

## SENATE BILL No. 261

By Committee on Judiciary

1-15

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1 AN ACT concerning the uniform trust code; relating to trust distribution to  
2 spouse or relative of the grantor; creditor claims against settlors;  
3 amending K.S.A. 58a-505 and 59-103 and K.S.A. 2013 Supp. 58a-105  
4 and repealing the existing sections; also repealing K.S.A. 58a-818.  
5

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

7 New Section 1. (a) If a trust distribution is directed by the trust  
8 instrument to be made to a spouse of the grantor or to any relative of the  
9 grantor by lineal descent or within the sixth degree, whether by blood or  
10 adoption, and such spouse or relative dies before the date of the  
11 distribution directed by the trust instrument, leaving issue who survive,  
12 such issue shall take the same distribution which such spouse or relative  
13 would have taken if such spouse or relative had survived, unless a different  
14 disposition is made or required by the trust instrument.

15 (b) Unless the provisions of such trust specifically provide to the  
16 contrary, the term "issue" means offspring, progeny or lineal descendants,  
17 by blood or adoption, in whatever degree.

18 (c) This section applies only to trusts executed on or after January 1,  
19 2015.

20 (d) This section shall be a part of and supplemental to the Kansas  
21 uniform trust code.

22 Sec. 2. K.S.A. 2013 Supp. 58a-105 is hereby amended to read as  
23 follows: 58a-105. (a) Except as otherwise provided in the terms of the  
24 trust, this code governs the duties and powers of a trustee, relations among  
25 trustees and the rights and interests of a beneficiary.

26 (b) The terms of a trust prevail over any provision of this code  
27 except:

- 28 (1) The requirements for creating a trust;
- 29 (2) the duty of a trustee to act in good faith and administer the trust in  
30 accordance with K.S.A. 58a-801, and amendments thereto;
- 31 (3) the requirement that a trust and its terms be for the benefit of its  
32 beneficiaries, and that the trust have a purpose that is lawful, not contrary  
33 to public policy and possible to achieve;
- 34 (4) the power of the court to modify or terminate a trust under K.S.A.  
35 58a-410 through 58a-416, and amendments thereto;
- 36 (5) the effect of the rights of creditors to reach a trust as provided in

1 article 5 of chapter 58a of the Kansas Statutes Annotated, and amendments  
2 thereto;

3 (6) the power of the court under K.S.A. 58a-702, and amendments  
4 thereto, to require, dispense with, or modify or terminate a bond;

5 (7) the power of the court under subsection (b) of K.S.A. 58a-708,  
6 and amendments thereto, to adjust a trustee's compensation specified in the  
7 terms of the trust which is unreasonably low or high;

8 (8) the effect of an exculpatory term under K.S.A. 58a-1008, and  
9 amendments thereto;

10 (9) the rights under K.S.A. 58a-1010 through 58a-1013, and  
11 amendments thereto, of a person other than a trustee or beneficiary;

12 (10) periods of limitation for commencing a judicial proceeding  
13 under K.S.A. 58a-604, and amendments thereto; *and*

14 (11) the power of the court to take such action and exercise such  
15 jurisdiction as may be necessary in the interests of justice; ~~and~~

16 ~~(12) the barring of claims against trusts and trustees under K.S.A.~~  
17 ~~58a-818, and amendments thereto.~~

18 (c) Notwithstanding any provisions of the Kansas uniform trust code  
19 to the contrary, any trust created by will and admitted to probate shall be  
20 subject to the requirements of chapter 59 of the Kansas Statutes  
21 Annotated, *and amendments thereto*.

22 Sec. 3. K.S.A. 58a-505 is hereby amended to read as follows: 58a-  
23 505. (a) Except as provided by K.S.A. 33-101 et seq. and 33-201 et seq.,  
24 and amendments thereto, whether or not the terms of a trust contain a  
25 spendthrift provision, the following rules apply:

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

28 (2) With respect to an irrevocable trust, a creditor or assignee of the  
29 settlor may reach the maximum amount that can be distributed to or for the  
30 settlor's benefit. If a trust has more than one settlor, the amount the creditor  
31 or assignee of a particular settlor may reach may not exceed the settlor's  
32 interest in the portion of the trust attributable to that settlor's contribution,  
33 *except that the provisions of subsection (a)(3) shall apply to a creditor or*  
34 *an assignee of the settlor of a trust that becomes irrevocable solely due to*  
35 *the death of the settlor.*

36 (3) After the death of a settlor, ~~and subject to the settlor's right to~~  
37 ~~direct the source from which liabilities will be paid, :~~

38 (A) *Except as provided further,* the property of a trust that was  
39 revocable ~~at~~ *immediately prior to* the settlor's death is subject to claims of  
40 the settlor's creditors, costs of administration of the settlor's estate, the  
41 expenses of the settlor's funeral and disposal of remains, the homestead,  
42 homestead allowance, the elective share rights of the surviving spouse  
43 pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory

1 allowance to a surviving spouse and children to the extent the settlor's  
2 probate estate is inadequate to satisfy those claims, costs, expenses, and  
3 allowances, each referred to as a "claim." A revocable trust shall not be  
4 liable for any claim unless: (i) A petition is filed for probate of the settlor's  
5 will pursuant to K.S.A. 59-2220, and amendments thereto, or for the  
6 administration of the decedent's estate pursuant to K.S.A. 59-2219, and  
7 amendments thereto, within six months after the death of the decedent; (ii)  
8 the settlor's probate estate is inadequate to satisfy the claim, unless the  
9 settlor has specifically directed otherwise; and (iii) the claim has been  
10 properly exhibited in the settlor's probate estate, allowed by the court in  
11 the proceeding under chapter 59 of the Kansas Statutes Annotated, and  
12 amendments thereto, and not otherwise barred by K.S.A. 59-2239, and  
13 amendments thereto.

14 (B) If the trustee of the revocable trust has not been given notice of  
15 the hearing on the claim in the proceeding under chapter 59 of the Kansas  
16 Statutes Annotated, and amendments thereto, the finding of the court in  
17 such proceeding, although binding on the estate, shall not be binding on  
18 the revocable trust. In such event, the property of the revocable trust shall  
19 only be subject to the claim if the creditor making the claim files a petition  
20 for a de novo hearing on such claim in the court pursuant to the  
21 proceeding under chapter 59 of the Kansas Statutes Annotated, and  
22 amendments thereto, and gives notice of such hearing to the trustee of the  
23 revocable trust within one year of the decedent's death, and the trustee  
24 may raise any defenses the trustee has to such claim at that hearing, but in  
25 no event may the amount of the claim exceed that allowed in the prior  
26 hearing.

27 (C) If the trustee of a revocable trust receives notice of a claim within  
28 the nonclaim period, the trustee may pay such claim from the revocable  
29 trust after determining such payment is otherwise appropriate,  
30 notwithstanding that a probate estate has not been opened within six  
31 months after death or the claim has not been properly exhibited therein.  
32 This shall not relieve the requirements above for any claim not so paid by  
33 the trustee.

34 (D) Notwithstanding the other provisions of subsection (a)(3), and  
35 except as otherwise provided in subsection (g) of K.S.A. 39-709, and  
36 amendments thereto, to the extent property owned by, payable to or  
37 otherwise passing under a revocable trust on the settlor's death was  
38 exempt from the claims of the settlor's creditors under applicable law  
39 immediately prior to the settlor's death, such property, as well as any  
40 proceeds thereof, and whether or not comingled with nonexempt assets  
41 after death, shall remain exempt from the claims of the settlor's creditors  
42 following the settlor's death.

43 (E) When the revocable trust designates property to be appropriated

1 for the payment of claims it shall be applied to such purpose. Otherwise  
2 the property in the revocable trust which is properly subject to payment of  
3 claims shall be appropriated in the following order:

- 4 (1) Personal property not disposed of by the trust;
- 5 (2) real estate not disposed of by the trust;
- 6 (3) personal property given to a residuary beneficiary;
- 7 (4) real estate given to a residuary beneficiary;
- 8 (5) property not specifically given; and
- 9 (6) property specifically given.

10 The property of each class shall be exhausted before resorting to that  
11 of the next class, and all of one class shall contribute ratably if all the  
12 property of that class is not required for the payment of claims.

13 (b) For purposes of this section:

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

17 (2) upon the lapse, release, or waiver of the power, the holder is  
18 treated as the settlor of the trust only to the extent the value of the property  
19 affected by the lapse, release, or waiver exceeds the greater of the amount  
20 specified in section 2041(b)(2) or 2514(e) of the federal internal revenue  
21 code of 1986, as in effect on December 31, 2002; or section 2503(b) of the  
22 federal internal revenue code of 1986, as in effect on December 31, 2002;  
23 and

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

26 Sec. 4. K.S.A. 59-103 is hereby amended to read as follows: 59-103.  
27 (a) Chapter 59 of the Kansas Statutes Annotated, *and amendments thereto*,  
28 may be used:

29 (1) To admit last wills and testaments to probate.

30 (2) To grant and revoke letters testamentary and of administration.

31 (3) To direct and control the official acts of executors and  
32 administrators, to settle their accounts, and to order the distribution of  
33 estates.

34 (4) To administer partnership estates as provided in this act.

35 (5) To determine the heirs, devisees, and legatees of decedents.

36 (6) To appoint and remove guardians and conservators for minors,  
37 voluntary conservatees and incapacitated persons, to make all necessary  
38 orders relating to their estates, to direct and control the official acts of such  
39 guardians and conservators and to settle their accounts.

40 (7) To supervise the administration of trusts and powers created by  
41 wills admitted to probate, and trusts and powers created by written  
42 instruments other than by wills in favor of persons subject to  
43 conservatorship; to appoint and remove trustees for such trusts, to make all

1 necessary orders relating to such trust estates, to direct and control the  
2 official acts of such trustees, and to settle their accounts.

3 (8) To appoint and remove trustees of estates of convicts imprisoned  
4 in a correctional institution under sentence of imprisonment for life, to  
5 make all necessary orders relating to their estates, to direct and control the  
6 official acts of such trustees, and to settle their accounts.

7 (9) To hold hearings respecting mentally ill persons, and to order their  
8 referral for treatment.

9 (10) *To determine the validity and payment of claims.*

10 (b) Every petition to commence an action pursuant to *this* chapter ~~59~~  
11 shall state, immediately below the clause showing the name of the court,  
12 parties and case docket number, the following: "Petition pursuant to  
13 chapter 59 of the Kansas Statutes Annotated."

14 Sec. 5. K.S.A. 58a-505, 58a-818 and 59-103 and K.S.A. 2013 Supp.  
15 58a-105 are hereby repealed.

16 Sec. 6. This act shall take effect and be in force from and after its  
17 publication in the statute book.