

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 239**  
**95TH GENERAL ASSEMBLY**

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Reported from the Committee on Financial and Governmental Organizations and Elections, April 23, 2009, with recommendation that the Senate Committee Substitute do pass.

0752S.04C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 172.290, 402.010, 402.015, 402.025, 402.030, 402.035, 402.040, 402.045, 402.055, 402.060, 456.5-505, 469.411, 472.335, 473.333, 475.130, and 475.190, RSMo, and to enact in lieu thereof twenty new sections relating to the management of funds.

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

Section A. Sections 172.290, 402.010, 402.015, 402.025, 402.030, 402.035, 402.040, 402.045, 402.055, 402.060, 456.5-505, 469.411, 472.335, 473.333, 475.130, and 475.190, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 172.290, 362.333, 369.162, 402.130, 402.132, 402.134, 402.136, 402.138, 402.140, 402.142, 402.144, 402.146, 402.148, 456.4-418, 456.5-505, 469.411, 472.335, 473.333, 475.130, and 475.190, to read as follows:

172.290. **Notwithstanding any other provision of law to the contrary,** grants made to the curators for specified purposes and uses shall not be applied, either wholly or in part, to any other uses; **provided, however, that in carrying out its duties as trustee, the curators may use a reasonable portion of its endowment to support internal endowment administration and development functions. For purposes of this section, "reasonable portion" shall mean no more than two percent of the total market value of the endowment for the applicable year.**

362.333. **In addition to the powers authorized in section 362.332, a bank or trust company with authorized trust authority and created under the laws of this state may transfer by assignment, for consideration or no consideration, some or all of its fiduciary**

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

5 obligations that consist only of irrevocable life insurance trusts to the  
6 Missouri trust office of an out-of-state bank with trust powers or an  
7 out-of-state trust company. The transfer of such irrevocable life  
8 insurance trusts shall be subject to the provisions of this section and  
9 to all regulatory procedures described in subsections 2 to 7 of section  
10 362.332. On the effective date of the transfer of fiduciary obligations  
11 under this section, the transferring bank or trust company shall be  
12 released from all transferred fiduciary obligations and shall cease to  
13 act as a fiduciary, except that such transferring bank or trust company  
14 shall not be relieved of any obligations arising out of a breach of  
15 fiduciary duty occurring prior to such effective date.

369.162. In addition to any other banking authority, a savings  
2 and loan association or a savings bank with authorized trust authority  
3 and created under the laws of this state may transfer by assignment,  
4 for consideration or no consideration, some or all of its fiduciary  
5 obligations that consist only of irrevocable life insurance trusts in the  
6 same way as permitted a Missouri bank or trust company under section  
7 362.333, RSMo.

402.130. As used in sections 402.130 to 402.148, the following  
2 terms shall mean:

3 (1) "Charitable purpose", the relief of poverty, the advancement  
4 of education or religion, the promotion of health, the promotion of a  
5 governmental purpose, or any other purpose the achievement of which  
6 is beneficial to the community;

7 (2) "Endowment fund", an institutional fund or part thereof that,  
8 under the terms of a gift instrument, is not wholly expendable by the  
9 institution on a current basis. The term shall not include assets that an  
10 institution designates as an endowment fund for its own use;

11 (3) "Gift instrument", a record or records, including an  
12 institutional solicitation under which property is granted to,  
13 transferred to, or held by an institution as an institutional fund;

14 (4) "Institution":

15 (a) A person, other than an individual, organized and operated  
16 exclusively for charitable purposes;

17 (b) A government or governmental subdivision, agency, or  
18 instrumentality to the extent that it holds funds exclusively for a  
19 charitable purpose; or

20 (c) A trust that had both charitable and noncharitable interests  
21 after all noncharitable interests have terminated;

22 (5) "Institutional fund", a fund held by an institution exclusively  
23 for charitable purposes. It shall not include:

24 (a) Program-related assets;

25 (b) A fund held for an institution by a trustee that is not an  
26 institution; or

27 (c) A fund in which a beneficiary that is not an institution has  
28 an interest other than an interest that could arise upon violation or  
29 failure of the purposes of the fund;

30 (6) "Person", an individual, corporation, business trust, estate,  
31 trust, partnership, limited liability company, association, joint venture,  
32 public corporation, government or governmental subdivision, agency,  
33 or instrumentality, or any other legal or commercial entity;

34 (7) "Program-related asset", an asset held by an institution  
35 primarily to accomplish a charitable purpose of the institution and not  
36 primarily for investment;

37 (8) "Record", information that is inscribed on tangible medium  
38 or that is stored in an electronic or other medium and is retrievable in  
39 perceivable form.

402.132. 1. Subject to the intent of a donor expressed in a gift,  
2 an institution, in managing and investing an institutional fund, shall  
3 consider the charitable purposes of the institution and the purposes of  
4 the institutional fund.

5 2. In addition to complying with the duty of loyalty imposed by  
6 law other than in sections 402.130 to 402.148, each person responsible  
7 for managing and investing an institutional fund shall manage and  
8 invest the fund in good faith and with the care an ordinary prudent  
9 person in a like position would exercise under similar circumstances.

10 3. In managing and investing an institutional fund, an  
11 institution:

12 (1) May incur only costs that are appropriate and reasonable in  
13 relation to the assets, the purpose of the institution, and the skills  
14 available to the institution; and

15 (2) Shall make a reasonable effort to verify facts relevant to the  
16 management and investment of the fund.

17 4. An institution may pool two or more institutional funds for the

18 purposes of management and investment.

19 5. Except as otherwise provided by a gift instrument, the  
20 following rules apply:

21 (1) In managing and investing an institutional fund, the  
22 following factors, if relevant, shall be considered:

23 (a) General economic conditions;

24 (b) The possible effect of inflation or deflation;

25 (c) The expected tax consequences, if any, of investment  
26 decisions or strategies;

27 (d) The role that each investment or course of action plays  
28 within the overall investment portfolio of the fund;

29 (e) The expected total return from the income and the  
30 appreciation of investments;

31 (f) Other resources of the institution;

32 (g) The needs of the institution and the fund to make the  
33 distributions and to preserve capital; and

34 (h) An asset's special relationship or special value, if any, to the  
35 charitable purposes of the institution;

36 (2) Management and investment decisions about an individual  
37 asset shall not be made in isolation but in the context of the  
38 institutional fund's portfolio of investments as a whole and as a part of  
39 an overall investment strategy having risk and return objectives  
40 reasonably suited to the fund and to the institution;

41 (3) Except as otherwise provided by law other than in sections  
42 402.130 to 402.148, an institution may invest in any kind of property or  
43 type of investment consistent with this section;

44 (4) An institution shall diversify the investments of an  
45 institutional fund unless the institution reasonably determines that  
46 because of special circumstances the purposes of the fund are better  
47 served without diversification;

48 (5) Within a reasonable time after receiving property, an  
49 institution shall make and carry out decisions concerning the retention  
50 or disposition of the property or to rebalance a portfolio in order to  
51 bring the institutional fund into compliance with the purposes, terms,  
52 and distribution requirements of the institution as necessary to meet  
53 other circumstances of the institution and the requirements of sections  
54 402.130 to 402.148;

55           (6) A person that has or represents to have special skills or  
56 expertise, or is selected in reliance upon the person's representation  
57 that the person has special skills or expertise and in reliance  
58 thereupon is selected and assigned institutional funds management and  
59 investment functions, has a duty to use those skills or that expertise in  
60 managing and investing institutional funds.

          402.134. 1. Subject to the intent of the donor expressed in the  
2 gift instrument, an institution may appropriate for expenditure or  
3 accumulate so much of an endowment fund as the institution  
4 determines is prudent for the uses, benefits, purposes, and duration for  
5 which the endowment fund is established. Unless otherwise stated in  
6 the gift instrument, the assets in an endowment fund are donor-  
7 restricted assets until appropriated for expenditure by the institution.  
8 In making a determination to appropriate or accumulate, the  
9 institution shall act in good faith with the care that an ordinary  
10 prudent person in a like position would exercise under similar  
11 circumstances and shall consider, if relevant, the following factors:

- 12           (1) The duration and preservation of the endowment fund;
- 13           (2) The purposes of the institution and the endowment fund;
- 14           (3) General economic conditions;
- 15           (4) The possible effect of inflation or deflation;
- 16           (5) The expected total return from income and the appreciation  
17 of investments;
- 18           (6) Other resources of the institution; and
- 19           (7) The investment policy of the institution.

20           2. To limit the authority to appropriate for expenditure or  
21 accumulate under subsection 1 of this section, a gift instrument shall  
22 specifically state the limitation.

23           3. Terms in a gift instrument designating a gift as an endowment,  
24 or a direction or authorization in the gift instrument to use only  
25 "income", "interest", "dividends", or "rents, issues or profits", or to  
26 preserve the principal intact, or words of that import that:

- 27           (1) Create an endowment fund of permanent duration unless  
28 other language in the gift instrument limits the duration or purpose of  
29 the fund; and
- 30           (2) Do not otherwise limit the authority to appropriate for  
31 expenditure or accumulate under subsection 1 of this section.

402.136. 1. Subject to any specific limitation set forth in a gift instrument or law not within sections 402.130 to 402.148, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith with the care that an ordinarily prudent person in a like position would exercise under similar circumstances in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation consistent with the purposes of the institution and the institutional fund; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

3. An institution that complies with subsection 1 of this section is not liable for the decisions or actions of an agent to which the function was delegated.

4. By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

5. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law other than provided for in sections 402.130 to 402.148.

402.138. 1. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

2. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment

11 of the fund, or if, because of circumstances not anticipated by the  
12 donor, a modification of a restriction will further the purposes of the  
13 fund. The institution shall notify the attorney general of the  
14 application, and the attorney general shall be given an opportunity to  
15 be heard. To the extent practicable, any modification shall be made in  
16 accordance with the donor's probable intention.

17 3. If a particular charitable purpose or restriction contained in  
18 a gift instrument on the use of an institutional fund becomes unlawful,  
19 impracticable, impossible to achieve, or wasteful, the court, upon  
20 application of an institution, may modify the purpose of the fund or the  
21 restriction on the use of the fund in a manner consistent with the  
22 charitable purposes expressed in the gift instrument. The institution  
23 shall notify the attorney general of the application, and the attorney  
24 general shall be given an opportunity to be heard.

25 4. If an institution determines that a restriction contained in a  
26 gift instrument on the management, investment, or purpose of an  
27 institutional fund is unlawful, impracticable, impossible to achieve, or  
28 wasteful, the institution, sixty days after notification to the attorney  
29 general, may release or modify the restrictions in whole or in part if:

30 (1) The institutional fund subject to the restriction has a total  
31 value of less than fifty thousand dollars;

32 (2) More than ten years have lapsed since the fund was  
33 established; and

34 (3) The institution uses the property in a manner consistent with  
35 the charitable purposes expressed in the gift instrument.

402.140. Sections 402.130 to 402.148 shall apply to institutional  
2 funds existing on or established after August 28, 2009.

402.142. As authorized in 15 U.S.C. 7002, as amended, sections  
2 402.130 to 402.148 modifies, limits, or supersedes the federal Electronic  
3 Signatures in Global and National Commerce Act, 15 U.S.C. Section  
4 7001, et seq., but do not modify, limit, or supersede 15 U.S.C. Section  
5 7001(a), or authorize electronic delivery of any of the notices described  
6 in 15 U.S.C. Section 7003(b).

402.144. Compliance with sections 402.130 to 402.148 is  
2 determined in light of the facts and circumstances existing at the time  
3 a decision is made or action is taken and not by hindsight.

402.146. In applying and construing sections 402.130 to 402.148,

2 consideration shall be given to the need to promote uniformity of the  
3 law with respect to its subject matter among states that enact it.

402.148. Nothing in sections 402.130 to 402.148 shall act to amend  
2 the status of governing boards or the duties and liabilities of directors  
3 under other applicable law.

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

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

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

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

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

20 (4) The trustee determines that the application of this section to  
21 the trust is not inconsistent with a material purpose of the trust;

22 (5) The trustee determines that the application of this section to  
23 a trust that is exempt from the federal generation-skipping transfer tax  
24 will not cause the trust to become subject to such tax; and

25 (6) The trust became irrevocable on or before September 25,  
26 1985.

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

30 (1) The termination of the interests of all the beneficiaries who  
31 were permissible distributees on the date of the notice required by  
32 subsection 5 of this section;



33           **(2) The termination of the trust; or**

34           **(3) The trustee determines that additional distributions under**  
35 **this section will impair the ability of the trustee to meet its obligation**  
36 **to the permissible distributees.**

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

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

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

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

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

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

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

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

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

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

22          4. Any trustee who has a duty or power to pay the debts of a deceased  
23 settlor may publish a notice in [some] a newspaper published in the county  
24 **designated in subdivision (3) of this subsection** once a week for four

25 consecutive weeks in substantially the following form:

26 To all persons interested in the estate of ....., decedent. The  
27 undersigned ..... is acting as Trustee under a trust the terms of which  
28 provide that the debts of the decedent may be paid by the Trustee(s) upon receipt  
29 of proper proof thereof. The address of the Trustee is .....

30 All creditors of the decedent are noticed to present their claims to the  
31 undersigned within six (6) months from the date of the first publication of this  
32 notice or be forever barred.

33 .....

34 Trustee

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

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

42 **(3) Such publication shall be in a newspaper published in:**

43 **(a) The county in which the domicile of the settlor at the time of**  
44 **his or her death is situated;**

45 **(b) If the settlor had no domicile in this state at the time of his**  
46 **or her death, any county wherein trust assets are located; except that,**  
47 **when the major part of the trust assets in this state consist of real**  
48 **estate, the notice shall be published in the county in which the real**  
49 **estate or the major part thereof is located; or**

50 **(c) If the settlor had no domicile in this state at the time of his**  
51 **or her death and no trust assets are located therein, the county**  
52 **wherein the principal place of administration of the trust is located.**

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

57 5. For purposes of this section:

58 (1) During the period the power may be exercised, the holder of a power  
59 of withdrawal is treated in the same manner as the settlor of a revocable trust  
60 to the extent of the property subject to the power; and

61           (2) Upon the lapse, release, or waiver of the power, the holder is treated  
62 as the settlor of the trust only to the extent the value of the property affected by  
63 the lapse, release, or waiver exceeds the greater of the amount specified in  
64 Sections 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code.

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

          469.411. 1. If the provisions of this section apply to a trust, the unitrust  
2 amount shall be determined as follows:

3           (1) For the first three accounting periods of the trust, the unitrust amount  
4 for a current valuation year of the trust shall be a percentage between three and  
5 five percent that is specified by the terms of the governing instrument or by the  
6 election made in accordance with subdivision (2) of subsection 5 of this section,  
7 of the net fair market values of the assets held in the trust on the first business  
8 day of the current valuation year;

9           (2) Beginning with the fourth accounting period of the trust, the unitrust  
10 amount for a current valuation year of the trust shall be a percentage between  
11 three and five percent that is specified by the terms of the governing instrument  
12 or by the election made in accordance with subdivision (2) of subsection 5 of this  
13 section, of the average of the net fair market values of the assets held in the trust  
14 on the first business day of the current valuation year and the net fair market  
15 values of the assets held in the trust on the first business day of each prior  
16 valuation year, regardless of whether this section applied to the ascertainment  
17 of net income for all valuation years;

18           (3) The unitrust amount for the current valuation year computed pursuant  
19 to subdivision (1) or (2) of this subsection shall be proportionately reduced for any  
20 distributions, in whole or in part, other than distributions of the unitrust amount,  
21 and for any payments of expenses, including debts, disbursements and taxes, from  
22 the trust within a current valuation year that the trustee determines to be  
23 material and substantial, and shall be proportionately increased for the receipt,  
24 other than a receipt that represents a return on investment, of any additional  
25 property into the trust within a current valuation year;

26           (4) For purposes of subdivision (2) of this subsection, the net fair market  
27 values of the assets held in the trust on the first business day of a prior valuation  
28 year shall be adjusted to reflect any reduction, in the case of a distribution or  
29 payment, or increase, in the case of a receipt, for the prior valuation year  
30 pursuant to subdivision (3) of this subsection, as if the distribution, payment or

31 receipt had occurred on the first day of the prior valuation year;

32 (5) In the case of a short accounting period, the trustee shall prorate the  
33 unitrust amount on a daily basis;

34 (6) In the case where the net fair market value of an asset held in the  
35 trust has been incorrectly determined either in a current valuation year or in a  
36 prior valuation year, the unitrust amount shall be increased in the case of an  
37 undervaluation, or be decreased in the case of an overvaluation, by an amount  
38 equal to the difference between the unitrust amount determined based on the  
39 correct valuation of the asset and the unitrust amount originally determined.

40 2. As used in this section, the following terms mean:

41 (1) "Current valuation year", the accounting period of the trust for which  
42 the unitrust amount is being determined;

43 (2) "Prior valuation year", each of the two accounting periods of the trust  
44 immediately preceding the current valuation year.

45 3. In determining the sum of the net fair market values of the assets held  
46 in the trust for purposes of subdivisions (1) and (2) of subsection 1 of this section,  
47 there shall not be included the value of:

48 (1) Any residential property or any tangible personal property that, as of  
49 the first business day of the current valuation year, one or more income  
50 beneficiaries of the trust have or had the right to occupy, or have or had the right  
51 to possess or control, other than in a capacity as trustee, and instead the right of  
52 occupancy or the right to possession or control shall be deemed to be the unitrust  
53 amount with respect to the residential property or the tangible personal property;  
54 or

55 (2) Any asset specifically given to a beneficiary under the terms of the  
56 trust and the return on investment on that asset, which return on investment  
57 shall be distributable to the beneficiary.

58 4. In determining the net fair market value of each asset held in the trust  
59 pursuant to subdivisions (1) and (2) of subsection 1 of this section, the trustee  
60 shall, not less often than annually, determine the fair market value of each asset  
61 of the trust that consists primarily of real property or other property that is not  
62 traded on a regular basis in an active market by appraisal or other reasonable  
63 method or estimate, and that determination, if made reasonably and in good  
64 faith, shall be conclusive as to all persons interested in the trust. Any claim  
65 based on a determination made pursuant to this subsection shall be barred if not  
66 asserted in a judicial proceeding brought by any beneficiary with any interest

67 whatsoever in the trust within two years after the trustee has sent a report to all  
68 qualified beneficiaries that adequately discloses the facts constituting the  
69 claim. The rules set forth in subsection 2 of section 469.409 shall apply to the  
70 barring of claims pursuant to this subsection.

71 5. This section shall apply to the following trusts:

72 (1) Any trust created after August 28, 2001, with respect to which the  
73 terms of the trust clearly manifest an intent that this section apply;

74 (2) Any trust created under an instrument that became irrevocable on,  
75 before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects  
76 to have this section apply unless the instrument creating the trust specifically  
77 prohibits an election under this subdivision. The trustee shall deliver notice to  
78 all qualified beneficiaries and the settlor of the trust, if he or she is then living,  
79 of the trustee's intent to make such an election at least sixty days before making  
80 that election. The trustee shall have sole authority to make the election. Section  
81 469.402 shall apply for all purposes of this subdivision. An action or order by any  
82 court shall not be required. The election shall be made by a signed writing  
83 delivered to the settlor of the trust, if he or she is then living, and to all qualified  
84 beneficiaries. The election is irrevocable, unless revoked by order of the court  
85 having jurisdiction of the trust. The election may specify the percentage used to  
86 determine the unitrust amount pursuant to this section, provided that such  
87 percentage is between three and five percent, or if no percentage is specified, then  
88 that percentage shall be three percent. In making an election pursuant to this  
89 subsection, the trustee shall be subject to the same limitations and conditions as  
90 apply to an adjustment between income and principal pursuant to subsections 3  
91 and 4 of section 469.405;

92 (3) No action of any kind based on an election made by a trustee pursuant  
93 to subdivision (2) of this subsection shall be brought against the trustee by any  
94 beneficiary of that trust three years from the effective date of that election;

95 (4) If this section is made applicable under this subdivision to an  
96 institutional endowment fund, as defined in section [402.010] **402.130**, RSMo, the  
97 restrictions contained in section [402.015] **402.134**, RSMo, shall not apply to the  
98 extent payment of a unitrust amount would otherwise be prohibited.

472.335. The power of the court to approve, ratify, confirm and validate  
2 acts or transactions entered into by a personal representative of the estate  
3 without court authorization includes, without limitation, retention of real or  
4 personal property, compromises of claims by and against the estate,

5 [investments,] purchases, sales, mortgages, exchanges, abandonment, leases of  
6 any duration, improvements, contracts to improve, contracts to sell, contracts to  
7 purchase, and contracts to exchange and grants of options, easements, profits or  
8 other rights with respect to land or other property. It also includes, without  
9 limitation, payment of a mortgage indebtedness on the real estate of the decedent  
10 out of the personal estate and purchase of real estate at a sale made under a  
11 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  
2 personal representative that will not shortly be required for the expenses of  
3 administration, or payment of claims, taxes or other required disbursements, the  
4 personal representative shall make such investment of the money on or after  
5 August 28, 1998, in accordance with the provisions of the Missouri prudent  
6 investor act, sections 469.900 to 469.913, RSMo. The personal representative may  
7 also, without an order of court, invest in (1) direct obligations of, or obligations  
8 unconditionally guaranteed as to principal and interest, by the United States, or  
9 (2) accounts of savings and loan associations to the extent the accounts are  
10 insured by the Federal Savings and Loan Insurance Corporation, without inquiry  
11 as to whether the investment is reasonable and prudent. An order of court  
12 authorizing investments pursuant to this section does not relieve a personal  
13 representative or his sureties of responsibility and liability if the investment  
14 made is not in fact in accordance with the Missouri prudent investor act, sections  
15 469.900 to 469.913, RSMo.] **Except as restricted or otherwise provided by**  
16 **the will of the decedent, on or after August 28, 2009, the personal**  
17 **representative shall, without authorization or approval of the court,**  
18 **invest liquid assets of the estate, including funds received from the sale**  
19 **of other assets, other than funds needed to meet debts and expenses**  
20 **currently payable, in accordance with the provisions of the Missouri**  
21 **prudent investor act, sections 469.900 to 469.913, RSMo, subject to the**  
22 **following exceptions:**

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

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

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

30 shall constitute prudent investments;

31 (2) If the personal representative determines it appropriate to  
32 delegate investment and management functions to an agent as provided  
33 in section 469.909, RSMo, the agent to whom the delegation is made  
34 shall acknowledge in a writing delivered to the personal representative  
35 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  
2 shall, under supervision of the court, protect, preserve and manage the estate,  
3 [invest it, on or after August 28, 1998, in accordance with the provisions of the  
4 Missouri prudent investor act, sections 469.900 to 469.913, RSMo,] apply it as  
5 provided in this code, account for it faithfully, perform all other duties required  
6 of [him] the conservator by law, and at the termination of the conservatorship  
7 deliver the assets of the protectee to the persons entitled thereto. In protecting,  
8 preserving and managing the estate, the conservator of the estate is under a duty  
9 to use the degree of care, skill and prudence which an ordinarily prudent [man]  
10 person uses in managing the property of, and conducting transactions on behalf  
11 of, others. If a conservator of the estate has special skills or is appointed on the  
12 basis of representations of special skills or expertise, [he] the conservator is  
13 under a duty to use those skills in the conduct of the protectee's affairs. A  
14 conservator of the estate is under a duty to act in the interest of the protectee and  
15 to avoid conflicts of interest which impair [his] the conservator's ability so to  
16 act.

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

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

31           4. The conservator of the estate shall prosecute and defend all actions  
32 instituted in behalf of or against the protectee; collect all debts due or becoming  
33 due to the protectee, and give acquittances and discharges therefor, and adjust,  
34 settle and pay all claims due or becoming due from the protectee so far as his **or**  
35 **her** estate and effects will extend, except as provided in sections 507.150 and  
36 507.188, RSMo.

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

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

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

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

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

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

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

55           (7) Contract for needed repairs and maintenance of property of the estate;

56           (8) Lease land and buildings for terms not exceeding one year, reserving  
57 reasonable rent, and renew any such lease for a like term;

58           (9) Vote corporate stock in person or by general or limited proxy;

59           (10) Contract for the provision of board, lodging, education, medical care,  
60 or necessities of the protectee for periods not exceeding one year, and renew any  
61 such contract for a like period;

62           **(11) On or after August 28, 2009, invest the estate in accordance**  
63 **with the provisions of section 475.190.**

64           6. If, in exercising any power conferred by subsection 5 of this section, a  
65 conservator breaches any of the duties enumerated in subsection 1 **of this**  
66 **section, [he] the conservator** may be surcharged for losses to the estate caused



67 by the breach but persons who dealt with the conservator in good faith, without  
68 knowledge of or reason to suspect the breach of duty, may enforce and retain the  
69 benefits of any transaction with the conservator which [he] **the conservator** has  
70 power under subsection 5 of this section to conduct.

475.190. 1. [The conservator shall invest the money of the protectee, from  
2 whatever source derived, unless it is required for other lawful purposes.

3 2. No investment, other than an investment (a) in the direct obligations  
4 of or obligations unconditionally guaranteed as to principal and interest by the  
5 United States or (b) in savings accounts and time deposits, including time  
6 certificates of deposit, in banking institutions to the extent such accounts or  
7 deposits are insured by the Federal Deposit Insurance Corporation or (c) in  
8 accounts of savings and loan associations to the extent such accounts are insured  
9 by the Federal Savings and Loan Insurance Corporation, shall be made without  
10 prior order of the court.

11 3. The conservator may invest in any other property, real or personal,  
12 which the court finds is a reasonable and prudent investment in the  
13 circumstances. An order of court authorizing investment under this subsection  
14 does not relieve a conservator or his sureties of responsibility and liability if the  
15 investment made is not in fact in accordance with the Missouri prudent investor  
16 act, sections 469.900 to 469.913, RSMo.

17 4.] **On or after August 28, 2009, the conservator shall invest**  
18 **liquid assets of the estate of the protectee, other than funds needed to**  
19 **meet debts and expenses currently payable, in accordance with the**  
20 **provisions of the Missouri prudent investor act, sections 469.900 to**  
21 **469.913, RSMo, subject to the following exceptions:**

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

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

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

29 **shall constitute prudent investments;**

30 (2) **If the conservator determines it appropriate to delegate**  
31 **investment and management functions to an agent as provided in**  
32 **section 469.909, RSMo, the agent to whom the delegation is made shall**

33 **acknowledge in a writing delivered to the conservator that the agent**  
34 **is acting as an investment fiduciary on the account.**

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

48       **[5.] 3.** If any conservator refuses or neglects to make the report at the  
49 time aforesaid, or makes a false report thereof, [he and his] **the conservator**  
50 **and the conservator's** sureties are liable on their bond for all loss or damage  
51 to the protectee occasioned by reason of [his] **the conservator's** neglect or  
52 refusal so to report, or by making a false report, and the conservator may, on  
53 account thereof, be removed from [his] **the conservator's** trust in the discretion  
54 of the court.

          [402.010. In sections 402.010 to 402.060:

2               (1) "Gift instrument" means:

3               (a) A will, deed, grant, conveyance, agreement,  
4 memorandum, writing, or other governing document (including the  
5 terms of any institutional solicitations from which an institutional  
6 fund resulted) under which property is transferred by a donor to an  
7 institution as an institutional endowment fund; or

8               (b) An oral statement or condition expressed by the donor  
9 at the time of transfer of property, which oral statement or  
10 condition is memorialized in writing by the institution at the time  
11 of the gift, to an institution that the institution is to hold the gift  
12 as an institutional endowment fund;

13              (2) "Governing board" means the body responsible for the  
14 management of an institution or of an institutional fund;

15                   (3) "Historic dollar value" means the aggregate fair value  
16                   in dollars of:

17                   (a) An institutional endowment fund at the time it became  
18                   an endowment fund;

19                   (b) Each subsequent donation to the fund at the time it is  
20                   made; and

21                   (c) Each accumulation made pursuant to a direction in the  
22                   applicable gift instrument or the governing board at the time the  
23                   accumulation is added to the fund. The determination of historic  
24                   dollar value made in good faith by the governing board of the  
25                   institution or the institutional trustee is conclusive;

26                   (4) "Institution" means an incorporated or unincorporated  
27                   organization which is recognized under section 501(c)(3) of the  
28                   Internal Revenue Code of 1986 as being operated exclusively for  
29                   educational, religious, charitable, or other eleemosynary  
30                   purposes. The term does not include:

31                   (a) Any public common school or public institution of higher  
32                   education, or a foundation chartered for the benefit of such public  
33                   common school or public institution of higher education, or for the  
34                   benefit of a component of such school or institution of higher  
35                   education;

36                   (b) Any governmental entity or a foundation chartered for  
37                   the benefit of a governmental entity or for the benefit of a  
38                   component of such governmental entity;

39                   (c) A private foundation as defined by section 509(a)k of the  
40                   Internal Revenue Code of 1986;

41                   (5) "Institutional endowment fund" means either:

42                   (a) A fund held by an institution for its exclusive use,  
43                   benefit, or purposes, and which is not wholly expendable by the  
44                   institution on a current basis under the terms of the applicable gift  
45                   instrument; or

46                   (b) A fund which is held in trust by an institution as  
47                   trustee for another institution under the terms of the applicable  
48                   gift instrument, but not including

49                   a. A fund held for an institution by a trustee that is not an  
50                   institution; or

51           b. A fund in which a beneficiary that is not an institution  
52           has an interest, other than possible rights that could arise upon  
53           violation or failure of the purpose of the fund;

54           (6) "Institutional trustee" means an institution acting as  
55           trustee of an institutional endowment fund which under the terms  
56           of the applicable gift instrument is held in trust for the benefit of  
57           one or more institutions.]

          [402.015. 1. Unless otherwise limited by the applicable gift  
2           instrument, the governing board of the institution or institutional  
3           trustee may accumulate so much of the annual net income of an  
4           institutional endowment fund as is prudent under the standard  
5           established by section 402.035 and may hold any or all of such  
6           accumulated income in an income reserve for subsequent  
7           expenditure for the uses and purposes for which such institutional  
8           endowment fund is established or may add any or all of such  
9           accumulated income to the principal of such institutional  
10          endowment fund as is prudent under such standard.

11          2. Unless otherwise limited by the applicable instrument,  
12          the governing board of the institution or institutional trustee may  
13          appropriate for expenditure for the uses and purposes for which an  
14          institutional endowment fund is established so much of the net  
15          appreciation, realized and unrealized, in the fair value of the assets  
16          of an endowment fund over the historic dollar value of the fund as  
17          is prudent under the standard established by section 402.035.

18          3. This section does not limit the authority of the governing  
19          board to accumulate income or to add the same to principal of an  
20          institutional endowment fund or to expend funds as permitted  
21          under other law or the terms of the applicable gift instrument.

22          4. Subsection 3 of this section shall not apply if the  
23          applicable gift instrument indicates the donor's intention that net  
24          appreciation shall not be expended. A restriction upon the  
25          expenditure of net appreciation may not be implied from a  
26          designation of a gift as an endowment, or from a direction or  
27          authorization in the applicable gift instrument which does not  
28          clearly evidence an intention that net appreciation not be  
29          expended.]

2           [402.025. In addition to an investment otherwise authorized  
3           by law or by the applicable gift instrument, the governing board,  
4           subject to any specific limitations set forth in the applicable gift  
5           instrument or in the applicable law may:

6                 (1) Invest and reinvest an institutional endowment fund in  
7                 any real or personal property deemed advisable by the governing  
8                 board, whether or not it produces a current return, including  
9                 mortgages, stocks, bonds, debentures, and other securities of profit  
10                or nonprofit corporations, shares in or obligations of associations,  
11                partnerships, or individuals, and obligations of any government or  
12                subdivision or instrumentality thereof;

13               (2) Retain property contributed by a donor to an  
14               institutional endowment fund for as long as the governing board  
15               deems advisable;

16               (3) Include all or any part of an institutional endowment  
17               fund in any pooled or common fund maintained by the institution  
18               or institutional trustee; and

19               (4) Invest all or any part of an institutional endowment  
20               fund in any other pooled or common fund available for investment,  
21               including shares or interests in regulated investment companies,  
22               mutual funds, common trust funds, investment partnerships, real  
23               estate investment trusts, or similar organizations in which funds  
24               are commingled and investment determinations are made by  
25               persons other than the governing board.]

2           [402.030. Except as otherwise provided by the applicable  
3           gift instrument, the governing board may:

4                 (1) Delegate to its committees, officers or employees of the  
5                 institution or the fund, or agents, including investment counsel, the  
6                 authority to act in place of the board in investment and  
7                 reinvestment of institutional endowment funds;

8                 (2) Contract with independent investment advisors,  
9                 investment counsel or managers, banks, or trust companies, to act  
10                for the governing board in investment of institutional endowment  
11                funds; and

12               (3) Authorize the payment of compensation for investment  
13               advisory or management services.]

2           [402.035. Except as otherwise set forth in the gift  
3           instrument, when investing, reinvesting, purchasing, acquiring,  
4           exchanging, selling, managing property, appropriating  
5           appreciation, developing and applying investment and spending  
6           policies, accumulating income, and delegating investment  
7           management for the benefit of an institution, the members of the  
8           governing board shall act with the care, skill, prudence, and  
9           diligence under the circumstances then prevailing that a prudent  
10          person acting in like capacity and familiar with these matters  
11          would use in the conduct of an enterprise of like character and with  
12          like aims to accomplish the purposes of the institution receiving  
13          the benefit of the institutional endowment fund. In the course of  
14          administering the fund pursuant to this standard, individual  
15          investments shall be considered as part of an overall investment  
16          strategy. In exercising judgment pursuant to this section, the  
17          governing board shall consider long and short term needs of the  
18          institution or the institution which is the beneficiary in carrying  
19          out its educational, religious, charitable, or other eleemosynary  
20          purposes, its present and anticipated financial requirements,  
21          expected total return on its investments, price level trends, and  
            general economic conditions.]

            [402.040. 1. With the written consent of the donor, the  
2          governing board may release, in whole or in part, a restriction  
3          imposed by the applicable gift instrument on the use or investment  
4          of an institutional endowment fund.

5                 2. If written consent of the donor cannot be obtained by  
6          reason of his death, disability, incapacity, unavailability, or  
7          impossibility of identification, or if the gift instrument does not  
8          give the institutional trustee the right to exercise the power of  
9          cy-pres, the governing board may apply in the name of the  
10         institution or institutional trustee to the circuit court for release of  
11         a restriction imposed by the applicable gift instrument on the use  
12         or investment of an institutional endowment fund. The attorney  
13         general shall be notified of the application and shall be given an  
14         opportunity to be heard. If the court finds that the restriction is  
15         obsolete, inappropriate, or impracticable, it may, by order, release

16 the restriction in whole or in part. A release under this subsection  
17 may not change an institutional endowment fund to a fund that is  
18 not an institutional endowment fund.

19 3. A release under this section may not allow an  
20 institutional endowment fund to be used for purposes other than  
21 the educational, religious, charitable, or other eleemosynary  
22 purposes of the institution affected.

23 4. This section does not limit the application of the doctrine  
24 of cy-pres.]

[402.045. If any provision of sections 402.010 to 402.060 or  
2 the application thereof to any person or circumstances is held  
3 invalid, the invalidity shall not affect other provisions or  
4 applications of sections 402.010 to 402.060 which can be given  
5 effect without the invalid provision or application, and to this end  
6 the provisions of sections 402.010 to 402.060 are declared  
7 severable.]

[402.055. All of the provisions of sections 402.010 to  
2 402.055 apply to gift instruments executed or in effect before or  
3 after August 13, 1976.]

[402.060. 1. Nothing in sections 402.010 to 402.060 shall  
2 act to amend the status of governing boards, or the duties and  
3 liabilities of directors pursuant to other applicable law.

4 2. Notwithstanding any provision of section 456.012, RSMo,  
5 or section 456.013, RSMo, sections 402.010 to 402.060 shall  
6 supersede and control in any case of conflict between sections  
7 402.010 to 402.060 and section 456.012, RSMo, or section 456.013,  
8 RSMo.]

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