

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 230
100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Offered March 12, 2019.

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0886S.06P

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 209.625, 472.010, 475.035, and 475.115, RSMo, and to enact in lieu thereof four new sections relating to guardianship and conservatorship proceedings.

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

Section A. Sections 209.625, 472.010, 475.035, and 475.115, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 209.625, 472.010, 475.035, and 475.115, to read as follows:

209.625. 1. Notwithstanding any law to the contrary, the assets of the
2 ABLE program held by the board and the assets of any ABLE account and any
3 income therefrom shall be exempt from all taxation by the state or any of its
4 political subdivisions. Income earned or received from an ABLE account or
5 deposit shall not be subject to state income tax imposed pursuant to chapter
6 143. The exemption from taxation pursuant to this section shall apply only to
7 assets and income maintained, accrued, or expended pursuant to the
8 requirements of the ABLE program established pursuant to sections 209.600 to
9 209.645, and no exemption shall apply to assets and income expended for any
10 other purposes. Annual contributions made to the ABLE program held by the
11 board up to and including eight thousand dollars per participating taxpayer, and
12 up to sixteen thousand dollars for married individuals filing a joint tax return,
13 shall be subtracted in determining Missouri adjusted gross income pursuant to

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

14 section 143.121.

15 2. If any deductible contributions to or earnings from any such program
16 referred to in this section are distributed and not used to pay qualified disability
17 expenses or are not held for the minimum length of time established by the
18 appropriate Missouri board, the amount so distributed shall be added to the
19 Missouri adjusted gross income of the participant, or, if the participant is not
20 living, the designated beneficiary.

21 3. The provisions of this section shall apply to tax years beginning on or
22 after January 1, 2015.

23 4. **The assets held in an ABLE account under sections 209.600 to**
24 **209.645 shall not be considered the property of a conservatorship estate**
25 **established under chapter 475.**

26 5. **The provisions of subsection 4 of this section shall not apply**
27 **to ABLE accounts in the charge and custody of a public administrator.**

 472.010. When used in this code, unless otherwise apparent from the
2 context:

3 (1) "Administrator" includes any administrator de bonis non,
4 administrator cum testamento annexo, administrator ad litem and administrator
5 during absence or minority;

6 (2) "Child" includes an adopted child and a child born out of wedlock, but
7 does not include a grandchild or other more remote descendants;

8 (3) "Claims" include liabilities of the decedent which survive whether
9 arising in contract, tort or otherwise, funeral expenses, the expense of a
10 tombstone, and costs and expenses of administration;

11 (4) "Clerk" means clerk of the probate division of the circuit court;

12 (5) "Code" or "probate code" means chapters 472, 473, 474 and 475;

13 (6) "Court" or "probate court" means the probate division of the circuit
14 court;

15 (7) "Devise", when used as a noun, means a testamentary disposition of
16 real or personal property or both; when used as a verb it means to dispose of real
17 or personal property or both by will;

18 (8) "Devisee" includes legatee;

19 (9) "Distributee" denotes those persons who are entitled to the real and
20 personal property of a decedent under his will, under the statutes of intestate
21 succession or who take as surviving spouse under section 474.160, upon election
22 to take against the will;

23 (10) "Domicile" means the place in which a person has voluntarily fixed
24 his abode, not for a mere special or temporary purpose, but with a present
25 intention of remaining there permanently or for an indefinite time;

26 (11) "Estate" means the real and personal property of the decedent or
27 ward, as from time to time changed in form by sale, reinvestment or otherwise,
28 and augmented by any accretions and additions thereto and substitutions
29 therefor, and diminished by any decreases and distributions therefrom. **Under**
30 **the provisions of subsections 4 and 5 of section 209.625, assets held in**
31 **an ABLE account established under sections 209.600 to 209.645 shall not**
32 **be considered the property of the designated beneficiary of said**
33 **account for purposes of this subdivision when applied in chapter 475,**
34 **unless the estate is in the charge and custody of a public administrator;**

35 (12) "Exempt property" means that property of a decedent's estate which
36 is not subject to be applied to the payment of claims, charges, legacies or bequests
37 as described in section 474.250;

38 (13) "Fiduciary" includes executor, administrator, guardian, conservator,
39 and trustee;

40 (14) "Heirs" means those persons, including the surviving spouse, who are
41 entitled under the statutes of intestate succession to the real and personal
42 property of a decedent on his death intestate;

43 (15) "Interested persons" mean heirs, devisees, spouses, creditors or any
44 others having a property right or claim against the estate of a decedent being
45 administered and includes children of a protectee who may have a property right
46 or claim against or an interest in the estate of a protectee. This meaning may
47 vary at different stages and different parts of a proceeding and must be
48 determined according to the particular purpose and matter involved;

49 (16) "Issue" of a person, when used to refer to persons who take by
50 intestate succession, includes adopted children and all lawful lineal descendants,
51 except those who are the lineal descendants of living lineal descendants of the
52 intestate;

53 (17) "Lease" includes an oil and gas lease or other mineral lease, but does
54 not include month-to-month or year-to-year tenancies under oral contracts;

55 (18) "Legacy" means a testamentary disposition of personal property;

56 (19) "Legatee" means a person entitled to personal property under a will;

57 (20) "Letters" include letters testamentary, letters of administration and
58 letters of guardianship;

59 (21) "Lien" includes all liens except general judgment, execution and
60 attachment liens;

61 (22) "Lineal descendants" include adopted children and their descendants;

62 (23) "Mortgage" includes deed of trust, vendor's lien and chattel mortgage;

63 (24) "Person" includes natural persons and corporations;

64 (25) "Personal property" includes interests in goods, money, choses in
65 action, evidences of debt, shares of corporate stock, and chattels real;

66 (26) "Personal representative" means executor or administrator. It
67 includes an administrator with the will annexed, an administrator de bonis non,
68 an administrator pending contest, an administrator during minority or absence,
69 and any other type of administrator of the estate of a decedent whose
70 appointment is permitted. It does not include an executor de son tort;

71 (27) "Property" includes both real and personal property;

72 (28) "Real property" includes estates and interests in land, corporeal or
73 incorporeal, legal or equitable, other than chattels real;

74 (29) "Registered mail" includes "certified mail" as defined and certified
75 under regulations of the United States Postal Service;

76 (30) "Will" includes codicil; it also includes a testamentary instrument
77 which merely appoints an executor and a testamentary instrument which merely
78 revokes or revives another will.

475.035. 1. The venue for the appointment of a guardian or conservator
2 shall be:

3 (1) In the county in this state where the minor or alleged incapacitated
4 or disabled person is domiciled. **Domicile for a minor is the domicile of the**
5 **custodial parent, custodial parents, or guardian. Placement by a court,**
6 **fiduciary, or agency for evaluation, treatment, or residential care shall**
7 **not constitute a choice of domicile by the minor or alleged**
8 **incapacitated or disabled person; however, for the purpose of**
9 **determining domicile, the court may consider the desire or intent of the**
10 **alleged incapacitated or disabled person to the extent he or she has**
11 **capacity; or**

12 (2) If the minor or alleged incapacitated or disabled person has no
13 domicile in this state, then in the county in which the minor or alleged
14 incapacitated or disabled person [actually resides, or if he or she does not reside
15 in any county, then in any county wherein there is any property of the minor or
16 alleged incapacitated or disabled person; or

17 (3) In the county, or on any federal reservation within the county, wherein
18 the minor or alleged incapacitated or disabled person or his or her property is
19 found; or

20 (4) In a county of this state which is within a judicial circuit which has
21 prior and continuing jurisdiction over the minor pursuant to subdivision (1) of
22 subsection 1 of section 211.031] **has a significant connection. In**
23 **determining under this section whether a minor or alleged**
24 **incapacitated or disabled person has a significant connection, the court**
25 **shall consider:**

26 (a) **Whether a juvenile, criminal, or probate court in a county of**
27 **this state has previously or currently assumed jurisdiction over the**
28 **minor or alleged incapacitated or disabled person under chapter 211 or**
29 **552;**

30 (b) **The location of the minor's or alleged incapacitated or**
31 **disabled person's family and other persons required to be notified of**
32 **the guardianship or conservatorship;**

33 (c) **Whether the minor or alleged incapacitated or disabled**
34 **person has a residence or is physically present in the county and the**
35 **duration of his or her physical presence or absence;**

36 (d) **The location of the minor's or alleged incapacitated or**
37 **disabled person's property; and**

38 (e) **The extent to which the minor or alleged incapacitated or**
39 **disabled person has ties such as voting registration, local tax return**
40 **filing, vehicle registration, driver's license, social relationships, or**
41 **receipt of services.**

42 2. [If the alleged incapacitated or disabled person has resided in a county
43 other than the county of his or her domicile for more than one year, the court of
44 that county may assume venue for the purpose of appointment of a guardian or
45 conservator] **In the event the venue for purposes of guardianship and**
46 **conservatorship are in different counties, venue shall be in the county**
47 **of the guardianship.**

48 3. If proceedings are commenced in more than one county, they shall be
49 stayed except in the county where first commenced until final determination of
50 venue in the county where first commenced. The proceeding is deemed
51 commenced by the filing of a petition[]; and the proceeding first legally commenced
52 to appoint a conservator of the estate extends to all of the property of the

53 protectee in this state].

475.115. 1. When a guardian or conservator dies, is removed by order of
2 the court, or resigns and his or her resignation is accepted by the court, the court
3 shall have the same authority as it has in like cases over personal representatives
4 and their sureties and may appoint another guardian or conservator in the same
5 manner and subject to the same requirements as are herein provided for an
6 original appointment of a guardian or conservator.

7 2. A public administrator may request transfer of any case to the
8 jurisdiction of another county by filing a petition for transfer. If [the receiving
9 county meets the venue requirements of section 475.035 and] the public
10 administrator of the receiving county consents to the transfer, the court shall
11 transfer the case. The court with jurisdiction over the receiving county shall,
12 without the necessity of any hearing as required by section 475.075, appoint the
13 public administrator of the receiving county as successor guardian and/or
14 successor conservator and issue letters therein. In the case of a conservatorship,
15 the final settlement of the public administrator's conservatorship shall be filed
16 within thirty days of the court's transfer of the case, in the court with jurisdiction
17 over the original conservatorship, and forwarded to the receiving county upon
18 audit and approval.

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