

SESSION OF 2026

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2590

As Recommended by House Committee on
Financial Institutions and Pensions

Brief*

HB 2590, as amended, would create the Kansas Community Property Trust Act (Act) and amend the Kansas Uniform Trust Code (Trust Code). The bill also makes technical changes.

Definitions (New Section 1)

The bill would define terms, including:

- “Community property” would mean property owned by a community property trust during the marriage of the settlor spouses;
- “Community property trust” would mean an express trust that complies with the requirements of the bill; and
- “Qualified trustee” would mean a natural person who is a resident of Kansas or a company authorized to act as a fiduciary in Kansas.

Kansas Community Property Trusts (New Sections 2 and 4)

The bill would state an arrangement would be a Kansas community property trust (community trust) if one or both spouses transfer property to a trust that:

*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 <https://klrd.gov/>

- Expressly declares the trust is a community trust;
- Has at least one qualified trustee whose powers include maintaining records for the trust and preparing for the preparation of any income tax returns that must be filed by the trust. Both spouses or either spouse may be a trustee;
- Is signed by both spouses; and
- Contains specific disclaimer text about the consequences of the trust, as noted in the bill.

The bill would state a community trust would be enforceable without consideration. All property owned by a community trust would be community property during marriage. When property is distributed from a community trust, the property would no longer constitute community property.

The right to manage and control property transferred to a community trust would be determined by the terms of the trust.

Establishing and Amending a Community Trust (New Section 3)

The bill would state the agreement establishing the community trust would allow spouses to agree on:

- Rights and obligations in the property transferred to the trust regardless of where the property is acquired or located;
- Management and control of the property transferred to the trust;

- Disposition of the property transferred to the trust upon dissolution, death, or the occurrence or non-occurrence of another event;
- Choice of law governing the trust's interpretation; and
- Any other matter affecting property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

A community trust could not be amended or revoked unless the community trust agreement provides for amendment or revocation. Regardless of the agreement, the bill would allow either spouse to amend a community trust regarding the disposition of the spouse's 1/2 share of the community trust if the spouse dies. A community trust would not be able to adversely affect the right of a child to support.

Obligations (New Section 5)

The bill would state that an obligation incurred by only one spouse before or during marriage could be satisfied from the spouse's 1/2 share of a community trust. An obligation incurred by both spouses could be satisfied by the community trust.

Domicile and Property Laws (New Sections 4 and 6)

For purposes of the Internal Revenue Code of 1986, the bill would state a community trust would be considered a trust established under the community property laws of Kansas. Regardless of a spouse's state domicile, a spouse would be able to transmute any or all of their property to community property by transferring the property to a community trust.

Community property, as classified by a non-Kansas jurisdiction, transferred to a community trust would retain its character as community property while in the community

trust. If the community trust is revoked, property transferred upon revocation of the community trust as classified by the non-Kansas jurisdiction would retain its character as community property to the extent otherwise provided by Kansas law.

Death and Dissolution (New Sections 7 and 8)

The bill would state that upon the death of a spouse, 1/2 of the aggregate value of the community trust property would reflect the surviving spouse's share and would not be subject to testamentary disposition by the decedent spouse or distribution under Kansas succession laws. The other 1/2 share would be subject to testamentary disposition or distribution under Kansas succession laws.

Unless otherwise provided in the community trust agreement, the trustee would have the power to distribute the community trust assets to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non-*pro rata* division of the community trust's aggregate value of the trust assets, on the basis of each individual asset in the community trust, or by using both distribution bases. The decedent's spouse's 1/2 share would not be included in the elective estate.

Marriage Dissolution

The bill would state that upon the dissolution of marriage of the spouses, the community trust would terminate and the trustee would be required to distribute 1/2 of the trust assets to each spouse. The bill would not allow the community trust to automatically terminate upon the initiation of an action to terminate a marriage, unless the spouses have a signed agreement in writing or otherwise ordered by the court having jurisdiction over the dissolution proceedings between the spouses.

If a marriage dissolution action remains pending for 180 days, the trust would automatically terminate, and the trustee would be required to distribute 1/2 of the community trust assets to each spouse, unless any of the following apply:

- A spouse objects to the termination within 180 days following the filing of the dissolution action, at which time either party could request the court determine whether good cause exists to terminate the community trust during the pendency of the dissolution of marriage action;
- The court over the dissolution proceedings enters an order directing otherwise;
- The spouses agree in writing while the dissolution of marriage action is pending; or
- The community trust agreement provides otherwise.

Unless the community trust agreement provides otherwise, the trustee would have the power to distribute trust assets in divided or undivided interests and adjust resulting difference in valuation. A distribution in kind could be made on the basis of a non-*pro rata* division of the aggregate value of the trust assets, on the basis of a *pro rata* division of each individual asset, or by using both distribution bases.

A trustee would not be allowed to distribute real property or business interests in a manner that would leave the spouses as co-owners of such assets after the dissolution of the marriage or the termination of the community trust, unless otherwise agreed to by the spouses in a separate written agreement executed during the marriage dissolution action.

The community trust agreement would not be able to be terminated and the assets distributed in a manner that could

cause the trust assets to not be treated as community property.

The court over the dissolution proceedings would have personal and subject matter jurisdiction over the spouses and the trustee of the community trust for the purpose of effectuating the distribution of the community trust assets consistent with the terms of the community trust agreement and in a manner ensuring the community trust assets retain their community property character.

Enforceability (New Section 9)

The bill would state a community trust executed during marriage would not be enforceable if the spouse against whom enforcement is sought proves that:

- The trust was unconscionable, as determined by a court, when made;
- The spouse against whom enforcement is sought did not execute the community trust agreement voluntarily;
- The community trust agreement was the product of fraud, duress, coercion, or overreaching; or
- Before executing the community trust agreement, the spouse against whom enforcement is sought:
 - Was not given a fair and reasonable disclosure of the other spouse's property and financial obligations;
 - Did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the provided disclosure; or
 - Did not have notice of the property or financial obligations of the other spouse.

A community trust would not be deemed unenforceable solely on the fact the spouses did not have separate legal representation when executing the community trust agreement.

Designated Representative (New Section 10)

The bill defines a "designated representative" as a person who has delivered to the trustee the person's written acceptance of the office of designated representative or has agreed to serve as such through at least one of the manners provided in the bill. The designated representative could be appointed for representing a beneficiary and would be presumed to be a fiduciary.

The definition would be added to the Trust Code.

Freedom of Disposition (New Section 11)

The bill would give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.

The bill would allow the agreement to expand, restrict, eliminate, or vary any laws of general application to fiduciaries, trusts, and trust administration. It would not allow the agreement to permit exculpation or indemnification of a fiduciary for the fiduciary's own willful misconduct or preclude a court of jurisdiction from removing a fiduciary due to the fiduciary's willful misconduct.

Additionally, the bill would allow the agreement to expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed of the beneficiary's interest in a trust for a period of time. During the restriction or elimination of a beneficiary's right to be informed of their interest in the trust, any designated beneficiary would be required to represent and bind such beneficiary for purposes of any

judicial proceeds or any nonjudicial matter. If a corporate trustee is serving for any governing instruments, the corporate trustee would need to maintain a Kansas presence.

The bill would add provisions regarding freedom of disposition to the Trust Code.

Taxes and Distributions (Section 12)

The bill would amend the Trust Code by not considering amount paid by a trustee's discretionary authority as a distributed benefit.

Keeping Beneficiaries Informed (Section 13)

The bill would amend the Trust Code's provision related to keeping qualified trust beneficiaries reasonably informed about the administration of the trust. The bill would provide an exception to allow the community trust agreement to instruct otherwise.

Trustee Powers (Section 14)

The bill would amend the Trust Code's list of powers a trustee could exercise by permitting a trustee to exercise discretionary power to reimburse a settlor under current federal tax laws, except as otherwise provided under the terms of the trust.

Background

The bill was introduced by the House Committee on Financial Institutions and Pensions at the request of a representative of the Kansas Bankers Association.

House Committee on Financial Institutions and Pensions

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Bankers Association and Midwest Trust Company. The proponents generally stated the bill would provide an opt-in trust option that could attract new clients to Kansas trust businesses. The bill would also give more power to people wanting to ensure their entire estate is transferred to their wishes.

Written-only proponent testimony was provided by a private citizen.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of the State Bank Commissioner (OSBC) regulates and examines trust companies in Kansas. Any community property trusts created under the bill would be reviewed as part of the OSBC's normal examination schedule. Any costs associated with the examinations would be absorbed into the OSBC's existing budget.

The Department of Credit Unions (Department) indicates where account ownership is in a trust very specific items are verified during the Department's examinations. Because the Department already has the review of information in place, any costs associated with the examinations would be absorbed within the Department's existing budget.

The Kansas Department of Revenue indicates that under the bill, a community property trust would allow married couples to avoid capital gains taxes after one of the spouses dies. Property would be valued at the current market value when the spouse dies, which would allow the property to be sold without any capital gains. This would reduce federal

taxable income and have a minimal effect on Kansas tax liability. Moving property into a trust does not qualify a taxpayer for any deduction or credit. Any fiscal effect associated with the bill is not reflected in *The FY 2027 Governor's Budget Report*.

The Kansas Association of Counties indicates enactment of the bill could increase counties' costs depending on the work involved for the Register of Deeds concerning the property in the trust. However, the Association is unable to estimate a fiscal effect. The League of Kansas Municipalities indicates enactment of the bill would not have a fiscal effect on cities.

Community trust; trusts; Kansas Uniform Trust Code; Kansas Community Property Trust Act