

SECOND REGULAR SESSION

# HOUSE BILL NO. 1829

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES STORCH (Sponsor) AND PRATT (Co-sponsor).

Read 1st time January 24, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3431L.01I

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### AN ACT

To repeal sections 402.205, 402.210, 402.215, and 402.217, RSMo, and to enact in lieu thereof four new sections relating to the Missouri family trust.

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

Section A. Sections 402.205, 402.210, 402.215, and 402.217, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 402.205, 402.210, 402.215,  
3 and 402.217, to read as follows:

402.205. 1. [The families, friends and guardians of] Persons who have a disability [or]  
2 , as defined in section 402.200, or persons who are eligible for services provided by the  
3 department of mental health, or both, may participate in a trust which may supplement the care,  
4 support, and treatment of such persons pursuant to the provisions of sections 402.199 to 402.220.  
5 Neither the contribution to the trust for the benefit of a life beneficiary nor the use of trust  
6 income to provide benefits shall in any way reduce, impair or diminish the benefits to which such  
7 person is otherwise entitled by law; and the administration of the trust shall not be taken into  
8 consideration in appropriations for the department of mental health to render services required  
9 by law.

10 2. Unless otherwise prohibited by federal statutes or regulations, all state agencies shall  
11 disregard the trust as a resource when determining eligibility of Missouri residents for assistance  
12 under chapter 208, RSMo.

13 3. The assets of the board of trustees and assets held in trust pursuant to the provisions  
14 of sections 402.199 to 402.220 shall not be considered state money, assets of the state or revenue

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 for any purposes of the state constitution or statutes. The property of the board of trustees and  
16 its income and operations shall be exempt from all taxation by the state or any of its political  
17 subdivisions.

402.210. 1. There is hereby created the "Missouri Family Trust Board of Trustees",  
2 which shall be a body corporate and an instrumentality of the state. The board of trustees shall  
3 consist of nine persons appointed by the governor with the advice and consent of the senate. The  
4 members' terms of office shall be three years and until their successors are appointed and  
5 qualified. The trustees shall be persons who are not prohibited from serving by sections 105.450  
6 to 105.482, RSMo, and who are not otherwise employed by the department of mental health.  
7 The board of trustees shall be composed of the following:

8 (1) Three members of the immediate family of persons who have a disability [or are the  
9 recipients of services provided by the department in the treatment of mental illness] **of mental**  
10 **illness**. The advisory council for comprehensive psychiatric services, created pursuant to section  
11 632.020, RSMo, shall submit a panel of nine names to the governor, from which he shall appoint  
12 three. One shall be appointed for a term of one year, one for two years, and one for three years.  
13 Thereafter, as the term of a trustee expires each year, the Missouri advisory council for  
14 comprehensive psychiatric services shall submit to the governor a panel of not less than three nor  
15 more than five proposed trustees, and the governor shall appoint one trustee from such panel for  
16 a term of three years;

17 (2) Three members of the immediate family of persons who [are recipients of services  
18 provided by the department in the habilitation of the mentally retarded or developmentally  
19 disabled] **have a developmental disability**. The Missouri advisory council on mental  
20 retardation and developmental disabilities, created pursuant to section 633.020, RSMo, shall  
21 submit a panel of nine names to the governor, from which he shall appoint three. One shall be  
22 appointed for one year, one for two years and one for three years. Thereafter, as the term of a  
23 trustee expires each year, the Missouri advisory council on mental retardation and developmental  
24 disabilities shall submit to the governor a panel of not less than three nor more than five  
25 proposed trustees, and the governor shall appoint one trustee from such panel for a term of three  
26 years;

27 (3) Three persons who are recognized for their expertise in general business matters and  
28 procedures. Of the three business people to be appointed by the governor, one shall be appointed  
29 for one year, one for two years and one for three years. Thereafter, as the term of a trustee  
30 expires each year, the governor shall appoint one business person as trustee for a term of three  
31 years.

32 2. The trustees shall receive no compensation for their services. The trust shall reimburse  
33 the trustees for necessary expenses actually incurred in the performance of their duties.

34           3. As used in this section, the term "immediate family" includes spouse, parents, parents  
35 of spouse, children, spouses of children and siblings.

36           4. The board of trustees shall be subject to the provisions of sections 610.010 to 610.120,  
37 RSMo.

38           5. The board of trustees shall annually prepare or cause to be prepared an accounting of  
39 the trust funds and shall transmit a copy of the accounting to the governor, the president pro  
40 tempore of the senate and the speaker of the house of representatives.

41           6. The board of trustees shall establish policies, procedures and other rules and  
42 regulations necessary to implement the provisions of sections 402.199 to 402.220.

          402.215. 1. The board of trustees is authorized and directed to establish and administer  
2 the Missouri family trust and to advise, consult with, and render services to departments and  
3 agencies of the state of Missouri and to other nonprofit organizations which qualify as  
4 organizations pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986,  
5 as amended, and which provide services to Missouri residents with a disability. The board shall  
6 be authorized to execute all documents necessary to establish and administer the trust including  
7 the formation of a not-for-profit corporation created pursuant to chapter 355, RSMo, and to  
8 qualify as an organization pursuant to Section 501(c)(3) of the United States Internal Revenue  
9 Code of 1986, as amended.

10           2. The trust documents shall include and be limited by the following provisions:

11           (1) The Missouri family trust shall be authorized to accept contributions from any source  
12 including trustees, personal representatives, personal custodians pursuant to chapter 404, RSMo,  
13 and other fiduciaries, and, subject to the provisions of subdivision [(11)] **(10)** of this subsection,  
14 from the life beneficiaries and their respective spouses, to be held, administered, managed,  
15 invested and distributed in order to facilitate the coordination and integration of private financing  
16 for individuals who have a disability or are eligible for services provided by the Missouri  
17 department of mental health, or both, while maintaining the eligibility of such individuals for  
18 government entitlement funding. All contributions, and the earnings thereon, shall be  
19 administered as one trust fund; however, separate accounts shall be established for each  
20 designated beneficiary. The income earned[, after deducting administrative expenses,] shall be  
21 credited to the accounts of the respective life beneficiaries in proportion to the principal balance  
22 in the account for each such life beneficiary, to the total principal balances in the accounts for  
23 all life beneficiaries;

24           (2) Every donor may designate a specific person as the life beneficiary of the  
25 contribution made by such donor. In addition, each donor may name a cotrustee, including the  
26 donor, and a successor or successors to the cotrustee, to act with the trustees of the trust on  
27 behalf of the designated life beneficiary; provided, however, a life beneficiary shall not be

28 eligible to be a cotrustee or a successor cotrustee[; provided, however, that] . Court approval of  
29 the specific [person] **persons** designated as life beneficiary and as cotrustee or successor trustee  
30 shall be required [in connection with] **at the time** any trust **is** created pursuant to section  
31 473.657, RSMo, or section 475.093, RSMo;

32 (3) The cotrustee, with the consent of the trust, shall from time to time [but not less  
33 frequently than annually] determine the amount of income or principal or income and principal  
34 to be used to provide noncash benefits and the nature and type of benefits to be provided for the  
35 life beneficiary. Any net income which is not used shall be added to principal annually. In the  
36 event that the trust and the cotrustee shall be unable to agree either on the amount of income or  
37 principal or income and principal to be used or the benefits to be provided, then either the trust  
38 or the cotrustee shall have the right to request that the matter be resolved by arbitration which  
39 shall be conducted in accordance with the Commercial Arbitration Rules of the American  
40 Arbitration Association. The requesting party shall send a written request for arbitration to the  
41 responding party and shall in such request set forth the name, address and telephone number of  
42 such requesting party's arbitrator. The responding party shall, within ten days after receipt of the  
43 request for arbitration, set forth in writing to the requesting party the name, address and  
44 telephone number of the responding party's arbitrator. Copies of the request for arbitration and  
45 response shall be sent to the director of the department. If the two designated arbitrators shall  
46 be unable to agree upon a third arbitrator within ten days after the responding party shall have  
47 identified such party's arbitrator, then the director of the department shall designate the third  
48 arbitrator by written notice to the requesting and responding parties' arbitrators. The three  
49 arbitrators shall meet, conduct a hearing, and render a decision within thirty days after the  
50 appointment of the third arbitrator. A decision of a majority of the arbitrators shall be binding  
51 upon the requesting and responding parties. Each party shall pay the fees and expenses of such  
52 party's arbitrator and the fees and expenses of the third arbitrator shall be borne equally by the  
53 parties. Judgment on the arbitrators' award may be entered in any court of competent  
54 jurisdiction;

55 (4) Any donor, during his or her lifetime, except for a trust created pursuant to section  
56 473.657, RSMo, or section 475.093, RSMo, may revoke any gift made to the trust; provided,  
57 however, any donor may, at any time, voluntarily waive the right to revoke. In the event that at  
58 the time the donor shall have revoked his or her gift to the trust the life beneficiary shall not have  
59 received any benefits provided by use of trust income or principal, then an amount equal to one  
60 hundred percent of the principal balance shall be returned to the donor. Any undistributed net  
61 income shall be distributed to the charitable trust. In the event that at the time the donor shall  
62 have revoked his or her gift to the trust the life beneficiary shall have received any benefits  
63 provided by the use of trust income or principal, then an amount equal to ninety percent of the

64 principal balance shall be returned to the donor. The balance of the principal balance together  
65 with all undistributed net income shall be distributed to the charitable trust;

66 (5) Any acting cotrustee, except a cotrustee of a trust created pursuant to section  
67 473.657, RSMo, or section 475.093, RSMo, other than the original donor of a life beneficiary's  
68 account, shall have the right, for good and sufficient reason upon written notice to the trust and  
69 the department stating such reason, to withdraw all or a portion of the principal balance. In such  
70 event, the applicable portion, as set forth in subdivision (7) of this subsection, of the principal  
71 balance shall then be distributed to the successor trust and the balance of the principal balance  
72 together with any undistributed net income shall be distributed to the charitable trust;

73 (6) In the event that a life beneficiary for whose benefit a contribution or contributions  
74 shall have been made to the family trust shall cease to [be eligible for services provided by the  
75 department of mental health] **have a disability as defined in section 402.200** and neither the  
76 donor nor the then acting cotrustee, except a cotrustee of a trust created pursuant to section  
77 473.657, RSMo, or section 475.093, RSMo, shall revoke or withdraw the applicable portion, as  
78 set for in subdivision (7) of this subsection, of the principal balance, then the board of trustees  
79 may, by written notice to such donor or acting cotrustee, terminate the trust as to such beneficiary  
80 and thereupon shall distribute the applicable portion, as set forth in subdivision (7) of this  
81 subsection, of the principal balance, to the trustee of the successor trust to be held, administered  
82 and distributed by such trustee in accordance with the provisions of the successor trust described  
83 in subdivision (12) of this subsection;

84 (7) If at the time of withdrawal or termination as provided in subdivision (6) of this  
85 subsection of a life beneficiary's account from the trust either the life beneficiary shall not have  
86 received any benefits provided by the use of the trust income or principal or the life beneficiary  
87 shall have received benefits provided by the use of trust income or principal for a period of not  
88 more than five years from the date a contribution shall have first been made to the trust for such  
89 life beneficiary, then an amount equal to ninety percent of the principal balance shall be  
90 distributed to the successor trust, and the balance of the principal balance together with all  
91 undistributed net income shall be distributed to the charitable trust; provided, however, if the life  
92 beneficiary at the time of such withdrawal by the cotrustee or termination as provided above shall  
93 have received any benefits provided by the use of trust income or principal for a period of more  
94 than five years from the date a contribution shall have first been made to the trust for such life  
95 beneficiary, then an amount equal to seventy-five percent of the principal balance shall be  
96 distributed to the successor trust, and the balance of the principal balance together with all  
97 undistributed net income shall be distributed to the charitable trust;

98 (8) Subject to the provisions of subdivision (9) of this subsection, if the life beneficiary  
99 dies before receiving any benefits provided by the use of trust income or principal, then an

100 amount equal to one hundred percent of the principal balance shall be distributed to such person  
101 or persons as the donor shall have designated. Any undistributed net income shall be distributed  
102 to the charitable trust. If at the time of death of the life beneficiary, the life beneficiary shall have  
103 been receiving benefits provided by the use of trust income or principal or income and principal,  
104 then, in such event, an amount equal to seventy-five percent of the principal balance shall be  
105 distributed to such person or persons as the donor designated, and the balance of the principal  
106 balance, together with all undistributed net income, shall be distributed to the charitable trust;

107 (9) In the event the trust is created as a result of a distribution from a personal  
108 representative of an estate of which the life beneficiary is a distributee, then if the life beneficiary  
109 dies before receiving any benefits provided by the use of trust income or principal, an amount  
110 equal to one hundred percent of the principal balance shall be distributed to such person or  
111 persons who are the life beneficiary's heirs at law. Any undistributed income shall be distributed  
112 to the charitable trust. If at the time of death of the life beneficiary the life beneficiary shall have  
113 been receiving benefits provided by the use of trust income or principal or income and principal,  
114 then, an amount equal to seventy-five percent of the principal balance shall be distributed to such  
115 person or persons who are the life beneficiary's heirs at law. The balance of the principal balance  
116 together with all undistributed income shall be distributed to the charitable trust. If there are no  
117 heirs at the time of either such distribution, the then-principal balance together with all  
118 undistributed income shall be distributed to the charitable trust;

119 (10) In the event the trust is created [as a result of the recovery of damages by reason of  
120 a personal injury to the life beneficiary, then if the life beneficiary dies before receiving any  
121 benefits provided by the use of trust income or principal, the state of Missouri shall receive all  
122 amounts remaining in the life beneficiary's account up to an amount equal to the total medical  
123 assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United  
124 States Code, and then to the extent there is any amount remaining in the life beneficiary's  
125 account, an amount equal to one hundred percent of the principal balance shall be distributed to  
126 such person or persons who are the life beneficiary's heirs at law. If there are no heirs, the  
127 balance, if any, of the principal balance together with all undistributed income shall be  
128 distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary  
129 should have been receiving benefits provided by the use of trust income or principal or income  
130 and principal then the state of Missouri shall receive all amounts remaining in the life  
131 beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such  
132 life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent  
133 there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five  
134 percent of the principal balance shall be distributed to such person or persons who are the life  
135 beneficiary's heirs at law and the balance of the principal balance together with all undistributed

136 income shall be distributed to the charitable trust. If there are no heirs, the balance of the  
137 principal balance, together with all undistributed income, shall be distributed to the charitable  
138 trust;

139 (11) In the event an account is established] **with the proceeds from the recovery of**  
140 **damages by reason of a personal injury to the life beneficiary or** with the assets of the  
141 beneficiary by the beneficiary, a family member, the beneficiary's guardian, or pursuant to a court  
142 order, all in accordance with Title 42 of the United States Code Section **1396p(d)(4)(A) or**  
143 **Section 1396p(d)(4)(C)**, then upon the death of the life beneficiary the state of [Missouri]  
144 **residence of the beneficiary** shall receive all amounts remaining in the life beneficiary's account  
145 up to an amount equal to the total medical assistance paid on behalf of such life beneficiary  
146 under a state plan under Title 42 of the United States Code[, and then] ("**State Plan**"); **except**  
147 **that twenty-five percent of the principal balance shall first be distributed to the charitable**  
148 **trust.** To the extent there is any amount remaining in the life beneficiary's account, [an amount  
149 equal to seventy-five percent of] the principal balance shall be distributed to such person or  
150 persons who are the life beneficiary's heirs at law [and the balance of the principal balance  
151 together with all undistributed income shall be distributed to the charitable trust]. If there are no  
152 heirs, the balance of the principal balance together with all undistributed income shall be  
153 distributed to the charitable trust. **In the event that two or more states are entitled to receive**  
154 **reimbursement for medical assistance paid on behalf of a beneficiary and the total of such**  
155 **medical assistance is in excess of the balance in the beneficiary account, then each such**  
156 **state shall be paid an amount equal to that portion of the beneficiary's account as is equal**  
157 **to the portion of the total medical assistance paid by each such state;**

158 [(12)] **(11)** Notwithstanding the provisions of subdivisions (4) to (8) of this subsection  
159 to the contrary, the donor may voluntarily agree to a smaller percentage of the principal balance  
160 in any account established by such donor than is provided in this subsection to be returned to the  
161 donor or distributed to the successor trust, as the case may be; and a corresponding larger  
162 percentage of the principal balance in such account to be distributed either to the charitable trust  
163 or to a designated restricted account within the charitable trust;

164 [(13)] **(12)** Upon receipt of a notice of withdrawal from a designated cotrustee, other than  
165 the original donor, and a determination by the board of trustees that the reason for such  
166 withdrawal is good and sufficient, or upon the issuance of notice of termination by the board of  
167 trustees, the board of trustees shall distribute and pay over to the designated trustee of the  
168 successor trust the applicable portion of the principal balance as set forth in subdivision (7) of  
169 this subsection; provided, however, that court approval of distribution to a successor trustee shall  
170 be required in connection with any trust created pursuant to section 473.657, RSMo, or section  
171 475.093, RSMo.

172 The designated trustee of the successor trust shall hold, administer and distribute the principal  
173 and income of the successor trust, in the discretion of such trustee, for the maintenance, support,  
174 health, education and general well-being of the beneficiary, recognizing that it is the purpose of  
175 the successor trust to supplement, not replace, any government benefits for the beneficiary's basic  
176 support to which such beneficiary may be entitled and to increase the quality of such  
177 beneficiary's life by providing the beneficiary with those amenities which cannot otherwise be  
178 provided by public assistance or entitlements or other available sources. Permissible  
179 expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic  
180 work or treatment than is otherwise available from public assistance, private rehabilitative  
181 training, supplementary education aid, entertainment, periodic vacations and outings,  
182 expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to  
183 purchase personal property and services which will make life more comfortable and enjoyable  
184 for the beneficiary but which will not defeat his or her eligibility for public assistance.  
185 Expenditures may include payment of the funeral and burial costs of the beneficiary. The  
186 designated trustee, in his or her discretion, may make payments from time to time for a person  
187 to accompany the beneficiary on vacations and outings and for the transportation of the  
188 beneficiary or of friends and relatives of the beneficiary to visit the beneficiary. Any  
189 undistributed income shall be added to the principal from time to time. Expenditures shall not  
190 be made for the primary support or maintenance of the beneficiary, including basic food, shelter  
191 and clothing, if, as a result, the beneficiary would no longer be eligible to receive public benefits  
192 or assistance to which the beneficiary is then entitled. After the death and burial of the  
193 beneficiary, the remaining balance of the successor trust shall be distributed to such person or  
194 persons as the donor shall have designated;

195       [(14)] **(13)** The charitable trust shall be administered as part of the family trust, but as  
196 a separate account. The income attributable to the charitable trust shall be used to provide  
197 benefits for individuals who have a disability [or who are eligible for services provided by or  
198 through the department and who either have no immediate family or whose immediate family,  
199 in the reasonable opinion of the trustees, is financially unable to make a contribution to the trust  
200 sufficient to provide benefits for such individuals, while maintaining such individuals' eligibility  
201 for government entitlement funding] **and who have no income or very limited income other**  
202 **than benefits.** The trustees may from time to time determine to use part of the principal of the  
203 charitable trust to provide such benefits. [As used in this section, the term "immediate family"  
204 includes parents, children and siblings. The individuals to be beneficiaries of the charitable trust  
205 shall be recommended to the trustees by the department and others from time to time.] The  
206 trustees shall annually determine the amount of charitable trust income or principal to be used



207 to provide benefits and the nature and type of benefits to be provided for each identified  
208 beneficiary of the charitable trust. Any income not used shall be added to principal annually;  
209 [(15)] (14) Any person, with the consent of the board of trustees, may establish a  
210 restricted account within the charitable trust and shall be permitted to determine, with the  
211 consent of the board of trustees, the beneficiaries of such restricted account provided such  
212 beneficiaries qualify as participants of the trust as set forth in subsection 1 of section 402.205.

402.217. 1. No beneficiary shall have any vested or property rights or interests in [the  
2 family] **any trust established for the benefit of such beneficiary**, nor shall any beneficiary have  
3 the power to anticipate, assign, convey, alienate, or otherwise encumber any interest in the  
4 income or principal of the [family] trust, nor shall such income or the principal or any interest  
5 of any beneficiary thereunder be liable for any debt incurred by such beneficiary, nor shall the  
6 principal or income of the [family] trust be subject to seizure by any creditor or any beneficiary  
7 under any writ or proceeding in law or in equity.

8 2. Except for the right of a donor to revoke any gift made to the trust, pursuant to  
9 subdivision (4) of subsection 2 of section 402.215, and the right of any acting cotrustee, other  
10 than the original donor, to withdraw all or a portion of the principal balance, pursuant to  
11 subdivision (5) of subsection 2 of section 402.215, neither the donor nor any acting cotrustee  
12 shall have the right to sell, assign, convey, alienate or otherwise encumber, for consideration or  
13 otherwise, any interest in the income or principal of the family trust, nor shall such income or  
14 the principal or any interest of any beneficiary thereunder be liable for any debt incurred by the  
15 donor or any acting cotrustee, nor shall the principal or income of the family trust be subject to  
16 seizure by any creditor of any donor or any acting cotrustee under any writ or proceeding in law  
17 or in equity.

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