

SECOND REGULAR SESSION

SENATE BILL NO. 761

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time February 7, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4043S.02I

AN ACT

To repeal section 456.8-808, RSMo, and to enact in lieu thereof one new section relating to trust protectors.

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

Section A. Section 456.8-808, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.8-808, to read as follows:

456.8-808. 1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

2. [If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

3. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.] **A trust instrument may provide for the appointment of a trust protector. For purposes of this section, a "trust protector", whether referred to in the trust instrument by that name or by some other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly granted in the trust instrument one or**

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

20 more powers over the trust.

21 3. A trust protector appointed in the trust instrument shall have
22 only the powers granted to the trust protector by the express terms of
23 the trust instrument, and a trust protector is only authorized to act
24 within the scope of the authority expressly granted in the trust
25 instrument. Without limiting the authority of the settlor to grant
26 powers to a trust protector, the express powers that may be granted
27 include, but are not limited to, the following:

28 (1) Remove and appoint a trustee or name a successor trustee or
29 trust protector;

30 (2) Modify or amend the trust instrument to:

31 (a) Achieve favorable tax status or respond to changes in the
32 Internal Revenue Code or state law, or the rulings and regulations
33 under such code or law;

34 (b) Reflect legal changes that affect trust administration;

35 (c) Correct errors or ambiguities that might otherwise require
36 court construction; or

37 (d) Correct a drafting error that defeats a grantor's intent;

38 (3) Increase, decrease, modify, or restrict the interests of the
39 beneficiary or beneficiaries of the trust;

40 (4) Terminate the trust in favor of the beneficiary or
41 beneficiaries of the trust;

42 (5) Change the applicable law governing the trust and the trust
43 situs; or

44 (6) Such other powers as are expressly granted to the trust
45 protector in the trust instrument.

46 4. Notwithstanding any provision in the trust instrument to the
47 contrary, a trust protector shall have no power to modify a trust to:

48 (1) Remove a requirement from a trust created to meet the
49 requirements of 42 U.S.C. Section 1396p(d)(4) to payback a
50 governmental entity for benefits provided to the permissible
51 beneficiary of the trust at the death of that beneficiary; or

52 (2) Reduce or eliminate an income interest of the income
53 beneficiary of any of the following types of trusts:

54 (a) A trust for which a marital deduction has been taken for
55 federal tax purposes under Sections 2056 or 2523 of the Internal
56 Revenue Code or for state tax purposes under any comparable

57 provision of applicable state law, during the life of the settlor's spouse;

58 (b) A charitable remainder trust under Section 664 of the
59 Internal Revenue Code, during the life of the noncharitable beneficiary;

60 (c) A grantor retained annuity trust under Section 2702 of the
61 Internal Revenue Code, during any period in which the settlor is a
62 beneficiary; or

63 (d) A trust for which an election as a qualified Sub-Chapter S
64 Trust under Section 1361(d) of the Internal Revenue Code is currently
65 in place.

66 5. Except to the extent otherwise provided in a trust instrument
67 specifically referring to this subsection, the trust protector shall not
68 exercise a power in a way that would result in a taxable gift for federal
69 gift tax purposes or cause the inclusion of any assets of the trust in the
70 trust protector's gross estate for federal estate tax purposes.

71 6. Except to the extent otherwise provided in the trust
72 instrument and in subsection 7 of this section, and notwithstanding any
73 provision of the uniform trust code, sections 456.1-101 to 456.11-1106,
74 to the contrary:

75 (1) A trust protector shall act in a fiduciary capacity in carrying
76 out the powers granted to the trust protector in the trust instrument,
77 and shall have such duties to the beneficiaries, the settlor, or the trust
78 as set forth in the trust instrument. A trust protector is not a trustee
79 and is not liable or accountable as a trustee when performing or
80 declining to perform the express powers given to the trust protector in
81 the trust instrument. A trust protector is not liable for the acts or
82 omissions of any fiduciary or beneficiary under the trust instrument;

83 (2) A trust protector is exonerated from any and all liability for
84 the trust protector's acts or omissions, or arising from any exercise or
85 non-exercise of the powers expressly conferred on the trust protector
86 in the trust instrument, unless it is established by preponderance of the
87 evidence that the acts or omissions of the trust protector were done or
88 omitted in breach of the trust protector's duty, in bad faith, or with
89 reckless indifference;

90 (3) A trust protector is authorized to exercise the express powers
91 granted in the trust instrument at any time and from time to time after
92 the trust protector acquires knowledge of their appointment as trust
93 protector and of the powers granted;

94 **(4) A trust protector is entitled to receive, from the assets of the**
95 **trust for which the trust protector is acting, reasonable compensation,**
96 **and reimbursement of the reasonable costs and expenses incurred, in**
97 **determining whether to carry out, and in carrying out, the express**
98 **powers given to the trust protector in the trust instrument;**

99 **(5) A trust protector is entitled to receive, from the assets of the**
100 **trust for which the trust protector is acting, reimbursement of the**
101 **reasonable costs and expenses, including attorney's fees, of defending**
102 **any claim made against the trust protector arising from the acts or**
103 **omissions of the trust protector acting in that capacity unless it is**
104 **established by clear and convincing evidence that the trust protector**
105 **was acting in bad faith or with reckless indifference; and**

106 **(6) The express powers granted in the trust instrument shall not**
107 **be exercised by the trust protector for the trust protector's own**
108 **personal benefit.**

109 **7. Notwithstanding the provisions of subsection 6 of this section,**
110 **if a trust protector is granted a power in the trust instrument pursuant**
111 **to subdivision (6) of subsection 3 of this section to direct, consent to, or**
112 **disapprove a trustee's actual or proposed investment decision,**
113 **distribution decision, or other decision of the trustee required to be**
114 **performed under applicable trust law in carrying out the duties of the**
115 **trustee in administering the trust, then with respect to such power the**
116 **trust protector shall have the same duties and liabilities as if serving**
117 **as a trustee under the trust instrument.**

118 **8. A trustee shall carry out the written directions given to the**
119 **trustee by a trust protector acting within the scope of the powers**
120 **expressly granted to the trust protector in the trust instrument. Except**
121 **in cases of bad faith or reckless indifference on the part of the trustee,**
122 **or as otherwise provided in the trust instrument, the trustee shall not**
123 **be liable for any loss resulting directly or indirectly from any act taken**
124 **or omitted as a result of the written direction of the trust protector or**
125 **the failure of the trust protector to provide consent. Except as**
126 **otherwise provided in the trust instrument, the trustee shall have no**
127 **duty to monitor the conduct of the trust protector, provide advice to or**
128 **consult with the trust protector, or communicate with or warn or**
129 **apprise any beneficiary concerning instances in which the trustee**
130 **would or might have exercised the trustee's own discretion in a manner**

131 different from the manner directed by the trust protector.

132 **9. Except to the extent otherwise expressly provided in the trust**
133 **instrument, the trust protector shall be entitled to receive information**
134 **regarding the administration of the trust as follows:**

135 **(1) Upon the request of the trust protector, unless unreasonable**
136 **under the circumstances, the trustee shall promptly provide to the trust**
137 **protector any and all information related to the trust that may relate**
138 **to the exercise or non-exercise of a power expressly granted to the**
139 **trust protector in the trust instrument. The trustee has no obligation**
140 **to provide any information to the trust protector except to the extent**
141 **a trust protector requests information pursuant to this section;**

142 **(2) The request of the trust protector for information under this**
143 **section shall be with respect to a single trust that is sufficiently**
144 **identified to enable the trustee to locate the records of the trust; and**

145 **(3) If the trustee is bound by any confidentiality restrictions**
146 **with respect to an asset of a trust, a trust protector who requests**
147 **information pursuant to this section about such asset shall agree to be**
148 **bound by the confidentiality restrictions that bind the trustee before**
149 **receiving such information from the trustee.**

150 **10. A trust protector may resign by giving thirty days written**
151 **notice to the trustee and any successor trust protector. A successor**
152 **trust protector, if any, shall have all the powers expressly granted in**
153 **the trust instrument to the resigning trust protector unless such**
154 **powers are expressly modified for the successor trust protector.**

155 **11. A trust protector of a trust having its principal place of**
156 **administration in this state submits personally to the jurisdiction of the**
157 **courts of this state during any period that the principal place of**
158 **administration of the trust is located in this state and the trust**
159 **protector is serving in such capacity.**

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