

HOUSE BILL No. 2722

By Committee on Judiciary

Requested by Joe Molina on behalf of the Kansas Bar Association

2-5

1 AN ACT concerning the Kansas uniform trust code; relating to spendthrift
2 and discretionary trusts; providing that certain resultant trusts are not
3 subject to claims of the settlor's creditors; amending K.S.A. 58a-505
4 and repealing the existing section.

5

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

7 Section 1. K.S.A. 58a-505 is hereby amended to read as follows: 58a-
8 505. (a) Except as provided ~~by~~ in subsection (c), K.S.A. 33-101 et seq. and
9 33-201 et seq., and amendments thereto, whether or not the terms of a trust
10 contain a spendthrift provision, the following rules apply:

11 (1) During the lifetime of the settlor, the property of a revocable trust
12 is subject to claims of the settlor's creditors.

13 (2) With respect to an irrevocable trust, a creditor or assignee of the
14 settlor may reach the maximum amount that can be distributed to or for the
15 settlor's benefit. If a trust has more than one settlor, the amount the creditor
16 or assignee of a particular settlor may reach may not exceed the settlor's
17 interest in the portion of the trust attributable to that settlor's contribution.

18 (3) After the death of a settlor, and subject to the settlor's right to
19 direct the source from which liabilities will be paid, the property of a trust
20 that was revocable at the settlor's death is subject to claims of the settlor's
21 creditors, costs of administration of the settlor's estate, the expenses of the
22 settlor's funeral and disposal of remains, the homestead, homestead
23 allowance, the elective share rights of the surviving spouse pursuant to
24 K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a
25 surviving spouse and children to the extent the settlor's probate estate is
26 inadequate to satisfy those claims, costs, expenses, and allowances.

27 (b) For purposes of this section:

28 (1) During the period the power may be exercised, the holder of a
29 power of withdrawal is treated in the same manner as the settlor of a
30 revocable trust to the extent of the property subject to the power;

31 (2) upon the lapse, release, or waiver of the power, the holder is
32 treated as the settlor of the trust only to the extent the value of the property
33 affected by the lapse, release, or waiver exceeds the greater of the amount
34 specified in section 2041(b)(2) or 2514(e) of the federal internal revenue
35 code of 1986, as in effect on December 31, 2002; or section 2503(b) of

1 the federal internal revenue code of 1986, as in effect on December 31,
2 2002; and

3 (3) this subsection shall not apply to the lapse of powers held by the
4 spouse of a person occurring upon the death of such person.

5 (c) *This section shall not apply to:*

6 (1) *An irrevocable trust that was a reversionary trust created under*
7 *the terms of section 2523(e) of the federal internal revenue code of 1986,*
8 *as in effect on July 1, 2026, for which an election under section 2523(f) of*
9 *the federal internal revenue code of 1986, as in effect on July 1, 2026, was*
10 *made in which the settlor of the initial trust is a beneficiary of the*
11 *resultant trust; or*

12 (2) *a resultant trust that was funded by the exercise of a power of*
13 *appointment reposed in the spouse of the settlor in an irrevocable trust*
14 *created for the benefit of the settlor's spouse that was entirely funded by*
15 *completed gifts of the settlor to the initial trust and with respect to which*
16 *the settlor of the initial trust was a beneficiary of the resultant trust, the*
17 *surviving spouse exercising such power of appointment in that event being*
18 *deemed the settlor of the resultant trust.*

19 Sec. 2. K.S.A. 58a-505 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its
21 publication in the statute book.