



**KANSAS BAR
ASSOCIATION**

TO: The Honorable John Barker, Chair
 And Members of the House Judiciary Committee

FROM: Tim O’Sullivan
 On behalf of the Kansas Bar Association

RE: HB 2101 – Arbitration and Mediation in Trust Instruments

DATE: February 2, 2015

Mr. Chairman and members of the House Judiciary Committee, I am Tim O’Sullivan, an attorney practicing with Foulston Siefkin LLP in Wichita, concentrating my practice in estate planning, probate and trust matters. I am appearing on behalf of the Kansas Bar Association (KBA) in support of H.B. 2101 (the Bill), which is a proposed statutory sanctioning of the enforceability of mediation and arbitration provisions in Revocable Trusts. The Bill was proposed by the KBA Real Property, Probate and Trust Section, approved by the KBA Legislative Committee and endorsed by the KBA Board of Governors.

The Bill essentially desires to statutorily codify in Kansas an identical provision that was codified in the Missouri Uniform Trust Code in 2014. Attached is the information form submitted by the Probate and Trust Committee of the Missouri Bar Association which was used in support of its passage. Missouri, which like Kansas, passed the Uniform Trust Code, incorporated such mediation and arbitration provisions under Section 2-205 of the MUTC. Such provisions essentially provide that provisions in a Revocable Trust which require mediation and arbitration with respect to any disputes among beneficiaries are enforceable, except with respect to issues involving the validity of the instrument (e.g., lack of capacity) unless all interested persons agree otherwise.

In addition to the numerous cogent reasons enunciated for its passage by the Probate and Trust Committee of the Missouri Bar attached hereto, I would note that alternative dispute resolution (ADR) is emphasized by the Courts, well over one-half of trusts and estates disputes appear to be resolved by mediation without even having to resort to arbitration, and mediation and arbitration are often a far less costly procedure to reach a resolution of such disputes. Moreover, as beneficiaries of a trust other than a spouse have no inheritance rights to a decedent’s property, the grantor of a revocable trust should be able to place such reasonable conditions favoring both a public and family harmony purpose upon a beneficiary’s right to receive his or her property under the provisions of a Revocable Trust.

On behalf of the Kansas Bar Association, I respectfully ask that you give the Bill your support and am prepared to answer any questions you might have.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals. www.ksbar.org