

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Judiciary** recommends **HB 2172** be amended on page 1, in line 7, before "Section" by inserting "New"; in line 9, before "Sec." by inserting "New";

On page 4, in line 20, before "Sec." by inserting "New"; in line 37, before "Sec." by inserting "New";

On page 5, in line 4, before "Sec." by inserting "New"; in line 16, before "Sec." by inserting "New"; in line 21, before "Sec." by inserting "New";

On page 6, in line 26, before "Sec." by inserting "New"; in line 42, before "Sec." by inserting "New";

On page 7, in line 43, before "Sec." by inserting "New";

On page 8, in line 6, before "Sec." by inserting "New";

On page 9, in line 27, before "Sec." by inserting "New";

On page 10, in line 13, before "Sec." by inserting "New";

On page 11, in line 19, before "Sec." by inserting "New";

On page 12, in line 13, before "Sec." by inserting "New"; in line 38, before "Sec." by inserting "New";

On page 13, in line 14, before "Sec." by inserting "New"; in line 29, before "Sec." by inserting "New"; in line 39, before "Sec." by inserting "New";

On page 16, in line 25, before "Sec." by inserting "New"; in line 31, before "Sec." by inserting "New"; in line 35, before "Sec." by inserting "New";

On page 17, in line 5, before "Sec." by inserting "New"; in line 23, before "Sec." by

inserting "New"; in line 26, before "Sec." by inserting "New"; in line 34, before "Sec." by inserting "New";

On page 18, in line 6, before "Sec." by inserting "New"; in line 10, before "Sec." by inserting "New"; in line 13, before "Sec." by inserting "New"; in line 19, before "Sec." by inserting "New"; following line 23, by inserting:

"Sec. 31. K.S.A. 2022 Supp. 58a-411 is hereby amended to read as follows: 58a-411.

(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) (1) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(2) 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.

Sec. 32. K.S.A. 59-3404 is hereby amended to read as follows: 59-3404. K.S.A. 59-3401, and amendments thereto, the 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 a:

(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.

Sec. 33. K.S.A. 2022 Supp. 79-32,109 is hereby amended to read as follows: 79-32,109. As used in this act, unless the context otherwise requires:

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

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

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

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

(d) "Resident trust" means a trust that:

- (1) Is administered in this state ~~and that~~;
- (2) was created by or consists of property owned by a person domiciled in this state on the date the trust or portion of the trust became irrevocable; and
- (3) has at least one income beneficiary who, on the last day of the taxable year, was a resident of this state.

(e)(1) "Resident partner" means a partner who is a resident individual, a resident estate, or a resident trust.

(2) "Nonresident partner" means a partner other than a resident partner.

(f)(1) "Resident beneficiary" means a beneficiary of an estate or trust which beneficiary is a resident individual, a resident estate, or a resident trust.

(2) "Nonresident beneficiary" means a beneficiary other than a resident beneficiary.

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

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

- (A) The ownership of any interest in real or tangible personal property in this state;
- (B) a business, trade, profession or occupation carried on in this state;
- (C) a business, trade, profession or occupation carried on partly within and partly without this state as determined by the uniform division of income for tax purposes act as set forth in K.S.A. 79-3271 through 79-3293, and amendments thereto;
- (D) the distributive share of partnership income, gain, loss and deduction determined under this section as if the partnership were a nonresident individual;

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

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

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

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

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

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

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

Sec. 34. K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-32,109 are hereby

repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 4, after "trust" by inserting "; authorizing modification of a noncharitable irrevocable trust to provide that the rule against perpetuities is inapplicable; providing that the Kansas uniform statutory rule against perpetuities is inapplicable to trusts under certain circumstances; modifying the definition of resident trust in the Kansas income tax act; amending K.S.A. 59-3404 and K.S.A. 2022 Supp. 58a-411 and 79-32,109 and repealing the existing sections"; and the bill be passed as amended.

_____ Chairperson