

SECOND REGULAR SESSION

HOUSE BILL NO. 2273

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor) AND WITTE (Co-sponsor).

Read 1st time February 27, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4917L.01I

AN ACT

To repeal sections 456.5-505 and 473.153, RSMo, and to enact in lieu thereof three new sections relating to the Missouri uniform trust code.

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

Section A. Sections 456.5-505 and 473.153, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 456.4-418, 456.5-505, and 473.153, to read as follows:

456.4-418. 1. During any period of time that this section applies to an irrevocable trust, the trustee shall have the authority in its discretion to distribute trust income or principal to a qualified remainder beneficiary of the trust. For purposes of this section, a "qualified remainder beneficiary" is a descendant of a permissible distributee who will be eligible to receive distributions of trust income or principal, whether mandatory or discretionary, upon the termination of the interest of such permissible distributee or upon the termination of the trust.

2. This section shall apply to an irrevocable trust that is administered in this state if:

(1) the trustee may distribute trust income or principal to one or more permissible distributees;

(2) no distributions of trust income or principal have been made to any permissible distributee during the ten-year period preceding the notice required by subsection 5 of this section;

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 (3) the trustee determines that there will be sufficient assets in the trust for the
16 trustee to meet its obligations to the permissible distributees after any distributions
17 authorized by this section;

18 (4) the trustee determines that the application of this section to the trust is not
19 inconsistent with a material purpose of the trust; and

20 (5) the trustee determines that the application of this section to a trust that is
21 exempt from the federal generation-skipping transfer tax will not cause the trust to become
22 subject to such tax.

23 3. After the trustee determines that this section applies to a trust, this section shall
24 continue to apply to the trust until the first to occur of the following:

25 (1) the termination of the interests of all the beneficiaries who were permissible
26 distributees on the date of the notice required by subsection 5 of this section;

27 (2) the termination of the trust; or

28 (3) the trustee determines that additional distributions under this section will
29 impair the ability of the trustee to meet its obligation to the permissible distributees.

30 4. A spendthrift provision in the terms of a trust is not presumed inconsistent with
31 the application of this section to the trust.

32 5. The trustee shall notify the qualified beneficiaries of the trustee that the trustee
33 has determined that this section applies to a trust not less than sixty days before
34 distributing trust income or principal to any qualified remainder beneficiary.

35 6. A trustee acting in good faith shall not be liable to any beneficiary for acting or
36 failing to act under this section.

456.5-505. 1. Whether or not the terms of a trust contain a spendthrift provision, during
2 the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's
3 creditors.

4 2. With respect to an irrevocable trust without a spendthrift provision, a creditor or
5 assignee of the settlor may reach the maximum amount that can be distributed to or for the
6 settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a
7 particular settlor may reach may not exceed the settlor's interest in the portion of the trust
8 attributable to that settlor's contribution.

9 3. With respect to an irrevocable trust with a spendthrift provision, a spendthrift
10 provision will prevent the settlor's creditors from satisfying claims from the trust assets except:

11 (1) Where the conveyance of assets to the trust was fraudulent as to creditors pursuant
12 to the provisions of chapter 428, RSMo; or

13 (2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the
14 trust became irrevocable:

15 (a) The settlor was the sole beneficiary of either the income or principal of the trust or
16 retained the power to amend the trust; or

17 (b) The settlor was one of a class of beneficiaries and retained a right to receive a
18 specific portion of the income or principal of the trust that was determinable solely from the
19 provisions of the trust instrument.

20 4. Any trustee who has a duty or power to pay the debts of a deceased settlor may publish
21 a notice in some newspaper published in the county **in which the domicile of the settlor at the**
22 **time of his or her death is situated** once a week for four consecutive weeks in substantially the
23 following form:

24 To all persons interested in the estate of, decedent. The undersigned
25 is acting as Trustee under a trust the terms of which provide that the debts of the decedent may
26 be paid by the Trustee(s) upon receipt of proper proof thereof. The address of the Trustee is
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28
29 All creditors of the decedent are noticed to present their claims to the undersigned within six (6)
30 months from the date of the first publication of this notice or be forever barred.

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33 Trustee

34 (1) If such publication is duly made by the trustee, any debts not presented to the trustee
35 within six months from the date of the first publication of the preceding notice shall be forever
36 barred as against the trustee and the trust property.

37 (2) A trustee shall not be liable to account to the decedent's personal representative under
38 the provisions of section 461.300, RSMo, by reason of any debt barred under the provisions of
39 this subsection.

40 **(3) For purposes of this subsection, the term "domicile" means the place in which**
41 **the settlor voluntarily fixed his or her abode, not for a mere special or temporary purpose,**
42 **but with a present intention of remaining there permanently or for an indefinite term.**

43 5. For purposes of this section:

44 (1) during the period the power may be exercised, the holder of a power of withdrawal
45 is treated in the same manner as the settlor of a revocable trust to the extent of the property
46 subject to the power; and

47 (2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
48 the trust only to the extent the value of the property affected by the lapse, release, or waiver
49 exceeds the greater of the amount specified in Sections 2041(b)(2), 2514(e) or 2503(b) of the
50 Internal Revenue Code.

51 6. This section shall not apply to a spendthrift trust described, defined, or established in
52 section 456.014.

 473.153. 1. If a testator by will makes provision for the compensation of his **or her**
2 personal representative, that shall be allowed and taken as his **or her** full compensation unless
3 **[he] the personal representative** files in the court a written instrument renouncing all claim for
4 the compensation provided by the will before qualifying as personal representative. When no
5 compensation is provided in the will, or when there is no will, or when the personal
6 representative renounces all claim to the compensation provided in the will, the compensation
7 of the personal representative shall be determined pursuant to this section. When there is only
8 one personal representative he **or she** shall be allowed as the minimum compensation for his **or**
9 **her** services the following percentages of the value of the personal **and real** property
10 administered [and of the proceeds of all real property sold under order of the probate court]:

11 On the first	\$ 5,000,	5	percent;
12 On the next	20,000,	4	percent;
13 On the next	75,000,	3	percent;
14 On the next	300,000,	2 3/4	percent;
15 On the next	600,000,	2 1/2	percent;
16 On all over	1,000,000,	2	percent.

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18 In any case where reasonable compensation to the personal representative is in excess of the
19 minimum provided in the above schedule, the court shall allow such additional compensation
20 as will make the compensation of the personal representative reasonable and adequate.
21 Performance by the personal representative of extraordinary services is not necessary to entitle
22 him to such additional compensation. Such percentages shall be computed on the value of the
23 personal property at the time of disbursement or distribution thereof, except that where it is
24 necessary to allow compensation before the property is disbursed or distributed, or to allow
25 compensation to a personal representative who has been succeeded by another personal
26 representative, the court may determine the fair market value of property at the time of making
27 the allowance and base such percentage thereon.

28 2. When there are two or more joint or successor personal representatives they shall be
29 allowed in the aggregate reasonable compensation for their services, not exceeding twice the
30 minimum provided for in the schedule set forth in subsection 1 of this section or five percent of
31 the value of the personal **and real** property administered [and of the proceeds of the real property
32 sold under order of the probate division], whichever is less, except that this maximum limitation
33 shall not apply if [possession has been taken of real property pursuant to order of the probate
34 division but such real property has not been sold under order of the probate division, or if]

35 extraordinary services have been performed. Where there are two or more joint or successor
36 personal representatives the compensation allowed them shall be apportioned among them by
37 the court according to the services actually rendered by each, or as they may agree.

38 3. Attorneys performing services for the estate at the instance of the personal
39 representative shall be allowed out of the estate as the minimum compensation for their services
40 sums equal to the percentages set forth in the schedule contained in subsection 1 of this section.
41 In any case where reasonable compensation to the attorneys is in excess of the minimum
42 provided in the schedule the court shall allow such additional compensation as will make the
43 compensation of the attorneys reasonable and adequate. Performance by the attorneys of
44 extraordinary services is not necessary to entitle them to such additional compensation. If the
45 personal representative is an attorney, no allowance shall be made for legal services performed
46 by him **or her** or at his **or her** instance unless such services are authorized by the will or by order
47 of the court or are consented to by all heirs and devisees whose rights may be adversely affected
48 by the allowance. In addition, when one member of a law firm or professional corporation serves
49 as personal representative of the estate and another member of the same law firm or professional
50 corporation serves as the attorney for the estate, only one fee as set forth in subsection 1 of this
51 section shall be allowed.

52 4. A personal representative may employ independent accountants, certified public
53 accountants, or tax specialists holding a valid permit to practice before the United States
54 Treasury Department to assist [him] **the personal representative** in filing estate tax returns,
55 federal and state income tax returns, or establishing records of account and reporting on financial
56 results in those estates requiring this service and such person shall be allowed reasonable
57 compensation for such service as determined by the court. If the personal representative is a
58 certified public accountant, tax specialist holding a valid permit to practice before the United
59 States Treasury Department or an independent accountant, no allowance shall be made for
60 accountant services performed by him **or her** or at his **or her** instance unless such services are
61 authorized by will or by order of the court or are consented to by all heirs and devisees whose
62 rights may be adversely affected by the allowance. In addition, when one member of an
63 accounting firm or professional corporation serves as an accountant for the estate, only one fee
64 as set forth in subsection 1 of this section will be allowed.

65 5. If the court finds that any accountant's services or actions in connection therewith are
66 wrong, improper or injurious to the estate, no accountant fee whatsoever shall be allowed.

67 6. Compensation properly allowable hereunder may be allowed to personal
68 representatives or attorneys upon final settlement, or partial compensation upon application
69 therefor, at any time or times during administration. If the court finds that a personal
70 representative has failed to discharge his **or her** duties as such in any respect it may deny [him]

71 **the personal representative** any compensation whatsoever or may reduce the compensation
72 which would otherwise be allowed. If the court finds that any attorney's services or actions in
73 connection therewith are wrong, improper or injurious to the estate, no attorney fee whatever
74 shall be allowed.

75 7. No personal representative, other than one who is an attorney, may appear in court
76 except by attorney, and such attorney may not be a salaried employee of the personal
77 representative, but when the personal representative is an attorney, nothing herein shall prevent
78 [his] **the personal representative from** being represented in court by a partner, associate or
79 employee who is an attorney. Any personal representative may prepare and file his **or her** own
80 inventories and settlements.

81 **8. For purposes of this section, real property is administered in a supervised**
82 **administration only if the personal representative takes possession of the real property**
83 **under subsection 2 of section 473.263, and real property is administered in an independent**
84 **administration if the personal representative takes possession or control of the property**
85 **under section 473.803.**

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