

SESSION OF 2004

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2556**

As Agreed to March 30, 2004

Brief *

HB 2556 amends the Kansas Uniform Trust Code and creates additional medical assistance eligibility requirements for medical moneys. Major provisions of the Uniform Trust Code include the following:

- ! adds a nonclaim period during which creditors of a decedent must present claims to the trustee of a trust of which the decedent was a settlor. The nonclaim period is the later of four months from the first date of publication of the notice to creditors or 30 days after actual notice is given to a reasonably ascertainable creditor;
- ! clarifies that the term qualified beneficiary be read in the conjunctive;
- ! permits a trust to be created by transfer of property to the trustee or to the trust;
- ! clarifies that adopted children are included in the exception to void trusts;
- ! clarifies that, although the property of a trust that was revocable at the settlor's death may be subject to the settlor's surviving spouse's elective share rights, it is so only as provided;
- ! requires that in case of a joint trust that is revoked or amended by fewer than all of its settlors, that the trustee must give prompt notice of the change to the other settlors;

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- ! clarifies that compensation received from a mutual fund for providing services to the fund is in addition to the trustee's regular compensation;
- ! clarifies that a trustee has a duty to both qualified beneficiaries and permissible current distributees to keep them reasonably informed regarding the administration of the trust;

The Senate Committee of the Whole amendment added provisions of House Sub. for SB 272 which creates additional medical assistance eligibility requirements for applicants or recipients who apply for medical assistance (Medicaid) monies under federal and state programs. The bill also authorizes provisions for the recovery of estate monies from deceased Medicaid recipients by the Department of Social and Rehabilitation Services (SRS) to pay for Medicaid services. The Conference Committee deleted these provisions.

Conference Committee Action

The Conference Committee agreed to the following:

- ! delete SB 272 dealing with additional medical assistance eligibility requirements;
- ! add in provisions of SB 424 as amended by the House Committee which provides that the transfer by warranty deed of real property into an *inter vivos* trust shall not affect the coverage of any title insurance if the settlor of the trust is and remains a beneficiary of the real property.

Once the transfer takes effect, the trustee shall be deemed to be insured, and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original named insured. If the settlor is a beneficiary of the trust at the time of the transfer, the transfer of the property into the trust shall not affect any homestead exemption or redemption rights; or cause a due on sale or similar clause to be effective under a mortgage or security interest.

Background

The original SB 424 was requested by the Kansas Bar Association's Real Estate, Probate and Trust section. A proponent said that revocable trusts are used increasingly to avoid probate proceedings and to save costs but some title insurance companies around the nation have refused to defend the title insurance companies around the nation have refused to defend the title of property placed in a revocable trust and a bankruptcy court refused to recognize a state's homestead exemption on residential property placed in a revocable trust.

A representative of the Columbian National Title Insurance Company said there were serious concerns about SB 424.

The Senate Committee amendments were proposed by the Kansas Bar Association to address the concerns of the title company.