



# KANSAS JUDICIAL COUNCIL

CHIEF JUSTICE LAWTON R. NUSS, CHAIR, SALINA  
JUDGE STEPHEN D. HILL, PAOLA  
JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE MARITZA SEGARRA, JUNCTION CITY  
SEN. THOMAS C. (TIM) OWENS, OVERLAND PARK  
REP. LANCE Y. KINZER, OLATHE  
J. NICK BADGEROW, OVERLAND PARK  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA  
SARAH B. SHATTUCK, ASHLAND

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR  
NANCY J. STROUSE  
STAFF ATTORNEY  
CHRISTY R. MOLZEN  
ADMINISTRATIVE ASSISTANTS  
JANELLE L. WILLIAMS  
MARIAN L. CLINKENBEARD

**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council – Nancy Schmidt Roush**

**DATE: March 13, 2012**

**RE: Testimony on 2012 SB 293 Relating to Delivery of Wills to the District Court and Preservation of Wills for Probate**

## Introduction

Last year, Senator Tim Owens referred two bills relating to probate estates and trusts to the Judicial Council for study: 2011 SB 47 and SB 48. The Council's Probate Law Advisory Committee studied those bills, as well as several others, all of which had originally been drafted by the Real Estate, Probate and Trust Law Section of the Kansas Bar Association. As a result of that study, the Probate Committee recommended three new bills, one of which is 2012 SB 293.

## Purpose of Amendments

SB 293 would amend K.S.A. 59-618a in two respects. The amendments to subsection (a) would blend in language from current K.S.A. 59-621 (which would be repealed under the bill) providing that the custodian of a will has a duty to deliver it to the district court upon the testator's death. The Committee believes this change will clarify that Kansas law has a bifurcated system where anyone in possession of a decedent's will has a duty to deliver that will to the court, and, once the will is delivered, any interested party can file an affidavit to preserve the will for probate.

The amendments to subsection (b) and (c) would allow a decedent's will to be filed within six months of date of death with an affidavit preserving the will for probate regardless of the kind or value of property in the decedent's probate estate or the total amount of known demands against the estate. Existing law is changed by no longer requiring that a decedent's estate contain no known real or personal property or the value of such property be less than the total of all known demands enumerated in K.S.A. 59-1301. The information required to be in the affidavit is changed by eliminating the requirements that the property in the estate and the demands against the estate be stated.

The Committee also recommends that the Revisor include the phrase, "preserving will for probate" in the heading of this statute.

### **Committee Members**

The members of the Judicial Council Probate Law Advisory Committee are:

Hon. Sam K. Bruner, Acting Chair, Overland Park  
Eric N. Anderson, Salina  
Cheryl C. Boushka, Kansas City  
James L. Bush, Hiawatha  
Tim Carmody, Overland Park  
Prof. Martin B. Dickinson, Jr., Lawrence  
Mark Knackendoffel, Manhattan  
Hon. Edward Larson, Topeka  
Philip D. Ridenour, Cimarron  
Nancy Schmidt Roush, Kansas City  
Jennifer L. Stultz, Wichita  
Willard B. Thompson, Wichita  
Molly M. Wood, Lawrence