



MISSOURI HOUSE OF REPRESENTATIVES
WITNESS APPEARANCE FORM

BILL NUMBER: HB 758		DATE: 3/24/2021	
COMMITTEE: Judiciary			
TESTIFYING: <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES			
WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: DANIEL WHEELER		PHONE NUMBER: 816-792-8300	
BUSINESS/ORGANIZATION NAME: MISSOURI BAR ASSOCIATION		TITLE:	
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THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

WRITTEN STATEMENT OF DANIEL P. WHEELER IN SUPPORT OF HOUSE BILL 758 I am a partner of Kirkland Woods & Martinsen LLP, a law firm that specializes in trusts and estates law with offices in St. Louis, Liberty and Springfield, Missouri. I am the Chair of the Estate Planning, Trust and Probate Division of the Missouri Bar. I am the former probate commissioner for the Probate Division of the Jackson County, Missouri Circuit Court. I am also a Fellow in the American College of Trust & Estate Counsel. I am testifying on behalf of the Missouri Bar in support of House Bill 758 which establishes a provision regarding interpretation of familial relationships described in trusts and modifies a provision regarding distributions of income or principal from one trust to another trust (referred to as decanting).

FAMILIAL RELATIONSHIPS (Section 456.1-114) For purposes of intestate succession, Missouri addresses the status of adopted children and children born out of wedlock in Section 474.060, RS Mo. For class gifts under wills, Section 474.435, RS Mo. states that the rules of intestate succession shall apply to adopted children and those born out of wedlock. With respect to class gifts under trusts, however, the Missouri Supreme Court held in *Traders Bank of Kansas City v. Goulding*, 711 S.W.2d 872, 875 (Mo. 1986) that the rules of intestate succession in Section 474.060, RS Mo. are not applicable to determine whether illegitimate children of a trust beneficiary were lawful issue. Missouri courts have held that adopted children are within the class of "issue" or "descendants" for purposes of a trust unless a contrary intent is set forth in the trust. See, e.g., *Commerce Bank v. Blasdel*, 141 S.W.3d 434 (Mo. App. W.D. 2004) and *Davis v. Neilson*, 871 S.W.2d 35 (Mo. App. W.D. 1993). However, in each of those cases, the court ruled that certain individuals adopted as adults were not entitled to distributions from the trust at issue. House Bill 758 addresses the lack of a statutory standard for children born out of wedlock and adopted children for determining beneficiaries under trusts. The approach taken is similar to that under Missouri's intestacy rules, i.e., open acknowledgment and support by the putative parent or a judicial proceeding commenced while the putative parent is still living. The proposed statute provides that a child adopted prior to age 18 is included in class gifts unless a contrary intent is expressed in the trust. The statute does not change Missouri law regarding whether a person adopted after age 18 is included in a class gift. House Bill 758 will bring clarity to Missouri trust law regarding familial relationships under trusts and will benefit the citizens of Missouri as grantors or beneficiaries of trusts as well as the trustees serving as fiduciaries of trusts.

DECANTING OF TRUSTS (Section 456.4-419) A committee of the Estate Planning, Trust and Probate Division of the Missouri Bar formed a Decanting Subcommittee to study Section 456.4-419, RSMo (the "Missouri decanting statute") and the Uniform Trust Decanting Act (the "Uniform Act"). House Bill 758 modifies the Missouri decanting statute, which was enacted in 2011. Decanting is a term used to describe discretionary distributions that are made from one trust (the "First Trust") to another trust (the "Second Trust") if certain conditions are met. The Missouri decanting statute has been very

useful to the citizens of Missouri because it allows greater flexibility to address circumstances that have changed since the First Trust was executed. One example of where decanting is useful is where the First Trust does not include provisions that are desirable due to the dramatic increases in the federal estate tax exemption (which was only \$600,000 prior to the year 2000 and is now \$11,700,000) and the Second Trust does include those provisions. Another example of where decanting is useful is where the First Trust does not include provisions for a beneficiary with special needs and the Second Trust does include those provisions. There are currently 29 states with a decanting statute. In 2015, the Uniform Law Commissioners approved and recommended enactment of the Uniform Act. The Uniform Act has now been enacted in 10 states. In 2017, the Estate Planning, Trust and Probate Committee of the Missouri Bar formed a Decanting Subcommittee to study the Uniform Act and recommend whether Missouri should make any changes to the Missouri decanting statute or replace it with the Uniform Act. The Subcommittee recommended that the Missouri decanting statute be amended to adopt some, but not all, of the provisions of the Uniform Act. The Subcommittee has presented the amendments set forth in House Bill 758 to the Estate Planning, Trust and Probate Committee at the 2017 Fall Meeting and subsequent meetings. In those meetings, the Committee unanimously approved the proposed changes to the Missouri decanting act. The primary changes that House Bill 758 would make to the Missouri decanting statute are as follows:

1. Subsection 2 eliminates the risk that the existence of the decanting power may cause the IRS to treat a “nongrantor trust” as a “grantor trust”, which would result in the settlor of the trust being deemed to be owner of the trust assets for income tax purposes.
2. Subsection 3 provides more flexibility for the trustee of a trust to use decanting to create a special needs trust for a beneficiary with a disability.
3. Subsection 4 adopts the tax provisions of the Uniform Act, which will prevent the exercise of the decanting power in a manner that has adverse tax consequences to a trust or the beneficiaries of a trust.
4. Subsection 5 expands the notice requirements for the exercise of the decanting power.
5. Subsection 8 provides that any rule against perpetuities that applies to the First Trust will apply to the Second Trust (unless a beneficiary has a general power of appointment over the First Trust or Second Trust that causes the rule to no longer apply) – although this is not a change to the current law, inclusion of this language in the statute eliminates any question as to whether the rule against perpetuities still applies to the Second Trust.
6. Subsection 9 sets forth a “savings” provision that protects the trust and the beneficiaries from the attempted exercise of the decanting power in a manner that violates the statute.

For many years, Missouri has been a leading state in the area of trust law. It has been proactive in passing legislation that makes Missouri a great state for administering trusts, which helps not only the citizens of Missouri but Missouri banks and trusts that act as trustees. The enactment of House Bill 758 will further strengthen Missouri’s already exceptional trust laws. House Bill 758 will not negatively impact state revenues and, if anything, it will enhance state revenues by causing the settlors of trusts to choose to have their trusts administered in Missouri rather than elsewhere. On behalf of the Missouri Bar, I urge the members of the House to pass House Bill 758.

DANIEL P. WHEELER
Kirkland Woods & Martinsen LLP



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This Bill needs additional work and much needed debate!			