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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 8, 2021
Subject: Bill Brief for SB 141

Senate Bill 141 enacts the Kansas uniform directed trust act.

Section 1 names the act and section 2 provides definitions to be used in the act. “Directed trust” means a trust for which the terms of the trust grant a power of direction. “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee, but it excludes the powers described in section 5.

Sections 3 provides for the applicability of the act to a trust, whenever created, that has its principal place of administration in this state. If the trust was created before July 1, 2021, this act applies only to a decision or action occurring on or after July 1, 2021. If the principal place of administration of the trust is changed to this state on or after July 1, 2021, this act applies only to a decision or action occurring on or after July 1, 2021. Section 4 provides that the common law and principles of equity supplement the act, except to the extent modified by the act or law of this state other than the act. Section 5 provides a list of powers the act does not apply to, including a power of appointment.

Section 6 provides that the terms of a trust may grant a power of direction to a trust director. Unless the terms of a trust provide otherwise, a trust director may exercise any further power appropriate to the exercise or nonexercise of the power of direction granted to them and trust directors with joint powers must act by majority decision. Section 7 provides that a trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power regarding: (1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law; and (2) a charitable interest in the trust, including notice regarding the interest to the attorney general. Section 8 imposes certain fiduciary duties and liabilities on a trust director

and provides that the terms of a trust may impose additional duties and liabilities. Section 9 provides that a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power and the trustee is not liable for the action. Section 9 also provides that a directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power to the extent that by complying the trustee would engage in willful misconduct.

Section 10 requires a trustee to provide certain information to a trust director and requires a trust director to provide certain information to a trustee or another trust director. Section 11 provides that certain duties are not imposed on a trustee or trust director unless the terms of a trust provide otherwise. Section 12 provides that the terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 9 through 11.

Section 13 provides that an action against a trust director for breach of trust must be commenced within the same limitation period as under K.S.A. 58a-1005 and a report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under K.S.A. 58a-1005. Section 14 provides that in such an action for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee. Section 15 provides that by accepting appointment as a trust director of a trust subject to the Kansas uniform directed trust act, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director. Section 16 provides that certain rules applicable to a trustee apply to a trust director unless the terms of a trust provide otherwise.

Section 17 provides for consideration to be given to the need to promote uniformity in the law. Section 18 describes the extent to which this act impacts the electronic signatures in global and national commerce act. Section 19 amends K.S.A. 58a-103 to amend the definition of "terms of a trust." Section 20 amends K.S.A. 58a-105 to provide that the duty of a trustee to act in good faith and administer the trust in accordance with K.S.A. 58a-801 is subject to the provisions of sections 9, 11, and 12. Section 21 amends K.S.A. 58a-603 to provide that while a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust. Section 22 amends K.S.A. 58a-703, regarding cotrustees, to make the provisions subject to section 12.