

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1008

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HARDWICK.

2112H.01P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 415.415, 431.202, and 456.4-419, RSMo, and to enact in lieu thereof five new sections relating to financial transactions.

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

Section A. Sections 415.415, 431.202, and 456.4-419, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 415.415, 431.201, 431.202, 456.1-114, and 456.4-419, to read as follows:

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

2. If the occupant is in default for a period of more than forty-five days, the operator may enforce the lien granted in subsection 1 of this section and sell the property stored in the leased space for cash. Sale of the property stored on the premises may be done at a public or private sale, may be done as a unit or in parcels, or may be by way of one or more contracts, and may

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.

15 be at any time or place and on any terms as long as the sale is done in a commercially reasonable
16 manner in accordance with the provisions of section 400.9-627. The operator may otherwise
17 dispose of any property which has no commercial value.

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

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

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

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

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

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

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

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

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

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

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

62 6. At any time before a sale under this section, the occupant may pay the amount
63 necessary to satisfy the lien and redeem the occupant's personal property.

431.201. As used in section 431.202, unless the context otherwise requires, the
2 **following terms mean:**

3 (1) **"Business entity", any natural person, business, corporation, limited liability**
4 **company, series limited liability company, partnership, sole or other proprietorship,**
5 **professional practice, or any other business organization or commercial enterprise,**
6 **whether for profit or not, including, but not limited to, any successor-in-interest to a**
7 **business entity who conducts business or who, directly or indirectly, owns any equity**
8 **interest, ownership, or profit participation in the business entity;**

9 (2) **"Customers with whom the employee dealt", each customer or prospective**
10 **customer:**

11 (a) **Who was serviced, directly or indirectly, by an employee of a business entity;**

12 (b) **Whose business or other dealings with a business entity were supervised,**
13 **coordinated, or otherwise worked on, directly or indirectly, by an employee;**

14 (c) **Who was solicited, produced, induced, persuaded, encouraged, or otherwise**
15 **dealt with, directly or indirectly, by an employee;**

16 (d) **About whom an employee, directly or indirectly, obtained, had knowledge of,**
17 **had access to, or is in possession of confidential business or proprietary information or**
18 **trade secrets in the course of or as a result of the employee's relationship with the business**
19 **entity;**

20 (e) **Who has purchased or otherwise obtained products or services from a business**
21 **entity and the sale or provision of which resulted in compensation, commissions, earnings,**

22 or profits to or for the employee within two years prior to the end of the employee's
23 employment or business relationship with the business entity; or

24 (f) With whom an employee had contact, directly or indirectly, of sufficient quality,
25 frequency, and duration during the employee's employment or other business relationship
26 with the business entity such that the employee had influence over the customer;

27 (3) "Employee":

28 (a) A natural person currently or formerly employed or retained by a business
29 entity in any capacity, or who has performed work for a business entity, including, but not
30 limited to, a member of a board of directors, an officer, a supervisor, an independent
31 contractor, or a vendor;

32 (b) A natural person who, by reason of having been employed by or having a
33 business relationship with a business entity:

34 a. Obtained specialized skills, training, learning, or abilities; or

35 b. Obtained, had knowledge of, had access to, or is in possession of confidential or
36 proprietary business information or trade secrets of the business entity, including, but not
37 limited to, customer contact information or information of or belonging to customers of the
38 business entity; or

39 (c) A current or former owner or seller of all or any part of the assets of a business
40 entity or of any interest in a business entity, including, but not limited to, all or any part
41 of the shares of a corporation, a partnership interest, a membership or membership
42 interest in a limited liability company or a series limited liability company, or an equity
43 interest, ownership, profit participation, or other interest of any type in any business
44 entity.

45

46 The definition of "employee" set forth in this subdivision shall be applicable only with
47 respect to section 431.202 and shall have no application in any other context. The
48 definition of "employee" is not intended, and shall not be relied upon, to create, change,
49 or affect the employment status of any natural person or the meaning of the terms
50 "employee", "employment", or "employer" that may be applicable in any other context
51 or under any other provision of law.

431.202. 1. A reasonable covenant in writing promising not to solicit, recruit, hire,
2 induce, persuade, encourage, or otherwise interfere with, directly or indirectly, the
3 employment or other business relationship of one or more employees of a business entity
4 shall be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031 if

5 (1) Between two or more [~~corporations or other~~] business entities seeking to preserve
6 workforce stability (which shall be deemed to be among the protectable interests of each

7 ~~[corporation or]~~ **such** business entity) during, and for a reasonable period following, negotiations
8 between such ~~[corporations or]~~ **business** entities for the acquisition of all or a part of one or more
9 of such ~~[corporations or]~~ **business** entities;

10 (2) Between two or more ~~[corporations or]~~ business entities engaged in a joint venture
11 or other legally permissible business arrangement where such covenant seeks to protect against
12 possible misuse of confidential **business or proprietary information** or trade ~~[secret business~~
13 ~~information]~~ **secrets** shared or to be shared between or among such ~~[corporations or]~~ entities;

14 (3) Between ~~[an employer]~~ **a business entity** and one or more employees **of such**
15 **business entity** seeking on the part of the ~~[employer]~~ **business entity** to protect:

16 (a) Confidential **business or proprietary information** or trade ~~[secret business~~
17 ~~information]~~ **secrets**; or

18 (b) Customer or supplier relationships, goodwill or loyalty, which shall be deemed to be
19 among the protectable interests of the ~~[employer]~~ **business entity**; or

20 (4) Between ~~[an employer]~~ **a business entity** and one or more employees **of such**
21 **business entity**, notwithstanding the absence of the protectable interests described in subdivision
22 (3) of this subsection, so long as such covenant does not continue for more than ~~[one year]~~ **two**
23 **years** following the employee's employment **or business relationship with the business entity**;
24 provided, however, that this subdivision shall not apply to covenants signed by employees who
25 provide only secretarial or clerical services **and who own no shares, partnership interest, or**
26 **membership or membership interest in a limited liability company or series limited liability**
27 **company, or equity interest, ownership, profit participation, or other interest of any type**
28 **in the business entity**.

29 2. Whether a covenant covered by **subsection 1** of this section is reasonable shall be
30 determined based upon the facts and circumstances pertaining to such covenant, but a covenant
31 covered exclusively by subdivision (3) or (4) of subsection 1 of this section shall be conclusively
32 presumed to be reasonable if its postemployment **or postbusiness** duration is no more than ~~[one~~
33 ~~year]~~ **two years**.

34 3. A reasonable covenant in writing promising not to solicit, induce, persuade,
35 encourage, service, accept business from, or otherwise interfere with, directly or indirectly,
36 a business entity's customers, including, but not limited to, any reduction, termination, or
37 transfer of any customer's business, in whole or in part, for purposes of providing any
38 product or any service that is competitive with those provided by the business entity, shall
39 be enforceable and not a restraint of trade under subsection 1 of section 416.031, if the
40 covenant is limited to customers with whom the employee dealt during the employee's
41 employment or other business relationship with the business entity, and if:

42 **(1) The covenant is between a business entity and one or more current or former**
43 **employees of the business entity and is not associated with the sale or ownership of all or**
44 **any part of:**

45 **(a) The assets of a business entity; or**

46 **(b) Any interest in a business entity including, but not limited to, all or any part of**
47 **the shares of a corporation, a partnership interest, a membership or membership interest**
48 **in a limited liability company or series limited liability company, or an equity interest,**
49 **ownership, profit participation, or other interest of any type in any business entity;**

50

51 **provided that, the covenant does not continue for more than two years following the end**
52 **of the employee's employment or business relationship with the business entity.**
53 **Notwithstanding the foregoing, this subdivision shall not apply to covenants with current**
54 **or former distributors, dealers, franchisees, lessees of real or personal property, or**
55 **licensees of a trademark, trade dress, or service mark;**

56 **(2) The covenant is between a business entity and a current or former distributor,**
57 **dealer, franchisee, lessee of real or personal property, or licensee of a trademark, trade**
58 **dress, or service mark, and is not associated with the sale or ownership of all or any part**
59 **of any of the items provided in paragraph (a) or (b) of subdivision (1) of this subsection;**
60 **provided that, the covenant does not continue for more than three years following the end**
61 **of the business relationship; or**

62 **(3) The covenant is between a business entity and the owner or seller of all or any**
63 **part of any of the items provided in paragraph (a) or (b) of subdivision (1) of this**
64 **subsection, so long as the covenant does not continue for longer than five years in duration**
65 **or the period of time during which payments are being made to the owner or seller as a**
66 **result of any sale, measured from the date of termination, closing, or disposition of such**
67 **items. A breach or threatened breach of a covenant described in this subdivision shall**
68 **create a conclusive presumption of irreparable harm in the absence of an issuance of**
69 **injunctive relief in connection with the enforcement of the covenant, without the necessity**
70 **of establishing by prima facie evidence any actual or threatened damages or harm.**
71 **Nothing in this paragraph shall be construed to change any applicable evidentiary**
72 **standard or other standard necessary for obtaining temporary, preliminary, or permanent**
73 **injunctive relief relating to the enforcement of covenants. A provision in writing by which**
74 **an employee promises to provide prior notice to a business entity of the employee's intent**
75 **to terminate, sell, or otherwise dispose of all or any part of any of the items covered by this**
76 **subdivision shall be conclusively presumed to be enforceable and not a restraint of trade**
77 **under subsection 1 of section 416.031, if the specified notice period is no longer than thirty**

78 days in duration and the business entity agrees in writing to pay the employee at the
79 employee's regular rate of pay and to provide the employee with the employee's regular
80 benefits during the applicable notice period even if the business entity does not require the
81 employee to provide services during the notice period.

82 4. Whether a covenant covered by subsection 3 of this section is reasonable shall
83 be determined based upon the facts and circumstances pertaining to the covenant, but a
84 covenant covered by subdivisions (1) to (3) of subsection 3 of this section shall be
85 conclusively presumed to be reasonable if the duration of its postemployment,
86 posttermination, postbusiness relationship, postsale, or postdisposition period is consistent
87 with the applicable duration limits set forth in subdivisions (1) to (3) of subsection 3 of this
88 section.

89 5. No express reference to geographic area shall be required for a covenant
90 described in this section to be enforceable.

91 6. If a covenant is overbroad, overlong, or otherwise not reasonably necessary to
92 protect the legitimate business interests of the person seeking enforcement of the covenant,
93 a court shall modify the covenant, enforce the covenant as modified, and grant only the
94 relief reasonably necessary to protect such interests.

95 7. Nothing in subdivision (3) or (4) of subsection 1 or subdivisions (1) to (3) of
96 subsection 3 of this section is intended to create, or to affect the validity or enforceability of,
97 ~~[employer-employee]~~ covenants not to compete, other types of covenants, or nondisclosure
98 or confidentiality agreements, except as expressly provided in this section.

99 ~~[4-]~~ 8. Nothing in this section shall preclude a covenant described in subsection 1 of this
100 section from being enforceable in circumstances other than those described in subdivisions (1)
101 to (4) of subsection 1 of this section, or a covenant described in subsection 3 of this section
102 from being enforceable in circumstances other than those described in subdivisions (1) to
103 (3) of subsection 3 of this section, where such covenant is reasonably necessary to protect a
104 party's legally permissible business interests.

105 ~~[5-]~~ 9. Except as otherwise expressly provided in this section, nothing ~~[is]~~ in this
106 section shall be construed to limit an employee's ability to seek or accept employment with
107 another employer immediately upon, or at any time subsequent to, termination of employment,
108 whether said termination was voluntary or nonvoluntary.

109 ~~[6-]~~ 10. This section shall have retrospective as well as prospective effect.

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

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

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

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

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

17

18 If a parent-child relationship is established pursuant to paragraph (a) or (b) of this
19 subdivision, the rights afforded to the child shall not be retroactive, but instead shall apply
20 from the time the relationship is established; and

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

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

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

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

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

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

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

28 **(4) The second trust may not include any beneficiary who is not a beneficiary of the**
29 **first trust; and**

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

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

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

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

43 **(b) "Governmental benefits", financial aid or services from a state, federal, or other**
44 **public agency;**

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

47 **a. A trustee or other fiduciary, other than a settlor, who has discretionary power**
48 **under the terms of a trust to make a distribution of income or principal, whether or not**
49 **limited by an ascertainable standard, to or for the benefit of one or more beneficiaries; or**

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

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

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

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

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

63 **(3) The following provisions apply to any exercise of the authority granted by this**
64 **subsection:**

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

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

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

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

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

79 **4. The following provisions apply to any exercise of the authority granted by subsection**
80 **1 of this section:**

81 ~~(1) [The second trust may have as beneficiaries only one or more of those beneficiaries~~
82 ~~of the first trust to or for whom any discretionary distribution may be made from the first trust~~
83 ~~and who are proper objects of the exercise of the power, or one or more of those other~~
84 ~~beneficiaries of the first trust to or for whom a distribution of income or principal may have been~~

85 ~~made in the future from the first trust at a time or upon the happening of an event specified under~~
86 ~~the first trust;~~

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

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

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

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

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

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

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

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

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

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

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

114 ~~or~~

115 ~~—— (d) A trust which has been qualified as a Subchapter S trust under Section 1361(d) of the~~
116 ~~Internal Revenue Code or an electing small business trust under Section 1361(e) of the Internal~~
117 ~~Revenue Code.] If the exercise of the authority granted by subsection 1 of this section is~~

118 ~~limited by an ascertainable standard and the trustee exercising such authority is a~~
119 ~~permissible distributee of the first trust under such standard, then:~~

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

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

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

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

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

129 (a) If the first trust contains property that qualified, or would have qualified but
130 for provisions of this section other than this subdivision, for a marital deduction for
131 purposes of the gift or estate tax under the Internal Revenue Code of 1986, as amended,
132 the trust instrument for the second trust shall not include or omit any term that, if included
133 in or omitted from the trust instrument for the second trust, would have prevented the
134 transfer from qualifying for the deduction, or would have reduced the amount of the
135 deduction, under the same provisions of the Internal Revenue Code under which the
136 transfer qualified;

137 (b) If the first trust contains property that qualified, or would have qualified but
138 for provisions of this section other than this subdivision, for a charitable deduction for
139 purposes of the income, gift, or estate tax under the Internal Revenue Code of 1986, as
140 amended, the trust instrument for the second trust shall not include or omit any term that,
141 if included in or omitted from the trust instrument for the second trust, would have
142 prevented the transfer from qualifying for the deduction, or would have reduced the
143 amount of the deduction, under the same provisions of the Internal Revenue Code under
144 which the transfer qualified;

145 (c) If the first trust contains property that qualified, or would have qualified but
146 for provisions of this section other than this subdivision, for the exclusion from the gift tax
147 described in Section 2503(b) of the Internal Revenue Code of 1986, as amended, the trust
148 instrument for the second trust shall not include or omit a term that, if included in or
149 omitted from the trust instrument for the second trust, would have prevented the transfer
150 from qualifying under Section 2503(b) of the Internal Revenue Code. If the first trust
151 contains property that qualified, or would have qualified but for provisions of this section
152 other than this subdivision, for the exclusion from the gift tax described in Section 2503(b)
153 of the Internal Revenue Code, by application of Section 2503(c) of the Internal Revenue
154 Code, the trust instrument for the second trust shall not include or omit a term that, if
155 included or omitted from the trust instrument for the second trust, would have prevented

156 the transfer from meeting the requirements of Section 2503(c) of the Internal Revenue
157 Code;

158 (d) If the property of the first trust includes shares of stock in an S corporation, as
159 defined in Section 1361 of the Internal Revenue Code of 1986, as amended, and the first
160 trust is, or but for provisions of this section other than this subdivision would be, a
161 permitted shareholder under any provision of Section 1361 of the Internal Revenue Code,
162 the trustee of the first trust may exercise such authority with respect to part or all of the
163 S corporation stock only if the second trust receiving the stock is a permitted shareholder
164 under Section 1361(c)(2) of the Internal Revenue Code. If the property of the first trust
165 includes shares of stock in an S corporation and the first trust is, or but for provisions of
166 this section other than this subdivision would be, a qualified subchapter-S trust within the
167 meaning of Section 1361(d) of the Internal Revenue Code, the trust instrument for the
168 second trust shall not include or omit a term that prevents the second trust from qualifying
169 as a qualified subchapter-S trust; and

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

177 ~~[(6)]~~ (3) The exercise of such authority does not apply to trust property subject to a
178 presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit
179 of whom, the trustee has authority to make distributions, unless after the exercise of such
180 authority, such beneficiary's power of withdrawal is unchanged with respect to the trust property;
181 and

182 ~~[(7)]~~ (4) A spendthrift clause or a provision in the trust instrument that prohibits
183 amendment or revocation of the trust shall not preclude the trustee from exercising the authority
184 granted by subsection 1 of this section.

185 ~~[3-]~~ 5. At least sixty days prior to making a discretionary distribution under subsection
186 1 of this section, the trustee of the first trust shall notify **the permissible distributees of the first**
187 **trust and** the permissible distributees of the second trust~~], or the qualified beneficiaries of the~~
188 ~~second trust if there are no permissible distributees of the second trust,~~ of the distribution. A
189 beneficiary may waive the right to the notice required by this subsection and, with respect to
190 future distributions, may withdraw a waiver previously given.

191 [4-] **6.** In exercising the authority granted by subsection 1 of this section, the trustee shall
192 remain subject to all fiduciary duties otherwise imposed under the trust instrument and Missouri
193 law.

194 [5-] **7.** This section does not impose on a trustee a duty to exercise the authority granted
195 by subsection 1 of this section in favor of another trust or to consider exercising such authority
196 in favor of another trust.

197 **8. A second trust may have a duration that is the same as or different from the**
198 **duration of the first trust. However, to the extent that property of the second trust is**
199 **attributable to property of the first trust, the property of the second trust is subject to any**
200 **rules governing maximum perpetuity, accumulation, or suspension of the power of**
201 **alienation which apply to property of the first trust. The provisions of this subsection shall**
202 **not preclude the creation of a general power of appointment in the trust instrument for a**
203 **second trust as authorized by subdivision (5) of subsection 2 of this section.**

204 **9. In the event the trust instrument for the second trust in part does not comply**
205 **with this section but would otherwise be effective under this section, the exercise of the**
206 **power is effective and the following rules apply with respect to the principal of the second**
207 **trust attributable to the exercise of the power:**

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

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

213 [6-] **10.** This section is intended to codify and, from and after enactment, to provide
214 certain limitations to the common law of this state, and this section applies to any trust governed
215 by the laws of this state, including a trust whose principal place of administration is transferred
216 to this state before or after the enactment of this section.

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