

SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 291

As Amended by Senate Committee on Judiciary

Brief*

SB 291 would make several changes in or related to the Kansas Uniform Trust Code.

Spendthrift Provision

The bill would amend the spendthrift provision subsection in the statute governing modification or termination of a noncharitable irrevocable trust to state that such a provision is not presumed to constitute a material purpose of the trust.

Creditor's Claim Against Settlor

The bill would amend the statute governing a creditor's claim against a trust's settlor, KSA 58a-1013. Specifically, the amendments would specify the procedure for disposal of claims against trust property upon the death of the trust settlor.

For a revocable trust to be liable for a claim, the following requirements would need to be met: (1) a petition for probate of the settlor's will or for administration of the decedent's estate must be filed within six months of death; (2) the probate estate must be inadequate to satisfy the claim, unless the settlor has specifically directed otherwise; and (3) the claim must have been properly exhibited in the probate estate, allowed by the probate court, and not barred by KSA 59-2239.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The finding of the probate court would not be binding on a revocable trust unless the trustee has been given notice of the hearing on the claim. If such notice has not been given, a creditor may file a petition for a *de novo* hearing on a claim against a revocable trust in the probate proceeding, provided the creditor gives notice of the hearing to the trustee within one year of the decedent's death. The trustee may raise defenses to the claim at such hearing, and the claim amount may not exceed the original allowance.

The trustee would be permitted to pay appropriate claims received during the nonclaim period, even though a probate estate has not been opened within six months of death or the claim has not been properly exhibited in the estate.

To the extent revocable trust property was exempt from the settlor's creditors immediately prior to death, such property and its proceeds would remain exempt from claims by the settlor's creditors following death. This would not apply to medical assistance claims under KSA 39-709(g).

Finally, the order of priority applicable to probate assets, found in KSA 59-1405, would be adapted and included in this section to govern the appropriation of revocable trust property.

Taxpayer Identification Number

The bill would remove a trust's taxpayer identification number from the list of information required in an acknowledged certification of trust.

Probate Code Amendment

The bill would amend KSA 59-103 to add the following to the list of uses of the Kansas Probate Code: "To determine the validity and payment of claims." This would allow a probate court to administer the provisions in the amendments to KSA 58a-505.

Repeal of KSA 58a-818

The bill would repeal KSA 58a-818, which sets forth the timing and procedure for notice and claim related to the debts of a deceased trust settlor.

Background

SB 291 was introduced by the Senate Judiciary Committee at the request of the Kansas Judicial Council. The bill is one of three that resulted from a study of two 2011 bills, SB 47 and SB 48, which were requested by the Kansas Bar Association. These 2011 bills were referred to the Kansas Judicial Council for the study.

In the Senate Judiciary Committee, a representative of the Kansas Judicial Council spoke in support of the bill. The Kansas Bar Association submitted written testimony supporting the bill. The Committee amended the bill by modifying the proposed change to the spendthrift provision from "may" to "is not presumed to." The Committee recommended the bill be passed as amended.

The fiscal note on the bill states the Division of the Budget is currently awaiting a response from agencies or organizations affected by the bill. The fiscal note will be completed and submitted once the Division receives the necessary information.