

FIRST REGULAR SESSION

SENATE BILL NO. 59

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Pre-filed December 15, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

0491S.01I

AN ACT

To repeal section 456.5-505, RSMo, and to enact in lieu thereof three new sections relating to fiduciaries.

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

Section A. Section 456.5-505, RSMo, is repealed and three new sections
2 enacted in lieu thereof, to be known as sections 456.4-419, 456.5-505, and 456.5-
3 508, to read as follows:

**456.4-419. 1. Unless the terms of the trust instrument expressly
2 provide otherwise, a trustee who has discretionary power under the
3 terms of a trust to make a distribution of income or principal, whether
4 or not limited by an ascertainable standard, to or for the benefit of one
5 or more beneficiaries of a trust, the "first trust", may instead exercise
6 such discretionary power by appointing all or part of the income or
7 principal subject to such discretionary power in favor of a trustee of a
8 second trust, the "second trust", created under either the same or
9 different trust instrument in the event that the trustee of the first trust
10 decides that the appointment is necessary or desirable after taking into
11 account the terms and purposes of the first trust, the terms and
12 purposes of the second trust, and the consequences of the distribution.**

**13 2. The following provisions apply to any exercise of the authority
14 granted by subsection 1 of this section:**

**15 (1) The second trust may have as beneficiaries only one or more
16 of those beneficiaries of the first trust to or for whom any discretionary
17 distribution may be made from the first trust and who are proper
18 objects of the exercise of the power, or one or more of those other**

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

19 beneficiaries of the first trust to or for whom a distribution of income
20 or principal may have been made in the future from the first trust at
21 a time or upon the happening of an event specified under the first
22 trust;

23 (2) Unless the exercise of such power is limited by an
24 ascertainable standard, no trustee of the first trust may exercise such
25 authority to make a distribution from the first trust if:

26 (a) Such trustee is a beneficiary of the first trust; or

27 (b) Any beneficiary may remove and replace the trustee of the
28 first trust with a related or subordinate party to such beneficiary
29 within the meaning of Section 672(c) of the Internal Revenue Code;

30 (3) Except if participating in a change that is needed for a
31 distribution to any such beneficiary under an ascertainable standard,
32 no trustee shall exercise such authority to the extent that doing so
33 would have the effect either of:

34 (a) Increasing the distributions that can be made in the future
35 from the second trust to the trustee of the first trust or to a beneficiary
36 who can remove and replace the trustee of the first trust with a related
37 or subordinate party to such beneficiary within the meaning of Section
38 672(c) of the Internal Revenue Code; or

39 (b) Removing restrictions on discretionary distributions imposed
40 by the instrument under which the first trust was created;

41 (4) In the case of any trust contributions which have been
42 treated as gifts qualifying for the exclusion from gift tax described in
43 Section 2503(b) of the Internal Revenue Code, by reason of the
44 application of Section 2503(c), the governing instrument for the second
45 trust shall provide that the beneficiary's remainder interest shall vest
46 no later than the date upon which such interest would have vested
47 under the terms of the governing instrument for the first trust;

48 (5) The exercise of such authority may not reduce any income
49 interest of any income beneficiary of any of the following trusts:

50 (a) A trust for which a marital deduction has been taken for
51 federal tax purposes under Section 2056 or 2523 of the Internal
52 Revenue Code or for state tax purposes under any comparable
53 provision of applicable state law;

54 (b) A charitable remainder trust under Section 664 of the
55 Internal Revenue Code;

56 (c) A grantor retained annuity trust under Section 2702 of the
57 Internal Revenue Code; or

58 (d) A trust which has been qualified as a Subchapter S trust
59 under Section 1361(d) of the Internal Revenue Code or an electing small
60 business trust under Section 1361(e) of the Internal Revenue Code;

61 (6) The exercise of such authority does not apply to trust
62 property subject to a presently exercisable power of withdrawal held
63 by a trust beneficiary to whom, or for the benefit of whom, the trustee
64 has authority to make distributions, unless after the exercise of such
65 authority, such beneficiary's power of withdrawal is unchanged with
66 respect to the trust property; and

67 (7) A spendthrift clause or a provision in the trust instrument
68 that prohibits amendment or revocation of the trust shall not preclude
69 the trustee from exercising the authority granted by subsection 1 of
70 this section.

71 3. At least sixty days prior to making a discretionary distribution
72 under subsection 1 of this section, the trustee of the first trust shall
73 notify the permissible distributees of the second trust, or the qualified
74 beneficiaries of the second trust if there are no permissible distributees
75 of the second trust, of the distribution. A beneficiary may waive the
76 right to the notice required by this subsection and, with respect to
77 future distributions, may withdraw a waiver previously given.

78 4. In exercising the authority granted by subsection 1 of this
79 section, the trustee shall remain subject to all fiduciary duties
80 otherwise imposed under the trust instrument and Missouri law.

81 5. This section does not impose on a trustee a duty to exercise
82 the authority granted by subsection 1 of this section in favor of another
83 trust or to consider exercising such authority in favor of another trust.

84 6. This section is intended to codify and, from and after
85 enactment, to provide certain limitations to the common law of this
86 state, and this section applies to any trust governed by the laws of this
87 state, including a trust whose principal place of administration is
88 transferred to this state before or after the enactment of this section.

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

4 2. With respect to an irrevocable trust without a spendthrift provision, a

5 creditor or assignee of the settlor may reach the maximum amount that can be
6 distributed to or for the settlor's benefit. If a trust has more than one settlor, the
7 amount the creditor or assignee of a particular settlor may reach may not exceed
8 the settlor's interest in the portion of the trust attributable to that settlor's
9 contribution.

10 3. With respect to an irrevocable trust with a spendthrift provision, a
11 spendthrift provision will prevent the settlor's creditors from satisfying claims
12 from the trust assets except:

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

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

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

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

22 4. **In the event that a trust meets the requirements set forth in**
23 **subsection 3 of this section, a settlor's creditors may not reach the**
24 **settlor's beneficial interest in that trust regardless of any testamentary**
25 **power of appointment retained by the settlor that is exercisable by the**
26 **settlor in favor of any appointees other than the settlor, the settlor's**
27 **estate, the settlor's creditors, or the creditors of the settlor's estate.**

28 5. Any trustee who has a duty or power to pay the debts of a deceased
29 settlor may publish a notice in a newspaper published in the county designated
30 in subdivision (3) of this subsection once a week for four consecutive weeks in
31 substantially the following form:

32 To all persons interested in the estate of,
33 decedent. The undersigned is acting as Trustee
34 under a trust the terms of which provide that the debts of the decedent may be
35 paid by the Trustee(s) upon receipt of proper proof thereof. The address of the
36 Trustee is All creditors of the decedent are noticed
37 to present their claims to the undersigned within six (6) months from the date of
38 the first publication of this notice or be forever barred.

39

40 Trustee

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

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

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

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

51 (b) If the settlor had no domicile in this state at the time of his or her
52 death, any county wherein trust assets are located; except that, when the major
53 part of the trust assets in this state consist of real estate, the notice shall be
54 published in the county in which the real estate or the major part thereof is
55 located; or

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

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

63 [5.] 6. For purposes of this section:

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

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

71 [6.] 7. This section shall not apply to a spendthrift trust described,
72 defined, or established in section 456.014.

**456.5-508. 1. A creditor or other claimant of a beneficiary or
2 other person holding a special power of appointment or a testamentary
3 general power of appointment may not attach trust property or
4 beneficial interests subject to the power, obtain an order from a court**

5 forcing a judicial sale of the trust property, compel the exercise of the
6 power, or reach the trust property or beneficial interests by any other
7 means.

8 2. This section shall not limit the ability of a creditor or other
9 claimant to reach a beneficial interest as otherwise provided in
10 sections 456.5-501 to 456.5-507.

11 3. In this section "special power of appointment" means a power
12 of appointment exercisable in favor of one or more appointees other
13 than the holder, the holder's estate, the holder's creditors, or the
14 creditors of the holder's estate, and a "testamentary general power of
15 appointment" means a power of appointment exercisable at the death
16 of the holder, without the consent of the creator of the power or of a
17 person holding an adverse interest in favor of the holder, the holder's
18 estate, the holder's creditors, or the creditors of the holder's estate.

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Bill

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