

HOUSE BILL No. 2435

By Committee on Judiciary

2-10

9 AN ACT concerning the uniform trust code; amending K.S.A. 2004
10 Supp. 58a-103, 58a-110, 58a-411, 58a-417, 58a-603, 58a-802, 58a-813
11 and 58a-1008 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2004 Supp. 58a-103 is hereby amended to read as
15 follows: 58a-103. As used in this code:

16 (1) "Action," with respect to an act of a trustee, includes a failure to
17 act.

18 (2) "Beneficiary" means a person that:

19 (A) Has a present or future beneficial interest in a trust, vested or
20 contingent; or

21 (B) in a capacity other than that of trustee, holds a power of appoint-
22 ment over trust property.

23 (3) "Charitable trust" means a trust, or portion of a trust, created for
24 a charitable purpose described in subsection (a) of K.S.A. 2004 Supp.
25 58a-405, and amendments thereto.

26 (4) "Conservator" means a person appointed by the court pursuant
27 to K.S.A. 59-3001 *et seq.*, and amendments thereto, to administer the
28 estate of a minor or adult individual.

29 (5) "Environmental law" means a federal, state, or local law, rule,
30 regulation, or ordinance relating to protection of the environment.

31 (6) "Guardian" means a person appointed by the court pursuant to
32 K.S.A. 59-3001 *et seq.*, and amendments thereto, to make decisions re-
33 garding the support, care, education, health, and welfare of a minor or
34 adult individual. The term does not include a guardian ad litem.

35 (7) "Interests of the beneficiaries" means the beneficial interests pro-
36 vided in the terms of the trust.

37 (8) "Jurisdiction," with respect to a geographic area, includes a state
38 or country.

39 (9) "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government; governmental subdivision, agency, or instrumentality; public
42 corporation, or any other legal or commercial entity.

43 (10) "Power of withdrawal" means a presently exercisable general

1 power of appointment other than a power exercisable *by a trustee* or only
2 upon consent of the trustee or a person holding an adverse interest.

3 (11) “Property” means anything that may be the subject of owner-
4 ship, whether real or personal, legal or equitable, or any interest therein.

5 (12) (a) “Qualified beneficiary” means a beneficiary who, ~~on the date~~
6 ~~of the beneficiary’s qualification is determined to be either:~~

7 ~~— (A) — a distributee of trust income or principal; or~~

8 ~~— (B) — a distributee of trust income or principal if the trust terminated~~
9 ~~on that date. as of the date in question, either is receiving, or in the~~
10 ~~discretion of the trustee is then entitled to receive, distributions of trust~~
11 ~~income or principal, or would be so entitled if the trust terminated on~~
12 ~~that date.~~

13 (b) *As used in this section a “permissible distributee” means a person*
14 *presently entitled to receive income or principal in the discretion of the*
15 *trustee.*

16 (c) *For the purpose of the trustee determining “qualified beneficiar-*
17 *ies” of a trust in which a beneficial interest is subject to a power of ap-*
18 *pointment of any nature, the trustee may conclusively presume such*
19 *power of appointment has not been exercised unless the trustee has been*
20 *furnished by the powerholder or the legal representative of the power-*
21 *holder or the powerholder’s estate with the original or a copy of an in-*
22 *strument validly exercising such power of appointment, in which event*
23 *the “qualified beneficiaries” shall be subsequently determined by giving*
24 *due consideration to such exercise unless and until the trustee has been*
25 *given notification in a similar manner of a instrument which validly re-*
26 *vokes or modifies such exercise.*

27 (13) “Revocable,” as applied to a trust, means revocable by the settlor
28 without the consent of the trustee or a person holding an adverse interest.

29 (14) “Settlor” means a person, including a testator, who creates, or
30 contributes property to, a trust. If more than one person creates or con-
31 tributes property to a trust, each person is a settlor of the portion of the
32 trust property attributable to that person’s contribution except to the ex-
33 tent another person has the power to revoke or withdraw that portion.

34 (15) “Spendthrift provision” means a term of a trust which restrains
35 either voluntary or involuntary transfer of a beneficiary’s interest.

36 (16) “State” means a state of the United States, the District of Co-
37 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or
38 insular possession subject to the jurisdiction of the United States. The
39 term includes an Indian tribe or band recognized by federal law or for-
40 mally acknowledged by a state.

41 (17) “Terms of a trust” means the manifestation of the settlor’s intent
42 regarding a trust’s provisions as expressed in the trust instrument or as
43 may be established by other evidence that would be admissible in a ju-

1 dicial proceeding.

2 (18) "Trust instrument" means an instrument executed by the settlor
3 that contains terms of the trust, including any amendments thereto.

4 (19) "Trustee" includes an original, additional, and successor trustee,
5 and a cotrustee.

6 Sec. 2. K.S.A. 2004 Supp. 58a-110 is hereby amended to read as
7 follows: 58a-110. (a) A charitable organization ~~expressly mandated to re-~~
8 ~~ceive distributions~~ *that is a distributee or permissible distributee of trust*
9 *income or principal or would be a distributee or permissible distributee*
10 *of trust income or principal if the trust terminated on that date* under the
11 terms of a trust or a person appointed to enforce a trust created for the
12 care of an animal or another noncharitable purpose as provided in K.S.A.
13 2004 Supp. 58a-408 or 58a-409, and amendments thereto, has the rights
14 of a qualified beneficiary under this code.

15 (b) The attorney general of this state has the rights of a qualified
16 beneficiary with respect to a charitable trust having its principal place of
17 administration in this state.

18 Sec. 3. K.S.A. 2004 Supp. 58a-411 is hereby amended to read as
19 follows: 58a-411. (a) A noncharitable irrevocable trust may be modified
20 or terminated upon consent of the settlor and all qualified beneficiaries,
21 even if the modification or termination is inconsistent with a material
22 purpose of the trust; *provided, however, if a principal intent of the settlor*
23 *in establishing the trust, either as indicated by the provisions of the trust*
24 *or as can be established by extrinsic evidence, is for the trust estate not*
25 *to be included in the settlor's estate for federal estate tax purposes, then*
26 *the settlor shall not possess the foregoing authority to modify or revoke*
27 *the trust if such authority would cause the inclusion of any property of*
28 *the trust estate in the settlor's taxable estate unless the consent to such*
29 *modification or termination is obtained by all parties whose consent would*
30 *be required under applicable federal law in order to preclude such estate*
31 *tax inclusion.* A settlor's power to consent to a trust's modification or
32 termination may be exercised by an attorney in fact under a power of
33 attorney only to the extent expressly authorized by the power of attorney
34 or the terms of the trust; by the settlor's conservator with the approval of
35 the court supervising the conservatorship if an agent is not so authorized;
36 or by the settlor's guardian with the approval of the court supervising the
37 guardianship if an agent is not so authorized and a conservator has not
38 been appointed.

39 (b) A noncharitable irrevocable trust may be terminated *for good*
40 *cause shown* upon consent of all of the qualified beneficiaries if the court
41 concludes: (i) That continuance of the trust is not necessary to achieve
42 any material purpose of the trust. ~~A noncharitable irrevocable trust may~~
43 ~~be modified upon consent of all of the qualified beneficiaries if the court~~

1 ~~concludes that modification is not inconsistent with a material purpose of~~
2 ~~the trust; or (ii) that notwithstanding any inconsistency between such~~
3 ~~termination and achieving a material purpose of the trust, any potential~~
4 ~~detriment to such material purpose resulting from such termination is~~
5 ~~either of a strictly de minimis or insubstantial nature or has only a remote~~
6 ~~possibility of occurring such that the continuance of the trust is no longer~~
7 ~~merited.~~

8 (c) A spendthrift provision in the terms of the trust is presumed to
9 constitute a material purpose of the trust.

10 (d) Upon termination of a trust under subsection (a) or (b), the trust-
11 tee shall distribute the trust property as agreed by the qualified
12 beneficiaries.

13 (e) If not all of the qualified beneficiaries consent to a proposed mod-
14 ification or termination of the trust under subsection (a) or (b), the mod-
15 ification or termination may be approved by the court if the court is
16 satisfied that:

17 (1) If all of the qualified beneficiaries had consented, the trust could
18 have been modified or terminated under this section; and

19 (2) the interests of a qualified beneficiary who does not consent will
20 be adequately protected.

21 Sec. 4. K.S.A. 2004 Supp. 58a-417 is hereby amended to read as
22 follows: 58a-417. (a) After notice to the qualified beneficiaries, a trustee
23 may combine two or more trusts into a single trust or divide a trust into
24 two or more separate trusts, if the result does not impair rights of any
25 beneficiary or adversely affect achievement of the purposes of the trust.
26 *The terms of each new trust created by a division under this section do*
27 *not have to be identical if the interest of each beneficiary is substantially*
28 *the same under the terms of the trust prior to its division and the combined*
29 *terms of all trusts after the division. Two or more trusts may be combined*
30 *into a single trust if the interests of each beneficiary in the trust resulting*
31 *from the combination are substantially the same as the combined interests*
32 *of the beneficiary in the trusts prior to the combination. The trustee shall*
33 *determine the terms controlling any trust after its combination as au-*
34 *thorized by this section. The trustee may make a division under this sec-*
35 *tion by:*

36 (1) Giving written notice of the division, not later than the 30th day
37 before the date of a division under this subsection, to each qualified ben-
38 eficiary; and

39 (2) executing a written instrument, acknowledged before a notary
40 public or other person authorized to take acknowledgments of convey-
41 ances of real estate stating that the trust has been divided pursuant to
42 this section and that the notice requirements of this subsection have been
43 satisfied.

1 (b) A trustee, in the written instrument dividing a trust, shall allocate
2 trust property among the separate trusts on a fractional basis by identi-
3 fying the assets and liabilities passing to each separate trust, or on any
4 other reasonable basis. The trustee shall allocate undesignated trust prop-
5 erty received after the trustee has divided the trust into separate trusts
6 in the manner provided by the written instrument dividing the trust, or,
7 in the absence of a provision in the written instrument, in a manner
8 determined by the trustee.

9 (c) The trustee may combine two or more trusts under this section
10 by:

11 (1) Giving a written notice of the combination, not later than the 30th
12 day before the effective date of the combination, to each qualified ben-
13 efiary; and

14 (2) executing a written instrument, acknowledged before a notary
15 public or other person authorized to take acknowledgments of convey-
16 ances of real estate stating that the trust has been combined pursuant to
17 this section and that the notice requirements of this subsection have been
18 satisfied.

19 (d) The trustee may divide or combine a testamentary trust after the
20 will establishing the trust has been admitted to probate, even if the trust
21 will not be funded until a later date. The trustee may divide or combine
22 any other trust before it is funded if the instrument establishing the trust
23 is not revocable at the time of the division or combination.

24 Sec. 5. K.S.A. 2004 Supp. 58a-603 is hereby amended to read as
25 follows: 58a-603. (a) While a trust is revocable ~~and the settlor has capacity~~
26 ~~to revoke the trust~~, rights of the beneficiaries are subject to the control
27 of, and the duties of the trustee are owed exclusively to, the settlor.

28 (b) During the period the power may be exercised, the holder of a
29 power of withdrawal has the rights of a settlor of a revocable trust under
30 this section to the extent of the property subject to the power.

31 (c) *If a settlor of a revocable trust is a disabled person, on petition of*
32 *the settlor's legal representative, an adult member of the settlor's family*
33 *or any interested person, including a person interested in the welfare of*
34 *the settlor, for good cause shown, the court may:*

35 (1) *Order the trustee to exercise or refrain from exercising the trustee's*
36 *authority in a manner inconsistent with the trustee's fiduciary re-*
37 *sponsibilities under the provisions of the trust;*

38 (2) *remove the trustee;*

39 (3) *require the trustee to account; and*

40 (4) *issue such other orders as the court finds will be in the best interest*
41 *of the settlor. The court may require any person petitioning for any such*
42 *order to file a bond in such amount and with such sureties as required by*
43 *the court to indemnify either the trustee or the trust estate for the ex-*

1 *penses, including attorney fees, incurred with respect to such proceeding.*
2 *None of the actions described in this subsection shall be taken by the court*
3 *until after hearing upon reasonable notice to the trustee, the settlor, and*
4 *any legal representative of the settlor, such as a conservator or attorney-*
5 *in-fact under a durable power of attorney authorizing the attorney-in-*
6 *fact to act on the behalf of the settlor in such matters. If there is no legal*
7 *representative of the settlor, the court shall appoint a guardian ad litem*
8 *to represent the settlor in such proceeding. In the event of an emergency*
9 *as determined by the court, the court, without notice, may enter such*
10 *temporary order as seems proper to the court, but no such temporary*
11 *order shall be effective for more than 30 days unless extended by the court*
12 *after hearing on reasonable notice to the persons identified as herein*
13 *provided.*

14 Sec. 6. K.S.A. 2004 Supp. 58a-802 is hereby amended to read as
15 follows: 58a-802. (a) A trustee shall administer the trust consistent with
16 the terms of the trust and solely in the interests of the beneficiaries.

17 (b) Subject to the rights of persons dealing with or assisting the trust-
18 tee as provided in K.S.A. 2004 Supp. 58a-1012, and amendments thereto,
19 a sale, encumbrance, or other transaction involving the investment or
20 management of trust property entered into by the trustee for the trustee's
21 own personal account or which is otherwise affected by a conflict between
22 the trustee's fiduciary and personal interests is voidable by a beneficiary
23 affected by the transaction unless:

- 24 (1) The transaction was authorized by the terms of the trust;
- 25 (2) the transaction was approved by the court;
- 26 (3) the beneficiary did not commence a judicial proceeding within
27 the time allowed by K.S.A. 2004 Supp. 58a-1005, and amendments
28 thereto;
- 29 (4) the beneficiary consented to the trustee's conduct, ratified the
30 transaction, or released the trustee in compliance with K.S.A. 2004 Supp.
31 58a-1009, and amendments thereto; or
- 32 (5) the transaction involves a contract entered into or claim acquired
33 by the trustee before the person became or contemplated becoming
34 trustee.

35 (c) A sale, encumbrance, or other transaction involving the invest-
36 ment or management of trust property is presumed to be affected by a
37 conflict between personal and fiduciary interests if it is entered into by
38 the trustee with:

- 39 (1) The trustee's spouse;
- 40 (2) the trustee's descendants, siblings, parents, or their spouses;
- 41 (3) an agent or attorney of the trustee; or
- 42 (4) a corporation or other person or enterprise in which the trustee,
43 or a person that owns a significant interest in the trustee, has an interest

1 that might affect the trustee's best judgment.

2 (d) A transaction between a trustee and a beneficiary that does not
3 concern trust property but that occurs during the existence of the trust
4 or while the trustee retains significant influence over the beneficiary and
5 from which the trustee obtains an advantage is voidable by the beneficiary
6 unless the trustee establishes that the transaction was fair to the
7 beneficiary.

8 (e) A transaction not concerning trust property in which the trustee
9 engages in the trustee's individual capacity involves a conflict between
10 personal and fiduciary interests if the transaction concerns an opportunity
11 properly belonging to the trust.

12 (f) *The following transactions are not presumed to be affected by a*
13 *conflict between the trustee's personal and fiduciary interest provided that*
14 *any investment made pursuant to the transaction complies with the Kan-*
15 *sas uniform prudent investor act:*

16 (1) An investment by a trustee in securities of an investment company
17 or investment trust to which the trustee, or its affiliate, provides services
18 in a capacity other than as trustee ~~is not presumed to be affected by a~~
19 ~~conflict between personal and fiduciary interests if the investment com-~~
20 ~~plies with the prudent investor rule of article 9 of this code.~~

21 (2) *The placing of securities transactions by a trustee through a se-*
22 *curities broker that is a part of the same company as the trustee, is owned*
23 *by the trustee, or is affiliated with the trustee.*

24 (3) In addition to ~~its compensation for acting as trustee~~ *the trustee's*
25 *fees charged to the trust*, the trustee, *its affiliate or associated entity* may
26 be compensated ~~by the investment company or investment trust for pro-~~
27 ~~viding those services out of fees charged to the trust. If the trustee re-~~
28 ~~ceives compensation from the investment company or investment trust~~
29 ~~for providing for any transaction or provision of services described in this~~
30 ~~subsection; provided, however, that with respect to any investment in~~
31 ~~securities of an investment company or investment trust to which the~~
32 ~~trustee or its affiliate provides investment advisory or investment man-~~
33 ~~agement services, the trustee must shall~~ at least annually notify the per-
34 sons entitled to receive a copy of the trustee's annual report, under K.S.A.
35 2004 Supp. 58a-813, and amendments thereto, of the rate, ~~formula~~ or
36 method by which that compensation was determined.

37 (g) In voting shares of stock or in exercising powers of control over
38 similar interests in other forms of enterprise, the trustee shall act in the
39 best interests of the beneficiaries and consistent with the terms of the
40 trust. If the trust is the sole owner of a corporation or other form of
41 enterprise, the trustee shall elect or appoint directors or other managers
42 who will manage the corporation or enterprise in the best interests of the
43 beneficiaries.

- 1 (h) This section does not preclude the following transactions, if fair
- 2 to the beneficiaries:
- 3 (1) An agreement between a trustee and a beneficiary relating to the
- 4 appointment or compensation of the trustee;
- 5 (2) payment of reasonable compensation to the trustee;
- 6 (3) a transaction between a trust and another trust, decedent's estate,
- 7 or conservatorship of which the trustee is a fiduciary or in which a ben-
- 8 eficiary has an interest;
- 9 (4) a deposit of trust money in a regulated financial-service institution
- 10 operated by the trustee; or
- 11 (5) an advance by the trustee of money for the protection of the trust.
- 12 (i) The court may appoint a special fiduciary to make a decision with
- 13 respect to any proposed transaction that might violate this section if en-
- 14 tered into by the trustee.
- 15 Sec. 7. K.S.A. 2004 Supp. 58a-813 is hereby amended to read as
- 16 follows: 58a-813. (a) A trustee shall keep the qualified beneficiaries ~~and~~
- 17 ~~permissible current distributees of the trust income or principal~~ reason-
- 18 ably informed about the administration of the trust and of the material
- 19 facts necessary for them to protect their interests. Unless unreasonable
- 20 under the circumstances, a trustee shall promptly respond to a qualified
- 21 beneficiary's ~~and a permissible current distributee's~~ request for infor-
- 22 mation related to the administration of the trust.
- 23 (b) *Except as otherwise provided under the terms of the trust, a trustee*
- 24 *of a trust created on or after January 1, 2003 shall:*
- 25 (1) Upon request of a qualified beneficiary ~~or a permissible current~~
- 26 ~~distributee, shall~~ promptly furnish to the qualified beneficiary ~~or per-~~
- 27 ~~missible current distributee~~ a copy of the trust instrument;
- 28 (2) within 60 days after accepting a trusteeship, ~~shall~~ notify the qual-
- 29 ified beneficiaries ~~and permissible current distributees~~ of the acceptance
- 30 and of the trustee's name, address, and telephone number;
- 31 (3) within 60 days after the date the trustee acquires knowledge of
- 32 the creation of an irrevocable trust, or the date the trustee acquires knowl-
- 33 edge that a formerly revocable trust has become irrevocable *on or after*
- 34 *January 1, 2003*, whether by the death of the settlor or otherwise, ~~shall~~
- 35 notify the qualified beneficiaries ~~and permissible current distributees~~ of
- 36 the trust's existence, of the identity of the settlor or settlors, of the right
- 37 to request a copy of the trust instrument and of the right to a trustee's
- 38 report as provided in subsection (c); and
- 39 (4) ~~shall~~ notify the qualified beneficiaries ~~and permissible current dis-~~
- 40 ~~tributees~~ in advance of any change in the method or rate of the trustee's
- 41 compensation.
- 42 (c) A trustee shall send to the distributees ~~permissible current distri-~~
- 43 ~~butees~~ of trust income or principal, and to other qualified beneficiaries

1 who request it, at least annually and at the termination of the trust, a
2 report of the trust property including liabilities, receipts and disburse-
3 ments, including the source and amount of the trustee's compensation, a
4 listing of the trust assets and, if feasible, their respective market values,
5 and if requested, the trust's association of investment management and
6 research compliant rate of return. Upon a vacancy in a trusteeship, unless
7 a cotrustee remains in office, a report must be sent to the qualified ben-
8 efiiciaries by the former trustee. A personal representative, conservator,
9 or guardian may send the qualified beneficiaries ~~and permissible current~~
10 ~~distributes~~ a report on behalf of a deceased or incapacitated trustee.

11 (d) A qualified beneficiary ~~or permissible current distributee~~ may
12 waive the right to a trustee's report or other information otherwise re-
13 quired to be furnished under this section. A qualified beneficiary ~~or per-~~
14 ~~missible current distributee~~, with respect to future reports and other in-
15 formation, may withdraw a waiver previously given.

16 (e) The provisions of this section are inapplicable to persons other
17 than a surviving spouse so long as a surviving spouse is ~~or may be entitled~~
18 ~~to receive income or principal distributions from a qualified beneficiary~~
19 ~~of the trust, or holds any power of appointment therein over the entire~~
20 ~~trust estate, and where any or all other qualified beneficiaries are the~~
21 issue of the surviving spouse.

22 ~~(f) As used in this section "permissible current distributee" means a~~
23 ~~person presently entitled to receive, subject to the discretion of the trust-~~
24 ~~tee, income or principal.~~

25 Sec. 8. K.S.A. 2004 Supp. 58a-1008 is hereby amended to read as
26 follows: 58a-1008. (a) A term of a trust relieving a trustee of liability for
27 breach of trust is unenforceable to the extent that it:

28 (1) Relieves the trustee of liability for breach of trust committed in
29 bad faith or with reckless indifference to the purposes of the trust or the
30 interests of the beneficiaries; or

31 (2) was inserted as the result of an abuse by the trustee of a fiduciary
32 or confidential relationship to the settlor.

33 (b) *Unless the settlor was represented by an attorney not employed*
34 *by the trustee with respect to the trust containing the exculpatory term,*
35 an exculpatory term drafted or caused to be drafted by the trustee is
36 invalid as an abuse of a fiduciary or confidential relationship unless the
37 trustee proves that the exculpatory term is fair under the circumstances
38 and that its existence and contents were adequately communicated to the
39 settlor.

40 Sec. 9. K.S.A. 2004 Supp. 58a-103, 58a-110, 58a-411, 58a-417, 58a-
41 603, 58a-802, 58a-813 and 58a-1008 are hereby repealed.

42 Sec. 10. This act shall take effect and be in force from and after its
43 publication in the statute book.