

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 569

AN ACT

To repeal sections 456.985, 456.1035, 456.1080, 456.1-103, 456.4-414, and 456.8-808, RSMo, and to enact in lieu thereof seven new sections relating to trusts.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 456.985, 456.1035, 456.1080, 456.1-103,  
2 456.4-414, and 456.8-808, RSMo, are repealed and seven new  
3 sections enacted in lieu thereof, to be known as sections  
4 456.006, 456.985, 456.1035, 456.1080, 456.1-103, 456.4-414, and  
5 456.8-808, to read as follows:

6 456.006. 1. If a trust or custodial account constitutes a  
7 health savings account, as defined under 26 U.S.C. Section  
8 223(d) (1), a trust may be created by any of the following:

9 (1) A transfer of money to the trustee or custodian holding  
10 such trust or custodial account;

11 (2) The documentation of the creation of such trust or  
12 custodial account in the records of the trustee or custodian  
13 holding such trust or custodial account; or

14 (3) The execution of a trust or custodial agreement with  
15 respect to such trust or custodial account.

16 2. In any case, a trust or custodial account shall be

1 deemed to have been established on the first day on which the  
2 individual who is the beneficiary of such trust or custodial  
3 account is an eligible individual, as defined under 26 U.S.C.  
4 Section 223(c) (1), in that calendar year in which such trust or  
5 custodial account is created in accordance with this section.

6 456.985. 1. Except as otherwise provided in the terms of  
7 an instrument creating or exercising a power of appointment,  
8 sections 456.970 to 456.1135 govern powers of appointment.

9 2. The terms of an instrument creating or exercising a  
10 power of appointment prevail over any provisions of sections  
11 456.970 to 456.1135 except:

12 (1) The requisites for the creation of a power of  
13 appointment under subsections 1 to 4 of section 456.990;

14 (2) The transferability of a power of appointment by a  
15 powerholder under subsection 1 of section 456.995;

16 ~~[(2)]~~ (3) The limitations on the authority of a donor to  
17 extend a general power of appointment beyond the death of a  
18 powerholder under subsection 3 of section 456.995;

19 ~~[(3)]~~ (4) The power is exclusionary if the permissible  
20 appointees of a power of appointment are not defined and limited  
21 under subsection 3 of section 456.1005;

22 ~~[(4)]~~ (5) The requisites for the exercise of a power of  
23 appointment under section 456.1015;

24 ~~[(5)]~~ (6) The effect of an impermissible appointment under  
25 section 456.1045;

26 ~~[(6)]~~ (7) A general power of appointment which is presently  
27 exercisable may be reached by the creditors of the powerholder or  
28 the powerholder's estate under section 456.1100.

1           456.1035. 1. A powerholder of a general power of  
2 appointment that permits appointment to the powerholder or the  
3 powerholder's estate may make any appointment, including an  
4 appointment in trust or creating a new power of appointment, that  
5 the powerholder could make in disposing of the powerholder's own  
6 property.

7           2. A powerholder of a general power of appointment that  
8 permits appointment only to the creditors of the powerholder or  
9 of the powerholder's estate may appoint only to those creditors.

10          3. The powerholder of a nongeneral power may:

11           (1) Make an appointment in any form, including an  
12 appointment in trust, in favor of a permissible appointee;

13           (2) Create a general power or nongeneral power in a  
14 permissible appointee; or

15           (3) Create a nongeneral power in any person to appoint to  
16 one or more of the permissible appointees of the original  
17 nongeneral power.

18           456.1080. As provided by sections 469.010 to [469.210]  
19 469.120, a powerholder may disclaim all or part of a power of  
20 appointment, and a permissible appointee, appointee, or taker in  
21 default of appointment may disclaim all or part of an interest in  
22 appointive property.

23           456.1-103. In sections 456.1-101 to 456.11-1106, the  
24 following terms shall mean:

25           (1) "Action[,]" ] with respect to an act of a trustee,  
26 includes a failure to act;

27           (2) "Ascertainable standard" [means] ] a standard relating  
28 to an individual's health, education, support, or maintenance

1 within the meaning of Section 2041(b)(1)(A) or Section 2541(c)(1)  
2 of the Internal Revenue Code;

3 (3) "Beneficiary" [means], a person that:

4 (a) Has a present or future beneficial interest in a trust,  
5 vested or contingent; or

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

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

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

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

16 (7) "Directed trust", any trust, including a split interest  
17 trust, in which the trust instrument:

18 (a) Authorizes a trust protector to instruct or direct the  
19 trustee;

20 (b) Charges a trust protector with any responsibilities  
21 regarding the trust;

22 (c) Grants the trust protector one or more powers over the  
23 trust; or

24 (d) Directs one or more powers over the trust to a person,  
25 who is not serving as a trustee, and is not a settlor or a  
26 beneficiary;

27 (8) "Environmental law" [means], a federal, state, or local  
28 law, rule, regulation, or ordinance relating to protection of the

1 environment;

2 [(8)] (9) "Financial institution" [means], a non-foreign  
3 bank, savings and loan or trust company chartered, regulated and  
4 supervised by the Missouri division of finance, the office of the  
5 comptroller of the currency, the office of thrift supervision,  
6 the National Credit Union Administration, or the Missouri  
7 division of credit union supervision. The term "non-foreign  
8 bank" shall mean a bank that is not a foreign bank within the  
9 meaning of subdivision (1) of section 361.005;

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

13 [(10)] (11) "Interested persons", include beneficiaries and  
14 any others having a property right in or claim against a trust  
15 estate which may be affected by a judicial proceeding. It also  
16 includes fiduciaries and other persons representing interested  
17 persons. The meaning as it relates to particular persons may  
18 vary from time to time and must be determined according to the  
19 particular purposes of, and matter involved in, any proceeding;

20 [(11)] (12) "Interests of the beneficiaries" [means], the  
21 beneficial interests provided in the terms of the trust;

22 [(12)] (13) "Internal Revenue Code" [means], the United  
23 States Internal Revenue Code of 1986, as in effect on January 1,  
24 2005, or as later amended;

25 [(13)] (14) "Jurisdiction[,]" with respect to a geographic  
26 area, includes a state or country;

27 [(14)] (15) "Person" [means], an individual, corporation,  
28 business trust, estate, trust, partnership, limited liability

1 company, association, joint venture, government; governmental  
2 subdivision, agency, or instrumentality; public corporation, or  
3 any other legal or commercial entity;

4 [(15)] (16) "Permissible distributee" [means], a  
5 beneficiary who is currently eligible to receive distributions of  
6 trust income or principal, whether mandatory or discretionary;

7 [(16)] (17) "Power of withdrawal" [means], a presently  
8 exercisable power of a beneficiary to withdraw assets from the  
9 trust without the consent of the trustee or any other person;

10 [(17)] (18) "Principal place of administration", of a trust  
11 is the trustee's usual place of business where the records  
12 pertaining to the trust are kept, or the trustee's residence if  
13 the trustee has no such place of business, unless otherwise  
14 designated by the terms of the trust as provided in section  
15 456.1-108. In the case of cotrustees, the principal place of  
16 administration is, in the following order of priority:

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

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

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

24 [(18)] (19) "Professional fiduciary" [means], an individual  
25 who represents himself or herself to the public as having  
26 specialized training, experience or skills in the administration  
27 of trusts;

28 [(19)] (20) "Property" [means], anything that may be the

1 subject of ownership, whether real or personal, legal or  
2 equitable, or any interest therein;

3 [(20)] (21) "Qualified beneficiary" [means], a beneficiary  
4 who, on the date the beneficiary's qualification is determined:

5 (a) Is a permissible distributee;

6 (b) Would be a permissible distributee if the interests of  
7 the permissible distributees described in paragraph (a) of this  
8 subdivision terminated on that date; or

9 (c) Would be a permissible distributee if the trust  
10 terminated on that date;

11 [(21)] (22) "Record" [means], information that is inscribed  
12 on a tangible medium or that is stored in an electronic or other  
13 medium and is retrievable in perceivable form;

14 [(22)] (23) "Revocable[,]" as applied to a trust, means  
15 that the settlor has the legal power to revoke the trust without  
16 the consent of the trustee or a person holding an adverse  
17 interest, regardless of whether the settlor has the mental  
18 capacity to do so in fact;

19 [(23)] (24) "Settlor" [means], a person, including a  
20 testator, who creates, or contributes property to, a trust. If  
21 more than one person creates or contributes property to a trust,  
22 each person is a settlor of the portion of the trust property  
23 attributable to that person's contribution except to the extent  
24 another person has the power to revoke or withdraw that portion  
25 pursuant to the terms of the trust;

26 [(24)] (25) "Sign" [means], with present intent to  
27 authenticate or adopt a record:

28 (a) To execute or adopt a tangible symbol; or

1 (b) To attach to or logically associate with the record an  
2 electronic sound, symbol, or process;

3 [(25)] (26) "Spendthrift provision" [means], a term of a  
4 trust which restrains either the voluntary or involuntary  
5 transfer or both the voluntary and involuntary transfer of a  
6 beneficiary's interest;

7 [(26)] (27) "State" [means], a state of the United States,  
8 the District of Columbia, Puerto Rico, the United States Virgin  
9 Islands, or any territory or insular possession subject to the  
10 jurisdiction of the United States. The term includes an Indian  
11 tribe or band recognized by federal law or formally acknowledged  
12 by a state;

13 [(27)] (28) "Terms of a trust" [means], the manifestation  
14 of the settlor's intent regarding a trust's provisions as  
15 expressed in the trust instrument or as may be established by  
16 other evidence that would be admissible in a judicial proceeding;

17 [(28)] (29) "Trust instrument" [means], an instrument  
18 executed by the settlor that contains terms of the trust,  
19 including any amendments thereto;

20 (30) "Trust protector", any person, group of persons, or  
21 entity not serving as a trustee and not the settlor or a  
22 beneficiary, designated in a trust instrument to instruct or  
23 direct the trustee or charged in the trust instrument with any  
24 responsibilities regarding the trust or expressly granted in the  
25 trust instrument one or more powers over the trust. The term  
26 "trust protector" includes, but is not limited to, persons or  
27 entities identified in the trust instrument as trust advisors,  
28 trust directors, distribution advisors, or investment advisors;



1            [(29)] (31) "Trustee", includes an original, additional,  
2 and successor trustee, and a cotrustee.

3            456.4-414. 1. After notice to the qualified beneficiaries,  
4 the trustee of a trust consisting of trust property having a  
5 total value less than [one hundred thousand] two hundred fifty  
6 thousand dollars may terminate the trust if the trustee concludes  
7 that the value of the trust property is insufficient to justify  
8 the cost of administration.

9            2. The court may modify or terminate a trust or remove the  
10 trustee and appoint a different trustee if it determines that the  
11 value of the trust property is insufficient to justify the cost  
12 of administration.

13           3. Upon termination of a trust under this section, the  
14 trustee shall distribute the trust property in a manner  
15 consistent with the purposes of the trust.

16           4. This section does not apply to an easement for  
17 conservation or preservation.

18           456.8-808. 1. While a trust is revocable, the trustee may  
19 follow a direction of the settlor that is contrary to the terms  
20 of the trust.

21           2. A trust instrument may provide for [the appointment of a  
22 trust protector. For purposes of this section, a "trust  
23 protector", whether referred to in the trust instrument by that  
24 name or by some other name, is a person, other than the settlor,  
25 a trustee, or a beneficiary, who is expressly granted in the  
26 trust instrument one or more powers over the trust] one or more  
27 persons, not then serving as a trustee and not the settlor or a  
28 beneficiary, to be given any powers over the trust as expressly

1 granted in the trust instrument. Any such person may be  
2 identified and appointed as a trust protector or similar term.  
3 Whenever a trust instrument names, appoints, authorizes, or  
4 otherwise designates a trust protector, the trust shall be deemed  
5 a directed trust.

6 3. A trust protector appointed in the trust instrument  
7 shall have only the powers granted to the trust protector by the  
8 express terms of the trust instrument, and a trust protector is  
9 only authorized to act within the scope of the authority  
10 expressly granted in the trust instrument. Without limiting the  
11 authority of the settlor to grant powers to a trust protector,  
12 the express powers that may be granted include, but are not  
13 limited to, the following:

14 (1) Remove and appoint a trustee or a trust protector or  
15 name a successor trustee or trust protector;

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

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

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

21 (c) Correct errors or ambiguities that might otherwise  
22 require court construction; or

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

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

27 (4) Terminate the trust in favor of the beneficiary or  
28 beneficiaries of the trust;

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

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

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

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

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

14           (a) A trust for which a marital deduction has been taken  
15 for federal tax purposes under Section 2056 or 2523 of the  
16 Internal Revenue Code or for state tax purposes under any  
17 comparable provision of applicable state law, during the life of  
18 the settlor's spouse;

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

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

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

28           5. Except to the extent otherwise provided in a trust

1 instrument specifically referring to this subsection, the trust  
2 protector shall not exercise a power in a way that would result  
3 in a taxable gift for federal gift tax purposes or cause the  
4 inclusion of any assets of the trust in the trust protector's  
5 gross estate for federal estate tax purposes.

6 6. Except to the extent otherwise provided in the trust  
7 instrument and in subsection 7 of this section, and  
8 notwithstanding any provision of sections 456.1-101 to 456.11-  
9 1106 to the contrary:

10 (1) A trust protector shall act in a fiduciary capacity in  
11 carrying out the powers granted to the trust protector in the  
12 trust instrument, and shall have such duties to the  
13 beneficiaries, the settlor, or the trust as set forth in the  
14 trust instrument, provided that the trust instrument may provide  
15 that the trust protector shall act in a nonfiduciary capacity. A  
16 trust protector is not a trustee, and is not liable or  
17 accountable as a trustee when performing or declining to perform  
18 the express powers given to the trust protector in the trust  
19 instrument. A trust protector is not liable for the acts or  
20 omissions of any fiduciary or beneficiary under the trust  
21 instrument;

22 (2) A trust protector is exonerated from any and all  
23 liability for the trust protector's acts or omissions, or arising  
24 from any exercise or nonexercise of the powers expressly  
25 conferred on the trust protector in the trust instrument, unless  
26 it is established by a preponderance of the evidence that the  
27 acts or omissions of the trust protector were done or omitted in  
28 breach of the trust protector's duty, in bad faith or with

1 reckless indifference;

2 (3) A trust protector is authorized to exercise the express  
3 powers granted in the trust instrument at any time and from time  
4 to time after the trust protector acquires knowledge of their  
5 appointment as trust protector and of the powers granted. The  
6 trust protector may take any action, judicial or otherwise,  
7 necessary to carry out the duties given to the trust protector in  
8 the trust instrument;

9 (4) A trust protector is entitled to receive, from the  
10 assets of the trust for which the trust protector is acting,  
11 reasonable compensation, and reimbursement of the reasonable  
12 costs and expenses incurred, in determining whether to carry out,  
13 and in carrying out, the express powers given to the trust  
14 protector in the trust instrument;

15 (5) A trust protector is entitled to receive, from the  
16 assets of the trust for which the trust protector is acting,  
17 reimbursement of the reasonable costs and expenses, including  
18 attorney's fees, of defending any claim made against the trust  
19 protector arising from the acts or omissions of the trust  
20 protector acting in that capacity unless it is established by  
21 clear and convincing evidence that the trust protector was acting  
22 in bad faith or with reckless indifference; and

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

26 7. If a trust protector is granted a power in the trust  
27 instrument to direct, consent to, or disapprove a trustee's  
28 actual or proposed investment decision, distribution decision, or

1 other decision of the trustee required to be performed under  
2 applicable trust law in carrying out the duties of the trustee in  
3 administering the trust, then only with respect to such power,  
4 excluding the powers identified in subsection 3 of this section,  
5 the trust protector shall have the same duties and liabilities as  
6 if serving as a trustee under the trust instrument unless the  
7 trust instrument expressly provides otherwise. In carrying out  
8 any written directions given to the trustee by the trust  
9 protector concerning actual or proposed investment decisions, the  
10 trustee shall not be subject to the provisions of sections  
11 469.900 to 469.913. For purposes of this subsection, "investment  
12 decisions" means, with respect to any investment, decisions to  
13 retain, purchase, sell, exchange, tender, or otherwise engage in  
14 transactions affecting the ownership of investments or rights  
15 therein and, with respect to nonpublicly traded investments, the  
16 valuation thereof.

17 8. Any trustee of a directed trust shall not be accountable  
18 under the law or equity for any act or omission of a trust  
19 protector and shall stand absolved from liability for executing  
20 the decisions or instructions from a trust protector or for  
21 monitoring the actions or inactions of a trust protector. A  
22 trustee shall take reasonable steps to facilitate the activity of  
23 a trust protector in a directed trust. A trustee shall carry out  
24 the written directions given to the trustee by a trust protector  
25 acting within the scope of the powers expressly granted to the  
26 trust protector in the trust instrument. Except [in cases of bad  
27 faith or reckless indifference on the part of the trustee, or] as  
28 otherwise provided in the trust instrument, the trustee shall not

1 be liable for any loss resulting directly or indirectly from any  
2 act taken or omitted as a result of the written direction of the  
3 trust protector or the failure of the trust protector to provide  
4 consent. Except as otherwise provided in the trust instrument,  
5 the trustee shall have no duty to monitor the conduct of the  
6 trust protector, provide advice to or consult with the trust  
7 protector, or communicate with or warn or apprise any beneficiary  
8 concerning instances in which the trustee would or might have  
9 exercised the trustee's own discretion in a manner different from  
10 the manner directed by the trust protector. Except as otherwise  
11 provided in the trust instrument, any actions taken by the  
12 trustee at the trust protector's direction shall be deemed to be  
13 administrative actions taken by the trustee solely to allow the  
14 trustee to carry out the instructions of the trust protector and  
15 shall not be deemed to constitute an act by the trustee to  
16 monitor the trust protector or otherwise participate in actions  
17 within the scope of the trust protector's authority. Whenever a  
18 directed trust reserves to a person or vests in an advisory or  
19 investment committee authority to direct the making or retention  
20 of any investment, to the exclusion of the trustee or trustees,  
21 the excluded trustee or trustees shall not be liable,  
22 individually or as a trustee, for any loss resulting from the  
23 making or retention of any investment pursuant to such direction.

24 9. Except to the extent otherwise expressly provided in the  
25 trust instrument, the trust protector shall be entitled to  
26 receive information regarding the administration of the trust as  
27 follows:

28 (1) Upon the request of the trust protector, unless

1 unreasonable under the circumstances, the trustee shall promptly  
2 provide to the trust protector any and all information related to  
3 the trust that may relate to the exercise or nonexercise of a  
4 power expressly granted to the trust protector in the trust  
5 instrument. The trustee has no obligation to provide any  
6 information to the trust protector except to the extent a trust  
7 protector requests information under this section;

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

12 (3) If the trustee is bound by any confidentiality  
13 restrictions with respect to an asset of a trust, a trust  
14 protector who requests information under this section about such  
15 asset shall agree to be bound by the confidentiality restrictions  
16 that bind the trustee before receiving such information from the  
17 trustee.

18 10. A trust protector may resign by giving thirty days'  
19 written notice to the trustee and any successor trust protector.  
20 A successor trust protector, if any, shall have all the powers  
21 expressly granted in the trust instrument to the resigning trust  
22 protector unless such powers are expressly modified for the  
23 successor trust protector.

24 11. A trust protector of a trust having its principal place  
25 of administration in this state submits personally to the  
26 jurisdiction of the courts of this state during any period that  
27 the principal place of administration of the trust is located in  
28 this state and the trust protector is serving in such capacity.



1 The trust instrument may also provide that a trust protector is  
2 subject to the personal jurisdiction of the courts of this state  
3 as a condition of appointment.

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Mike Cunningham

Lyndall Fraker