

**SENATE BILL No. 404**

By Committee on Judiciary

2-8

1 AN ACT concerning the Kansas uniform trust code; relating to spendthrift  
2 trusts; amending K.S.A. 58a-502 and repealing the existing section.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 58a-502 is hereby amended to read as follows: 58a-  
6 502. (a) A spendthrift provision is valid.

7 (b) A term of a trust providing that the interest of a beneficiary is held  
8 subject to a "spendthrift trust," or words of similar import, is sufficient to  
9 restrain both voluntary and involuntary transfer of the beneficiary's  
10 interest.

11 (c) A beneficiary may not transfer an interest in a trust in violation of  
12 a valid spendthrift provision and, except as otherwise provided in this  
13 article, a creditor or assignee of the beneficiary may not reach the interest  
14 or a distribution by the trustee before its receipt by the beneficiary.

15 ~~(d) Whether or not a trust contains a spendthrift provision, a creditor~~  
16 ~~of a beneficiary may not compel a distribution that is subject to the~~  
17 ~~trustee's discretion even if: (1) The discretion is expressed in the form of a~~  
18 ~~standard for distribution; or (2) the trustee has abused the discretion.~~

19 *(d) A beneficiary's interest in a trust that is subject to the trustee's*  
20 *discretion, irrespective of whether the trust has a spendthrift clause, does*  
21 *not constitute an interest in property reachable by any creditor of a*  
22 *beneficiary, whether by compelling a distribution the trustee is legally*  
23 *required to make to such beneficiary, attaching present or future interests*  
24 *of a beneficiary in such trust, or by any other means, even if the standard*  
25 *of distribution is expressed in the form of a standard and the trustee has*  
26 *abused the trustee's discretion. If the beneficiary is serving as sole trustee*  
27 *and the standard of distribution with regard to such beneficiary is not in*  
28 *the form of an ascertainable standard, a creditor shall have the right,*  
29 *while the beneficiary is serving as sole trustee, to:*

30 *(1) Compel any present distribution the trustee is authorized to make*  
31 *to such beneficiary at the time any legal proceeding is initiated by such*  
32 *creditor seeking such compulsion; and*

33 *(2) attach such beneficiary's interest in the trust, limited to any*  
34 *present or future discretionary distributions, if such beneficiary's interest*  
35 *in the trust is not subject to a spendthrift clause.*

36 (e) This section does not limit the right of a beneficiary to maintain a

- 1 judicial proceeding against a trustee for an abuse of discretion or failure to
- 2 comply with a standard for distribution.
- 3 Sec. 2. K.S.A. 58a-502 is hereby repealed.
- 4 Sec. 3. This act shall take effect and be in force from and after its
- 5 publication in the statute book.