

SECOND REGULAR SESSION

SENATE BILL NO. 569

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

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ADRIANE D. CROUSE, Secretary.

4967S.01I

AN ACT

To repeal sections 456.1-103 and 456.8-808, RSMo, and to enact in lieu thereof two new sections relating to immunity for trustees.

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Section A. Sections 456.1-103 and 456.8-808, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 456.1-103 and 456.8-
3 808, to read as follows:

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

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

3 (2) "Ascertainable standard", means a standard relating to an individual's
4 health, education, support, or maintenance within the meaning of Section
5 2041(b)(1)(A) or Section 2541(c)(1) of the Internal Revenue Code;

6 (3) "Beneficiary", means a person that:

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

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

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

13 (5) "Conservator", means a person described in subdivision (3) of section
14 475.010. This term does not include a conservator ad litem;

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

17 (7) **"Directed trust", means any trust, including a split interest**
18 **trust, in which the trust instrument directs one or more powers over**

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

19 **the trust to a person, who is not serving as a trustee, and is not a**
20 **settlor or a beneficiary;**

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

23 **[(8)] (9)** "Financial institution", means a non-foreign bank, savings and
24 loan or trust company chartered, regulated and supervised by the Missouri
25 division of finance, the office of the comptroller of the currency, the office of thrift
26 supervision, the National Credit Union Administration, or the Missouri division
27 of credit union supervision. The term "non-foreign bank" shall mean a bank that
28 is not a foreign bank within the meaning of subdivision (1) of section 361.005;

29 **[(9)] (10)** "Guardian", means a person described in subdivision (7) of
30 section 475.010. The term does not include a guardian ad litem;

31 **[(10)] (11)** "Interested persons", include beneficiaries and any others
32 having a property right in or claim against a trust estate which may be affected
33 by a judicial proceeding. It also includes fiduciaries and other persons
34 representing interested persons. The meaning as it relates to particular persons
35 may vary from time to time and must be determined according to the particular
36 purposes of, and matter involved in, any proceeding;

37 **[(11)] (12)** "Interests of the beneficiaries", means the beneficial interests
38 provided in the terms of the trust;

39 **[(12)] (13)** "Internal Revenue Code", means the United States Internal
40 Revenue Code of 1986, as in effect on January 1, 2005, or as later amended;

41 **[(13)] (14)** "Jurisdiction[,]", with respect to a geographic area, includes
42 a state or country;

43 **[(14)] (15)** "Person", means an individual, corporation, business trust,
44 estate, trust, partnership, limited liability company, association, joint venture,
45 government; governmental subdivision, agency, or instrumentality; public
46 corporation, or any other legal or commercial entity;

47 **[(15)] (16)** "Permissible distributee", means a beneficiary who is
48 currently eligible to receive distributions of trust income or principal, whether
49 mandatory or discretionary;

50 **[(16)] (17)** "Power of withdrawal", means a presently exercisable power
51 of a beneficiary to withdraw assets from the trust without the consent of the
52 trustee or any other person;

53 **[(17)] (18)** "Principal place of administration", of a trust is the trustee's
54 usual place of business where the records pertaining to the trust are kept, or the

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

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

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

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

65 [(18)] **(19)** "Professional fiduciary", means an individual who represents
66 himself or herself to the public as having specialized training, experience or skills
67 in the administration of trusts;

68 [(19)] **(20)** "Property", means anything that may be the subject of
69 ownership, whether real or personal, legal or equitable, or any interest therein;

70 [(20)] **(21)** "Qualified beneficiary", means a beneficiary who, on the date
71 the beneficiary's qualification is determined:

72 (a) is a permissible distributee;

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

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

77 [(21)] **(22)** "Record", means information that is inscribed on a tangible
78 medium or that is stored in an electronic or other medium and is retrievable in
79 perceivable form;

80 [(22)] **(23)** "Revocable[.]", as applied to a trust, means that the settlor
81 has the legal power to revoke the trust without the consent of the trustee or a
82 person holding an adverse interest, regardless of whether the settlor has the
83 mental capacity to do so in fact;

84 [(23)] **(24)** "Settlor", means a person, including a testator, who creates,
85 or contributes property to, a trust. If more than one person creates or contributes
86 property to a trust, each person is a settlor of the portion of the trust property
87 attributable to that person's contribution except to the extent another person has
88 the power to revoke or withdraw that portion pursuant to the terms of the trust;

89 [(24)] **(25)** "Sign", means, with present intent to authenticate or adopt
90 a record:

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

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

94 [(25)] **(26)** "Spendthrift provision", means a term of a trust which
95 restrains either the voluntary or involuntary transfer or both the voluntary and
96 involuntary transfer of a beneficiary's interest;

97 [(26)] **(27)** "State", means a state of the United States, the District of
98 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
99 insular possession subject to the jurisdiction of the United States. The term
100 includes an Indian tribe or band recognized by federal law or formally
101 acknowledged by a state;

102 [(27)] **(28)** "Terms of a trust", means the manifestation of the settlor's
103 intent regarding a trust's provisions as expressed in the trust instrument or as
104 may be established by other evidence that would be admissible in a judicial
105 proceeding;

106 [(28)] **(29)** "Trust instrument", means an instrument executed by the
107 settlor that contains terms of the trust, including any amendments thereto;

108 [(29)] **(30)** "Trustee", includes an original, additional, and successor
109 trustee, and 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.

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

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

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

17 (a) Achieve favorable tax status or respond to changes in the Internal

18 Revenue Code or state law, or the rulings and regulations under such code or law;

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

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

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

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

25 (4) Terminate the trust in favor of the beneficiary or beneficiaries of the
26 trust;

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

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

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

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

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

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

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

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

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

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

53 6. Except to the extent otherwise provided in the trust instrument and in

54 subsection 7 of this section, and notwithstanding any provision of sections
55 456.1-101 to 456.11-1106 to the contrary:

56 (1) A trust protector shall act in a fiduciary capacity in carrying out the
57 powers granted to the trust protector in the trust instrument, and shall have such
58 duties to the beneficiaries, the settlor, or the trust as set forth in the trust
59 instrument. A trust protector is not a trustee, and is not liable or accountable as
60 a trustee when performing or declining to perform the express powers given to the
61 trust protector in the trust instrument. A trust protector is not liable for the acts
62 or omissions of any fiduciary or beneficiary under the trust instrument;

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

69 (3) A trust protector is authorized to exercise the express powers granted
70 in the trust instrument at any time and from time to time after the trust
71 protector acquires knowledge of their appointment as trust protector and of the
72 powers granted;

73 (4) A trust protector is entitled to receive, from the assets of the trust for
74 which the trust protector is acting, reasonable compensation, and reimbursement
75 of the reasonable costs and expenses incurred, in determining whether to carry
76 out, and in carrying out, the express powers given to the trust protector in the
77 trust instrument;

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

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

86 7. If a trust protector is granted a power in the trust instrument to direct,
87 consent to, or disapprove a trustee's actual or proposed investment decision,
88 distribution decision, or other decision of the trustee required to be performed
89 under applicable trust law in carrying out the duties of the trustee in

90 administering the trust, then only with respect to such power, excluding the
91 powers identified in subsection 3 of this section, the trust protector shall have the
92 same duties and liabilities as if serving as a trustee under the trust instrument.

93 8. A trustee shall carry out the written directions given to the trustee by
94 a trust protector acting within the scope of the powers expressly granted to the
95 trust protector in the trust instrument. Except in cases of bad faith or reckless
96 indifference on the part of the trustee, or as otherwise provided in the trust
97 instrument, the trustee shall not be liable for any loss resulting directly or
98 indirectly from any act taken or omitted as a result of the written direction of the
99 trust protector or the failure of the trust protector to provide consent. Except as
100 otherwise provided in the trust instrument, the trustee shall have no duty to
101 monitor the conduct of the trust protector, provide advice to or consult with the
102 trust protector, or communicate with or warn or apprise any beneficiary
103 concerning instances in which the trustee would or might have exercised the
104 trustee's own discretion in a manner different from the manner directed by the
105 trust protector.

106 9. **Whenever a directed trust reserves to a person or vests in an**
107 **advisory or investment committee authority to direct the making or**
108 **retention of any investment, to the exclusion of the trustee or trustees,**
109 **the excluded trustee or trustees shall not be liable, individually or as**
110 **a trustee, for any loss resulting from the making or retention of any**
111 **investment pursuant to such direction.**

112 10. Except to the extent otherwise expressly provided in the trust
113 instrument, the trust protector shall be entitled to receive information regarding
114 the administration of the trust as follows:

115 (1) Upon the request of the trust protector, unless unreasonable under the
116 circumstances, the trustee shall promptly provide to the trust protector any and
117 all information related to the trust that may relate to the exercise or nonexercise
118 of a power expressly granted to the trust protector in the trust instrument. The
119 trustee has no obligation to provide any information to the trust protector except
120 to the extent a trust protector requests information under this section;

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

124 (3) If the trustee is bound by any confidentiality restrictions with respect
125 to an asset of a trust, a trust protector who requests information under this

126 section about such asset shall agree to be bound by the confidentiality restrictions
127 that bind the trustee before receiving such information from the trustee.

128 [10.] 11. A trust protector may resign by giving thirty days' written
129 notice to the trustee and any successor trust protector. A successor trust
130 protector, if any, shall have all the powers expressly granted in the trust
131 instrument to the resigning trust protector unless such powers are expressly
132 modified for the successor trust protector.

133 [11.] 12. A trust protector of a trust having its principal place of
134 administration in this state submits personally to the jurisdiction of the courts
135 of this state during any period that the principal place of administration of the
136 trust is located in this state and the trust protector is serving in such capacity.

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