

HOUSE AMENDMENT NO.\_\_\_\_  
TO  
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Offered By

AMEND House Amendment No.\_\_\_\_ to Senate Committee Substitute No. 2 for Senate Bill No. 128, Page 1, Line 6, deleting all of said line and inserting in lieu thereof the following:

~~"94999]~~ 491 S.W.3d 535 (Mo. banc 2016) prior to August 28 ~~[2017]~~2018.  
456.1-103. In sections 456.1-101 to 456.11-1106:

(1) "Action," with respect to an act of a trustee, includes a failure to act;

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2541(c)(1) of the Internal Revenue Code;

(3) "Beneficiary" means a person that:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property;

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405;

(5) "Conservator" means a person described in subdivision (3) of section 475.010. This term does not include a conservator ad litem;

(6) "Conservator ad litem" means a person appointed by the court pursuant to the provisions of section 475.097;

(7) "Directed trust", means any trust, including a split interest trust, where the trust instrument authorizes a trust protector to instruct or direct the trustee or that charges a trust protector with any responsibilities regarding the trust or that grants the trust protector one or more powers over the trust;

(8) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment;

~~[(8)]~~ (9) "Financial institution" means a non-foreign bank, savings and loan or trust company chartered, regulated and supervised by the Missouri division of finance, the office of the comptroller of the currency, the office of thrift supervision, the National Credit Union Administration, or the Missouri division of credit union supervision. The term "non-foreign bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of section 361.005;

~~[(9)]~~ (10) "Guardian" means a person described in subdivision (7) of section 475.010. The term does not include a guardian ad litem;

~~[(10)]~~ (11) "Interested persons" include beneficiaries and any others having a property right

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in or claim against a trust estate which may be affected by a judicial proceeding. It also includes fiduciaries and other persons representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding;

~~[(11)]~~ (12) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;

~~[(12)]~~ (13) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as in effect on January 1, 2005, or as later amended;

~~[(13)]~~ (14) "Jurisdiction," with respect to a geographic area, includes a state or country;

~~[(14)]~~ (15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity;

~~[(15)]~~ (16) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary;

~~[(16)]~~ (17) "Power of withdrawal" means a presently exercisable power of a beneficiary to withdraw assets from the trust without the consent of the trustee or any other person;

~~[(17)]~~ (18) "Principal place of administration" of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business, unless otherwise designated by the terms of the trust as provided in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the following order of priority:

(a) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(b) The usual place of business or residence of the trustee who is a professional fiduciary if there is but one such trustee and no corporate cotrustee; or

(c) The usual place of business or residence of any of the cotrustees;

~~[(18)]~~ (19) "Professional fiduciary" means an individual who represents himself or herself to the public as having specialized training, experience or skills in the administration of trusts;

~~[(19)]~~ (20) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein;

~~[(20)]~~ (21) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees described in paragraph (a) of this subdivision terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date;

~~[(21)]~~ (22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

~~[(22)]~~ (23) "Revocable," as applied to a trust, means that the settlor has the legal power to revoke the trust without the consent of the trustee or a person holding an adverse interest, regardless of whether the settlor has the mental capacity to do so in fact;

~~[(23)]~~ (24) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion pursuant to the terms of the trust;

~~[(24)]~~ (25) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process;

[(25)] (26) "Spendthrift provision" means a term of a trust which restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest;

[(26)] (27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state;

[(27)] (28) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding;

[(28)] (29) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto;

[(29)] (30) "Trust protector", means any person, group of persons or entity not serving as a trustee and not the settlor or a beneficiary, designated in a trust instrument to instruct or direct the trustee or charged in the trust instrument with any responsibilities regarding the trust or expressly granted in the trust instrument one or more powers over the trust. The term "trust protector" includes but is not limited to persons or entities identified in the trust instrument as trust advisors, trust directors, distribution advisers, or investment advisers;

(31) "Trustee" includes an original, additional, and successor trustee, and a cotrustee."; and 456.4-420. 1. If a trust instrument containing a no-contest clause is or has become irrevocable, an interested person may file a petition to the court for an interlocutory determination whether a particular motion, petition, or other claim for relief by the interested person would trigger application of the no-contest clause or would otherwise trigger a forfeiture that is enforceable under applicable law and public policy.

2. The petition described in subsection 1 of this section shall be verified under oath. The petition may be filed by an interested person either as a separate judicial proceeding, or brought with other claims for relief in a single judicial proceeding, all in the manner prescribed generally for such proceedings under this chapter. If a petition is joined with other claims for relief, the court shall enter its order or judgment on the petition before proceeding any further with any other claim for relief joined therein. In ruling on such a petition, the court shall consider the text of the clause, the context to the terms of the trust instrument as a whole, and in the context of the verified factual allegations in the petition. No evidence beyond the pleadings and the trust instrument shall be taken except as required to resolve an ambiguity in the no-contest clause.

3. An order or judgment determining a petition described in subsection 1 of this section shall have the effect set forth in subsections 4 and 5 of this section, and shall be subject to appeal as with other final judgments. If the order disposes of fewer than all claims for relief in a judicial proceeding, that order is subject to interlocutory appeal in accordance with the applicable rules for taking such an appeal. If an interlocutory appeal is taken, the court may stay the pending judicial proceeding until final disposition of said appeal on such terms and conditions as the court deems reasonable and proper under the circumstances. A final ruling on the applicability of a no-contest clause shall not preclude any later filing and adjudication of other claims related to the trust.

4. An order or judgment, in whole or in part, on a petition described in subsection 1 of this section shall result in the no-contest clause being enforceable to the extent of the court's ruling, and shall govern application of the no-contest clause to the extent that the interested person then proceeds forward with the claims described therein. In the event such an interlocutory order or judgment is vacated, reversed, or otherwise modified on appeal, no interested person shall be

1 prejudiced by any reliance, through action, inaction, or otherwise, on the order or judgment prior to  
2 final disposition of the appeal.

3 5. An order or judgment shall have effect only as to the specific trust terms and factual basis  
4 recited in the petition. If claims are later filed that are materially different than those upon which  
5 the order or judgment is based, then to the extent such new claims are raised, the party in whose  
6 favor the order or judgment was entered shall have no protection from enforcement of the no-  
7 contest clause otherwise afforded by the order and judgment entered under this section.

8 6. For purposes of this section, a "no-contest clause" shall mean a provision in a trust  
9 instrument purporting to rescind a donative transfer to, or a fiduciary appointment of, any person, or  
10 that otherwise effects a forfeiture of some or all of an interested person's beneficial interest in a trust  
11 estate as a result of some action taken by the beneficiary. This definition shall not be construed in  
12 any way as determining whether a no-contest clause is enforceable under applicable law and public  
13 policy in a particular factual situation. As used in this section, the term "no-contest clause" shall  
14 also mean an "in terrorem clause".

15 7. A no-contest clause is not enforceable against an interested person in, but not limited to,  
16 the following circumstances:

17 (1) Filing a motion, petition, or other claim for relief objecting to the jurisdiction or venue  
18 of the court over a proceeding concerning a trust, or over any person joined, or attempted to be  
19 joined, in such a proceeding;

20 (2) Filing a motion, petition, or other claim for relief concerning an accounting, report, or  
21 notice that has or should have been made by a trustee, provided the interested person otherwise has  
22 standing to do so under applicable law, including, but not limited to, section 456.6-603;

23 (3) Filing a motion, petition, or other claim for relief under chapter 475 concerning the  
24 appointment of a guardian or conservator for the settlor;

25 (4) Filing a motion, petition, or other claim for relief under chapter 404 concerning the  
26 settlor;

27 (5) Disclosure to any person of information concerning a trust instrument or that is relevant  
28 to a proceeding before the court concerning the trust instrument or property of the trust estate,  
29 unless such disclosure is otherwise prohibited by law;

30 (6) Filing a motion, pleading, or other claim for relief seeking approval of a nonjudicial  
31 settlement agreement concerning a trust instrument, as set forth in section 456.1-111;

32 (7) Filing a motion, pleading, or other claim for relief concerning a breach of trust by a  
33 trustee including, but not limited to, a claim under section 456.10-1001. For purposes of this  
34 subdivision, "breach of trust" means a trustee's violation of the terms of a trust instrument, a  
35 violation of the trustee's general fiduciary obligations, or a trustee's violation of a duty that equity  
36 imposes on a trustee;

37 (8) Filing a motion, pleading, or other claim for relief concerning removal of a trustee  
38 including, but not limited to, a claim for removal under section 456.7-706;

39 (9) To the extent a petition under subsection 1 of this section is limited to the procedure and  
40 purpose described therein.

41 8. In any proceeding brought under this section, the court may award costs, expenses, and  
42 attorneys' fees to any party, as provided in section 456.10-1004.

43 456.8-808. 1. While a trust is revocable, the trustee may follow a direction of the settlor  
44 that is contrary to the terms of the trust.

45 2. A trust instrument may provide for ~~[the appointment of a trust protector. For purposes of~~  
46 ~~this section, a "trust protector", whether referred to in the trust instrument by that name or by some~~  
47 ~~other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly granted in~~  
48 ~~the trust instrument one or more powers over the trust]~~ one or more persons, not then serving as a

trustee and not the settlor or a beneficiary, to be given any powers over the trust as expressly granted in the trust instrument. Any such person may be identified and appointed as a trust protector or similar term. Whenever a trust instrument names, appoints, authorizes, or otherwise designates a trust protector, the trust shall be deemed a directed trust.

3. A trust protector appointed in the trust instrument shall have only the powers granted to the trust protector by the express terms of the trust instrument, and a trust protector is only authorized to act within the scope of the authority expressly granted in the trust instrument. Without limiting the authority of the settlor to grant powers to a trust protector, the express powers that may be granted include, but are not limited to, the following:

- (1) Remove and appoint a trustee or a trust protector or name a successor trustee or trust protector;
- (2) Modify or amend the trust instrument to:
  - (a) Achieve favorable tax status or respond to changes in the Internal Revenue Code or state law, or the rulings and regulations under such code or law;
  - (b) Reflect legal changes that affect trust administration;
  - (c) Correct errors or ambiguities that might otherwise require court construction; or
  - (d) Correct a drafting error that defeats a grantor's intent;
- (3) Increase, decrease, modify, or restrict the interests of the beneficiary or beneficiaries of the trust;
- (4) Terminate the trust in favor of the beneficiary or beneficiaries of the trust;
- (5) Change the applicable law governing the trust and the trust situs; or
- (6) Such other powers as are expressly granted to the trust protector in the trust instrument.

4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector shall have no power to modify a trust to:

- (1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C. Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible beneficiary of the trust at the death of that beneficiary; or
- (2) Reduce or eliminate an income interest of the income beneficiary of any of the following types of trusts:
  - (a) A trust for which a marital deduction has been taken for federal tax purposes under Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any comparable provision of applicable state law, during the life of the settlor's spouse;
  - (b) A charitable remainder trust under Section 664 of the Internal Revenue Code, during the life of the noncharitable beneficiary;
  - (c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code, during any period in which the settlor is a beneficiary; or
  - (d) A trust for which an election as a qualified Sub-Chapter S Trust under Section 1361(d) of the Internal Revenue Code is currently in place.

5. Except to the extent otherwise provided in a trust instrument specifically referring to this subsection, the trust protector shall not exercise a power in a way that would result in a taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the trust protector's gross estate for federal estate tax purposes.

6. Except to the extent otherwise provided in the trust instrument and in subsection 7 of this section, and notwithstanding any provision of sections 456.1-101 to 456.11-1106 to the contrary:

- (1) A trust protector shall act in a fiduciary capacity in carrying out the powers granted to the trust protector in the trust instrument, and shall have such duties to the beneficiaries, the settlor, or the trust as set forth in the trust instrument; provided, however, that the trust instrument may provide that the trust protector shall act in a nonfiduciary capacity. A trust protector is not a trustee,

1 and is not liable or accountable as a trustee when performing or declining to perform the express  
2 powers given to the trust protector in the trust instrument. A trust protector is not liable for the acts  
3 or omissions of any fiduciary or beneficiary under the trust instrument;

4 (2) A trust protector is exonerated from any and all liability for the trust protector's acts or  
5 omissions, or arising from any exercise or nonexercise of the powers expressly conferred on the  
6 trust protector in the trust instrument, unless it is established by a preponderance of the evidence  
7 that the acts or omissions of the trust protector were done or omitted in breach of the trust  
8 protector's duty, in bad faith or with reckless indifference;

9 (3) A trust protector is authorized to exercise the express powers granted in the trust  
10 instrument at any time and from time to time after the trust protector acquires knowledge of their  
11 appointment as trust protector and of the powers granted. The trust protector may take any action,  
12 judicial or otherwise, necessary to carry out the duties given to the trust protector in the trust  
13 instrument;

14 (4) A trust protector is entitled to receive, from the assets of the trust for which the trust  
15 protector is acting, reasonable compensation, and reimbursement of the reasonable costs and  
16 expenses incurred, in determining whether to carry out, and in carrying out, the express powers  
17 given to the trust protector in the trust instrument;

18 (5) A trust protector is entitled to receive, from the assets of the trust for which the trust  
19 protector is acting, reimbursement of the reasonable costs and expenses, including attorney's fees, of  
20 defending any claim made against the trust protector arising from the acts or omissions of the trust  
21 protector acting in that capacity unless it is established by clear and convincing evidence that the  
22 trust protector was acting in bad faith or with reckless indifference; and

23 (6) The express powers granted in the trust instrument shall not be exercised by the trust  
24 protector for the trust protector's own personal benefit.

25 7. If a trust protector is granted a power in the trust instrument to direct, consent to, or  
26 disapprove a trustee's actual or proposed investment decision, distribution decision, or other  
27 decision of the trustee required to be performed under applicable trust law in carrying out the duties  
28 of the trustee in administering the trust, then only with respect to such power, excluding the powers  
29 identified in subsection 3 of this section, the trust protector shall have the same duties and liabilities  
30 as if serving as a trustee under the trust instrument unless the trust instrument expressly provides  
31 otherwise. In carrying out any written directions given to the trustee by the trust protector  
32 concerning actual or proposed investment decisions, the trustee shall not be subject to the provisions  
33 of sections 469.900 to 469.913. For purposes of this subsection, "investment decisions" means, with  
34 respect to any investment, decisions to retain, purchase, sell, exchange, tender, or otherwise engage  
35 in transactions affecting the ownership of investments or rights therein, and, with respect to  
36 nonpublicly traded investments, the valuation thereof.

37 8. Any trustee of a directed trust shall not be accountable under the law or equity for any act  
38 or omission of a trust protector and shall stand absolved from liability for executing the decisions or  
39 instructions from a trust protector, or for monitoring the actions or inactions of a trust protector. A  
40 trustee shall take reasonable steps to facilitate the activity of a trust protector in a directed trust. A  
41 trustee shall carry out the written directions given to the trustee by a trust protector acting within the  
42 scope of the powers expressly granted to the trust protector in the trust instrument. Except [in cases  
43 of bad faith or reckless indifference on the part of the trustee, or] as otherwise provided in the trust  
44 instrument, the trustee shall not be liable for any loss resulting directly or indirectly from any act  
45 taken or omitted as a result of the written direction of the trust protector or the failure of the trust  
46 protector to provide consent. Except as otherwise provided in the trust instrument, the trustee shall  
47 have no duty to monitor the conduct of the trust protector, provide advice to or consult with the trust  
48 protector, or communicate with or warn or apprise any beneficiary concerning instances in which

1 the trustee would or might have exercised the trustee's own discretion in a manner different from the  
2 manner directed by the trust protector. Except as otherwise provided in the trust instrument, any  
3 actions taken by the trustee at the trust protector's direction shall be deemed to be administrative  
4 actions taken by the trustee solely to allow the trustee to carry out the instructions of the trust  
5 protector, and shall not be deemed to constitute an act by the trustee to monitor the trust protector or  
6 otherwise participate in actions within the scope of the trust protector's authority.

7 9. Except to the extent otherwise expressly provided in the trust instrument, the trust  
8 protector shall be entitled to receive information regarding the administration of the trust as follows:

9 (1) Upon the request of the trust protector, unless unreasonable under the circumstances, the  
10 trustee shall promptly provide to the trust protector any and all information related to the trust that  
11 may relate to the exercise or nonexercise of a power expressly granted to the trust protector in the  
12 trust instrument. The trustee has no obligation to provide any information to the trust protector  
13 except to the extent a trust protector requests information under this section;

14 (2) The request of the trust protector for information under this section shall be with respect  
15 to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust;  
16 and

17 (3) If the trustee is bound by any confidentiality restrictions with respect to an asset of a  
18 trust, a trust protector who requests information under this section about such asset shall agree to be  
19 bound by the confidentiality restrictions that bind the trustee before receiving such information from  
20 the trustee.

21 10. A trust protector may resign by giving thirty days' written notice to the trustee and any  
22 successor trust protector. A successor trust protector, if any, shall have all the powers expressly  
23 granted in the trust instrument to the resigning trust protector unless such powers are expressly  
24 modified for the successor trust protector.

25 11. A trust protector of a trust having its principal place of administration in this state  
26 submits personally to the jurisdiction of the courts of this state during any period that the principal  
27 place of administration of the trust is located in this state and the trust protector is serving in such  
28 capacity. The trust instrument may also provide that a trust protector is subject to the personal  
29 jurisdiction of the courts of this state as a condition of appointment."; and"; and  
30

31 Further amend said bill by amending the title, enacting clause, and intersectional references  
32 accordingly.  
33

34 THIS AMENDS 0528S03.14H