

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 239

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JONES (89) (Sponsor), JONES (117), GRISAMORE,
BIVINS AND SCHOELLER (Co-sponsors).

0752L.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 472.335, 473.333, 475.130, and 475.190, RSMo, and to enact in lieu thereof
four new sections relating to a conservator's investment in property.

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

Section A. Sections 472.335, 473.333, 475.130, and 475.190, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 472.335, 473.333, 475.130,
3 and 475.190, to read as follows:

472.335. The power of the court to approve, ratify, confirm and validate acts or
2 transactions entered into by a personal representative of the estate without court authorization
3 includes, without limitation, retention of real or personal property, compromises of claims by and
4 against the estate, [investments,] purchases, sales, mortgages, exchanges, abandonment, leases
5 of any duration, improvements, contracts to improve, contracts to sell, contracts to purchase, and
6 contracts to exchange and grants of options, easements, profits or other rights with respect to
7 land or other property. It also includes, without limitation, payment of a mortgage indebtedness
8 on the real estate of the decedent out of the personal estate and purchase of real estate at a sale
9 made under a mortgage, deed of trust, vendor's lien or other lien held by the decedent.

473.333. [If it appears that there is a surplus of money in the hands of the personal
2 representative that will not shortly be required for the expenses of administration, or payment
3 of claims, taxes or other required disbursements, the personal representative shall make such
4 investment of the money on or after August 28, 1998, in accordance with the provisions of the
5 Missouri prudent investor act, sections 469.900 to 469.913, RSMo. The personal representative

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.

6 may also, without an order of court, invest in (1) direct obligations of, or obligations
7 unconditionally guaranteed as to principal and interest, by the United States, or (2) accounts of
8 savings and loan associations to the extent the accounts are insured by the Federal Savings and
9 Loan Insurance Corporation, without inquiry as to whether the investment is reasonable and
10 prudent. An order of court authorizing investments pursuant to this section does not relieve a
11 personal representative or his sureties of responsibility and liability if the investment made is not
12 in fact in accordance with the Missouri prudent investor act, sections 469.900 to 469.913,
13 RSMo.] **Except as restricted or otherwise provided by the will of the decedent, on or after**
14 **August 28, 2009, the personal representative shall, without authorization or approval of**
15 **the court, invest liquid assets of the estate, including funds received from the sale of other**
16 **assets, other than funds needed to meet debts and expenses currently payable, in**
17 **accordance with the provisions of the Missouri prudent investor act, sections 469.900 to**
18 **469.913, RSMo, subject to the following exceptions:**

19 (1) **Investment of any part or all of the liquid assets:**

20 (a) **In direct obligation of or obligations unconditionally guaranteed as to principal**
21 **and interest by the United States; or**

22 (b) **In interest bearing accounts and time deposits, including time certificates of**
23 **deposit, in financial institutions to the extent the account or deposits are insured by the**
24 **Federal Deposit Insurance Corporation,**

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26 **shall constitute prudent investments;**

27 (2) **If the personal representative determines it appropriate to delegate investment**
28 **and management functions to an agent as provided in section 469.909, RSMo, the agent to**
29 **whom the delegation is made shall acknowledge in a writing delivered to the personal**
30 **representative that the agent is acting as an investment fiduciary on the account.**

475.130. 1. **The** conservator of the estate of a minor or disabled person shall, under
2 supervision of the court, protect, preserve and manage the estate, [invest it, on or after August
3 28, 1998, in accordance with the provisions of the Missouri prudent investor act, sections
4 469.900 to 469.913, RSMo,] apply it as provided in this code, account for it faithfully, perform
5 all other duties required of [him] **the conservator** by law, and at the termination of the
6 conservatorship deliver the assets of the protectee to the persons entitled thereto. In protecting,
7 preserving and managing the estate, the conservator of the estate is under a duty to use the degree
8 of care, skill and prudence which an ordinarily prudent [man] **person** uses in managing the
9 property of, and conducting transactions on behalf of, others. If a conservator of the estate has
10 special skills or is appointed on the basis of representations of special skills or expertise, [he] **the**
11 **conservator** is under a duty to use those skills in the conduct of the protectee's affairs. A

12 conservator of the estate is under a duty to act in the interest of the protectee and to avoid
13 conflicts of interest which impair [his] **the conservator's** ability so to act.

14 2. The conservator of the estate shall take possession of all of the protectee's real and
15 personal property, and of rents, income, issue and profits therefrom, whether accruing before or
16 after [his] **the conservator's** appointment, and of the proceeds arising from the sale, mortgage,
17 lease or exchange thereof. Subject to such possession, the title to all such estate, and to the
18 increment and proceeds thereof, is in the protectee and not in the conservator. Upon a showing
19 that funds available or payable for the benefit of the protectee by any federal agency are being
20 applied for the benefit of the protectee, or that such federal agency has refused to recognize the
21 authority of the conservator to administer such funds, the court may waive, by order, the duty of
22 the conservator to account therefor.

23 3. The court has full authority under the rules of civil procedure to enjoin any person
24 from interfering with the right of the conservator to possession of the assets of the protectee,
25 including benefits payable from any source.

26 4. The conservator of the estate shall prosecute and defend all actions instituted in behalf
27 of or against the protectee; collect all debts due or becoming due to the protectee, and give
28 acquittances and discharges therefor, and adjust, settle and pay all claims due or becoming due
29 from the protectee so far as his **or her** estate and effects will extend, except as provided in
30 sections 507.150 and 507.188, RSMo.

31 5. A conservator of the estate has power, without authorization or approval of the court,
32 to:

33 (1) Settle or compromise a claim against the protectee or the estate agreeing to pay or
34 paying not more than one thousand dollars;

35 (2) Settle, abandon or compromise a claim in favor of the estate which does not exceed
36 one thousand dollars;

37 (3) Sell, or agree to sell, chattels[,] choses in action [and investment securities]
38 reasonably worth not more than one thousand dollars for cash or upon terms involving a
39 reasonable extension of credit;

40 (4) Exchange, or agree to exchange, chattels[,] **and** choses in action [and investment
41 securities] for other such property of equivalent value, not in excess of one thousand dollars;

42 (5) Insure or contract for insurance of property of the estate against fire, theft and other
43 hazards;

44 (6) Insure or contract for insurance protecting the protectee against any liability likely
45 to be incurred, including medical and hospital expenses, and protecting the conservator against
46 liability to third parties arising from acts or omissions connected with possession or management
47 of the estate;

- 48 (7) Contract for needed repairs and maintenance of property of the estate;
- 49 (8) Lease land and buildings for terms not exceeding one year, reserving reasonable rent,
- 50 and renew any such lease for a like term;
- 51 (9) Vote corporate stock in person or by general or limited proxy;
- 52 (10) Contract for the provision of board, lodging, education, medical care, or necessities
- 53 of the protectee for periods not exceeding one year, and renew any such contract for a like
- 54 period;
- 55 **(11) On or after August 28, 2009, invest the estate in accordance with the provisions**
- 56 **of section 475.190.**
- 57 6. If, in exercising any power conferred by subsection 5 of this section, a conservator
- 58 breaches any of the duties enumerated in subsection 1 **of this section, [he] the conservator** may
- 59 be surcharged for losses to the estate caused by the breach but persons who dealt with the
- 60 conservator in good faith, without knowledge of or reason to suspect the breach of duty, may
- 61 enforce and retain the benefits of any transaction with the conservator which **[he] the**
- 62 **conservator** has power under subsection 5 of this section to conduct.
- 2 475.190. 1. [The conservator shall invest the money of the protectee, from whatever
- 3 source derived, unless it is required for other lawful purposes.
- 4 2. No investment, other than an investment (a) in the direct obligations of or obligations
- 5 unconditionally guaranteed as to principal and interest by the United States or (b) in savings
- 6 accounts and time deposits, including time certificates of deposit, in banking institutions to the
- 7 extent such accounts or deposits are insured by the Federal Deposit Insurance Corporation or (c)
- 8 in accounts of savings and loan associations to the extent such accounts are insured by the
- 9 Federal Savings and Loan Insurance Corporation, shall be made without prior order of the court.
- 10 3. The conservator may invest in any other property, real or personal, which the court
- 11 finds is a reasonable and prudent investment in the circumstances. An order of court authorizing
- 12 investment under this subsection does not relieve a conservator or his sureties of responsibility
- 13 and liability if the investment made is not in fact in accordance with the Missouri prudent
- 14 investor act, sections 469.900 to 469.913, RSMo.
- 15 **4.] On or after August 28, 2009, the conservator shall invest liquid assets of the**
- 16 **estate of the protectee, other than funds needed to meet debts and expenses currently**
- 17 **payable, in accordance with the provisions of the Missouri prudent investor act, sections**
- 18 **469.900 to 469.913, RSMo, subject to the following exceptions:**
- 19 **(1) Investment of any part or all of the liquid assets:**
- 20 **(a) In direct obligation of or obligations unconditionally guaranteed as to principal**
- and interest by the United States; or**

21 (b) In interest bearing accounts and time deposits, including time certificates of
22 deposit, in financial institutions to the extent the account or deposits are insured by the
23 Federal Deposit Insurance Corporation,

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25 shall constitute prudent investments;

26 (2) If the conservator determines it appropriate to delegate investment and
27 management functions to an agent as provided in section 469.909, RSMo, the agent to
28 whom the delegation is made shall acknowledge in a writing delivered to the conservator
29 that the agent is acting as an investment fiduciary on the account.

30 2. Every conservator shall make a report at every annual settlement of the disposition
31 made by the conservator of the money belonging to the protectee entrusted to [him] **the**
32 **conservator**. If it appears that the money is invested in securities, then the conservator shall
33 report a detailed description of the securities and shall describe any real estate security and state
34 where it is situated, and its value, which report shall be filed in the court. The court shall
35 carefully examine into the report as soon as made, and, if in the opinion of the court the security
36 is insufficient, the court shall make such orders as are necessary to protect the interest of the
37 protectee. The conservator and [his] **the conservator's** sureties are liable on their bond for any
38 omission to comply with the orders of the court. If the money has not been invested as
39 authorized by law the conservator shall state that fact and the reasons, and shall state that the
40 conservator has been unable to make an investment after diligent effort to do so.

41 [5.] 3. If any conservator refuses or neglects to make the report at the time aforesaid, or
42 makes a false report thereof, [he and his] **the conservator and the conservator's** sureties are
43 liable on their bond for all loss or damage to the protectee occasioned by reason of [his] **the**
44 **conservator's** neglect or refusal so to report, or by making a false report, and the conservator
45 may, on account thereof, be removed from [his] **the conservator's** trust in the discretion of the
46 court.

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