

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 886

101ST GENERAL ASSEMBLY

2022

3707H.03T

---

---

## AN ACT

To repeal sections 214.160, 456.4-419, 456.5-504, and 456.5-505, RSMo, and to enact in lieu thereof six new sections relating to trusts.

---

---

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

Section A. Sections 214.160, 456.4-419, 456.5-504, and  
2 456.5-505, RSMo, are repealed and six new sections enacted in  
3 lieu thereof, to be known as sections 214.160, 456.026, 456.1-  
4 114, 456.4-419, 456.5-504, and 456.5-505, to read as follows:

214.160. 1. Under sections 214.140 to 214.180, and as  
2 otherwise not prohibited under Article VI, Section 23 of the  
3 Constitution of Missouri, the county commission may invest  
4 or loan said trust fund or funds in United States  
5 government, state, county or municipal bonds, certificates  
6 of deposit, first real estate mortgages, or deeds of trust  
7 and may utilize investment managers to invest, reinvest, and  
8 manage assets, subject to the terms, conditions, and  
9 limitations provided in this section and Article IV, Section  
10 15 of the Constitution of Missouri. **[They]** **When sufficient,**  
11 **the commission** shall use the net income from said trust fund  
12 or funds or such investments or so much thereof as is  
13 necessary to support and maintain and beautify any public or  
14 private cemetery or any particular part thereof which may be

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

15 designated by the person, persons or firm or association  
16 making said gift or bequest. **If the net income from said**  
17 **trust fund or funds is not sufficient to support and**  
18 **maintain and beautify a cemetery, the commission may only**  
19 **use as much of the principal thereof as the commission deems**  
20 **necessary for the purpose of the basic maintenance to**  
21 **control the growth of grass and weeds.** In maintaining or  
22 supporting the cemetery or any particular part or portion  
23 thereof the commission shall as nearly as possible follow  
24 the expressed wishes of the creator of said trust fund.

25 2. An investment manager shall discharge his or her  
26 duties in the interest of the public or private cemetery and  
27 the interest of the person, persons, or firm making the gift  
28 or bequest and shall:

29 (1) Act with the same care, skill, prudence, and  
30 diligence under the circumstances then prevailing that a  
31 prudent person acting in a similar capacity and familiar  
32 with those matters would use in the conduct of a similar  
33 enterprise with similar aims;

34 (2) Act with due regard for the management,  
35 reputation, and stability of the issuer and the character of  
36 the particular investments being considered;

37 (3) Make investments for the purpose of supporting,  
38 maintaining, and beautifying any public or private cemetery  
39 or any particular part thereof, which may be designated by  
40 the person, persons, or firm or association making said gift  
41 or bequest, and of defraying reasonable expenses of  
42 investing the assets;

43 (4) Give appropriate consideration to those facts and  
44 circumstances that the investment fiduciary knows or should  
45 know are relevant to the particular investment or investment  
46 course of action involved, including the role the investment

47 or investment course of action plays in that portion of the  
48 investments for which the investment fiduciary has  
49 responsibility. For purposes of this subdivision,  
50 "appropriate consideration" shall include, but is not  
51 limited to, a determination by the investment fiduciary that  
52 a particular investment or investment course of action is  
53 reasonably designed to further the purposes of supporting,  
54 maintaining, and beautifying any public or private cemetery  
55 or any particular part thereof, which may be designated by  
56 the person, persons, or firm or association making said gift  
57 or bequest, while considering the risk of loss and the  
58 opportunity for gain or other return associated with the  
59 investment or investment course of action and considering  
60 the following factors as they relate to the investment or  
61 investment course of action:

62 (a) The diversification of the investments;

63 (b) The liquidity and current return of the  
64 investments relative to the anticipated cash flow  
65 requirements; and

66 (c) The projected return of the investments relative  
67 to the funding objectives; and

68 (5) Give appropriate consideration to investments that  
69 would enhance the general welfare of this state and its  
70 citizens if those investments offer the safety and rate of  
71 return comparable to other investments available to the  
72 investment fiduciary at the time the investment decision is  
73 made.

74 3. As used in this section, "invest" or "investment"  
75 means utilization of moneys in the expectation of future  
76 returns in the form of income or capital gain.

**456.026. For purposes of determining whether a trust  
2 that is subject to the rule against perpetuities violates**

3 said rule, if there is only one beneficiary of the trust who  
4 is entitled or eligible to receive distributions of income  
5 or principal from the trust, such beneficiary holds a  
6 general power of appointment over the trust, and no other  
7 person has a power to appoint any part of the trust to  
8 anyone other than the beneficiary, then the beneficiary has  
9 a vested interest in the trust, regardless of whether such  
10 general power is presently exercisable or is exercisable  
11 only at the powerholder's death.

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

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

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

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

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

23 with reckless indifference to the purposes of the trust or  
24 the interests of the beneficiaries; and

25 (3) A child adopted prior to the age of eighteen is  
26 the child of an adopting parent and not of the natural  
27 parents, except that adoption of a child by the spouse of a  
28 natural parent has no effect on the relationship between the  
29 child and such natural parent.

30 2. If a parent-child relationship is established  
31 pursuant to this section, the rights afforded to the child  
32 shall not be retroactive, but instead shall apply from the  
33 time the relationship is established.

34 3. The terms of a trust shall prevail over any  
35 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]

174 **If the exercise of the authority**  
175 **granted by subsection 1 of this section is limited by an**  
**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.

456.5-504. 1. A beneficiary's interest in a trust  
2 that is subject to the trustee's discretion does not  
3 constitute an interest in property or an enforceable right  
4 even if the discretion is expressed in the form of a  
5 standard of distribution or the beneficiary is then serving  
6 as a trustee or cotrustee. A creditor or other claimant may  
7 not attach present or future distributions from such an  
8 interest or right, obtain an order from a court forcing the  
9 judicial sale of the interest or compelling the trustee to  
10 make distributions, or reach the interest or right by any

11 other means, even if the trustee has abused the trustee's  
12 discretion.

13 2. This section does not limit the right of a  
14 beneficiary to maintain a judicial proceeding against a  
15 trustee for an abuse of discretion or failure to comply with  
16 a standard for distribution.

17 3. This section applies whether or not an interest is  
18 subject to a spendthrift provision.

19 4. For purposes of this section, a beneficiary's  
20 interest in a trust is subject to the trustee's discretion  
21 if that interest does not constitute a mandatory  
22 distribution as defined in subsection 1 of section 456.5-506.

23 **5. Whether or not a trust contains a spendthrift**  
24 **provision, no creditor or other person making a claim**  
25 **against a beneficiary shall be entitled to any information**  
26 **relating to the trust's assets or other trust records if**  
27 **distributions to the beneficiary are solely within the**  
28 **discretion of the trustee. The provisions of this**  
29 **subsection shall apply during the term of the trust,**  
30 **regardless of whether the beneficiary is also a potential**  
31 **remainder beneficiary of the trust.**

456.5-505. 1. Whether or not the terms of a trust  
2 contain a spendthrift provision, during the lifetime of the  
3 settlor, the property of a revocable trust is subject to  
4 claims of the settlor's creditors.

5 2. With respect to an irrevocable trust without a  
6 spendthrift provision, a creditor or assignee of the settlor  
7 may reach the maximum amount that can be distributed to or  
8 for the settlor's benefit. If a trust has more than one  
9 settlor, the amount the creditor or assignee of a particular  
10 settlor may reach may not exceed the settlor's interest in

11 the portion of the trust attributable to that settlor's  
12 contribution.

13 3. With respect to an irrevocable trust with a  
14 spendthrift provision, a spendthrift provision will prevent  
15 the settlor's creditors from satisfying claims from the  
16 trust assets except:

17 (1) Where the conveyance of assets to the trust was  
18 fraudulent as to creditors pursuant to the provisions of  
19 chapter 428; or

20 (2) To the extent of the settlor's beneficial interest  
21 in the trust assets, if at the time the trust became  
22 irrevocable:

23 (a) The settlor was the sole beneficiary of either the  
24 income or principal of the trust or retained the power to  
25 amend the trust; or

26 (b) The settlor was one of a class of beneficiaries  
27 and retained a right to receive a specific portion of the  
28 income or principal of the trust that was determinable  
29 solely from the provisions of the trust instrument.

30 4. In the event that a trust meets the requirements  
31 set forth in subsection 3 of this section, a settlor's  
32 creditors may not reach the settlor's beneficial interest in  
33 that trust, regardless of:

34 (1) Any testamentary power of appointment [retained by  
35 the settlor] that is exercisable by the settlor, **by a will**  
36 **or other written instrument**, in favor of any appointees  
37 other than the settlor, the settlor's estate, the settlor's  
38 creditors, or the creditors of the settlor's estate; **or**

39 (2) **The settlor's power to veto distributions from the**  
40 **trust.**

41 5. Any trustee who has a duty or power to pay the  
42 debts of a deceased settlor may publish a notice in a

43 newspaper published in the county designated in subdivision  
44 (3) of this subsection once a week for four consecutive  
45 weeks in substantially the following form:

46           To all persons interested in the estate of  
47           \_\_\_\_\_, decedent. The undersigned \_\_\_\_\_ is  
48           acting as Trustee under a trust the terms of  
49           which provide that the debts of the decedent may  
50           be paid by the Trustee(s) upon receipt of proper  
51           proof thereof. The address of the Trustee is  
52           \_\_\_\_\_.

53           All creditors of the decedent are noticed  
54           to present their claims to the undersigned  
55           within six (6) months from the date of the first  
56           publication of this notice or be forever  
57           barred.

58           \_\_\_\_\_ Trustee

59           (1) If such publication is duly made by the trustee,  
60           any debts not presented to the trustee within six months  
61           from the date of the first publication of the preceding  
62           notice shall be forever barred as against the trustee and  
63           the trust property.

64           (2) A trustee shall not be liable to account to the  
65           decedent's personal representative under the provisions of  
66           section 461.300 by reason of any debt barred under the  
67           provisions of this subsection.

68           (3) Such publication shall be in a newspaper published  
69           in:

70           (a) The county in which the domicile of the settlor at  
71           the time of his or her death is situated;

72           (b) If the settlor had no domicile in this state at  
73           the time of his or her death, any county wherein trust  
74           assets are located; except that, when the major part of the

75 trust assets in this state consist of real estate, the  
76 notice shall be published in the county in which the real  
77 estate or the major part thereof is located; or

78 (c) If the settlor had no domicile in this state at  
79 the time of his or her death and no trust assets are located  
80 therein, the county wherein the principal place of  
81 administration of the trust is located.

82 (4) For purposes of this subsection, the term  
83 "domicile" means the place in which the settlor voluntarily  
84 fixed his or her abode, not for a mere special or temporary  
85 purpose, but with a present intention of remaining there  
86 permanently or for an indefinite term.

87 6. For purposes of this section:

88 (1) During the period the power may be exercised, the  
89 holder of a power of withdrawal is treated in the same  
90 manner as the settlor of a revocable trust to the extent of  
91 the property subject to the power; and

92 (2) Upon the lapse, release, or waiver of the power,  
93 the holder is treated as the settlor of the trust only to  
94 the extent the value of the property affected by the lapse,  
95 release, or waiver exceeds the greater of the amount  
96 specified in Sections 2041(b)(2), 2514(e) or 2503(b) of the  
97 Internal Revenue Code.

98 **7. For all purposes of section 456.5-501 to 456.5-508,**  
99 **the settlor of any of the following trusts, known as the**  
100 **"first trust" in this subsection, shall not be treated as**  
101 **the settlor of any other trust, known as the "second trust"**  
102 **in this subsection, that is created pursuant to the exercise**  
103 **of a power of appointment over the first trust if the**  
104 **settlor is a beneficiary of the second trust:**

105 (1) **An irrevocable inter vivos trust for the benefit**  
106 **of the settlor's spouse that qualifies for the marital**

107 deduction from the federal gift tax under Section 2523(e) of  
108 the Internal Revenue Code;

109 (2) An irrevocable inter vivos trust for the benefit  
110 of the settlor's spouse that qualifies for the marital  
111 deduction from the federal gift tax under Section 2523(f) of  
112 the Internal Revenue Code;

113 (3) An irrevocable inter vivos trust for the benefit  
114 of the settlor's spouse, or the settlor's spouse and other  
115 beneficiaries, where the settlor's spouse is the beneficiary  
116 who exercises the power of appointment to create the second  
117 trust; and

118 (4) An irrevocable inter vivos trust where any  
119 beneficiary exercises a general power of appointment to  
120 create the second trust.

121 8. This section shall not apply to a spendthrift trust  
122 described, defined, or established in section 456.014.

✓