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MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 12, 2020

Subject: Bill Brief on HB 2554

House Bill 2554 enacts the uniform fiduciary income and principal act and repeals the uniform principal and income act (1997). Section 1 names the act and section 2 provides for definitions to be used in the act. Sections 3 and 4 provide for the applicability of the act. Section 5 provides for the duties and powers of a fiduciary. Section 6 provides for the definition of a fiduciary decision. The court shall not order a fiduciary to change their decision unless it was an abuse of a fiduciary's discretion. The court may order remedies if they determine a fiduciary's decision was an abuse of power.

Section 7 allows a fiduciary to adjust between income and principal if the fiduciary determines the exercise of power will assist the fiduciary to administer the trust or estate impartially. The section creates no duty to exercise or consider the power to adjust or to inform a beneficiary about the section. A fiduciary that in good faith fails to adjust is not liable to a person affected. In deciding whether to adjust, a fiduciary shall consider all factors in sections 5, 17, 24 and 29. Section 7 also lists circumstances under which a fiduciary may not exercise the power to adjust. Subsections (f), (g) and (h) contain provisions for co-fiduciaries. Terms of a trust that limit the power to adjust do not affect the application of this section unless the terms of the trust expressly limit the power to adjust. The power to adjust in any accounting period may apply to the current period, the immediately preceding period and one or more subsequent periods. A description of the power to adjust must be included in a report sent to beneficiaries or communicated to them.

Section 8 provides limited definitions to be used in sections 8 through 16. Section 9 contains provisions for converting a trust to a unitrust. Section 10 outlines what actions a fiduciary can take and when they can adjust. It also provides notice requirements and timeframes in which action must be taken, and it allows fiduciaries to release or delegate the power to convert to a unitrust. Section 11 provides notice requirements and provides the manner in which consent can be made. Section 12 contains the items that must be provided in a unitrust policy. Section 13 describes what the rates for a unitrust may be and what rate limits a unitrust policy may provide. Section 14 requires a method for determining the fair market value of an asset for the purpose of determining the unitrust amount. It also allows a unitrust policy to provide methods for determining the amount of the net fair market value of the trust. Section 15 subsection (a) requires a unitrust policy to provide the period used for sections 13 and 14 and provides options for what that period may be. Subsection (b) provides what standards can be provided in a unitrust policy with respect to the period. Section 16 provides discretionary items that may be contained in a unitrust policy. It also provides options if a trust qualifies for a special tax benefit or a fiduciary is not an independent person.

Section 17 provides guidelines for distributions from all types of entities. A distribution in exchange for part or all of the fiduciary's interest in an entity is principal. Subsection (e) describes how a fiduciary may determine or estimate that money received is a capital distribution, and subsection (f) lists factors to consider. Section 18 allows a fiduciary to allocate receipts in accordance with the terms of the recipient trust, or if no provision exists, in accordance with the act. Section 19 contains provisions to be used if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business. Section 20 provides what a fiduciary must allocate to principal. Section 21 requires a fiduciary to allocate to income an amount received as rent. Sections 22 and 23 provide what a fiduciary shall allocate to income and what they shall allocate to principal.

Section 24 excuses the fiduciary from the burden of determining the portion of a receipt that should be allocated to income if the allocation is insubstantial. It also provides a list of factors that make an allocation insubstantial. Section 25 contains provisions related to rules for each accounting period that apply to a separate fund. It also provides requirements for a fiduciary with respect to marital trusts.

Section 26 provides a definition of liquidating asset and the rules for allocating them. Section 27 contains allocation rules for when the fiduciary is working with an interest in minerals, water or other natural resources, and section 28 contains allocation rules for when a fiduciary is working with timber. Section 29 relates to property received when a gift or estate tax marital deduction is allowed. Section 30 contains provisions related to derivatives. Section 31 requires a fiduciary to allocate to income a receipt from or related to an asset-backed security. If a fiduciary receives one or more payments in exchange for their interest in an asset-back security, allocation rules are provided. Section 32 requires a fiduciary to allocate receipts from or related to a financial instrument or arrangement not addressed by this act consistent with sections 30 and 31.

Section 33 contains provisions for a fiduciary to follow when disbursing from income. Section 34 contains provisions for a fiduciary to follow when disbursing from principal. Section 35 relates to depreciation. Sections 36 relates to transfers from principal to income, and section 37 relates to transfers from income to reimburse principal.

Section 38 contains provisions related to income tax. Section 39 allows fiduciaries to make an adjustment between income and principal to offset the shifting of economic interests or tax benefits in certain instances. Section 40 applies when the death of an individual results in the creation of an estate or trust or an income interest in a trust terminates. Section 41 relates to distribution to a successor beneficiary. Section 42 provides that an income beneficiary is entitled to net income in accordance with the terms of a trust from the date the income interest begins. If no date is specified, it provides alternative dates. Section 43 provides timeframes for when a fiduciary shall allocate an income receipt or disbursement to principal or income. Section 44 requires that when a mandatory income interest of a beneficiary ends, a fiduciary shall pay the beneficiary's share of undistributed income that is not disposed of pursuant to the trust.

Section 45 provides for consideration to be given to the need to promote uniformity in the law. Section 46 describes the extent to which this act impacts the electronic signatures in global and national commerce act. Section 47 provides that the act applies to a trust or estate existing or created on or after July 1, 2020, except as otherwise expressly provided in the terms of the trust or this act. Section 48 is a severability provision. Section 49 amends K.S.A. 58a-103 to amend the definition of "terms of a trust".