

HB 2105 -- ESTATE PLANNING

SPONSOR: Cornejo

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Civil and Criminal Proceedings by a vote of 11 to 0. Voted "Do Pass" by the Select Committee on Judiciary by a vote of 8 TO 0.

Currently, if an attorney in fact or his or her successor, appointed to act as an agent pursuant to a written power of attorney, acts in bad faith, fraudulently or dishonestly then the attorney in fact must be liable to the principal or the principal's successors in interest for damages as well as attorney's fees. This bill provides that the attorney in fact is liable if he or she engages in willful misconduct or fraud or acts with willful disregard for the purposes, terms, or conditions of the power of attorney. For the purposes of the bill "successors in interest" include those who can prove that they have been damaged as a result of the attorney in fact's actions (Section 404.717, RSMo).

When a noncharitable irrevocable trust is modified or terminated without a court order pursuant to current law, a beneficiary, who is not a qualified beneficiary, may be represented in nonjudicial proceedings by a qualified beneficiary who has substantially identical interests (Section 456.3-304).

Currently, a court may modify or terminate a noncharitable irrevocable trust which became irrevocable on or after January 1, 2005, upon finding that the interests of nonconsenting beneficiaries will be protected, and terminating or modifying the trust does not affect the material purpose of the trust. This bill provides that a court may modify or terminate all noncharitable irrevocable trusts which meet such conditions.

The bill also repeals a provision of law regarding the termination and modification of a trust instrument that became irrevocable prior to January 1, 2005 (Sections 456.4B-411 and 456.590).

Currently, a settlor, cotrustee, or a qualified beneficiary may request the court to remove a trustee or the trustee may be removed by the court's own initiative. This bill specifies that a court may also replace the trustee. When a corporation is the trustee being removed the successor trustee must be selected by the court (Section 456.7-706).

The bill provides that the Principal and Income Act applies to every trust or decedent's estate existing on or after August 28, 2001, rather than solely to those trusts or decedents' estates existing on August 28, 2001 (Section 469.467).

Currently, the law provides that for letters of administration to be issued an application must be made to the court within one year of the death of the decedent. This bill provides that this time limit rule applies on the issuance of letters of administration except as provided under current law that when a will is presented to the probate court within the proper time limits, then administration may be granted on the will at any time after presentation (Section 473.050).

This bill is the same as SB 577 (2016).

PROPOSERS: Supporters say that this bill has been vetted by the Missouri Bar Association and it simply cleans up language and eliminates some loopholes in the law.

Testifying for the bill were Representative Cornejo and Michael Magliari, The Missouri Bar.

OPPOSERS: There was no opposition voiced to the committee.