



**KANSAS BAR  
ASSOCIATION**

**TO: The Honorable Lance Kinzer, Chair**  
And Members of the House Judiciary Committee

**FROM: Joseph N. Molina**  
On behalf of the Kansas Bar Association

**RE: SB 291 – modification or termination of non-charitable irrevocable trusts**

**DATE: March 13, 2012**

Good afternoon Chairman Kinzer and Members of the House Judiciary Committee. I am Joseph Molina and on behalf of the Kansas Bar Association I provide this written testimony in support of SB 291 that will amend 2011 K.S.A. sup. 58a-411 by allowing the modification or termination of non-charitable irrevocable trust by consent, amending K.S.A. 58a-505 concerning creditor's claims against settlor and eliminating the requirement for a taxpayer's ID on certification of trust.

As way of background, the Legislature first considered similar legislation in 2011 (SB 47). SB 47 was introduced by the Kansas Bar Association into this committee. The Senate Judiciary Committee did not act on the bill, but rather referred SB 47 to the Kansas Judicial Council for further study. The Legislature often refers complex matters to the Kansas Judicial Council for review and recommendations before enacting changes to the law. The Judicial Council is composed of practicing attorneys from plaintiff and defense bar, law professors, and judges.

In 2011, the Probate Advisory Committee of the Kansas Judicial Council reviewed several trust proposals, including SB 47. The Kansas Bar Association was able to have a voice during these discussions as a KBA member, Nancy Roush, was asked to be part of the review process. The fruit of those discussions is presented in the form of SB 291.

In an attempt to avoid duplicative testimony, I will briefly summarize our support for two sections of SB 291. The first concerns spendthrift trusts as it is found in K.S.A. 58a-411. Currently, when interpreting a trust the "material purposes" of that trust cannot be inferred if the trust contains specific trust provisions. Nonetheless, K.S.A 58a-411 contains a singular exception to this rule by presuming that a spendthrift provision in a trust constitutes a "material purpose" of the trust. At the time of its enactment in the Kansas Uniform Trust Code (KUTC), it departed from the pure version of the UTC, which provided the opposite inference, i.e., that such a provision was not presumed to constitute a material purpose. The interjection of this provision into the KUTC was suggested by members of the KBA Real Estate, Probate and Trust Law Section as a means of strengthening the nature of such clauses in garnering asset

protection. However, in two appellate decisions, an unintended result has been that this provision has become a significant impediment to a judicial modification of trust provisions otherwise merited under other provisions of the UTC and KUTC, in essence overriding all other considerations.

SB 291 would eliminate this presumption placing an undue preeminence on the inclusion of spendthrift provisions, which are normally included in the “boilerplate” provisions. As such, whether a spendthrift clause would constitute a material purpose of the trust would be determined in the absence of such presumption under the specific facts and circumstances.

In addition, SB 291 contains an amendment to K.S.A. 58a-1013 that removes the requirement that a trust’s taxpayer identification number be listed on the trust document. The KBA introduced identical legislation in 2011 in the form of SB 45. This committee held a hearing on SB 45 and passed it out favorably. SB 45 was then passed by the Kansas Senate on a vote of 38-0. Unfortunately, SB 45 did not survive its trip through the Kansas House of Representatives, where its language was ultimately substituted for an abortion bill.

In SB 291, the Judicial Council has resurrected this proposal and the KBA fully supports the effort to pass this common sense proposal out of committee again. The KBA supports repealing the requirement that the trust’s taxpayer identification number be listed on the trust, because there are other, more secure ways to identify a trust. Increasing privacy will decrease the possibility of identity theft, and by eliminating the Tax ID number in K.S.A. 58a-1013(7), the Register of Deeds will no longer need to concern themselves with concealing that information, thereby saving time and resources.

In closing, the Kansas Bar Association supports the work product of the Probate Advisory Committee of the Kansas Judicial Council, which amends the Uniform Trust Code.

On behalf of the Kansas Bar Association, I thank you for the opportunity to provide this written testimony in support of SB 291.

*About the Kansas Bar Association:*

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. [www.ksbar.org](http://www.ksbar.org)