

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 304
91ST GENERAL ASSEMBLY

Reported from the Committee on Judiciary, April 12, 2001, with recommendation that the House Committee Substitute for Senate Bill No. 304 Do Pass.

TED WEDEL, Chief Clerk

1141L.03C

AN ACT

To repeal section 456.183, RSMo 2000, relating to trustees' resignation and removal, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 456.183, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 456.183, to read as follows:

456.183. **1.** A trustee may resign at any time by written notice of the resignation to the settlor, if living, to a cotrustee, if any, and to the beneficiaries **who then have the capacity to contract and who are** then entitled to receive or eligible to have the benefit of the income from the trust estate.

2. The settlor, a cotrustee, or any beneficiary may petition the court at any time to remove a successor corporate trustee. Removal of a successor corporate trustee shall be commenced and shall proceed either pursuant to sections 456.190 to 456.200, or pursuant to the provisions of this section, at the petitioner's discretion.

3. Upon a petition for removal filed pursuant to this section, the court shall conduct an evidentiary hearing and may remove a successor corporate trustee based upon any of the following findings:

- (1)** The trustee has committed a breach of trust;
- (2)** The trustee is unfit, unwilling, or unable to administer the trust in a manner which effectively promotes or achieves the material purposes and intent of the trust; or
- (3)** There is a substantial and continuing change in circumstances that supports a finding that the best interests of the beneficiaries would be served by removal of the trustee.

4. Removal of a trustee pursuant to subdivision (3) of subsection 3 of this section shall not be ordered if the court finds any of the following:

- (1)** That such removal would be inconsistent with the material purposes and intent of the trust;
- (2)** That such removal would be inconsistent with the provisions of sections 456.900 to 456.913; or
- (3)** That the trust instrument contains a provision which explicitly prohibits removal of the trustee and said provision of the trust is not illegal and does not violate public policy.

5. Upon request of any party, or upon its own motion, the court may enter a temporary

order of relief, pending final resolution on the petition for removal, based upon a finding that such relief is necessary to protect the trust property, the interests of any beneficiary, or the material purposes and intent of the trust. Any such temporary order of relief may, among other forms of relief, include the temporary suspension of the trustee's duties, powers and authority along with the commensurate appointment of a temporary trustee except where the trust provides for a cotrustee or a successor trustee. The temporary trustee shall assume the trustee's duties, powers and authority until discharged by further order of the court or until resignation pursuant to this section. In the event a temporary trustee resigns, he or she shall provide written notice to the court in addition to those who are entitled to such notice pursuant to subsection 1 of this section.

6. Upon a petition for removal filed pursuant to this section, and in lieu of an order of removal, the court may order any appropriate relief necessary to effectively promote or achieve the material purposes and intent of the trust. Such relief may not be inconsistent with any section in this chapter and may include, but is not limited to:

(1) Compelling the trustee to perform the trustee's duties, or certain of them, in a manner which effectively promotes or achieves the material purposes and intent of the trust. In the court's discretion, such an order may specify the manner in which the trustee must perform the identified duty or duties;

(2) Prohibiting the trustee from committing an act or omission which would constitute a breach of trust, or which would be inconsistent with the material purposes and intent of the trust, or which would be inconsistent with the provisions of sections 456.900 to 456.913;

(3) Compelling the trustee to redress a breach of trust by paying money, by restoring property, or by any other means specified by the court;

(4) Compelling the trustee to disclose certain information related to the trust or to any activity of the trustee which may be in conflict with his or her duties as trustee of the trust;

(5) Compelling the trustee to prepare and distribute an accounting of the trust;

(6) Restricting the powers and authority of the trustee; or

(7) Reducing the compensation of the trustee.

7. In the event the court orders the removal of a trustee pursuant to this section, the court shall appoint a successor trustee except where the trust provides for a cotrustee or successor trustee. The successor trustee shall assume the trustee's duties, powers and authority until discharged by further order of the court or until resignation pursuant to this section. In the event a successor trustee resigns, he or she shall provide written notice to the court in addition to those who are entitled to such notice pursuant to subsection 1 of this section.

8. In the event a petition for removal of trustee is filed pursuant to this section and the final judgment in the case does not include an order of removal, the reasonable attorney fees incurred by the defendant trustee and the court costs of the removal suit shall be ordered paid from the assets of the trust.

9. The resignation, suspension or removal of a trustee, pursuant to this section, shall not be deemed to constitute a termination of the trust or a distribution with respect to the trust estate.