

FIRST REGULAR SESSION

HOUSE BILL NO. 230

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), JONES (89), DIEHL, LANT, KELLEY (126),
LICHTENEGGER AND WHITE (Co-sponsors).

0125L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 456, RSMo, by adding thereto three 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. Chapter 456, RSMo, is amended by adding thereto three new sections, to be
2 known as sections 456.1-113, 456.8-818, and 1, to read as follows:

**456.1-113. 1. If a husband and wife own real or personal property as tenants by
2 the entireties and transfer such property to the trustee of a trust, the terms of which
3 provide that husband and wife are both settlors of that trust, then during any period that
4 such property, or any investment or reinvestment thereof, is held by the trustee of that
5 trust, such property shall be deemed to be tenancy by the entireties property and shall
6 retain its characteristics as tenancy by the entireties property for all purposes.**

**7 2. Unless the terms of the transfer or the terms of the trust specifically provide
8 otherwise, while both husband and wife are living and after the death of the first of them,
9 the trustee shall administer such property as tenancy by the entireties property, including
10 but not limited to administering such property in the following manner:**

**11 (1) The husband and wife while both shall be living shall be the sole permissible
12 distributees of such property, or any interest therein, and of any income or benefits derived
13 from the property;**

**14 (2) The husband and wife while both shall be living, and the survivor of them, shall
15 have the power at any time and from time to time to withdraw or to appoint to any person
16 or persons any part or all of such property; and**

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.

17 **(3) The power to revoke or amend the trust shall be vested in and exercisable by**
18 **the husband and wife while both of them are living and by the survivor of them.**

19 **3. In the event that any transfer of tenancy by entireties property to the trustee of**
20 **the trust is held to be invalid by any court of proper jurisdiction while both husband and**
21 **wife are living, or the trust is terminated by a court decree or by its terms while both**
22 **husband and wife are living, then immediately upon the occurrence of any such event, any**
23 **such tenancy by entireties property held by the trustee shall automatically be deemed to**
24 **be held individually by the husband and wife, as tenants by the entireties, free and clear**
25 **of the trust, without any further action required on the part of the trustee or husband and**
26 **wife.**

456.8-818. 1. A trust instrument may provide for the appointment of a trust
2 **protector. For the purposes of this section, a person designated with a status or title, other**
3 **than that of a beneficiary or as a trustee, with powers similar to those specified in**
4 **subsection 2 of this section is a trust protector, except to the extent otherwise provided in**
5 **the trust instrument.**

6 **2. A trust protector appointed by the trust instrument has the powers, delegations,**
7 **and functions conferred on the trust protector by the trust instrument. These powers,**
8 **delegations and functions may include, but are not limited to, the following:**

- 9 **(1) Remove and appoint a trustee or name a successor trust protector;**
10 **(2) Modify or amend the trust instrument for any valid purpose or reason,**
11 **including, without limitation, to:**
12 **(a) achieve favorable tax status or to respond to changes in the Internal Revenue**
13 **Code or state law, or the rulings and regulations under such Code or law;**
14 **(b) modify or amend the trustee's administration, financial, and investment powers**
15 **as set forth in the trust instrument;**
16 **(c) modify or amend the trust principal and income distribution provisions;**
17 **(d) reflect legal changes that affect trust administration;**
18 **(e) correct errors or ambiguities that might otherwise require court construction;**
19 **or**
20 **(f) correct a drafting error that defeats a grantor's clear intent;**
21 **(3) Increase, decrease, modify, or restrict the interests of any beneficiary of the**
22 **trust;**
23 **(4) Modify the terms of a power of appointment granted by the trust; or**
24 **(5) Change the applicable law governing the trust or the trust situs.**

25 **3. Except to the extent otherwise specifically provided in the trust instrument, a**
26 **modification authorized under subsection 2 of this section shall not:**

27 (1) Grant a beneficial interest to an individual or a class of individuals unless the
28 individual or class of individuals is specifically provided for under the trust instrument;

29 (2) Modify the beneficial interest of a governmental unit in a trust created under
30 42 U.S.C. Section 1396p(d)(4); or

31 (3) Grant any power or authority that would create a taxable gift for federal gift
32 tax purposes by the trust protector or cause the inclusion of any assets of the trust in the
33 gross estate of the trust protector for federal estate tax purposes.

34 4. Notwithstanding any provision of the Missouri uniform trust code to the
35 contrary, but except to the extent otherwise provided by the trust instrument, a trust
36 protector:

37 (1) is not a trustee or fiduciary and is not liable or accountable as a trustee or
38 fiduciary because of an act or omission of the trust protector when performing or failing
39 to perform the duties of a trust protector under the trust instrument;

40 (2) is permitted and authorized to exercise the trust protector's best judgment in
41 its course of service and will not be liable for any act or omission to act unless it is
42 conclusively established that the act or omission to act was motivated by an actual intent
43 to harm any trust, for which the trust protector is acting or any beneficiary of such trust,
44 or is an act of self-dealing for personal pecuniary benefit;

45 (3) is entitled to payment or reimbursement of the reasonable costs and expenses
46 from the assets of the trust for which the trust protector is acting (including attorney's fees)
47 of defending, settlement, or judgment of any claim made against the trust protector for
48 claims made arising from actions taken by the trust protector acting in that capacity,
49 unless it is conclusively established by a court decision from which no appeal may be taken
50 that the trust protector's conduct was in bad faith; and

51 (4) absent bad faith on the part of the trust protector, the trust protector is
52 exonerated from any and all liability for the trust protector's acts or omissions or the acts
53 or omissions of any fiduciary or any beneficiary under the trust instrument or arising from
54 any exercise or nonexercise of the powers and discretions conferred under the trust
55 instrument.

Section 1. An estate held by entirety may be devised by a joint testamentary
2 disposition. By agreement and joint act, a husband and wife by joint testamentary
3 disposition may devise a remainder over after life enjoyment by the surviving spouse. Such
4 act shall not disrupt or terminate the joint tenancy by the husband and wife during the life
5 of both.