

SECOND REGULAR SESSION

HOUSE BILL NO. 2453

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

Read 1st time March 26, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5515L.01I

AN ACT

To repeal sections 362.550 and 456.8-816, RSMo, and to enact in lieu thereof two new sections relating to the Missouri uniform trust code.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 362.550 and 456.8-816, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 362.550 and 456.8-816, to read as follows:

362.550. 1. When any trust company organized pursuant to the laws of this state shall
2 have been nominated as personal representative of the last will of any deceased person, the court
3 or officer authorized pursuant to the law of this state to grant letters testamentary thereon shall,
4 upon proper application, grant letters testamentary thereon to the trust company or to its
5 successor by merger.

6 2. When application is made for the appointment of a personal representative on the
7 estate of any deceased person, and there is no person entitled to the letters, or if there is one so
8 entitled then, on the application of the person, the court or officer making the appointment may
9 grant letters of administration with will annexed to any trust company.

10 3. Any trust company may be appointed conservator, trustee, personal representative,
11 receiver, assignee or in any other fiduciary capacity, in the manner now provided by law for
12 appointment of individuals to any such office. On the application of any natural person acting
13 in any such office, or on the application of any natural persons acting jointly in any such office,
14 any trust company may be appointed by the court or officer having jurisdiction in the place and
15 stead of the person or persons; or on the application of the person or persons any trust company

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.

16 may be appointed to the office to act jointly with the person or persons theretofore appointed,
17 or appointed at the same time; provided, the appointment shall not increase the compensation
18 to be paid the joint fiduciaries over the amount pursuant to the law payable to a fiduciary acting
19 alone.

20 4. Any natural person or persons heretofore or hereafter appointed as guardian, trustee,
21 personal representative, receiver, assignee, or in any other fiduciary capacity, desiring to have
22 their bond under the office reduced, or desiring to be appointed under a reduced bond, the person
23 or persons may apply to the court to have their appointment put or made under such limitation
24 of powers and upon such terms and conditions as to the deposits of assets by the person or
25 persons with any trust company, under such reduced bond to be given by the person or persons
26 as the court or judge shall prescribe, and the court or judge may make any proper order in the
27 premises.

28 5. Any investments made by any trust company of money received by it in any fiduciary
29 capacity shall be at its sole risk, and for all losses of such money the capital stock and property
30 of the company shall be absolutely liable, unless the investments are such as are proper when
31 made by an individual acting in such fiduciary capacity, or such as are permitted under and by
32 the instrument or order creating or defining the trust. Any trust company in the exercise of its
33 fiduciary powers as personal representative, guardian, trustee or other fiduciary capacity, may
34 retain and continue to hold, as an investment of an estate, trust or other account administered by
35 it as fiduciary, any shares of the capital stock, and other securities or obligations, of the trust
36 company so acting, and of any parent company or affiliated company of such trust company,
37 which stock, securities and obligations have been transferred to or deposited with such fiduciary
38 by the creator or creators of such fiduciary account or other donors or grantors, or received by
39 it in exchange for, or as dividends upon, or purchased by the exercise of subscription rights,
40 including rights to purchase fractional shares, in respect of, any other stock, securities or
41 obligations so transferred to or deposited with it, or which have been purchased by such fiduciary
42 pursuant to a requirement of the instrument or order governing such account or pursuant to the
43 direction of such person or persons other than the trust company having power to direct such
44 fiduciary with respect to such purchases; but except as herein provided, including the exercise
45 of subscription rights, no such trust company shall purchase as an investment for any fiduciary
46 account, in the exercise of its own discretion, any stock or other securities or obligations, other
47 than deposit accounts, savings certificates or certificates of deposits, issued by such trust
48 company, or its parent or affiliated companies. This subsection shall not be construed to prohibit
49 a trust company, in the exercise of its own discretion, from purchasing as an investment, for any
50 fiduciary account, securities or obligations of any state or political subdivision thereof which
51 meet investment standards which shall be established by the director of the division of finance,

52 even though such obligations are underwritten by such trust company or its parent or affiliated
53 companies.

54 6. The court or officer may make orders respecting the trusts and require any trust
55 company to render all accounts which the court or officer might lawfully require if the personal
56 representative, guardian, trustee, receiver, depositary or the trust company acting in any other
57 fiduciary capacity, were a natural person.

58 7. Upon the appointment of a trust company to any fiduciary office, no official oath shall
59 be required.

60 8. Property or securities received or held by a trust company in any fiduciary capacity
61 shall be a special deposit in the trust company, and the accounts thereof shall be kept separate
62 from each other and separate from the company's individual business. The property or securities
63 held in trust shall not be mingled with the investments of the capital stock or other property
64 belonging to the trust company or be liable for the debts or obligations thereof. For the purpose
65 of this section, the corporation shall have a trust department, in which all business authorized by
66 subsection 2 of section 362.105 is kept separate and distinct from its general business.

67 9. The accounts, securities and all records of any trust company relating to a trust
68 committed to it shall be open for the inspection of all persons interested in the trust.

69 10. When any trust company organized pursuant to the laws of this state shall have been
70 appointed personal representative of the estate of any deceased person, or guardian, trustee,
71 receiver, assignee, or in any other fiduciary capacity, in the manner provided by law for
72 appointment to any such office, and if the trust company has heretofore merged or consolidated
73 with or shall hereafter merge or consolidate with any other trust company organized pursuant to
74 the laws of this state, then, at the option of the first mentioned company, and upon the filing by
75 it, with the court having jurisdiction of the estate being administered, of a certificate of the
76 merger or consolidation, together with a statement that the other trust company is to thereafter
77 administer the estate held by it and an acceptance by the latter trust company of the trust to be
78 administered, the certificate, statement and acceptance to be executed by the president or vice
79 president of the respective companies and to have affixed thereto the corporate seals of the
80 respective companies, attested by the secretary thereof, and further upon the approval of the court
81 and the giving of such bond as may be required, all the rights, privileges, title and interest in and
82 to all property of whatsoever kind, whether real, personal or mixed, and things in action
83 belonging to the trust estate, and every right, privilege or asset of conceivable value or benefit
84 then existing which would inure to the estate under an unmerged or consolidated existence of
85 the first mentioned company, shall be fully and finally and without right of reversion transferred
86 to and vested in the corporation into which it is merged or with which it is consolidated, without
87 further act or deed, and the last mentioned corporation shall have and hold the same in its own

88 right as fully as the same was possessed and held by the corporation from which it was, by
89 operation of the provisions of this section, transferred, and the corporation shall succeed to all
90 the relations, obligations and liabilities, and shall execute and perform all the trusts and
91 obligations devolving upon it, in the same manner as though it had itself assumed the relation
92 or trust.

93 11. Notwithstanding any other provisions of law to the contrary, a bank, trust company
94 or affiliate thereof, when acting as a trustee, investment advisor, custodian, or otherwise in a
95 fiduciary capacity with respect to the investment and reinvestment of assets may invest and
96 reinvest the assets, subject to the standards contained in section [456.520] **456.8-816**, RSMo, in
97 the securities of any open-end or closed-end management investment company or investment
98 trust registered pursuant to the federal Investment Company Act of 1940 as amended (15 U.S.C.
99 Sections 80a-1, et seq.) (collectively, "mutual funds"). Such investment and reinvestment of
100 assets may be made notwithstanding that such bank, trust company, or affiliate provides services
101 to the investment company or trust as investment advisor, sponsor, distributor, custodian, transfer
102 agent, registrar, or otherwise, and receives reasonable remuneration for such services. Such bank
103 or trust company or affiliate thereof is entitled to receive fiduciary fees with respect to such
104 assets. For such services the bank or trust company or affiliate thereof shall be entitled only to
105 the normal fiduciary fee but neither a bank, trust company nor affiliate shall be required to reduce
106 or waive its compensation for services provided in connection with the investment and
107 management of assets because the fiduciary invests, reinvests or retains assets in a mutual fund.
108 The provisions of this subsection apply to any trust, advisory, custody or other fiduciary
109 relationship established before or after August 28, 1999, unless the governing instrument refers
110 to this section and provides otherwise.

111 12. As used in this section, the term "trust company" applies to any state or national bank
112 or trust company qualified to act as fiduciary in this state.

456.8-816. Without limiting the authority conferred by section 456.8-815, a trustee may:

- 2 (1) collect trust property and accept or reject additions to the trust property from a settlor
3 or any other person;
- 4 (2) acquire or sell property in divided or undivided interests, for cash or on credit, at
5 public or private sale;
- 6 (3) exchange, partition, or otherwise change the character of trust property;
- 7 (4) deposit trust money in an account in a financial institution;
- 8 (5) borrow money, with or without security, and mortgage or pledge trust property for
9 a period within or extending beyond the duration of the trust;
- 10 (6) with respect to an interest in a proprietorship, partnership, limited liability company,
11 business trust, corporation, or other form of business or enterprise, continue the business or other

12 enterprise and take any action that may be taken by shareholders, members, or property owners,
13 including merging, dissolving, or otherwise changing the form of business organization or
14 contributing additional capital;

15 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,
16 including the right to:

17 (a) vote, or give proxies to vote, with or without power of substitution, or enter into or
18 continue a voting trust agreement;

19 (b) hold a security in the name of a nominee or in other form without disclosure of the
20 trust so that title may pass by delivery;

21 (c) pay calls, assessments, and other sums chargeable or accruing against the securities,
22 and sell or exercise stock subscription or conversion rights; and

23 (d) deposit the securities with a depository or other financial institution;

24 (8) with respect to an interest in real property, construct, or make ordinary or
25 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
26 demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop
27 land, dedicate land to public use or grant public or private easements, and make or vacate plats
28 and adjust boundaries;

29 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other
30 arrangement for exploration and removal of natural resources, with or without the option to
31 purchase or renew, for a period within or extending beyond the duration of the trust;

32 (10) grant an option involving a sale, lease, or other disposition of trust property or
33 acquire an option for the acquisition of property, including an option exercisable beyond the
34 duration of the trust, and exercise an option so acquired;

35 (11) insure the property of the trust against damage or loss and insure the trustee, the
36 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

37 (12) abandon or decline to administer property of no value or of insufficient value to
38 justify its collection or continued administration;

39 (13) with respect to possible liability for violation of environmental law:

40 (a) inspect or investigate property the trustee holds or has been asked to hold, or property
41 owned or operated by an organization in which the trustee holds or has been asked to hold an
42 interest, for the purpose of determining the application of environmental law with respect to the
43 property;

44 (b) take action to prevent, abate, or otherwise remedy any actual or potential violation
45 of any environmental law affecting property held directly or indirectly by the trustee, whether
46 taken before or after the assertion of a claim or the initiation of governmental enforcement;

47 (c) decline to accept property into trust or disclaim any power with respect to property
48 that is or may be burdened with liability for violation of environmental law;

49 (d) compromise claims against the trust which may be asserted for an alleged violation
50 of environmental law; and

51 (e) pay the expense of any inspection, review, abatement, or remedial action to comply
52 with environmental law;

53 (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole
54 or in part, a claim belonging to the trust;

55 (15) pay taxes, assessments, compensation of the trustee and of employees and agents
56 of the trust, and other expenses incurred in the administration of the trust;

57 (16) exercise elections with respect to federal, state, and local taxes;

58 (17) select a mode of payment under any employee benefit or retirement plan, annuity,
59 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right
60 to indemnification for expenses and against liabilities, and take appropriate action to collect the
61 proceeds;

62 (18) make loans out of trust property, including loans to a beneficiary on terms and
63 conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee
64 has a lien on future distributions for repayment of those loans;

65 (19) pledge trust property to guarantee or secure loans made by others to a beneficiary;

66 (20) appoint a trustee to act in another jurisdiction with respect to trust property located
67 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
68 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
69 appointed;

70 (21) pay an amount distributable to a beneficiary who is under a legal disability or who
71 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
72 applying it for the beneficiary's benefit, or by:

73 (a) paying it to the beneficiary's conservator or, if the beneficiary does not have a
74 conservator, the beneficiary's guardian;

75 (b) paying it to the beneficiary's custodian under the Missouri transfers to minors law
76 under sections 404.005 to 404.094, RSMo, or a personal custodian under sections 404.400 to
77 404.650, RSMo, and, for that purpose, creating a custodianship or custodial trust;

78 (c) if the trustee does not know of a conservator, guardian, custodian, or custodial
79 trustee, paying it to an adult relative or other person having legal or physical care or custody of
80 the beneficiary, to be expended on the beneficiary's behalf; or

81 (d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's
82 continuing right to withdraw the distribution;

83 (22) on distribution of trust property or the division or termination of a trust, make
84 distributions in divided or undivided interests, allocate particular assets in proportionate or
85 disproportionate shares, value the trust property for those purposes, and adjust for resulting
86 differences in valuation;

87 (23) resolve a dispute concerning the interpretation of the trust or its administration by
88 mediation, arbitration, or other procedure for alternative dispute resolution;

89 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
90 protect trust property and the trustee in the performance of the trustee's duties;

91 (25) to engage and compensate attorneys, accountants, investment advisors, or other
92 agents, and to delegate to them trustee's duties and functions in accordance with the provisions
93 of section 456.8-807;

94 (26) sign and deliver contracts and other instruments that are useful to achieve or
95 facilitate the exercise of the trustee's powers;

96 (27) on termination of the trust, exercise the powers appropriate to wind up the
97 administration of the trust and distribute the trust property to the persons entitled to it; and

98 (28) to invest and reinvest trust assets in accordance with sections 469.900 to 469.913,
99 RSMo; including investing and reinvesting **trust assets in United States government**
100 **obligations, either directly or in the form of securities of, or other interests in, any open-**
101 **end or closed-end management type investment company or investment trust registered**
102 **pursuant to the Investment Company Act of 1940, as amended, provided that the**
103 **governing instrument or order directs, requires, authorizes, or permits investment in**
104 **United States government obligations, and provided that the portfolio of such investment**
105 **company or investment trust is limited to United States government obligations and to**
106 **repurchase agreements fully collateralized by such obligations, and provided further that**
107 **such investment company or investment trust shall take delivery of such collateral, and in**
108 securities or obligations of any state or its political subdivisions, including securities or
109 obligations that are underwritten by the trustee or an affiliate of the trustee or a syndicate in
110 which the trustee or an affiliate of the trustee is a member which meet the standards established
111 by the division of finance pursuant to subsection 5 of section 362.550, RSMo.

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