

House _____ Amendment NO. _____

Offered By

1 AMEND House Bill No. 1008, Page 1, Section A, Line 2, by inserting after all of said section and
2 line the following:

3
4 "415.415. 1. The operator of a self-service storage facility has a lien on all personal
5 property stored within each leased space for rent, labor, or other charges, and for expenses
6 reasonably incurred in sale of such personal property, as provided in sections 415.400 to 415.425.
7 The lien established by this subsection shall have priority over all other liens except those liens that
8 have been perfected and recorded on personal property. The rental agreement shall contain a
9 statement, in bold type, advising the occupant of the existence of such lien and that property stored
10 in the leased space may be sold to satisfy such lien if the occupant is in default, and that any
11 proceeds from the sale of the property which remain after satisfaction of the lien will be paid to the
12 state treasurer if unclaimed by the occupant within one year after the sale of the property.

13 2. If the occupant is in default for a period of more than forty-five days, the operator may
14 enforce the lien granted in subsection 1 of this section and sell the property stored in the leased
15 space for cash. Sale of the property stored on the premises may be done at a public or private sale,
16 may be done as a unit or in parcels, or may be by way of one or more contracts, and may be at any
17 time or place and on any terms as long as the sale is done in a commercially reasonable manner in
18 accordance with the provisions of section 400.9-627. The operator may otherwise dispose of any
19 property which has no commercial value.

20 3. The proceeds of any sale made under this subsection shall be applied to satisfy the lien,
21 with any surplus being held for delivery on demand to the occupant or any other lienholders which
22 the operator knows of or which are contained in the statement filed by the occupant pursuant to
23 subsection 3 of section 415.410 for a period of one year after receipt of proceeds of the sale and
24 satisfaction of the lien. No proceeds shall be paid to an occupant until such occupant files a sworn
25 affidavit with the operator stating that there are no other valid liens outstanding against the property
26 sold and that he or she, the occupant, shall indemnify the operator for any damages incurred or
27 moneys paid by the operator due to claims arising from other lienholders of the property sold. After
28 the one-year period set in this subsection, any proceeds remaining after satisfaction of the lien shall
29 be considered abandoned property to be reported and paid to the state treasurer in accordance with
30 laws pertaining to the disposition of unclaimed property.

31 4. Before conducting a sale under subsection 2 of this section, the operator shall:

32 (1) At least forty-five days before any disposition of property under this section, which shall
33 run concurrently with subsection 2 of this section, notify the occupant and each lienholder which is
34 contained in any statement filed by the occupant pursuant to subsection 3 of section 415.410 of the
35 default by first-class mail or electronic mail at the occupant's or lienholder's last known address, and
36 shall notify any third-party owner identified by the occupant pursuant to subsection 3 of section

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1 415.410;

2 (2) No sooner than ten days after mailing the notice required in subdivision (1) of this
3 subsection, mail a second notice of default, by verified mail or electronic mail, to the occupant at the
4 occupant's or lienholder's last known address, which notice shall include:

5 (a) A statement that the contents of the occupant's leased space are subject to the operator's
6 lien;

7 (b) A statement of the operator's claim, indicating the charges due on the date of the notice,
8 the amount of any additional charges which shall become due before the date of release for sale and
9 the date those additional charges shall become due;

10 (c) A demand for payment of the charges due within a specified time, not less than ten days
11 after the date on which the second notice was mailed;

12 (d) A statement that unless the claim is paid within the time stated, the contents of the
13 occupant's space will be sold after a specified time; and

14 (e) The name, street address and telephone number of the operator, or a designated agent
15 whom the occupant may contact, to respond to the notice;

16 (3) At least seven days before the sale, advertise the time, place, and terms of the sale in the
17 classified section of a newspaper of general circulation in the jurisdiction where the sale is to be
18 held or in any other commercially reasonable manner. [~~Such~~] The manner of advertisement shall be
19 [in the classified section of the newspaper and shall state that the items will be released for sale.]
20 deemed commercially reasonable if at least three independent bidders attend or view the sale at the
21 time and place advertised.

22 5. If the property is a vehicle, watercraft, or trailer and rent and other charges remain unpaid
23 for sixty days, the owner may treat the vehicle, watercraft, or trailer as an abandoned vehicle and
24 have the vehicle, watercraft, or trailer towed from the self-service storage facility. When the
25 vehicle, watercraft, or trailer is towed from the self-service storage facility, the owner shall not be
26 liable for the vehicle, watercraft, or trailer for any damages to the motor vehicle, watercraft, or
27 trailer once the tower takes possession of the property.

28 6. At any time before a sale under this section, the occupant may pay the amount necessary
29 to satisfy the lien and redeem the occupant's personal property."; and
30

31 Further amend said bill, Page 5, Section 431.202, Line 109, by inserting after all of said section and
32 line the following:

33
34 "456.1-114. 1. For purposes of interpreting a term of familial relationship in a trust,
35 "descendants", "issue", "children", and similar terms of relationship shall be construed as follows:

36 (1) A child conceived or born of a marriage is presumed to be a child of the persons so
37 married unless a judicial proceeding is commenced before the death of the presumed parent and it is
38 finally determined in such proceeding that the presumed parent is not the parent of the child;

39 (2) A child who is not conceived or born of a marriage is presumed to not be a child of a
40 person who did not give birth to the child unless:

41 (a) A judicial proceeding commenced before the death of such person determined that such
42 person is a parent of the child; or

43 (b) Such person openly recognized the child as his or her child and such person has not
44 refused to voluntarily support the child. A trustee may rely on its discretion regarding the
45 sufficiency of recognition or support, and the trustee shall not be liable to any person for its exercise
46 of this discretion unless the trustee acts in bad faith or with reckless indifference to the purposes of
47 the trust or the interest of the beneficiaries.

48
49 If a parent-child relationship is established pursuant to paragraph (a) or (b) of this subdivision, the

1 rights afforded to the child shall not be retroactive, but instead shall apply from the time the
 2 relationship is established; and

3 (3) A child adopted prior to the age of eighteen is the child of an adopting parent and not of
 4 the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on
 5 the relationship between the child and such natural parent.

6 2. The terms of a trust shall prevail over any provision of this section.

7 456.4-419. 1. Unless the terms of the trust instrument expressly provide otherwise, a
 8 trustee, other than a settlor, who has discretionary power under the terms of a trust to make a
 9 distribution of income or principal, whether or not limited by an ascertainable standard, to or for the
 10 benefit of one or more beneficiaries of a trust, the first trust, may instead exercise such discretionary
 11 power by ~~[appointing]~~ distributing all or part of the income or principal subject to such discretionary
 12 power in favor of a trustee of a second trust, the second trust, created under either the same or
 13 different trust instrument in the event that the trustee of the first trust decides that the ~~[appointment]~~
 14 distribution is necessary or desirable after taking into account the terms and purposes of the first
 15 trust, the terms and purposes of the second trust, and the consequences of the distribution. A trustee
 16 may exercise the power described in this subsection by distributing property from the first trust to
 17 one or more second trusts or by modifying the trust instrument for the first trust which, as modified,
 18 becomes one or more second trusts.

19 2. With respect to a second trust to which a distribution is made pursuant to subsection 1 of
 20 this section:

21 (1) At least one permissible distributee of the first trust shall be a permissible distributee of
 22 the second trust immediately after the distribution;

23 (2) If, at the time of the distribution, the settlor of the first trust is living and the first trust is
 24 not a grantor trust under Subpart E of Part I of Subchapter J of Chapter 1 of the Internal Revenue
 25 Code of 1986, as amended, there may not be any permissible distributee of the second trust
 26 immediately after the distribution who is not a permissible distributee of the first trust;

27 (3) If, at the time of the distribution, the settlor of the first trust is deceased or if, at the time
 28 of the distribution, the first trust is a grantor trust under Subpart E of Part I of Subchapter J of
 29 Chapter 1 of the Internal Revenue Code of 1986, as amended, for reasons other than the trustee
 30 having the power granted by this section, any beneficiary of the first trust may be included as a
 31 permissible distributee of the second trust immediately after the distribution;

32 (4) The second trust may not include any beneficiary who is not a beneficiary of the first
 33 trust; and

34 (5) The trust instrument for the second trust may retain, modify, or omit a power of
 35 appointment granted in the first trust, and the trust instrument for the second trust may create a
 36 power of appointment if the powerholder is a beneficiary of the second trust. Except to the extent
 37 provided otherwise in subsection 4 of this section, a power of appointment in the trust instrument for
 38 the second trust may be a general or nongeneral power of appointment and the permissible
 39 appointees of the power need not be limited to the beneficiaries of the first trust.

40 3. The following provisions apply to a trust that has a beneficiary with a disability:

41 (1) As used in this subsection, the following terms mean:

42 (a) "Beneficiary with a disability", a beneficiary of a first trust who the special-needs
 43 fiduciary believes may qualify for governmental benefits based on disability, whether or not the
 44 beneficiary currently receives those benefits or is an individual who has been adjudicated disabled
 45 or adjudicated incapacitated;

46 (b) "Governmental benefits", financial aid or services from a state, federal, or other public
 47 agency;

48 (c) "Special-needs fiduciary", with respect to a trust that has a beneficiary with a disability:

49 a. A trustee or other fiduciary, other than a settlor, who has discretionary power under the

1 terms of a trust to make a distribution of income or principal, whether or not limited by an
 2 ascertainable standard, to or for the benefit of one or more beneficiaries; or

3 b. If no trustee or fiduciary has discretion under subparagraph a. of this paragraph, a trustee
 4 or other fiduciary, other than a settlor, who is required to distribute part or all of the income or
 5 principal of the first trust to or for the benefit of one or more beneficiaries;

6 (d) "Special-needs trust", a trust the trustee believes would not be considered a resource for
 7 purposes of determining whether a beneficiary with a disability is eligible for governmental
 8 benefits;

9 (2) A special-needs fiduciary may exercise the authority granted by subsection 1 of this
 10 section if:

11 (a) A second trust is a special-needs trust that benefits the beneficiary with a disability; and

12 (b) The special-needs fiduciary determines that exercise of the authority pursuant to
 13 subsection 1 of this section will further the purposes of the first trust; and

14 (3) The following provisions apply to any exercise of the authority granted by this
 15 subsection:

16 (a) Notwithstanding the provisions of subdivision (4) of subsection 2 of this section to the
 17 contrary, the terms of the second trust may:

18 a. Provide that an interest is held by a pooled trust as defined by Medicaid law for the
 19 benefit of the beneficiary with a disability under 42 U.S.C. Section 1396p(d)(4)(C); or

20 b. Contain payback provisions complying with reimbursement requirements of Medicaid
 21 law under 42 U.S.C. Section 1396p(d)(4)(A);

22 (b) The provisions of subdivision (3) of subsection 4 of this section shall not apply to the
 23 interests of the beneficiary with a disability; and

24 (c) Except as affected by any change to the interests of the beneficiary with a disability, the
 25 second trust, or if there are two or more second trusts, the second trusts in the aggregate, shall grant
 26 each other beneficiary of the first trust beneficial interests in the second trusts which are
 27 substantially similar to the beneficiary's beneficial interests in the first trust, unless such other
 28 beneficiary's interest is modified in accordance with the provisions of this section other than this
 29 subsection.

30 4. The following provisions apply to any exercise of the authority granted by subsection 1 of
 31 this section:

32 ~~(1) [The second trust may have as beneficiaries only one or more of those beneficiaries of~~
 33 ~~the first trust to or for whom any discretionary distribution may be made from the first trust and who~~
 34 ~~are proper objects of the exercise of the power, or one or more of those other beneficiaries of the~~
 35 ~~first trust to or for whom a distribution of income or principal may have been made in the future~~
 36 ~~from the first trust at a time or upon the happening of an event specified under the first trust;~~

37 ~~— (2) Unless the exercise of such power is limited by an ascertainable standard, no trustee of~~
 38 ~~the first trust may exercise such authority to make a distribution from the first trust if:~~

39 ~~— (a) Such trustee is a beneficiary of the first trust; or~~

40 ~~— (b) Any beneficiary may remove and replace the trustee of the first trust with a related or~~
 41 ~~subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue~~
 42 ~~Code;~~

43 ~~— (3) Except if participating in a change that is needed for a distribution to any such~~
 44 ~~beneficiary under an ascertainable standard, no trustee shall exercise such authority to the extent that~~
 45 ~~doing so would have the effect either of:~~

46 ~~— (a) Increasing the distributions that can be made in the future from the second trust to the~~
 47 ~~trustee of the first trust or to a beneficiary who can remove and replace the trustee of the first trust~~
 48 ~~with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the~~
 49 ~~Internal Revenue Code; or~~

1 ~~——(b) Removing restrictions on discretionary distributions imposed by the instrument under~~
2 ~~which the first trust was created;~~

3 ~~——(4) In the case of any trust contributions which have been treated as gifts qualifying for the~~
4 ~~exclusion from gift tax described in Section 2503(b) of the Internal Revenue Code, by reason of the~~
5 ~~application of Section 2503(c), the governing instrument for the second trust shall provide that the~~
6 ~~beneficiary's remainder interest shall vest no later than the date upon which such interest would have~~
7 ~~vested under the terms of the governing instrument for the first trust;~~

8 ~~——(5) The exercise of such authority may not reduce any income interest of any income~~
9 ~~beneficiary of any of the following trusts:~~

10 ~~——(a) A trust for which a marital deduction has been taken for federal tax purposes under~~
11 ~~Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any comparable~~
12 ~~provision of applicable state law;~~

13 ~~——(b) A charitable remainder trust under Section 664 of the Internal Revenue Code;~~

14 ~~——(c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code; or~~

15 ~~——(d) A trust which has been qualified as a Subchapter S trust under Section 1361(d) of the~~
16 ~~Internal Revenue Code or an electing small business trust under Section 1361(e) of the Internal~~
17 ~~Revenue Code] If the exercise of the authority granted by subsection 1 of this section is limited by~~
18 ~~an ascertainable standard and the trustee exercising such authority is a permissible distributee of the~~
19 ~~first trust under such standard, then:~~

20 ~~(a) The discretionary power under the trust instrument for the second trust to distribute~~
21 ~~income or principal to such trustee as a permissible distributee shall be subject to the same~~
22 ~~ascertainable standard as, or a more restrictive ascertainable standard than, such standard in the trust~~
23 ~~instrument for the first trust; and~~

24 ~~(b) The trust instrument for the second trust shall not:~~

25 ~~a. Modify a power of appointment granted to such trustee in the first trust; or~~

26 ~~b. Grant a power of appointment to such trustee that did not exist in the first trust;~~

27 ~~(2) An exercise of the authority granted by subsection 1 of this section is subject to the~~
28 ~~following limitations:~~

29 ~~(a) If the first trust contains property that qualified, or would have qualified but for~~
30 ~~provisions of this section other than this subdivision, for a marital deduction for purposes of the gift~~
31 ~~or estate tax under the Internal Revenue Code of 1986, as amended, the trust instrument for the~~
32 ~~second trust shall not include or omit any term that, if included in or omitted from the trust~~
33 ~~instrument for the second trust, would have prevented the transfer from qualifying for the deduction,~~
34 ~~or would have reduced the amount of the deduction, under the same provisions of the Internal~~
35 ~~Revenue Code under which the transfer qualified;~~

36 ~~(b) If the first trust contains property that qualified, or would have qualified but for~~
37 ~~provisions of this section other than this subdivision, for a charitable deduction for purposes of the~~
38 ~~income, gift, or estate tax under the Internal Revenue Code of 1986, as amended, the trust~~
39 ~~instrument for the second trust shall not include or omit any term that, if included in or omitted from~~
40 ~~the trust instrument for the second trust, would have prevented the transfer from qualifying for the~~
41 ~~deduction, or would have reduced the amount of the deduction, under the same provisions of the~~
42 ~~Internal Revenue Code under which the transfer qualified;~~

43 ~~(c) If the first trust contains property that qualified, or would have qualified but for~~
44 ~~provisions of this section other than this subdivision, for the exclusion from the gift tax described in~~
45 ~~Section 2503(b) of the Internal Revenue Code of 1986, as amended, the trust instrument for the~~
46 ~~second trust shall not include or omit a term that, if included in or omitted from the trust instrument~~
47 ~~for the second trust, would have prevented the transfer from qualifying under Section 2503(b) of the~~
48 ~~Internal Revenue Code. If the first trust contains property that qualified, or would have qualified~~
49 ~~but for provisions of this section other than this subdivision, for the exclusion from the gift tax~~

1 described in Section 2503(b) of the Internal Revenue Code, by application of Section 2503(c) of the
 2 Internal Revenue Code, the trust instrument for the second trust shall not include or omit a term that,
 3 if included or omitted from the trust instrument for the second trust, would have prevented the
 4 transfer from meeting the requirements of Section 2503(c) of the Internal Revenue Code;

5 (d) If the property of the first trust includes shares of stock in an S corporation, as defined in
 6 Section 1361 of the Internal Revenue Code of 1986, as amended, and the first trust is, or but for
 7 provisions of this section other than this subdivision would be, a permitted shareholder under any
 8 provision of Section 1361 of the Internal Revenue Code, the trustee of the first trust may exercise
 9 such authority with respect to part or all of the S corporation stock only if the second trust receiving
 10 the stock is a permitted shareholder under Section 1361(c)(2) of the Internal Revenue Code. If the
 11 property of the first trust includes shares of stock in an S corporation and the first trust is, or but for
 12 provisions of this section other than this subdivision would be, a qualified subchapter-S trust within
 13 the meaning of Section 1361(d) of the Internal Revenue Code, the trust instrument for the second
 14 trust shall not include or omit a term that prevents the second trust from qualifying as a qualified
 15 subchapter-S trust; and

16 (e) If the first trust contains property that qualified, or would have qualified but for
 17 provisions of this section other than this subdivision, for a zero inclusion ratio for purpose of the
 18 generation-skipping transfer tax under Section 2642(c) of the Internal Revenue Code of 1986, as
 19 amended, the trust instrument for the second trust shall not include or omit a term that, if included in
 20 or omitted from the first trust, would have prevented the transfer to the first trust from qualifying for
 21 a zero inclusion ratio under Section 2642(c) of the Internal Revenue Code;

22 ~~[(6)]~~ (3) The exercise of such authority does not apply to trust property subject to a
 23 presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of
 24 whom, the trustee has authority to make distributions, unless after the exercise of such authority,
 25 such beneficiary's power of withdrawal is unchanged with respect to the trust property; and

26 ~~[(7)]~~ (4) A spendthrift clause or a provision in the trust instrument that prohibits amendment
 27 or revocation of the trust shall not preclude the trustee from exercising the authority granted by
 28 subsection 1 of this section.

29 ~~[3-]~~ 5. At least sixty days prior to making a discretionary distribution under subsection 1 of
 30 this section, the trustee of the first trust shall notify the permissible distributees of the first trust and
 31 the permissible distributees of the second trust~~, or the qualified beneficiaries of the second trust if~~
 32 ~~there are no permissible distributees of the second trust,~~ of the distribution. A beneficiary may
 33 waive the right to the notice required by this subsection and, with respect to future distributions,
 34 may withdraw a waiver previously given.

35 ~~[4-]~~ 6. In exercising the authority granted by subsection 1 of this section, the trustee shall
 36 remain subject to all fiduciary duties otherwise imposed under the trust instrument and Missouri
 37 law.

38 ~~[5-]~~ 7. This section does not impose on a trustee a duty to exercise the authority granted by
 39 subsection 1 of this section in favor of another trust or to consider exercising such authority in favor
 40 of another trust.

41 8. A second trust may have a duration that is the same as or different from the duration of
 42 the first trust. However, to the extent that property of the second trust is attributable to property of
 43 the first trust, the property of the second trust is subject to any rules governing maximum perpetuity,
 44 accumulation, or suspension of the power of alienation which apply to property of the first trust.
 45 The provisions of this subsection shall not preclude the creation of a general power of appointment
 46 in the trust instrument for a second trust as authorized by subdivision (5) of subsection 2 of this
 47 section.

48 9. In the event the trust instrument for the second trust in part does not comply with this
 49 section but would otherwise be effective under this section, the exercise of the power is effective

1 and the following rules apply with respect to the principal of the second trust attributable to the
2 exercise of the power:

3 (1) A provision in the trust instrument for the second trust which is not permitted under this
4 section is void to the extent necessary to comply with this section; and

5 (2) A provision required by this section to be in the trust instrument for the second trust
6 which is not contained in the trust instrument is deemed to be included in the trust instrument to the
7 extent necessary to comply with this section.

8 [6.] 10. This section is intended to codify and, from and after enactment, to provide certain
9 limitations to the common law of this state, and this section applies to any trust governed by the
10 laws of this state, including a trust whose principal place of administration is transferred to this state
11 before or after the enactment of this section."; and

12
13 Further amend said bill by amending the title, enacting clause, and intersectional references
14 accordingly.