



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Fred Patton, Chair
And Members of the House Judiciary Committee

FROM: Joseph Molina
On behalf of the Kansas Bar Association

RE: KBA Support for SB 141 – Uniform Directed Trust Act

DATE: March 2, 2022

Chairman Patton and members of the House Judiciary Committee, my name is Joseph Molina and I provide this written testimony on behalf of the Kansas Bar Association in **SUPPORT** of SB 141, Uniform Directed Trust Act.

The Uniform Directed Trust Act (UDTA) provides clear, practical answers to the challenges raised by the rise of directed trusts. The act offers a simple framework for allocating fiduciary power and duty between a trust director and a trustee and comprehensively addresses the many practical questions raised by the presence of a trust director. Although many states have already enacted statutes to govern directed trusts, the UDTA improves on these statutes by offering solutions that are simpler, more precise, and more complete. Because directed trusts are now standard in sophisticated trust drafting, a comprehensive directed trust statute is essential for every state.

The UDTA balances settlor autonomy and beneficiary safeguards. The UDTA divides fiduciary duty between a trustee and a trust director by allocating primary duty to the director while maintaining a minimum core of duty for the trustee to avoid willful misconduct. This approach balances a settlor's freedom of disposition with a beneficiary's need for fiduciary protections. In allocating fiduciary duty in this way, the UDTA clarifies and extends the division of fiduciary duties that has already been pioneered by Delaware. Delaware's success in attracting directed trusts indicates that the UDTA approach is workable in practice.

The UDTA is comprehensive. In addition to providing a sensible and clear allocation of fiduciary duty, the UDTA address a host of other issues that have been largely overlooked by existing state statutes. The UDTA provides rules to govern the flow of information between trustees and trust directors, for example, and offers solutions to important practical problems concerning trust directors, such as succession, compensation, and removal. The UDTA's comprehensiveness is driven by a coherent drafting philosophy that largely extends a state's existing law of trusteeship to trust directors.

The UDTA offers many technical innovations. Because the UDTA is the product of an extensive drafting process aided by nationally recognized trust law experts, the UDTA offers many technical innovations that

improve on existing state statutes. Some of these innovations fix errors and oversights in existing statutes. Unlike most state statutes, for example, the UDTA makes clear that the settlor of a revocable trust is not a trust director. The UDTA also offers several novel innovations. It provides tools to assist a settlor's tax planning, for example, and resolves doubt about ancillary areas of a trust director's authority. The UDTA further innovates by treating all trust directors, similarly, thereby avoiding the artificial and overly rigid categories of trust directors that make many existing statutes difficult to work with.

For these reasons the Kansas Bar Association supports passage of SB 141.

Thank you for your time and attention.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 5,500 members include lawyers, judges, law students, and paralegals. www.ksbar.org