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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 1, 2023

Subject: Bill Brief on HB 2144

HB 2144 authorizes modifications of a noncharitable irrevocable trust to provide that the rule against perpetuities is inapplicable. It also provides that the statutory rule against perpetuities is inapplicable to trusts under certain circumstances and modifies the definition of resident trust in the Kansas income tax act.

Section 1 amends K.S.A. 58a-411, the statute authorizing modification or termination of noncharitable irrevocable trust by consent, to add a provision stating that application of the rule against perpetuities is not presumed to constitute a material purpose of the trust.

Section 2 amends K.S.A. 59-3404, the statute providing exclusions from the Kansas uniform statutory rule against perpetuities, to add an exclusion of a trust in which the governing instrument states that the rule does not apply and the trustee or other proper person has the power to sell, lease or mortgage property for a period of time beyond the period that would otherwise be required for an interest created under the governing instrument to vest. This new exclusion applies to all trusts created or amended on and after July 1, 2023.

Section 3 amends K.S.A. 79-32,109, the definition section of the Kansas income tax act, to add to the definition of “resident trust” the requirement that at least one income beneficiary was a resident of the state on the last day of the taxable year.