

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2444

As Amended by Senate Committee on Judiciary

Brief*

HB 2444, as amended, would amend the law concerning spendthrift provisions of a trust to more closely mirror uniform law provisions.

Currently, the law states that regardless of whether a trust contains a spendthrift provision, a creditor of a beneficiary cannot compel a distribution that is subject to the trustee's discretion, even if the discretion is expressed in the form of a standard for distribution or the trustee has abused discretion. The bill would provide that a creditor may not compel a distribution even if both the standard of distribution is expressed in the form of a standard and the trustee has abused the trustee's discretion.

The bill would create an exception to this prohibition for instances in which a beneficiary is serving as sole trustee. If a beneficiary is or was serving as sole trustee and the standard of distribution with respect to such beneficiary is not in the form of an ascertainable standard relating to such beneficiary's health, education, support, or maintenance, the bill would allow a creditor to:

- Compel any distribution the beneficiary, while serving as sole trustee, either is presently authorized to make to such beneficiary or was authorized to make to such beneficiary and did not make; and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Attach such beneficiary's beneficial interest in the trust with respect to any present or future discretionary distributions to such beneficiary, in the absence of a spendthrift provision precluding such attachment.

Background

In the House Judiciary Committee, a representative of the Kansas Bar Association (KBA) appeared in support of the bill. The KBA requested the bill in response to the Commissioners on Uniform State Laws' recommendations to add language that specifically addresses situations in which a beneficiary is serving as sole trustee to protect the trust estate against creditors of the beneficiary. The House Committee amended the bill by adopting an amendment requested by the KBA to more closely align the language of the bill with language the KBA initially requested.

A representative of the KBA also appeared in support of the bill in the Senate Judiciary Committee.

The Senate Committee amended the bill to replace "regard" with "respect" to be consistent with other language.

The fiscal note prepared by the Division of the Budget states that, according to the Office of Judicial Administration, passage of the bill, as introduced, would have no fiscal effect.