

FIRST REGULAR SESSION

SENATE BILL NO. 70

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Pre-filed January 4, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0089S.03I

AN ACT

To repeal sections 402.199, 402.200, 402.205, 402.210, 402.215, 402.217, 402.220, 473.657, and 475.093, RSMo, and to enact in lieu thereof twelve new sections relating to the Missouri family trust.

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

Section A. Sections 402.199, 402.200, 402.205, 402.210, 402.215, 402.217, 2 402.220, 473.657, and 475.093, RSMo, are repealed and twelve new sections 3 enacted in lieu thereof, to be known as sections 402.199, 402.200, 402.201, 4 402.202, 402.203, 402.204, 402.205, 402.206, 402.207, 402.208, 473.657, and 5 475.093, to read as follows:

402.199. 1. The general assembly hereby finds and declares the following:

2 (1) It is an essential function of state government to provide basic support 3 **and services for certain** persons with [a mental or physical impairment that 4 substantially limits one or more major life activities, whether the impairment is 5 congenital or acquired by accident, injury or disease] **disabilities;**

6 (2) [The cost of providing basic support for persons with a mental or 7 physical impairment is difficult for many to afford and they are forced to] **Many 8 persons with disabilities lack financial resources and must** rely upon the 9 government to provide [such] **services and** support; **and**

10 (3) [Families and friends of persons with a mental or physical impairment 11 desire to supplement, but not replace, the basic support provided by state 12 government and other governmental programs;

13 (4) The cost of medical, social or other supplemental services is often 14 provided by families and friends of persons with mental or physical impairments, 15 for the lifetime of such persons;

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

16 (5) It is in the best interest of the [people of this] state **and is**
17 **necessary and desirable for the public health, safety, and welfare** to
18 encourage, enhance and foster the ability of [families and friends of Missouri
19 residents and residents of adjacent states with mental or physical impairments
20 to supplement, but not to replace, the basic support provided by state government
21 and other governmental programs and to provide for medical, social or other
22 supplemental services for such persons;

23 (6) Permitting and assisting families and friends of Missouri residents
24 and residents of adjacent states with mental or physical impairments to
25 supplement, but not to replace, the basic support provided by state government
26 and other governmental programs and to provide medical, social or other
27 supplemental services for such persons as necessary and desirable for the public
28 health, safety and welfare of this state] **individuals with disabilities who**
29 **reside in Missouri or who reside in one of the eight states adjacent to**
30 **Missouri, and in the best interests of their families and friends to**
31 **supplement, but not replace, the services and support provided by state**
32 **government and other governmental programs.**

33 2. In light of the findings and declarations described in subsection 1 of
34 this section, the general assembly **hereby** declares [the purpose of the Missouri
35 family trust to be the encouragement, enhancement and fostering of the provision
36 of medical, social or other supplemental services for persons with a mental or
37 physical impairment by family and friends of such persons] **that contributions**
38 **to a trust account administered as part of the Missouri family trust by**
39 **the Missouri family trust board of trustees as authorized in sections**
40 **402.199 to 402.208, shall in no way reduce, impair, or diminish the**
41 **benefits to which the beneficiary of the trust account is otherwise**
42 **entitled by law, nor shall the administration of the Missouri family**
43 **trust or any trust account therein be taken into consideration in**
44 **determining appropriations for programs or services for persons with**
45 **disabilities, and unless otherwise prohibited by federal statutes or**
46 **regulations, all state agencies shall disregard the trust account as a**
47 **resource when determining the eligibility of a resident for assistance**
48 **under chapter 208.**

402.200. As used in sections 402.199 to [402.220] **402.208**, the following
2 terms mean:

3 (1) **"Beneficiary"**, also referred to as **"life beneficiary"**, a person

4 **who:**

5 **(a) Has been determined to have a disability or to be a disabled**
6 **person;**

7 **(b) Is a resident of Missouri or one of the eight states adjacent**
8 **to Missouri; and**

9 **(c) Is the person designated as the sole, primary beneficiary of**
10 **a trust account administrated as part of the Missouri family trust by**
11 **the board of trustees;**

12 **(2) "Board of trustees", [the] "board", or "Missouri family trust board of**
13 **trustees", the body corporate and instrumentality of the state,**
14 **established as the Missouri family trust board of trustees pursuant to**
15 **section 402.201;**

16 **[(2)] (3) "Charitable trust", [the trust to provide benefits for] an**
17 **account established and administered as part of the Missouri family trust**
18 **for the benefit of disabled individuals, as [set forth] provided in section**
19 **[402.215] 402.207;**

20 **(4) "Co-trustee", that person designated by the settlor to act**
21 **together with the trustee as co-trustee of a trust account;**

22 **[(3)] (5) "Department", the department of mental health;**

23 **[(4)] (6) "Disability"[,]:**

24 **(a) A mental or physical impairment that substantially limits one or more**
25 **major life activities, whether the impairment is congenital or acquired by**
26 **accident, injury or disease, and where the impairment is verified by medical**
27 **findings; or**

28 **(b) As is defined in section 1614(a)(3) of the Social Security Act,**
29 **42 U.S.C. 1382c(a)(3);**

30 **[(5)] "Life beneficiary" or "beneficiary", a designated beneficiary of the**
31 **Missouri family trust;**

32 **[(6)] (7) "Missouri family trust" or "trust", the trust established**
33 **pursuant to section 402.202 and administered by the board of trustees,**
34 **as trustee, pursuant to sections 402.199 to 402.208;**

35 **(8) "Net income", the earnings received on investments less**
36 **administrative expenses and fees;**

37 **[(7)] (9) "Principal balance", the fair market value of all contributions**
38 **made to a particular account, less distributions, determined as of the end of the**
39 **calendar month immediately preceding the occurrence giving rise to any**

40 determination of principal balance;

41 (8) "Requesting party", the party desiring arbitration;

42 (9) "Responding party", the other party in arbitration of a dispute
43 regarding benefits to be provided by the trust;]

44 (10) **"Remainder beneficiaries", the person or persons designated**
45 **to receive the applicable portion of the principal balance of a trust**
46 **account remaining after the death of the beneficiary;**

47 (11) **"Restricted account", an account established and**
48 **administered as part of the trust for the benefit of persons with**
49 **disabilities as provided in section 402.206;**

50 (12) **"[Successor] Standby trust", the trust established upon distribution**
51 **of a trust account by the board of trustees pursuant to notice of withdrawal or**
52 **termination and administered as set forth in subsection 3 of section [402.215]**
53 **402.205;**

54 [(11)] (13) **"Trust account", an account established and**
55 **administered as part of the Missouri family trust [established pursuant to]**
56 **for the benefit of a beneficiary as provided in sections [402.200 to 402.220]**
57 **402.203 and 402.204;**

58 [(12)] (14) **"Trustee", [a member of the Missouri family trust] the board**
59 **of trustees acting in its capacity as trustee of a trust account, the**
60 **charitable trust, or a restricted account as used in section 402.201.**

402.201. 1. There is hereby created the "Missouri Family Trust
2 **Board of Trustees", which shall be a body corporate and an**
3 **instrumentality of the state, and which shall be incorporated as a**
4 **Missouri general not for profit corporation. The board of trustees is**
5 **authorized to apply for and qualify for recognition as an exempt**
6 **organization pursuant to section 501(c)(3) of the United States Internal**
7 **Revenue Code of 1986, as amended.**

8 **2. The board of trustees shall consist of nine members who are**
9 **natural persons appointed by the governor with the advice and consent**
10 **of the senate. The members' terms of office shall be three years and**
11 **until their successors are appointed and qualified. The members shall**
12 **be persons who are not prohibited from serving by sections 105.450 to**
13 **105.482. The board shall be composed of the following:**

14 **(1) Three members of the immediate family of persons who have**
15 **a disability of mental illness. The department's state advisory council**

16 for comprehensive psychiatric services, created pursuant to section
17 632.020, shall submit a panel of nine proposed members of the board to
18 the governor, from which the governor shall appoint three. One shall
19 be appointed for a term of one year, one for two years, and one for
20 three years. Thereafter, as the term of a member of the board
21 appointed under this subdivision expires each year, the state advisory
22 council for comprehensive psychiatric services shall submit to the
23 governor a panel of not less than three nor more than five proposed
24 members of the board of trustees, and the governor shall appoint one
25 member from such panel for a term of three years;

26 (2) Three members of the immediate family of persons who have
27 a developmental disability. The department's Missouri planning
28 council for developmental disabilities, created pursuant to section
29 633.020, shall submit a panel of nine proposed members of the board to
30 the governor, from which the governor shall appoint three. One shall
31 be appointed for a term of one year, one for two years, and one for
32 three years. Thereafter, as the term of a member of the board
33 appointed under this subdivision expires each year, the Missouri
34 planning council for developmental disabilities shall submit to the
35 governor a panel of not less than three nor more than five proposed
36 members of the board of trustees, and the governor shall appoint one
37 member from such panel for a term of three years; and

38 (3) Three persons recognized for their expertise in general
39 business matters and procedures. Of the three business persons to be
40 appointed by the governor, one shall be appointed for one year, one for
41 two years, and one for three years. Thereafter, as the term of a member
42 of the board of trustees appointed under this subdivision expires each
43 year, the governor shall appoint one business person as member for a
44 term of three years.

45 3. As used in subdivisions (1) and (2) of subsection 2 of this
46 section, "immediate family" includes spouse, parents, parents of spouse,
47 children, spouses of children, and siblings.

48 4. No member of the board of trustees shall receive compensation
49 for services as a member of the board. The board shall reimburse the
50 members of the board for necessary expenses actually incurred in the
51 performance of their duties.

52 5. The board of trustees shall be subject to the provisions of

53 sections 610.010 to 610.029 and is considered a public governmental
54 body under section 610.010.

55 6. The board of trustees shall annually prepare or cause to be
56 prepared an accounting of funds administered by the board and shall
57 transmit a copy of the accounting to the governor, the president pro
58 tempore of the senate and the speaker of the house of representatives.

59 7. The board of trustees shall establish policies, procedures, and
60 other rules and regulations necessary to implement the provisions of
61 sections 402.199 to 402.208.

62 8. The board of trustees is authorized to advise, consult with,
63 coordinate and render services to those departments, agencies, political
64 subdivisions, and governmental instrumentalities of Missouri and of the
65 states adjacent to Missouri, and those nonprofit organizations that
66 qualify as organizations pursuant to Section 501(c)(3) of the United
67 States Internal Revenue Code of 1986, as amended, that provide
68 services or support to persons with disabilities who are residents of
69 Missouri or one of the states adjacent to Missouri.

70 9. The assets of the board of trustees shall not be considered
71 state money, assets of the state or revenue for any purposes of the state
72 constitution or statutes. The property of the board of trustees and its
73 income and operations shall be exempt from all taxation by the state or
74 any of its political subdivisions.

75 10. No trustee, co-trustee or successor co-trustee serving
76 pursuant to the provisions of sections 402.200 to 402.208 shall at any
77 time be held liable for any mistake of law or fact, or of both law and
78 fact, or errors of judgment, nor for any loss sustained as a result
79 thereof.

402.202. 1. Trust accounts, restricted trust accounts, and the
2 charitable trust shall be held and administered in trust as the Missouri
3 family trust. The charitable trust, the restricted accounts and the trust
4 accounts shall each be maintained in trust as separate accounts, but
5 may be pooled for purposes of investment and management. Assets of
6 the Missouri family trust shall not be considered state money, assets of
7 the state or revenue for any purposes of the state constitution or
8 statutes.

9 2. The board of trustees shall act as the trustee of the Missouri
10 family trust. The board of trustees, as trustee, shall administer the

11 Missouri family trust pursuant to the provisions of sections 402.199 to
12 402.208 and pursuant to the policies, procedures, rules, and regulations
13 of the board of trustees.

14 3. In addition to the powers and duties granted to the board
15 pursuant to sections 402.199 to 402.208, in its capacity as trustee of the
16 trust the board shall have all powers granted to trustees acting under
17 chapter 456, as now in effect or hereafter amended; provided, that
18 section 456.8-813 regarding the duty to inform and report to the
19 beneficiaries shall not apply to the trust, except as mandated under
20 section 456.1-105.

402.203. 1. A beneficiary who is a person with disabilities as
2 defined in Section 1614(a)(3) of the Social Security Act 42 U.S.C.
3 1382c(a)(3), or the parent, grandparent, or legal guardian of a
4 beneficiary, or a court, as settlor, may contribute assets of the
5 beneficiary in trust to the board as trustee, for the benefit of the
6 beneficiary as part of a pooled trust described by 42 U.S.C. Section
7 1396p(d)(4)(C). Upon such contribution, the settlor's completion and
8 execution of trust documents provided by the trustee, and the trustee's
9 review, approval and execution of the trust documents, a trust account
10 for the beneficiary shall thereby be created. A trust account to which
11 the assets of a beneficiary are contributed shall be referred to as a
12 "first party trust account" and shall be held and administered in trust
13 for the benefit of the beneficiary as provided in this section.

14 2. The settlor may designate a co-trustee, and a successor or
15 successors to the co-trustee, to act together with the trustee as trustees
16 of the first-party trust account; provided that the beneficiary may not
17 act as a co-trustee or successor co-trustee; and provided further that
18 court approval of the beneficiary, co-trustee or successor trustee shall
19 be required in connection with any first party trust account created
20 pursuant to section 473.657 or section 475.093.

21 3. If the board determines, in its good faith judgment, that a co-
22 trustee has breached his or her fiduciary duties, either as a result of an
23 act of commission or omission, then the board may, by written notice
24 to such co-trustee, remove such co-trustee and may appoint a successor
25 co-trustee or serve as sole trustee.

26 4. At the death of the beneficiary, the board of trustees shall
27 provide notice that the trust account has terminated to each state of

28 which the board of trustees has knowledge that such state has provided
29 medical assistance on behalf of the beneficiary under a state plan for
30 medical assistance under Title 42 of the United States Code. After
31 distribution of twenty-five percent of the principal balance of the trust
32 account to the charitable trust, the board of trustees shall pay over and
33 distribute to such states all amounts remaining in the trust account up
34 to an amount equal to the total medical assistance paid by such states
35 on behalf of the beneficiary under the state plan for medical assistance
36 under Title 42 of the United States Code. In the event that the
37 beneficiary has received medical assistance from more than one state
38 with claims on the proceeds for reimbursement of medical assistance
39 payments under Title 42 of the United States Code and there are
40 insufficient assets to pay the entire balance due to each state then the
41 proceeds shall be distributed to each state on a pro rata basis based
42 upon each state's proportionate share of the total medical assistance
43 paid by all states.

44 5. To the extent any amounts remain in the trust account after
45 distribution to the charitable trust and the state or states for state
46 reimbursement claims, the remainder shall be distributed to such
47 person, entities, or organizations designated as remainder beneficiaries
48 by the settlor in the trust documents. If any individual remainder
49 beneficiary named by the settlor is not then living, then in the absence
50 of contrary instruction in the trust documents completed by the settlor,
51 such remainder beneficiary's distribution shall be made to such
52 remainder beneficiary's heirs at law, as determined by the laws of the
53 state of the beneficiary's residence at the time of the beneficiary's
54 death.

402.204. 1. Any person, as settlor, except a beneficiary or a
2 beneficiary's spouse, may contribute assets not including assets of the
3 beneficiary or the beneficiary's spouse in trust to the board as trustee,
4 for the benefit of the beneficiary. Upon such contribution, the settlor's
5 completion and execution of trust documents provided by the trustee,
6 and the trustee's review, approval and execution of the trust
7 documents, a trust account for the beneficiary shall thereby be created.
8 A trust account to which assets that do not include assets of a
9 beneficiary or of a beneficiary's spouse are contributed shall be
10 referred to as a "third party trust account", and shall be held and

11 administered in trust for the benefit of the beneficiary as provided in
12 this section.

13 2. The settlor may designate a co-trustee, and a successor or
14 successors to the co-trustee, to act together with the trustee as trustees
15 of the third party trust account; provided that the beneficiary or the
16 beneficiary's spouse may not act as co-trustee or successor co-trustee;
17 and provided further that court approval of the beneficiary, co-trustee
18 or successor trustee shall be required in connection with any third
19 party trust account created pursuant to subsection 2 of section 473.657.

20 3. If the board determines, in its good faith judgment, that a co-
21 trustee has breached his or her fiduciary duties, either as a result of an
22 act of commission or omission, then the board may, by written notice
23 to such co-trustee, remove such co-trustee, appoint a successor co-
24 trustee, or serve as sole trustee.

25 4. At the death of the beneficiary, the board of trustees shall
26 promptly determine the principal balance of the trust account and,
27 after payment of any expenses of the beneficiary as the board may
28 authorize and all fees and expenses of the board, shall distribute to the
29 persons, entities, or organizations designated by the settlor as
30 remainder beneficiaries in the trust documents:

31 (1) An amount equal to one hundred percent of the principal
32 balance if the beneficiary shall not have received any benefits provided
33 by use of trust account income or principal; or

34 (2) An amount equal to seventy-five percent of the principal
35 balance if the beneficiary shall have received any benefits provided by
36 use of trust account income or principal; and

37 (3) Any principal not distributed pursuant to the provisions of
38 subdivision (2) of this subsection, and any undistributed income shall
39 be distributed to the charitable trust established pursuant to the
40 provisions of section 402.207;

41 (4) If any individual remainder beneficiary named by the settlor
42 is not then living, then in the absence of contrary instructions in the
43 trust documents completed by the settlor, such remainder beneficiary's
44 share shall be distributed to such remainder beneficiary's heirs at law,
45 as determined by the laws of the state of the beneficiary's residence at
46 the time of the beneficiary's death.

47 5. Notwithstanding the provisions of subsection 4 of this section

48 to the contrary, the settlor may voluntarily agree that a smaller
49 percentage of the principal balance in any trust account established by
50 such settlor than is provided in subsection 4 of this section be
51 distributed to the remainder beneficiaries designated in the trust
52 documents; and that a corresponding larger percentage of the principal
53 balance in such trust account be distributed either to the charitable
54 trust or to a designated restricted account within the charitable trust.

402.205. 1. [The families, friends and guardians of persons who have a
2 disability or are eligible for services provided by the department of mental health,
3 or both, may participate in a trust which may supplement the care, support, and
4 treatment of such persons pursuant to the provisions of sections 402.199 to
5 402.220. Neither the contribution to the trust for the benefit of a life beneficiary
6 nor the use of trust income to provide benefits shall in any way reduce, impair or
7 diminish the benefits to which such person is otherwise entitled by law; and the
8 administration of the trust shall not be taken into consideration in appropriations
9 for the department of mental health to render services required by law.

10 2. Unless otherwise prohibited by federal statutes or regulations, all state
11 agencies shall disregard the trust as a resource when determining eligibility of
12 Missouri residents for assistance under chapter 208.

13 3. The assets of the board of trustees and assets held in trust pursuant
14 to the provisions of sections 402.199 to 402.220 shall not be considered state
15 money, assets of the state or revenue for any purposes of the state constitution
16 or statutes. The property of the board of trustees and its income and operations
17 shall be exempt from all taxation by the state or any of its political subdivisions.]

18 **The settlor of a revocable third party trust account or the co-trustee of**
19 **a revocable third party trust account if authorized by the settlor in the**
20 **trust documents, upon written notice to the board and with the board's**
21 **consent may, from time to time, withdraw such part of the trust**
22 **account as the settlor or such authorized co-trustee may determine;**
23 **provided, however, neither the settlor nor such authorized co-trustee**
24 **may withdraw an amount that when aggregated with all withdrawals**
25 **within the prior twelve months shall reduce the remaining principal**
26 **balance of the trust account below the greater of the amount due the**
27 **board, if the trust account had terminated at the time of such**
28 **withdrawal or the minimum amount required by the board, from time**
29 **to time, for an account.**

30 **2. The settlor of a revocable third party trust account or the co-**
31 **trustee of a revocable third party trust account if authorized by the**
32 **settlor in the trust documents, upon written notice to the board and**
33 **with the board's consent may revoke and terminate the trust**
34 **account. Upon receipt of such notice, the board shall promptly**
35 **determine the principal balance of the trust account and after payment**
36 **of all fees and expenses of the board shall distribute:**

37 **(1) In the case of revocation and termination by the settlor:**

38 **(a) An amount equal to one hundred percent of the principal**
39 **balance to the settlor if the beneficiary shall not have received any**
40 **benefits provided by use of trust account income or principal; or**

41 **(b) An amount equal to seventy-five percent of the principal**
42 **balance to the settlor if the beneficiary shall have received any benefits**
43 **provided by use of trust account income or principal; and**

44 **(c) Any principal not distributed pursuant to the provisions of**
45 **paragraph (b) of this subdivision, and any undistributed income to the**
46 **charitable trust;**

47 **(2) In the case of revocation and termination by an authorized**
48 **co-trustee:**

49 **(a) An amount equal to one hundred percent of the principal**
50 **balance shall be distributed to the trustees of the standby trust, if the**
51 **beneficiary shall not have received any benefits provided by use of**
52 **trust account income or principal, to be held, administered, and**
53 **distributed in accordance with the provisions of subsection 3 of this**
54 **section; or**

55 **(b) An amount equal to seventy-five percent of the then principal**
56 **balance shall be distributed to the trustees of the standby trust, if the**
57 **beneficiary shall have received any benefits provided by use of trust**
58 **account income or principal, to be held, administered, and distributed**
59 **in accordance with the provisions of subsection 3 of this section; and**

60 **(c) Any principal not distributed pursuant to the provisions of**
61 **paragraph (b) of this subdivision, and any undistributed income shall**
62 **be distributed to the charitable trust.**

63 **3. The trustee or trustees of the standby trust shall hold,**
64 **administer, and distribute the principal and income of the standby**
65 **trust, in the discretion of such trustee, for the support, health,**
66 **education, and general well-being of the beneficiary during the**

67 beneficiary's life, recognizing that it is the purpose of the standby trust
68 to supplement, not replace, any government benefits for the
69 beneficiary's basic support to which such beneficiary may be entitled
70 and to increase the quality of such beneficiary's life by providing the
71 beneficiary those amenities which cannot otherwise be provided by
72 public assistance or entitlements or other available
73 sources. Permissible expenditures include, but are not limited to, those
74 described in subdivision (2) of section 402.206.

402.206. Each first party trust account and third party trust
2 account shall be held and administered in trust as follows:

3 (1) The board of trustees shall hold, administer, and distribute
4 the principal and income of the trust account, in the discretion of the
5 trustee, in consultation with the co-trustee, for the health, education,
6 and general well-being of the beneficiary, recognizing that the purpose
7 of the trust account is to supplement, not replace, any government
8 benefits for the beneficiary's basic support to which such beneficiary
9 may be entitled;

10 (2) Expenditure of trust account funds shall be made solely for
11 benefit of the beneficiary, to increase the quality of the beneficiary's
12 life by providing those amenities that cannot otherwise be provided by
13 public assistance or entitlements or other available
14 sources. Permissible expenditures include, but are not limited to,
15 dental, medical, and diagnostic work or treatment that is not otherwise
16 available from public benefits or assistance; private rehabilitative
17 training; supplementary education aid; entertainment; periodic
18 vacations and outings; expenditures to foster the interests, talents, and
19 hobbies of the beneficiary; and expenditures to purchase personal
20 property and services that will make life more comfortable and
21 enjoyable for the beneficiary but that will not defeat his or her
22 eligibility for public benefits or assistance. The trustee, with
23 consultation of the co-trustee, may make payments for a person to
24 accompany the beneficiary on vacations and outings and for the
25 transportation of the beneficiary or of friends and relatives of the
26 beneficiary to visit the beneficiary;

27 (3) Expenditures of trust account funds shall not be made for the
28 primary support or maintenance of the beneficiary, including basic
29 food or shelter, if, as a result, the beneficiary would no longer be

30 eligible to receive public benefits or assistance to which the beneficiary
31 is then entitled;

32 (4) The co-trustee, with consent of the trustee, shall not less
33 frequently than annually determine the amount of income or principal
34 or income and principal which may be used to provide noncash benefits
35 and the nature and type of benefits to be provided for the
36 beneficiary. Any net income which is not used shall be added to the
37 principal annually;

38 (5) In the event that the trustee and the co-trustee shall be
39 unable to agree either on:

40 (a) The amount of income or principal to be used;

41 (b) The benefits to be provided; or

42 (c) The administration of the trust account,

43 then the co-trustee shall have the right to appeal the decision of the
44 trustee in accordance with the rules and regulations established by the
45 board.

402.207. 1. The board of trustees shall establish a charitable
2 trust for the benefit of individuals with disabilities.

3 2. The board of trustees shall accept contributions to the
4 charitable trust at the termination of trust accounts and other
5 contributions from donors in accordance with policies and procedures
6 adopted by the board of trustees.

7 3. The trustees shall as necessary determine the amount of
8 income and principal of the charitable trust to be used to provide
9 benefits for individuals with disabilities. Benefits provided shall only
10 be those that have no negative effect on the individual's entitlement to
11 government benefits. Any income not used to provide benefits shall be
12 added to the principal annually.

13 4. Any person with the consent of the board of trustees may
14 establish a restricted account within the charitable trust and may
15 determine, with the consent of the board of trustees, the class of
16 individuals eligible to be recipients of funds from the restricted
17 account, so long as the eligible recipients are individuals with
18 disabilities as set forth in section 402.200.

402.208. 1. The board may establish and collect fees for
2 administering trust accounts established pursuant to the provisions of
3 sections 402.199 to 402.220.

4 **2. The board shall establish policies and procedures for**
5 **providing periodic reports to the co-trustees of each trust account**
6 **established pursuant to the provisions of sections 402.199 to 402.220.**

7 **3. (1) No beneficiary shall have any vested or property rights or**
8 **interests in any trust account, nor shall any beneficiary have the power**
9 **to anticipate, assign, convey, alienate, or otherwise encumber any**
10 **interest in the income or principal of any trust account.**

11 **(2) The income or the principal or any interest of any beneficiary**
12 **in the trust account shall not be liable for any debt incurred by such**
13 **beneficiary, nor shall the principal or income of any trust account be**
14 **subject to seizure by any creditor or any beneficiary under any writ or**
15 **proceeding in law or in equity.**

16 **4. Except for the right of a settlor to withdraw from or revoke**
17 **any revocable trust account under section 402.205, and the right of any**
18 **acting co-trustee, other than the original settlor, to withdraw all or a**
19 **portion of the principal balance of a revocable trust account under**
20 **section 402.205, neither the settlor nor any acting co-trustee shall have**
21 **the right to sell, assign, convey, alienate, or otherwise encumber, for**
22 **consideration or otherwise, any interest in the income or principal of**
23 **the trust account. The income or the principal or any interest of any**
24 **beneficiary of a revocable trust account shall not be liable for any debt**
25 **incurred by the settlor or any acting co-trustee, nor shall the principal**
26 **or income of the trust account be subject to seizure by any creditor of**
27 **any settlor or any acting co-trustee under any writ or proceeding in**
28 **law or in equity.**

 473.657. 1. Distribution to a distributee may be made to the distributee
2 or to a person holding a power of attorney properly executed by the distributee
3 in accordance with the law of the place of execution, or to the distributee's
4 personal representative, guardian, or conservator.

5 2. Distribution may be made to the trustees of a trust **account**
6 established pursuant to sections 402.199 to [402.225] **402.208** if the court finds
7 that such distribution **qualifies as a life beneficiary under subdivision (1)**
8 **of section 402.200 and that such distribution** would be in the best interest
9 of the distributee as prescribed by section 475.093.

 475.093. 1. If the court finds that the establishment of a trust would be
2 in the protectee's best interest, the court may authorize the establishment of a
3 trust **account** for the benefit of a protectee pursuant to sections 402.199 to

4 [402.255] **402.208**, if it finds that the protectee qualifies as a life beneficiary
5 pursuant to **subdivision (1) of section [402.205] 402.200**, or the court may
6 authorize the establishment of such trust for the benefit of a protectee pursuant
7 to section 475.092.

8 2. A trust **account** established pursuant to sections 402.199 to [402.225]
9 **402.208** will be in the best interest of the protectee, notwithstanding the fact that
10 a sum not exceeding twenty-five percent of the principal balance as defined in
11 subdivision [(7)] **(9)** of section 402.200 will be distributed to the charitable trust
12 **of the Missouri family trust** as prescribed by section [402.215] **402.203**.

[402.210. 1. There is hereby created the "Missouri Family
2 Trust Board of Trustees", which shall be a body corporate and an
3 instrumentality of the state. The board of trustees shall consist of
4 nine persons appointed by the governor with the advice and
5 consent of the senate. The members' terms of office shall be three
6 years and until their successors are appointed and qualified. The
7 trustees shall be persons who are not prohibited from serving by
8 sections 105.450 to 105.482 and who are not otherwise employed by
9 the department of mental health. The board of trustees shall be
10 composed of the following:

11 (1) Three members of the immediate family of persons who
12 have a disability or are the recipients of services provided by the
13 department in the treatment of mental illness. The advisory
14 council for comprehensive psychiatric services, created pursuant to
15 section 632.020, shall submit a panel of nine names to the
16 governor, from which he shall appoint three. One shall be
17 appointed for a term of one year, one for two years, and one for
18 three years. Thereafter, as the term of a trustee expires each year,
19 the Missouri advisory council for comprehensive psychiatric
20 services shall submit to the governor a panel of not less than three
21 nor more than five proposed trustees, and the governor shall
22 appoint one trustee from such panel for a term of three years;

23 (2) Three members of the immediate family of persons who
24 are recipients of services provided by the department in the
25 habilitation of the mentally retarded or developmentally
26 disabled. The Missouri advisory council on mental retardation and
27 developmental disabilities, created pursuant to section 633.020,

28 shall submit a panel of nine names to the governor, from which he
29 shall appoint three. One shall be appointed for one year, one for
30 two years and one for three years. Thereafter, as the term of a
31 trustee expires each year, the Missouri advisory council on mental
32 retardation and developmental disabilities shall submit to the
33 governor a panel of not less than three nor more than five proposed
34 trustees, and the governor shall appoint one trustee from such
35 panel for a term of three years;

36 (3) Three persons who are recognized for their expertise in
37 general business matters and procedures. Of the three business
38 people to be appointed by the governor, one shall be appointed for
39 one year, one for two years and one for three years. Thereafter, as
40 the term of a trustee expires each year, the governor shall appoint
41 one business person as trustee for a term of three years.

42 2. The trustees shall receive no compensation for their
43 services. The trust shall reimburse the trustees for necessary
44 expenses actually incurred in the performance of their duties.

45 3. As used in this section, the term "immediate family"
46 includes spouse, parents, parents of spouse, children, spouses of
47 children and siblings.

48 4. The board of trustees shall be subject to the provisions
49 of sections 610.010 to 610.120.

50 5. The board of trustees shall annually prepare or cause to
51 be prepared an accounting of the trust funds and shall transmit a
52 copy of the accounting to the governor, the president pro tempore
53 of the senate and the speaker of the house of representatives.

54 6. The board of trustees shall establish policies, procedures
55 and other rules and regulations necessary to implement the
56 provisions of sections 402.199 to 402.220.]

2 [402.215. 1. The board of trustees is authorized and
3 directed to establish and administer the Missouri family trust and
4 to advise, consult with, and render services to departments and
5 agencies of the state of Missouri and to other nonprofit
6 organizations which qualify as organizations pursuant to Section
7 501(c)(3) of the United States Internal Revenue Code of 1986, as
amended, and which provide services to Missouri residents with a

8 disability. The board shall be authorized to execute all documents
9 necessary to establish and administer the trust including the
10 formation of a not-for-profit corporation created pursuant to
11 chapter 355 and to qualify as an organization pursuant to Section
12 501(c)(3) of the United States Internal Revenue Code of 1986, as
13 amended.

14 2. The trust documents shall include and be limited by the
15 following provisions:

16 (1) The Missouri family trust shall be authorized to accept
17 contributions from any source including trustees, personal
18 representatives, personal custodians pursuant to chapter 404, and
19 other fiduciaries, and, subject to the provisions of subdivision (11)
20 of this subsection, from the life beneficiaries and their respective
21 spouses, to be held, administered, managed, invested and
22 distributed in order to facilitate the coordination and integration
23 of private financing for individuals who have a disability or are
24 eligible for services provided by the Missouri department of mental
25 health, or both, while maintaining the eligibility of such
26 individuals for government entitlement funding. All contributions,
27 and the earnings thereon, shall be administered as one trust fund;
28 however, separate accounts shall be established for each designated
29 beneficiary. The income earned, after deducting administrative
30 expenses, shall be credited to the accounts of the respective life
31 beneficiaries in proportion to the principal balance in the account
32 for each such life beneficiary, to the total principal balances in the
33 accounts for all life beneficiaries;

34 (2) Every donor may designate a specific person as the life
35 beneficiary of the contribution made by such donor. In addition,
36 each donor may name a cotrustee, including the donor, and a
37 successor or successors to the cotrustee, to act with the trustees of
38 the trust on behalf of the designated life beneficiary; provided,
39 however, a life beneficiary shall not be eligible to be a cotrustee or
40 a successor cotrustee; provided, however, that court approval of the
41 specific person designated as life beneficiary and as cotrustee or
42 successor trustee shall be required in connection with any trust
43 created pursuant to section 473.657 or section 475.093;

44 (3) The cotrustee, with the consent of the trust, shall from
45 time to time but not less frequently than annually determine the
46 amount of income or principal or income and principal to be used
47 to provide noncash benefits and the nature and type of benefits to
48 be provided for the life beneficiary. Any net income which is not
49 used shall be added to principal annually. In the event that the
50 trust and the cotrustee shall be unable to agree either on the
51 amount of income or principal or income and principal to be used
52 or the benefits to be provided, then either the trust or the cotrustee
53 shall have the right to request that the matter be resolved by
54 arbitration which shall be conducted in accordance with the
55 Commercial Arbitration Rules of the American Arbitration
56 Association. The requesting party shall send a written request for
57 arbitration to the responding party and shall in such request set
58 forth the name, address and telephone number of such requesting
59 party's arbitrator. The responding party shall, within ten days
60 after receipt of the request for arbitration, set forth in writing to
61 the requesting party the name, address and telephone number of
62 the responding party's arbitrator. Copies of the request for
63 arbitration and response shall be sent to the director of the
64 department. If the two designated arbitrators shall be unable to
65 agree upon a third arbitrator within ten days after the responding
66 party shall have identified such party's arbitrator, then the director
67 of the department shall designate the third arbitrator by written
68 notice to the requesting and responding parties' arbitrators. The
69 three arbitrators shall meet, conduct a hearing, and render a
70 decision within thirty days after the appointment of the third
71 arbitrator. A decision of a majority of the arbitrators shall be
72 binding upon the requesting and responding parties. Each party
73 shall pay the fees and expenses of such party's arbitrator and the
74 fees and expenses of the third arbitrator shall be borne equally by
75 the parties. Judgment on the arbitrators' award may be entered in
76 any court of competent jurisdiction;

77 (4) Any donor, during his or her lifetime, except for a trust
78 created pursuant to section 473.657 or section 475.093, may revoke
79 any gift made to the trust; provided, however, any donor may, at

80 any time, voluntarily waive the right to revoke. In the event that
81 at the time the donor shall have revoked his or her gift to the trust
82 the life beneficiary shall not have received any benefits provided by
83 use of trust income or principal, then an amount equal to one
84 hundred percent of the principal balance shall be returned to the
85 donor. Any undistributed net income shall be distributed to the
86 charitable trust. In the event that at the time the donor shall have
87 revoked his or her gift to the trust the life beneficiary shall have
88 received any benefits provided by the use of trust income or
89 principal, then an amount equal to ninety percent of the principal
90 balance shall be returned to the donor. The balance of the
91 principal balance together with all undistributed net income shall
92 be distributed to the charitable trust;

93 (5) Any acting cotrustee, except a cotrustee of a trust
94 created pursuant to section 473.657 or section 475.093, other than
95 the original donor of a life beneficiary's account, shall have the
96 right, for good and sufficient reason upon written notice to the
97 trust and the department stating such reason, to withdraw all or
98 a portion of the principal balance. In such event, the applicable
99 portion, as set forth in subdivision (7) of this subsection, of the
100 principal balance shall then be distributed to the successor trust
101 and the balance of the principal balance together with any
102 undistributed net income shall be distributed to the charitable
103 trust;

104 (6) In the event that a life beneficiary for whose benefit a
105 contribution or contributions shall have been made to the family
106 trust shall cease to be eligible for services provided by the
107 department of mental health and neither the donor nor the then
108 acting cotrustee, except a cotrustee of a trust created pursuant to
109 section 473.657 or section 475.093, shall revoke or withdraw the
110 applicable portion, as set for in subdivision (7) of this subsection,
111 of the principal balance, then the board of trustees may, by written
112 notice to such donor or acting cotrustee, terminate the trust as to
113 such beneficiary and thereupon shall distribute the applicable
114 portion, as set forth in subdivision (7) of this subsection, of the
115 principal balance, to the trustee of the successor trust to be held,

116 administered and distributed by such trustee in accordance with
117 the provisions of the successor trust described in subdivision (12)
118 of this subsection;

119 (7) If at the time of withdrawal or termination as provided
120 in subdivision (6) of this subsection of a life beneficiary's account
121 from the trust either the life beneficiary shall not have received
122 any benefits provided by the use of the trust income or principal or
123 the life beneficiary shall have received benefits provided by the use
124 of trust income or principal for a period of not more than five years
125 from the date a contribution shall have first been made to the trust
126 for such life beneficiary, then an amount equal to ninety percent of
127 the principal balance shall be distributed to the successor trust,
128 and the balance of the principal balance together with all
129 undistributed net income shall be distributed to the charitable
130 trust; provided, however, if the life beneficiary at the time of such
131 withdrawal by the cotrustee or termination as provided above shall
132 have received any benefits provided by the use of trust income or
133 principal for a period of more than five years from the date a
134 contribution shall have first been made to the trust for such life
135 beneficiary, then an amount equal to seventy-five percent of the
136 principal balance shall be distributed to the successor trust, and
137 the balance of the principal balance together with all undistributed
138 net income shall be distributed to the charitable trust;

139 (8) Subject to the provisions of subdivision (9) of this
140 subsection, if the life beneficiary dies before receiving any benefits
141 provided by the use of trust income or principal, then an amount
142 equal to one hundred percent of the principal balance shall be
143 distributed to such person or persons as the donor shall have
144 designated. Any undistributed net income shall be distributed to
145 the charitable trust. If at the time of death of the life beneficiary,
146 the life beneficiary shall have been receiving benefits provided by
147 the use of trust income or principal or income and principal, then,
148 in such event, an amount equal to seventy-five percent of the
149 principal balance shall be distributed to such person or persons as
150 the donor designated, and the balance of the principal balance,
151 together with all undistributed net income, shall be distributed to

152 the charitable trust;

153 (9) In the event the trust is created as a result of a
154 distribution from a personal representative of an estate of which
155 the life beneficiary is a distributee, then if the life beneficiary dies
156 before receiving any benefits provided by the use of trust income or
157 principal, an amount equal to one hundred percent of the principal
158 balance shall be distributed to such person or persons who are the
159 life beneficiary's heirs at law. Any undistributed income shall be
160 distributed to the charitable trust. If at the time of death of the
161 life beneficiary the life beneficiary shall have been receiving
162 benefits provided by the use of trust income or principal or income
163 and principal, then, an amount equal to seventy-five percent of the
164 principal balance shall be distributed to such person or persons
165 who are the life beneficiary's heirs at law. The balance of the
166 principal balance together with all undistributed income shall be
167 distributed to the charitable trust. If there are no heirs at the time
168 of either such distribution, the then-principal balance together with
169 all undistributed income shall be distributed to the charitable
170 trust;

171 (10) In the event the trust is created as a result of the
172 recovery of damages by reason of a personal injury to the life
173 beneficiary, then if the life beneficiary dies before receiving any
174 benefits provided by the use of trust income or principal, the state
175 of Missouri shall receive all amounts remaining in the life
176 beneficiary's account up to an amount equal to the total medical
177 assistance paid on behalf of such life beneficiary under a state plan
178 under Title 42 of the United States Code, and then to the extent
179 there is any amount remaining in the life beneficiary's account, an
180 amount equal to one hundred percent of the principal balance shall
181 be distributed to such person or persons who are the life
182 beneficiary's heirs at law. If there are no heirs, the balance, if any,
183 of the principal balance together with all undistributed income
184 shall be distributed to the charitable trust. If at the time of death
185 of the life beneficiary the life beneficiary should have been
186 receiving benefits provided by the use of trust income or principal
187 or income and principal then the state of Missouri shall receive all

188 amounts remaining in the life beneficiary's account up to an
189 amount equal to the total medical assistance paid on behalf of such
190 life beneficiary under a state plan under Title 42 of the United
191 States Code, and then to the extent there is any amount remaining
192 in the life beneficiary's account, an amount equal to seventy-five
193 percent of the principal balance shall be distributed to such person
194 or persons who are the life beneficiary's heirs at law and the
195 balance of the principal balance together with all undistributed
196 income shall be distributed to the charitable trust. If there are no
197 heirs, the balance of the principal balance, together with all
198 undistributed income, shall be distributed to the charitable trust;

199 (11) In the event an account is established with the assets
200 of the beneficiary by the beneficiary, a family member, the
201 beneficiary's guardian, or pursuant to a court order, all in
202 accordance with Title 42 of the United States Code Section
203 1396p(d)(4)(C), then upon the death of the life beneficiary the state
204 of Missouri shall receive all amounts remaining in the life
205 beneficiary's account up to an amount equal to the total medical
206 assistance paid on behalf of such life beneficiary under a state plan
207 under Title 42 of the United States Code, and then to the extent
208 there is any amount remaining in the life beneficiary's account, an
209 amount equal to seventy-five percent of the principal balance shall
210 be distributed to such person or persons who are the life
211 beneficiary's heirs at law and the balance of the principal balance
212 together with all undistributed income shall be distributed to the
213 charitable trust. If there are no heirs, the balance of the principal
214 balance together with all undistributed income shall be distributed
215 to the charitable trust;

216 (12) Notwithstanding the provisions of subdivisions (4) to
217 (8) of this subsection to the contrary, the donor may voluntarily
218 agree to a smaller percentage of the principal balance in any
219 account established by such donor than is provided in this
220 subsection to be returned to the donor or distributed to the
221 successor trust, as the case may be; and a corresponding larger
222 percentage of the principal balance in such account to be
223 distributed either to the charitable trust or to a designated

224 restricted account within the charitable trust;

225 (13) Upon receipt of a notice of withdrawal from a
226 designated cotrustee, other than the original donor, and a
227 determination by the board of trustees that the reason for such
228 withdrawal is good and sufficient, or upon the issuance of notice of
229 termination by the board of trustees, the board of trustees shall
230 distribute and pay over to the designated trustee of the successor
231 trust the applicable portion of the principal balance as set forth in
232 subdivision (7) of this subsection; provided, however, that court
233 approval of distribution to a successor trustee shall be required in
234 connection with any trust created pursuant to section 473.657 or
235 section 475.093. The designated trustee of the successor trust shall
236 hold, administer and distribute the principal and income of the
237 successor trust, in the discretion of such trustee, for the
238 maintenance, support, health, education and general well-being of
239 the beneficiary, recognizing that it is the purpose of the successor
240 trust to supplement, not replace, any government benefits for the
241 beneficiary's basic support to which such beneficiary may be
242 entitled and to increase the quality of such beneficiary's life by
243 providing the beneficiary with those amenities which cannot
244 otherwise be provided by public assistance or entitlements or other
245 available sources. Permissible expenditures include, but are not
246 limited to, more sophisticated dental, medical and diagnostic work
247 or treatment than is otherwise available from public assistance,
248 private rehabilitative training, supplementary education aid,
249 entertainment, periodic vacations and outings, expenditures to
250 foster the interests, talents and hobbies of the beneficiary, and
251 expenditures to purchase personal property and services which will
252 make life more comfortable and enjoyable for the beneficiary but
253 which will not defeat his or her eligibility for public
254 assistance. Expenditures may include payment of the funeral and
255 burial costs of the beneficiary. The designated trustee, in his or
256 her discretion, may make payments from time to time for a person
257 to accompany the beneficiary on vacations and outings and for the
258 transportation of the beneficiary or of friends and relatives of the
259 beneficiary to visit the beneficiary. Any undistributed income shall

260 be added to the principal from time to time. Expenditures shall
261 not be made for the primary support or maintenance of the
262 beneficiary, including basic food, shelter and clothing, if, as a
263 result, the beneficiary would no longer be eligible to receive public
264 benefits or assistance to which the beneficiary is then
265 entitled. After the death and burial of the beneficiary, the
266 remaining balance of the successor trust shall be distributed to
267 such person or persons as the donor shall have designated;

268 (14) The charitable trust shall be administered as part of
269 the family trust, but as a separate account. The income
270 attributable to the charitable trust shall be used to provide benefits
271 for individuals who have a disability or who are eligible for services
272 provided by or through the department and who either have no
273 immediate family or whose immediate family, in the reasonable
274 opinion of the trustees, is financially unable to make a contribution
275 to the trust sufficient to provide benefits for such individuals, while
276 maintaining such individuals' eligibility for government
277 entitlement funding. The trustees may from time to time
278 determine to use part of the principal of the charitable trust to
279 provide such benefits. As used in this section, the term "immediate
280 family" includes parents, children and siblings. The individuals to
281 be beneficiaries of the charitable trust shall be recommended to the
282 trustees by the department and others from time to time. The
283 trustees shall annually determine the amount of charitable trust
284 income or principal to be used to provide benefits and the nature
285 and type of benefits to be provided for each identified beneficiary
286 of the charitable trust. Any income not used shall be added to
287 principal annually;

288 (15) Any person, with the consent of the board of trustees,
289 may establish a restricted account within the charitable trust and
290 shall be permitted to determine, with the consent of the board of
291 trustees, the beneficiaries of such restricted account provided such
292 beneficiaries qualify as participants of the trust as set forth in
293 subsection 1 of section 402.205.]

2 [402.217. 1. No beneficiary shall have any vested or
property rights or interests in the family trust, nor shall any

3 beneficiary have the power to anticipate, assign, convey, alienate,
4 or otherwise encumber any interest in the income or principal of
5 the family trust, nor shall such income or the principal or any
6 interest of any beneficiary thereunder be liable for any debt
7 incurred by such beneficiary, nor shall the principal or income of
8 the family trust be subject to seizure by any creditor or any
9 beneficiary under any writ or proceeding in law or in equity.

10 2. Except for the right of a donor to revoke any gift made
11 to the trust, pursuant to subdivision (4) of subsection 2 of section
12 402.215, and the right of any acting cotrustee, other than the
13 original donor, to withdraw all or a portion of the principal balance,
14 pursuant to subdivision (5) of subsection 2 of section 402.215,
15 neither the donor nor any acting cotrustee shall have the right to
16 sell, assign, convey, alienate or otherwise encumber, for
17 consideration or otherwise, any interest in the income or principal
18 of the family trust, nor shall such income or the principal or any
19 interest of any beneficiary thereunder be liable for any debt
20 incurred by the donor or any acting cotrustee, nor shall the
21 principal or income of the family trust be subject to seizure by any
22 creditor of any donor or any acting cotrustee under any writ or
23 proceeding in law or in equity.]

[402.220. No trustee, cotrustee or successor cotrustee
2 serving pursuant to the provisions of sections 402.200 to 402.220
3 shall at any time be held liable for any mistake of law or fact, or of
4 both law and fact, or errors of judgment, nor for any loss sustained
5 by the trust estate or by any beneficiary under the provisions of
6 sections 402.200 to 402.220, or by any other person, except through
7 actual fraud or willful misconduct on the part of such trustee,
8 cotrustee or successor cotrustee.]

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