

HB 1845 -- ESTATE PLANNING

SPONSOR: Cornejo

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Judiciary by a vote of 10 to 0.

This bill specifies that the terms of an instrument creating or exercising a power of appointment prevail over provisions of the Missouri Uniform Powers of Appointment except the requisites for the creation of a power of appointment under subsections 1 to 4 of Section 456.990, RSMo, of the Missouri Uniform Powers of Appointment.

Additionally, the powerholder of a nongeneral power may create a nongeneral power in a permissible appointee.

The bill repeals the provision specifying that a trust instrument may provide for the appointment of a trust protector and replaces it with a provision specifying that a trust instrument may provide for one or more persons, not then serving as a trustee and not the settlor or a beneficiary, to be given any powers over the trust as expressly granted in the trust instrument. Any such person may be identified and appointed as a trust protector or similar term. When a trust designates a trust protector, the trust shall be deemed a direct trust.

Finally, a trust protector shall act in a fiduciary capacity; however, the trust may provide that the trust protector shall act in a nonfiduciary capacity. In carrying out any written directions given to the trustee by the trust protector, the trustee shall not be subject to the provisions of the Prudent Investor Act. Furthermore, no trustee of a directed trust shall be accountable under law or equity for any act or omission of a trust protector and the trustee shall stand absolved from liability for executing the decisions or instructions from a trust protector or for monitoring the actions or inactions of a trust protector. A trustee shall take reasonable steps to facilitate the activity of a trust protector in a directed trust.

PROPOSERS: Supporters say that this protects trust protectors, who are being told what to do, and it provides technical amendments to the powers of appointment act.

Testifying for the bill were Representative Cornejo and The Board of Governors of the Missouri Bar.

OPPOSERS: There was no opposition voiced to the committee.