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TO: House Judiciary Committee

FROM: Kansas Judicial Council – Tim Carmody

DATE: February 9, 2016

RE: Testimony in support of SB 321 amending K.S.A. 59-618a

The Kansas Judicial Council recommends SB 321, which was drafted by the Council's Probate Law Advisory Committee. The bill would amend K.S.A. 59-618a, a statute that allows a protective filing of a will within 6 months of the date of death of a decedent without formally petitioning to admit the will to probate. This protective filing preserves the will for possible future probate after the usual 6-month deadline.

Under current law, this protective filing can only be made if there is no known property in the probate estate or if the value of any property is less than all demands against the estate. The Judicial Council believes that there should be no conditions upon the protective filing of a will and no public purpose is served by including information about assets of the estate and demands against it in the affidavit. It is often impossible to know the assets and liabilities of an estate early on, and allowing more wills to be preserved, regardless of the estate's assets and liabilities, would preserve the intent of more testators. Also, deleting these requirements would place creditors' claims against a testate estate on equal footing with those against an intestate estate.

Before seeking Council approval, the Probate Committee asked the Kansas Bar Association's real estate, probate and trust law section for their feedback. That group unanimously supports the proposed amendments.

Judicial Council Probate Law Advisory Committee

The Judicial Council's Probate Law Advisory Committee consists of practicing attorneys, judges and law professors from across the state, all of whom have substantial experience in the area of probate and trust law. Over the past 80 plus years, the Judicial Council and its Probate Law Advisory Committee have drafted and updated numerous codes and acts including: the Probate Code, the Simplified Estates Act, the Informal Administration Act, the Kansas Uniform Trust Code, and the Kansas Power of Attorney Act.

The current members of the Probate Law Advisory Committee are:

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