SECOND REGULAR SESSION

**[**P E R F E C T E D**]**

# SENATE BILL NO. 577

**98TH GENERAL ASSEMBLY**

INTRODUCED BY SENATOR KEAVENY.

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

Read 2nd time January 7, 2016, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee March 3, 2016, with recommendation that the bill do pass.

Taken up for Perfection April 18, 2016. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

4516S.03P

## AN ACT

To repeal sections 404.717, 456.590, 456.3-304, 456.4B-411, 456.7-706, 469.467, and 473.050, RSMo, and to enact in lieu thereof six new sections relating to estate planning.

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

Section A. Sections 404.717, 456.590, 456.3-304, 456.4B-411, 456.7-706, 469.467, and 473.050, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 404.717, 456.3-304, 456.4B-411, 456.7-706, 469.467, and 473.050, to read as follows:

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

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

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

(3) When a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record

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

in the office of the recorder of deeds in the city or county of the principal's residence or, if the principal is a nonresident of the state, in the city or county of the residence of the attorney in fact last known to the principal, or in the city or county in which is located any property specifically referred to in the power of attorney;

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

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

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

2. Whenever any of the events described in subsection 1 of this section operate merely to terminate the authority of the particular person designated as the attorney in fact, rather than terminating the power of attorney, if the power of attorney designates a successor or contingent attorney in fact or prescribes a procedure whereby a successor or contingent attorney in fact may be designated, then the authority provided in the power of attorney shall extend to and vest in the successor or contingent attorney in fact in lieu of the attorney in fact whose power and authority was terminated under any of the circumstances referred to in subsection 1 of this section.

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

4. This section does not prohibit the principal, acting individually, and the person designated as the attorney in fact from entering into a written agreement that sets forth their duties and liabilities as between themselves and their

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successors, and which expands or limits the application of sections 404.700 to 404.735, with the exception of those acts enumerated in subsection 7 of section 404.710.

5. As between the principal and any attorney in fact or successor **attorney in fact**, if the attorney in fact or successor **attorney in fact** undertakes to act, and if in respect to such act, the attorney in fact or successor **[**acts in bad faith, fraudulently or otherwise dishonestly**] attorney in fact engages in willful misconduct or fraud or acts with willful disregard for the purposes, terms, or conditions of the power of attorney**, or if the attorney in fact or successor **attorney in fact** intentionally acts after receiving actual notice that the power of attorney has been revoked or terminated, and thereby causes damage or loss to the principal or to the principal's successors in interest, such attorney in fact or successor **attorney in fact** shall be liable to the principal or to the principal's successors in interest, or both, for such damages, together with reasonable attorney's fees, and punitive damages as allowed by law.

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

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

2. Unless otherwise represented, a beneficiary who is not a qualified beneficiary may be represented by and bound by a qualified beneficiary having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented, in any court proceeding under subsection 2 of section 456.4-412, or in a nonjudicial settlement agreement entered into under section 456.1-111 **or**

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**section 456.4A-411** in lieu of such a court proceeding.

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

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

3. If a trust cannot be terminated or modified under subsection 1 of this section because not all adult beneficiaries having capacity to contract consent or the terms of the trust prevent such modification or termination, the modification or termination may be approved by the court if the court is satisfied that the interests of a beneficiary, other than the settlor, who does not consent will be adequately protected, modification or termination will benefit a living settlor who is also a beneficiary, and:

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

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

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

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

2. The court **within its discretion** may remove **and replace** a trustee

**[**if**] under the following circumstances**:

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

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

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

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

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

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

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

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

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

(2) In the event that a successor trustee is not appointed under the provisions of section 456.7-704 or the court finds that all potential successor trustees are not suitable, then the court may appoint such trustee or trustees as the court finds suitable under the circumstances.

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

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

property or the interests of the beneficiaries.

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

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

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

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

(2) One of the following:

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

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

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

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

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

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

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

domiciliary estate in such other state, territory or district of the United States.

4. A will presented for probate within the time limitations provided in subsection 3 of this section may be exhibited to be proven, and proof received and administration granted on such will at any time after such presentation.

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

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

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

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

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

4. An application to the court under this section may be

made by the trustees, or by any of them, or by any person beneficially interested under the trust.**]**

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