

FIRST REGULAR SESSION

SENATE BILL NO. 418

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

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ADRIANE D. CROUSE, Secretary.

1853S.01I

AN ACT

To repeal section 456.4-419, RSMo, and to enact in lieu thereof one new section relating to distribution of income or principal from one trust to another trust.

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

Section A. Section 456.4-419, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.4-419, to read as follows:

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

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

(1) At least one permissible distributee of the first trust shall be a permissible distributee of the second trust immediately after the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 **distribution;**

21 **(2) If, at the time of the distribution, the settlor of the first trust**
22 **is living and the first trust is not a grantor trust under Subpart E of**
23 **Part I of Subchapter J of Chapter 1 of the Internal Revenue Code of**
24 **1986, as amended, there may not be any permissible distributee of the**
25 **second trust immediately after the distribution who is not a permissible**
26 **distributee of the first trust;**

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

34 **(4) The second trust may not include any beneficiary who is not**
35 **a beneficiary of the first trust;**

36 **(5) The trust instrument for the second trust may retain, modify,**
37 **or omit a power of appointment granted in the first trust, and the trust**
38 **instrument for the second trust may create a power of appointment if**
39 **the powerholder is a beneficiary of the second trust. Except to the**
40 **extent provided otherwise in subsection 4 of this section, a power of**
41 **appointment in the trust instrument for the second trust may be a**
42 **general or nongeneral power of appointment and the permissible**
43 **appointees of the power need not be limited to the beneficiaries of the**
44 **first trust.**

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

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

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

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

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

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

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

65 (d) "Special-needs trust", a trust the trustee believes would not
66 be considered a resource for purposes of determining whether a
67 beneficiary with a disability is eligible for governmental benefits.

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

70 (a) A second trust is a special-needs trust that benefits the
71 beneficiary with a disability; and

72 (b) The special-needs fiduciary determines that exercise of the
73 authority under subsection 1 of this section will further the purposes
74 of the first trust.

75 (3) The following provisions apply to any exercise of the
76 authority granted by this subsection:

77 (a) Notwithstanding subdivision (4) of subsection 2 of this
78 section, the terms of the second trust may:

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

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

84 (b) Subdivision (3) of subsection 4 of this section does not apply
85 to the interests of the beneficiary with a disability.

86 (c) Except as affected by any change to the interests of the
87 beneficiary with a disability, the second trust, or if there are two or
88 more second trusts, the second trusts in the aggregate, shall grant each
89 other beneficiary of the first trust beneficial interests in the second
90 trusts which are substantially similar to the beneficiary's beneficial
91 interests in the first trust, unless such other beneficiary's interest is
92 modified in accordance with the provisions of this section other than
93 the provisions of this subsection.

94 4. The following provisions apply to any exercise of the authority granted
95 by subsection 1 of this section:

96 (1) [The second trust may have as beneficiaries only one or more of those
97 beneficiaries of the first trust to or for whom any discretionary distribution may
98 be made from the first trust and who are proper objects of the exercise of the
99 power, or one or more of those other beneficiaries of the first trust to or for whom
100 a distribution of income or principal may have been made in the future from the
101 first trust at a time or upon the happening of an event specified under the first
102 trust;

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

106 (a) Such trustee is a beneficiary of the first trust; or

107 (b) Any beneficiary may remove and replace the trustee of the first trust
108 with a related or subordinate party to such beneficiary within the meaning of
109 Section 672(c) of the Internal Revenue Code;

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

113 (a) Increasing the distributions that can be made in the future from the
114 second trust to the trustee of the first trust or to a beneficiary who can remove
115 and replace the trustee of the first trust with a related or subordinate party to
116 such beneficiary within the meaning of Section 672(c) of the Internal Revenue
117 Code; or

118 (b) Removing restrictions on discretionary distributions imposed by the
119 instrument under which the first trust was created;

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

126 (5) The exercise of such authority may not reduce any income interest of
127 any income beneficiary of any of the following trusts:

128 (a) A trust for which a marital deduction has been taken for federal tax
129 purposes under Section 2056 or 2523 of the Internal Revenue Code or for state

130 tax purposes under any comparable provision of applicable state law;

131 (b) A charitable remainder trust under Section 664 of the Internal
132 Revenue Code;

133 (c) A grantor retained annuity trust under Section 2702 of the Internal
134 Revenue Code; or

135 (d) A trust which has been qualified as a Subchapter S trust under
136 Section 1361(d) of the Internal Revenue Code or an electing small business trust
137 under Section 1361(e) of the Internal Revenue Code] **If the exercise of the**
138 **authority granted by subsection 1 of this section is limited by an**
139 **ascertainable standard and the trustee exercising such authority is a**
140 **permissible distributee of the first trust under such standard, then:**

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

146 (b) The trust instrument for the second trust shall not (i) modify
147 a power of appointment granted to such trustee in the first trust, or (ii)
148 grant a power of appointment to such trustee that did not exist in the
149 first trust;

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

152 (a) If the first trust contains property that qualified, or would
153 have qualified but for provisions of this section other than this
154 subdivision, for a marital deduction for purposes of the gift or estate
155 tax under the Internal Revenue Code of 1986, as amended, the trust
156 instrument for the second trust shall not include or omit any term that,
157 if included in or omitted from the trust instrument for the second trust,
158 would have prevented the transfer from qualifying for the deduction,
159 or would have reduced the amount of the deduction, under the same
160 provisions of the Internal Revenue Code under which the transfer
161 qualified;

162 (b) If the first trust contains property that qualified, or would
163 have qualified but for provisions of this section other than this
164 subdivision, for a charitable deduction for purposes of the income, gift,
165 or estate tax under the Internal Revenue Code of 1986, as amended, the
166 trust instrument for the second trust shall not include or omit any term

167 that, if included in or omitted from the trust instrument for the second
168 trust, would have prevented the transfer from qualifying for the
169 deduction, or would have reduced the amount of the deduction, under
170 the same provisions of the Internal Revenue Code under which the
171 transfer qualified;

172 (c) If the first trust contains property that qualified, or would
173 have qualified but for provisions of this section other than this
174 subdivision, for the exclusion from the gift tax described in Section
175 2503(b) of the Internal Revenue Code of 1986, as amended, the trust
176 instrument for the second trust shall not include or omit a term that,
177 if included in or omitted from the trust instrument for the second trust,
178 would have prevented the transfer from qualifying under Section
179 2503(b) of the Internal Revenue Code. If the first trust contains
180 property that qualified, or would have qualified but for provisions of
181 this section other than this subdivision, for the exclusion from the gift
182 tax described in Section 2503(b) of the Internal Revenue Code, by
183 application of Section 2503(c) of the Internal Revenue Code, the trust
184 instrument for the second trust shall not include or omit a term that,
185 if included or omitted from the trust instrument for the second trust,
186 would have prevented the transfer from meeting the requirements of
187 Section 2503(c) of the Internal Revenue Code;

188 (d) If the property of the first trust includes shares of stock in
189 an S corporation, as defined in Section 1361 of the Internal Revenue
190 Code of 1986, as amended, and the first trust is, or but for provisions of
191 this section other than this subdivision would be, a permitted
192 shareholder under any provision of Section 1361 of the Internal
193 Revenue Code, the trustee of the first trust may exercise such authority
194 with respect to part or all of the S corporation stock only if the second
195 trust receiving the stock is a permitted shareholder under Section
196 1361(c)(2) of the Internal Revenue Code. If the property of the first
197 trust includes shares of stock in an S corporation and the first trust is,
198 or but for provisions of this section other than this subdivision would
199 be, a qualified subchapter-S trust within the meaning of Section 1361(d)
200 of the Internal Revenue Code, the trust instrument for the second trust
201 shall not include or omit a term that prevents the second trust from
202 qualifying as a qualified subchapter-S trust;

203 (e) If the first trust contains property that qualified, or would

204 have qualified but for provisions of this section other than this
205 subdivision, for a zero inclusion ratio for purpose of the generation-
206 skipping transfer tax under Section 2642(c) of the Internal Revenue
207 Code of 1986, as amended, the trust instrument for the second trust
208 shall not include or omit a term that, if included in or omitted from the
209 first trust, would have prevented the transfer to the first trust from
210 qualifying for a zero inclusion ratio under Section 2642(c) of the
211 Internal Revenue Code;

212 [(6)] (3) The exercise of such authority does not apply to trust property
213 subject to a presently exercisable power of withdrawal held by a trust beneficiary
214 to whom, or for the benefit of whom, the trustee has authority to make
215 distributions, unless after the exercise of such authority, such beneficiary's power
216 of withdrawal is unchanged with respect to the trust property; and

217 [(7)] (4) A spendthrift clause or a provision in the trust instrument that
218 prohibits amendment or revocation of the trust shall not preclude the trustee
219 from exercising the authority granted by subsection 1 of this section.

220 [3.] 5. At least sixty days prior to making a discretionary distribution
221 under subsection 1 of this section, the trustee of the first trust shall notify **the**
222 **permissible distributees of the first trust and** the permissible distributees
223 of the second trust[, or the qualified beneficiaries of the second trust if there are
224 no permissible distributees of the second trust,] of the distribution. A beneficiary
225 may waive the right to the notice required by this subsection and, with respect
226 to future distributions, may withdraw a waiver previously given.

227 [4.] 6. In exercising the authority granted by subsection 1 of this section,
228 the trustee shall remain subject to all fiduciary duties otherwise imposed under
229 the trust instrument and Missouri law.

230 [5.] 7. This section does not impose on a trustee a duty to exercise the
231 authority granted by subsection 1 of this section in favor of another trust or to
232 consider exercising such authority in favor of another trust.

233 8. **A second trust may have a duration that is the same as or**
234 **different from the duration of the first trust. However, to the extent**
235 **that property of the second trust is attributable to property of the first**
236 **trust, the property of the second trust is subject to any rules governing**
237 **maximum perpetuity, accumulation, or suspension of the power of**
238 **alienation which apply to property of the first trust. This subsection**
239 **shall not preclude the creation of a general power of appointment in**

240 the trust instrument for a second trust as authorized by subdivision (5)
241 of subsection 2 of this section.

242 9. In the event the trust instrument for the second trust in part
243 does not comply with this section but would otherwise be effective
244 under this section, the exercise of the power is effective and the
245 following rules apply with respect to the principal of the second trust
246 attributable to the exercise of the power:

247 (1) A provision in the trust instrument for the second trust which
248 is not permitted under this section is void to the extent necessary to
249 comply with this section.

250 (2) A provision required by this section to be in the trust
251 instrument for the second trust which is not contained in the trust
252 instrument is deemed to be included in the trust instrument to the
253 extent necessary to comply with this section.

254 [6.] 10. This section is intended to codify and, from and after enactment,
255 to provide certain limitations to the common law of this state, and this section
256 applies to any trust governed by the laws of this state, including a trust whose
257 principal place of administration is transferred to this state before or after the
258 enactment of this section.

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