

Plocher



Mr. Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and passed

SCS HB 1250

entitled:

AN ACT

To repeal sections 456.985, 456.1035, 456.1080, 456.4-414, 474.150, 515.575, and 515.635, RSMo, and to enact in lieu thereof twenty-seven new sections relating to trusts and estates.

With SA 1

In which the concurrence of the House is respectfully requested.

Respectfully,

Adriane D. Crouse

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Secretary of the Senate

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MAY 17 2018

CHIEF CLERK

SENATE AMENDMENT NO. 1Offered by CUNNINGHAM³³ of _____Amend SCS/House Bill No. 1250, Page 1, Section 456.006, Lines 2-3,

by striking "in the Internal Revenue Code of 1986, as amended"
and inserting in lieu thereof the following: "under 26 U.S.C.
Section 223(d)(1)"; and

Further amend said bill and section, Page 2, Lines 14-15, by
striking "in the Internal Revenue Code of 1986, as amended" and
inserting in lieu thereof the following: "under 26 U.S.C.
Section 223(c)(1)"; and

Further amend said bill, Page 3, Section 456.1080, Line 4,
by inserting after all of said line the following:

"456.1-103. In sections 456.1-101 to 456.11-1106, the
following terms shall mean:

(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

Offered 5/17/18
Adopted 5/17/18

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

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

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

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

11 (7) "Directed trust", any trust, including a split interest
12 trust, in which the trust instrument:

13 (a) Authorizes a trust protector to instruct or direct the
14 trustee;

15 (b) Charges a trust protector with any responsibilities
16 regarding the trust;

17 (c) Grants the trust protector one or more powers over the
18 trust; or

19 (d) Directs one or more powers over the trust to a person,
20 who is not serving as a trustee, and is not a settlor or a
21 beneficiary;

22 (8) "Environmental law" [means]_ a federal, state, or local
23 law, rule, regulation, or ordinance relating to protection of the
24 environment;

25 [(8)] (9) "Financial institution" [means]_ a non-foreign
26 bank, savings and loan or trust company chartered, regulated and
27 supervised by the Missouri division of finance, the office of the
28 comptroller of the currency, the office of thrift supervision,
29 the National Credit Union Administration, or the Missouri

1 division of credit union supervision. The term "non-foreign
2 bank" shall mean a bank that is not a foreign bank within the
3 meaning of subdivision (1) of section 361.005;

4 [(9)] (10) "Guardian" [means], a person described in
5 subdivision (7) of section 475.010. The term does not include a
6 guardian ad litem;

7 [(10)] (11) "Interested persons", include beneficiaries and
8 any others having a property right in or claim against a trust
9 estate which may be affected by a judicial proceeding. It also
10 includes fiduciaries and other persons representing interested
11 persons. The meaning as it relates to particular persons may
12 vary from time to time and must be determined according to the
13 particular purposes of, and matter involved in, any proceeding;

14 [(11)] (12) "Interests of the beneficiaries" [means], the
15 beneficial interests provided in the terms of the trust;

16 [(12)] (13) "Internal Revenue Code" [means], the United
17 States Internal Revenue Code of 1986, as in effect on January 1,
18 2005, or as later amended;

19 [(13)] (14) "Jurisdiction[,]" with respect to a geographic
20 area, includes a state or country;

21 [(14)] (15) "Person" [means], an individual, corporation,
22 business trust, estate, trust, partnership, limited liability
23 company, association, joint venture, government; governmental
24 subdivision, agency, or instrumentality; public corporation, or
25 any other legal or commercial entity;

26 [(15)] (16) "Permissible distributee" [means], a
27 beneficiary who is currently eligible to receive distributions of
28 trust income or principal, whether mandatory or discretionary;

29 [(16)] (17) "Power of withdrawal" [means], a presently

1 exercisable power of a beneficiary to withdraw assets from the
2 trust without the consent of the trustee or any other person;

3 [(17)] (18) "Principal place of administration", of a trust
4 is the trustee's usual place of business where the records
5 pertaining to the trust are kept, or the trustee's residence if
6 the trustee has no such place of business, unless otherwise
7 designated by the terms of the trust as provided in section
8 456.1-108. In the case of cotrustees, the principal place of
9 administration is, in the following order of priority:

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

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

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

17 [(18)] (19) "Professional fiduciary" [means], an individual
18 who represents himself or herself to the public as having
19 specialized training, experience or skills in the administration
20 of trusts;

21 [(19)] (20) "Property" [means], anything that may be the
22 subject of ownership, whether real or personal, legal or
23 equitable, or any interest therein;

24 [(20)] (21) "Qualified beneficiary" [means], a beneficiary
25 who, on the date the beneficiary's qualification is determined:

26 (a) Is a permissible distributee;

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

1 (c) Would be a permissible distributee if the trust
2 terminated on that date;

3 [(21)] (22) "Record" [means]_ information that is inscribed
4 on a tangible medium or that is stored in an electronic or other
5 medium and is retrievable in perceivable form;

6 [(22)] (23) "Revocable[,]"_ as applied to a trust, means
7 that the settlor has the legal power to revoke the trust without
8 the consent of the trustee or a person holding an adverse
9 interest, regardless of whether the settlor has the mental
10 capacity to do so in fact;

11 [(23)] (24) "Settlor" [means]_ a person, including a
12 testator, who creates, or contributes property to, a trust. If
13 more than one person creates or contributes property to a trust,
14 each person is a settlor of the portion of the trust property
15 attributable to that person's contribution except to the extent
16 another person has the power to revoke or withdraw that portion
17 pursuant to the terms of the trust;

18 [(24)] (25) "Sign" [means]_, with present intent to
19 authenticate or adopt a record:

20 (a) To execute or adopt a tangible symbol; or

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

23 [(25)] (26) "Spendthrift provision" [means]_ a term of a
24 trust which restrains either the voluntary or involuntary
25 transfer or both the voluntary and involuntary transfer of a
26 beneficiary's interest;

27 [(26)] (27) "State" [means]_ a state of the United States,
28 the District of Columbia, Puerto Rico, the United States Virgin
29 Islands, or any territory or insular possession subject to the

1 jurisdiction of the United States. The term includes an Indian
2 tribe or band recognized by federal law or formally acknowledged
3 by a state;

4 [(27)] (28) "Terms of a trust" [means], the manifestation
5 of the settlor's intent regarding a trust's provisions as
6 expressed in the trust instrument or as may be established by
7 other evidence that would be admissible in a judicial proceeding;

8 [(28)] (29) "Trust instrument" [means], an instrument
9 executed by the settlor that contains terms of the trust,
10 including any amendments thereto;

11 (30) "Trust protector", any person, group of persons, or
12 entity not serving as a trustee and not the settlor or a
13 beneficiary, designated in a trust instrument to instruct or
14 direct the trustee or charged in the trust instrument with any
15 responsibilities regarding the trust or expressly granted in the
16 trust instrument one or more powers over the trust. The term
17 "trust protector" includes, but is not limited to, persons or
18 entities identified in the trust instrument as trust advisors,
19 trust directors, distribution advisors, or investment advisors;

20 [(29)] (31) "Trustee", includes an original, additional,
21 and successor trustee, and a cotrustee."; and

22 Further amend said bill and page, Section 456.4-414, Line
23 13, by inserting after all of said line the following:

24 "456.8-808. 1. While a trust is revocable, the trustee may
25 follow a direction of the settlor that is contrary to the terms
26 of the trust.

27 2. A trust instrument may provide for [the appointment of a
28 trust protector. For purposes of this section, a "trust
29 protector", whether referred to in the trust instrument by that

1 name or by some other name, is a person, other than the settlor,
2 a trustee, or a beneficiary, who is expressly granted in the
3 trust instrument one or more powers over the trust] one or more
4 persons, not then serving as a trustee and not the settlor or a
5 beneficiary, to be given any powers over the trust as expressly
6 granted in the trust instrument. Any such person may be
7 identified and appointed as a trust protector or similar term.
8 Whenever a trust instrument names, appoints, authorizes, or
9 otherwise designates a trust protector, the trust shall be deemed
10 a directed trust.

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

19 (1) Remove and appoint a trustee or a trust protector or
20 name a successor trustee or trust protector;

21 (2) Modify or amend the trust instrument to:

22 (a) Achieve favorable tax status or respond to changes in
23 the Internal Revenue Code or state law, or the rulings and
24 regulations under such code or law;

25 (b) Reflect legal changes that affect trust administration;

26 (c) Correct errors or ambiguities that might otherwise
27 require court construction; or

28 (d) Correct a drafting error that defeats a grantor's
29 intent;

1 (3) Increase, decrease, modify, or restrict the interests
2 of the beneficiary or beneficiaries of the trust;

3 (4) Terminate the trust in favor of the beneficiary or
4 beneficiaries of the trust;

5 (5) Change the applicable law governing the trust and the
6 trust situs; or

7 (6) Such other powers as are expressly granted to the trust
8 protector in the trust instrument.

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

12 (1) Remove a requirement from a trust created to meet the
13 requirements of 42 U.S.C. Section 1396p(d)(4) to pay back a
14 governmental entity for benefits provided to the permissible
15 beneficiary of the trust at the death of that beneficiary; or

16 (2) Reduce or eliminate an income interest of the income
17 beneficiary of any of the following types of trusts:

18 (a) A trust for which a marital deduction has been taken
19 for federal tax purposes under Section 2056 or 2523 of the
20 Internal Revenue Code or for state tax purposes under any
21 comparable provision of applicable state law, during the life of
22 the settlor's spouse;

23 (b) A charitable remainder trust under Section 664 of the
24 Internal Revenue Code, during the life of the noncharitable
25 beneficiary;

26 (c) A grantor retained annuity trust under Section 2702 of
27 the Internal Revenue Code, during any period in which the settlor
28 is a beneficiary; or

29 (d) A trust for which an election as a qualified Sub-

1 Chapter S Trust under Section 1361(d) of the Internal Revenue
2 Code is currently in place.

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

9 6. Except to the extent otherwise provided in the trust
10 instrument and in subsection 7 of this section, and
11 notwithstanding any provision of sections 456.1-101 to 456.11-
12 1106 to the contrary:

13 (1) A trust protector shall act in a fiduciary capacity in
14 carrying out the powers granted to the trust protector in the
15 trust instrument, and shall have such duties to the
16 beneficiaries, the settlor, or the trust as set forth in the
17 trust instrument, provided that the trust instrument may provide
18 that the trust protector shall act in a nonfiduciary capacity. A
19 trust protector is not a trustee, and is not liable or
20 accountable as a trustee when performing or declining to perform
21 the express powers given to the trust protector in the trust
22 instrument. A trust protector is not liable for the acts or
23 omissions of any fiduciary or beneficiary under the trust
24 instrument;

25 (2) A trust protector is exonerated from any and all
26 liability for the trust protector's acts or omissions, or arising
27 from any exercise or nonexercise of the powers expressly
28 conferred on the trust protector in the trust instrument, unless
29 it is established by a preponderance of the evidence that the

1 acts or omissions of the trust protector were done or omitted in
2 breach of the trust protector's duty, in bad faith or with
3 reckless indifference;

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

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

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

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

28 7. If a trust protector is granted a power in the trust
29 instrument to direct, consent to, or disapprove a trustee's

1 actual or proposed investment decision, distribution decision, or
2 other decision of the trustee required to be performed under
3 applicable trust law in carrying out the duties of the trustee in
4 administering the trust, then only with respect to such power,
5 excluding the powers identified in subsection 3 of this section,
6 the trust protector shall have the same duties and liabilities as
7 if serving as a trustee under the trust instrument unless the
8 trust instrument expressly provides otherwise. In carrying out
9 any written directions given to the trustee by the trust
10 protector concerning actual or proposed investment decisions, the
11 trustee shall not be subject to the provisions of sections
12 469.900 to 469.913. For purposes of this subsection, "investment
13 decisions" means, with respect to any investment, decisions to
14 retain, purchase, sell, exchange, tender, or otherwise engage in
15 transactions affecting the ownership of investments or rights
16 therein and, with respect to nonpublicly traded investments, the
17 valuation thereof.

18 8. Any trustee of a directed trust shall not be accountable
19 under the law or equity for any act or omission of a trust
20 protector and shall stand absolved from liability for executing
21 the decisions or instructions from a trust protector or for
22 monitoring the actions or inactions of a trust protector. A
23 trustee shall take reasonable steps to facilitate the activity of
24 a trust protector in a directed trust. A trustee shall carry out
25 the written directions given to the trustee by a trust protector
26 acting within the scope of the powers expressly granted to the
27 trust protector in the trust instrument. Except [in cases of bad
28 faith or reckless indifference on the part of the trustee, or] as
29 otherwise provided in the trust instrument, the trustee shall not

1 be liable for any loss resulting directly or indirectly from any
2 act taken or omitted as a result of the written direction of the
3 trust protector or the failure of the trust protector to provide
4 consent. Except as otherwise provided in the trust instrument,
5 the trustee shall have no duty to monitor the conduct of the
6 trust protector, provide advice to or consult with the trust
7 protector, or communicate with or warn or apprise any beneficiary
8 concerning instances in which the trustee would or might have
9 exercised the trustee's own discretion in a manner different from
10 the manner directed by the trust protector. Except as otherwise
11 provided in the trust instrument, any actions taken by the
12 trustee at the trust protector's direction shall be deemed to be
13 administrative actions taken by the trustee solely to allow the
14 trustee to carry out the instructions of the trust protector and
15 shall not be deemed to constitute an act by the trustee to
16 monitor the trust protector or otherwise participate in actions
17 within the scope of the trust protector's authority. Whenever a
18 directed trust reserves to a person or vests in an advisory or
19 investment committee authority to direct the making or retention
20 of any investment, to the exclusion of the trustee or trustees,
21 the excluded trustee or trustees shall not be liable,
22 individually or as a trustee, for any loss resulting from the
23 making or retention of any investment pursuant to such direction.

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

28 (1) Upon the request of the trust protector, unless
29 unreasonable under the circumstances, the trustee shall promptly

1 provide to the trust protector any and all information related to
2 the trust that may relate to the exercise or nonexercise of a
3 power expressly granted to the trust protector in the trust
4 instrument. The trustee has no obligation to provide any
5 information to the trust protector except to the extent a trust
6 protector requests information under this section;

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

11 (3) If the trustee is bound by any confidentiality
12 restrictions with respect to an asset of a trust, a trust
13 protector who requests information under this section about such
14 asset shall agree to be bound by the confidentiality restrictions
15 that bind the trustee before receiving such information from the
16 trustee.

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

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

1 as a condition of appointment."; and

2 Further amend the title and enacting clause accordingly.