

SECOND REGULAR SESSION

SENATE BILL NO. 841

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Pre-filed January 5, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4947S.011

AN ACT

To repeal sections 456.1-103 and 456.8-808, RSMo, and to enact in lieu thereof two new sections relating to the powers of trust protectors.

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Section A. Sections 456.1-103 and 456.8-808, RSMo, are repealed and two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) "Environmental law" means a federal, state, or local law, rule,
18 regulation, or ordinance relating to protection of the environment;

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

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

25 (9) "Guardian" means a person described in subdivision (7) of section
26 475.010. The term does not include a guardian ad litem;

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

33 (11) "Interests of the beneficiaries" means the beneficial interests provided
34 in the terms of the trust;

35 (12) "Internal Revenue Code" means the United States Internal Revenue
36 Code of 1986, as in effect on January 1, 2005, or as later amended;

37 (13) **"Investment advisor", means a person, entity, or trust**
38 **protector who has been granted the power under a trust instrument,**
39 **including a split interest trust, to direct, consent to, approve of, or**
40 **disapprove of a trustee's actual or proposed investment decisions; to**
41 **retain, purchase, sell, exchange, tender, or otherwise engage in**
42 **transactions affecting the ownership of investments or rights therein,**
43 **with respect to either publicly or nonpublicly traded investments,**
44 **including the determination of the valuation thereof;**

45 (14) "Jurisdiction," with respect to a geographic area, includes a state or
46 country;

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

51 [(15)] (16) "Permissible distributee" means a beneficiary who is currently
52 eligible to receive distributions of trust income or principal, whether mandatory
53 or discretionary;

54 [(16)] (17) "Power of withdrawal" means a presently exercisable power

55 of a beneficiary to withdraw assets from the trust without the consent of the
56 trustee or any other person;

57 [(17)] **(18)** "Principal place of administration" of a trust is the trustee's
58 usual place of business where the records pertaining to the trust are kept, or the
59 trustee's residence if the trustee has no such place of business, unless otherwise
60 designated by the terms of the trust as provided in section 456.1-108. In the case
61 of cotrustees, the principal place of administration is, in the following order of
62 priority:

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

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

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

69 [(18)] **(19)** "Professional fiduciary" means an individual who represents
70 himself or herself to the public as having specialized training, experience or skills
71 in the administration of trusts;

72 [(19)] **(20)** "Property" means anything that may be the subject of
73 ownership, whether real or personal, legal or equitable, or any interest therein;

74 [(20)] **(21)** "Qualified beneficiary" means a beneficiary who, on the date
75 the beneficiary's qualification is determined:

76 (a) is a permissible distributee;

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

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

81 [(21)] **(22)** "Record" means information that is inscribed on a tangible
82 medium or that is stored in an electronic or other medium and is retrievable in
83 perceivable form;

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

88 [(23)] **(24)** "Settlor" means a person, including a testator, who creates,
89 or contributes property to, a trust. If more than one person creates or contributes
90 property to a trust, each person is a settlor of the portion of the trust property

91 attributable to that person's contribution except to the extent another person has
92 the power to revoke or withdraw that portion pursuant to the terms of the trust;

93 [(24)] **(25)** "Sign" means, with present intent to authenticate or adopt a
94 record:

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

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

98 [(25)] **(26)** "Spendthrift provision" means a term of a trust which
99 restrains either the voluntary or involuntary transfer or both the voluntary and
100 involuntary transfer of a beneficiary's interest;

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

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

110 [(28)] **(29)** "Trust instrument" means an instrument executed by the
111 settlor that contains terms of the trust, including any amendments thereto;

112 [(29)] **(30)** "Trustee" includes an original, additional, and successor
113 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 one or more persons not**
4 **then serving as a trustee to be given any powers over the trust as**
5 **expressly granted in the trust instrument. Any such person may be**
6 **identified in the trust instrument by any name or designation, but for**
7 **purposes of this section, any such person is herein referred to as "trust**
8 **protector". A trust instrument including a split interest trust may also**
9 provide for [the appointment of a trust protector. For purposes of this section,
10 a "trust protector", whether referred to in the trust instrument by that name or
11 by some other name, is a person, other than the settlor, a trustee, or a
12 beneficiary, who is expressly granted in the trust instrument one or more powers
13 over the trust] **one or more persons, designated as a trust protector, to**

14 **be given authority to direct, consent to, approve of, or disapprove a**
15 **trustee's actual or proposed investment decisions, distribution**
16 **decisions, or other decisions of the trustee and shall be deemed a**
17 **directed trust if such powers are granted. Any such person may be**
18 **identified in the trust instrument as an investment advisor, distribution**
19 **advisor, or any other designation, but for the purposes of this section,**
20 **any such person is herein referred to as "advisor".**

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

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

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

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

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

33 (c) Correct errors or ambiguities that might otherwise require court
34 construction; or

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

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

38 (4) Terminate the trust in favor of the beneficiary or beneficiaries of the
39 trust;

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

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

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

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

49 (2) Reduce or eliminate an income interest of the income beneficiary of

50 any of the following types of trusts:

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

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

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

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

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

66 6. Except to the extent otherwise provided in the trust instrument and in
67 subsection 7 of this section, and notwithstanding any provision of sections
68 456.1-101 to 456.11-1106 to the contrary:

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

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

84 (3) A trust protector is authorized to exercise the express powers granted
85 in the trust instrument at any time and from time to time after the trust

86 protector acquires knowledge of their appointment as trust protector and of the
87 powers granted. **The trust protector may take any action, judicial or**
88 **otherwise, necessary to carry out the duties given to the trust protector**
89 **in the trust instrument;**

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

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

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

103 7. If [a trust protector] **an advisor** is granted a power in the trust
104 instrument to direct, consent to, or disapprove a trustee's actual or proposed
105 investment decision, distribution decision, or other decision of the trustee
106 required to be performed under applicable trust law in carrying out the duties of
107 the trustee in administering the trust, then only with respect to such power,
108 excluding the powers identified in subsection 3 of this section, the trust protector
109 shall have the same duties and liabilities as if serving as a trustee under the
110 trust instrument. **In carrying out any written directions given to the**
111 **trustee by the advisor concerning actual or proposed investment**
112 **decisions, the trustee shall not be subject to the provisions of sections**
113 **469.900 to 469.913. For purposes of this subsection, "investment**
114 **decisions" means, with respect to any investment, decisions to retain,**
115 **purchase, sell, exchange, tender, or otherwise engage in transactions**
116 **affecting the ownership of investments or rights therein, and, with**
117 **respect to nonpublicly traded investments, the valuation thereof.**

118 8. A trustee shall carry out the written directions given to the trustee by
119 a trust protector acting within the scope of the powers expressly granted to the
120 trust protector in the trust instrument. Except in cases of bad faith or reckless
121 indifference on the part of the trustee, or as otherwise provided in the trust

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

✓

Unofficial

Bill

Copy