

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 3, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Jeff Goering - Excused
Representative Dan Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Trista Curzydlo, Kansas Bar Association
Laura Kelly, Kansas Recreation & Park Association
Kevin Robertson, Kansas Dental Center
Barbara Conant, Kansas Trial Lawyers Association

Trista Curzydlo, Kansas Bar Association, requested a committee bill which would amend the Uniform Trust Code (Attachment 1). Representative Loyd made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Laura Kelly, Kansas Recreation & Park Association, requested a bill that would exempt Boy & Girl Clubs, Salvation Army and local units of government from the Department of Health & Environment Child Care Regulations. Representative Rehorn made the motion to have the request introduced as a committee bill. Representative Pauls seconded the motion. The motion carried.

Hearing on **SB 34 - Charitable health care provider under the tort claims act**, were opened.

Kevin Robertson, Kansas Dental Center, appeared as the sponsor of the proposed bill. He explained that the Kansas Mission of Mercy is a dental outreach program that has put together a traveling dental clinic to offer free dental care. Each year there will be two different areas that are serviced. The first being Garden City at the end of February and the second is in Wyandotte County in the fall. He estimated that they will service 1,500 people in each area. All services and equipment have been donated.

Currently, a dentist or dental hygienist falls under the provisions of the Charitable Healthcare Provider Act, if they provide gratuitous services to medically indigent in a health department or a health clinic. The project they are proposing does not fall under the statute and the bill would bring them in under the act (Attachment 2).

Barbara Conant, Kansas Trial Lawyers Association, appeared as a proponent of the bill. They provided input on the proposed bill with regard to the drafting language and believes that this would be a wonderful service to offer across the state (Attachment 3).

Hearing on **SB 34** were closed.

SB 34 - Charitable health care provider under the tort claims act

Representative Long made the motion to report SB 34 favorably for passage. Representative Crow seconded the motion. The motion carried.

Committee minutes from January 16, 23, 27, 28 & 29 were distributed.

The committee meeting adjourned at 4:15 p.m. The next meeting was scheduled for Tuesday, February 4, 2003 at 3:30 p.m. in room 313-S.



**KANSAS BAR
ASSOCIATION**

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MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Trista Beadles Curzydlo, KBA Lobbyist
DATE: February 3, 2003
RE: Introduction of a Bill amending the Uniform Trust Code

Chairperson O'Neal and Members of the House Judiciary Committee:

My name is Trista Curzydlo, I am here today on behalf of the Kansas Bar Association to introduce a bill to amend the Uniform Trust Code. I have attached a draft and explanation of the three changes the KBA is requesting.

H. JUDICIARY

2-03-03

Attachment: 1

UTC Technical Corrections Act

The following items were approved by the Real Estate, Probate & Trust section executive committee on January 16, 2003.

I. Approved changed:

Section 103(12) [as revised by Kansas. Definition of "qualified beneficiary."

Defined as "a beneficiary who, on the date of the beneficiary's qualification is determined:

- (A) is a distributee of trust income or principal; or
- (B) would be a distributee of trust income or principal if the trust terminated on that date.

The provision as amended would read:

Section 103(12) [as revised by Kansas. Definition of "qualified beneficiary."

Defined as "a beneficiary who, on the date of the beneficiary's qualification is determined to be either:

- (A) a distributee of trust income or principal; or
- (B) a distributee of trust income or principal if the trust terminated on that date.

The existing language is confusing as to whether "a qualified beneficiary" includes beneficiaries in both (A) or (B). The provision as amended would remove that ambiguity.

II. Section 813 currently reads as follows:

Sec. 70 (UTC 813) DUTY TO INFORM AND REPORT. (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

(b) A trustee:

- (1) Upon request of the qualified beneficiary, shall promptly furnish to the qualified beneficiary a copy of the trust instrument;
- (2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance of the acceptance and of the trustee's name, address, and telephone number;
- (3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable,

whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlers, of 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

- (4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.
- (c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property including liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values, and if requested, the trust's association of investment management and research compliant rate of return. Upon a vacancy in a trusteeship, unless a co-trustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.
- (d) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.
- (e) The provisions of this section 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.

Approved change: Delete "as to notice" in subparagraph (e).

The effect of the change: For trusts meeting the criteria of subparagraph (e) only spouses will be entitled to the benefits and requirements of Section 813.

III. **Approved amendment for 505(b):**

- (b) for purposes of this section:
- (1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and
- (2) except as provided in subparagraph (3) below, upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount

specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on [the effective date of this [Code]] [, or as later amended].

- (3) Subparagraph (2) shall not apply to the lapse of a power held by the spouse of a person occurring upon the death of such person.

For purposes of determining whether an individual has created a "self-settled" trust with respect to creditor issues, Section 505 addresses the issue of lapses of withdrawal rights. Although there was not a significant amount of prior case law on this issue, it would appear that lapses of withdrawal rights would not literally meet the requirements under most self-settled trust statutes, including that under Kansas law (K.S.A. 33-101). These statutes, literally read, would seem to require an affirmative act. In deciding to include trust property with respect to which lapse of a withdrawal right (which would appear to include general powers of appointment) had occurred in this category, the Uniform Commissioners carved out a safe harbor under 505(b), which reads as follows:

- (b) for purposes of this section:
 - (1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and
 - (2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on [the effective date of this [Code]] [, or as later amended].

This limited exception, patterned after Texas and Arizona laws, was designed to accommodate "Crummey" powers. It does not accommodate "reciprocal general powers of appointment" between spouses which are being increasingly used to balance estates between spouses for federal estate tax purposes (as sanctioned by recent IRS letter rulings) and/or to arguably achieve a "step up" in basis in all spousal assets upon the death of the first spouse. The lapse of the surviving spouse's general power of appointment over the predeceased spouse's assets upon the death of the predeceased spouse could subject all assets left in trust by the predeceased spouse for the benefit of the surviving spouse not only to the claims of the surviving spouse's creditors, but also to inclusion in the surviving spouse's taxable estate, as the exposure of the trust assets to the surviving spouse's creditors would constitute a general power of appointment under I.R.C. Section 2041.



KANSAS DENTAL ASSOCIATION

Date: February 3, 2003

To: House Committee on Judiciary

From: Kevin J. Robertson, CAE
Executive Director 

RE: **Testimony in SUPPORT of SB 34**

Chairman O'Neal and members of the committee I am Kevin Robertson, executive director of the Kansas Dental Association representing 1,168, or some 80% of the state's licensed dentists. Thank you for all seeing fit to co-sponsor SB 34 and assist the KDA and other partners through our Kansas Dental Charitable Foundation move forward with what we think is a terrific oral health access project.

The Kansas Mission of Mercy (KMOM) is a dental outreach that is being funded entirely through the generosity of Kansas dentists and private funders. No governmental of any kind is being used – and none was sought.

The KDA's Kansas Dental Charitable Foundation has joined forces with the Kansas Dental Hygienist's Association, Kansas Dental Assistants Association, local dental societies, dental product suppliers, the United Methodist Health Ministry Fund, Mexican American Ministries, community volunteers, and civic groups to help provide dental care to persons in need and combat a growing problem in many areas of Kansas - access to dental care.

Thousands of Kansans with little or no ability to pay for dental services suffer pain from lack of care. On the weekend of February 28, March 1 and 2 at the Finney County Fairgrounds in Garden City we will provide a wide range of dental services to all comers at absolutely no cost.

Volunteer professionals from the sponsoring organizations, including 60 dental hygienists, 100 dentists, and 100 dental assistants will set up a 45-chair dental clinic and administer free dental care to as many area residents as can be accommodated during the Friday to Sunday event. In all, some 400 volunteers are supporting KMOM. In addition to dental professionals, more than a dozen dental students from two schools, dental laboratory personnel, dental equipment and dental supply representatives, church volunteers, civic clubs, Garden City police, as well as school nurses and the local medical community will be on hand. The Kansas event is modeled after similar projects in Virginia and Texas. In addition to area residents receiving needed dental care - medical screenings and immunizations through local physicians will be offered.

Garden City was chosen as the site for this first-ever KMOM project because of its diverse and economically impacted population. The second project will be held at the Wyandotte County Fairgrounds November 14-16, 2003. The KDA's intent is to continue to host two KMOM projects each year in both shifting and recurring locations.

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H. JUDICIARY

02-03-03

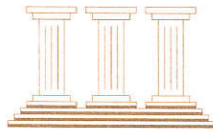
Attachment: 2

The KDA estimates that 1,500 to 2,000 people will receive \$500,000 or more in free dental services during the three day KMOM event. When all volunteer time – including police support, meals, interpreters, etc. The KMOM project may well approach \$1 million in total volunteer participation.

You can help us to hold a successful access event by supporting SB 34. Currently, a dentist or dental hygienist falls under the provisions of the Charitable Healthcare Provider Act (75-6102) if they provide gratuitous services to medically indigent in a health department or health clinic. This project is so unique, however, it is not covered by the existing Charitable Healthcare Provider Act. SB 34 would simply extend the Charitable Healthcare Provider Act to dentists and dental hygienists who participate in KMOM project.

Representatives of the KDA and the Kansas Trial Lawyers Association had several contacts through December/January to find acceptable language to cover the KMOM project under the Charitable Healthcare Provider Act. That language is contained in SB 34.

Thank you for your time today, I am happy to answer any questions you may have at this time. I urge you to support SB 34 with a favorable recommendation.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Judiciary Committee

FROM: Barb Conant
Director of Public Affairs
Kansas Trial Lawyers Association

RE: 2003 SB 34/Charitable Health Care Provider

DATE: Feb. 2, 2003

Chairman O'Neal and members of the House Judiciary Committee, I am Barb Conant, director of public affairs for the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to appear before you today in support of SB 34.

We were pleased to be asked by the Kansas Dental Association to provide input into the drafting of the language of Sec. 1(f)(4) amending the definition of "charitable health care provider." This new section allows the KDA to offer free, mobile dental services through a community service project. We worked with KDA in drafting the new section and have no objection to the language which allows KDA members to perform dental services while still protecting citizens.

As advocates for the safety and protection of consumers and families, we commend KDA members for their efforts to improve the dental health of their communities and for their concern for the safety of Kansans.

Thank you again for the opportunity to express our support of SB 34.

Terry Humphrey, Executive Director

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H. JUDICIARY

2-03-03

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