

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 239

95TH GENERAL ASSEMBLY

0752S.04T

2009

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.

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402.035, 402.040, 402.045, 402.055, 402.060, 456.5-505, 469.411, 472.335, 473.333, 475.130, and 475.190, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 172.290, 362.333, 369.162, 402.130, 402.132, 402.134, 402.136, 402.138, 402.140,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 obligations that consist only of irrevocable life insurance trusts to the Missouri trust office**

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.

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

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

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

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

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

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

12 (4) "Institution":

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

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

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

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

21 (a) Program-related assets;

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

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

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

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

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

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

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

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

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

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

13 4. An institution may pool two or more institutional funds for the purposes of
14 management and investment.

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

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

18 (a) General economic conditions;

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

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

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

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

24 (f) Other resources of the institution;

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

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

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

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

36 (4) An institution shall diversify the investments of an institutional fund unless the
37 institution reasonably determines that because of special circumstances the purposes of the
38 fund are better served without diversification;

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

44 (6) A person that has or represents to have special skills or expertise and in reliance
45 thereupon is selected and assigned institutional funds management and investment
46 functions has a duty to use those skills or that expertise in managing and investing
47 institutional funds.

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

10 (1) The duration and preservation of the endowment fund;

11 (2) The purposes of the institution and the endowment fund;

12 (3) General economic conditions;

13 (4) The possible effect of inflation or deflation;

14 (5) The expected total return from income and the appreciation of investments;

15 (6) Other resources of the institution; and

16 (7) The investment policy of the institution.

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

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

22 (1) Create an endowment fund of permanent duration unless other language in the
23 gift instrument limits the duration or purpose of the fund; and

24 (2) Do not otherwise limit the authority to appropriate for expenditure or
25 accumulate under subsection 1 of this section.

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

7 (1) Selecting an agent;

8 (2) Establishing the scope and terms of the delegation consistent with the purposes
9 of the institution and the institutional fund; and

10 (3) Periodically reviewing the agent's actions in order to monitor the agent's
11 performance and compliance with the scope and terms of the delegation.

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

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

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

20 5. An institution may delegate management and investment functions to its
21 committees, officers, or employees as authorized by law other than provided for in sections
22 402.130 to 402.148.

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

5 2. The court, upon application of an institution, may modify a restriction contained
6 in a gift instrument regarding the management or investment of an institutional fund if the
7 restriction has become impracticable or wasteful, if it impairs the management or
8 investment of the fund, or if, because of circumstances not anticipated by the donor, a
9 modification of a restriction will further the purposes of the fund. The institution shall
10 notify the attorney general of the application, and the attorney general shall be given an
11 opportunity to be heard. To the extent practicable, any modification shall be made in
12 accordance with the donor's probable intention.

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

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

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

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

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

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

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

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

2 **402.146.** In applying and construing sections 402.130 to 402.148, consideration shall
3 be given to the need to promote uniformity of the law with respect to its subject matter
4 among states that enact it.

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

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

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

4 **(1)** The trustee may distribute trust income or principal to one or more permissible
5 distributees;

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

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

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

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

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

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

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

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

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

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

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

36 **6. A trustee acting in good faith shall not be liable to any beneficiary for acting or**
37 **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] a newspaper published in the county **designated in subdivision (3) of this**
22 **subsection** once a week for four consecutive weeks in substantially the following form:

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

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

29

30 Trustee

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

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

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

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

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

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

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

50 5. For purposes of this section:

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

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

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

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

3 (1) For the first three accounting periods of the trust, the unitrust amount for a current
4 valuation year of the trust shall be a percentage between three and five percent that is specified
5 by the terms of the governing instrument or by the election made in accordance with subdivision

6 (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on
7 the first business day of the current valuation year;

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

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

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

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

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

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

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

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

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

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

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

51 4. In determining the net fair market value of each asset held in the trust pursuant to
52 subdivisions (1) and (2) of subsection 1 of this section, the trustee shall, not less often than
53 annually, determine the fair market value of each asset of the trust that consists primarily of real
54 property or other property that is not traded on a regular basis in an active market by appraisal
55 or other reasonable method or estimate, and that determination, if made reasonably and in good
56 faith, shall be conclusive as to all persons interested in the trust. Any claim based on a
57 determination made pursuant to this subsection shall be barred if not asserted in a judicial
58 proceeding brought by any beneficiary with any interest whatsoever in the trust within two years
59 after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts
60 constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the
61 barring of claims pursuant to this subsection.

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

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

65 (2) Any trust created under an instrument that became irrevocable on, before, or after
66 August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply unless
67 the instrument creating the trust specifically prohibits an election under this subdivision. The
68 trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she
69 is then living, of the trustee's intent to make such an election at least sixty days before making
70 that election. The trustee shall have sole authority to make the election. Section 469.402 shall
71 apply for all purposes of this subdivision. An action or order by any court shall not be required.
72 The election shall be made by a signed writing delivered to the settlor of the trust, if he or she
73 is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by
74 order of the court having jurisdiction of the trust. The election may specify the percentage used
75 to determine the unitrust amount pursuant to this section, provided that such percentage is

76 between three and five percent, or if no percentage is specified, then that percentage shall be
77 three percent. In making an election pursuant to this subsection, the trustee shall be subject to
78 the same limitations and conditions as apply to an adjustment between income and principal
79 pursuant to subsections 3 and 4 of section 469.405;

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

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

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
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, shall constitute prudent investments;

25 (2) If the personal representative determines it appropriate to delegate investment
26 and management functions to an agent as provided in section 469.909, RSMo, the agent to
27 whom the delegation is made shall acknowledge in a writing delivered to the personal
28 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[,] **and** 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.

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

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

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

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

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

19 (a) **In direct obligation of or obligations unconditionally guaranteed as to principal**
20 **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, shall constitute prudent investments;**

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

28 2. Every conservator shall make a report at every annual settlement of the disposition
29 made by the conservator of the money belonging to the protectee entrusted to [him] **the**
30 **conservator**. If it appears that the money is invested in securities, then the conservator shall
31 report a detailed description of the securities and shall describe any real estate security and state
32 where it is situated, and its value, which report shall be filed in the court. The court shall

33 carefully examine into the report as soon as made, and, if in the opinion of the court the security
34 is insufficient, the court shall make such orders as are necessary to protect the interest of the
35 protectee. The conservator and [his] **the conservator's** sureties are liable on their bond for any
36 omission to comply with the orders of the court. If the money has not been invested as
37 authorized by law the conservator shall state that fact and the reasons, and shall state that the
38 conservator has been unable to make an investment after diligent effort to do so.

39 [5.] 3. If any conservator refuses or neglects to make the report at the time aforesaid, or
40 makes a false report thereof, [he and his] **the conservator and the conservator's** sureties are
41 liable on their bond for all loss or damage to the protectee occasioned by reason of [his] **the**
42 **conservator's** neglect or refusal so to report, or by making a false report, and the conservator
43 may, on account thereof, be removed from [his] **the conservator's** trust in the discretion of the
44 court.

[402.010. In sections 402.010 to 402.060:

- 2 (1) "Gift instrument" means:
3 (a) A will, deed, grant, conveyance, agreement, memorandum, writing,
4 or other governing document (including the terms of any institutional
5 solicitations from which an institutional fund resulted) under which property is
6 transferred by a donor to an institution as an institutional endowment fund; or
7 (b) An oral statement or condition expressed by the donor at the time of
8 transfer of property, which oral statement or condition is memorialized in writing
9 by the institution at the time of the gift, to an institution that the institution is to
10 hold the gift as an institutional endowment fund;
11 (2) "Governing board" means the body responsible for the management
12 of an institution or of an institutional fund;
13 (3) "Historic dollar value" means the aggregate fair value in dollars of:
14 (a) An institutional endowment fund at the time it became an endowment
15 fund;
16 (b) Each subsequent donation to the fund at the time it is made; and
17 (c) Each accumulation made pursuant to a direction in the applicable gift
18 instrument or the governing board at the time the accumulation is added to the
19 fund. The determination of historic dollar value made in good faith by the
20 governing board of the institution or the institutional trustee is conclusive;
21 (4) "Institution" means an incorporated or unincorporated organization
22 which is recognized under section 501(c)(3) of the Internal Revenue Code of
23 1986 as being operated exclusively for educational, religious, charitable, or other
24 eleemosynary purposes. The term does not include:
25 (a) Any public common school or public institution of higher education,
26 or a foundation chartered for the benefit of such public common school or public
27 institution of higher education, or for the benefit of a component of such school
28 or institution of higher education;

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

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

(5) "Institutional endowment fund" means either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 [402.035. Except as otherwise set forth in the gift instrument, when
3 investing, reinvesting, purchasing, acquiring, exchanging, selling, managing
4 property, appropriating appreciation, developing and applying investment and
5 spending policies, accumulating income, and delegating investment management
6 for the benefit of an institution, the members of the governing board shall act
7 with the care, skill, prudence, and diligence under the circumstances then
8 prevailing that a prudent person acting in like capacity and familiar with these
9 matters would use in the conduct of an enterprise of like character and with like
10 aims to accomplish the purposes of the institution receiving the benefit of the
11 institutional endowment fund. In the course of administering the fund pursuant
12 to this standard, individual investments shall be considered as part of an overall
investment strategy. In exercising judgment pursuant to this section, the

governing board shall consider long and short term needs of the institution or the institution which is the beneficiary in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.]

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

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

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

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

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

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

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

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

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