

HOUSE BILL NO. 1843

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

5581H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 456.1-103 and 456.8-808, RSMo, and to enact in lieu thereof two new sections relating to trusts directed by trust protectors.

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

Section A. Sections 456.1-103 and 456.8-808, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 456.1-103 and 456.8-808, to read as follows:

456.1-103. In sections 456.1-101 to 456.11-1106:

(1) "Action~~]~~", with respect to an act of a trustee, includes a failure to act;

(2) "Ascertainable standard", means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2541(c)(1) of the Internal Revenue Code;

(3) "Beneficiary", means a person that:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property;

(4) "Charitable trust", means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405;

(5) "Conservator", means a person described in subdivision (3) of section 475.010. This term does not include a conservator ad litem;

(6) "Conservator ad litem", means a person appointed by the court pursuant to the provisions of section 475.097;

(7) **"Directed trust", means any trust, including a split interest trust, where the trust instrument authorizes a trust protector to instruct or direct the trustee or that**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **charges a trust protector with any responsibilities regarding the trust or that grants the**
19 **trust protector one or more powers over the trust;**

20 **(8)** "Environmental law", means a federal, state, or local law, rule, regulation, or
21 ordinance relating to protection of the environment;

22 ~~[(8)]~~ **(9)** "Financial institution", means a non-foreign bank, savings and loan or trust
23 company chartered, regulated and supervised by the Missouri division of finance, the office of
24 the comptroller of the currency, the office of thrift supervision, the National Credit Union
25 Administration, or the Missouri division of credit union supervision. The term "non-foreign
26 bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of
27 section 361.005;

28 ~~[(9)]~~ **(10)** "Guardian", means a person described in subdivision (7) of section 475.010.
29 The term does not include a guardian ad litem;

30 ~~[(10)]~~ **(11)** "Interested persons", include beneficiaries and any others having a property
31 right in or claim against a trust estate which may be affected by a judicial proceeding. It also
32 includes fiduciaries and other persons representing interested persons. The meaning as it relates
33 to particular persons may vary from time to time and must be determined according to the
34 particular purposes of, and matter involved in, any proceeding;

35 ~~[(11)]~~ **(12)** "Interests of the beneficiaries", means the beneficial interests provided in the
36 terms of the trust;

37 ~~[(12)]~~ **(13)** "Internal Revenue Code", means the United States Internal Revenue Code
38 of 1986, as in effect on January 1, 2005, or as later amended;

39 ~~[(13)]~~ **(14)** "Jurisdiction[-]", with respect to a geographic area, includes a state or
40 country;

41 ~~[(14)]~~ **(15)** "Person", means an individual, corporation, business trust, estate, trust,
42 partnership, limited liability company, association, joint venture, government; governmental
43 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial
44 entity;

45 ~~[(15)]~~ **(16)** "Permissible distributee", means a beneficiary who is currently eligible to
46 receive distributions of trust income or principal, whether mandatory or discretionary;

47 ~~[(16)]~~ **(17)** "Power of withdrawal", means a presently exercisable power of a beneficiary
48 to withdraw assets from the trust without the consent of the trustee or any other person;

49 ~~[(17)]~~ **(18)** "Principal place of administration" of a trust is the trustee's usual place of
50 business where the records pertaining to the trust are kept, or the trustee's residence if the trustee
51 has no such place of business, unless otherwise designated by the terms of the trust as provided
52 in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the
53 following order of priority:

54 (a) The usual place of business of the corporate trustee if there is but one corporate
55 cotrustee;

56 (b) The usual place of business or residence of the trustee who is a professional fiduciary
57 if there is but one such trustee and no corporate cotrustee; or

58 (c) The usual place of business or residence of any of the cotrustees;

59 ~~[(18)]~~ **(19)** "Professional fiduciary", means an individual who represents himself or
60 herself to the public as having specialized training, experience or skills in the administration of
61 trusts;

62 ~~[(19)]~~ **(20)** "Property", means anything that may be the subject of ownership, whether
63 real or personal, legal or equitable, or any interest therein;

64 ~~[(20)]~~ **(21)** "Qualified beneficiary", means a beneficiary who, on the date the
65 beneficiary's qualification is determined:

66 (a) is a permissible distributee;

67 (b) would be a permissible distributee if the interests of the permissible distributees
68 described in paragraph (a) of this subdivision terminated on that date; or

69 (c) would be a permissible distributee if the trust terminated on that date;

70 ~~[(21)]~~ **(22)** "Record", means information that is inscribed on a tangible medium or that
71 is stored in an electronic or other medium and is retrievable in perceivable form;

72 ~~[(22)]~~ **(23)** "Revocable[;]", as applied to a trust, means that the settlor has the legal power
73 to revoke the trust without the consent of the trustee or a person holding an adverse interest,
74 regardless of whether the settlor has the mental capacity to do so in fact;

75 ~~[(23)]~~ **(24)** "Settlor", means a person, including a testator, who creates, or contributes
76 property to, a trust. If more than one person creates or contributes property to a trust, each
77 person is a settlor of the portion of the trust property attributable to that person's contribution
78 except to the extent another person has the power to revoke or withdraw that portion pursuant
79 to the terms of the trust;

80 ~~[(24)]~~ **(25)** "Sign", means[;] with present intent to authenticate or adopt a record:

81 (a) to execute or adopt a tangible symbol; or

82 (b) to attach to or logically associate with the record an electronic sound, symbol, or
83 process;

84 ~~[(25)]~~ **(26)** "Spendthrift provision", means a term of a trust which restrains either the
85 voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's
86 interest;

87 ~~[(26)]~~ **(27)** "State", means a state of the United States, the District of Columbia, Puerto
88 Rico, the United States Virgin Islands, or any territory or insular possession subject to the

89 jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal
90 law or formally acknowledged by a state;

91 ~~[(27)]~~ **(28)** "Terms of a trust", means the manifestation of the settlor's intent regarding
92 a trust's provisions as expressed in the trust instrument or as may be established by other
93 evidence that would be admissible in a judicial proceeding;

94 ~~[(28)]~~ **(29)** "Trust instrument", means an instrument executed by the settlor that contains
95 terms of the trust, including any amendments thereto;

96 ~~[(29)]~~ **(30)** "Trust protector", means any person, group of persons, or entity not
97 serving as a trustee and not the settlor or a beneficiary designated in a trust instrument to
98 instruct or direct the trustee or charged in the trust instrument with any responsibilities
99 regarding the trust or expressly granted in the trust instrument one or more powers over
100 the trust. The term "trust protector" includes, but is not limited to, persons or entities
101 identified in the trust instrument as trust advisors, trust directors, distribution advisors,
102 or investment advisors;

103 **(31)** "Trustee", includes an original, additional, and successor trustee, and a cotrustee.
456.8-808. 1. While a trust is revocable, the trustee may follow a direction of the settlor
2 that is contrary to the terms of the trust.

3 2. A trust instrument may provide for ~~[the appointment of a trust protector. For purposes~~
4 ~~of this section, a "trust protector", whether referred to in the trust instrument by that name or by~~
5 ~~some other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly~~
6 ~~granted in the trust instrument one or more powers over the trust]~~ **one or more persons, not**
7 **then serving as a trustee and not the settlor or a beneficiary, to be given any powers over**
8 **the trust as expressly granted in the trust instrument. Any such person may be identified**
9 **and appointed as a trust protector or similar term. Whenever a trust instrument names,**
10 **appoints, authorizes, or otherwise designates a trust protector, the trust shall be deemed**
11 **a directed trust.**

12 3. A trust protector appointed in the trust instrument shall have only the powers granted
13 to the trust protector by the express terms of the trust instrument, and a trust protector is only
14 authorized to act within the scope of the authority expressly granted in the trust instrument.
15 Without limiting the authority of the settlor to grant powers to a trust protector, the express
16 powers that may be granted include, but are not limited to, the following:

17 (1) Remove and appoint a trustee **or trust protector** or name a successor trustee or trust
18 protector;

19 (2) Modify or amend the trust instrument to:

20 (a) Achieve favorable tax status or respond to changes in the Internal Revenue Code or
21 state law, or the rulings and regulations under such code or law;

- 22 (b) Reflect legal changes that affect trust administration;
23 (c) Correct errors or ambiguities that might otherwise require court construction; or
24 (d) Correct a drafting error that defeats a grantor's intent;
25 (3) Increase, decrease, modify, or restrict the interests of the beneficiary or beneficiaries
26 of the trust;
27 (4) Terminate the trust in favor of the beneficiary or beneficiaries of the trust;
28 (5) Change the applicable law governing the trust and the trust situs; or
29 (6) Such other powers as are expressly granted to the trust protector in the trust
30 instrument.

31 4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector
32 shall have no power to modify a trust to:

33 (1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C.
34 Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible
35 beneficiary of the trust at the death of that beneficiary; or

36 (2) Reduce or eliminate an income interest of the income beneficiary of any of the
37 following types of trusts:

38 (a) A trust for which a marital deduction has been taken for federal tax purposes under
39 Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any
40 comparable provision of applicable state law, during the life of the settlor's spouse;

41 (b) A charitable remainder trust under Section 664 of the Internal Revenue Code, during
42 the life of the noncharitable beneficiary;

43 (c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code,
44 during any period in which the settlor is a beneficiary; or

45 (d) A trust for which an election as a qualified Sub-Chapter S Trust under Section
46 1361(d) of the Internal Revenue Code is currently in place.

47 5. Except to the extent otherwise provided in a trust instrument specifically referring to
48 this subsection, the trust protector shall not exercise a power in a way that would result in a
49 taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the
50 trust protector's gross estate for federal estate tax purposes.

51 6. Except to the extent otherwise provided in the trust instrument and in subsection 7 of
52 this section, and notwithstanding any provision of sections 456.1-101 to 456.11-1106 to the
53 contrary:

54 (1) A trust protector shall act in a fiduciary capacity in carrying out the powers granted
55 to the trust protector in the trust instrument, and shall have such duties to the beneficiaries, the
56 settlor, or the trust as set forth in the trust instrument, **provided that the trust instrument may**
57 **provide that the trust protector shall act in a nonfiduciary capacity.** A trust protector is not

58 a trustee, and is not liable or accountable as a trustee when performing or declining to perform
59 the express powers given to the trust protector in the trust instrument. A trust protector is not
60 liable for the acts or omissions of any fiduciary or beneficiary under the trust instrument;

61 (2) A trust protector is exonerated from any and all liability for the trust protector's acts
62 or omissions, or arising from any exercise or nonexercise of the powers expressly conferred on
63 the trust protector in the trust instrument, unless it is established by a preponderance of the
64 evidence that the acts or omissions of the trust protector were done or omitted in breach of the
65 trust protector's duty, in bad faith or with reckless indifference;

66 (3) A trust protector is authorized to exercise the express powers granted in the trust
67 instrument at any time and from time to time after the trust protector acquires knowledge of their
68 appointment as trust protector and of the powers granted. **The trust protector may take any
69 action, judicial or otherwise, necessary to carry out the duties given to the trust protector
70 in the trust instrument;**

71 (4) A trust protector is entitled to receive, from the assets of the trust for which the trust
72 protector is acting, reasonable compensation, and reimbursement of the reasonable costs and
73 expenses incurred, in determining whether to carry out, and in carrying out, the express powers
74 given to the trust protector in the trust instrument;

75 (5) A trust protector is entitled to receive, from the assets of the trust for which the trust
76 protector is acting, reimbursement of the reasonable costs and expenses, including attorney's
77 fees, of defending any claim made against the trust protector arising from the acts or omissions
78 of the trust protector acting in that capacity unless it is established by clear and convincing
79 evidence that the trust protector was acting in bad faith or with reckless indifference; and

80 (6) The express powers granted in the trust instrument shall not be exercised by the trust
81 protector for the trust protector's own personal benefit.

82 7. If a trust protector is granted a power in the trust instrument to direct, consent to, or
83 disapprove a trustee's actual or proposed investment decision, distribution decision, or other
84 decision of the trustee required to be performed under applicable trust law in carrying out the
85 duties of the trustee in administering the trust, then only with respect to such power, excluding
86 the powers identified in subsection 3 of this section, the trust protector shall have the same duties
87 and liabilities as if serving as a trustee under the trust instrument **unless the trust instrument
88 expressly provides otherwise. In carrying out any written directions given to the trustee
89 by the trust protector concerning actual or proposed investment decisions, the trustee shall
90 not be subject to the provisions of sections 469.900 to 469.913. For purposes of this
91 subsection, "investment decisions" means, with respect to any investment, decisions to
92 retain, purchase, sell, exchange, tender, or otherwise engage in transactions affecting the**

93 **ownership of investments or rights therein and, with respect to nonpublicly traded**
94 **investments, the valuation thereof.**

95 **8. Any trustee of a directed trust shall not be accountable under the law or equity**
96 **for any act or omission of a trust protector and shall stand absolved from liability for**
97 **executing the decisions or instructions from a trust protector or for monitoring the actions**
98 **or inactions of a trust protector. A trustee shall take reasonable steps to facilitate the**
99 **activity of a trust protector in a directed trust.** A trustee shall carry out the written directions
100 given to the trustee by a trust protector acting within the scope of the powers expressly granted
101 to the trust protector in the trust instrument. Except [~~in cases of bad faith or reckless indifference~~
102 ~~on the part of the trustee, or~~] as otherwise provided in the trust instrument, the trustee shall not
103 be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of
104 the written direction of the trust protector or the failure of the trust protector to provide consent.
105 Except as otherwise provided in the trust instrument, the trustee shall have no duty to monitor
106 the conduct of the trust protector, provide advice to or consult with the trust protector, or
107 communicate with or warn or apprise any beneficiary concerning instances in which the trustee
108 would or might have exercised the trustee's own discretion in a manner different from the manner
109 directed by the trust protector. **Except as otherwise provided in the trust instrument, any**
110 **actions taken by the trustee at the trust protector's direction shall be deemed to be**
111 **administrative actions taken by the trustee solely to allow the trustee to carry out the**
112 **instructions of the trust protector and shall not be deemed to constitute an act by the**
113 **trustee to monitor the trust protector or otherwise participate in actions within the scope**
114 **of the trust protector's authority.**

115 **9.** Except to the extent otherwise expressly provided in the trust instrument, the trust
116 protector shall be entitled to receive information regarding the administration of the trust as
117 follows:

118 (1) Upon the request of the trust protector, unless unreasonable under the circumstances,
119 the trustee shall promptly provide to the trust protector any and all information related to the trust
120 that may relate to the exercise or nonexercise of a power expressly granted to the trust protector
121 in the trust instrument. The trustee has no obligation to provide any information to the trust
122 protector except to the extent a trust protector requests information under this section;

123 (2) The request of the trust protector for information under this section shall be with
124 respect to a single trust that is sufficiently identified to enable the trustee to locate the records
125 of the trust; and

126 (3) If the trustee is bound by any confidentiality restrictions with respect to an asset of
127 a trust, a trust protector who requests information under this section about such asset shall agree

128 to be bound by the confidentiality restrictions that bind the trustee before receiving such
129 information from the trustee.

130 10. A trust protector may resign by giving thirty days' written notice to the trustee and
131 any successor trust protector. A successor trust protector, if any, shall have all the powers
132 expressly granted in the trust instrument to the resigning trust protector unless such powers are
133 expressly modified for the successor trust protector.

134 11. A trust protector of a trust having its principal place of administration in this state
135 submits personally to the jurisdiction of the courts of this state during any period that the
136 principal place of administration of the trust is located in this state and the trust protector is
137 serving in such capacity. **The trust instrument may also provide that a trust protector is**
138 **subject to the personal jurisdiction of the courts of this state as a condition of appointment.**

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