SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 698

98TH GENERAL ASSEMBLY

4945H.05C D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 404.717, 456.590, 456.3-304, 456.4B-411, 456.7-706, 469.467, 473.050, 473.730, 473.748, and 475.125, RSMo, and to enact in lieu thereof twenty new sections relating to the administration of estates and persons, with a penalty provision.

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Sections 404.717, 456.590, 456.3-304, 456.4B-411, 456.7-706, 469.467, 473.050, 473.730, 473.748, and 475.125, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 404.717, 404.1100, 404.1101, 404.1102, 404.1103, 404.1104, 404.1105, 404.1106, 404.1107, 404.1108, 404.1109, 404.1110, 456.3-304, 456.4B-411, 456.7-706, 469.467, 473.050, 473.730, 473.748, and 475.125, 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 in the office of the recorder of

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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 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.

404.1100. Sections 404.1100 to 404.1110 shall be known and may be cited as the "Designated Health Care Decision-Maker Act".

404.1101. As used in sections 404.1100 to 404.1110, the following terms mean:

(1) "Artificially supplied nutrition and hydration", any medical procedure whereby nutrition or hydration is supplied through a tube inserted into a person's nose, mouth, stomach, or intestines, or nutrients or fluids are administered into a person's bloodstream or provided subcutaneously;

(2) "Best interests":

(a) Promoting the incapacitated person's right to enjoy the highest attainable standard of health for that person;

(b) Advocating that the person who is incapacitated receive the same range, quality, and standard of health care, care, and comfort as is provided to a similarly situated individual who is not incapacitated; and

(c) Advocating against the discriminatory denial of health care, care, or comfort, or food or fluids on the basis that the person who is incapacitated is considered an individual with a disability;

(3) "Designated health care decision-maker", the person designated to make health care decisions for a patient under section 404.1104, not including a person acting as a guardian or an agent under a durable power of attorney for health care or any other person legally authorized to consent for the patient under any other law to make health care decisions for an incapacitated patient;

(4) "Disability" or "disabled" shall have the same meaning as defined in 42 U.S.C. Section 12102, the Americans with Disabilities Act of 1990, as amended; provided that the

term "this chapter" in that definition shall be deemed to refer to the Missouri health care decision-maker act;

(5) "Health care", a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin and includes:

(a) Assisted living services, or intermediate or skilled nursing care provided in a facility licensed under chapter 198;

(b) Services for the rehabilitation or treatment of injured, disabled, or sick persons; or

(c) Making arrangements for placement in or transfer to or from a health care facility or health care provider that provides such forms of care;

(6) "Health care facility", any hospital, hospice, inpatient facility, nursing facility, skilled nursing facility, residential care facility, intermediate care facility, dialysis treatment facility, assisted living facility, home health or hospice agency; any entity that provides home or community-based health care services; or any other facility that provides or contracts to provide health care, and which is licensed, certified, or otherwise authorized or permitted by law to provide health care;

(7) "Health care provider", any individual who provides health care to persons and who is licensed, certified, registered, or otherwise authorized or permitted by law to provide health care;

(8) "Incapacitated", a person who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur;

(9) "Patient", any adult person or any person otherwise authorized to make health care decisions for himself or herself under Missouri law;

(10) "Physician", a treating, attending, or consulting physician licensed to practice medicine under Missouri law;

(11) "Reasonable medical judgment", a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the health care possibilities with respect to the medical conditions involved.

404.1102. The determination that a patient is incapacitated shall be made as set forth in section 404.825. A health care provider or health care facility may rely in the exercise of good faith and in accordance with reasonable medical judgment upon the health care decisions made for a patient by a designated health care decision-maker selected in accordance with section 404.1104, provided two licensed physicians determine, after

reasonable inquiry and in accordance with reasonable medical judgment, that such patient is incapacitated and has neither a guardian with medical decision-making authority appointed in accordance with chapter 475, an attorney in fact appointed in a durable power of attorney for health care in accordance with sections 404.800 to 404.865, is not a child under the jurisdiction of the juvenile court under section 211.031, nor any other known person who has the legal authority to make health care decisions.

404.1103. Upon a determination that a patient is incapacitated, the physician or another health care provider acting at the direction of the physician shall make reasonable efforts to inform potential designated health care decision-makers set forth in section 404.1104 of whom the physician or physician's designee is aware, of the need to appoint a designated health care decision-maker. Reasonable efforts include, without limitation, identifying potential designated health care decision makers as set forth in subsection 1 of section 404.1104, a guardian with medical decision-making authority appointed in accordance with chapter 475, an attorney in fact appointed in a durable power of attorney for health care in accordance with sections 404.800 to 404.865, the juvenile court under section 211.031, or any other known person who has the legal authority to make health care decisions, by examining the patient's personal effects and medical records. If a family member, attorney in fact for health care or guardian with health care decision-making authority is identified, a documented attempt to contact that person by telephone, with all known telephone numbers and other contact information used, shall be made within twenty-four hours after a determination of incapacity is made as provided in section 404.1102.

404.1104. 1. If a patient is incapacitated under the circumstances described in section 404.1102 and is unable to provide consent regarding his or her own health care, and does not have a legally appointed guardian, an agent under a health care durable power of attorney, is not under the jurisdiction of the juvenile court, or does not have any other person who has legal authority to consent for the patient, decisions concerning the patient's health care may be made by the following competent persons in the following order of priority, with the exception of persons excluded under subsection 4 of section 404.1104:

(1) The spouse of the patient, unless the spouse and patient are separated under one of the following:

(a) A current dissolution of marriage or separation action;

(b) A signed written property or marital settlement agreement;

(c) A permanent order of separate maintenance or support or a permanent order approving a property or marital settlement agreement between the parties;

(2) An adult child of the patient;

(3) A parent of the patient;

(4) An adult sibling of the patient;

(5) A person who is a member of the same community of persons as the patient who is bound by vows to a religious life and who conducts or assists in the conducting of religious services and actually and regularly engages in religious, benevolent, charitable, or educational ministry, or performance of health care services;

(6) An adult who can demonstrate that he or she has a close personal relationship with the patient and is familiar with the patient's personal values; or

(7) Any other person designated by the unanimous mutual agreement of the persons listed above who is involved in the patient's care.

2. If a person who is a member of the classes listed in subsection 1 of this section, regardless of priority, or a health care provider or a health care facility involved in the care of the patient, disagrees on whether certain health care should be provided to or withheld or withdrawn from a patient, any such person, provider, or facility, or any other person interested in the welfare of the patient may petition the probate court for an order for the appointment of a temporary or permanent guardian in accordance with subsection 8 of this section to act in the best interest of the patient.

3. A person who is a member of the classes listed in subsection 1 of this section shall not be denied priority under this section based solely upon that person's support for, or direction to provide, withhold or withdraw health care to the patient, subject to the rights of other classes of potential designated decision-makers, a healthcare provider, or healthcare facility to petition the probate court for an order for the appointment of a temporary or permanent guardian under subsection 8 of this section to act in the best interests of the patient.

4. Priority under this section shall not be given to persons in any of the following circumstances:

(1) If a report of abuse or neglect of the patient has been made under section 192.2475, 198.070, 208.912, 210.115, 565.188, 630.163 or any other mandatory reporting statutes, and if the health care provider knows of such a report of abuse or neglect, then unless the report has been determined to be unsubstantiated or unfounded, or a determination of abuse was finally reversed after administrative or judicial review, the person reported as the alleged perpetrator of the abuse or neglect shall not be given priority or authority to make health care decisions under subsection 1 of this section, provided that such a report shall not be based on the person's support for, or direction to provide, health care to the patient;

(2) If the patient's physician or the physician's designee reasonably determines, after making a diligent effort to contact the designated health care decision-maker using known telephone numbers and other contact information and receiving no response, that such person is not reasonably available to make medical decisions as needed or is not willing to make health care decisions for the patient; or

(3) If a probate court in a proceeding under subsection 8 of this section finds that the involvement of the person in decisions concerning the patient's health care is contrary to instructions that the patient had unambiguously, and without subsequent contradiction or change, expressed before he or she became incapacitated. Such a statement to the patient's physician or other health care provider contemporaneously recorded in the patient's medical record and signed by the patient's physician or other health care provider shall be deemed such an instruction, subject to the ability of a party to a proceeding under subsection 8 of this section to dispute its accuracy, weight, or interpretation.

5. (1) The designated health care decision-maker shall make reasonable efforts to obtain information regarding the patient's health care preferences from health care providers, family, friends, or others who may have credible information.

(2) The designated health care decision-maker, and the probate court in any proceeding under subsection 8 of this section, shall always make health care decisions in the patient's best interests, and if the patient's religious and moral beliefs and health care preferences are known, in accordance with those beliefs and preferences.

6. This section does not authorize the provision or withholding of health care services that the patient has unambiguously, without subsequent contradiction or change of instruction, expressed that he or she would or would not want at a time when such patient had capacity. Such a statement to the patient's physician or other health care provider, contemporaneously recorded in the patient's medical record and signed by the patient's physician or other health care provider, shall be deemed such evidence, subject to the ability of a party to a proceeding under subsection 8 of this section to dispute its accuracy, weight, or interpretation.

7. A designated health care decision-maker shall be deemed a personal representative for the purposes of access to and disclosure of private medical information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Section 1320d and 45 CFR 160-164.

8. Nothing in sections 404.1100 to 404.1110 shall preclude any person interested in the welfare of a patient including, but not limited to, a designated health care decision-maker, a member of the classes listed in subsection 1 of this section regardless of priority, or a health care provider or health care facility involved in the care of the patient, from

petitioning the probate court for the appointment of a temporary or permanent guardian for the patient including expedited adjudication under chapter 475.

9. Pending the final outcome of proceedings initiated under subsection 8 of this section, the designated health care decision-maker, health care provider, or health care facility shall not withhold or withdraw, or direct the withholding or withdrawal, of health care, nutrition, or hydration whose withholding or withdrawal, in reasonable medical judgment, would result in or hasten the death of the patient, would jeopardize the health or limb of the patient, or would result in disfigurement or impairment of the patient's faculties. If a health care provider or a health care facility objects to the provision of such health care, nutrition, or hydration on the basis of religious beliefs or sincerely held moral convictions, the provider or facility shall not impede the transfer of the patient to another health care provider or health care facility willing to provide it, and shall provide such health care, nutrition, or hydration to the patient pending the completion of the transfer. For purposes of this section, artificially supplied nutrition and hydration may be withheld or withdrawn during the pendency of the guardianship proceeding only if, based on reasonable medical judgment, the patient's physician and a second licensed physician certify that the patient meets the standard set forth in subdivision (2) of subsection 1 of section 404.1105. If tolerated by the patient and adequate to supply the patient's needs for nutrition or hydration, natural feeding should be the preferred method.

404.1105. 1. No designated health care decision-maker may, with the intent of hastening or causing the death of the patient, authorize the withdrawal or withholding of nutrition or hydration supplied through either natural or artificial means. A designated health care decision-maker may authorize the withdrawal or withholding of artificially supplied nutrition and hydration only when the physician and a second licensed physician certify in the patient's medical record based on reasonable medical judgment that:

(1) Artificially supplied nutrition or hydration are not necessary for comfort care or the relief of pain and would serve only to prolong artificially the dying process and where death will occur within a short period of time whether or not such artificially supplied nutrition or hydration is withheld or withdrawn; or

(2) Artificially supplied nutrition or hydration cannot be physiologically assimilated or tolerated by the patient.

2. When tolerated by the patient and adequate to supply the patient's need for nutrition or hydration, natural feeding should be the preferred method.

3. The provisions of this section shall not apply to subsection 3 of section 459.010.

404.1106. If any of the individuals specified in section 404.1104 or the designated health care decision-maker or physician believes the patient is no longer incapacitated, the

patient's physician shall reexamine the patient and determine in accordance with reasonable medical judgment whether the patient is no longer incapacitated, shall certify the decision and the basis therefor in the patient's medical record, and shall notify the patient, the designated health care decision-maker, and the person who initiated the redetermination of capacity. Rights of the designated health care decision-maker shall end upon the physician's certification that the patient is no longer incapacitated.

404.1107. No health care provider or health care facility that makes good faith and reasonable attempts to identify, locate, and communicate with potential designated health care decision-makers in accordance with sections 404.1100 to 404.1110 shall be subject to civil or criminal liability or regulatory sanction for any act or omission related to his or her or its effort to identify, locate, and communicate with or act upon any decision by or for such actual or potential designated health care decision-makers.

404.1108. 1. A health care provider or a health care facility may decline to comply with the health care decision of a patient or a designated health care decision-maker if such decision is contrary to the religious beliefs or sincerely held moral convictions of a health care provider or health care facility.

2. If at any time, a health care facility or health care provider determines that any known or anticipated health care preferences expressed by the patient to the health care provider or health care facility, or as expressed through the patient's designated health care decision-maker, are contrary to the religious beliefs or sincerely held moral convictions of the health care provider or health care facility, such provider or facility shall promptly inform the patient or the patient's designated health care decision-maker.

3. If a health care provider declines to comply with such health care decision, no health care provider or health care facility shall impede the transfer of the patient to another health care provider or health care facility willing to comply with the health care decision.

4. Nothing in this section shall relieve or exonerate a health care provider or a health care facility from the duty to provide for the health care, care, and comfort of a patient pending transfer under this section. If withholding or withdrawing certain health care would, in reasonable medical judgment, result in or hasten the death of the patient, such health care shall be provided pending completion of the transfer. Notwithstanding any other provision of this section, no such health care shall be denied on the basis of a view that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled, or not terminally ill, or on the basis of the health care provider's or facility's disagreement with

how the patient or individual authorized to act on the patient's behalf values the tradeoff between extending the length of the patient's life and the risk of disability.

404.1109. No health care decision-maker shall withhold or withdraw health care from a pregnant patient, consistent with existing law, as set forth in section 459.025.

404.1110. Nothing in sections 404.1100 to 404.1110 is intended to:

(1) Be construed as condoning, authorizing, or approving euthanasia or mercy killing; or

(2) Be construed as permitting any affirmative or deliberate act to end a person's life, except to permit natural death as provided by sections 404.1100 to 404.1110.

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 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.

473.730. 1. Every county in this state, except the City of St. Louis, shall elect a public administrator at the general election in the year 1880, and every four years thereafter, who shall be ex officio public guardian and conservator in and for the public administrator's county. A candidate for public administrator shall be at least twenty-one years of age and a resident of the state of Missouri and the county in which he or she is a candidate for at least one year prior to the date of the general election for such office. The candidate shall also be a registered voter and shall be current in the payment of all personal and business taxes. **Each candidate for public administrator shall provide to the election authority a copy of a signed affidavit from a surety company, indicating that the candidate meets the bond requirements for the office of public administrator under this section.**

2. Before entering on the duties of the public administrator's office, the public administrator shall take the oath required by the constitution, and enter into bond to the state of Missouri in a sum not less than ten thousand dollars, with **[**two**]** **one** or more securities, approved by the court and conditioned that the public administrator will faithfully discharge all the duties of the public administrator's office, which bond shall be given and oath of office taken on or before the first day of January following the public administrator's election, and it shall be the duty of the judge of the court to require the public administrator to make a statement annually, under oath, of the amount of property in the public administrator's hands or under the public administrator's control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property; and such court may from time to time, as occasion shall

require, demand additional security of such administrator, and, in default of giving the same within twenty days after such demand, may remove the administrator and appoint another.

[2.**]** **3.** The public administrator in all counties, in the performance of the duties required by chapters 473, 474, and 475, is a public officer. The duties specified by section 475.120 are discretionary. The county shall defend and indemnify the public administrator against any alleged breach of duty, provided that any such alleged breach of duty arose out of an act or omission occurring within the scope of duty or employment.

[3.**]** **4.** After January 1, 2001, all salaried public administrators shall be considered county officials for purposes of section 50.333, subject to the minimum salary requirements set forth in section 473.742.

[4.**]** **5.** The public administrator for the city of St. Louis shall be appointed by a majority of the circuit judges and associate circuit judges of the twenty-second judicial circuit, en banc. Such public administrator shall meet the same qualifications and requirements specified in subsection 1 of this section for elected public administrators. The elected public administrator holding office on August 28, 2013, shall continue to hold such office for the remainder of his or her term.

473.748. 1. As used in this section, the terms conservator, guardian, protectee, and ward shall have the same definitions as in section 475.010.

2. Any term, provision, consideration, or covenant in any contract for treatment, goods, or services shall be unenforceable if such term, provision, consideration, or covenant requires a public administrator who is acting as a guardian or conservator to personally pay, assume, or guarantee the debt or account of a ward or protectee.

3. No public administrator acting as a guardian or conservator shall be required to disclose any personal or financial information including, but not limited to, his or her Social Security number or personal bank account number to any party with which they are contracting on behalf of a ward or protectee.

4. A public administrator acting as a guardian or conservator shall not be held personally liable, or act as the guarantor, for the debts of their ward or protectee.

5. Any person who knowingly violates the provisions of subsection 4 of this section shall be held liable in a civil action for any damage caused to the public administrator's credit by the violation, and may be required to pay a fine of up to fifty dollars. Any moneys collected from the fine shall be deposited into the general revenue fund.

6. Upon request, a consumer credit reporting agency shall provide a public administrator a copy of his or her credit report on a quarterly basis at no cost. A consumer credit reporting agency shall remove all references to any debt owed by a ward of the public administrator from the public administrator's credit report. A consumer

credit reporting agency may request that the public administrator provide a copy of the order appointing him or her as the public administrator for a ward.

475.125. 1. The court may make orders for the management of the estate of the protectee for the care, education, treatment, habilitation, **respite,** support and maintenance of the protectee and for the maintenance of his **or her** family and education of his **or her** children, according to his **or her** means and obligation, if any, out of the proceeds of his **or her** estate, and may direct that payments for such purposes shall be made weekly, monthly, quarterly, semiannually or annually. The payments ordered under this section may be decreased or increased from time to time as ordered by the court.

2. Appropriations for any such purposes, expenses of administration and allowed claims shall be paid from the property or income of the estate. The court may authorize the conservator to borrow money and obligate the estate for the payment thereof if the court finds that funds of the estate for the payment of such obligation will be available within a reasonable time and that the loan is necessary. If payments are made to another under the order of the court, the conservator of the estate is not bound to see to the application thereof.

3. In acting under this section the court shall take into account any duty imposed by law or contract upon a parent or spouse of the protectee, a government agency, a trustee, or other person or corporation, to make payments for the benefit of or provide support, education, care, treatment, habilitation, **respite,** maintenance or safekeeping of the protectee and his **or her** dependents. The guardian of the person and the conservator of the estate shall endeavor to enforce any such duty.

[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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