

SECOND REGULAR SESSION

SENATE BILL NO. 576

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4033S.02I

AN ACT

To repeal sections 404.710, 456.023, 456.5-508, and 469.060, RSMo, and to enact in lieu thereof thirty-six new sections relating to powers of appointment.

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

Section A. Sections 404.710, 456.023, 456.5-508, and 469.060, RSMo, are
2 repealed and thirty-six new sections enacted in lieu thereof, to be known as
3 sections 404.710, 456.970, 456.975, 456.980, 456.985, 456.990, 456.995, 456.1000,
4 456.1005, 456.1010, 456.1015, 456.1020, 456.1025, 456.1030, 456.1035, 456.1040,
5 456.1045, 456.1050, 456.1055, 456.1060, 456.1065, 456.1070, 456.1075, 456.1080,
6 456.1085, 456.1090, 456.1095, 456.1100, 456.1105, 456.1110, 456.1115, 456.1120,
7 456.1125, 456.1130, 456.1135, and 456.5-508, to read as follows:

404.710. 1. A principal may delegate to an attorney in fact in a power of
2 attorney general powers to act in a fiduciary capacity on the principal's behalf
3 with respect to all lawful subjects and purposes or with respect to one or more
4 express subjects or purposes. A power of attorney with general powers may be
5 durable or not durable.

6 2. If the power of attorney states that general powers are granted to the
7 attorney in fact and further states in substance that it grants power to the
8 attorney in fact to act with respect to all lawful subjects and purposes or that it
9 grants general powers for general purposes or does not by its terms limit the
10 power to the specific subject or purposes set out in the instrument, then the
11 authority of the attorney in fact acting under the power of attorney shall extend
12 to and include each and every action or power which an adult who is nondisabled
13 and nonincapacitated may carry out through an agent specifically authorized in
14 the premises, with respect to any and all matters whatsoever, except as provided

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

15 in subsections 6 and 7 of this section. When a power of attorney grants general
16 powers to an attorney in fact to act with respect to all lawful subjects and
17 purposes, the enumeration of one or more specific subjects or purposes does not
18 limit the general authority granted by that power of attorney, unless otherwise
19 provided in the power of attorney.

20 3. If the power of attorney states that general powers are granted to an
21 attorney in fact with respect to one or more express subjects or purposes for
22 which general powers are conferred, then the authority of the attorney in fact
23 acting under the power of attorney shall extend to and include each and every
24 action or power, but only with respect to the specific subjects or purposes
25 expressed in the power of attorney that an adult who is nondisabled and
26 nonincapacitated may carry out through an agent specifically authorized in the
27 premises, with respect to any and all matters whatsoever, except as provided in
28 subsections 6 and 7 of this section.

29 4. Except as provided in subsections 6 and 7 of this section, an attorney
30 in fact with general powers has, with respect to the subjects or purposes for which
31 the powers are conferred, all rights, power and authority to act for the principal
32 that the principal would have with respect to his or her own person or property,
33 including property owned jointly or by the entireties with another or others, as
34 a nondisabled and nonincapacitated adult; and without limiting the foregoing has
35 with respect to the subjects or purposes of the power complete discretion to make
36 a decision for the principal, to act or not act, to consent or not consent to, or
37 withdraw consent for, any act, and to execute and deliver or accept any deed, bill
38 of sale, bill of lading, assignment, contract, note, security instrument, consent,
39 receipt, release, proof of claim, petition or other pleading, tax document, notice,
40 application, acknowledgment or other document necessary or convenient to
41 implement or confirm any act, transaction or decision. An attorney in fact with
42 general powers, whether power to act with respect to all lawful subjects and
43 purposes, or only with respect to one or more express subjects or purposes, shall
44 have the power, unless specifically denied by the terms of the power of attorney,
45 to make, execute and deliver to or for the benefit of or at the request of a third
46 person, who is requested to rely upon an action of the attorney in fact, an
47 agreement indemnifying and holding harmless any third person or persons from
48 any liability, claims or expenses, including legal expenses, incurred by any such
49 third person by reason of acting or refraining from acting pursuant to the request
50 of the attorney in fact, and such indemnity agreement shall be binding upon the

51 principal who has executed such power of attorney and upon the principal's
52 successor or successors in interest. No such indemnity agreement shall protect
53 any third person from any liability, claims or expenses incurred by reason of the
54 fact that, and to the extent that, the third person has honored the power of
55 attorney for actions outside the scope of authority granted by the power of
56 attorney. In addition, the attorney in fact has complete discretion to employ and
57 compensate real estate agents, brokers, attorneys, accountants and subagents of
58 all types to represent and act for the principal in any and all matters, including
59 tax matters involving the United States government or any other government or
60 taxing entity, including, but not limited to, the execution of supplemental or
61 additional powers of attorney in the name of the principal in form that may be
62 required or preferred by any such taxing entity or other third person, and to deal
63 with any or all third persons in the name of the principal without limitation. No
64 such supplemental or additional power of attorney shall broaden the scope of
65 authority granted to the attorney in fact in the original power of attorney
66 executed by the principal.

67 5. An attorney in fact, who is granted general powers for all subjects and
68 purposes or with respect to any express subjects or purposes, shall exercise the
69 powers conferred according to the principal's instructions, in the principal's best
70 interest, in good faith, prudently and in accordance with sections 404.712 and
71 404.714.

72 6. Any power of attorney, whether durable or not durable, and whether
73 or not it grants general powers for all subjects and purposes or with respect to
74 express subjects or purposes, shall be construed to grant power or authority to an
75 attorney in fact to carry out any of the actions described in this subsection if the
76 actions are expressly enumerated and authorized in the power of attorney. Any
77 power of attorney may grant power of authority to an attorney in fact to carry out
78 any of the following actions if the actions are expressly authorized in the power
79 of attorney:

- 80 (1) To execute, amend or revoke any trust agreement;
- 81 (2) To fund with the principal's assets any trust not created by the
82 principal;
- 83 (3) To make or revoke a gift of the principal's property in trust or
84 otherwise;
- 85 (4) To disclaim a gift or devise of property to or for the benefit of the
86 principal, **including but not limited to the ability to disclaim or release**

87 **any power of appointment granted to the principal and the ability to**
88 **disclaim all or part of the principal's interest in appointive property to**
89 **the extent authorized under sections 456.970 to 456.1135;**

90 (5) To create or change survivorship interests in the principal's property
91 or in property in which the principal may have an interest; provided, however,
92 that the inclusion of the authority set out in this subdivision shall not be
93 necessary in order to grant to an attorney in fact acting under a power of attorney
94 granting general powers with respect to all lawful subjects and purposes the
95 authority to withdraw funds or other property from any account, contract or other
96 similar arrangement held in the names of the principal and one or more other
97 persons with any financial institution, brokerage company or other depository to
98 the same extent that the principal would be authorized to do if the principal were
99 present, not disabled or incapacitated, and seeking to act in the principal's own
100 behalf;

101 (6) To designate or change the designation of beneficiaries to receive any
102 property, benefit or contract right on the principal's death;

103 (7) To give or withhold consent to an autopsy or postmortem examination;

104 (8) To make an anatomical gift of, or prohibit an anatomical gift of, all or
105 part of the principal's body under the Revised Uniform Anatomical Gift Act or to
106 exercise the right of sepulcher over the principal's body under section 194.119;

107 (9) To nominate a guardian or conservator for the principal; and if so
108 stated in the power of attorney, the attorney in fact may nominate himself as
109 such;

110 (10) To give consent to or prohibit any type of health care, medical care,
111 treatment or procedure to the extent authorized by sections 404.800 to 404.865;
112 [or]

113 (11) To designate one or more substitute or successor or additional
114 attorneys in fact; **or**

115 **(12) To exercise, to revoke or amend the release of, or to contract**
116 **to exercise or not to exercise, any power of appointment granted to the**
117 **principal to the extent authorized under sections 456.970 to 456.1135.**

118 7. No power of attorney, whether durable or not durable, and whether or
119 not it delegates general powers, may delegate or grant power or authority to an
120 attorney in fact to do or carry out any of the following actions for the principal:

121 (1) To make, publish, declare, amend or revoke a will for the principal;

122 (2) To make, execute, modify or revoke a living will declaration for the

123 principal;

124 (3) To require the principal, against his or her will, to take any action or
125 to refrain from taking any action; or

126 (4) To carry out any actions specifically forbidden by the principal while
127 not under any disability or incapacity.

128 8. A third person may freely rely on, contract and deal with an attorney
129 in fact delegated general powers with respect to the subjects and purposes
130 encompassed or expressed in the power of attorney without regard to whether the
131 power of attorney expressly identifies the specific property, account, security,
132 storage facility or matter as being within the scope of a subject or purpose
133 contained in the power of attorney, and without regard to whether the power of
134 attorney expressly authorizes the specific act, transaction or decision by the
135 attorney in fact.

136 9. It is the policy of this state that an attorney in fact acting pursuant to
137 the provisions of a power of attorney granting general powers shall be accorded
138 the same rights and privileges with respect to the personal welfare, property and
139 business interests of the principal, and if the power of attorney enumerates some
140 express subjects or purposes, with respect to those subjects or purposes, as if the
141 principal himself or herself were personally present and acting or seeking to act;
142 and any provision of law and any purported waiver, consent or agreement
143 executed or granted by the principal to the contrary shall be void and
144 unenforceable.

145 10. Sections 404.700 to 404.735 shall not be construed to preclude any
146 person or business enterprise from providing in a contract with the principal as
147 to the procedure that thereafter must be followed by the principal or the
148 principal's attorney in fact in order to give a valid notice to the person or business
149 enterprise of any modification or termination of the appointment of an attorney
150 in fact by the principal; and any such contractual provision for notice shall be
151 valid and binding on the principal and the principal's successors so long as such
152 provision is reasonably capable of being carried out.

**456.970. Sections 456.970 to 456.1135 shall be known and may be
2 cited as the "Missouri Uniform Powers of Appointment Act".**

**456.975. As used in sections 456.970 to 456.1135 the following
2 terms mean:**

3 **(1) "Appointee", a person to which a powerholder makes an**
4 **appointment of appointive property;**

5 (2) "Appointive property", the property or property interest
6 subject to a power of appointment;

7 (3) "Blanket-exercise clause", a clause in an instrument which
8 exercises a power of appointment and is not a specific-exercise
9 clause. The term includes a clause that:

10 (a) Expressly uses the words "any power" in exercising any power
11 of appointment the powerholder has;

12 (b) Expressly uses the words "any property" in appointing any
13 property over which the powerholder has a power of appointment; or

14 (c) Disposes of all property subject to disposition by the
15 powerholder;

16 (4) "Claim of creditor", the attachment by a creditor of trust
17 property or beneficial interests subject to a power of appointment, a
18 creditor obtaining an order from a court forcing a judicial sale of trust
19 property, a creditor compelling the exercise of a power of appointment,
20 or a creditor reaching trust property or beneficial interests by other
21 means;

22 (5) "Donor", a person who creates a power of appointment;

23 (6) "Exclusionary power of appointment", a power of appointment
24 exercisable in favor of any one or more of the permissible appointees
25 to the exclusion of the other permissible appointees;

26 (7) "General power of appointment", a power of appointment
27 exercisable in favor of the powerholder, the powerholder's estate, a
28 creditor of the powerholder, or a creditor of the powerholder's estate;

29 (8) "Gift-in-default clause", a clause identifying a taker in default
30 of appointment;

31 (9) "Impermissible appointee", a person that is not a permissible
32 appointee;

33 (10) "Instrument", a document that contains information that:

34 (a) Is inscribed on a hard copy, or inscribed on a hard copy that
35 is transmitted by facsimile or stored in portable document format (.pdf)
36 or in another comparable electronic means or other medium that is
37 retrievable in perceivable form; and

38 (b) Contains a signature;

39 (11) "Nongeneral power of appointment", a power of appointment
40 that is not a general power of appointment;

41 (12) "Permissible appointee", a person in whose favor a

42 powerholder may exercise a power of appointment;

43 (13) "Person", an individual, estate, trust, business or nonprofit
44 entity, public corporation, government or governmental subdivision,
45 agency, or instrumentality, or other legal entity;

46 (14) "Power of appointment", a power that enables a powerholder
47 acting in a nonfiduciary capacity to designate a recipient of an
48 ownership interest in or another power of appointment over the
49 appointive property. The term does not include a power of attorney;

50 (15) "Powerholder", a person in which a donor creates a power
51 of appointment;

52 (16) "Presently exercisable power of appointment", a power of
53 appointment exercisable by the powerholder at the relevant time. The
54 term includes a power of appointment not exercisable until the
55 occurrence of a specified event, the satisfaction of an ascertainable
56 standard, or the passage of a specified time only after:

57 (a) The occurrence of the specified event;

58 (b) The satisfaction of the ascertainable standard; or

59 (c) The passage of the specified time, and does not include a
60 power exercisable only at the powerholder's death;

61 (17) "Specific-exercise clause", a clause in an instrument which
62 specifically refers to and exercises a particular power of appointment;

63 (18) "Taker in default of appointment", a person that takes all or
64 part of the appointive property to the extent the powerholder does not
65 effectively exercise the power of appointment;

66 (19) "Terms of the instrument", the manifestation of the intent of
67 the maker of the instrument regarding the instrument's provisions as
68 expressed in the instrument or as may be established by other evidence
69 that would be admissible in a legal proceeding.

456.980. 1. The creation, revocation, or amendment of the power
2 is governed by the law of the donor's domicile at the relevant time, and
3 the exercise, release, or disclaimer of the power, or the revocation or
4 amendment of the exercise, release, or disclaimer of the power, is
5 governed by the law of the powerholder's domicile at the relevant time.

6 2. The common law and principles of equity supplement sections
7 456.970 to 456.1135, except to the extent modified by such sections or
8 other laws of this state.

456.985. 1. Except as otherwise provided in the terms of an

2 instrument creating or exercising a power of appointment, sections
3 456.970 to 456.1135 govern powers of appointment.

4 2. The terms of an instrument creating or exercising a power of
5 appointment prevail over any provisions of sections 456.970 to 456.1135
6 except:

7 (1) The transferability of a power of appointment by a
8 powerholder under subsection 1 of section 456.995;

9 (2) The limitations on the authority of a donor to extend a
10 general power of appointment beyond the death of a powerholder
11 under subsection 3 of section 456.995;

12 (3) The power is exclusionary if the permissible appointees of a
13 power of appointment are not defined and limited under subsection 3
14 of section 456.1005;

15 (4) The requisites for the exercise of a power of appointment
16 under section 456.1015;

17 (5) The effect of an impermissible appointment under section
18 456.1045;

19 (6) A general power of appointment which is presently
20 exercisable may be reached by the creditors of the powerholder or the
21 powerholder's estate under section 456.1100.

456.990. 1. A power of appointment is created only if:

2 (1) The instrument creating the power:

3 (a) Is valid under applicable law; and

4 (b) Except as otherwise provided in subsection 2 of this section,
5 transfers the appointive property; and

6 (2) The terms of the instrument creating the power manifest the
7 donor's intent to create in a powerholder a power of appointment over
8 the appointive property exercisable in favor of a permissible appointee.

9 2. Paragraph (b) of subdivision (1) of subsection 1 of this section,
10 does not apply to the creation of a power of appointment by the
11 exercise of a power of appointment.

12 3. Power of appointment may not be created in a deceased
13 individual.

14 4. Subject to an applicable rule against perpetuities, a power of
15 appointment may be created in an unborn or unascertained
16 powerholder.

17 5. Any property that is the subject of an invalid power of

18 appointment shall be transferred, held or otherwise disposed of in
19 accordance with the valid provisions of the instrument attempting to
20 create the power, if any such provisions exist, or if none, in accordance
21 with other applicable laws, as the case may be.

456.995. 1. A powerholder may not transfer a power of
2 appointment.

3 2. Except as provided in subsection 3 of this section, to the
4 extent a powerholder dies without effectively disclaiming, exercising
5 or releasing a power, the power lapses upon the death of the
6 powerholder.

7 3. A general power of appointment may provide that the power
8 shall survive the death of the powerholder in the hands of the
9 powerholder's personal representative. Such provision shall be valid
10 only to the extent the powerholder dies after he or she effectively
11 receives the general power, but within the period for disclaiming the
12 power, and only to the extent the powerholder has not disclaimed,
13 exercised or released the power. Under such circumstances, the
14 personal representative of the powerholder may either exercise the
15 power in favor of the powerholder's estate, if the estate is a permissible
16 appointee, or disclaim the power as provided by section 456.1080.

17 (1) If the power is neither exercised nor disclaimed by the
18 powerholder's personal representative as stated, the power shall lapse
19 at the earlier of the end of the period for making a disclaimer under
20 other applicable Missouri laws or the end of the period in which the
21 power is valid under its terms.

22 (2) The terms of a general power of appointment providing that
23 "this power of appointment shall survive the death of the powerholder",
24 or words of similar import, shall be sufficient to extend the power after
25 the death of a powerholder in the hands of his or her personal
26 representative in this subsection.

27 (3) In addition to the protections otherwise afforded under
28 applicable law, the personal representative shall not be individually
29 liable for his or her actions or inactions under this subsection if he or
30 she does not have actual knowledge of the power and all pertinent
31 circumstances reasonably necessary for him or her to make a
32 determination on the exercise, disclaimer or lapse of the power at least
33 one hundred and twenty days prior to the end of the period for making

34 a disclaimer or the end of the period in which the power is valid under
35 its terms, whichever first occurs. The foregoing exemption from
36 liability shall not apply if the personal representative exercises or
37 disclaims the power or allows the power to lapse in bad faith.

456.1000. 1. Subject to section 456.1005, the power is:

- 2 (1) Presently exercisable;
- 3 (2) Exclusionary; and
- 4 (3) Except as otherwise provided in subsection 2 of this section,
5 general.

6 2. The power is nongeneral if:

- 7 (1) The power is exercisable only at the powerholder's death; and
- 8 (2) The permissible appointees of the power are a defined and
9 limited class that does not include the powerholder's estate, the
10 powerholder's creditors, or the creditors of the powerholder's estate.

456.1005. 1. As used in this section, "adverse party" means a
2 person with a substantial beneficial interest in property which would
3 be affected adversely by a powerholder's exercise or nonexercise of a
4 power of appointment in favor of the powerholder, the powerholder's
5 estate, a creditor of the powerholder, or a creditor of the powerholder's
6 estate.

7 2. If a powerholder may exercise a power of appointment only
8 with the consent or joinder of an adverse party, the power is
9 nongeneral.

10 3. If the permissible appointees of a power of appointment are
11 not defined and limited, the power is exclusionary.

456.1010. A donor may revoke or amend a power of appointment
2 only to the extent that the instrument creating the power is revocable
3 by the donor, or the donor reserves a power of revocation or
4 amendment in the instrument creating the power of appointment.

456.1015. A power of appointment is exercised only if:

- 2 (1) The instrument exercising the power is valid under
3 applicable law;
- 4 (2) The terms of the instrument exercising the power:
 - 5 (a) Manifest the powerholder's intent to exercise the power; and
 - 6 (b) Subject to section 456.1030, satisfy the requirements of
7 exercise, if any, imposed by the donor; and
- 8 (3) To the extent the appointment is a permissible exercise of the

9 power.

456.1020. 1. As used in this section:

2 (1) "Residuary clause" does not include a residuary clause
3 containing a blanket-exercise clause or a specific-exercise clause; and

4 (2) "Will" includes a codicil and a testamentary instrument that
5 revises another will.

6 2. A residuary clause in a powerholder's will or a comparable
7 clause in the powerholder's revocable trust, manifests the
8 powerholder's intent to exercise a power of appointment only if:

9 (1) The power is a general power exercisable in favor of the
10 powerholder's estate;

11 (2) There is no gift-in-default clause or the clause is ineffective;
12 and

13 (3) The powerholder did not release the power.

456.1025. 1. Except as otherwise provided in subsection 2 of this
2 section, a blanket-exercise clause extends to a power acquired by the
3 powerholder after executing the instrument containing the clause.

4 2. If the powerholder is also the donor of the power, the clause
5 does not extend to the power unless there is no gift-in-default clause or
6 the gift-in-default clause is ineffective.

456.1030. A powerholder's substantial compliance with a formal
2 requirement of appointment imposed by the donor is sufficient if the
3 powerholder knows of and intends to exercise the power, and the
4 powerholder's manner of attempted exercise of the power does not
5 impair a material purpose of the donor in imposing the requirement.

456.1035. 1. A powerholder of a general power of appointment
2 that permits appointment to the powerholder or the powerholder's
3 estate may make any appointment, including an appointment in trust
4 or creating a new power of appointment, that the powerholder could
5 make in disposing of the powerholder's own property.

6 2. A powerholder of a general power of appointment that permits
7 appointment only to the creditors of the powerholder or of the
8 powerholder's estate may appoint only to those creditors.

9 3. The powerholder of a nongeneral power may:

10 (1) Make an appointment in any form, including an appointment
11 in trust, in favor of a permissible appointee;

12 (2) Create a general power in a permissible appointee; or

13 **(3) Create a nongeneral power in any person to appoint to one**
14 **or more of the permissible appointees of the original nongeneral power.**

456.1040. 1. An appointment to a deceased appointee is
2 **ineffective.**

3 **2. A powerholder of a nongeneral power may exercise the power**
4 **in favor of, or create a new power of appointment in, a descendant of**
5 **a deceased permissible appointee whether or not the descendant is**
6 **described by the donor as a permissible appointee and whether or not**
7 **the descendant of a deceased permissible appointee was alive at the**
8 **time of the execution of the instrument creating the power or at the**
9 **time of the exercise of the power.**

456.1045. 1. Except as otherwise provided in section 456.1040, an
2 **exercise of a power of appointment in favor of an impermissible**
3 **appointee is ineffective.**

4 **2. An exercise of a power of appointment in favor of a**
5 **permissible appointee is ineffective to the extent the appointment is a**
6 **fraud on the power.**

456.1050. If a powerholder exercises a power of appointment in
2 **a disposition that also disposes of property the powerholder owns, the**
3 **owned property and the appointive property shall be allocated in the**
4 **permissible manner that best carries out the powerholder's intent.**

456.1055. To the extent a powerholder of a general power of
2 **appointment, other than a power to withdraw property from, revoke,**
3 **or amend a trust, makes an ineffective appointment:**

4 **(1) The gift-in-default clause controls the disposition of the**
5 **ineffectively appointed property; or**

6 **(2) If there is no gift-in-default clause or to the extent the clause**
7 **is ineffective, the ineffectively appointed property:**

8 **(a) Passes to the powerholder if the powerholder is a permissible**
9 **appointee and living; or**

10 **(b) If the powerholder is an impermissible appointee or**
11 **deceased, passes to the powerholder's estate if the estate is a**
12 **permissible appointee; or**

13 **(c) If there is no taker under paragraphs (a) or (b) of this**
14 **subdivision, passes under a reversionary interest to the donor or the**
15 **donor's transferee or successor in interest.**

456.1060. To the extent a powerholder releases or fails to

2 exercise a general power of appointment other than a power to
3 withdraw property from, revoke, or amend a trust, and except as
4 provided in subsection 3 of section 456.995:

5 (1) The gift-in-default clause controls the disposition of the
6 unappointed property; or

7 (2) If there is no gift-in-default clause or to the extent the clause
8 is ineffective:

9 (a) Except as otherwise provided in paragraph (b) of this
10 subdivision, the unappointed property passes to:

11 a. The powerholder if the powerholder is a permissible appointee
12 and living; or

13 b. If the powerholder is an impermissible appointee or deceased,
14 the powerholder's estate if the estate is a permissible appointee; or

15 (b) To the extent the powerholder released the power, or if there
16 is no taker under paragraph (a) of this subdivision, the unappointed
17 property passes under a reversionary interest to the donor or the
18 donor's transferee or successor in interest.

456.1065. To the extent a powerholder releases, ineffectively
2 exercises, or fails to exercise a nongeneral power of appointment:

3 (1) The gift-in-default clause controls the disposition of the
4 unappointed property; or

5 (2) If there is no gift-in-default clause or to the extent the clause
6 is ineffective, the unappointed property:

7 (a) Passes to the permissible appointees if:

8 a. The permissible appointees are defined and limited; and

9 b. The terms of the instrument creating the power do not
10 manifest a contrary intent; or

11 (b) If there is no taker under paragraph (a) of this subdivision,
12 passes under a reversionary interest to the donor or the donor's
13 transferee or successor in interest.

456.1070. 1. If the powerholder makes a valid partial
2 appointment to a taker in default of appointment, the taker in default
3 of appointment may share fully in unappointed property.

4 2. If a powerholder makes an appointment to a taker in default
5 of appointment and the appointee would have taken the property in the
6 same form, manner and amount under a gift-in-default clause had the
7 property not been appointed, the power of appointment is deemed not

8 to have been exercised and the appointee takes under the clause.

456.1075. A powerholder may revoke or amend an exercise of a
2 power of appointment at any time before the exercise becomes effective
3 to transfer property to the appointee.

456.1080. As provided by sections 469.010 to 469.210, a
2 powerholder may disclaim all or part of a power of appointment, and
3 a permissible appointee, appointee, or taker in default of appointment
4 may disclaim all or part of an interest in appointive property.

456.1085. 1. A powerholder may release a power of appointment,
2 in whole or in part, except to the extent the terms of the instrument
3 creating the power prevent the release.

4 2. A powerholder of a releasable power of appointment may
5 release the power in whole or in part:

6 (1) By substantial compliance with a method provided in the
7 terms of the instrument creating the power; or

8 (2) If the terms of the instrument creating the power do not
9 provide a method or the method provided in the terms of the
10 instrument is not expressly made exclusive, by an instrument
11 manifesting the powerholder's intent by clear and convincing evidence
12 and delivered to the donor, the donor's personal representative, a
13 guardian of the donor or the conservator of the estate of the donor, or
14 the holder of the legal title to the property to which the interest
15 related. A release involving an estate or property within the
16 jurisdiction of the probate division of a circuit court may be filed in
17 that division.

18 3. A powerholder may revoke or amend a release of a power of
19 appointment only to the extent that:

20 (1) The instrument of release is revocable by the powerholder;
21 or

22 (2) The powerholder reserves a power of revocation or
23 amendment in the instrument of release.

456.1090. 1. A powerholder of a presently exercisable power of
2 appointment may contract:

3 (1) Not to exercise the power; or

4 (2) To exercise the power if the contract when made does not
5 confer a benefit on an impermissible appointee.

6 2. A powerholder of a power of appointment that is not presently

7 exercisable may contract to exercise or not to exercise the power only
8 if the powerholder:

9 (1) Is also the donor of the power; and

10 (2) Has reserved the power in a revocable trust.

456.1095. The remedy for a powerholder's breach of contract to
2 appoint or not to appoint property is limited to damages payable out
3 of the appointive property or, if appropriate, specific performance of
4 the contract.

456.1100. 1. As used in this section, "power of appointment
2 created by the powerholder" includes a power of appointment created
3 in a transfer by another person to the extent the powerholder
4 contributed value to the transfer.

5 2. Appointive property subject to a general power of
6 appointment created by the powerholder is subject to a claim of a
7 creditor of the powerholder or of the powerholder's estate to the extent
8 provided in chapter 428.

9 3. Subject to subsection 2 of this section, appointive property
10 subject to a general power of appointment created by the powerholder
11 is not subject to a claim of a creditor of the powerholder or the
12 powerholder's estate:

13 (1) To the extent the powerholder irrevocably appointed the
14 property in favor of a person other than the powerholder or the
15 powerholder's estate; and

16 (2) If the power is not presently exercisable.

17 4. Subject to subdivision (1) of subsection 3 of this section, and
18 notwithstanding the presence of a spendthrift provision or whether the
19 claim arose before or after the creation of the power of appointment,
20 appointive property subject to a general power of appointment created
21 by the powerholder is subject to a claim of a creditor of the
22 powerholder to the same extent as if the powerholder owned the
23 appointive property, if the power is presently exercisable.

456.1105. 1. Except as otherwise provided in subsection 3 of this
2 section, appointive property subject to a exercisable general power of
3 appointment created by a person other than the powerholder is subject
4 to a claim of a creditor of the powerholder to the extent the
5 powerholder's property is insufficient.

6 2. Appointive property subject to testamentary or not presently

7 exercisable general power of appointment created by a person other
8 than the powerholder is not subject to a claim of a creditor of the
9 powerholder or the powerholder's estate.

10 3. Subject to subsection 3 of section 456.1115, a power of
11 appointment created by a person other than the powerholder which is
12 subject to an ascertainable standard relating to an individual's health,
13 education, support, or maintenance within the meaning of Section
14 204(b)(1)(a) or Section 2514(c)(1) of the Internal Revenue Code, is
15 treated for purposes of sections 456.1100 to 456.1115 as a nongeneral
16 power.

456.1110. 1. For purposes of sections 456.1100 to 456.1115, and
2 except as otherwise provided in subsection 2 of this section, during the
3 period the power may be exercised, a power of withdrawal shall be
4 treated as a presently exercisable general power of appointment to the
5 extent of the property subject to the power.

6 2. Upon the lapse, release, or waiver of a power to withdraw
7 property from a trust, the power is treated as a presently exercisable
8 general power of appointment only to the extent the value of the
9 property affected by the lapse, release, or waiver exceeds the greater
10 of the amount specified in Sections 2041(b)(2), 2514(e) or 2503(b) of the
11 Internal Revenue Code.

456.1115. 1. Except as otherwise provided in subsections 2 and
2 3 of this section, appointive property subject to a nongeneral power of
3 appointment is exempt from a claim of a creditor of the powerholder
4 or the powerholder's estate.

5 2. Appointive property subject to a nongeneral power of
6 appointment is subject to a claim of a creditor of the powerholder or
7 the powerholder's estate to the extent that the powerholder owned the
8 property and, reserving the nongeneral power, transferred the property
9 in violation of chapter 428.

10 3. If the initial gift-in-default of appointment is to the
11 powerholder or the powerholder's estate, a nongeneral power of
12 appointment is treated for purposes of sections 456.1100 to 456.1115 as
13 a general power.

456.1120. Sections 456.970 to 456.1135 shall not limit the ability
2 of a creditor or other claimant to reach a beneficial interest as
3 otherwise provided in sections 456.5-501 to 456.5-507.

456.1125. In applying and construing sections 456.970 to 456.1135,
2 consideration shall be given to the need to promote uniformity of the
3 law with respect to its subject matter among states that enact it.

456.1130. Sections 456.970 to 456.1135 modify, limit, or supersede
2 the Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. Section 7001 et seq., but do not modify, limit, or supersede
4 Section 101(c) of that act, 15 U.S.C. Section 7001 (c), or authorize
5 electronic delivery of any of the notices described in Section 103(b) of
6 that act, 15 U.S.C. Section 7003(b).

456.1135. 1. Except as otherwise provided in sections 456.970 to
2 456.1135:

3 (1) Sections 456.970 to 456.1135 shall apply to a power of
4 appointment created before, on, or after the effective date of such
5 sections, and shall apply to a judicial proceeding concerning a power
6 of appointment commenced on or after the effective date of these
7 sections;

8 (2) Sections 456.970 to 456.1135 shall apply to a judicial
9 proceeding concerning a power of appointment commenced before the
10 effective date of such sections unless the court finds that application
11 of a particular provision of such sections would interfere substantially
12 with the effective conduct of the judicial proceeding or prejudice a
13 right of a party, in which case the particular provision of such sections
14 does not apply and the superseded law applies;

15 (3) A rule of construction or presumption provided in sections
16 456.970 to 456.1135 applies to an instrument executed before the
17 effective date of sections 456.970 to 456.1135 unless there is a clear
18 indication of a contrary intent in the terms of the instrument; and

19 (4) Except as otherwise provided in subdivisions (1) to (3) of this
20 subsection, an action done before the effective date of sections 456.970
21 to 456.1135 is not affected by such sections.

22 2. If a right is acquired, extinguished, or barred on the
23 expiration of a prescribed period that commenced under law of this
24 state other than sections 456.970 to 456.1135 before the effective date
25 of such sections, the law continues to apply to the right.

456.5-508. 1. [A creditor or other claimant of a beneficiary or other
2 person holding a special power of appointment or a testamentary general power
3 of appointment may not attach trust property or beneficial interests subject to the

4 power, obtain an order from a court forcing a judicial sale of the trust property,
5 compel the exercise of the power, or reach the trust property or beneficial
6 interests by any other means] **Except as provided in sections 456.970 to**
7 **456.1135:**

8 **(1) Appointive property subject to a general power of**
9 **appointment exercisable only at the powerholder's death is not subject**
10 **to the claim of a creditor;**

11 **(2) Appointive property subject to a nongeneral power of**
12 **appointment is not subject to the claim of a creditor.**

13 2. This section shall not limit the ability of a creditor or other claimant
14 to reach a beneficial interest as otherwise provided in sections 456.5-501 to
15 456.5-507.

16 3. [In this section "special power of appointment" means a power of
17 appointment exercisable in favor of one or more appointees other than the holder,
18 the holder's estate, the holder's creditors, or the creditors of the holder's estate,
19 and a "testamentary general power of appointment" means a power of
20 appointment exercisable at the death of the holder, without the consent of the
21 creator of the power or of a person holding an adverse interest in favor of the
22 holder, the holder's estate, the holder's creditors, or the creditors of the holder's
23 estate] **As used in this section, the terms "appointive property", "general**
24 **power of appointment", "nongeneral power of appointment", and "claim**
25 **of a creditor" shall have the same meaning as defined in section 456.975.**

2 [456.023. A general residuary clause in a will, or a will
3 making general disposition of all of the testator's property, does not
4 exercise a power of appointment granted in an instrument creating
5 or amending a trust unless specific reference is made to the power
6 or there is some other indication of intention to include the
property subject to the power.]

2 [469.060. A power with respect to property shall be treated
3 as an interest in such property and if releasable shall be
4 disclaimable in whole or in part under the provisions of this
5 chapter by the holder of the power. An individual who is a
6 potential object of a power exercise has an interest in the property
that is disclaimable in whole or in part.]