

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1235
94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 13, 2008, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

5391S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 362.550, 456.8-802, and 456.8-816, RSMo, and to enact in lieu thereof three new sections relating to the Missouri uniform trust code.

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

Section A. Sections 362.550, 456.8-802, and 456.8-816, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 362.550,
3 456.8-802, and 456.8-816, to read as follows:

362.550. 1. When any trust company organized pursuant to the laws of
2 this state shall have been nominated as personal representative of the last will
3 of any deceased person, the court or officer authorized pursuant to the law of this
4 state to grant letters testamentary thereon shall, upon proper application, grant
5 letters testamentary thereon to the trust company or to its successor by merger.

6 2. When application is made for the appointment of a personal
7 representative on the estate of any deceased person, and there is no person
8 entitled to the letters, or if there is one so entitled then, on the application of the
9 person, the court or officer making the appointment may grant letters of
10 administration with will annexed to any trust company.

11 3. Any trust company may be appointed conservator, trustee, personal
12 representative, receiver, assignee or in any other fiduciary capacity, in the
13 manner now provided by law for appointment of individuals to any such office. On
14 the application of any natural person acting in any such office, or on the
15 application of any natural persons acting jointly in any such office, any trust
16 company may be appointed by the court or officer having jurisdiction in the place
17 and stead of the person or persons; or on the application of the person or persons

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

18 any trust company may be appointed to the office to act jointly with the person
19 or persons theretofore appointed, or appointed at the same time; provided, the
20 appointment shall not increase the compensation to be paid the joint fiduciaries
21 over the amount pursuant to the law payable to a fiduciary acting alone.

22 4. Any natural person or persons heretofore or hereafter appointed as
23 guardian, trustee, personal representative, receiver, assignee, or in any other
24 fiduciary capacity, desiring to have their bond under the office reduced, or
25 desiring to be appointed under a reduced bond, the person or persons may apply
26 to the court to have their appointment put or made under such limitation of
27 powers and upon such terms and conditions as to the deposits of assets by the
28 person or persons with any trust company, under such reduced bond to be given
29 by the person or persons as the court or judge shall prescribe, and the court or
30 judge may make any proper order in the premises.

31 5. Any investments made by any trust company of money received by it
32 in any fiduciary capacity shall be at its sole risk, and for all losses of such money
33 the capital stock and property of the company shall be absolutely liable, unless
34 the investments are such as are proper when made by an individual acting in
35 such fiduciary capacity, or such as are permitted under and by the instrument or
36 order creating or defining the trust. Any trust company in the exercise of its
37 fiduciary powers as personal representative, guardian, trustee or other fiduciary
38 capacity, may retain and continue to hold, as an investment of an estate, trust or
39 other account administered by it as fiduciary, any shares of the capital stock, and
40 other securities or obligations, of the trust company so acting, and of any parent
41 company or affiliated company of such trust company, which stock, securities and
42 obligations have been transferred to or deposited with such fiduciary by the
43 creator or creators of such fiduciary account or other donors or grantors, or
44 received by it in exchange for, or as dividends upon, or purchased by the exercise
45 of subscription rights, including rights to purchase fractional shares, in respect
46 of, any other stock, securities or obligations so transferred to or deposited with
47 it, or which have been purchased by such fiduciary pursuant to a requirement of
48 the instrument or order governing such account or pursuant to the direction of
49 such person or persons other than the trust company having power to direct such
50 fiduciary with respect to such purchases; but except as herein provided, including
51 the exercise of subscription rights, no such trust company shall purchase as an
52 investment for any fiduciary account, in the exercise of its own discretion, any
53 stock or other securities or obligations, other than deposit accounts, savings

54 certificates or certificates of deposits, issued by such trust company, or its parent
55 or affiliated companies. This subsection shall not be construed to prohibit a trust
56 company, in the exercise of its own discretion, from purchasing as an investment,
57 for any fiduciary account, securities or obligations of any state or political
58 subdivision thereof which meet investment standards which shall be established
59 by the director of the division of finance, even though such obligations are
60 underwritten by such trust company or its parent or affiliated companies.

61 6. The court or officer may make orders respecting the trusts and require
62 any trust company to render all accounts which the court or officer might lawfully
63 require if the personal representative, guardian, trustee, receiver, depositary or
64 the trust company acting in any other fiduciary capacity, were a natural person.

65 7. Upon the appointment of a trust company to any fiduciary office, no
66 official oath shall be required.

67 8. Property or securities received or held by a trust company in any
68 fiduciary capacity shall be a special deposit in the trust company, and the
69 accounts thereof shall be kept separate from each other and separate from the
70 company's individual business. The property or securities held in trust shall not
71 be mingled with the investments of the capital stock or other property belonging
72 to the trust company or be liable for the debts or obligations thereof. For the
73 purpose of this section, the corporation shall have a trust department, in which
74 all business authorized by subsection 2 of section 362.105 is kept separate and
75 distinct from its general business.

76 9. The accounts, securities and all records of any trust company relating
77 to a trust committed to it shall be open for the inspection of all persons interested
78 in the trust.

79 10. When any trust company organized pursuant to the laws of this state
80 shall have been appointed personal representative of the estate of any deceased
81 person, or guardian, trustee, receiver, assignee, or in any other fiduciary capacity,
82 in the manner provided by law for appointment to any such office, and if the trust
83 company has heretofore merged or consolidated with or shall hereafter merge or
84 consolidate with any other trust company organized pursuant to the laws of this
85 state, then, at the option of the first mentioned company, and upon the filing by
86 it, with the court having jurisdiction of the estate being administered, of a
87 certificate of the merger or consolidation, together with a statement that the
88 other trust company is to thereafter administer the estate held by it and an
89 acceptance by the latter trust company of the trust to be administered, the

90 certificate, statement and acceptance to be executed by the president or vice
91 president of the respective companies and to have affixed thereto the corporate
92 seals of the respective companies, attested by the secretary thereof, and further
93 upon the approval of the court and the giving of such bond as may be required,
94 all the rights, privileges, title and interest in and to all property of whatsoever
95 kind, whether real, personal or mixed, and things in action belonging to the trust
96 estate, and every right, privilege or asset of conceivable value or benefit then
97 existing which would inure to the estate under an unmerged or consolidated
98 existence of the first mentioned company, shall be fully and finally and without
99 right of reversion transferred to and vested in the corporation into which it is
100 merged or with which it is consolidated, without further act or deed, and the last
101 mentioned corporation shall have and hold the same in its own right as fully as
102 the same was possessed and held by the corporation from which it was, by
103 operation of the provisions of this section, transferred, and the corporation shall
104 succeed to all the relations, obligations and liabilities, and shall execute and
105 perform all the trusts and obligations devolving upon it, in the same manner as
106 though it had itself assumed the relation or trust.

107 11. Notwithstanding any other provisions of law to the contrary, a bank,
108 trust company or affiliate thereof, when acting as a trustee, investment advisor,
109 custodian, or otherwise in a fiduciary capacity with respect to the investment and
110 reinvestment of assets may invest and reinvest the assets, subject to the
111 standards contained in section [456.520] **456.8-816**, RSMo, **and sections**
112 **469.900 to 469.913, RSMo**, in the securities of any open-end or closed-end
113 management investment company or investment trust registered pursuant to the
114 federal Investment Company Act of 1940 as amended (15 U.S.C. Sections 80a-1,
115 et seq.) (collectively, "mutual funds"), **or in shares or interests in a**
116 **partnership or limited liability company or other entity that operates**
117 **as a privately-offered investment fund**. Such investment and reinvestment
118 of assets may be made notwithstanding that such bank, trust company, or
119 affiliate provides services to the investment company or trust **or privately-**
120 **offered investment fund** as investment advisor, sponsor, distributor, custodian,
121 transfer agent, registrar, or otherwise, and receives reasonable remuneration for
122 such services. Such bank or trust company or affiliate thereof is entitled to
123 receive fiduciary fees with respect to such assets. For such services the bank or
124 trust company or affiliate thereof shall be entitled only to the normal fiduciary
125 fee but neither a bank, trust company nor affiliate shall be required to reduce or

126 waive its compensation for services provided in connection with the investment
127 and management of assets because the fiduciary invests, reinvests or retains
128 assets in a mutual fund **or privately-offered investment fund**. The
129 provisions of this subsection apply to any trust, advisory, custody or other
130 fiduciary relationship established before or after August 28, 1999, unless the
131 governing instrument refers to this section and provides otherwise.

132 12. As used in this section, the term "trust company" applies to any state
133 or national bank or trust company qualified to act as fiduciary in this state.

456.8-802. 1. A trustee shall administer the trust solely in the interests
2 of the beneficiaries.

3 2. Subject to the rights of persons dealing with or assisting the trustee as
4 provided in section 456.10-1012, a sale, encumbrance, or other transaction
5 involving the investment or management of trust property entered into by the
6 trustee for the trustee's own personal account or which is otherwise affected by
7 a conflict between the trustee's fiduciary and personal interests is voidable by a
8 beneficiary affected by the transaction unless:

9 (1) the transaction was authorized by the terms of the trust;

10 (2) the transaction was approved by the court;

11 (3) the beneficiary did not commence a judicial proceeding within the time
12 allowed by section 456.10-1005;

13 (4) the beneficiary consented to the trustee's conduct, ratified the
14 transaction, or released the trustee in compliance with section 456.10-1009; or

15 (5) the transaction involves a contract entered into or claim acquired by
16 the trustee before the person became or contemplated becoming trustee.

17 3. A sale, encumbrance, or other transaction involving the investment or
18 management of trust property is presumed to be affected by a conflict between
19 personal and fiduciary interests if it is entered into by the trustee with:

20 (1) the trustee's spouse;

21 (2) the trustee's descendants, siblings, parents, or their spouses;

22 (3) an agent or attorney of the trustee; or

23 (4) a corporation or other person or enterprise in which the trustee, or a
24 person that owns a significant interest in the trustee, has an interest that might
25 affect the trustee's best judgment.

26 4. A transaction between a trustee and a beneficiary that does not concern
27 trust property but that occurs during the existence of the trust or while the
28 trustee retains significant influence over the beneficiary and from which the

29 trustee obtains an advantage is voidable by the beneficiary unless the trustee
30 establishes that the transaction was fair to the beneficiary.

31 5. A transaction not concerning trust property in which the trustee
32 engages in the trustee's individual capacity involves a conflict between personal
33 and fiduciary interests if the transaction concerns an opportunity properly
34 belonging to the trust.

35 6. The following transactions are not presumed to be affected by a conflict
36 between the trustee's personal and fiduciary interest provided that any
37 investment made pursuant to the transaction complies with the Missouri prudent
38 investor act.

39 (1) An investment by a trustee in securities of an investment company or
40 investment trust, **or in shares or interests in a partnership or limited**
41 **liability company or other entity that operates as a privately-offered**
42 **investment fund**, to which the trustee, or its affiliate, provides services in a
43 capacity other than as trustee.

44 (2) the placing of securities transactions by a trustee through a securities
45 broker that is a part of the same company as the trustee, is owned by the trustee,
46 or is affiliated with the trustee.

47 (3) In addition to the trustee's fees charged to the trust, the trustee, its
48 affiliate, or associated entity may be compensated for any transaction or provision
49 of services described in this subsection 6 or in subdivision (4), (5), or (6) of
50 subsection 8 of this section; provided, however, that with respect to any
51 investment in securities of an investment company or investment trust, **or in**
52 **shares or interests in a partnership or limited liability company or**
53 **other entity that operates as a privately-offered investment fund**, to
54 which the trustee or its affiliate provides investment advisory or investment
55 management services or any services described in subdivision (5) of subsection 8
56 of this section, the trustee shall at least annually notify the persons entitled
57 under section 456.8-813 to receive a copy of the trustee's annual report of the rate
58 or method by which the compensation was determined.

59 7. In voting shares of stock or in exercising powers of control over similar
60 interests in other forms of enterprise, the trustee shall act in the best interests
61 of the beneficiaries. If the trust is the sole owner of a corporation or other form
62 of enterprise, the trustee shall elect or appoint directors or other managers who
63 will manage the corporation or enterprise in the best interests of the
64 beneficiaries.

65 8. The following transactions, if fair to the beneficiaries, are not presumed
66 to be affected by a conflict between personal and fiduciary interests and are not
67 precluded by this section:

68 (1) an agreement between a trustee and a beneficiary relating to the
69 appointment or compensation of the trustee;

70 (2) payment of reasonable compensation to the trustee;

71 (3) a transaction between a trust and another trust, decedent's estate, or
72 conservatorship of which the trustee is a fiduciary or in which a beneficiary has
73 an interest;

74 (4) a deposit of trust money in a financial institution operated by the
75 trustee or an affiliate;

76 (5) a delegation and any transaction made pursuant to the delegation from
77 a trustee to an agent that is affiliated or associated with the trustee, provided
78 that notice of any compensation paid pursuant to the delegation is given as
79 provided in subdivision (3) of subsection 6 of this section; or

80 (6) any loan from the trustee or its affiliate.

81 9. The court may appoint a special fiduciary to make a decision with
82 respect to any proposed transaction that might violate this section if entered into
83 by the trustee.

 456.8-816. Without limiting the authority conferred by section 456.8-815,
2 a trustee may:

3 (1) collect trust property and accept or reject additions to the trust
4 property from a settlor or any other person;

5 (2) acquire or sell property in divided or undivided interests, for cash or
6 on credit, at public or private sale;

7 (3) exchange, partition, or otherwise change the character of trust
8 property;

9 (4) deposit trust money in an account in a financial institution;

10 (5) borrow money, with or without security, and mortgage or pledge trust
11 property for a period within or extending beyond the duration of the trust;

12 (6) with respect to an interest in a proprietorship, partnership, limited
13 liability company, business trust, corporation, or other form of business or
14 enterprise, continue the business or other enterprise and take any action that
15 may be taken by shareholders, members, or property owners, including merging,
16 dissolving, or otherwise changing the form of business organization or
17 contributing additional capital;

18 (7) with respect to stocks or other securities, exercise the rights of an
19 absolute owner, including the right to:

20 (a) vote, or give proxies to vote, with or without power of substitution, or
21 enter into or continue a voting trust agreement;

22 (b) hold a security in the name of a nominee or in other form without
23 disclosure of the trust so that title may pass by delivery;

24 (c) pay calls, assessments, and other sums chargeable or accruing against
25 the securities, and sell or exercise stock subscription or conversion rights; and

26 (d) deposit the securities with a depository or other financial institution;

27 (8) with respect to an interest in real property, construct, or make
28 ordinary or extraordinary repairs to, alterations to, or improvements in, buildings
29 or other structures, demolish improvements, raze existing or erect new party
30 walls or buildings, subdivide or develop land, dedicate land to public use or grant
31 public or private easements, and make or vacate plats and adjust boundaries;

32 (9) enter into a lease for any purpose as lessor or lessee, including a lease
33 or other arrangement for exploration and removal of natural resources, with or
34 without the option to purchase or renew, for a period within or extending beyond
35 the duration of the trust;

36 (10) grant an option involving a sale, lease, or other disposition of trust
37 property or acquire an option for the acquisition of property, including an option
38 exercisable beyond the duration of the trust, and exercise an option so acquired;

39 (11) insure the property of the trust against damage or loss and insure the
40 trustee, the trustee's agents, and beneficiaries against liability arising from the
41 administration of the trust;

42 (12) abandon or decline to administer property of no value or of
43 insufficient value to justify its collection or continued administration;

44 (13) with respect to possible liability for violation of environmental law:

45 (a) inspect or investigate property the trustee holds or has been asked to
46 hold, or property owned or operated by an organization in which the trustee holds
47 or has been asked to hold an interest, for the purpose of determining the
48 application of environmental law with respect to the property;

49 (b) take action to prevent, abate, or otherwise remedy any actual or
50 potential violation of any environmental law affecting property held directly or
51 indirectly by the trustee, whether taken before or after the assertion of a claim
52 or the initiation of governmental enforcement;

53 (c) decline to accept property into trust or disclaim any power with respect

54 to property that is or may be burdened with liability for violation of
55 environmental law;

56 (d) compromise claims against the trust which may be asserted for an
57 alleged violation of environmental law; and

58 (e) pay the expense of any inspection, review, abatement, or remedial
59 action to comply with environmental law;

60 (14) pay or contest any claim, settle a claim by or against the trust, and
61 release, in whole or in part, a claim belonging to the trust;

62 (15) pay taxes, assessments, compensation of the trustee and of employees
63 and agents of the trust, and other expenses incurred in the administration of the
64 trust;

65 (16) exercise elections with respect to federal, state, and local taxes;

66 (17) select a mode of payment under any employee benefit or retirement
67 plan, annuity, or life insurance payable to the trustee, exercise rights thereunder,
68 including exercise of the right to indemnification for expenses and against
69 liabilities, and take appropriate action to collect the proceeds;

70 (18) make loans out of trust property, including loans to a beneficiary on
71 terms and conditions the trustee considers to be fair and reasonable under the
72 circumstances, and the trustee has a lien on future distributions for repayment
73 of those loans;

74 (19) pledge trust property to guarantee or secure loans made by others to
75 a beneficiary;

76 (20) appoint a trustee to act in another jurisdiction with respect to trust
77 property located in the other jurisdiction, confer upon the appointed trustee all
78 of the powers and duties of the appointing trustee, require that the appointed
79 trustee furnish security, and remove any trustee so appointed;

80 (21) pay an amount distributable to a beneficiary who is under a legal
81 disability or who the trustee reasonably believes is incapacitated, by paying it
82 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

83 (a) paying it to the beneficiary's conservator or, if the beneficiary does not
84 have a conservator, the beneficiary's guardian;

85 (b) paying it to the beneficiary's custodian under the Missouri transfers
86 to minors law under sections 404.005 to 404.094, RSMo, or a personal custodian
87 under sections 404.400 to 404.650, RSMo, and, for that purpose, creating a
88 custodianship or custodial trust;

89 (c) if the trustee does not know of a conservator, guardian, custodian, or

90 custodial trustee, paying it to an adult relative or other person having legal or
91 physical care or custody of the beneficiary, to be expended on the beneficiary's
92 behalf; or

93 (d) managing it as a separate fund on the beneficiary's behalf, subject to
94 the beneficiary's continuing right to withdraw the distribution;

95 (22) on distribution of trust property or the division or termination of a
96 trust, make distributions in divided or undivided interests, allocate particular
97 assets in proportionate or disproportionate shares, value the trust property for
98 those purposes, and adjust for resulting differences in valuation;

99 (23) resolve a dispute concerning the interpretation of the trust or its
100 administration by mediation, arbitration, or other procedure for alternative
101 dispute resolution;

102 (24) prosecute or defend an action, claim, or judicial proceeding in any
103 jurisdiction to protect trust property and the trustee in the performance of the
104 trustee's duties;

105 (25) to engage and compensate attorneys, accountants, investment
106 advisors, or other agents, and to delegate to them trustee's duties and functions
107 in accordance with the provisions of section 456.8-807;

108 (26) sign and deliver contracts and other instruments that are useful to
109 achieve or facilitate the exercise of the trustee's powers;

110 (27) on termination of the trust, exercise the powers appropriate to wind
111 up the administration of the trust and distribute the trust property to the persons
112 entitled to it; and

113 (28) to invest and reinvest trust assets in accordance with sections
114 469.900 to 469.913, RSMo; including investing and reinvesting **trust assets in**
115 **United States government obligations, either directly or in the form of**
116 **securities of, or other interests in, any open-end or closed-end**
117 **management type investment company or investment trust registered**
118 **pursuant to the Investment Company Act of 1940, as amended,**
119 **including but not limited to United States government obligations and**
120 **repurchase agreements fully collateralized by such obligations,**
121 **notwithstanding that the governing instrument or order directs,**
122 **requires, authorizes, or restricts investment in or to United States**
123 **government obligations or repurchase agreements fully collateralized**
124 **by such obligations, and** in securities or obligations of any state or its political
125 subdivisions, including securities or obligations that are underwritten by the

126 trustee or an affiliate of the trustee or a syndicate in which the trustee or an
127 affiliate of the trustee is a member which meet the standards established by the
128 division of finance pursuant to subsection 5 of section 362.550, RSMo.

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