

SENATE BILL No. 400

By Committee on Financial Institutions and Insurance

1-27

1 AN ACT concerning trusts; relating to the creation, modification and
2 termination thereof; creating an opt-out provision for the rule against
3 perpetuities; providing for a process by which a new trust can be
4 created by moving all of the contents of one trust into a new trust;
5 adding to the list of matters that may be resolved by nonjudicial
6 settlement agreements; increasing the threshold at which an
7 uneconomic trust may be terminated; updating the definition of resident
8 trust; amending K.S.A. 58a-414 and 79-32,109 and K.S.A. 2021 Supp.
9 58a-111 and repealing the existing sections.

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11 *Be it enacted by the Legislature of the State of Kansas:*

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13 New Section 1. (a) The rule against perpetuities shall not apply to,
14 and any rule prohibiting unreasonable restraints on or suspension of the
15 power of alienation shall not be violated by, a trust if a trustee, or other to
16 whom the power is properly granted or delegated, has the power, pursuant
17 to the terms of the trust or applicable law, to sell the trust property during
18 the period of time the trust continues beyond the period of the rule against
19 perpetuities that would otherwise apply to the trust.

20

21 (b) No rule against accumulations shall apply to a trust described in
22 subsection (a) unless the terms of the trust require that the income be
23 accumulated during a period of time the trust continues beyond the period
24 of the rule against perpetuities that would otherwise apply to the trust. If
25 the terms of the trust require that the income be accumulated during any
26 period of time the trust continues beyond the period of the rule against
27 perpetuities that would otherwise apply to the trust, then during that period
28 of time the trustee shall have the power to make discretionary distributions
29 of net income to such recipients, in such shares and in such manner that
30 most closely effectuates the settlor's or testator's manifested plan of
31 distribution.

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33 (c) The provisions of this section shall apply to any trust created:
34 (1) By a will or inter vivos agreement or pursuant to the exercise of a
35 power of appointment other than a general power of appointment granted
36 under a will or inter vivos agreement that has been executed or amended
on or after July 1, 2021;

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(2) pursuant to the exercise of a general power of appointment
exercised in an instrument executed or amended on or after July 1, 2021;

38

1 or

2 (3) by a will or inter vivos agreement or pursuant to the exercise of a
3 power of appointment granted under a will or inter vivos agreement,
4 executed or amended before July 1, 2021, if the laws of this state become
5 applicable to the trust after such date, the laws of any other state applied to
6 the trust before such date and the rule against perpetuities does not apply
7 to the trust pursuant to the laws of the other state.

8 (d) As used in this section, the term "trust" means an express trust
9 created by a trust instrument, including a will, whereby a trustee has the
10 duty to administer a trust asset for the benefit of a named or otherwise
11 described income or principal beneficiary. "Trust" does not include a:

- 12 (1) Resulting or constructive trust;
- 13 (2) business trust that provides for certificates to be issued to
14 the beneficiary;
- 15 (3) investment trust;
- 16 (4) voting trust;
- 17 (5) security instrument;
- 18 (6) trust created by the judgment or decree of a court;
- 19 (7) liquidation trust or a trust for the primary purpose of paying
20 dividends, interests, interest coupons, salaries, wages, pensions or profits
21 or employee benefits of any kind;
- 22 (8) instrument wherein a person is nominee or escrowee for
23 another;
- 24 (9) trust created in deposits in any financial institution;
- 25 (10) trust that is not subject to the rule against perpetuities by
26 reason of any other law of this state; or
- 27 (11) any other trust the nature of which does not admit of
28 general trust administration.

29 (e) This section shall be a part of and supplemental to the Kansas
30 uniform trust code.

31 New Sec. 2. (a) If a trustee has discretionary power under the terms
32 of a trust to make a distribution of income or principal, whether or not
33 limited by an ascertainable standard, to or for the benefit of one or more
34 beneficiaries of such trust and unless the terms of such trust expressly
35 prohibit such distribution of income or principal, then the trustee may
36 exercise the trustee's discretionary power by appointing all or part of the
37 income or principal of the original trust in favor of a trustee of a new trust.
38 The new trust shall be created under the original trust document or a new
39 trust document in the event that the trustee of the original trust decides that
40 the appointment of income or principal is necessary or desirable after
41 considering the terms and purposes of the original trust, the terms and
42 purposes of the new trust and the consequences of the distribution.

43 (b) The following provisions apply to any exercise of the authority

1 granted by subsection (a):

2 (1) The new trust shall only have one or more beneficiaries of the
3 original trust to or for whom:

4 (A) Any discretionary distribution may have been made from the
5 original trust and such beneficiaries are proper objects of the exercise of
6 the power; or

7 (B) a distribution of income or principal may have been made in the
8 future from the original trust at a time or upon the occurrence of a
9 predetermined event specified as a condition precedent under the original
10 trust;

11 (2) unless the exercise of such power is limited by an ascertainable
12 standard, no trustee of the original trust may exercise the trustee's authority
13 to make a distribution from the original trust if:

14 (A) Such trustee is a beneficiary of the original trust; or

15 (B) any beneficiary may remove and replace the trustee of the
16 original trust with a related or subordinate party to such beneficiary within
17 the meaning of section 672(c) of the internal revenue code;

18 (3) if such trustee is participating in a change to the original trust that
19 is required for a distribution to be made to a beneficiary of the original
20 trust under an ascertainable standard, no trustee shall exercise such
21 authority to the extent that doing so would have the effect of:

22 (A) Increasing the distributions that can be made in the future from
23 the new trust to the trustee of the original trust or to a beneficiary who can
24 remove and replace the trustee of the original trust with a related or
25 subordinate party to such beneficiary within the meaning of section 672(c)
26 of the internal revenue code; or

27 (B) removing restrictions on discretionary distributions imposed by
28 the original instrument under which the original trust was created;

29 (4) in the case of any trust contributions that been treated as gifts
30 qualifying for the exclusion from gift tax described in section 2503(b) of
31 the internal revenue code, by reason of the application of section 2503(c)
32 of the internal revenue code, the governing instrument for the second trust
33 shall provide that the beneficiary's remainder interest shall vest no later
34 than the date upon which such interest would have vested under the terms
35 of the governing instrument for the first trust;

36 (5) the exercise of such authority may not reduce any income interest
37 of any income beneficiary of any of the following trusts:

38 (A) A trust for which a marital deduction has been taken for federal
39 income tax purposes under section 2056 or 2523 of the internal revenue
40 code or for state tax purposes under any comparable provision of
41 applicable state law;

42 (B) a charitable remainder trust under section 664 of the internal
43 revenue code;

1 (C) a grantor retained annuity trust under section 2702 of the internal
2 revenue code; or

3 (D) a trust that has been qualified as a subchapter S trust under
4 section 1361(d) of the internal revenue code or an electing small business
5 trust under section 1361(e) of the internal revenue code;

6 (6) the exercise of such authority shall not apply to trust property
7 subject to a presently exercisable power of withdrawal held by a trust
8 beneficiary to whom, or for the benefit of whom, the trustee has authority
9 to make distributions, unless after the exercise of such authority, such
10 beneficiary's power of withdrawal is unchanged with respect to the trust
11 property;

12 (7) a spendthrift clause or a provision in the trust instrument that
13 prohibits amendment or revocation of the trust shall not preclude the
14 trustee from exercising the authority granted by subsection (a);

15 (8) at least 60 days prior to making a discretionary distribution under
16 subsection (a), the trustee of the first trust shall notify the permissible
17 distributees of the second trust, or the qualified beneficiaries of the second
18 trust if there are no permissible distributees of the second trust, of the
19 distribution. A beneficiary may waive the right to the notice required by
20 this subsection and, with respect to future distributions, may withdraw a
21 waiver previously given;

22 (9) in exercising the authority granted by subsection (a), the trustee
23 shall remain subject to all fiduciary duties otherwise imposed under the
24 trust instrument and Kansas law; and

25 (10) this section shall not be construed to impose on a trustee a duty
26 to exercise the authority granted by subsection (a) in favor of another trust
27 or to consider exercising such authority in favor of another trust.

28 (c) This section applies to any trust governed by the laws of this state,
29 including a trust whose principal place of administration is transferred to
30 this state before or after the enactment of this section.

31 (d) As used in this section, "internal revenue code" means the federal
32 internal revenue code of 1986.

33 (e) This section shall be a part of and supplemental to the Kansas
34 uniform trust code.

35 Sec. 3. K.S.A. 2021 Supp. 58a-111 is hereby amended to read as
36 follows: 58a-111. (a) For purposes of this section, "interested persons"
37 means persons whose consent would be required in order to achieve a
38 binding settlement were the settlement to be approved by the court.

39 (b) Except as otherwise provided in subsection (c), interested persons
40 may enter into a binding nonjudicial settlement agreement with respect to
41 the matters listed in subsection (d).

42 (c) A nonjudicial settlement agreement is valid only to the extent it
43 does not violate a material purpose of the trust and includes terms and

1 conditions that could be properly approved by the court under this code or
2 other applicable law.

3 (d) Matters that may be resolved by a nonjudicial settlement
4 agreement are limited to:

5 (1) The approval of a trustee's report or accounting;

6 (2) the resignation or appointment of a trustee and the determination
7 of a trustee's compensation;

8 (3) transfer of a trust's principal place of administration; ~~and~~

9 (4) liability of a trustee for an action relating to the trust;

10 (5) *the interpretation or construction of the terms of the trust;*

11 (6) *direction to a trustee to refrain from performing a particular act*
12 *or the grant to a trustee of any necessary or desirable power; and*

13 (7) *the governing law of the trust.*

14 (e) Any interested person may request the court to approve a
15 nonjudicial settlement agreement, to determine whether the representation
16 as provided in article 3 of this code was adequate, and to determine
17 whether the agreement contains terms and conditions the court could have
18 properly approved.

19 Sec. 4. K.S.A. 58a-414 is hereby amended to read as follows: 58a-
20 414. (a) After notice to the qualified beneficiaries, the trustee of a trust
21 consisting of trust property having a total value less than ~~\$100,000~~
22 *\$250,000* may terminate the trust if the trustee concludes that the value of
23 the trust property is insufficient to justify the cost of administration.

24 (b) The court may modify or terminate a trust or remove the trustee
25 and appoint a different trustee if it determines that the value of the trust
26 property is insufficient to justify the cost of administration.

27 (c) Upon termination of a trust under this section, the trustee shall
28 distribute the trust property in a manner consistent with the purposes of the
29 trust.

30 ~~(d) This section does not apply to an easement for conservation or~~
31 ~~preservation.~~

32 (e) This section does not apply to:

33 (1) *An easement for conservation or preservation; or*

34 (2) any trust if ~~its~~ assets are distributable to the trustee or anyone the
35 trustee is obligated to support.

36 Sec. 5. K.S.A. 79-32,109 is hereby amended to read as follows: 79-
37 32,109. As used in this act, unless the context otherwise requires:

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

1 any time, or from time to time, for the taxable year.

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

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

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

18 (d) "Resident trust" means a trust ~~which is administered in this state.~~
19 ~~A trust shall not be deemed to be administered in this state solely because~~
20 ~~it is subject to the jurisdiction of a district court within this state.~~
21 ~~"Nonresident trust" means a trust other than a resident trust that was~~
22 ~~created by or consisting of property owned by a person domiciled in this~~
23 ~~state on the date the trust or portion of the trust became irrevocable and~~
24 ~~has at least one income beneficiary who, on the last day of the taxable~~
25 ~~year, was a resident of this state.~~

26 (e) "Resident partner" means a partner who is a resident individual, a
27 resident estate, or a resident trust. "Nonresident partner" means a partner
28 other than a resident partner.

29 (f) "Resident beneficiary" means a beneficiary of an estate or trust
30 which beneficiary is a resident individual, a resident estate, or a resident
31 trust. "Nonresident beneficiary" means a beneficiary other than a resident
32 beneficiary.

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

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

41 ~~(A)~~ (A) The ownership of any interest in real or tangible personal
42 property in this state;

43 ~~(B)~~ (B) a business, trade, profession or occupation carried on in this

1 state;

2 ~~(3)~~(C) a business, trade, profession or occupation carried on partly
3 within and partly without this state as determined by the uniform division
4 of income for tax purposes act as set forth in K.S.A. 79-3271 through
5 K.S.A. 79-3293, and amendments thereto;

6 ~~(4)~~(D) the distributive share of partnership income, gain, loss and
7 deduction determined under this section as if the partnership were a
8 nonresident individual;

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

11 ~~(6)~~(F) prizes won from lottery games conducted by the Kansas
12 lottery;

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

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

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

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

28 ~~(2)~~(B) such individual's share of distributed or undistributed taxable
29 income or net operating loss of a corporation which is an electing small
30 business corporation unless an agreement is filed as provided in K.S.A.
31 79-32,139, and amendments thereto, in which event, the "modified Kansas
32 source income" of such nonresident individual shall include such
33 individual's share of such corporation's distributed and undistributed
34 taxable income or net operating loss as such share is determined under the
35 internal revenue code only to the extent, however, that such income, gain
36 or loss is at the corporate level, derived from sources within Kansas.

37 Sec. 6. K.S.A. 58a-414 and K.S.A. 2021 Supp. 58a-111 and 79-
38 32,109 are hereby repealed.

39 Sec. 7. This act shall take effect and be in force from and after its
40 publication in the statute book.