

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 946 & 947
99TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 15, 2018, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4458S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 456.985, 456.1035, 456.1080, and 474.150, RSMo, and to enact in lieu thereof four new sections relating to estate planning.

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

Section A. Sections 456.985, 456.1035, 456.1080, and 474.150, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 456.985, 456.1035, 456.1080, and 474.150, to read as follows:

456.985. 1. Except as otherwise provided in the terms of an instrument
2 creating or exercising a power of appointment, sections 456.970 to 456.1135
3 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 except:

6 (1) **The requisites for the creation of a power of appointment**
7 **under subsections 1 to 4 of section 456.990;**

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

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

13 [(3)] (4) The power is exclusionary if the permissible appointees of a
14 power of appointment are not defined and limited under subsection 3 of section
15 456.1005;

16 [(4)] (5) The requisites for the exercise of a power of appointment under
17 section 456.1015;

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

18 [(5)] **(6)** The effect of an impermissible appointment under section
19 456.1045;

20 [(6)] **(7)** A general power of appointment which is presently exercisable
21 may be reached by the creditors of the powerholder or the powerholder's estate
22 under section 456.1100.

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

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

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

 456.1080. As provided by sections 469.010 to [469.210] **469.120**, a
2 powerholder may disclaim all or part of a power of appointment, and a
3 permissible appointee, appointee, or taker in default of appointment may disclaim
4 all or part of an interest in appointive property.

 474.150. 1. Any gift made by a **married** person, whether dying testate
2 or intestate, in fraud of the marital rights of [his] **the** surviving spouse [to share
3 in his estate] **to whom the decedent was married at the time of such gift**
4 **and who may share in the decedent's estate**, shall, at the election of [the]
5 **such** surviving spouse, be treated as a testamentary disposition and may be
6 recovered from the donee and persons taking from [him] **the decedent** without
7 adequate consideration and applied to the payment of the spouse's share, as in
8 case of his **or her** election to take against the will.

9 2. Any conveyance of real estate made by a married person at any time
10 without the joinder or other written express assent of [his] **such** spouse, made
11 at any time, duly acknowledged, is deemed to be in fraud of the marital rights of
12 [his] **such** spouse, if the spouse becomes a surviving spouse, unless the contrary

13 is shown.

14 3. Any conveyance of the property of the spouse of a disabled person is
15 deemed not to be in fraud of the marital rights of the disabled person if the
16 probate division of the circuit court authorizes the conservator of the disabled
17 person to join in or assent to the conveyance after finding that it is not made in
18 fraud of the marital rights. Any conveyance of the property of a minor or
19 disabled person made by a conservator pursuant to an order of court is deemed
20 not to be in fraud of the marital rights of the spouse of the protectee.

Unofficial ✓

Bill

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