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TO: House Judiciary Committee

FROM: Kansas Judicial Council – Professor Martin Dickinson

DATE: January 31, 2013

RE: Testimony on 2013 HB 2015 Relating to Marital Property

Introduction and Background

The Kansas Judicial Council's Probate Law Advisory Committee recommends HB 2015. The purpose of the bill is to clarify that a spouse's creditors cannot reach assets given as a gift to the other spouse so long as no fraud on creditors was involved.

Identical bills have been introduced in each of the last two years. In 2011, the Kansas Bar Association introduced 2011 SB 44, which was referred to the Judicial Council for study. After completing that study, the Council introduced 2012 SB 297. That bill passed the Senate but died in the House, although there were no opponents to the bill.

Purpose of Amendments

House Bill 2015 would amend K.S.A. 23-2601 to delete the exception for gifts received from a spouse from the list of property that shall remain the person's sole and separate property, notwithstanding the marriage. The references to K.S.A. 33-101 *et seq.* and 33-201 *et seq.* incorporate the exceptions for transfers that violate the Statute of Frauds and Uniform Fraudulent Transfer Act.

The amendment is intended to clarify that a spouse's creditors cannot reach assets given to the other spouse in circumstances where no fraud on creditors was involved. This statute was originally known as the "Married Women's Property Act" and reversed the common law rule that a wife's property was controlled by her husband. The statute was interpreted by the Kansas Supreme Court in *Waltz v. Sheetz*, 144 Kan. 595 (1936), as requiring that any gift between spouses be treated as fraudulent, and therefore voidable, by the creditors of the transferor spouse. The Court has not revisited the issue since that time. The Committee recommends that the *Waltz* interpretation of the statute be reversed by amending the statute.

Judicial Council Probate Law Advisory Committee

The Judicial Council's Probate Law Advisory Committee consists of practicing attorneys, judges and law professors from across the state, all of whom have substantial experience in the area of probate and trust law. Over the past 80 plus years, the Judicial Council and its Probate Law Advisory Committee have drafted and updated numerous codes and acts including: the Probate Code, the Simplified Estates Act, the Informal Administration Act, the Kansas Uniform Trust Code, and the Kansas Power of Attorney Act.

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