

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1151

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH.

Pre-filed December 6, 2001, and 1000 copies ordered printed.

Read 1st time January 9, 2002.

Read 2nd time January 10, 2002, and referred to the Committee on Civil and Administrative Law, January 10, 2002.

Reported from the Committee on Civil and Administrative Law, January 31, 2002, with recommendation that the bill Do Pass by Consent.

Perfected by Consent February 11, 2002.

TED WEDEL, Chief Clerk

3300L.01P

AN ACT

To repeal section 469.411, RSMo, and to enact in lieu thereof one new section relating to disclaimers of property.

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

Section A. Section 469.411, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 469.411, to read as follows:

469.411. 1. If the provisions of this section apply to a trust, the unitrust amount shall be determined as follows:

(1) For the first three accounting periods of the trust, the unitrust amount for a current valuation year of the trust shall be three percent, or any higher percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on the first business day of the current valuation year;

(2) Beginning with the fourth accounting period of the trust, the unitrust amount for a current valuation year of the trust shall be three percent, or any higher percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the average of the net fair market values of the assets held

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

12 in the trust on the first business day of the current valuation year and the net fair market values
13 of the assets held in the trust on the first business day of each prior valuation year;

14 (3) The unitrust amount for the current valuation year computed pursuant to subdivision
15 (1) or (2) of this subsection shall be proportionately reduced for any distributions, in whole or
16 in part, other than distributions of the unitrust amount, and for any payments of expenses,
17 including debts, disbursements and taxes, from the trust within a current valuation year that the
18 trustee determines to be material and substantial, and shall be proportionately increased for the
19 receipt, other than a receipt that represents a return on investment, of any additional property into
20 the trust within a current valuation year;

21 (4) For purposes of subdivision (2) of this subsection, the net fair market values of the
22 assets held in the trust on the first business day of a prior valuation year shall be adjusted to
23 reflect any reduction, in the case of a distribution or payment, or increase, in the case of a receipt,
24 for the prior valuation year pursuant to subdivision (3) of this subsection, as if the distribution,
25 payment or receipt had occurred on the first day of the prior valuation year;

26 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount
27 on a daily basis;

28 (6) In the case where the net fair market value of an asset held in the trust has been
29 incorrectly determined either in a current valuation year or in a prior valuation year, the unitrust
30 amount shall be increased in the case of an undervaluation, or be decreased in the case of an
31 overvaluation, by an amount equal to the difference between the unitrust amount determined
32 based on the correct valuation of the asset and the unitrust amount originally determined.

33 2. As used in this section, the following terms mean:

34 (1) "Current valuation year", the accounting period of the trust for which the unitrust
35 amount is being determined;

36 (2) "Prior valuation year", each of the two accounting periods of the trust immediately
37 preceding the current valuation year.

38 3. In determining the sum of the net fair market values of the assets held in the trust for
39 purposes of subdivisions (1) and (2) of subsection 1 of this section, there shall not be included
40 the value of:

41 (1) Any residential property or any tangible personal property that, as of the first business
42 day of the current valuation year, one or more income beneficiaries of the trust have or had the
43 right to occupy, or have or had the right to possess or control, other than in a capacity as trustee,
44 and instead the right of occupancy or the right to possession or control shall be deemed to be the
45 unitrust amount with respect to the residential property or the tangible personal property; or

46 (2) Any asset specifically given to a beneficiary under the terms of the trust and the
47 return on investment on that asset, which return on investment shall be distributable to the

48 beneficiary.

49 4. In determining the net fair market value of each asset held in the trust pursuant to
50 subdivisions (1) and (2) of subsection 1 of this section, the trustee shall, not less often than
51 annually, determine the fair market value of each asset of the trust that consists primarily of real
52 property or other property that is not traded on a regular basis in an active market by appraisal
53 or other reasonable method or estimate, and that determination, if made reasonably and in good
54 faith, shall be conclusive as to all persons interested in the trust. Any claim based on a
55 determination made pursuant to this subsection shall be barred if not asserted in a judicial
56 proceeding brought by any beneficiary with any interest whatsoever in the trust within two years
57 after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts
58 constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the
59 barring of claims pursuant to this subsection.

60 5. This section shall apply to the following trusts:

61 (1) Any trust created after August 28, 2001, with respect to which the terms of the trust
62 clearly manifest an intent that this section apply;

63 (2) Any trust created under an instrument that became irrevocable on or before August
64 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply two years from
65 August 28, 2001, unless the instrument creating the trust provides otherwise. The trustee shall
66 deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she is then living,
67 of the trustee's intent to make such an election at least sixty days before making that election.
68 The trustee shall have sole authority to make the election. Delivery of the notice to a person with
69 respect to whom, pursuant to subdivision (2) of section 472.300, RSMo, an order would bind a
70 beneficiary of the trust is delivery of notice to that beneficiary for all purposes of this subsection.
71 An action or order by any court shall not be required. The election shall be made by a signed
72 writing delivered to the settlor of the trust, if he or she is then living, and to all qualified
73 beneficiaries. The election is irrevocable, unless revoked by order of the court having
74 jurisdiction of the trust. The election may specify the percentage used to determine the unitrust
75 amount pursuant to this section, provided that such percentage is three percent or greater, or if
76 no percentage is specified, then that percentage shall be three percent. In making an election
77 pursuant to this subsection, the trustee shall be subject to the same limitations and conditions as
78 apply to an adjustment between income and principal pursuant to subsections 3 and 4 of section
79 [469.409] **469.405**;

80 (3) No action of any kind based on an election made or not made by a trustee pursuant
81 to subdivision (2) of this subsection shall be brought against the trustee by any beneficiary of that
82 trust three years from August 28, 2001.