

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 60
96TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 17, 2011, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 60, adopted April 4, 2011.

Taken up for Perfection April 4, 2011. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0085S.08P

AN ACT

To repeal sections 404.710, 456.3-301, 456.8-813, 469.411, 469.437, and 469.459, RSMo, and to enact in lieu thereof six new sections relating to fiduciaries.

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

Section A. Sections 404.710, 456.3-301, 456.8-813, 469.411, 469.437, and
2 469.459, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 404.710, 456.3-301, 456.8-813, 469.411, 469.437, and 469.459,
4 to read as follows:

404.710. 1. A principal may delegate to an attorney in fact in a power of
2 attorney general powers to act in a fiduciary capacity on the principal's behalf
3 with respect to all lawful subjects and purposes or with respect to one or more
4 express subjects or purposes. A power of attorney with general powers may be
5 durable or not durable.

6 2. If the power of attorney states that general powers are granted to the
7 attorney in fact and further states in substance that it grants power to the
8 attorney in fact to act with respect to all lawful subjects and purposes or that it
9 grants general powers for general purposes or does not by its terms limit the
10 power to the specific subject or purposes set out in the instrument, then the
11 authority of the attorney in fact acting under the power of attorney shall extend
12 to and include each and every action or power which an adult who is nondisabled
13 and nonincapacitated may carry out through an agent specifically authorized in
14 the premises, with respect to any and all matters whatsoever, except as provided

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

15 in subsections 6 and 7 of this section. When a power of attorney grants general
16 powers to an attorney in fact to act with respect to all lawful subjects and
17 purposes, the enumeration of one or more specific subjects or purposes does not
18 limit the general authority granted by that power of attorney, unless otherwise
19 provided in the power of attorney.

20 3. If the power of attorney states that general powers are granted to an
21 attorney in fact with respect to one or more express subjects or purposes for
22 which general powers are conferred, then the authority of the attorney in fact
23 acting under the power of attorney shall extend to and include each and every
24 action or power, but only with respect to the specific subjects or purposes
25 expressed in the power of attorney that an adult who is nondisabled and
26 nonincapacitated may carry out through an agent specifically authorized in the
27 premises, with respect to any and all matters whatsoever, except as provided in
28 subsections 6 and 7 of this section.

29 4. Except as provided in subsections 6 and 7 of this section, an attorney
30 in fact with general powers has, with respect to the subjects or purposes for which
31 the powers are conferred, all rights, power and authority to act for the principal
32 that the principal would have with respect to his or her own person or property,
33 including property owned jointly or by the entirety with another or others, as
34 a nondisabled and nonincapacitated adult; and without limiting the foregoing has
35 with respect to the subjects or purposes of the power complete discretion to make
36 a decision for the principal, to act or not act, to consent or not consent to, or
37 withdraw consent for, any act, and to execute and deliver or accept any deed, bill
38 of sale, bill of lading, assignment, contract, note, security instrument, consent,
39 receipt, release, proof of claim, petition or other pleading, tax document, notice,
40 application, acknowledgment or other document necessary or convenient to
41 implement or confirm any act, transaction or decision. An attorney in fact with
42 general powers, whether power to act with respect to all lawful subjects and
43 purposes, or only with respect to one or more express subjects or purposes, shall
44 have the power, unless specifically denied by the terms of the power of attorney,
45 to make, execute and deliver to or for the benefit of or at the request of a third
46 person, who is requested to rely upon an action of the attorney in fact, an
47 agreement indemnifying and holding harmless any third person or persons from
48 any liability, claims or expenses, including legal expenses, incurred by any such
49 third person by reason of acting or refraining from acting pursuant to the request
50 of the attorney in fact, and such indemnity agreement shall be binding upon the

51 principal who has executed such power of attorney and upon the principal's
52 successor or successors in interest. No such indemnity agreement shall protect
53 any third person from any liability, claims or expenses incurred by reason of the
54 fact that, and to the extent that, the third person has honored the power of
55 attorney for actions outside the scope of authority granted by the power of
56 attorney. In addition, the attorney in fact has complete discretion to employ and
57 compensate real estate agents, brokers, attorneys, accountants and subagents of
58 all types to represent and act for the principal in any and all matters, including
59 tax matters involving the United States government or any other government or
60 taxing entity, including, but not limited to, the execution of supplemental or
61 additional powers of attorney in the name of the principal in form that may be
62 required or preferred by any such taxing entity or other third person, and to deal
63 with any or all third persons in the name of the principal without limitation. No
64 such supplemental or additional power of attorney shall broaden the scope of
65 authority granted to the attorney in fact in the original power of attorney
66 executed by the principal.

67 5. An attorney in fact, who is granted general powers for all subjects and
68 purposes or with respect to any express subjects or purposes, shall exercise the
69 powers conferred according to the principal's instructions, in the principal's best
70 interest, in good faith, prudently and in accordance with sections 404.712 and
71 404.714.

72 6. Any power of attorney, whether durable or not durable, and whether
73 or not it grants general powers for all subjects and purposes or with respect to
74 express subjects or purposes, shall be construed to grant power or authority to an
75 attorney in fact to carry out any of the actions described in this subsection if the
76 actions are expressly enumerated and authorized in the power of attorney. Any
77 power of attorney may grant power of authority to an attorney in fact to carry out
78 any of the following actions if the actions are expressly authorized in the power
79 of attorney:

80 (1) To execute, amend or revoke any trust agreement;

81 (2) To fund with the principal's assets any trust not created by the
82 principal;

83 (3) To make or revoke a gift of the principal's property in trust or
84 otherwise;

85 (4) To disclaim a gift or devise of property to or for the benefit of the
86 principal;

87 (5) To create or change survivorship interests in the principal's property
88 or in property in which the principal may have an interest; provided, however,
89 that the inclusion of the authority set out in this [paragraph] **subdivision** shall
90 not be necessary in order to grant to an attorney in fact acting under a power of
91 attorney granting general powers with respect to all lawful subjects and purposes
92 the authority to withdraw funds or other property from any account, contract or
93 other similar arrangement held in the names of the principal and one or more
94 other persons with any financial institution, brokerage company or other
95 depository to the same extent that the principal would be authorized to do if the
96 principal were present, not disabled or incapacitated, and seeking to act in the
97 principal's own behalf;

98 (6) To designate or change the designation of beneficiaries to receive any
99 property, benefit or contract right on the principal's death;

100 (7) To give or withhold consent to an autopsy or postmortem examination;

101 (8) To make [a] **an anatomical** gift of, or [decline to make a] **prohibit**
102 **an anatomical** gift of, **all or part of** the principal's body [parts] under the
103 **Revised Uniform Anatomical Gift Act or to exercise the right of sepulcher**
104 **over the principal's body under section 194.119;**

105 (9) To nominate a guardian or conservator for the principal; and if so
106 stated in the power of attorney, the attorney in fact may nominate himself as
107 such;

108 (10) To give consent to or prohibit any type of health care, medical care,
109 treatment or procedure to the extent authorized by sections 404.800 to 404.865;
110 or

111 (11) To designate one or more substitute or successor or additional
112 attorneys in fact.

113 7. No power of attorney, whether durable or not durable, and whether or
114 not it delegates general powers, may delegate or grant power or authority to an
115 attorney in fact to do or carry out any of the following actions for the principal:

116 (1) To make, publish, declare, amend or revoke a will for the principal;

117 (2) To make, execute, modify or revoke a living will declaration for the
118 principal;

119 (3) To require the principal, against his or her will, to take any action or
120 to refrain from taking any action; or

121 (4) To carry out any actions specifically forbidden by the principal while
122 not under any disability or incapacity.

123 8. A third person may freely rely on, contract and deal with an attorney
124 in fact delegated general powers with respect to the subjects and purposes
125 encompassed or expressed in the power of attorney without regard to whether the
126 power of attorney expressly identifies the specific property, account, security,
127 storage facility or matter as being within the scope of a subject or purpose
128 contained in the power of attorney, and without regard to whether the power of
129 attorney expressly authorizes the specific act, transaction or decision by the
130 attorney in fact.

131 9. It is the policy of this state that an attorney in fact acting pursuant to
132 the provisions of a power of attorney granting general powers shall be accorded
133 the same rights and privileges with respect to the personal welfare, property and
134 business interests of the principal, and if the power of attorney enumerates some
135 express subjects or purposes, with respect to those subjects or purposes, as if the
136 principal himself or herself were personally present and acting or seeking to act;
137 and any provision of law and any purported waiver, consent or agreement
138 executed or granted by the principal to the contrary shall be void and
139 unenforceable.

140 10. Sections 404.700 to 404.735 shall not be construed to preclude any
141 person or business enterprise from providing in a contract with the principal as
142 to the procedure that thereafter must be followed by the principal or the
143 principal's attorney in fact in order to give a valid notice to the person or business
144 enterprise of any modification or termination of the appointment of an attorney
145 in fact by the principal; and any such contractual provision for notice shall be
146 valid and binding on the principal and the principal's successors so long as such
147 provision is reasonably capable of being carried out.

 456.3-301. 1. Notice to a person who may represent and bind another
2 person under sections 456.3-301 to 456.3-305 has the same effect as if notice were
3 given directly to the other person.

4 2. The consent of a person who may represent and bind another person
5 under sections 456.3-301 to 456.3-305 is binding on the person represented unless
6 the person represented objects to the representation before the consent would
7 otherwise have become effective. **Except that, such consent is binding on**
8 **the person represented regardless of whether the person represented**
9 **objects pursuant to this subsection, if the person who may represent**
10 **and bind is:**

11 (1) **The holder of a testamentary power of appointment described**

12 **in section 456.3-302 and the interests of the person represented are**
13 **subject to the power;**

14 **(2) The conservator, conservator ad litem, or guardian described**
15 **in subdivisions (1), (2), or (3) of section 456.3-303 and the person**
16 **represented is disabled; or**

17 **(3) A parent described in subdivision (4) of section 456.3-303 and**
18 **the person represented is a minor or unborn child of the parent.**

19 3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a
20 person who under sections 456.3-301 to 456.3-305 may represent a settlor who
21 lacks capacity may receive notice and give a binding consent on the settlor's
22 behalf.

23 4. A settlor may not represent and bind a beneficiary under sections
24 456.3-301 to 456.3-305 with respect to the termination or modification of a trust
25 under section 456.4A-411.

456.8-813. 1. (1) A trustee shall keep the qualified beneficiaries of the
2 trust reasonably informed about the administration of the trust and of the
3 material facts necessary for them to protect their interests. A trustee shall be
4 presumed to have fulfilled this duty if the trustee complies with the notice and
5 information requirements prescribed in subsections 2 to 7 of this section.

6 (2) Unless unreasonable under the circumstances, a trustee shall promptly
7 respond to a beneficiary's request for information related to the administration
8 of the trust.

9 2. A trustee:

10 (1) upon request of a beneficiary, shall promptly furnish to the beneficiary
11 a copy of the trust instrument;

12 (2) within **[60] one hundred and twenty** days after accepting a
13 trusteeship, shall notify the qualified beneficiaries of the acceptance and of the
14 trustee's name, address, and telephone number;

15 (3) within **[sixty] one hundred and twenty** days after the date the
16 trustee acquires knowledge of the creation of an irrevocable trust, or the date the
17 trustee acquires knowledge that a formerly revocable trust has become
18 irrevocable, whether by the death of the settlor or otherwise, shall notify the
19 qualified beneficiaries of the trust's existence, of the identity of the settlor or
20 settlors, of the right to request a copy of the trust instrument, and of the right to
21 a trustee's report as provided in subsection 3 of this section; and

22 (4) shall notify the qualified beneficiaries in advance of any change in the

23 method or rate of the trustee's compensation.

24 3. A trustee shall send to the permissible distributees of trust income or
25 principal, and to other beneficiaries who request it, at least annually and at the
26 termination of the trust, a report of the trust property, liabilities, receipts, and
27 disbursements, including the source and amount of the trustee's compensation,
28 a listing of the trust assets and, if feasible, their respective market values. Upon
29 a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
30 sent to the qualified beneficiaries by the former trustee. A personal
31 representative, conservator, or guardian may send the qualified beneficiaries a
32 report on behalf of a deceased or incapacitated trustee.

33 4. A beneficiary may waive the right to a trustee's report or other
34 information otherwise required to be furnished under this section. A beneficiary,
35 with respect to future reports and other information, may withdraw a waiver
36 previously given.

37 5. A trustee may charge a reasonable fee to a beneficiary for providing
38 information under this section.

39 6. The request of any beneficiary for information under any provision of
40 this section shall be with respect to a single trust that is sufficiently identified
41 to enable the trustee to locate the records of the trust.

42 7. If the trustee is bound by any confidentiality restrictions with respect
43 to an asset of a trust, any beneficiary who is eligible to receive information
44 pursuant to this section about such asset shall agree to be bound by the
45 confidentiality restrictions that bind the trustee before receiving such information
46 from the trustee.

47 8. This section does not apply to a trust created under a trust instrument
48 that became irrevocable before January 1, 2005, and the law in effect prior to
49 January 1, 2005, regarding the subject matter of this section shall continue to
50 apply to those trusts.

469.411. 1. If the provisions of this section apply to a trust, the unitrust
2 amount [shall be determined as follows:] **determined for each accounting**
3 **year of the trust shall be a percentage between three and five percent**
4 **of the average net fair market value of the trust, as of the first day of**
5 **the trust's current accounting year. The percentage applicable to a**
6 **trust shall be that percentage specified by the terms of the governing**
7 **instrument or by the election made in accordance with subdivision (2)**
8 **of subsection 5 of this section.**

9 (1) [For the first three accounting periods of the trust, the unitrust
10 amount for a current valuation year of the trust shall be a percentage between
11 three and five percent that is specified by the terms of the governing instrument
12 or by the election made in accordance with subdivision (2) of subsection 5 of this
13 section, of the net fair market values of the assets held in the trust on the first
14 business day of the current valuation year;

15 (2) Beginning with the fourth accounting period of the trust, the unitrust
16 amount for a current valuation year of the trust shall be a percentage between
17 three and five percent that is specified by the terms of the governing instrument
18 or by the election made in accordance with subdivision (2) of subsection 5 of this
19 section, of the average of the net fair market values of the assets held in the trust
20 on the first business day of the current valuation year and the net fair market
21 values of the assets held in the trust on the first business day of each prior
22 valuation year, regardless of whether this section applied to the ascertainment
23 of net income for all valuation years;

24 (3)] The unitrust amount for the current [valuation] **accounting** year
25 computed pursuant to [subdivision (1) or (2) of this subsection] **this section**
26 shall be proportionately reduced for any distributions, in whole or in part, other
27 than distributions of the unitrust amount, and for any payments of expenses,
28 including debts, disbursements and taxes, from the trust within a current
29 [valuation] **accounting** year that the trustee determines to be material and
30 substantial, and shall be proportionately increased for the receipt, other than a
31 receipt that represents a return on investment, of any additional property into
32 the trust within a current [valuation] **accounting** year;

33 [(4)] **(2)** For purposes of [subdivision (2) of this subsection] **this section**,
34 the net fair market values of the assets held in the trust on the first business day
35 of a prior [valuation year] **accounting quarter** shall be adjusted to reflect any
36 reduction, in the case of a distribution or payment, or increase, in the case of a
37 receipt, for the prior [valuation] **accounting** year pursuant to subdivision
38 [(3)] **(1)** of this subsection, as if the distribution, payment or receipt had occurred
39 on the first day of the prior [valuation] **accounting** year;

40 [(5)] **(3)** In the case of a short accounting period, the trustee shall prorate
41 the unitrust amount on a daily basis;

42 [(6)] **(4)** In the case where the net fair market value of an asset held in
43 the trust has been incorrectly determined [either in a current valuation year or
44 in a prior valuation year] **in any quarter**, the unitrust amount shall be

45 increased in the case of an undervaluation, or be decreased in the case of an
46 overvaluation, by an amount equal to the difference between the unitrust amount
47 determined based on the correct valuation of the asset and the unitrust amount
48 originally determined.

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

50 (1) **"Average net fair market value", a rolling average of the fair**
51 **market value of the assets held in the trust on the first business day of**
52 **the lessor of the number of accounting quarters of the trust from the**
53 **date of inception of the trust to the determination of the trust's average**
54 **net fair market value, or twelve accounting quarters of the trust,**
55 **regardless of whether this section applied to the ascertainment of net**
56 **income for all valuation quarters;**

57 (2) **"Current [valuation] accounting year",** the accounting period of the
58 trust for which the unitrust amount is being determined[;

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

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

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

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

74 4. In determining the **average** net fair market value of [each asset] **the**
75 **assets** held in the trust pursuant to [subdivisions (1) and (2) of] subsection 1 of
76 this section, the trustee shall, not less often than annually, determine the fair
77 market value of each asset of the trust that consists primarily of real property or
78 other property that is not traded on a regular basis in an active market by
79 appraisal or other reasonable method or estimate, and that determination, if
80 made reasonably and in good faith, shall be conclusive as to all persons interested

81 in the trust. Any claim based on a determination made pursuant to this
82 subsection shall be barred if not asserted in a judicial proceeding brought by any
83 beneficiary with any interest whatsoever in the trust within two years after the
84 trustee has sent a report to all qualified beneficiaries that adequately discloses
85 the facts constituting the claim. The rules set forth in subsection 2 of section
86 469.409 shall apply to the barring of claims pursuant to this subsection.

87 5. This section shall apply to the following trusts:

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

90 (2) Any trust created under an instrument that became irrevocable on,
91 before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects
92 to have this section apply unless the instrument creating the trust specifically
93 prohibits an election under this subdivision. The trustee shall deliver notice to
94 all qualified beneficiaries and the settlor of the trust, if he or she is then living,
95 of the trustee's intent to make such an election at least sixty days before making
96 that election. The trustee shall have sole authority to make the election. Section
97 469.402 shall apply for all purposes of this subdivision. An action or order by any
98 court shall not be required. The election shall be made by a signed writing
99 delivered to the settlor of the trust, if he or she is then living, and to all qualified
100 beneficiaries. The election is irrevocable, unless revoked by order of the court
101 having jurisdiction of the trust. The election may specify the percentage used to
102 determine the unitrust amount pursuant to this section, provided that such
103 percentage is between three and five percent, or if no percentage is specified, then
104 that percentage shall be three percent. In making an election pursuant to this
105 subsection, the trustee shall be subject to the same limitations and conditions as
106 apply to an adjustment between income and principal pursuant to subsections 3
107 and 4 of section 469.405; **and**

108 (3) No action of any kind based on an election made by a trustee pursuant
109 to subdivision (2) of this subsection shall be brought against the trustee by any
110 beneficiary of that trust three years from the effective date of that election[;

111 (4) If this section is made applicable under this subdivision to an
112 institutional endowment fund, as defined in section 402.130, the restrictions
113 contained in section 402.134 shall not apply to the extent payment of a unitrust
114 amount would otherwise be prohibited].

115 **6. Once the provisions of this section become applicable to a**
116 **trust, the net income of the trust shall be the unitrust amount.**

117 **(1) Unless otherwise provided by the governing instrument, the**
118 **unitrust amount distributed each year shall be paid from the following**
119 **sources for that year up to the full value of the unitrust amount in the**
120 **following order:**

121 **(a) Net income as determined if the trust were not a unitrust;**

122 **(b) Other ordinary income as determined for federal income tax**
123 **purposes;**

124 **(c) Assets of the trust principal for which there is a readily**
125 **available market value; and**

126 **(d) Other trust principal.**

127 **(2) Additionally, the trustee may allocate to trust income for**
128 **each taxable year of the trust, or portion thereof:**

129 **(a) Net short-term capital gain described in the Internal Revenue**
130 **Code, 26 U.S.C. s. 1222(5), for such year, or portion thereof, but only to**
131 **the extent that the amount so allocated together with all other amounts**
132 **to trust income, as determined under the provisions of this chapter**
133 **without regard to this section, for such year, or portion thereof, does**
134 **not exceed the unitrust amount for such year, or portion thereof;**

135 **(b) Net long-term capital gain described in the Internal Revenue**
136 **Code, 26 U.S.C. s. 1222(7), for such year, or portion thereof, but only to**
137 **the extent that the amount so allocated together with all other**
138 **amounts, including amounts described in paragraph (a), allocated to**
139 **trust income for such year, or portion thereof, does not exceed the**
140 **unitrust amount for such year, or portion thereof.**

141 **7. A trust with respect to which this section applies on August**
142 **28, 2011, may calculate the unitrust amount in accordance with the**
143 **provisions of this section, as it existed either before or after such date,**
144 **as the trustee of such trust shall determine in a writing kept with the**
145 **records of the trust in the trustee's discretion.**

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

2 (1) "Payment", an amount that is:

3 (a) Received or withdrawn from a plan; or

4 (b) One of a series of distributions that have been or will be received over
5 a fixed number of years or during the life of one or more individuals under any
6 contractual or other arrangement, or is a single payment from a plan that the
7 trustee could have received over a fixed number of years or during the life of one
8 or more individuals;

9 (2) "Plan", a contractual, custodial, trust or other arrangement that
10 provides for distributions to the trust, including, but not limited to, qualified
11 retirement plans, Individual Retirement Accounts, Roth Individual Retirement
12 Accounts, public and private annuities, and deferred compensation, including
13 payments received directly from an entity as defined in section 469.423 regardless
14 of whether or not such distributions are made from a specific fund or account.

15 2. If any portion of a payment is characterized as a distribution to the
16 trustee of interest, dividends or a dividend equivalent, the trustee shall allocate
17 the portion so characterized to income. The trustee shall allocate the balance of
18 that payment to principal.

19 3. If no part of a payment is allocated to income pursuant to subsection
20 2 of this section, then for each accounting period of the trust that any payment
21 is received by the trust with respect to the trust's interest in a plan, the trustee
22 shall allocate to income that portion of the aggregate value of all payments
23 received by the trustee in that accounting period equal to the amount of plan
24 income attributable to the trust's interest in the plan for that calendar year. The
25 trustee shall allocate the balance of that payment to principal.

26 4. For purposes of this section, if a payment is received from a plan that
27 maintains a separate account or fund for its participants or account holders,
28 including, but not limited to, defined contribution retirement plans, Individual
29 Retirement Accounts, Roth Individual Retirement Accounts, and some types of
30 deferred compensation plans, the phrase "plan income" shall mean either the
31 amount of the plan account or fund held for the benefit of the trust that, if the
32 plan account or fund were a trust, would be allocated to income pursuant to
33 sections 469.401 to 469.467 for that accounting period, or four percent of the
34 value of the plan account or fund on the first day of that accounting period. The
35 method of determining plan income pursuant to this subsection shall be chosen
36 by the trustee in the trustee's discretion. The trustees may change the method
37 of determining plan income pursuant to this subsection for any future accounting
38 period.

39 5. For purposes of this section if the payment is received from a plan that
40 does not maintain a separate account or fund for its participants or account
41 holders, including by way of example and not limitation defined benefit
42 retirement plans and some types of deferred compensation plans, the term "plan
43 income" shall mean four percent of the total present value of the trust's interest
44 in the plan as of the first day of the accounting period, based on reasonable

45 actuarial assumptions as determined by the trustee.

46 **6. Notwithstanding subsections 1 to 5 of this section, with respect**
47 **to a trust where an election to qualify for a marital deduction under**
48 **Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code of**
49 **1986, as amended, has been made, or a trust that qualified for the**
50 **marital deduction under either Section 2056(b)(5) or Section 2523(e) of**
51 **the Internal Revenue Code of 1986, as amended, a trustee shall**
52 **determine the plan income for the accounting period as if the plan**
53 **were a trust subject to sections 469.401 to 469.467. Upon request of the**
54 **surviving spouse, the trustee shall demand that the person**
55 **administering the plan distribute the plan income to the trust. The**
56 **trustee shall allocate a payment from the plan to income to the extent**
57 **of the plan income and distribute that amount to the surviving**
58 **spouse. The trustee shall allocate the balance of the payment to**
59 **principal. Upon request of the surviving spouse, the trustee shall**
60 **allocate principal to income to the extent the plan income exceeds**
61 **payments made from the plan to the trust during the accounting period.**

62 **7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee**
63 **shall allocate more of a payment to income than provided for by this section, the**
64 **trustee shall allocate to income the additional amount necessary to obtain the**
65 **marital deduction.**

469.459. 1. A tax required to be paid by a trustee based on receipts
2 allocated to income shall be paid from income.

3 2. A tax required to be paid by a trustee based on receipts allocated to
4 principal shall be paid from principal, even if the tax is called an income tax by
5 the taxing authority.

6 3. A tax required to be paid by a trustee on the trust's share of an entity's
7 taxable income shall be paid [proportionately]:

8 (1) From income to the extent that receipts from the entity are allocated
9 to income; and

10 (2) From principal to the extent that[:

11 (a)] receipts from the entity are allocated **only** to principal[; and

12 (b) The trust's share of the entity's taxable income exceeds the total
13 receipts described in subdivision (1) of this subsection and paragraph (a) of this
14 subdivision].

15 4. [For purposes of this section, receipts allocated to principal or income

16 shall be reduced by the amount distributed to a beneficiary from principal or
17 income for which the trust receives a deduction in calculating the tax] **After**
18 **applying subsections 1 to 3 of this section, the trustee shall adjust**
19 **income or principal receipts to the extent that the trust's taxes are**
20 **reduced because the trust receives a deduction for payment made to a**
21 **beneficiary.**

✓

Unofficial

Bill

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