

FIRST REGULAR SESSION

HOUSE BILL NO. 469

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRANZ.

1421L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 402.199, 402.200, 402.205, 402.210, 402.215, 402.217, 402.220, 2 473.657, and 475.093, RSMo, are repealed and twelve new sections enacted in lieu thereof, to 3 be known as sections 402.199, 402.200, 402.201, 402.202, 402.203, 402.204, 402.205, 402.206, 4 402.207, 402.208, 473.657, and 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 **and services**
3 for **certain** persons with [a mental or physical impairment that substantially limits one or more
4 major life activities, whether the impairment is congenital or acquired by accident, injury or
5 disease] **disabilities**;

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

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

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.

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

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

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

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

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

- 2 (1) **"Beneficiary", also referred to as "life beneficiary", a person who:**
3 (a) **Has been determined to have a disability or to be a disabled person;**
4 (b) **Is a resident of Missouri or one of the eight states adjacent to Missouri; and**
5 (c) **Is the person designated as the sole, primary beneficiary of a trust account**
6 **administrated as part of the Missouri family trust by the board of trustees;**

- 7 (2) "Board of trustees"[, the Missouri family trust board of trustees] **or "board" or**
8 **"Missouri family board of trustees", the body corporate and instrumentality of the state,**
9 **established as the Missouri family trust board of trustees under section 402.201;**
- 10 [(2)] (3) "Charitable trust", [the trust to provide benefits for] **an account established and**
11 **administered as part of the Missouri family trust for the benefit of disabled** individuals, as
12 [set forth] **provided** in section [402.215] **402.207;**
- 13 (4) **"Co-trustee", that person designated by the settlor to act together with the**
14 **trustee as co-trustee of a trust account;**
- 15 [(3)] (5) "Department", the department of mental health;
- 16 [(4)] (6) "Disability"[,] :
- 17 (a) A mental or physical impairment that substantially limits one or more major life
18 activities, whether the impairment is congenital or acquired by accident, injury or disease, and
19 where the impairment is verified by medical findings; **or**
- 20 (b) **As is defined in section 1614(a)(3) of the Social Security Act, 42 U.S.C.**
21 **1382c(a)(3);**
- 22 [(5)] "Life beneficiary" or "beneficiary", a designated beneficiary of the Missouri family
23 trust;
- 24 (6) (7) **"Missouri family trust" or "trust", the trust established under section**
25 **402.202 and administered by the board of trustees, as trustee, under sections 402.199 to**
26 **402.208;**
- 27 (8) "Net income", the earnings received on investments less administrative expenses and
28 fees;
- 29 [(7)] (9) "Principal balance", the fair market value of all contributions made to a
30 particular account, less distributions, determined as of the end of the calendar month immediately
31 preceding the occurrence giving rise to any determination of principal balance;
- 32 [(8)] "Requesting party", the party desiring arbitration;
- 33 (9) "Responding party", the other party in arbitration of a dispute regarding benefits to
34 be provided by the trust;]
- 35 (10) **"Remainder beneficiaries", the person or persons designated to receive the**
36 **applicable portion of the principal balance of a trust account remaining after the death of**
37 **the beneficiary;**
- 38 (11) **"Restricted account", an account established and administered as part of the**
39 **trust for the benefit of persons with disabilities as provided in section 402.206;**
- 40 (12) "[Successor] **Standby** trust", the trust established upon distribution **of a trust**
41 **account** by the board of trustees pursuant to notice of withdrawal or termination and
42 administered as set forth in **subsection 3 of section [402.215] 402.205;**

43 [(11)] (13) "Trust account", an account established and administered as part of the
44 Missouri family trust [established pursuant to] for the benefit of a beneficiary as provided in
45 sections [402.200 to 402.220] **402.203 and 402.204;**

46 [(12)] (14) "Trustee", [a member of the Missouri family trust] the board of trustees
47 acting in its capacity as trustee of a trust account, the charitable trust, or a restricted
48 account as used in section 402.201.

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

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

11 **(1) Three members of the immediate family of persons who have a disability of**
12 **mental illness. The department's state advisory council for comprehensive psychiatric**
13 **services, created under section 632.020, shall submit a panel of nine proposed members of**
14 **the board to the governor, from which the governor shall appoint three. One shall be**
15 **appointed for a term of one year, one for two years, and one for three years. Thereafter,**
16 **as the term of a member of the board appointed under this subdivision expires each year,**
17 **the state advisory council for comprehensive psychiatric services shall submit to the**
18 **governor a panel of not less than three nor more than five proposed members of the board**
19 **of trustees, and the governor shall appoint one member from such panel for a term of three**
20 **years;**

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

30 **(3) Three persons recognized for their expertise in general business matters and**
31 **procedures. Of the three business persons to be appointed by the governor, one shall be**
32 **appointed for one year, one for two years, and one for three years. Thereafter, as the term**
33 **of a member of the board of trustees appointed under this subdivision expires each year,**
34 **the governor shall appoint one business person as member for a term of three years.**

35 **3. As used in subdivisions (1) and (2) of subsection 2 of this section, "immediate**
36 **family" includes spouse, parents, parents of spouse, children, spouses of children, and**
37 **siblings.**

38 **4. No member of the board of trustees shall receive compensation for services as a**
39 **member of the board. The board shall reimburse the members of the board for necessary**
40 **expenses actually incurred in the performance of their duties.**

41 **5. The board of trustees shall be subject to the provisions of sections 610.010 to**
42 **610.029 and is considered a public governmental body under section 610.010.**

43 **6. The board of trustees shall annually prepare or cause to be prepared an**
44 **accounting of funds administered by the board and shall transmit a copy of the accounting**
45 **to the governor, the president pro tempore of the senate and the speaker of the house of**
46 **representatives.**

47 **7. The board of trustees shall establish policies, procedures, and other rules and**
48 **regulations necessary to implement the provisions of sections 402.199 to 402.208.**

49 **8. The board of trustees is authorized to advise, consult with, coordinate and render**
50 **services to those departments, agencies, political subdivisions, and governmental**
51 **instrumentalities of Missouri and of the states adjacent to Missouri, and those nonprofit**
52 **organizations that qualify as organizations under Section 501(c)(3) of the United States**
53 **Internal Revenue Code of 1986, as amended, that provide services or support to persons**
54 **with disabilities who are residents of Missouri or one of the states adjacent to Missouri.**

55 **9. The assets of the board of trustees shall not be considered state money, assets of**
56 **the state or revenue for any purposes of the state constitution or statutes. The property of**
57 **the board of trustees and its income and operations shall be exempt from all taxation by**
58 **the state or any of its political subdivisions.**

59 **10. No trustee, co-trustee or successor co-trustee serving under the provisions of**
60 **sections 402.200 to 402.208 shall at any time be held liable for any mistake of law or fact,**
61 **or of both law and fact, or errors of judgment, nor for any loss sustained as a result**
62 **thereof.**

402.202. 1. Trust accounts, restricted trust accounts, and the charitable trust shall
2 **be held and administered in trust as the Missouri family trust. The charitable trust, the**
3 **restricted accounts and the trust accounts shall each be maintained in trust as separate**

4 accounts, but may be pooled for purposes of investment and management. Assets of the
5 Missouri family trust shall not be considered state money, assets of the state or revenue for
6 any purposes of the state constitution or statutes.

7 2. The board of trustees shall act as the trustee of the Missouri family trust. The
8 board of trustees, as trustee, shall administer the Missouri family trust under the
9 provisions of sections 402.199 to 402.208 and pursuant to the policies, procedures, rules,
10 and regulations of the board of trustees.

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

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

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

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

21 4. At the death of the beneficiary, the board of trustees shall provide notice that the
22 trust account has terminated to each state of which the board of trustees has knowledge
23 that such state has provided medical assistance on behalf of the beneficiary under a state
24 plan for medical assistance under Title 42 of the United States Code. After distribution of

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

35 5. To the extent any amounts remain in the trust account after distribution to the
36 charitable trust and the state or states for state reimbursement claims, the remainder shall
37 be distributed to such person, entities, or organizations designated as remainder
38 beneficiaries by the settlor in the trust documents. If any individual remainder beneficiary
39 named by the settlor is not then living, then in the absence of contrary instruction in the
40 trust documents completed by the settlor, such remainder beneficiary's distribution shall
41 be made to such remainder beneficiary's heirs at law, as determined by the laws of the state
42 of the beneficiary's residence at the time of the beneficiary's death.

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

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

16 3. If the board determines, in its good faith judgment, that a co-trustee has
17 breached his or her fiduciary duties, either as a result of an act of commission or omission,

18 then the board may, by written notice to such co-trustee, remove such co-trustee, appoint
19 a successor co-trustee, or serve as sole trustee.

20 **4. At the death of the beneficiary, the board of trustees shall promptly determine**
21 **the principal balance of the trust account and, after payment of any expenses of the**
22 **beneficiary as the board may authorize and all fees and expenses of the board, shall**
23 **distribute to the persons, entities, or organizations designated by the settlor as remainder**
24 **beneficiaries in the trust documents:**

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

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

31 (3) Any principal not distributed under the provisions of subdivision (2) of this
32 subsection, and any undistributed income shall be distributed to the charitable trust
33 established under the provisions of section 402.207;

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

39 **5. Notwithstanding the provisions of subsection 4 of this section to the contrary, the**
40 **settlor may voluntarily agree that a smaller percentage of the principal balance in any trust**
41 **account established by such settlor than is provided in subsection 4 of this section be**
42 **distributed to the remainder beneficiaries designated in the trust documents; and that a**
43 **corresponding larger percentage of the principal balance in such trust account be**
44 **distributed either to the charitable trust or to a designated restricted account within the**
45 **charitable trust.**

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

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

12 3. The assets of the board of trustees and assets held in trust pursuant to the provisions
13 of sections 402.199 to 402.220 shall not be considered state money, assets of the state or revenue
14 for any purposes of the state constitution or statutes. The property of the board of trustees and
15 its income and operations shall be exempt from all taxation by the state or any of its political
16 subdivisions.] **The settlor of a revocable third-party trust account or the co-trustee of a**
17 **revocable third-party trust account if authorized by the settlor in the trust documents,**
18 **upon written notice to the board and with the board's consent may, from time to time,**
19 **withdraw such part of the trust account as the settlor or such authorized co-trustee may**
20 **determine; provided, however, neither the settlor nor such authorized co-trustee may**
21 **withdraw an amount that when aggregated with all withdrawals within the prior twelve**
22 **months shall reduce the remaining principal balance of the trust account below the greater**
23 **of the amount due the board, if the trust account had terminated at the time of such**
24 **withdrawal or the minimum amount required by the board, from time to time, for an**
25 **account.**

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

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

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

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

39 **(c) Any principal not distributed under the provisions of paragraph (b) of this**
40 **subdivision, and any undistributed income to the charitable trust;**

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

42 **(a) An amount equal to one hundred percent of the principal balance shall be**
43 **distributed to the trustees of the standby trust, if the beneficiary shall not have received**

44 any benefits provided by use of trust account income or principal, to be held, administered,
45 and distributed in accordance with the provisions of subsection 3 of this section; or

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

50 (c) Any principal not distributed under the provisions of paragraph (b) of this
51 subdivision, and any undistributed income shall be distributed to the charitable trust.

52 3. The trustee or trustees of the standby trust shall hold, administer, and distribute
53 the principal and income of the standby trust, in the discretion of such trustee, for the
54 support, health, education, and general well-being of the beneficiary during the
55 beneficiary's life, recognizing that it is the purpose of the standby trust to supplement, not
56 replace, any government benefits for the beneficiary's basic support to which such
57 beneficiary may be entitled and to increase the quality of such beneficiary's life by
58 providing the beneficiary those amenities which cannot otherwise be provided by public
59 assistance or entitlements or other available sources. Permissible expenditures include, but
60 are not limited to, those described in subdivision (2) of section 402.206.

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

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

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

19 outings and for the transportation of the beneficiary or of friends and relatives of the
20 beneficiary to visit the beneficiary;

21 (3) Expenditures of trust account funds shall not be made for the primary support
22 or maintenance of the beneficiary, including basic food or shelter, if, as a result, the
23 beneficiary would no longer be eligible to receive public benefits or assistance to which the
24 beneficiary is then entitled;

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

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

- 31 (a) The amount of income or principal to be used;
32 (b) The benefits to be provided; or
33 (c) The administration of the trust account,

34

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

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

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

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

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

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

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

6 **3. (1) No beneficiary shall have any vested or property rights or interests in any**
7 **trust account, nor shall any beneficiary have the power to anticipate, assign, convey,**
8 **alienate, or otherwise encumber any interest in the income or principal of any trust**
9 **account.**

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

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

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

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

475.093. 1. If the court finds that the establishment of a trust would be in the protectee's
2 best interest, the court may authorize the establishment of a trust **account** for the benefit of a
3 protectee pursuant to sections 402.199 to [402.255] **402.208**, if it finds that the protectee
4 qualifies as a life beneficiary pursuant to **subdivision (1) of section [402.205] 402.200**, or the
5 court may authorize the establishment of such trust for the benefit of a protectee pursuant to
6 section 475.092.

7 2. A trust **account** established pursuant to sections 402.199 to [402.225] **402.208** will
8 be in the best interest of the protectee, notwithstanding the fact that a sum not exceeding

9 twenty-five percent of the principal balance as defined in subdivision [(7)] (9) of section 402.200
10 will be distributed to the charitable trust of **the Missouri family trust** as prescribed by section
11 [402.215] **402.203**.

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

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

19 (2) Three members of the immediate family of persons who are recipients
20 of services provided by the department in the habilitation of the mentally retarded
21 or developmentally disabled. The Missouri advisory council on mental
22 retardation and developmental disabilities, created pursuant to section 633.020,
23 shall submit a panel of nine names to the governor, from which he shall appoint
24 three. One shall be appointed for one year, one for two years and one for three
25 years. Thereafter, as the term of a trustee expires each year, the Missouri
26 advisory council on mental retardation and developmental disabilities shall
27 submit to the governor a panel of not less than three nor more than five proposed
28 trustees, and the governor shall appoint one trustee from such panel for a term of
29 three years;

30 (3) Three persons who are recognized for their expertise in general
31 business matters and procedures. Of the three business people to be appointed
32 by the governor, one shall be appointed for one year, one for two years and one
33 for three years. Thereafter, as the term of a trustee expires each year, the
34 governor shall appoint one business person as trustee for a term of three years.

35 2. The trustees shall receive no compensation for their services. The trust
36 shall reimburse the trustees for necessary expenses actually incurred in the
37 performance of their duties.

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

40 4. The board of trustees shall be subject to the provisions of sections
41 610.010 to 610.120.

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

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

49

2 [402.215. 1. The board of trustees is authorized and directed to establish
3 and administer the Missouri family trust and to advise, consult with, and render
4 services to departments and agencies of the state of Missouri and to other
5 nonprofit organizations which qualify as organizations pursuant to Section
6 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and
7 which provide services to Missouri residents with a disability. The board shall
8 be authorized to execute all documents necessary to establish and administer the
9 trust including the formation of a not-for-profit corporation created pursuant to
10 chapter 355 and to qualify as an organization pursuant to Section 501(c)(3) of the
11 United States Internal Revenue Code of 1986, as amended.

12 2. The trust documents shall include and be limited by the following
13 provisions:

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

29 (2) Every donor may designate a specific person as the life beneficiary
30 of the contribution made by such donor. In addition, each donor may name a
31 cotrustee, including the donor, and a successor or successors to the cotrustee, to
32 act with the trustees of the trust on behalf of the designated life beneficiary;
33 provided, however, a life beneficiary shall not be eligible to be a cotrustee or a
successor cotrustee; provided, however, that court approval of the specific person

34 designated as life beneficiary and as cotrustee or successor trustee shall be
35 required in connection with any trust created pursuant to section 473.657 or
36 section 475.093;

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

63 (4) Any donor, during his or her lifetime, except for a trust created
64 pursuant to section 473.657 or section 475.093, may revoke any gift made to the
65 trust; provided, however, any donor may, at any time, voluntarily waive the right
66 to revoke. In the event that at the time the donor shall have revoked his or her
67 gift to the trust the life beneficiary shall not have received any benefits provided
68 by use of trust income or principal, then an amount equal to one hundred percent
69 of the principal balance shall be returned to the donor. Any undistributed net
70 income shall be distributed to the charitable trust. In the event that at the time the
71 donor shall have revoked his or her gift to the trust the life beneficiary shall have
72 received any benefits provided by the use of trust income or principal, then an
73 amount equal to ninety percent of the principal balance shall be returned to the
74 donor. The balance of the principal balance together with all undistributed net
75 income shall be distributed to the charitable trust;

76 (5) Any acting cotrustee, except a cotrustee of a trust created pursuant to
77 section 473.657 or section 475.093, other than the original donor of a life
78 beneficiary's account, shall have the right, for good and sufficient reason upon
79 written notice to the trust and the department stating such reason, to withdraw all
80 or a portion of the principal balance. In such event, the applicable portion, as set
81 forth in subdivision (7) of this subsection, of the principal balance shall then be
82 distributed to the successor trust and the balance of the principal balance together
83 with any undistributed net income shall be distributed to the charitable trust;

84 (6) In the event that a life beneficiary for whose benefit a contribution or
85 contributions shall have been made to the family trust shall cease to be eligible
86 for services provided by the department of mental health and neither the donor
87 nor the then acting cotrustee, except a cotrustee of a trust created pursuant to
88 section 473.657 or section 475.093, shall revoke or withdraw the applicable
89 portion, as set for in subdivision (7) of this subsection, of the principal balance,
90 then the board of trustees may, by written notice to such donor or acting
91 cotrustee, terminate the trust as to such beneficiary and thereupon shall distribute
92 the applicable portion, as set forth in subdivision (7) of this subsection, of the
93 principal balance, to the trustee of the successor trust to be held, administered and
94 distributed by such trustee in accordance with the provisions of the successor
95 trust described in subdivision (12) of this subsection;

96 (7) If at the time of withdrawal or termination as provided in subdivision
97 (6) of this subsection of a life beneficiary's account from the trust either the life
98 beneficiary shall not have received any benefits provided by the use of the trust
99 income or principal or the life beneficiary shall have received benefits provided
100 by the use of trust income or principal for a period of not more than five years
101 from the date a contribution shall have first been made to the trust for such life
102 beneficiary, then an amount equal to ninety percent of the principal balance shall
103 be distributed to the successor trust, and the balance of the principal balance
104 together with all undistributed net income shall be distributed to the charitable
105 trust; provided, however, if the life beneficiary at the time of such withdrawal by
106 the cotrustee or termination as provided above shall have received any benefits
107 provided by the use of trust income or principal for a period of more than five
108 years from the date a contribution shall have first been made to the trust for such
109 life beneficiary, then an amount equal to seventy-five percent of the principal
110 balance shall be distributed to the successor trust, and the balance of the principal
111 balance together with all undistributed net income shall be distributed to the
112 charitable trust;

113 (8) Subject to the provisions of subdivision (9) of this subsection, if the
114 life beneficiary dies before receiving any benefits provided by the use of trust
115 income or principal, then an amount equal to one hundred percent of the principal
116 balance shall be distributed to such person or persons as the donor shall have
117 designated. Any undistributed net income shall be distributed to the charitable
118 trust. If at the time of death of the life beneficiary, the life beneficiary shall have

119 been receiving benefits provided by the use of trust income or principal or
120 income and principal, then, in such event, an amount equal to seventy-five
121 percent of the principal balance shall be distributed to such person or persons as
122 the donor designated, and the balance of the principal balance, together with all
123 undistributed net income, shall be distributed to the charitable trust;

124 (9) In the event the trust is created as a result of a distribution from a
125 personal representative of an estate of which the life beneficiary is a distributee,
126 then if the life beneficiary dies before receiving any benefits provided by the use
127 of trust income or principal, an amount equal to one hundred percent of the
128 principal balance shall be distributed to such person or persons who are the life
129 beneficiary's heirs at law. Any undistributed income shall be distributed to the
130 charitable trust. If at the time of death of the life beneficiary the life beneficiary
131 shall have been receiving benefits provided by the use of trust income or
132 principal or income and principal, then, an amount equal to seventy-five percent
133 of the principal balance shall be distributed to such person or persons who are the
134 life beneficiary's heirs at law. The balance of the principal balance together with
135 all undistributed income shall be distributed to the charitable trust. If there are
136 no heirs at the time of either such distribution, the then-principal balance together
137 with all undistributed income shall be distributed to the charitable trust;

138 (10) In the event the trust is created as a result of the recovery of damages
139 by reason of a personal injury to the life beneficiary, then if the life beneficiary
140 dies before receiving any benefits provided by the use of trust income or
141 principal, the state of Missouri shall receive all amounts remaining in the life
142 beneficiary's account up to an amount equal to the total medical assistance paid
143 on behalf of such life beneficiary under a state plan under Title 42 of the United
144 States Code, and then to the extent there is any amount remaining in the life
145 beneficiary's account, an amount equal to one hundred percent of the principal
146 balance shall be distributed to such person or persons who are the life
147 beneficiary's heirs at law. If there are no heirs, the balance, if any, of the
148 principal balance together with all undistributed income shall be distributed to the
149 charitable trust. If at the time of death of the life beneficiary the life beneficiary
150 should have been receiving benefits provided by the use of trust income or
151 principal or income and principal then the state of Missouri shall receive all
152 amounts remaining in the life beneficiary's account up to an amount equal to the
153 total medical assistance paid on behalf of such life beneficiary under a state plan
154 under Title 42 of the United States Code, and then to the extent there is any
155 amount remaining in the life beneficiary's account, an amount equal to
156 seventy-five percent of the principal balance shall be distributed to such person
157 or persons who are the life beneficiary's heirs at law and the balance of the
158 principal balance together with all undistributed income shall be distributed to the
159 charitable trust. If there are no heirs, the balance of the principal balance,
160 together with all undistributed income, shall be distributed to the charitable trust;

161 (11) In the event an account is established with the assets of the
162 beneficiary by the beneficiary, a family member, the beneficiary's guardian, or
163 pursuant to a court order, all in accordance with Title 42 of the United States
164 Code Section 1396p(d)(4)(C), then upon the death of the life beneficiary the state
165 of Missouri shall receive all amounts remaining in the life beneficiary's account
166 up to an amount equal to the total medical assistance paid on behalf of such life
167 beneficiary under a state plan under Title 42 of the United States Code, and then
168 to the extent there is any amount remaining in the life beneficiary's account, an
169 amount equal to seventy-five percent of the principal balance shall be distributed
170 to such person or persons who are the life beneficiary's heirs at law and the
171 balance of the principal balance together with all undistributed income shall be
172 distributed to the charitable trust. If there are no heirs, the balance of the
173 principal balance together with all undistributed income shall be distributed to the
174 charitable trust;

175 (12) Notwithstanding the provisions of subdivisions (4) to (8) of this
176 subsection to the contrary, the donor may voluntarily agree to a smaller
177 percentage of the principal balance in any account established by such donor than
178 is provided in this subsection to be returned to the donor or distributed to the
179 successor trust, as the case may be; and a corresponding larger percentage of the
180 principal balance in such account to be distributed either to the charitable trust
181 or to a designated restricted account within the charitable trust;

182 (13) Upon receipt of a notice of withdrawal from a designated cotrustee,
183 other than the original donor, and a determination by the board of trustees that the
184 reason for such withdrawal is good and sufficient, or upon the issuance of notice
185 of termination by the board of trustees, the board of trustees shall distribute and
186 pay over to the designated trustee of the successor trust the applicable portion of
187 the principal balance as set forth in subdivision (7) of this subsection; provided,
188 however, that court approval of distribution to a successor trustee shall be
189 required in connection with any trust created pursuant to section 473.657 or
190 section 475.093. The designated trustee of the successor trust shall hold,
191 administer and distribute the principal and income of the successor trust, in the
192 discretion of such trustee, for the maintenance, support, health, education and
193 general well-being of the beneficiary, recognizing that it is the purpose of the
194 successor trust to supplement, not replace, any government benefits for the
195 beneficiary's basic support to which such beneficiary may be entitled and to
196 increase the quality of such beneficiary's life by providing the beneficiary with
197 those amenities which cannot otherwise be provided by public assistance or
198 entitlements or other available sources. Permissible expenditures include, but are
199 not limited to, more sophisticated dental, medical and diagnostic work or
200 treatment than is otherwise available from public assistance, private rehabilitative
201 training, supplementary education aid, entertainment, periodic vacations and
202 outings, expenditures to foster the interests, talents and hobbies of the
203 beneficiary, and expenditures to purchase personal property and services which

204 will make life more comfortable and enjoyable for the beneficiary but which will
205 not defeat his or her eligibility for public assistance. Expenditures may include
206 payment of the funeral and burial costs of the beneficiary. The designated
207 trustee, in his or her discretion, may make payments from time to time for a
208 person to accompany the beneficiary on vacations and outings and for the
209 transportation of the beneficiary or of friends and relatives of the beneficiary to
210 visit the beneficiary. Any undistributed income shall be added to the principal
211 from time to time. Expenditures shall not be made for the primary support or
212 maintenance of the beneficiary, including basic food, shelter and clothing, if, as
213 a result, the beneficiary would no longer be eligible to receive public benefits or
214 assistance to which the beneficiary is then entitled. After the death and burial of
215 the beneficiary, the remaining balance of the successor trust shall be distributed
216 to such person or persons as the donor shall have designated;

217 (14) The charitable trust shall be administered as part of the family trust,
218 but as a separate account. The income attributable to the charitable trust shall be
219 used to provide benefits for individuals who have a disability or who are eligible
220 for services provided by or through the department and who either have no
221 immediate family or whose immediate family, in the reasonable opinion of the
222 trustees, is financially unable to make a contribution to the trust sufficient to
223 provide benefits for such individuals, while maintaining such individuals'
224 eligibility for government entitlement funding. The trustees may from time to
225 time determine to use part of the principal of the charitable trust to provide such
226 benefits. As used in this section, the term "immediate family" includes parents,
227 children and siblings. The individuals to be beneficiaries of the charitable trust
228 shall be recommended to the trustees by the department and others from time to
229 time. The trustees shall annually determine the amount of charitable trust income
230 or principal to be used to provide benefits and the nature and type of benefits to
231 be provided for each identified beneficiary of the charitable trust. Any income
232 not used shall be added to principal annually;

233 (15) Any person, with the consent of the board of trustees, may establish
234 a restricted account within the charitable trust and shall be permitted to
235 determine, with the consent of the board of trustees, the beneficiaries of such
236 restricted account provided such beneficiaries qualify as participants of the trust
237 as set forth in subsection 1 of section 402.205.]
238

2 [402.217. 1. No beneficiary shall have any vested or property rights or
3 interests in the family trust, nor shall any beneficiary have the power to
4 anticipate, assign, convey, alienate, or otherwise encumber any interest in the
5 income or principal of the family trust, nor shall such income or the principal or
6 any interest of any beneficiary thereunder be liable for any debt incurred by such
7 beneficiary, nor shall the principal or income of the family trust be subject to
8 seizure by any creditor or any beneficiary under any writ or proceeding in law or
in equity.

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

2 [402.220. No trustee, cotrustee or successor cotrustee serving pursuant
3 to the provisions of sections 402.200 to 402.220 shall at any time be held liable
4 for any mistake of law or fact, or of both law and fact, or errors of judgment, nor
5 for any loss sustained by the trust estate or by any beneficiary under the
6 provisions of 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, cotrustee or
8 successor cotrustee.]

T