

This bill changes the laws regarding the administration of justice.

MISSOURI UNIFORM POWERS OF APPOINTMENT ACT (Sections 404.710, 456.970, 456.975, 456.980, 456.985, 456.990, 456.995, 456.1000, 456.1005, 456.1010, 456.1015, 456.1020, 456.1025, 456.1030, 456.1035, 456.1040, 456.1045, 456.1050, 456.1055, 456.1060, 456.1065, 456.1070, 456.1075, 456.1080, 456.1085, 456.1090, 456.1095, 456.1100, 456.1105, 456.1110, 456.1115, 456.1120, 456.1125, 456.1130, 456.1135, and 456.5-508, RSMo)

This bill creates the Missouri Uniform Powers of Appointment Act, and unless provided in the terms of an instrument creating a power of appointment the bill must be the law governing powers of appointment.

A power of appointment is a power enabling a person, known as the powerholder, to designate a recipient of an ownership interest in property subject to the power of appointment, known as appointive property. A power of appointment is created when a document or instrument, such as a trust or a will, manifests the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee. A donor is defined in the bill as a person who creates the power of appointment, and a permissible appointee is a person in whose favor a powerholder may exercise a power of appointment. A power of appointment cannot be created in an individual who is deceased, but may be created in an unborn or an unascertained powerholder.

A powerholder cannot transfer a power of appointment, and the power to direct the assets lapses upon his or her death. However, a general power of appointment may provide that the power must survive and pass to the powerholder's personal representative, if the powerholder dies after receiving the general power, and the powerholder did exercise, release, or disclaim the power within the applicable time limits. If this happens then the personal representative may either exercise the power in favor of the powerholder's estate if the estate is a permissible appointee, or disclaim the power. The bill sets forth circumstances under which a personal representative may or may not be individually held liable for actions or inactions regarding the power of appointment.

The general rule of construction is that a power of appointment is presently exercisable, exclusionary, and general unless the terms of the instrument specify otherwise.

A donor may only revoke or amend a power of appointment if the

instrument creating the power is revocable or the donor reserves a power of revocation or amendment in the instrument.

A residuary clause in a powerholder's will or a comparable clause in the powerholder's revocable trust does not manifest an intent to exercise a power of appointment, unless the power is a general power exercisable in favor of the powerholder's estate, there is no gift-in-default clause, and the powerholder did not release the power.

Unless the terms of the instrument indicate otherwise, a blanket-exercise clause extends to a power of appointment acquired after the powerholder executed the instrument containing the blanket-exercise clause. If the powerholder is also the donor of the power then the blanket-exercise clause only extends to the power if there is not a gift-in-default clause or the gift-in-default clause is ineffective.

A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment. However, a powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or the powerholder's estate may appoint only to those creditors. The powerholder of a nongeneral power may make an appointment in any form in favor of a permissible appointee, create a general power in a permissible appointee, or create a nongeneral power in any person to appoint to permissible appointees of the original nongeneral power.

The bill prohibits an appointment to a deceased appointee, but a powerholder of a nongeneral power may exercise the power in favor of the descendant of a deceased permissible appointee.

If a powerholder of a general power of appointment makes an ineffective appointment then either the gift-in-default clause controls the disposition of the appointed property or if there is no such clause then the property passes to the powerholder if he or she is a permissible appointee. If the powerholder is not a permissible appointee then the property passes to the powerholder's estate if the estate is a permissible appointee. If neither option is available then the property passes under a reversionary interest to the donor.

Likewise, if the powerholder releases or fails to exercise a general power of appointment then the gift-in-default clause controls the disposition of the unappointed property or if one does not exist then such property must pass to the powerholder, the powerholder's estate, or under a reversionary interest to the donor.

When a powerholder makes an appointment to a taker in default of appointment who would have taken the property under a gift-in-default clause if the appointment had not occurred, then the power of appointment is deemed not to have been exercised, and the taker in default takes under the clause.

A powerholder may revoke or amend an exercise of a power of appointment at any time before the exercise becomes effective to transfer property to the appointee. A powerholder may also disclaim all or part of a power of appointment or release a power of appointment in whole or in part. A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

A powerholder of a presently exercisable power may contract to make or not to make an appointment if the contract does not confer a benefit on an impermissible appointee. If the power of appointment is not presently exercisable then the powerholder may contract to exercise or not to exercise the power only if the powerholder is also the donor and has reserved the power in a revocable trust. The remedy for a powerholder's breach of contract to appoint or not to appoint property is damages payable from the appointive property or specific performance of the contract.

If a donor fraudulently transfers appointive property, retaining a power of appointment, then the appointive property may be subject to a claim of the donor/powerholder's creditor under the Uniform Fraudulent Transfer Act. Such appointive property is not subject to a claim of a creditor of the powerholder to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder, and if the power is not presently exercisable. Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor to the same extent as if the powerholder owned the appointive property and the power is presently exercisable.

Appointive property subject to a presently exercisable general power of appointment not created by the powerholder is subject to a claim of a creditor of the powerholder to the extent the powerholder's property is insufficient. However, if the appointive property is subject to testamentary or not presently exercisable general power of appointment then the property is not subject to a claim of a creditor of the powerholder.

In situations where the appointive property is subject to a nongeneral power of appointment then the property is exempt from a claim of a creditor of the powerholder, unless there is a fraudulent transfer.

The bill provides that the provisions regarding rights of creditors does not limit the ability of a creditor to reach a beneficial interest as provided in the Missouri Uniform Trust Code.

The bill applies to a power of appointment created before, on, or after the bill's effective date. The bill must apply to judicial proceedings concerning a power of appointment commenced before the effective date of the bill unless the court finds the application of a particular provision would interfere substantially with the conduct of the proceeding or prejudice a right of a party.

The bill also modifies existing law regarding power of attorney by specifying that the authority of an attorney in fact authorized in the power of attorney to disclaim a gift or devise of property to or for the benefit of the principal includes the ability of the attorney in fact to disclaim or release any power of appointment granted to the principal and to disclaim all or part of the principal's interest in appointive property. A power of attorney can also grant an attorney in fact the authority to exercise, revoke or amend the release of, or contract to exercise any power of appointment granted to the principal.

The bill repeals provisions which provide that a creditor may not attach trust property or beneficial interests subject to the power of appointment, obtain a court order forcing judicial sale, compel the exercise of the power, or reach the trust property by any other means.

ESTATE PLANNING (Sections 404.717, 456.3-304, 456.4B-411, 456.7-706, 469.467, and 473.050)

Currently, if an attorney in fact or his or her successor, appointed to act as agent pursuant to a written power of attorney, acts in bad faith, fraudulently or dishonestly then the attorney in fact must be liable to the principal or the principal's successors in interest for damages as well as attorney's fees. This bill provides that the attorney in fact must be liable if he or she engages in willful misconduct or fraud or acts with willful disregard for the purposes, terms, or conditions of the power of attorney. For the purposes of the bill "successors in interest" include those who can prove that they have been damaged as a result of the attorney in fact's actions. The bill provides that when a noncharitable irrevocable trust is modified or terminated without a court order pursuant to current law, a beneficiary, who is not a qualified beneficiary, may be represented in such non judicial proceedings by a qualified beneficiary who has substantially identical interests.

Currently, a court may modify or terminate a noncharitable irrevocable trust which became irrevocable on or after January 1, 2005, upon finding that the interests of nonconsenting beneficiaries will be protected, and terminating or modifying the trust does not affect the material purpose of the trust. This bill specifies that a court may modify or terminate all noncharitable irrevocable trusts, which meet such conditions.

The bill also repeals a provision of law regarding the termination and modification of a trust instrument that became irrevocable prior to January 1, 2005.

Currently, a settlor, cotrustee, or a qualified beneficiary may request the court to remove a trustee or the trustee may be removed by the court's own initiative. This bill specifies that a court may also replace the trustee. When a corporation is the trustee being removed the successor trustee must be selected by the court.

The bill provides that the Principal and Income Act applies to every trust or decedent's estate existing on or after August 28, 2001, rather than solely to those trusts or decedents' estates existing on August 28, 2001.

Currently, for a letter of administration to be issued an application must be made to the court within one year of the death of the decedent. This bill provides that this time limit rule applies on the issuance of letters of administration except as provided under current law that when a will is presented to the probate court within the proper time limits, then administration may be granted on the will at any time after presentation.

GUARDIANSHIPS (Section 475.125)

This bill adds respite to the list of purposes that the court may make an order for the management of the estate of a protectee.

FIREARMS (Section 513.430)

Exempts firearms, firearm accessories, and ammunition up to \$1,500 in aggregate value from attachment and execution in bankruptcy.

MISSOURI COMMERCIAL RECEIVERSHIP ACT (Sections 515.500, 515.505, 515.510, 515.515, 515.520, 515.525, 515.530, 515.535, 515.540, 515.540, 515.545, 515.550, 515.555, 515.560, 515.565, 515.570, 515.575, 515.580, 515.585, 515.590, 515.595, 515.600, 515.600, 515.605, 515.610, 515.615, 515.620, 515.625, 515.630, 515.635, 515.640, 515.645, 515.650, 515.655, 515.660, and 515.665)

The bill grants the court authority to appoint a receiver whenever

the court deems necessary. A receiver has the duty to keep and preserve any money deposited with the court, and any property and business or business interests entrusted to the receiver pending any legal or equitable action concerning such money, property, or business interest. The appointment of a receiver may be sought as an independent claim and remedy, and does not need to be in addition to another legal claim. A debtor and all parties to the action must receive seven days' notice of any application for the appointment of a receiver. Notice must also be given to all other parties in interest.

Where a receiver has been appointed in a foreign jurisdiction with respect to the debtor's property and upon the application by the receiver appointed in the foreign jurisdiction or any party to that foreign action, the court must appoint as receiver of the debtor's property located in this state the same person. Following the appointment, the court must give effect to orders or judgments of the court in the foreign jurisdiction affecting the property in this state unless to do so would be manifestly unjust or inequitable.

The order appointing a receiver must describe the property by category, individual items, or both if the receiver is to take charge of less than substantially all of the debtor's property. The receiver will be deemed a general receiver with authority to take charge over all of the debtor's property unless expressly stated otherwise in the order.

According to the bill, a receiver is either a general receiver or a limited receiver depending on how much possession and control over the debtor's property the court grants the receiver.

Within 10 business days of the appointment of a receiver or the conversion of a limited receiver to a general receiver, the receiver must give notice of the appointment or conversion to all interested parties including the Secretary of State or the state and federal taxing authorities. The bill specifies the content of such notice and states that the notice must be sent by first class mail. Additionally, a general receiver must publish notice of the receivership in a newspaper of general circulation in the county in which estate property is located once a week for three weeks. A debtor must cooperate with all reasonable requests for information by the receiver in order to assist in satisfying the notice requirements.

Any person may serve as a receiver unless the person has been found guilty of a felony, is party to the action, is related to the debtor or is a partner, director, attorney, employee, or creditor of the debtor, has an interest materially adverse to the interests

of persons affected by the receivership, or is a sheriff of any county. A receiver must execute a bond with one or more sureties approved by the court and in an amount specified by the court.

As of the time of appointment, a receiver has the same powers and priority as a creditor that obtained a judicial lien on all of the debtor's property that is subject to the receivership, but must satisfy real property recording requirements as established in the bill.

The court has exclusive authority over the receiver, and exclusive possession and control of all real property and all tangible and intangible personal property in which the receiver has been appointed to keep and preserve. The court also has exclusive authority to determine all controversies relating to the collection, preservation, application and distribution of all property, and all claims against the receiver arising out of the exercise of the receiver's performance of duties.

The bill specifies the powers and authority of a receiver which include paying expenses incidental to the preservation and use of estate property, performing all duties associated with operating a business in the ordinary course of operation, intervening in any action in which a claim is asserted against the debtor, seeking advice from the court about a course of action, and obtaining appraisals of estate property. Additional powers may be granted to the receiver by statute, court rule, or by the court.

A receiver may demand that a person turn over any estate property that is within the possession or control of that person. A receiver may seek to compel turnover of estate property, and unless a bona fide dispute over the receiver's right to possession of the estate property exists, failure to relinquish possession of the property is punishable as contempt.

A debtor must make available for inspection by a general receiver all information and data as established by the bill, and must cooperate fully with the receiver in the administration of the estate and discharge of the receiver's duties. After the appointment of a general receiver, the debtor must file with the court and submit to the receiver certain information including a list of all known creditors and a true list of all estate property.

A general receiver must file with the court a monthly report of the receiver's operations and financial affairs, and a limited receiver must file all reports as the court requires.

The order of appointing a general receiver must operate as a stay of certain actions as specified in the bill, but must not operate

as a stay of criminal proceedings against the debtor; actions establishing paternity, or actions modifying or enforcing alimony, maintenance or support orders; any act to perfect or to maintain the perfection of an interest in estate property; an action by a governmental unit to enforce its police or regulatory power; the enforcement of a judgment obtained in an action by a governmental unit to enforce its police or regulatory power; the exercise of a right of setoff; or any action pending in another court.

A public utility providing service to estate property must provide 15 days notice, or notice as required by the Public Service Commission for a customer of that class, before altering or discontinuing service to the estate property. Additionally, the court may prohibit the alteration or cessation of utility service if the receiver can furnish adequate assurance of payment for service. Any public utility regulated by the Public Service Commission which does not provide notice or comply with the court's order is subject to the appropriate remedial measures by the Commission. A receiver may bring an action to enforce compliance with these provisions against any utility not regulated by the Public Service Commission which does not provide notice or comply with the court's order.

A receiver may assume or reject any executory contract or unexpired lease of the debtor upon order of the court following notice and a hearing. Any obligation or liability incurred by a general receiver on account of the receiver's assumption of the executory contract or unexpired lease must be treated as an expense of the receivership, and rejection of a contract or lease is to be treated as a breach of contract or lease occurring immediately prior to the receiver's appointment.

If a receiver is authorized to operate the debtor's business or manage the debtor's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business as an administrative expense. The receiver may obtain credit or incur debt other than in the ordinary course of business with the authorization of the court and following notice and a hearing.

The bill grants a receiver the right to sue and be sued without leave of court in all circumstances necessary for the receivership. A judgment against a general receiver or the debtor is not a lien on estate property and no executions can be issued on such property.

A receiver and the agents, attorneys, and employees of the receivership have judicial immunity for acts and omissions committed in connection with official duties on behalf of the court and within the scope of the appointment. A person may bring an

action against a receiver or the agents, attorneys, and employees of the receivership only after filing an application with the court and the court granting such application after notice and hearing.

With the court's approval, the receiver may employ attorneys, accountants, appraisers, auctioneers, or other professionals to assist the receiver. The receiver and any professionals employed must maintain itemized billing records.

Creditors and parties of interest and other persons submitting written claims in the receivership are bound by the acts of the receiver and court orders relating to the receivership regardless of whether the person is a party to the receivership action. The receiver must maintain a master mailing list of all parties and parties in interest that file and serve a notice of appearance in the receivership. All persons on the master list must be given 30 days notice prior to certain hearings and other proceedings specified in the bill.

Certain claims must be in the form as required by the bill, served on the receiver, and filed with the court. The claims administration process must be administered by a general receiver and may be administered by a limited receiver when ordered by the court.

Prior to the entry of an order approving the general receiver's final report, the receiver or any party in interest may file with the court an objection to a claim. A copy of the objection must be mailed to the creditor who has 30 days to file, with the court, suggestions in support of the claim. The bill establishes the order of priority on a pro rata basis for the distribution of claims not disallowed by the court.

The court must remove or replace the receiver if the receiver fails to perform the duties prescribed under the bill or ordered by the court.

Upon distribution of all property of the estate or completion of the receiver's duties, the receiver must file a motion with the court to be discharged. The receiver's final report and accounting which includes all receipts and disbursements of the estate must be included in the petition for discharge and filed with the court.

LIABILITY MENTAL HEALTH PROFESSIONAL (Section 516.105)

This bill establishes a two-year statute of limitations for actions against a licensed mental health professional for damages for malpractice, negligence, error, or mistake related to health care.

EXONERATION (Section 650.058)

This bill specifies that when a court or board of probation and parole specifies the sole reason for a revocation of a person's probation or parole is the conviction for a crime for which a person is later determined to be innocent, the order must, for purposes of these provisions only, be conclusive evidence that the probation or parole was revoked in connection with the crime for which the person was exonerated.