

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 742

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

Read 2nd time January 16, 2002, and referred to the Committee on Judiciary.

Reported from the Committee February 4, 2002, with recommendation that the bill do pass with Senate Committee Amendment No. 1 and be placed on the Consent Calendar.

Senate Committee Amendment No. 1 adopted February 19, 2002.

Taken up February 19, 2002. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

2965S.01P

AN ACT

To repeal section 469.411, RSMo, relating to trusts and estates, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Section 469.411, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 362.011 and 469.411, to read as follows:

362.011. For the purposes of this chapter, a person does not engage in the trust business by:

- (1) The rendering of fiduciary services by an attorney-at-law admitted to the practice of law in this state;**
- (2) Rendering services as a certified or registered public accountant in the performance of duties as such;**
- (3) Acting as a trustee or receiver in bankruptcy;**

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

- (4) Engaging in the business of an escrow agent;**
- (5) Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal;**
- (6) Acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;**
- (7) Acting in accordance with its authorized powers as a religious, charitable, educational, or other not-for-profit corporation or as a charitable trust or as an unincorporated religious organization;**
- (8) Engaging in securities transactions as a dealer or salesman;**
- (9) Acting as either a receiver under the supervision of a court or as an assignee for the benefit of creditors under the supervision of a court; or**
- (10) Engaging in such other activities that the director may prescribe by rule.**

469.411. 1. If the provisions of this section apply to a trust, the unitrust amount shall be determined as follows:

(1) For the first three accounting periods of the trust, the unitrust amount for a current valuation year of the trust shall be three percent, or any higher percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on the first business day of the current valuation year;

(2) Beginning with the fourth accounting period of the trust, the unitrust amount for a current valuation year of the trust shall be three percent, or any higher percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the average of the net fair market values of the assets held in the trust on the first business day of the current valuation year and the net fair market values of the assets held in the trust on the first business day of each prior valuation year;

(3) The unitrust amount for the current valuation year computed pursuant to subdivision (1) or (2) of this subsection shall be proportionately reduced for any distributions, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements and taxes, from the trust within a current valuation year that the trustee determines to be material and substantial, and shall be proportionately increased for the receipt, other than a receipt that represents a return on

investment, of any additional property into the trust within a current valuation year;

(4) For purposes of subdivision (2) of this subsection, the net fair market values of the assets held in the trust on the first business day of a prior valuation year shall be adjusted to reflect any reduction, in the case of a distribution or payment, or increase, in the case of a receipt, for the prior valuation year pursuant to subdivision (3) of this subsection, as if the distribution, payment or receipt had occurred on the first day of the prior valuation year;

(5) In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis;

(6) In the case where the net fair market value of an asset held in the trust has been incorrectly determined either in a current valuation year or in a prior valuation year, the unitrust amount shall be increased in the case of an undervaluation, or be decreased in the case of an overvaluation, by an amount equal to the difference between the unitrust amount determined based on the correct valuation of the asset and the unitrust amount originally determined.

2. As used in this section, the following terms mean:

(1) "Current valuation year", the accounting period of the trust for which the unitrust amount is being determined;

(2) "Prior valuation year", each of the two accounting periods of the trust immediately preceding the current valuation year.

3. In determining the sum of the net fair market values of the assets held in the trust for purposes of subdivisions (1) and (2) of subsection 1 of this section, there shall not be included the value of:

(1) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more income beneficiaries of the trust have or had the right to occupy, or have or had the right to possess or control, other than in a capacity as trustee, and instead the right of occupancy or the right to possession or control shall be deemed to be the unitrust amount with respect to the residential property or the tangible personal property; or

(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on investment on that asset, which return on investment shall be distributable to the beneficiary.

4. In determining the net fair market value of each asset held in the trust

pursuant to subdivisions (1) and (2) of subsection 1 of this section, the trustee shall, not less often than annually, determine the fair market value of each asset of the trust that consists primarily of real property or other property that is not traded on a regular basis in an active market by appraisal or other reasonable method or estimate, and that determination, if made reasonably and in good faith, shall be conclusive as to all persons interested in the trust. Any claim based on a determination made pursuant to this subsection shall be barred if not asserted in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust within two years after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the barring of claims pursuant to this subsection.

5. This section shall apply to the following trusts:

(1) Any trust created after August 28, 2001, with respect to which the terms of the trust clearly manifest an intent that this section apply;

(2) Any trust created under an instrument that became irrevocable on or before August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply two years from August 28, 2001, unless the instrument creating the trust provides otherwise. The trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she is then living, of the trustee's intent to make such an election at least sixty days before making that election. The trustee shall have sole authority to make the election. Delivery of the notice to a person with respect to whom, pursuant to subdivision (2) of section 472.300, RSMo, an order would bind a beneficiary of the trust is delivery of notice to that beneficiary for all purposes of this subsection. An action or order by any court shall not be required. The election shall be made by a signed writing delivered to the settlor of the trust, if he or she is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by order of the court having jurisdiction of the trust. The election may specify the percentage used to determine the unitrust amount pursuant to this section, provided that such percentage is three percent or greater, or if no percentage is specified, then that percentage shall be three percent. In making an election pursuant to this subsection, the trustee shall be subject to the same limitations and conditions as apply to an adjustment between income and principal pursuant to subsections 3 and 4 of section [469.409] **469.405**;

(3) No action of any kind based on an election made or not made by a trustee pursuant to subdivision (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three years from August 28, 2001.

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