

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1204

101ST GENERAL ASSEMBLY

2495S.03C

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 415.415, 431.202, and 456.4-419, RSMo, and to enact in lieu thereof six new sections relating to the administration of justice.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 415.415, 431.202, and 456.4-419, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 415.415, 431.201, 431.202, 456.1-114, 456.4-419, and 650.125, to read as follows:

415.415. 1. The operator of a self-service storage facility has a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in sale of such personal property, as provided in sections 415.400 to 415.425. The lien established by this subsection shall have priority over all other liens except those liens that have been perfected and recorded on personal property. The rental agreement shall contain a statement, in bold type, advising the occupant of the existence of such lien and that property stored in the leased space may be sold to satisfy such lien if the occupant is in default, and that any proceeds from the sale of the property which remain after satisfaction of the lien will be paid to the state treasurer if unclaimed by the occupant within one year after the sale of the property.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 2. If the occupant is in default for a period of more
17 than forty-five days, the operator may enforce the lien
18 granted in subsection 1 of this section and sell the
19 property stored in the leased space for cash. Sale of the
20 property stored on the premises may be done at a public or
21 private sale, may be done as a unit or in parcels, or may be
22 by way of one or more contracts, and may be at any time or
23 place and on any terms as long as the sale is done in a
24 commercially reasonable manner in accordance with the
25 provisions of section 400.9-627. The operator may otherwise
26 dispose of any property which has no commercial value.

27 3. The proceeds of any sale made under this subsection
28 shall be applied to satisfy the lien, with any surplus being
29 held for delivery on demand to the occupant or any other
30 lienholders which the operator knows of or which are
31 contained in the statement filed by the occupant pursuant to
32 subsection 3 of section 415.410 for a period of one year
33 after receipt of proceeds of the sale and satisfaction of
34 the lien. No proceeds shall be paid to an occupant until
35 such occupant files a sworn affidavit with the operator
36 stating that there are no other valid liens outstanding
37 against the property sold and that he or she, the occupant,
38 shall indemnify the operator for any damages incurred or
39 moneys paid by the operator due to claims arising from other
40 lienholders of the property sold. After the one-year period
41 set in this subsection, any proceeds remaining after
42 satisfaction of the lien shall be considered abandoned
43 property to be reported and paid to the state treasurer in
44 accordance with laws pertaining to the disposition of
45 unclaimed property.

46 4. Before conducting a sale under subsection 2 of this
47 section, the operator shall:

48 (1) At least forty-five days before any disposition of
49 property under this section, which shall run concurrently
50 with subsection 2 of this section, notify the occupant and
51 each lienholder which is contained in any statement filed by
52 the occupant pursuant to subsection 3 of section 415.410 of
53 the default by first-class mail or electronic mail at the
54 occupant's or lienholder's last known address, and shall
55 notify any third-party owner identified by the occupant
56 pursuant to subsection 3 of section 415.410;

57 (2) No sooner than ten days after mailing the notice
58 required in subdivision (1) of this subsection, mail a
59 second notice of default, by verified mail or electronic
60 mail, to the occupant at the occupant's or lienholder's last
61 known address, which notice shall include:

62 (a) A statement that the contents of the occupant's
63 leased space are subject to the operator's lien;

64 (b) A statement of the operator's claim, indicating
65 the charges due on the date of the notice, the amount of any
66 additional charges which shall become due before the date of
67 release for sale and the date those additional charges shall
68 become due;

69 (c) A demand for payment of the charges due within a
70 specified time, not less than ten days after the date on
71 which the second notice was mailed;

72 (d) A statement that unless the claim is paid within
73 the time stated, the contents of the occupant's space will
74 be sold after a specified time; and

75 (e) The name, street address and telephone number of
76 the operator, or a designated agent whom the occupant may
77 contact, to respond to the notice;

78 (3) At least seven days before the sale, advertise the
79 time, place, and terms of the sale in **the classified section**

80 of a newspaper of general circulation in the jurisdiction
81 where the sale is to be held **or in any other commercially**
82 **reasonable manner.** [Such] **The manner of** advertisement shall
83 be [in the classified section of the newspaper and shall
84 state that the items will be released for sale.] **deemed**
85 **commercially reasonable if at least three independent**
86 **bidders attend or view the sale at the time and place**
87 **advertised.**

88 5. If the property is a vehicle, watercraft, or
89 trailer and rent and other charges remain unpaid for sixty
90 days, the owner may treat the vehicle, watercraft, or
91 trailer as an abandoned vehicle and have the vehicle,
92 watercraft, or trailer towed from the self-service storage
93 facility. When the vehicle, watercraft, or trailer is towed
94 from the self-service storage facility, the owner shall not
95 be liable for the vehicle, watercraft, or trailer for any
96 damages to the motor vehicle, watercraft, or trailer once
97 the tower takes possession of the property.

98 6. At any time before a sale under this section, the
99 occupant may pay the amount necessary to satisfy the lien
100 and redeem the occupant's personal property.

431.201. As used in section 431.202, unless the
2 **context otherwise requires, the following terms mean:**

3 (1) **"Business entity", any natural person, business,**
4 **corporation, limited liability company, series limited**
5 **liability company, partnership, sole or other**
6 **proprietorship, professional practice, or any other business**
7 **organization or commercial enterprise, whether for profit or**
8 **not, including, but not limited to, any successor-in-**
9 **interest to a business entity who conducts business or who,**
10 **directly or indirectly, owns any equity interest, ownership,**
11 **or profit participation in the business entity;**

12 (2) "Customers with whom the employee dealt", each
13 customer or prospective customer:

14 (a) Who was serviced, directly or indirectly, by an
15 employee of a business entity;

16 (b) Whose business or other dealings with a business
17 entity were supervised, coordinated, or otherwise worked on,
18 directly or indirectly, by an employee;

19 (c) Who was solicited, produced, induced, persuaded,
20 encouraged, or otherwise dealt with, directly or indirectly,
21 by an employee;

22 (d) About whom an employee, directly or indirectly,
23 obtained, had knowledge of, had access to, or is in
24 possession of confidential business or proprietary
25 information or trade secrets in the course of or as a result
26 of the employee's relationship with the business entity;

27 (e) Who has purchased or otherwise obtained products
28 or services from a business entity and the sale or provision
29 of which resulted in compensation, commissions, earnings, or
30 profits to or for the employee within two years prior to the
31 end of the employee's employment or business relationship
32 with the business entity; or

33 (f) With whom an employee had contact, directly or
34 indirectly, of sufficient quality, frequency, and duration
35 during the employee's employment or other business
36 relationship with the business entity such that the employee
37 had influence over the customer;

38 (3) "Employee":

39 (a) A natural person currently or formerly employed or
40 retained by a business entity in any capacity, or who has
41 performed work for a business entity, including, but not
42 limited to, a member of a board of directors, an officer, a
43 supervisor, an independent contractor, or a vendor;

44 (b) A natural person who, by reason of having been
45 employed by or having a business relationship with a
46 business entity:

47 a. Obtained specialized skills, training, learning, or
48 abilities; or

49 b. Obtained, had knowledge of, had access to, or is in
50 possession of confidential or proprietary business
51 information or trade secrets of the business entity,
52 including, but not limited to, customer contact information
53 or information of or belonging to customers of the business
54 entity; or

55 (c) A current or former owner or seller of all or any
56 part of the assets of a business entity or of any interest
57 in a business entity, including, but not limited to, all or
58 any part of the shares of a corporation, a partnership
59 interest, a membership or membership interest in a limited
60 liability company or a series limited liability company, or
61 an equity interest, ownership, profit participation, or
62 other interest of any type in any business entity.

63 The definition of "employee" set forth in this subdivision
64 shall be applicable only with respect to section 431.202 and
65 shall have no application in any other context. The
66 definition of "employee" is not intended, and shall not be
67 relied upon, to create, change, or affect the employment
68 status of any natural person or the meaning of the terms
69 "employee", "employment", or "employer" that may be
70 applicable in any other context or under any other provision
71 of law.

431.202. 1. A reasonable covenant in writing
2 promising not to solicit, recruit, hire, induce, persuade,
3 encourage, or otherwise interfere with, directly or

4 **indirectly**, the employment **or other business relationship** of
5 one or more employees **of a business entity** shall be
6 enforceable and not a restraint of trade pursuant to
7 subsection 1 of section 416.031 if:

8 (1) Between two or more [corporations or other]
9 business entities seeking to preserve workforce stability
10 (which shall be deemed to be among the protectable interests
11 of each [corporation or] **such** business entity) during, and
12 for a reasonable period following, negotiations between such
13 [corporations or] **business** entities for the acquisition of
14 all or a part of one or more of such [corporations or]
15 **business** entities;

16 (2) Between two or more [corporations or] business
17 entities engaged in a joint venture or other legally
18 permissible business arrangement where such covenant seeks
19 to protect against possible misuse of confidential **business**
20 **or proprietary information** or trade [secret business
21 information] **secrets** shared or to be shared between or among
22 such [corporations or] entities;

23 (3) Between [an employer] **a business entity** and one or
24 more employees **of such business entity** seeking on the part
25 of the [employer] **business entity** to protect:

26 (a) Confidential **business or proprietary information**
27 or trade [secret business information] **secrets**; or

28 (b) Customer or supplier relationships, goodwill or
29 loyalty, which shall be deemed to be among the protectable
30 interests of the [employer] **business entity**; or

31 (4) Between [an employer] **a business entity** and one or
32 more employees **of such business entity**, notwithstanding the
33 absence of the protectable interests described in
34 subdivision (3) of this subsection, so long as such covenant
35 does not continue for more than [one year] **two years**

36 following the employee's employment **or business relationship**
37 **with the business entity;** provided, however, that this
38 subdivision shall not apply to covenants signed by employees
39 who provide only secretarial or clerical services **and who**
40 **own no shares, partnership interest, or membership or**
41 **membership interest in a limited liability company or series**
42 **limited liability company, or equity interest, ownership,**
43 **profit participation, or other interest of any type in the**
44 **business entity.**

45 2. Whether a covenant covered by **subsection 1 of this**
46 section is reasonable shall be determined based upon the
47 facts and circumstances pertaining to such covenant, but a
48 covenant covered exclusively by subdivision (3) or (4) of
49 subsection 1 of this section shall be conclusively presumed
50 to be reasonable if its postemployment **or postbusiness**
51 duration is no more than [one year] **two years.**

52 3. **A reasonable covenant in writing promising not to**
53 **solicit, induce, persuade, encourage, service, accept**
54 **business from, or otherwise interfere with, directly or**
55 **indirectly, a business entity's customers, including, but**
56 **not limited to, any reduction, termination, or transfer of**
57 **any customer's business, in whole or in part, for purposes**
58 **of providing any product or any service that is competitive**
59 **with those provided by the business entity, shall be**
60 **enforceable and not a restraint of trade under subsection 1**
61 **of section 416.031, if the covenant is limited to customers**
62 **with whom the employee dealt during the employee's**
63 **employment or other business relationship with the business**
64 **entity, and if:**

65 (1) **The covenant is between a business entity and one**
66 **or more current or former employees of the business entity**

67 and is not associated with the sale or ownership of all or
68 any part of:

69 (a) The assets of a business entity; or

70 (b) Any interest in a business entity including, but
71 not limited to, all or any part of the shares of a
72 corporation, a partnership interest, a membership or
73 membership interest in a limited liability company or series
74 limited liability company, or an equity interest, ownership,
75 profit participation, or other interest of any type in any
76 business entity;

77 provided that, the covenant does not continue for more than
78 two years following the end of the employee's employment or
79 business relationship with the business entity.

80 Notwithstanding the foregoing, this subdivision shall not
81 apply to covenants with current or former distributors,
82 dealers, franchisees, lessees of real or personal property,
83 or licensees of a trademark, trade dress, or service mark;

84 (2) The covenant is between a business entity and a
85 current or former distributor, dealer, franchisee, lessee of
86 real or personal property, or licensee of a trademark, trade
87 dress, or service mark, and is not associated with the sale
88 or ownership of all or any part of any of the items provided
89 in paragraph (a) or (b) of subdivision (1) of this
90 subsection; provided that, the covenant does not continue
91 for more than three years following the end of the business
92 relationship; or

93 (3) The covenant is between a business entity and the
94 owner or seller of all or any part of any of the items
95 provided in paragraph (a) or (b) of subdivision (1) of this
96 subsection, so long as the covenant does not continue for
97 longer than five years in duration or the period of time

98 during which payments are being made to the owner or seller
99 as a result of any sale, measured from the date of
100 termination, closing, or disposition of such items. A
101 breach or threatened breach of a covenant described in this
102 subdivision shall create a conclusive presumption of
103 irreparable harm in the absence of an issuance of injunctive
104 relief in connection with the enforcement of the covenant,
105 without the necessity of establishing by prima facie
106 evidence any actual or threatened damages or harm. Nothing
107 in this paragraph shall be construed to change any
108 applicable evidentiary standard or other standard necessary
109 for obtaining temporary, preliminary, or permanent
110 injunctive relief relating to the enforcement of covenants.
111 A provision in writing by which an employee promises to
112 provide prior notice to a business entity of the employee's
113 intent to terminate, sell, or otherwise dispose of all or
114 any part of any of the items covered by this subdivision
115 shall be conclusively presumed to be enforceable and not a
116 restraint of trade under subsection 1 of section 416.031, if
117 the specified notice period is no longer than thirty days in
118 duration and the business entity agrees in writing to pay
119 the employee at the employee's regular rate of pay and to
120 provide the employee with the employee's regular benefits
121 during the applicable notice period even if the business
122 entity does not require the employee to provide services
123 during the notice period.

124 4. Whether a covenant covered by subsection 3 of this
125 section is reasonable shall be determined based upon the
126 facts and circumstances pertaining to the covenant, but a
127 covenant covered by subdivisions (1) to (3) of subsection 3
128 of this section shall be conclusively presumed to be
129 reasonable if the duration of its postemployment,

130 posttermination, postbusiness relationship, postsale, or
131 postdisposition period is consistent with the applicable
132 duration limits set forth in subdivisions (1) to (3) of
133 subsection 3 of this section.

134 5. No express reference to geographic area shall be
135 required for a covenant described in this section to be
136 enforceable.

137 6. If a covenant is overbroad, overlong, or otherwise
138 not reasonably necessary to protect the legitimate business
139 interests of the person seeking enforcement of the covenant,
140 a court shall modify the covenant, enforce the covenant as
141 modified, and grant only the relief reasonably necessary to
142 protect such interests.

143 7. Nothing in subdivision (3) or (4) of subsection 1
144 or subdivisions (1) to (3) of subsection 3 of this section
145 is intended to create, or to affect the validity or
146 enforceability of, [employer-employee] covenants not to
147 compete, other types of covenants, or nondisclosure or
148 confidentiality agreements, except as expressly provided in
149 this section.

150 [4.] 8. Nothing in this section shall preclude a
151 covenant described in subsection 1 of this section from
152 being enforceable in circumstances other than those
153 described in subdivisions (1) to (4) of subsection 1 of this
154 section, or a covenant described in subsection 3 of this
155 section from being enforceable in circumstances other than
156 those described in subdivisions (1) to (3) of subsection 3
157 of this section, where such covenant is reasonably necessary
158 to protect a party's legally permissible business interests.

159 [5.] 9. Except as otherwise expressly provided in this
160 section, nothing [is] in this section shall be construed to
161 limit an employee's ability to seek or accept employment

162 with another employer immediately upon, or at any time
163 subsequent to, termination of employment, whether said
164 termination was voluntary or nonvoluntary.

165 [6.] 10. This section shall have retrospective as well
166 as prospective effect.

2 456.1-114. 1. For purposes of interpreting a term of
3 familial relationship in a trust, "descendants", "issue",
4 "children", and similar terms of relationship shall be
5 construed as follows:

6 (1) A child conceived or born of a marriage is
7 presumed to be a child of the persons so married unless a
8 judicial proceeding is commenced before the death of the
9 presumed parent and it is finally determined in such
10 proceeding that the presumed parent is not the parent of the
11 child;

12 (2) A child who is not conceived or born of a marriage
13 is presumed to not be a child of a person who did not give
14 birth to the child unless:

15 (a) A judicial proceeding commenced before the death
16 of such person determined that such person is a parent of
17 the child; or

18 (b) Such person openly recognized the child as his or
19 her child and such person has not refused to voluntarily
20 support the child. A trustee may rely on its discretion
21 regarding the sufficiency of recognition or support, and the
22 trustee shall not be liable to any person for its exercise
23 of this discretion unless the trustee acts in bad faith or
24 with reckless indifference to the purposes of the trust or
the interest of the beneficiaries.

25 If a parent-child relationship is established pursuant to
26 paragraph (a) or (b) of this subdivision, the rights

27 afforded to the child shall not be retroactive, but instead
28 shall apply from the time the relationship is established;
29 and

30 (3) A child adopted prior to the age of eighteen is
31 the child of an adopting parent and not of the natural
32 parents, except that adoption of a child by the spouse of a
33 natural parent has no effect on the relationship between the
34 child and such natural parent.

35 2. The terms of a trust shall prevail over any
36 provision of this section.

456.4-419. 1. Unless the terms of the trust
2 instrument expressly provide otherwise, a trustee, **other**
3 **than a settlor**, who has discretionary power under the terms
4 of a trust to make a distribution of income or principal,
5 whether or not limited by an ascertainable standard, to or
6 for the benefit of one or more beneficiaries of a trust, the
7 first trust, may instead exercise such discretionary power
8 by [appointing] **distributing** all or part of the income or
9 principal subject to such discretionary power in favor of a
10 trustee of a second trust, the second trust, created under
11 either the same or different trust instrument in the event
12 that the trustee of the first trust decides that the
13 [appointment] **distribution** is necessary or desirable after
14 taking into account the terms and purposes of the first
15 trust, the terms and purposes of the second trust, and the
16 consequences of the distribution. **A trustee may exercise**
17 **the power described in this subsection by distributing**
18 **property from the first trust to one or more second trusts**
19 **or by modifying the trust instrument for the first trust**
20 **which, as modified, becomes one or more second trusts.**

21 2. With respect to a second trust to which a
22 distribution is made pursuant to subsection 1 of this
23 section:

24 (1) At least one permissible distributee of the first
25 trust shall be a permissible distributee of the second trust
26 immediately after the distribution;

27 (2) If, at the time of the distribution, the settlor
28 of the first trust is living and the first trust is not a
29 grantor trust under Subpart E of Part I of Subchapter J of
30 Chapter 1 of the Internal Revenue Code of 1986, as amended,
31 there may not be any permissible distributee of the second
32 trust immediately after the distribution who is not a
33 permissible distributee of the first trust;

34 (3) If, at the time of the distribution, the settlor
35 of the first trust is deceased or if, at the time of the
36 distribution, the first trust is a grantor trust under
37 Subpart E of Part I of Subchapter J of Chapter 1 of the
38 Internal Revenue Code of 1986, as amended, for reasons other
39 than the trustee having the power granted by this section,
40 any beneficiary of the first trust may be included as a
41 permissible distributee of the second trust immediately
42 after the distribution;

43 (4) The second trust may not include any beneficiary
44 who is not a beneficiary of the first trust; and

45 (5) The trust instrument for the second trust may
46 retain, modify, or omit a power of appointment granted in
47 the first trust, and the trust instrument for the second
48 trust may create a power of appointment if the powerholder
49 is a beneficiary of the second trust. Except to the extent
50 provided otherwise in subsection 4 of this section, a power
51 of appointment in the trust instrument for the second trust
52 may be a general or nongeneral power of appointment and the

53 permissible appointees of the power need not be limited to
54 the beneficiaries of the first trust.

55 3. The following provisions apply to a trust that has
56 a beneficiary with a disability:

57 (1) As used in this subsection, the following terms
58 mean:

59 (a) "Beneficiary with a disability", a beneficiary of
60 a first trust who the special-needs fiduciary believes may
61 qualify for governmental benefits based on disability,
62 whether or not the beneficiary currently receives those
63 benefits or is an individual who has been adjudicated
64 disabled or adjudicated incapacitated;

65 (b) "Governmental benefits", financial aid or services
66 from a state, federal, or other public agency;

67 (c) "Special-needs fiduciary", with respect to a trust
68 that has a beneficiary with a disability:

69 a. A trustee or other fiduciary, other than a settlor,
70 who has discretionary power under the terms of a trust to
71 make a distribution of income or principal, whether or not
72 limited by an ascertainable standard, to or for the benefit
73 of one or more beneficiaries; or

74 b. If no trustee or fiduciary has discretion under
75 subparagraph a. of this paragraph, a trustee or other
76 fiduciary, other than a settlor, who is required to
77 distribute part or all of the income or principal of the
78 first trust to or for the benefit of one or more
79 beneficiaries;

80 (d) "Special-needs trust", a trust the trustee
81 believes would not be considered a resource for purposes of
82 determining whether a beneficiary with a disability is
83 eligible for governmental benefits;

84 (2) A special-needs fiduciary may exercise the
85 authority granted by subsection 1 of this section if:

86 (a) A second trust is a special-needs trust that
87 benefits the beneficiary with a disability; and

88 (b) The special-needs fiduciary determines that
89 exercise of the authority pursuant to subsection 1 of this
90 section will further the purposes of the first trust; and

91 (3) The following provisions apply to any exercise of
92 the authority granted by this subsection:

93 (a) Notwithstanding the provisions of subdivision (4)
94 of subsection 2 of this section to the contrary, the terms
95 of the second trust may:

96 a. Provide that an interest is held by a pooled trust
97 as defined by Medicaid law for the benefit of the
98 beneficiary with a disability under 42 U.S.C. Section
99 1396p(d) (4) (C); or

100 b. Contain payback provisions complying with
101 reimbursement requirements of Medicaid law under 42 U.S.C.
102 Section 1396p(d) (4) (A);

103 (b) The provisions of subdivision (3) of subsection 4
104 of this section shall not apply to the interests of the
105 beneficiary with a disability; and

106 (c) Except as affected by any change to the interests
107 of the beneficiary with a disability, the second trust, or
108 if there are two or more second trusts, the second trusts in
109 the aggregate, shall grant each other beneficiary of the
110 first trust beneficial interests in the second trusts which
111 are substantially similar to the beneficiary's beneficial
112 interests in the first trust, unless such other
113 beneficiary's interest is modified in accordance with the
114 provisions of this section other than this subsection.

115 4. The following provisions apply to any exercise of
116 the authority granted by subsection 1 of this section:

117 (1) [The second trust may have as beneficiaries only
118 one or more of those beneficiaries of the first trust to or
119 for whom any discretionary distribution may be made from the
120 first trust and who are proper objects of the exercise of
121 the power, or one or more of those other beneficiaries of
122 the first trust to or for whom a distribution of income or
123 principal may have been made in the future from the first
124 trust at a time or upon the happening of an event specified
125 under the first trust;

126 (2) Unless the exercise of such power is limited by an
127 ascertainable standard, no trustee of the first trust may
128 exercise such authority to make a distribution from the
129 first trust if:

130 (a) Such trustee is a beneficiary of the first trust;
131 or

132 (b) Any beneficiary may remove and replace the trustee
133 of the first trust with a related or subordinate party to
134 such beneficiary within the meaning of Section 672(c) of the
135 Internal Revenue Code;

136 (3) Except if participating in a change that is needed
137 for a distribution to any such beneficiary under an
138 ascertainable standard, no trustee shall exercise such
139 authority to the extent that doing so would have the effect
140 either of:

141 (a) Increasing the distributions that can be made in
142 the future from the second trust to the trustee of the first
143 trust or to a beneficiary who can remove and replace the
144 trustee of the first trust with a related or subordinate
145 party to such beneficiary within the meaning of Section
146 672(c) of the Internal Revenue Code; or

147 (b) Removing restrictions on discretionary
148 distributions imposed by the instrument under which the
149 first trust was created;

150 (4) In the case of any trust contributions which have
151 been treated as gifts qualifying for the exclusion from gift
152 tax described in Section 2503(b) of the Internal Revenue
153 Code, by reason of the application of Section 2503(c), the
154 governing instrument for the second trust shall provide that
155 the beneficiary's remainder interest shall vest no later
156 than the date upon which such interest would have vested
157 under the terms of the governing instrument for the first
158 trust;

159 (5) The exercise of such authority may not reduce any
160 income interest of any income beneficiary of any of the
161 following trusts:

162 (a) A trust for which a marital deduction has been
163 taken for federal tax purposes under Section 2056 or 2523 of
164 the Internal Revenue Code or for state tax purposes under
165 any comparable provision of applicable state law;

166 (b) A charitable remainder trust under Section 664 of
167 the Internal Revenue Code;

168 (c) A grantor retained annuity trust under Section
169 2702 of the Internal Revenue Code; or

170 (d) A trust which has been qualified as a Subchapter S
171 trust under Section 1361(d) of the Internal Revenue Code or
172 an electing small business trust under Section 1361(e) of
173 the Internal Revenue Code] **If the exercise of the authority**
174 **granted by subsection 1 of this section is limited by an**
175 **ascertainable standard and the trustee exercising such**
176 **authority is a permissible distributee of the first trust**
177 **under such standard, then:**

178 (a) The discretionary power under the trust instrument
179 for the second trust to distribute income or principal to
180 such trustee as a permissible distributee shall be subject
181 to the same ascertainable standard as, or a more restrictive
182 ascertainable standard than, such standard in the trust
183 instrument for the first trust; and

184 (b) The trust instrument for the second trust shall
185 not:

186 a. Modify a power of appointment granted to such
187 trustee in the first trust; or

188 b. Grant a power of appointment to such trustee that
189 did not exist in the first trust;

190 (2) An exercise of the authority granted by subsection
191 1 of this section is subject to the following limitations:

192 (a) If the first trust contains property that
193 qualified, or would have qualified but for provisions of
194 this section other than this subdivision, for a marital
195 deduction for purposes of the gift or estate tax under the
196 Internal Revenue Code of 1986, as amended, the trust
197 instrument for the second trust shall not include or omit
198 any term that, if included in or omitted from the trust
199 instrument for the second trust, would have prevented the
200 transfer from qualifying for the deduction, or would have
201 reduced the amount of the deduction, under the same
202 provisions of the Internal Revenue Code under which the
203 transfer qualified;

204 (b) If the first trust contains property that
205 qualified, or would have qualified but for provisions of
206 this section other than this subdivision, for a charitable
207 deduction for purposes of the income, gift, or estate tax
208 under the Internal Revenue Code of 1986, as amended, the
209 trust instrument for the second trust shall not include or

210 omit any term that, if included in or omitted from the trust
211 instrument for the second trust, would have prevented the
212 transfer from qualifying for the deduction, or would have
213 reduced the amount of the deduction, under the same
214 provisions of the Internal Revenue Code under which the
215 transfer qualified;

216 (c) If the first trust contains property that
217 qualified, or would have qualified but for provisions of
218 this section other than this subdivision, for the exclusion
219 from the gift tax described in Section 2503(b) of the
220 Internal Revenue Code of 1986, as amended, the trust
221 instrument for the second trust shall not include or omit a
222 term that, if included in or omitted from the trust
223 instrument for the second trust, would have prevented the
224 transfer from qualifying under Section 2503(b) of the
225 Internal Revenue Code. If the first trust contains property
226 that qualified, or would have qualified but for provisions
227 of this section other than this subdivision, for the
228 exclusion from the gift tax described in Section 2503(b) of
229 the Internal Revenue Code, by application of Section 2503(c)
230 of the Internal Revenue Code, the trust instrument for the
231 second trust shall not include or omit a term that, if
232 included or omitted from the trust instrument for the second
233 trust, would have prevented the transfer from meeting the
234 requirements of Section 2503(c) of the Internal Revenue Code;

235 (d) If the property of the first trust includes shares
236 of stock in an S corporation, as defined in Section 1361 of
237 the Internal Revenue Code of 1986, as amended, and the first
238 trust is, or but for provisions of this section other than
239 this subdivision would be, a permitted shareholder under any
240 provision of Section 1361 of the Internal Revenue Code, the
241 trustee of the first trust may exercise such authority with

242 respect to part or all of the S corporation stock only if
243 the second trust receiving the stock is a permitted
244 shareholder under Section 1361(c)(2) of the Internal Revenue
245 Code. If the property of the first trust includes shares of
246 stock in an S corporation and the first trust is, or but for
247 provisions of this section other than this subdivision would
248 be, a qualified subchapter-S trust within the meaning of
249 Section 1361(d) of the Internal Revenue Code, the trust
250 instrument for the second trust shall not include or omit a
251 term that prevents the second trust from qualifying as a
252 qualified subchapter-S trust; and

253 (e) If the first trust contains property that
254 qualified, or would have qualified but for provisions of
255 this section other than this subdivision, for a zero
256 inclusion ratio for purpose of the generation-skipping
257 transfer tax under Section 2642(c) of the Internal Revenue
258 Code of 1986, as amended, the trust instrument for the
259 second trust shall not include or omit a term that, if
260 included in or omitted from the first trust, would have
261 prevented the transfer to the first trust from qualifying
262 for a zero inclusion ratio under Section 2642(c) of the
263 Internal Revenue Code;

264 [(6)] (3) The exercise of such authority does not
265 apply to trust property subject to a presently exercisable
266 power of withdrawal held by a trust beneficiary to whom, or
267 for the benefit of whom, the trustee has authority to make
268 distributions, unless after the exercise of such authority,
269 such beneficiary's power of withdrawal is unchanged with
270 respect to the trust property; and

271 [(7)] (4) A spendthrift clause or a provision in the
272 trust instrument that prohibits amendment or revocation of

273 the trust shall not preclude the trustee from exercising the
274 authority granted by subsection 1 of this section.

275 [3.] 5. At least sixty days prior to making a
276 discretionary distribution under subsection 1 of this
277 section, the trustee of the first trust shall notify **the**
278 **permissible distributees of the first trust and** the
279 permissible distributees of the second trust[, or the
280 qualified beneficiaries of the second trust if there are no
281 permissible distributees of the second trust,] of the
282 distribution. A beneficiary may waive the right to the
283 notice required by this subsection and, with respect to
284 future distributions, may withdraw a waiver previously given.

285 [4.] 6. In exercising the authority granted by
286 subsection 1 of this section, the trustee shall remain
287 subject to all fiduciary duties otherwise imposed under the
288 trust instrument and Missouri law.

289 [5.] 7. This section does not impose on a trustee a
290 duty to exercise the authority granted by subsection 1 of
291 this section in favor of another trust or to consider
292 exercising such authority in favor of another trust.

293 **8. A second trust may have a duration that is the same**
294 **as or different from the duration of the first trust.**
295 **However, to the extent that property of the second trust is**
296 **attributable to property of the first trust, the property of**
297 **the second trust is subject to any rules governing maximum**
298 **perpetuity, accumulation, or suspension of the power of**
299 **alienation which apply to property of the first trust. The**
300 **provisions of this subsection shall not preclude the**
301 **creation of a general power of appointment in the trust**
302 **instrument for a second trust as authorized by subdivision**
303 **(5) of subsection 2 of this section.**

304 9. In the event the trust instrument for the second
305 trust in part does not comply with this section but would
306 otherwise be effective under this section, the exercise of
307 the power is effective and the following rules apply with
308 respect to the principal of the second trust attributable to
309 the exercise of the power:

310 (1) A provision in the trust instrument for the second
311 trust which is not permitted under this section is void to
312 the extent necessary to comply with this section; and

313 (2) A provision required by this section to be in the
314 trust instrument for the second trust which is not contained
315 in the trust instrument is deemed to be included in the
316 trust instrument to the extent necessary to comply with this
317 section.

318 [6.] 10. This section is intended to codify and, from
319 and after enactment, to provide certain limitations to the
320 common law of this state, and this section applies to any
321 trust governed by the laws of this state, including a trust
322 whose principal place of administration is transferred to
323 this state before or after the enactment of this section.

 650.125. 1. The provisions of this section shall be
2 known and may be cited as the "Missouri Cybersecurity Act".

3 2. There is hereby established within the department
4 of public safety the "Missouri Cybersecurity Commission".
5 The commission shall have as its purpose identifying risk to
6 and vulnerability of the state and critical infrastructure
7 with regard to cyber attacks of any nature from within or
8 outside the United States and advising the governor on such
9 matters. The commission shall consist of the following
10 members:

11 (1) Eight members to be appointed by the governor, one
12 from each congressional district, with four members from
13 each party;

14 (2) The state chief information officer as designated
15 by the governor and commissioner of the office of
16 administration;

17 (3) One representative of the Missouri state highway
18 patrol, *ex officio*;

19 (4) One representative of the state emergency
20 management agency, *ex officio*; and

21 (5) One representative of the Missouri national guard,
22 *ex officio*.

23 No more than five of the nine members appointed by the
24 governor shall be of the same political party. To be
25 eligible for appointment by the governor, a person shall
26 have demonstrated expertise in cybersecurity or experience
27 in a field that directly correlates to a need of the state
28 relating to cyber defense. The membership of the commission
29 shall reflect both private sector and public sector
30 expertise and experience in cybersecurity. Appointed
31 members of the commission shall serve three-year terms,
32 except that of the initial appointments made by the
33 governor, three shall be for one-year terms, three shall be
34 for two-year terms, and three shall be for three-year
35 terms. No appointed member of the commission shall serve
36 more than six years total. Any vacancy on the commission
37 shall be filled in the same manner as the original
38 appointment.

39 3. The members of the commission shall serve without
40 compensation, but shall be reimbursed for the actual and

41 necessary expenses incurred in the discharge of the members'
42 official duties.

43 4. A chair of the commission shall be selected by the
44 members of the commission.

45 5. The department of public safety shall furnish
46 administrative support and staff for the effective operation
47 of the commission.

48 6. The commission shall meet at least quarterly and at
49 such other times as the chair deems necessary.

50 7. The commission shall be funded by an appropriation
51 limited to that purpose. Any expenditure constituting more
52 than ten percent of the commission's annual appropriation
53 shall be based on a competitive bid process.

54 8. The commission shall:

55 (1) Advise the governor on the state of cybersecurity
56 in the state of Missouri;

57 (2) Solicit data from state agencies, political
58 subdivisions of the state, public institutions of higher
59 education, and public schools relating to cybersecurity;

60 (3) Make recommendations to reduce the state's risk of
61 cyber attack and to identify best practices for the state to
62 work offensively against cyber threats.

63 9. State agencies, public institutions of higher
64 education, and public schools shall provide any data
65 requested by the commission under this section unless such
66 information is protected from disclosure under chapter 610
67 or is required to be kept confidential under a code of
68 ethics from a profession licensed in the state. The
69 provisions of this section shall not be construed to compel
70 private sector organizations to provide information or data
71 to the commission.

72 10. The commission shall prepare and present an annual
73 report to the governor by December thirty-first of each
74 year. Any content from the report protected under section
75 610.021, including any cybersecurity vulnerabilities
76 identified by the commission, shall be held confidential.

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