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February 13, 2020

The Honorable Fred Patton, Chairman, House Judiciary Committee  
Room 519-N  
Topeka, KS 666112

Re: HB 2554

Dear Representative Patton:

Mr. Chairman and Members of the Committee: My name is Jeff Bottenberg and I appear before you today on behalf of the Trust Division of the Kansas Bankers Association ("KBA") in support of HB 2554.

HB 2554 enacts the Uniform Fiduciary Income and Principal Act, which is a model law created by the Uniform Law Commission, a nonprofit organization composed of lawyers, judges, law professors, legislative staff and others who draft uniform laws for state implementation. HB 2554 is an update to the 1997 Uniform Principal and Income Act and contains many positive changes to current law regarding the ability of a fiduciary to administer a trust.

One of the most fundamental jobs of a fiduciary is to follow the language of the trust document when administering a trust. Sometimes the governing document limits the type of assets that a fiduciary can distribute to a beneficiary, for instance, restricting distributions to only income. However, situations such as health care needs, the birth of a child or the loss of a job may result in the fiduciary determining that it is necessary to distribute principal in addition to income. Under current law a fiduciary may adjust between principal and income if three conditions are met, namely if the fiduciary invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that must be distributed to a beneficiary and the fiduciary determines that he or she is unable to comply with the requirement to impartially administer the trust. HB 2554 replaces these three requirements by simply stating that a fiduciary, through a written record, may adjust between principal and income if he or she determines that such adjustment will assist in impartially administering the trust or estate. Although there are factors that the fiduciary may consider in arriving at his or her decision, HB 2554 does not require that the trustee consider them if he or she does not believe that they are relevant.

HB 2554 also amends the statutes that govern a fiduciary's ability to convert a trust into a unitrust. Under current law a fiduciary, after proper written justification and notice to the affected parties, may usually distribute no less than three percent and no more than five percent of the trust's total assets to a beneficiary or set of beneficiaries. In most situations, HB 2554 eliminates the three to five percent limitation and gives the fiduciary more flexibility to determine the appropriate amount to distribute.

Another beneficial change contained in HB 2554 is the clarification that Kansas law will apply to any trust that is administered in Kansas, even if the trust was created in another state. This is a needed change since the

issue of situs can be challenging when a trust was created in another state but is presently administered in Kansas.

I would also note that although I am testifying on behalf of professional fiduciaries, the provisions of HB 2554 would apply to any person who has assumed the role of a fiduciary simply by being named as such in the legal document, such as a family member.

Therefore, for the above-mentioned reasons, the KBA stands in strong support of HB 2554 and urges its enactment into law. I would be happy to take any questions that you or the Committee may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Bottenberg", with a stylized flourish at the end.

Jeff Bottenberg