

SESSION OF 2009

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 70**

As Amended by House Committee on  
Judiciary

**Brief\***

SB 70 would create new law relating to the Uniform Principal and Income Act (UPIA). The bill would authorize a trustee, unless prohibited by the governing instrument, to convert or redefine income so that distributions to income beneficiaries (current and remainder beneficiaries) are determined by a unitrust distribution formula. Under the formula, a trustee would distribute a fixed percentage of the assets to the beneficiary each year as income.

A trustee would be authorized to convert a trust into a unitrust if:

- The trustee determines that conversion will enable the trustee to better carry out the intent of the creator of the trust and the purposes of the trust;
- The trustee gives each qualified beneficiary written notice of the intent to convert the trust into a unitrust and the operation of the unitrust; and
- No qualified beneficiary files a written objection to the conversion within 60 days of the notice being mailed to the beneficiary. If there is an objection, the bill would authorize a trustee to petition the district court to approve the conversion. The court would be required to approve the conversion if the court concludes, among other factors, that the conversion will enable the trustee to better carry out the intent of the creator of the trust and the purpose of the trust.

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\*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>

Additionally, a trustee would be required to consider all factors relevant to the trust and its beneficiaries in deciding whether to convert a trust into a unitrust, including:

- The nature, purpose, and expected duration of the trust;
- The intent of the creator of the trust;
- The identity and circumstances of the beneficiaries;
- The need for liquidity, regularity of income, and preservation and appreciation of capital;
- The assets held in the trust;
- The net amount allocated to income, and the increase or decrease in the value of the principal assets;
- The actual and anticipated effect of economic conditions on principal and income; and
- The anticipated tax consequences of conversion.

The bill would authorize a qualified beneficiary to request a trustee to convert a trust to a unitrust and to petition the district court if the trustee does not convert. The court would be required to direct the conversion if the court concludes, among other factors, that the conversion will enable the trustee to better carry out the intent of the creator of the trust and the purpose of the trust.

Conversion would be prohibited under circumstances specified in the bill.

The bill would require the trustee, after a trust is converted, to follow an investment policy seeking a total return for the investments held by the trust from appreciation of capital and from earnings and distributions from capital, or both.

The bill also would provide that the income standard set out in the bill does not create a presumption that a trustee who distributes less than 3 percent or more than 5 percent of payout percentage is breaching a trustee's fiduciary duty to the beneficiary.

## **Background**

The proponent of the bill who presented testimony in the Senate Committee hearing was Mark Knackendoffel, Kansas Judicial Council Probate Law Advisory Committee. Mr. Knackendoffel testified 26 states have adopted unitrust conversion statutes.

There was no testimony in opposition to the bill.

The House Judiciary Committee amended the bill by inserting the provision that would state there would be no presumption of a breach of fiduciary duty if a trustee distributes less than 3 percent or more than 5 percent of payout percentage.

The fiscal note states SB 70 has the potential for increasing litigation in the courts because of the potential for objection to the creation of a unitrust. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.