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**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council – Christy Molzen, Staff Attorney**

**DATE: February 1, 2023**

**Re: Neutral testimony on 2023 H.B. 2144 – Authorizing trusts to opt out of the rule against perpetuities – WRITTEN ONLY**

Sections 1 and 2 of 2023 H.B. 2144 authorize trusts to opt out of the rule against perpetuities and are based on the recommendations of the Judicial Council and its Probate Law Advisory Committee (PLAC). I am providing a copy of PLAC's report for the Committee's information.

Last year, the Council was asked to review 2022 S.B. 400, which was requested by the Kansas Bankers Association and Midwest Trust and which would have enacted several trust-related provisions based on Missouri law. One of those provisions would have made the rule against perpetuities inapplicable to trusts in certain circumstances. As described in more detail in its report, the PLAC agreed with the concept of providing an opt-out from the rule against perpetuities but thought that a Nebraska statute provided a better model.

House Bill 2144 incorporates the PLAC's recommendations in Sections 1 and 2. Section 3 of the bill amending the definition of "resident trust" was not part of the Council's study.

**REPORT OF THE PROBATE LAW ADVISORY COMMITTEE ON 2022 S.B. 400 PROVISIONS  
RELATING TO TRUST DECANTING AND THE RULE AGAINST PERPETUITIES**

**December 2, 2022**

In March 2022, the Kansas Bar Association requested that the Judicial Council study two topics that arose during the legislature's consideration of 2022 S.B. 400: the rule against perpetuities and trust decanting. As introduced, Section 1 of S.B. 400 would have made the rule against perpetuities inapplicable to trusts under certain circumstances. That provision was based on a Missouri statute. Section 2 of the bill would have enacted a trust decanting provision also based on a Missouri statute. The proponents of S.B. 400, the Kansas Bankers Association and Midwest Trust, agreed to have those two sections removed from the bill and referred to the Judicial Council for further study. See attached study request.

The Judicial Council assigned the study to the Probate Law Advisory Committee (Committee). The Committee held three meetings during the fall of 2022 to conduct the study, and, at the Committee's invitation, Kelly VanZwoll and Alex Orel from the Kansas Bankers Association and Will Bergman of Midwest Trust attended several of those meetings.

**Committee membership**

The members of the Probate Law Advisory Committee are:

Sarah Bootes Shattuck, Ashland; Chair  
Eric Anderson, Salina  
Shannon Barks, Kansas City, MO  
Cheryl Boushka, Kansas City, MO  
Emily Donaldson, Topeka  
Christine Graham, Kansas City, MO  
Mark Knackendoffel, Manhattan  
Hon. James McCabria, Lawrence  
Kent Meyerhoff, Wichita  
Rep. Fred Patton, Topeka  
Dave Snapp, Dodge City

## **Trust Decanting**

The Committee has spent the last several years reviewing the Uniform Trust Decanting Act and drafting amendments appropriate to Kansas. After reviewing the Committee's draft, the representatives of the Bankers Association and Midwest Trust agreed with the Committee that the Uniform Act is a better, more comprehensive approach than the Missouri statute, Mo. Rev. Stat. § 456.4-419, that provided the model for 2022 S.B. 400.

The Committee's recommendation relating to the Uniform Trust Decanting Act is being submitted to the Judicial Council for approval separately, and more detail about the Act is included in that submission.

## **Rule Against Perpetuities (RAP)**

Section 2 of S.B. 400 would have enacted another Missouri-based provision making the rule against perpetuities inapplicable to trusts under certain circumstances. The common law rule against perpetuities is a rule that prevents the "dead hand" from controlling property interests far into the future. As commonly stated, the rule prohibits the creation of any future interest in property which does not necessarily vest within 21 years after a life or lives in being at the time of creation of the interest, plus the period of gestation if gestation is taking place. See *Jason Oil Co., LLC v. Littler*, 310 Kan. 376, 381, 446 P.3d 1058, 1062 (2019).

In Missouri, Mo. Rev. Stat. § 456.025 creates an "opt-out" provision specifically for trusts, which states that for trusts created after August 28, 2001, and for certain other trusts, the rule against perpetuities (and any rule prohibiting unreasonable restraints on or suspension of the power of alienation) will not apply to the trust if the trustee has the power pursuant to the terms of the trust or applicable law to sell the trust property during the period of time the trust continues beyond the period of the rule against perpetuities that would otherwise apply. This provision essentially allows the drafter of a trust to opt out of the rule against perpetuities by including the necessary language in the trust instrument. Senate Bill 400 would have enacted a similar provision in Kansas.

Kansas, unlike Missouri, is one of 29 jurisdictions that have adopted the Uniform Statutory Rule Against Perpetuities (USRAP). See K.S.A. 59-3401, *et seq.* The USRAP supersedes the common law rule against perpetuities. K.S.A. 59-3408. Among other changes, the USRAP adds a "wait-and-see" approach to the rule, by providing that an interest that is not certain to vest within the common law period is still valid if it actually vests within 90 years after the date it is

created. K.S.A. 59-3401(a). The USRAP also contains a cy pres provision authorizing judicial reformation of a disposition that would otherwise be invalid to conform it to the limits of the 90-year waiting period. K.S.A. 59-3404.

Almost every state has modified the common law rule against perpetuities in some manner, with some states abolishing the rule entirely. Among states that have adopted the USRAP, several have made major modifications including extending the 90-year period up to 500 or even 1000 years. See Bogert's Law of Trusts and Trustees, § 214.

The rule against perpetuities was first developed to prevent the practice of tying up family property for generations, which creates an unreasonable restraint upon the alienation of that property. The Kansas Supreme Court has recognized alienability of property as the overarching public policy consideration behind the continued application of the rule in Kansas. *Jason Oil*, 310 Kan. at 389.

While some Committee members expressed the concern that repealing or further modifying the rule against perpetuities could undermine the public policy behind it, the Committee recognized that the rule has already been so eroded by its modification and outright abolition in other states that the rule no longer offers the protection it once did. The Committee also noted that the Kansas legislature has already created an exemption from the rule for "fidfin" trusts administered by technology enabled fiduciary financial institutions (TEFFI's). See K.S.A. 9-2326, enacted in 2021.

The Committee heard from proponents of S.B. 400 that, when wealthy people who want to establish dynasty trusts learn that they cannot do so in Kansas, they simply venue shop and find a company that will establish the trust in another state with more lenient trust laws. In fact, some trust companies are specifically marketing themselves based on their ability to administer trusts in those other states. Thus, repealing or limiting the application of the rule against perpetuities would make Kansas trust companies more competitive.

The Committee agreed that providing an "opt-out" provision to allow the drafter of a trust to specifically exclude a trust from the application of the rule would provide greater flexibility and help Kansas keep trust business in the state. The Committee considered the Missouri provision contained in S.B. 400 but decided that it would be better to incorporate any opt-out provision into the Kansas USRAP rather than the trust code. The Committee ultimately chose the Nebraska statute, Neb. Rev. St. § 76-2005(9), as a model, because that state has also adopted the USRAP with modifications. The Committee also agreed that any change to the rule should be

made prospective only, because some existing trusts have been drafted with the understanding that they would terminate no later than the end of the statutory 90-year perpetuities period.

The Committee also recommends an amendment to the Kansas uniform trust code to clarify that a court can modify an existing trust to opt out of the rule against perpetuities. Under K.S.A. 58a-411, a noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. The Committee recommends adding language to the statute making clear that application of the rule against perpetuities is not presumed to be a material purpose of the trust. This amendment is important because, under Section 20 of the Uniform Trust Decanting Act, a second trust is subject to any rule against perpetuities that applied to the first trust. Thus, it may be necessary to modify the first trust to opt out of the rule against perpetuities before decanting to a second trust.

### **Recommendation**

The Committee recommends the following amendments:

K.S.A. 59-3404. Kansas USRAP; exclusions.

K.S.A. 59-3401, statutory rule against perpetuities, does not apply to:

- (1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;
- (2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;
- (3) a power to appoint a fiduciary;
- (4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;
- (5) a nonvested property interest held by a charity, government or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or the beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; ~~or~~

(7) a property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or

(8) A trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee or other person to whom the power is properly granted or delegated has power under the governing instrument, any applicable statute, or the common law to sell, lease, or mortgage property for any period of time beyond the period which would otherwise be required for an interest created under the governing instrument to vest. This subsection shall apply to all trusts created by will or inter vivos agreement executed or amended on or after July 1, 2023, and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2023.

#### 58a-411. Modification or termination of noncharitable irrevocable trust by consent

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an attorney in fact under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. This subsection does not apply to irrevocable trusts created before, or to revocable trusts that became irrevocable before, January 1, 2003.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust. Application of the rule against perpetuities is not presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(e) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the qualified beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a qualified beneficiary who does not consent will be adequately protected.



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March 7, 2022

Nancy Strouse, Executive Director  
Kansas Judicial Council  
301 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

Dear Ms. Strouse:

I am writing to request the Kansas Judicial Council study a topic that arose during the consideration of legislation by the Senate Committee on Financial Institutions and Insurance during the 2022 Session. I believe that in-depth consideration of the issues raised by the legislation by the Judicial Council would be appropriate and helpful before the Legislature considers this issue next session.

**Substitute for SB 400 certain requirements and conditions relating to the creation, modification and termination of trusts in the Kansas uniform trust code and updating the definition of resident trust for tax purposes.**

SB 400 was introduced at the request of Kansas Bankers Association on behalf of their member Midwest Trust. The Bankers and Midwest Trust testified in favor of the bill while the Kansas Bar Association took a neutral position.

Prior to the scheduled hearing on SB 400 it came to our attention that the Kansas judicial Council was working on amending various Decanting statutes within the Kansas Uniform Trust Code. SB 400 as introduced, would have also amended those Decanting statutes with language from the Missouri Trust code. We believe these two various decanting proposals should be studied to determine which would best fit within our current trust code scheme.

The Kansas Bankers Association, along with Midwest Trust, agreed to amend their initial proposal by removing the decanting amendments and the provision eliminating the Rules Against Perpetuities. This agreement was contingent upon the Kansas Bar Association requesting this study, which we do so now.

I would appreciate any recommendation by the Judicial Council regarding this topic and Senate Sub for SB 400, including ways to address the concerns raised at the hearing.

I have included with this letter testimony from that hearing,



I have included with this letter testimony from that hearing, which is available at [http://www.kslegislature.org/li/b2021\\_22/measures/SB400/testimony](http://www.kslegislature.org/li/b2021_22/measures/SB400/testimony) .

Please let me know if I can provide any further information or answer any questions regarding this request.

Sincerely,

*Cheryl J. Whelan*

Cheryl Whelan  
President, Kansas Bar Association

## SENATE BILL No. 400

By Committee on Financial Institutions and Insurance

1-27

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1 AN ACT concerning trusts; relating to the creation, modification and  
2 termination thereof; creating an opt-out provision for the rule against  
3 perpetuities; providing for a process by which a new trust can be  
4 created by moving all of the contents of one trust into a new trust;  
5 adding to the list of matters that may be resolved by nonjudicial  
6 settlement agreements; increasing the threshold at which an  
7 uneconomic trust may be terminated; updating the definition of resident  
8 trust; amending K.S.A. 58a-414 and 79-32,109 and K.S.A. 2021 Supp.  
9 58a-111 and repealing the existing sections.

10

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

12 New Section 1. (a) The rule against perpetuities shall not apply to,  
13 and any rule prohibiting unreasonable restraints on or suspension of the  
14 power of alienation shall not be violated by, a trust if a trustee, or other to  
15 whom the power is properly granted or delegated, has the power, pursuant  
16 to the terms of the trust or applicable law, to sell the trust property during  
17 the period of time the trust continues beyond the period of the rule against  
18 perpetuities that would otherwise apply to the trust.

19 (b) No rule against accumulations shall apply to a trust described in  
20 subsection (a) unless the terms of the trust require that the income be  
21 accumulated during a period of time the trust continues beyond the period  
22 of the rule against perpetuities that would otherwise apply to the trust. If  
23 the terms of the trust require that the income be accumulated during any  
24 period of time the trust continues beyond the period of the rule against  
25 perpetuities that would otherwise apply to the trust, then during that period  
26 of time the trustee shall have the power to make discretionary distributions  
27 of net income to such recipients, in such shares and in such manner that  
28 most closely effectuates the settlor's or testator's manifested plan of  
29 distribution.

30 (c) The provisions of this section shall apply to any trust created:

31 (1) By a will or inter vivos agreement or pursuant to the exercise of a  
32 power of appointment other than a general power of appointment granted  
33 under a will or inter vivos agreement that has been executed or amended  
34 on or after July 1, 2021;

35 (2) pursuant to the exercise of a general power of appointment  
36 exercised in an instrument executed or amended on or after July 1, 2021;

1 or

2 (3) by a will or inter vivos agreement or pursuant to the exercise of a  
3 power of appointment granted under a will or inter vivos agreement,  
4 executed or amended before July 1, 2021, if the laws of this state become  
5 applicable to the trust after such date, the laws of any other state applied to  
6 the trust before such date and the rule against perpetuities does not apply  
7 to the trust pursuant to the laws of the other state.

8 (d) As used in this section, the term "trust" means an express trust  
9 created by a trust instrument, including a will, whereby a trustee has the  
10 duty to administer a trust asset for the benefit of a named or otherwise  
11 described income or principal beneficiary. "Trust" does not include a:

- 12 (1) Resulting or constructive trust;
- 13 (2) business trust that provides for certificates to be issued to  
14 the beneficiary;
- 15 (3) investment trust;
- 16 (4) voting trust;
- 17 (5) security instrument;
- 18 (6) trust created by the judgment or decree of a court;
- 19 (7) liquidation trust or a trust for the primary purpose of paying  
20 dividends, interests, interest coupons, salaries, wages, pensions or profits  
21 or employee benefits of any kind;
- 22 (8) instrument wherein a person is nominee or escrowee for  
23 another;
- 24 (9) trust created in deposits in any financial institution;
- 25 (10) trust that is not subject to the rule against perpetuities by  
26 reason of any other law of this state; or
- 27 (11) any other trust the nature of which does not admit of  
28 general trust administration.

29 (e) This section shall be a part of and supplemental to the Kansas  
30 uniform trust code.

31 New Sec. 2. (a) If a trustee has discretionary power under the terms  
32 of a trust to make a distribution of income or principal, whether or not  
33 limited by an ascertainable standard, to or for the benefit of one or more  
34 beneficiaries of such trust and unless the terms of such trust expressly  
35 prohibit such distribution of income or principal, then the trustee may  
36 exercise the trustee's discretionary power by appointing all or part of the  
37 income or principal of the original trust in favor of a trustee of a new trust.  
38 The new trust shall be created under the original trust document or a new  
39 trust document in the event that the trustee of the original trust decides that  
40 the appointment of income or principal is necessary or desirable after  
41 considering the terms and purposes of the original trust, the terms and  
42 purposes of the new trust and the consequences of the distribution.

43 (b) The following provisions apply to any exercise of the authority

1 granted by subsection (a):

2 (1) The new trust shall only have one or more beneficiaries of the  
3 original trust to or for whom:

4 (A) Any discretionary distribution may have been made from the  
5 original trust and such beneficiaries are proper objects of the exercise of  
6 the power; or

7 (B) a distribution of income or principal may have been made in the  
8 future from the original trust at a time or upon the occurrence of a  
9 predetermined event specified as a condition precedent under the original  
10 trust;

11 (2) unless the exercise of such power is limited by an ascertainable  
12 standard, no trustee of the original trust may exercise the trustee's authority  
13 to make a distribution from the original trust if:

14 (A) Such trustee is a beneficiary of the original trust; or

15 (B) any beneficiary may remove and replace the trustee of the  
16 original trust with a related or subordinate party to such beneficiary within  
17 the meaning of section 672(c) of the internal revenue code;

18 (3) if such trustee is participating in a change to the original trust that  
19 is required for a distribution to be made to a beneficiary of the original  
20 trust under an ascertainable standard, no trustee shall exercise such  
21 authority to the extent that doing so would have the effect of:

22 (A) Increasing the distributions that can be made in the future from  
23 the new trust to the trustee of the original trust or to a beneficiary who can  
24 remove and replace the trustee of the original trust with a related or  
25 subordinate party to such beneficiary within the meaning of section 672(c)  
26 of the internal revenue code; or

27 (B) removing restrictions on discretionary distributions imposed by  
28 the original instrument under which the original trust was created;

29 (4) in the case of any trust contributions that been treated as gifts  
30 qualifying for the exclusion from gift tax described in section 2503(b) of  
31 the internal revenue code, by reason of the application of section 2503(c)  
32 of the internal revenue code, the governing instrument for the second trust  
33 shall provide that the beneficiary's remainder interest shall vest no later  
34 than the date upon which such interest would have vested under the terms  
35 of the governing instrument for the first trust;

36 (5) the exercise of such authority may not reduce any income interest  
37 of any income beneficiary of any of the following trusts:

38 (A) A trust for which a marital deduction has been taken for federal  
39 income tax purposes under section 2056 or 2523 of the internal revenue  
40 code or for state tax purposes under any comparable provision of  
41 applicable state law;

42 (B) a charitable remainder trust under section 664 of the internal  
43 revenue code;

1 (C) a grantor retained annuity trust under section 2702 of the internal  
2 revenue code; or

3 (D) a trust that has been qualified as a subchapter S trust under  
4 section 1361(d) of the internal revenue code or an electing small business  
5 trust under section 1361(e) of the internal revenue code;

6 (6) the exercise of such authority shall not apply to trust property  
7 subject to a presently exercisable power of withdrawal held by a trust  
8 beneficiary to whom, or for the benefit of whom, the trustee has authority  
9 to make distributions, unless after the exercise of such authority, such  
10 beneficiary's power of withdrawal is unchanged with respect to the trust  
11 property;

12 (7) a spendthrift clause or a provision in the trust instrument that  
13 prohibits amendment or revocation of the trust shall not preclude the  
14 trustee from exercising the authority granted by subsection (a);

15 (8) at least 60 days prior to making a discretionary distribution under  
16 subsection (a), the trustee of the first trust shall notify the permissible  
17 distributees of the second trust, or the qualified beneficiaries of the second  
18 trust if there are no permissible distributees of the second trust, of the  
19 distribution. A beneficiary may waive the right to the notice required by  
20 this subsection and, with respect to future distributions, may withdraw a  
21 waiver previously given;

22 (9) in exercising the authority granted by subsection (a), the trustee  
23 shall remain subject to all fiduciary duties otherwise imposed under the  
24 trust instrument and Kansas law; and

25 (10) this section shall not be construed to impose on a trustee a duty  
26 to exercise the authority granted by subsection (a) in favor of another trust  
27 or to consider exercising such authority in favor of another trust.

28 (c) This section applies to any trust governed by the laws of this state,  
29 including a trust whose principal place of administration is transferred to  
30 this state before or after the enactment of this section.

31 (d) As used in this section, "internal revenue code" means the federal  
32 internal revenue code of 1986.

33 (e) This section shall be a part of and supplemental to the Kansas  
34 uniform trust code.

35 Sec. 3. K.S.A. 2021 Supp. 58a-111 is hereby amended to read as  
36 follows: 58a-111. (a) For purposes of this section, "interested persons"  
37 means persons whose consent would be required in order to achieve a  
38 binding settlement were the settlement to be approved by the court.

39 (b) Except as otherwise provided in subsection (c), interested persons  
40 may enter into a binding nonjudicial settlement agreement with respect to  
41 the matters listed in subsection (d).

42 (c) A nonjudicial settlement agreement is valid only to the extent it  
43 does not violate a material purpose of the trust and includes terms and

1 conditions that could be properly approved by the court under this code or  
 2 other applicable law.

3 (d) Matters that may be resolved by a nonjudicial settlement  
 4 agreement are limited to:

- 5 (1) The approval of a trustee's report or accounting;
- 6 (2) the resignation or appointment of a trustee and the determination  
 7 of a trustee's compensation;
- 8 (3) transfer of a trust's principal place of administration; ~~and~~
- 9 (4) liability of a trustee for an action relating to the trust;
- 10 (5) *the interpretation or construction of the terms of the trust;*
- 11 (6) *direction to a trustee to refrain from performing a particular act*  
 12 *or the grant to a trustee of any necessary or desirable power; and*
- 13 (7) *the governing law of the trust.*

14 (e) Any interested person may request the court to approve a  
 15 nonjudicial settlement agreement, to determine whether the representation  
 16 as provided in article 3 of this code was adequate, and to determine  
 17 whether the agreement contains terms and conditions the court could have  
 18 properly approved.

19 Sec. 4. K.S.A. 58a-414 is hereby amended to read as follows: 58a-  
 20 414. (a) After notice to the qualified beneficiaries, the trustee of a trust  
 21 consisting of trust property having a total value less than ~~-\$100,000-~~  
 22 *\$250,000* may terminate the trust if the trustee concludes that the value of  
 23 the trust property is insufficient to justify the cost of administration.

24 (b) The court may modify or terminate a trust or remove the trustee  
 25 and appoint a different trustee if it determines that the value of the trust  
 26 property is insufficient to justify the cost of administration.

27 (c) Upon termination of a trust under this section, the trustee shall  
 28 distribute the trust property in a manner consistent with the purposes of the  
 29 trust.

30 ~~(d) This section does not apply to an easement for conservation or~~  
 31 ~~preservation.~~

- 32 (e) This section does not apply to:
- 33 (1) *An easement for conservation or preservation; or*
- 34 (2) any trust if ~~its~~ assets are distributable to the trustee or anyone the  
 35 trustee is obligated to support.

36 Sec. 5. K.S.A. 79-32,109 is hereby amended to read as follows: 79-  
 37 32,109. As used in this act, unless the context otherwise requires:

38 (a) (1) Any term used in this act shall have the same meaning as  
 39 when used in a comparable context in the federal internal revenue code.  
 40 Any reference in this act to the "federal internal revenue code" shall mean  
 41 the provisions of the federal internal revenue code of 1986, and  
 42 amendments thereto, and other provisions of the laws of the United States  
 43 relating to federal income taxes, as the same may be or become effective at

1 any time, or from time to time, for the taxable year.

2 (2) Any reference in this act to a federal form or schedule, or to a line  
3 number on a federal form or schedule, shall be to such form, schedule and  
4 line number as they existed for tax year 2011 and as revised thereafter by  
5 the internal revenue service. Any such reference shall include comparable  
6 federal forms, schedules, and line numbers used by non-United States  
7 residents when filing their federal income tax return with the internal  
8 revenue service.

9 (b) "Resident individual" means a natural person who is domiciled in  
10 this state. A natural person who spends in the aggregate more than six  
11 months of the taxable year within this state shall be presumed to be a  
12 resident for purposes of this act in absence of proof to the contrary. A  
13 nonresident individual means an individual other than a resident  
14 individual.

15 (c) "Resident estate" means the estate of a deceased person whose  
16 domicile was in this state at the time of such person's death. "Nonresident  
17 estate" means an estate other than a resident estate.

18 (d) ~~"Resident trust" means a trust which is administered in this state.~~  
19 ~~A trust shall not be deemed to be administered in this state solely because~~  
20 ~~it is subject to the jurisdiction of a district court within this state.~~  
21 ~~"Nonresident trust" means a trust other than a resident trust that was~~  
22 ~~created by or consisting of property owned by a person domiciled in this~~  
23 ~~state on the date the trust or portion of the trust became irrevocable and~~  
24 ~~has at least one income beneficiary who, on the last day of the taxable~~  
25 ~~year, was a resident of this state.~~

26 (e) "Resident partner" means a partner who is a resident individual, a  
27 resident estate, or a resident trust. "Nonresident partner" means a partner  
28 other than a resident partner.

29 (f) "Resident beneficiary" means a beneficiary of an estate or trust  
30 which beneficiary is a resident individual, a resident estate, or a resident  
31 trust. "Nonresident beneficiary" means a beneficiary other than a resident  
32 beneficiary.

33 (g) "Director" means the director of taxation.

34 (h) (1) "Modified Kansas source income" means that part of a  
35 nonresident individual's Kansas adjusted gross income as set forth in  
36 K.S.A. 79-32,117, and amendments thereto, derived from sources in  
37 Kansas. Items of income including unemployment compensation, gain,  
38 loss or deduction reflected in Kansas adjusted gross income shall be  
39 considered derived from sources in Kansas to the extent that they are  
40 attributable to:

41 (1)(A) The ownership of any interest in real or tangible personal  
42 property in this state;

43 (2)(B) a business, trade, profession or occupation carried on in this

1 state;

2 ~~(3)~~(C) a business, trade, profession or occupation carried on partly  
3 within and partly without this state as determined by the uniform division  
4 of income for tax purposes act as set forth in K.S.A. 79-3271 through  
5 K.S.A. 79-3293, and amendments thereto;

6 ~~(4)~~(D) the distributive share of partnership income, gain, loss and  
7 deduction determined under this section as if the partnership were a  
8 nonresident individual;

9 ~~(5)~~(E) the share of estate or trust income, gain, loss and deduction  
10 determined under K.S.A. 79-32,137, and amendments thereto;

11 ~~(6)~~(F) prizes won from lottery games conducted by the Kansas  
12 lottery;

13 ~~(7)~~(G) any winnings from parimutuel wagering derived from the  
14 conduct of parimutuel activities within this state; or

15 ~~(8)~~(H) income from intangible personal property, including annuities,  
16 dividends, interest, and gains from the disposition of intangible personal  
17 property to the extent that such income is from property employed in a  
18 trade, business, profession or occupation carried on in Kansas. A  
19 nonresident, other than a dealer holding property primarily for sale to  
20 customers in the ordinary course of such dealer's trade or business, shall  
21 not be deemed to carry on a business, trade, profession or occupation in  
22 Kansas solely by reason of the purchase and sale of property for such  
23 nonresident's own account.

24 (2) "Modified Kansas source income" ~~shall~~ does not include:

25 ~~(1)~~(A) Compensation paid by the United States for service in the  
26 armed forces of the United States, performed during an induction period  
27 by an individual not domiciled in this state; or

28 ~~(2)~~(B) such individual's share of distributed or undistributed taxable  
29 income or net operating loss of a corporation which is an electing small  
30 business corporation unless an agreement is filed as provided in K.S.A.  
31 79-32,139, and amendments thereto, in which event, the "modified Kansas  
32 source income" of such nonresident individual shall include such  
33 individual's share of such corporation's distributed and undistributed  
34 taxable income or net operating loss as such share is determined under the  
35 internal revenue code only to the extent, however, that such income, gain  
36 or loss is at the corporate level, derived from sources within Kansas.

37 Sec. 6. K.S.A. 58a-414 and K.S.A. 2021 Supp. 58a-111 and 79-  
38 32,109 are hereby repealed.

39 Sec. 7. This act shall take effect and be in force from and after its  
40 publication in the statute book.



**Substitute for SENATE BILL No. 400**

By Committee on Financial Institutions and Insurance

2-17

1 AN ACT concerning trusts; relating to the creation, modification and  
2 termination thereof; adding to the list of matters that may be resolved  
3 by nonjudicial settlement agreements; increasing the threshold at which  
4 an uneconomic trust may be terminated; updating the definition of  
5 resident trust; amending K.S.A. 58a-414 and 79-32,109 and K.S.A.  
6 2021 Supp. 58a-111 and repealing the existing sections.  
7

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

9 Section 1. K.S.A. 2021 Supp. 58a-111 is hereby amended to read as  
10 follows: 58a-111. (a) For purposes of this section, "interested persons"  
11 means persons whose consent would be required in order to achieve a  
12 binding settlement were the settlement to be approved by the court.

13 (b) Except as otherwise provided in subsection (c), interested persons  
14 may enter into a binding nonjudicial settlement agreement with respect to  
15 the matters listed in subsection (d).

16 (c) A nonjudicial settlement agreement is valid only to the extent it  
17 does not violate a material purpose of the trust and includes terms and  
18 conditions that could be properly approved by the court under this code or  
19 other applicable law.

20 (d) Matters that may be resolved by a nonjudicial settlement  
21 agreement are limited to:

- 22 (1) The approval of a trustee's report or accounting;  
23 (2) the resignation or appointment of a trustee and the determination  
24 of a trustee's compensation;  
25 (3) transfer of a trust's principal place of administration; ~~and~~  
26 (4) liability of a trustee for an action relating to the trust;  
27 (5) *the interpretation or construction of the terms of the trust;*  
28 (6) *direction to a trustee to refrain from performing a particular act*  
29 *or the grant to a trustee of any necessary or desirable power; and*  
30 (7) *the governing law of the trust.*

31 (e) Any interested person may request the court to approve a  
32 nonjudicial settlement agreement, to determine whether the representation  
33 as provided in article 3 of this code was adequate, and to determine  
34 whether the agreement contains terms and conditions the court could have  
35 properly approved.

36 Sec. 2. K.S.A. 58a-414 is hereby amended to read as follows: 58a-

1 414. (a) After notice to the qualified beneficiaries, the trustee of a trust  
2 consisting of trust property having a total value less than ~~-\$100,000-~~  
3 ~~\$250,000~~ may terminate the trust if the trustee concludes that the value of  
4 the trust property is insufficient to justify the cost of administration.

5 (b) The court may modify or terminate a trust or remove the trustee  
6 and appoint a different trustee if it determines that the value of the trust  
7 property is insufficient to justify the cost of administration.

8 (c) Upon termination of a trust under this section, the trustee shall  
9 distribute the trust property in a manner consistent with the purposes of the  
10 trust.

11 ~~(d) This section does not apply to an easement for conservation or~~  
12 ~~preservation.~~

13 (e) This section does not apply to:

14 (1) *An easement for conservation or preservation; or*

15 (2) any trust if ~~its~~ assets are distributable to the trustee or anyone the  
16 trustee is obligated to support.

17 Sec. 3. K.S.A. 79-32,109 is hereby amended to read as follows: 79-  
18 32,109. As used in this act, unless the context otherwise requires:

19 (a) (1) Any term used in this act shall have the same meaning as  
20 when used in a comparable context in the federal internal revenue code.  
21 Any reference in this act to the "federal internal revenue code" shall mean  
22 the provisions of the federal internal revenue code of 1986, and  
23 amendments thereto, and other provisions of the laws of the United States  
24 relating to federal income taxes, as the same may be or become effective at  
25 any time, or from time to time, for the taxable year.

26 (2) Any reference in this act to a federal form or schedule, or to a line  
27 number on a federal form or schedule, shall be to such form, schedule and  
28 line number as they existed for tax year 2011 and as revised thereafter by  
29 the internal revenue service. Any such reference shall include comparable  
30 federal forms, schedules, and line numbers used by non-United States  
31 residents when filing their federal income tax return with the internal  
32 revenue service.

33 (b) "Resident individual" means a natural person who is domiciled in  
34 this state. A natural person who spends in the aggregate more than six  
35 months of the taxable year within this state shall be presumed to be a  
36 resident for purposes of this act in absence of proof to the contrary. A  
37 nonresident individual means an individual other than a resident  
38 individual.

39 (c) "Resident estate" means the estate of a deceased person whose  
40 domicile was in this state at the time of such person's death. "Nonresident  
41 estate" means an estate other than a resident estate.

42 (d) "Resident trust" means a trust ~~which that~~ is administered in this  
43 state. ~~A trust shall not be deemed to be administered in this state solely~~

1 ~~because it is subject to the jurisdiction of a district court within this state.~~  
2 "Nonresident trust" means a trust other than a resident trust and that was  
3 created by or consists of property owned by a person domiciled in this  
4 state on the date the trust or portion of the trust became irrevocable.

5 (e) "Resident partner" means a partner who is a resident individual, a  
6 resident estate, or a resident trust. "Nonresident partner" means a partner  
7 other than a resident partner.

8 (f) "Resident beneficiary" means a beneficiary of an estate or trust  
9 which beneficiary is a resident individual, a resident estate, or a resident  
10 trust. "Nonresident beneficiary" means a beneficiary other than a resident  
11 beneficiary.

12 (g) "Director" means the director of taxation.

13 (h) (1) "Modified Kansas source income" means that part of a  
14 nonresident individual's Kansas adjusted gross income as set forth in  
15 K.S.A. 79-32,117, and amendments thereto, derived from sources in  
16 Kansas. Items of income including unemployment compensation, gain,  
17 loss or deduction reflected in Kansas adjusted gross income shall be  
18 considered derived from sources in Kansas to the extent that they are  
19 attributable to:

20 (1)(A) The ownership of any interest in real or tangible personal  
21 property in this state;

22 (2)(B) a business, trade, profession or occupation carried on in this  
23 state;

24 (3)(C) a business, trade, profession or occupation carried on partly  
25 within and partly without this state as determined by the uniform division  
26 of income for tax purposes act as set forth in K.S.A. 79-3271 through  
27 K.S.A. 79-3293, and amendments thereto;

28 (4)(D) the distributive share of partnership income, gain, loss and  
29 deduction determined under this section as if the partnership were a  
30 nonresident individual;

31 (5)(E) the share of estate or trust income, gain, loss and deduction  
32 determined under K.S.A. 79-32,137, and amendments thereto;

33 (6)(F) prizes won from lottery games conducted by the Kansas  
34 lottery;

35 (7)(G) any winnings from parimutuel wagering derived from the  
36 conduct of parimutuel activities within this state; or

37 (8)(H) income from intangible personal property, including annuities,  
38 dividends, interest, and gains from the disposition of intangible personal  
39 property to the extent that such income is from property employed in a  
40 trade, business, profession or occupation carried on in Kansas. A  
41 nonresident, other than a dealer holding property primarily for sale to  
42 customers in the ordinary course of such dealer's trade or business, shall  
43 not be deemed to carry on a business, trade, profession or occupation in

1 Kansas solely by reason of the purchase and sale of property for such  
2 nonresident's own account.

3 (2) "Modified Kansas source income" ~~shall~~ *does* not include:

4 (1)(A) Compensation paid by the United States for service in the  
5 armed forces of the United States, performed during an induction period  
6 by an individual not domiciled in this state; or

7 (2)(B) such individual's share of distributed or undistributed taxable  
8 income or net operating loss of a corporation which is an electing small  
9 business corporation unless an agreement is filed as provided in K.S.A.  
10 79-32,139, and amendments thereto, in which event, the "modified Kansas  
11 source income" of such nonresident individual shall include such  
12 individual's share of such corporation's distributed and undistributed  
13 taxable income or net operating loss as such share is determined under the  
14 internal revenue code only to the extent, however, that such income, gain  
15 or loss is at the corporate level, derived from sources within Kansas.

16 Sec. 4. K.S.A. 58a-414 and 79-32,109 and K.S.A. 2021 Supp. 58a-  
17 111 are hereby repealed.

18 Sec. 5. This act shall take effect and be in force from and after its  
19 publication in the statute book.



**Date:** February 2, 2022  
**To:** Senate Committee on Financial Institutions & Insurance  
Senator Jeff Longbine, Chairman  
**From:** Will Bergman, In-House Counsel  
Midwest Trust Company  
**RE:** Verbal Proponent Testimony – SB 400

Mr. Chairman and committee members, I am Will Bergman appearing on behalf of Midwest Trust Company (Midwest Trust), a non-depository Kansas trust company with its headquarters in Overland Park. Thank you for this chance to provide proponent testimony on SB 400. This bill, if passed, will help modernize the Kansas Trust Code, bring high quality jobs to Kansas and will ensure Kansas fiduciaries are competing fairly with other states.

### **Background on Corporate Trustees**

The Kansas Office of the State Bank Commissioner currently regulates 12 active independent state-chartered trust companies and 33 Commercial Banks with trust powers. These organizations provide valuable services to Kansans and to residents of other states acting as corporate trustee for trusts, private foundations and administrator for estates. As trustees, we are Fiduciaries, obligated to do what is best for our clients.

### **Sections 1 and 2**

Regarding New Sections 1 and 2, after recent conversations with other interested parties we have learned that the Judicial Council is studying these subjects. We would like to collaborate with them and report back to this committee at a different time on these two proposals. Therefore, we request that these sections are stricken from the bill. I deeply appreciate all the work staff has done in preparing this draft and look forward to working with them in the future on sections 1 and 2.



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### **Section 3 Nonjudicial Settlement Agreement**

Nonjudicial settlement agreements are contracts made by the interested parties of a trust agreement, the settlor, beneficiaries, and trustee, to aid in the administration of the trust. A nonjudicial settlement agreement must be unanimous with all parties agreeing. This agreement is a preferred method to resolving issues with trust administration because it is more expedient and cheaper. The alternative is to go through the court system. This statute maintains a safe harbor provision; at any time, an interested party can request the court to approve the agreement. Overall, legal fees are smaller, and the court system does not get bogged down. The best part is that since all the parties agree, lawsuits are unlikely.

New Paragraphs 5, 6, and 7 expand the use of nonjudicial settlement agreements. The main purpose of these new provisions is to solve vague or confusing provisions of trust documents as a result of the drafting. These new provisions have been taken from Missouri and Tennessee law.

### **Section 4 Uneconomic Trusts**

Section 4 on uneconomic trusts, if passed will make it easier to administer trusts within Kansas. The purpose of Statute 58a-414 was to allow for the uneconomic termination of trusts. The trustee maintains the right, but not the obligation to terminate a trust and to distribute the funds to the beneficiaries if the cost of administering the trust is too expensive. Originally, the bill was passed with \$100,000 being the threshold in 2002. With inflation over the last 20 years, it is necessary to increase that amount. This provision is entirely within the trustee's discretion, so free-spending beneficiaries cannot request this termination to occur.

### **Section 5 Resident Trust Definition**

The current definition of resident trust is overly broad in Kansas. A resident trust as currently defined is "a trust which is administered in this state". Thus, if any trust is administered in the state, a fiduciary income tax return must be filed. This hinders Kansas corporate trustees from providing services to residents of other states. Most states link the definition of resident trust to either the location of the settlor or beneficiaries, not the trustee. If Kansas trust companies provide services for residents of other states, double taxation can occur, a Kansas fiduciary income



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tax return will be filed and the state at which the client is a resident may require a return.

Midwest Trust maintains Trust Service Offices in Washington, Colorado, Kansas, Missouri, Tennessee, and Ohio, where trust administration occurs. Midwest Trust is a preferred trust provider for Morgan Stanley and Fidelity. Each year they send us hundreds of accounts to be administered. As fiduciaries, we have started to open our new accounts to be administered in Missouri, where the resident trust definition benefits these new clients. Because of the new influx of accounts, we have been hiring trust offices and employees in our Clayton and downtown Kansas City offices, to avail ourselves of this preferential tax treatment.

With people working from home and clients becoming more comfortable with video conferencing, our trust officers do not need to be located near their clients. We can hire them anywhere, but we have not been hiring them in Kansas because the Kansas definition of Resident Trust is too broad.

Following conversations with other interested parties, we do ask for a friendly amendment. This change is to ensure that no adverse effects occur resulting from this change in definition. We request the following change:

*“Resident Trust” means a trust, which is administered in this state and was created by or consisting of property owned by a person domiciled in this state on the date the trust or portion of the trust became irrevocable.*

This definition will allow for us to provide services to residents from other states without overhauling the definition for residents of Kansas.

I would like to thank you all for the opportunity to provide proponent testimony on behalf of SB 400. With the passage of this bill, Kansas trust companies will become more competitive and bring jobs to our state.

As the Committee considers this bill, I respectfully ask for favorable consideration so that we can provide the best service to our clients, from our headquarters in Kansas. Mr. Chairman, thank you, and I would be happy to stand for questions at the appropriate time. If at a later time you have questions or require additional information, don't hesitate to get in touch with me at [will.bergman@midwesttrust.com](mailto:will.bergman@midwesttrust.com) or (913) 319-0329.



**KANSAS BAR  
ASSOCIATION**

**TO:**           **The Honorable Jeff Longbine, Chair**  
and Members of the Senate Committee on Financial Institutions &  
Insurance

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

**RE:**           **SB 400 - Updating certain requirements and conditions relating to the  
creation, modification, and termination of trusts in the Kansas  
uniform trust code and updating the definition of resident trust for tax  
purposes.**

**DATE:**       **February 2, 2022**

Chairman and members of the Senate Committee on Financial Institutions & Insurance, my name is Joseph Molina and I provide this neutral testimony on behalf of the Kansas Bar Association as it relates to SB 400 - Updating certain requirements and conditions relating to the creation, modification, and termination of trusts in the Kansas uniform trust code and updating the definition of resident trust for tax purposes.

The Kansas Bar Association has been in close contact with the sponsors of this bill and the Kansas Judicial Council. We appreciate the openness and willingness of the Kansas Bankers and Midwest Trust to discuss SB 400 with us. We are extremely sensitive to the work and effort put forth by the sponsors and recognize the importance SB 400 is to their legislative agenda.

With that being said, the Kansas Bar Association would request additional time to study SB 400. By allowing this additional time, a full vetting of the provisions within SB 400 and the Uniform Decanting Act currently being studied by the Kansas Judicial Council could take place.

In addition, the Kansas Bar Association Real Property, Trust and Probate Section could review SB 400 to determine if any of its provisions conflicted with the Uniform Trust Code enacted in 2002. SB 400 would be the most significant amendment to the Uniform Trust Code in nearly two decades.

It is for these reasons the KBA would request additional time to study SB 400.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

***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 7,200 members include lawyers, judges, law students, and paralegals. [www.ksbar.org](http://www.ksbar.org)





# Trust Division

A DIVISION of KBA

**February 2, 2022**

**To: Senate Committee on Financial Institutions and Insurance  
Senator Jeff Longbine, Chairman**

**From: Joe Karnes, CTFI-Trust Division, Kansas Bankers Association**

**Re: Written Proponent Testimony –SB 400**

Mr. Chairman and committee members, I am Joe Karnes providing this testimony on behalf of the Trust Division of the Kansas Bankers Association. The Trust Division of the KBA has been working to support Kansas banks for more than 100 years. We thank you for the opportunity to provide testimony in support of SB 400 which will modernize Kansas Trust Law. We believe the proposed changes will make Kansas Banks and Trust Companies more competitive and better able to serve our state's residents with their estate planning.

Let me begin with changing the definition of resident trust. By making the proposed change, trusts administered in Kansas will avoid potential double taxation. That is not possible under the current statute, KSA 79-32, 109(d). As currently written, all trusts administered in the state are resident trusts. Law firms in Kansas are able to take advantage of the different definitions of resident trusts and have drafted documents having the trusts be administered in Missouri and our other bordering states. If SB 400 is passed, Kansas will be able to administer trusts for residents of other states and our industry will flourish.

The second part of the proposed changes I want to address is to expand the list of uses for non-judicial settlement agreements. The current statute is 58a-111. We support expanding the list to include the Missouri and Tennessee provisions. These changes will not alter any material purpose of a trust, but it will make it easier and more cost effective for trustees to administer trusts when all interested parties are in agreement.

The last item in SB 400 I wish to bring to the committee's attention is the increase in the cap for termination of uneconomic trusts. The current statute is 58a-414. The cap now is set at \$100,000 and it has not be raised since the early 2000s. Like everything else inflation has made the cost to administer trusts more expensive. We support raising the cap to \$250,000.

Thank you for the opportunity to provide written proponent testimony on SB 400. When the Committee considers acting on this legislation, we respectfully ask for favorable consideration.

Mr. Chairman, if you or any committee member have questions or require additional information, please contact me at [joeka@centralnational.com](mailto:joeka@centralnational.com) or 785-838-1962.



**Date:** March 7, 2022

**To:** House Committee on Financial Institutions and Rural  
Development  
Representative Jim Kelly, Chairman

**From:** Will Bergman, In-House Counsel  
Midwest Trust Company

**RE:** Verbal Proponent Testimony – SB 400

Mr. Chairman and committee members, I am Will Bergman appearing on behalf of Midwest Trust Company (Midwest Trust), a non-depository Kansas trust company with its headquarters in Overland Park. Thank you for this chance to provide proponent testimony on Substitute for SB 400. This bill, if passed, will help modernize the Kansas Trust Code, bring high quality jobs to Kansas and will ensure Kansas fiduciaries are competing fairly with other states.

### **Background on Corporate Trustees**

The Kansas Office of the State Bank Commissioner currently regulates 12 active independent state-chartered trust companies and 33 Commercial Banks with trust powers. These organizations provide valuable services to Kansans and to residents of other states acting as corporate trustee for trusts, private foundations and administrator for estates. As trustees, we are Fiduciaries, obligated to do what is best for our clients.

### **Section 3 Nonjudicial Settlement Agreement**

Nonjudicial settlement agreements are contracts made by the interested parties of a trust agreement, the settlor, beneficiaries, and trustee, to aid in the administration of the trust. A nonjudicial settlement agreement must be unanimous with all parties agreeing. This agreement is a preferred method to resolving issues with trust administration because it is more expedient and cheaper. The alternative is to go through the court system. This statute maintains a safe harbor provision; at any time, an interested party can request the court to approve the agreement. Overall,



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legal fees are smaller, and the court system does not get bogged down. The best part is that since all the parties agree, lawsuits are unlikely.

New Paragraphs 5, 6, and 7 expand the use of nonjudicial settlement agreements. The main purpose of these new provisions is to solve vague or confusing provisions of trust documents as a result of the drafting. These new provisions have been taken from Missouri and Tennessee law.

#### **Section 4 Uneconomic Trusts**

Section 4 on uneconomic trusts, if passed will make it easier to administer trusts within Kansas. The purpose of Statute 58a-414 was to allow for the uneconomic termination of trusts. The trustee maintains the right, but not the obligation to terminate a trust and to distribute the funds to the beneficiaries if the cost of administering the trust is too expensive. Originally, the bill was passed with \$100,000 being the threshold in 2002. With inflation over the last 20 years, it is necessary to increase that amount. This provision is entirely within the trustee's discretion, so free-spending beneficiaries cannot request this termination to occur.

#### **Section 5 Resident Trust Definition**

The current definition of resident trust is overly broad in Kansas. A resident trust as currently defined is "a trust which is administered in this state". Thus, if any trust is administered in the state, a fiduciary income tax return must be filed. This hinders Kansas corporate trustees from providing services to residents of other states. Most states link the definition of resident trust to either the location of the settlor or beneficiaries, not the trustee. If Kansas trust companies provide services for residents of other states, double taxation can occur, a Kansas fiduciary income tax return will be filed and the state at which the client is a resident may require a return.

Midwest Trust maintains Trust Service Offices in Washington, Colorado, Kansas, Missouri, Tennessee, and Ohio, where trust administration occurs. Midwest Trust is a preferred trust provider for Morgan Stanley and Fidelity. Each year they send us hundreds of accounts to be administered. As fiduciaries, we have started to open our new accounts to be administered in Missouri, where the resident trust definition benefits these new clients. Because of the new influx of accounts, we have been hiring trust offices and employees in our Clayton and downtown Kansas City offices, to avail ourselves of this preferential tax treatment.



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With people working from home and clients becoming more comfortable with video conferencing, our trust officers do not need to be located near their clients. We can hire them anywhere, but we have not been hiring them in Kansas because the Kansas definition of Resident Trust is too broad.

I would like to thank you all for the opportunity to provide proponent testimony on behalf of SB 400. With the passage of this bill, Kansas trust companies will become more competitive and bring jobs to our state.

After meeting with other interested parties, we requested this substitute bill replace the original bill. The Kansas Bar Association and the Judicial Counsel both had been studying portions of the Kansas Uniform Trust Code that this bill would address. We look forward to collaborating in the future on these studied topics.

As the Committee considers this bill, I respectfully ask for favorable consideration so that we can provide the best service to our clients, from our headquarters in Kansas. Mr. Chairman, thank you, and I would be happy to stand for questions at the appropriate time. If at a later time you have questions or require additional information, don't hesitate to get in touch with me at [will.bergman@midwesttrust.com](mailto:will.bergman@midwesttrust.com) or (913) 319-03292.



**KANSAS BAR  
ASSOCIATION**

**TO:**           **The Honorable Jim Kelly**  
and Members of the House Committee on Financial Institutions and Rural  
Development

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

**RE:**           **SB 400 - Updating certain requirements and conditions relating to the  
creation, modification, and termination of trusts in the Kansas  
uniform trust code and updating the definition of resident trust for tax  
purposes.**

**DATE:**       **March 8, 2022**

Chairman and Members of the House Committee on Financial Institutions and Rural Development, my name is Joseph Molina and I provide this neutral testimony on behalf of the Kansas Bar Association as it relates to SB 400 - Updating certain requirements and conditions relating to the creation, modification, and termination of trusts in the Kansas uniform trust code and updating the definition of resident trust for tax purposes.

The Kansas Bar Association has been in close contact with the sponsors of this bill and the Kansas Judicial Council. We appreciate the openness and willingness of the Kansas Bankers and Midwest Trust to discuss SB 400 with us. We are extremely sensitive to the work and effort put forth by the sponsors and recognize the importance SB 400 is to their legislative agenda.

When SB 400 was introduced the Kansas Bar Association met with the Bankers to request additional time to study SB 400. This additional time would allow further vetting of the provisions within SB 400, specifically the provisions dealing with decanting and the rules against perpetuities. At present the Kansas Judicial Council is studying the Uniform Decanting statutes

The Senate amended SB 400 to remove these provisions which is why the bill before you is Substitute for SB 400. The KBA has drafted a request to the Kansas Judicial Council, which I have attached to my testimony to memorialize our intent to have the issues studied during the interim. Again, we appreciate the Kansas bankers and Midwest Trust for working with us on this issue.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

***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 7,200 members include lawyers, judges, law students, and paralegals. [www.ksbar.org](http://www.ksbar.org)