

FIRST REGULAR SESSION

# SENATE BILL NO. 171

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS DIXON AND SIFTON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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### AN ACT

To repeal sections 456.1-103 and 456.8-808, RSMo, and to enact in lieu thereof two new sections relating to trusts directed by trust protectors.

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

Section A. Sections 456.1-103 and 456.8-808, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 456.1-103 and 456.8-808, to read as follows:

456.1-103. In sections 456.1-101 to 456.11-1106:

(1) "Action," with respect to an act of a trustee, includes a failure to act;  
(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2541(c)(1) of the Internal Revenue Code;

(3) "Beneficiary" means a person that:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property;

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405;

(5) "Conservator" means a person described in subdivision (3) of section 475.010. This term does not include a conservator ad litem;

(6) "Conservator ad litem" means a person appointed by the court pursuant to the provisions of section 475.097;

(7) "**Directed trust**", means any trust, including a split interest trust, where the trust instrument authorizes a trust protector to

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

19 **instruct or direct the trustee or that charges a trust protector with any**  
20 **responsibilities regarding the trust or that grants the trust protector**  
21 **one or more powers over the trust;**

22       (8) "Environmental law" means a federal, state, or local law, rule,  
23 regulation, or ordinance relating to protection of the environment;

24       [(8)] (9) "Financial institution" means a non-foreign bank, savings and  
25 loan or trust company chartered, regulated and supervised by the Missouri  
26 division of finance, the office of the comptroller of the currency, the office of thrift  
27 supervision, the National Credit Union Administration, or the Missouri division  
28 of credit union supervision. The term "non-foreign bank" shall mean a bank that  
29 is not a foreign bank within the meaning of subdivision (1) of section 361.005;

30       [(9)] (10) "Guardian" means a person described in subdivision (7) of  
31 section 475.010. The term does not include a guardian ad litem;

32       [(10)] (11) "Interested persons" include beneficiaries and any others  
33 having a property right in or claim against a trust estate which may be affected  
34 by a judicial proceeding. It also includes fiduciaries and other persons  
35 representing interested persons. The meaning as it relates to particular persons  
36 may vary from time to time and must be determined according to the particular  
37 purposes of, and matter involved in, any proceeding;

38       [(11)] (12) "Interests of the beneficiaries" means the beneficial interests  
39 provided in the terms of the trust;

40       [(12)] (13) "Internal Revenue Code" means the United States Internal  
41 Revenue Code of 1986, as in effect on January 1, 2005, or as later amended;

42       [(13)] (14) "Jurisdiction," with respect to a geographic area, includes a  
43 state or country;

44       [(14)] (15) "Person" means an individual, corporation, business trust,  
45 estate, trust, partnership, limited liability company, association, joint venture,  
46 government; governmental subdivision, agency, or instrumentality; public  
47 corporation, or any other legal or commercial entity;

48       [(15)] (16) "Permissible distributee" means a beneficiary who is currently  
49 eligible to receive distributions of trust income or principal, whether mandatory  
50 or discretionary;

51       [(16)] (17) "Power of withdrawal" means a presently exercisable power  
52 of a beneficiary to withdraw assets from the trust without the consent of the  
53 trustee or any other person;

54       [(17)] (18) "Principal place of administration" of a trust is the trustee's

55 usual place of business where the records pertaining to the trust are kept, or the  
56 trustee's residence if the trustee has no such place of business, unless otherwise  
57 designated by the terms of the trust as provided in section 456.1-108. In the case  
58 of cotrustees, the principal place of administration is, in the following order of  
59 priority:

60 (a) The usual place of business of the corporate trustee if there is but one  
61 corporate cotrustee;

62 (b) The usual place of business or residence of the trustee who is a  
63 professional fiduciary if there is but one such trustee and no corporate cotrustee;  
64 or

65 (c) The usual place of business or residence of any of the cotrustees;

66 [(18)] **(19)** "Professional fiduciary" means an individual who represents  
67 himself or herself to the public as having specialized training, experience or skills  
68 in the administration of trusts;

69 [(19)] **(20)** "Property" means anything that may be the subject of  
70 ownership, whether real or personal, legal or equitable, or any interest therein;

71 [(20)] **(21)** "Qualified beneficiary" means a beneficiary who, on the date  
72 the beneficiary's qualification is determined:

73 (a) is a permissible distributee;

74 (b) would be a permissible distributee if the interests of the permissible  
75 distributees described in paragraph (a) of this subdivision terminated on that  
76 date; or

77 (c) would be a permissible distributee if the trust terminated on that date;

78 [(21)] **(22)** "Record" means information that is inscribed on a tangible  
79 medium or that is stored in an electronic or other medium and is retrievable in  
80 perceivable form;

81 [(22)] **(23)** "Revocable," as applied to a trust, means that the settlor has  
82 the legal power to revoke the trust without the consent of the trustee or a person  
83 holding an adverse interest, regardless of whether the settlor has the mental  
84 capacity to do so in fact;

85 [(23)] **(24)** "Settlor" means a person, including a testator, who creates,  
86 or contributes property to, a trust. If more than one person creates or contributes  
87 property to a trust, each person is a settlor of the portion of the trust property  
88 attributable to that person's contribution except to the extent another person has  
89 the power to revoke or withdraw that portion pursuant to the terms of the trust;

90 [(24)] **(25)** "Sign" means, with present intent to authenticate or adopt a

91 record:

92 (a) to execute or adopt a tangible symbol; or

93 (b) to attach to or logically associate with the record an electronic sound,  
94 symbol, or process;

95 [(25)] **(26)** "Spendthrift provision" means a term of a trust which  
96 restrains either the voluntary or involuntary transfer or both the voluntary and  
97 involuntary transfer of a beneficiary's interest;

98 [(26)] **(27)** "State" means a state of the United States, the District of  
99 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or  
100 insular possession subject to the jurisdiction of the United States. The term  
101 includes an Indian tribe or band recognized by federal law or formally  
102 acknowledged by a state;

103 [(27)] **(28)** "Terms of a trust" means the manifestation of the settlor's  
104 intent regarding a trust's provisions as expressed in the trust instrument or as  
105 may be established by other evidence that would be admissible in a judicial  
106 proceeding;

107 [(28)] **(29)** "Trust instrument" means an instrument executed by the  
108 settlor that contains terms of the trust, including any amendments thereto;

109 **(29)** **(30)** "Trust protector", means any person, group of persons  
110 or entity not serving as a trustee and not the settlor or a beneficiary,  
111 designated in a trust instrument to instruct or direct the trustee or  
112 charged in the trust instrument with any responsibilities regarding the  
113 trust or expressly granted in the trust instrument one or more powers  
114 over the trust. The term "trust protector" includes but is not limited to  
115 persons or entities identified in the trust instrument as trust advisors,  
116 trust directors, distribution advisers or investment advisers;

117 **(31)** "Trustee" includes an original, additional, and successor trustee, and  
118 a cotrustee.

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

3 2. A trust instrument may provide for [the appointment of a trust  
4 protector. For purposes of this section, a "trust protector", whether referred to  
5 in the trust instrument by that name or by some other name, is a person, other  
6 than the settlor, a trustee, or a beneficiary, who is expressly granted in the trust  
7 instrument one or more powers over the trust] **one or more persons, not then**  
8 **serving as a trustee and not the settlor or a beneficiary, to be given any**

9 **powers over the trust as expressly granted in the trust instrument. Any**  
10 **such person may be identified and appointed as a trust protector or**  
11 **similar term. Whenever a trust instrument names, appoints, authorizes,**  
12 **or otherwise designates a trust protector, the trust shall be deemed a**  
13 **directed trust.**

14       3. A trust protector appointed in the trust instrument shall have only the  
15 powers granted to the trust protector by the express terms of the trust  
16 instrument, and a trust protector is only authorized to act within the scope of the  
17 authority expressly granted in the trust instrument. Without limiting the  
18 authority of the settlor to grant powers to a trust protector, the express powers  
19 that may be granted include, but are not limited to, the following:

20           (1) Remove and appoint a trustee **or a trust protector** or name a  
21 successor trustee or trust protector;

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

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

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

26              (c) Correct errors or ambiguities that might otherwise require court  
27 construction; or

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

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

31              (4) Terminate the trust in favor of the beneficiary or beneficiaries of the  
32 trust;

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

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

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

38           (1) Remove a requirement from a trust created to meet the requirements  
39 of 42 U.S.C. Section 1396p(d)(4) to pay back a governmental entity for benefits  
40 provided to the permissible beneficiary of the trust at the death of that  
41 beneficiary; or

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

44              (a) A trust for which a marital deduction has been taken for federal tax

45 purposes under Section 2056 or 2523 of the Internal Revenue Code or for state  
46 tax purposes under any comparable provision of applicable state law, during the  
47 life of the settlor's spouse;

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

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

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

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

59 6. Except to the extent otherwise provided in the trust instrument and in  
60 subsection 7 of this section, and notwithstanding any provision of sections  
61 456.1-101 to 456.11-1106 to the contrary:

62 (1) A trust protector shall act in a fiduciary capacity in carrying out the  
63 powers granted to the trust protector in the trust instrument, and shall have such  
64 duties to the beneficiaries, the settlor, or the trust as set forth in the trust  
65 instrument; **provided, however, that the trust instrument may provide**  
66 **that the trust protector shall act in a nonfiduciary capacity.** A trust  
67 protector is not a trustee, and is not liable or accountable as a trustee when  
68 performing or declining to perform the express powers given to the trust protector  
69 in the trust instrument. A trust protector is not liable for the acts or omissions  
70 of any fiduciary or beneficiary under the trust instrument;

71 (2) A trust protector is exonerated from any and all liability for the trust  
72 protector's acts or omissions, or arising from any exercise or nonexercise of the  
73 powers expressly conferred on the trust protector in the trust instrument, unless  
74 it is established by a preponderance of the evidence that the acts or omissions of  
75 the trust protector were done or omitted in breach of the trust protector's duty,  
76 in bad faith or with reckless indifference;

77 (3) A trust protector is authorized to exercise the express powers granted  
78 in the trust instrument at any time and from time to time after the trust  
79 protector acquires knowledge of their appointment as trust protector and of the  
80 powers granted. **The trust protector may take any action, judicial or**

81 **otherwise, necessary to carry out the duties given to the trust protector  
82 in the trust instrument;**

83       (4) A trust protector is entitled to receive, from the assets of the trust for  
84 which the trust protector is acting, reasonable compensation, and reimbursement  
85 of the reasonable costs and expenses incurred, in determining whether to carry  
86 out, and in carrying out, the express powers given to the trust protector in the  
87 trust instrument;

88       (5) A trust protector is entitled to receive, from the assets of the trust for  
89 which the trust protector is acting, reimbursement of the reasonable costs and  
90 expenses, including attorney's fees, of defending any claim made against the trust  
91 protector arising from the acts or omissions of the trust protector acting in that  
92 capacity unless it is established by clear and convincing evidence that the trust  
93 protector was acting in bad faith or with reckless indifference; and

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

96       7. If a trust protector is granted a power in the trust instrument to direct,  
97 consent to, or disapprove a trustee's actual or proposed investment decision,  
98 distribution decision, or other decision of the trustee required to be performed  
99 under applicable trust law in carrying out the duties of the trustee in  
100 administering the trust, then only with respect to such power, excluding the  
101 powers identified in subsection 3 of this section, the trust protector shall have the  
102 same duties and liabilities as if serving as a trustee under the trust instrument  
103 **unless the trust instrument expressly provides otherwise. In carrying**  
104 **out any written directions given to the trustee by the trust protector**  
105 **concerning actual or proposed investment decisions, the trustee shall**  
106 **not be subject to the provisions of sections 469.900 to 469.913. For**  
107 **purposes of this subsection, "investment decisions" means, with respect**  
108 **to any investment, decisions to retain, purchase, sell, exchange, tender,**  
109 **or otherwise engage in transactions affecting the ownership of**  
110 **investments or rights therein, and, with respect to nonpublicly traded**  
111 **investments, the valuation thereof.**

112       8. Any trustee of a directed trust shall not be accountable under  
113 the law or equity for any act or omission of a trust protector and shall  
114 stand absolved from liability for executing the decisions or instructions  
115 from a trust protector, or for monitoring the actions or inactions of a  
116 trust protector. A trustee shall take reasonable steps to facilitate the

117 **activity of a trust protector in a directed trust.** A trustee shall carry out  
118 the written directions given to the trustee by a trust protector acting within the  
119 scope of the powers expressly granted to the trust protector in the trust  
120 instrument. Except [in cases of bad faith or reckless indifference on the part of  
121 the trustee, or] as otherwise provided in the trust instrument, the trustee shall  
122 not be liable for any loss resulting directly or indirectly from any act taken or  
123 omitted as a result of the written direction of the trust protector or the failure of  
124 the trust protector to provide consent. Except as otherwise provided in the trust  
125 instrument, the trustee shall have no duty to monitor the conduct of the trust  
126 protector, provide advice to or consult with the trust protector, or communicate  
127 with or warn or apprise any beneficiary concerning instances in which the trustee  
128 would or might have exercised the trustee's own discretion in a manner different  
129 from the manner directed by the trust protector. **Except as otherwise**  
130 **provided in the trust instrument, any actions taken by the trustee at**  
131 **the trust protector's direction shall be deemed to be administrative**  
132 **actions taken by the trustee solely to allow the trustee to carry out the**  
133 **instructions of the trust protector, and shall not be deemed to**  
134 **constitute an act by the trustee to monitor the trust protector or**  
135 **otherwise participate in actions within the scope of the trust**  
136 **protector's authority.**

137       9. Except to the extent otherwise expressly provided in the trust  
138 instrument, the trust protector shall be entitled to receive information regarding  
139 the administration of the trust as follows:

140           (1) Upon the request of the trust protector, unless unreasonable under the  
141 circumstances, the trustee shall promptly provide to the trust protector any and  
142 all information related to the trust that may relate to the exercise or nonexercise  
143 of a power expressly granted to the trust protector in the trust instrument. The  
144 trustee has no obligation to provide any information to the trust protector except  
145 to the extent a trust protector requests information under this section;

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

149           (3) If the trustee is bound by any confidentiality restrictions with respect  
150 to an asset of a trust, a trust protector who requests information under this  
151 section about such asset shall agree to be bound by the confidentiality restrictions  
152 that bind the trustee before receiving such information from the trustee.

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

158        11. A trust protector of a trust having its principal place of administration  
159 in this state submits personally to the jurisdiction of the courts of this state  
160 during any period that the principal place of administration of the trust is located  
161 in this state and the trust protector is serving in such capacity. **The trust**  
**162 instrument may also provide that a trust protector is subject to the**  
**163 personal jurisdiction of the courts of this state as a condition of**  
**164 appointment.**

✓

Bill

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