

SECOND REGULAR SESSION

SENATE BILL NO. 947

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 23, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4524S.01I

AN ACT

To repeal sections 456.985, 456.1035, 456.1080, 456.1-103, and 456.8-808, RSMo, and to enact in lieu thereof five new sections relating to estate planning.

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

Section A. Sections 456.985, 456.1035, 456.1080, 456.1-103, and 456.8-808, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 456.985, 456.1035, 456.1080, 456.1-103, and 456.8-808, to read as follows:

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

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

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

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

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

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

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

[(5)] (6) The effect of an impermissible appointment under section

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

19 456.1045;

20 [(6)] (7) A general power of appointment which is presently exercisable
21 may be reached by the creditors of the powerholder or the powerholder's estate
22 under section 456.1100.

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

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

9 3. The powerholder of a nongeneral power may:

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

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

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

456.1080. As provided by sections 469.010 to [469.210] **469.120**, a
2 powerholder may disclaim all or part of a power of appointment, and a
3 permissible appointee, appointee, or taker in default of appointment may disclaim
4 all or part of an interest in appointive property.

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, where the trust instrument authorizes a trust protector to**
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
43 a 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
49 currently eligible to receive distributions of trust income or principal, whether

50 mandatory 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
82 has the legal power to revoke the trust without the consent of the trustee or a
83 person holding an adverse interest, regardless of whether the settlor has the
84 mental 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
91 a 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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