or occupant will not within a period of two years use or permit the use of such real estate in violation of law.

- ✓ **If any condition of such bond is violated**, the whole amount may be recovered as a penalty.

*[which would necessitate another evidentiary hearing, upon notice, & w/ due process of law]*

In addition, the court may assess a civil penalty not to exceed \$25,000 against any or all defendants, based upon the severity of the nuisance and its duration. Such penalty shall be paid into the county treasury, if recovered by a county or district attorney, and into the city treasury, if recovered by a city attorney.

- (2) Upon final judgment that any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property are designed for and have been used in carrying on any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto, the court *may*

- ✓ order that such effects, equipment, paraphernalia, fixtures, appliances, musical instruments and other personal property be publicly destroyed by the sheriff or other law enforcement officer or

- ✓ that such personal property be sold in the manner provided for sales in execution of judgment.

- (3) The proceeds of any sale of personal property pursuant to subsection (2) shall be applied as follows:

- (a) First, to the fees and costs of the removal and sale.  
(b) Second, to the costs of closing the structure and keeping it closed.  
(c) Third, to payment of the costs of the action.  
(d) Fourth, to payment of any civil penalty imposed pursuant to this section or any fine imposed for contempt in the proceedings.  
(e) Fifth, to the owner of the personal property.

- (4) Subject to the provisions of subsection (3), upon final judgment for the state the court shall

adjudge that any defendant who was maintaining the common nuisance pay all costs, including a reasonable fee, fixed by the court, to be paid to the prosecuting attorney.

Such costs shall be a lien upon any real property against which an order of abatement is obtained, *if the court finds* that the owner of such property knew or should have known under the circumstances of the maintenance of the common nuisance on the property and did not make a bona fide attempt to abate such nuisance under the circumstances.

- (5) For purposes of this section, *evidence of a bona fide attempt to abate such nuisance by the owner of the property shall include*, but not be limited to, the filing of a written report, by such owner or at such owner's direction, to the local law enforcement agency that the property is suspected by the owner of the property of being used in maintaining and carrying on any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto.

History: L. 1970, ch. 129, § 22-3904; L. 1990, ch. 114, § 3; July 1.

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GARDEN CITY  
LEGISLATIVE TESTIMONY

TO: Chairman Vratil and Members, Senate Judiciary Committee

FROM: Jim Kaup, on behalf of the City of Garden City

RE: **HB 2769 Common Nuisances-Felony Activity by Gang Members**

DATE: March 8, 2002

The Legislative Policy Statement adopted by the City Commission of Garden City provides:

“The City supports legislation to amend the common nuisance statute, K.S.A. 22-3901, to add to the list of property declared to be common nuisances property that is used to maintain and carry on gang-related activities.”

Garden City continues to face the problem of youth gangs. In order to deal effectively with this problem, the City has engaged in a number of approaches, both proactive and reactive. The City has expanded the scope of its DARE program in the schools to focus even more attention on anti-gang education. In a cooperative program that involves the business community, private citizens, local law enforcement, and other municipal departments, the City has significantly reduced the gang graffiti problem through an aggressive approach to cleanup and by restricting the sale of spray paint to minors. The special “street gang unit” formed a few years ago between the Garden City and Finney County law enforcement agencies continues to be highly active in identifying and investigating gang members, notifying parents, conducting surveillance, working closely with the schools through their administration and through school resource officers, and arresting gang members on various criminal charges.

As a consequence of all of those efforts, the community has achieved some success in the reduction of gang activity and the decline in the number of youth being recruited into local gangs.

However, there is still much that needs to be done in Garden City. Of particular concern is what

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drug trafficking, and just plain intimidation. The hard-working, law-abiding residents of the neighborhood are afraid for their safety, even while on their own property, and those residents fear for the influence this activity may have on small children in the neighborhood. The police respond as aggressively as possible when violations occur, but are often limited in what they can do. The community needs another option to address situations like this.

That is precisely what the City is asking for in House Bill 2769. The bill would expand the range of options available to combat gangs, specifically by amending K.S.A. 22-3901 to enable the use of common nuisance statutes against gang activity. This legislation would add specified gang activity to the current list of common nuisances. This would give local authorities the ability to file for injunctive and other relief currently provided for under K.S.A. 22-3901 *et seq.* This method has been employed with some success by communities in other states, most notably in Arizona and California where similar laws have survived legal challenges.

Complex community problems such as criminal gangs, substance abuse, and related problems are best addressed on multiple fronts. The City views this legislation as assisting in this regard, by providing another tool to utilize in efforts to eliminate gang activity and keep the streets safe for citizens. As such, the City of Garden City would like to convey its strong support for House Bill 2769.

The City respectfully requests favorable action on HB 2769 by this Committee.

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