

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 698

AN ACT

To repeal sections 404.717, 456.590, 456.3-304, 456.4B-411, 456.7-706, 469.467, 473.050, and 473.730, RSMo, and to enact in lieu thereof seven new sections relating to the administration of estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 404.717, 456.590, 456.3-304,
2 456.4B-411, 456.7-706, 469.467, 473.050, and 473.730, RSMo, are
3 repealed and seven new sections enacted in lieu thereof, to be
4 known as sections 404.717, 456.3-304, 456.4B-411, 456.7-706,
5 469.467, 473.050, and 473.730, to read as follows:

6 404.717. 1. As between the principal and attorney in fact
7 or successor attorney in fact, and any agents appointed by either
8 of them, unless the power of attorney is coupled with an
9 interest, the authority granted in a power of attorney shall be
10 modified or terminated as follows:

11 (1) On the date shown in the power of attorney and in
12 accordance with the express provisions of the power of attorney;

13 (2) When the principal, orally or in writing, or the
14 principal's legal representative with approval of the court in
15 writing informs the attorney in fact or successor that the power
16 of attorney is modified or terminated, or when and under what

1 circumstances it is modified or terminated;

2 (3) When a written notice of modification or termination of
3 the power of attorney is filed by the principal or the
4 principal's legal representative for record in the office of the
5 recorder of deeds in the city or county of the principal's
6 residence or, if the principal is a nonresident of the state, in
7 the city or county of the residence of the attorney in fact last
8 known to the principal, or in the city or county in which is
9 located any property specifically referred to in the power of
10 attorney;

11 (4) On the death of the principal, except that if the power
12 of attorney grants authority under subdivision (7) or (8) of
13 subsection 6 of section 404.710, the power of attorney and the
14 authority of the attorney in fact shall continue for the limited
15 purpose of carrying out the authority granted under either or
16 both of said subdivisions for a reasonable length of time after
17 the death of the principal;

18 (5) When the attorney in fact under a durable power of
19 attorney is not qualified to act for the principal;

20 (6) On the filing of any action for divorce or dissolution
21 of the marriage of the principal and the principal's attorney in
22 fact who were married to each other at or subsequent to the time
23 the power of attorney was created, unless the power of attorney
24 provides otherwise.

25 2. Whenever any of the events described in subsection 1 of
26 this section operate merely to terminate the authority of the
27 particular person designated as the attorney in fact, rather than
28 terminating the power of attorney, if the power of attorney

1 designates a successor or contingent attorney in fact or
2 prescribes a procedure whereby a successor or contingent attorney
3 in fact may be designated, then the authority provided in the
4 power of attorney shall extend to and vest in the successor or
5 contingent attorney in fact in lieu of the attorney in fact whose
6 power and authority was terminated under any of the circumstances
7 referred to in subsection 1 of this section.

8 3. As between the principal and attorney in fact or
9 successor attorney in fact, acts and transactions of the attorney
10 in fact or successor attorney in fact undertaken in good faith,
11 in accordance with section 404.714, and without actual knowledge
12 of the death of the principal or without actual knowledge, or
13 constructive knowledge pursuant to subdivision (3) of subsection
14 1 of this section, that the authority granted in the power of
15 attorney has been suspended, modified or terminated, relieves the
16 attorney in fact or successor attorney in fact from liability to
17 the principal and the principal's successors in interest.

18 4. This section does not prohibit the principal, acting
19 individually, and the person designated as the attorney in fact
20 from entering into a written agreement that sets forth their
21 duties and liabilities as between themselves and their
22 successors, and which expands or limits the application of
23 sections 404.700 to 404.735, with the exception of those acts
24 enumerated in subsection 7 of section 404.710.

25 5. As between the principal and any attorney in fact or
26 successor attorney in fact, if the attorney in fact or successor
27 attorney in fact undertakes to act, and if in respect to such
28 act, the attorney in fact or successor [acts in bad faith,

1 fraudulently or otherwise dishonestly] attorney in fact engages
2 in willful misconduct or fraud or acts with willful disregard for
3 the purposes, terms, or conditions of the power of attorney, or
4 if the attorney in fact or successor attorney in fact
5 intentionally acts after receiving actual notice that the power
6 of attorney has been revoked or terminated, and thereby causes
7 damage or loss to the principal or to the principal's successors
8 in interest, such attorney in fact or successor attorney in fact
9 shall be liable to the principal or to the principal's successors
10 in interest, or both, for such damages, together with reasonable
11 attorney's fees, and punitive damages as allowed by law.

12 6. For purposes of this section, the principal's
13 "successors in interest" shall include those persons who can
14 prove they have been damaged as a result of the actions of the
15 attorney in fact or successor attorney in fact, such as a
16 conservator of the principal or a personal representative of a
17 deceased principal. If more than one person claims a recovery
18 under this section the court shall determine the priority of
19 their respective claims.

20 456.3-304. 1. Unless otherwise represented, a minor,
21 incapacitated, or unborn individual, or a person whose identity
22 or location is unknown and not reasonably ascertainable, may be
23 represented by and bound by another having a substantially
24 identical interest with respect to the particular question or
25 dispute, but only to the extent there is no conflict of interest
26 between the representative and the person represented with
27 respect to a particular question or dispute.

28 2. Unless otherwise represented, a beneficiary who is not a

1 qualified beneficiary may be represented by and bound by a
2 qualified beneficiary having a substantially identical interest
3 with respect to the particular question or dispute, but only to
4 the extent there is no conflict of interest with respect to the
5 particular question or dispute between the representative and the
6 person represented, in any court proceeding under subsection 2 of
7 section 456.4-412, or in a nonjudicial settlement agreement
8 entered into under section 456.1-111 or section 456.4A-411 in
9 lieu of such a court proceeding.

10 456.4B-411. 1. When all of the adult beneficiaries having
11 the capacity to contract consent, the court may, upon finding
12 that the interest of any nonconsenting beneficiary will be
13 adequately protected, modify the terms of a noncharitable
14 irrevocable trust so as to reduce or eliminate the interests of
15 some beneficiaries and increase those of others, change the times
16 or amounts of payments and distributions to beneficiaries, or
17 provide for termination of the trust at a time earlier or later
18 than that specified by its terms. The court may at any time upon
19 its own motion appoint a representative pursuant to section
20 456.3-305 to represent a nonconsenting beneficiary. The court
21 shall appoint such a representative upon the motion of any party,
22 unless the court determines such an appointment is not
23 appropriate under the circumstances.

24 2. Upon termination of a trust under subsection 1 of this
25 section, the trustee shall distribute the trust property as
26 directed by the court.

27 3. If a trust cannot be terminated or modified under
28 subsection 1 of this section because not all adult beneficiaries

1 having capacity to contract consent or the terms of the trust
2 prevent such modification or termination, the modification or
3 termination may be approved by the court if the court is
4 satisfied that the interests of a beneficiary, other than the
5 settlor, who does not consent will be adequately protected,
6 modification or termination will benefit a living settlor who is
7 also a beneficiary, and:

8 (1) in the case of a termination, the party seeking
9 termination establishes that continuance of the trust is not
10 necessary to achieve any material purpose of the trust; or

11 (2) in the case of a modification, the party seeking
12 modification establishes that the modification is not
13 inconsistent with a material purpose of the trust, and the
14 modification is not specifically prohibited by the terms of the
15 trust.

16 4. This section shall [apply to trusts created under trust
17 instruments that become irrevocable on or after January 1, 2005.]
18 replace the provisions of section 456.590 and shall apply to all
19 trusts that were created under trust instruments that become
20 irrevocable prior to, on, or after January 1, 2005.

21 456.7-706. 1. The settlor, a cotrustee, or a qualified
22 beneficiary may request the court to remove a trustee, or a
23 trustee may be removed and replaced by the court within its
24 discretion on its own initiative.

25 2. The court within its discretion may remove and replace a
26 trustee [if] under the following circumstances:

27 (1) the trustee has committed a serious breach of trust;

28 (2) lack of cooperation among cotrustees substantially

1 impairs the administration of the trust;

2 (3) because of unfitness, unwillingness, or persistent
3 failure of the trustee to administer the trust effectively, the
4 court determines that removal of the trustee best serves the
5 interests of the beneficiaries; or

6 (4) the trustee has substantially and materially reduced
7 the level of services provided to that trust and has failed to
8 reinstate a substantially equivalent level of services within
9 ninety days after receipt of notice by the settlor, a cotrustee,
10 or a qualified beneficiary or removal is requested by all of the
11 qualified beneficiaries and in either such case the party seeking
12 removal establishes to the court that:

13 (a) removal of the trustee best serves the interests of all
14 of the beneficiaries;

15 (b) removal of the trustee is not inconsistent with a
16 material purpose of the trust; and

17 (c) a suitable cotrustee or successor trustee is available
18 and willing to serve.

19 3. In an action to remove a trustee under subdivision (4)
20 of subsection 2 of this section, the following apply:

21 (1) In the event that a corporation is the trustee being
22 removed, a [suitable] replacement cotrustee or successor trustee
23 shall be [another corporation qualified to conduct trust business
24 in this state] such trustee or trustees as the court finds
25 suitable under the circumstances.

26 (2) In the event that a successor trustee is not appointed
27 under the provisions of section 456.7-704 or the court finds that
28 all potential successor trustees are not suitable, then the court

1 may appoint such trustee or trustees as the court finds suitable
2 under the circumstances.

3 (3) With respect to a trust created under an instrument
4 executed before January 1, 2005, the provisions of subdivision
5 (4) of subsection 2 of this section shall not apply if the
6 instrument contains any language or procedures concerning removal
7 of any trustee designated in the trust instrument.

8 4. Pending a final decision on a request to remove a
9 trustee, or in lieu of or in addition to removing a trustee, the
10 court may order such appropriate relief under subsection 2 of
11 section 456.10-1001 as may be necessary to protect the trust
12 property or the interests of the beneficiaries.

13 469.467. Sections 469.401 to 469.467 apply to every trust
14 or decedent's estate existing on or after August 28, 2001, except
15 as otherwise expressly provided in the will or terms of the trust
16 or in sections 469.401 to 469.467.

17 473.050. 1. A will, to be effective as a will, must be
18 presented for and admitted to probate.

19 2. When used in chapter 472, chapter 474, chapter 475, and
20 this chapter, the term "presented" means:

21 (1) Either the delivery of a will of a decedent, if such
22 will has not previously been delivered, to the probate division
23 of the circuit court which would be the proper venue for the
24 administration of the estate of such decedent, or the delivery of
25 a verified statement to such court, if the will of such decedent
26 is lost, destroyed, suppressed or otherwise not available,
27 setting forth the reason such will is not available and setting
28 forth the provisions of such will so far as known; and

1 (2) One of the following:

2 (a) An affidavit pursuant to section 473.097, which
3 requests such will be admitted to probate; or

4 (b) A petition which seeks to have such will admitted to
5 probate; or

6 (c) An authenticated copy of the order admitting such will
7 to probate in any state, territory or district of the United
8 States, other than this state.

9 3. No proof shall be taken of any will nor a certificate of
10 probate thereof issued unless such will has been presented within
11 the applicable time set forth as follows:

12 (1) In cases where notice has previously been given in
13 accordance with section 473.033 of the granting of letters on the
14 estate of such testator, within six months after the date of the
15 first publication of the notice of granting of letters, or within
16 thirty days after the commencement of an action under section
17 473.083 to establish or contest the validity of a will of the
18 testator named in such will, whichever later occurs;

19 (2) In cases where notice has not previously been given in
20 accordance with section 473.033 of the granting of letters on the
21 estate of testator, within one year after the date of death of
22 the testator;

23 (3) In cases involving a will admitted to probate in any
24 state, territory or district of the United States, other than
25 this state, which was the decedent's domicile, at any time during
26 the course of administration of the decedent's domiciliary estate
27 in such other state, territory or district of the United States.

28 4. A will presented for probate within the time limitations

1 provided in subsection 3 of this section may be exhibited to be
2 proven, and proof received and administration granted on such
3 will at any time after such presentation.

4 5. A will not presented for probate within the time
5 limitations provided in subsection 3 of this section is forever
6 barred from admission to probate in this state.

7 6. Except as provided in subsection 4 of this section and
8 section 537.021, no letters of administration shall be issued
9 unless application is made to the court for such letters within
10 one year from the date of death of the decedent.

11 473.730. 1. Every county in this state, except the City of
12 St. Louis, shall elect a public administrator at the general
13 election in the year 1880, and every four years thereafter, who
14 shall be ex officio public guardian and conservator in and for
15 the public administrator's county. A candidate for public
16 administrator shall be at least twenty-one years of age and a
17 resident of the state of Missouri and the county in which he or
18 she is a candidate for at least one year prior to the date of the
19 general election for such office. The candidate shall also be a
20 registered voter and shall be current in the payment of all
21 personal and business taxes. Each candidate for public
22 administrator shall provide to the election authority a copy of a
23 signed affidavit from a surety company, indicating that the
24 candidate meets the bond requirements for the office of public
25 administrator under this section.

26 2. Before entering on the duties of the public
27 administrator's office, the public administrator shall take the
28 oath required by the constitution, and enter into bond to the

1 state of Missouri in a sum not less than ten thousand dollars,
2 with [two] one or more securities, approved by the court and
3 conditioned that the public administrator will faithfully
4 discharge all the duties of the public administrator's office,
5 which bond shall be given and oath of office taken on or before
6 the first day of January following the public administrator's
7 election, and it shall be the duty of the judge of the court to
8 require the public administrator to make a statement annually,
9 under oath, of the amount of property in the public
10 administrator's hands or under the public administrator's control
11 as such administrator, for the purpose of ascertaining the amount
12 of bond necessary to secure such property; and such court may
13 from time to time, as occasion shall require, demand additional
14 security of such administrator, and, in default of giving the
15 same within twenty days after such demand, may remove the
16 administrator and appoint another.

17 [2.] 3. The public administrator in all counties, in the
18 performance of the duties required by chapters 473, 474, and 475,
19 is a public officer. The duties specified by section 475.120 are
20 discretionary. The county shall defend and indemnify the public
21 administrator against any alleged breach of duty, provided that
22 any such alleged breach of duty arose out of an act or omission
23 occurring within the scope of duty or employment.

24 [3.] 4. After January 1, 2001, all salaried public
25 administrators shall be considered county officials for purposes
26 of section 50.333, subject to the minimum salary requirements set
27 forth in section 473.742.

28 [4.] 5. The public administrator for the city of St. Louis

1 shall be appointed by a majority of the circuit judges and
2 associate circuit judges of the twenty-second judicial circuit,
3 en banc. Such public administrator shall meet the same
4 qualifications and requirements specified in subsection 1 of this
5 section for elected public administrators. The elected public
6 administrator holding office on August 28, 2013, shall continue
7 to hold such office for the remainder of his or her term.

8 [456.590. 1. Where, in the management or
9 administration of any property vested in trustees, any
10 sale, lease, mortgage, surrender, release, or other
11 disposition, or any purchase, investment, acquisition,
12 expenditure, or other transaction is in the opinion of
13 the court expedient, but the same cannot be effected by
14 reason of the absence of any power for that purpose
15 vested in the trustees by the trust instrument, if any,
16 or by law, the court may by order confer upon the
17 trustees, either generally or in any particular
18 instance, the necessary power for the purpose, on such
19 terms, and subject to such provisions and conditions,
20 if any, as the court may think fit and may direct in
21 what manner any money authorized to be expended, and
22 the costs of any transaction, are to be paid or borne
23 as between capital and income.

24 2. When all of the adult beneficiaries who are
25 not disabled consent, the court may, upon finding that
26 such variation will benefit the disabled, minor, unborn
27 and unascertained beneficiaries, vary the terms of a
28 private trust so as to reduce or eliminate the
29 interests of some beneficiaries and increase those of
30 others, to change the times or amounts of payments and
31 distributions to beneficiaries, or to provide for
32 termination of the trust at a time earlier or later
33 than that specified by the terms.

34 3. The court may, from time to time, rescind or
35 vary any order made under this section, or may make any
36 new or further order.

37 4. An application to the court under this section
38 may be made by the trustees, or by any of them, or by
39 any person beneficially interested under the trust.]
40