

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 672
99TH GENERAL ASSEMBLY

4224H.08C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.115, 456.4-420, and 475.024, RSMo, and to enact in lieu thereof five new sections relating to fiduciary relationships.

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

Section A. Sections 210.115, 456.4-420, and 475.024, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 210.115, 456.4-420, 475.600, 475.602, and 475.604, to read as follows:

210.115. 1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the examination, care, treatment or research of persons, and any other health practitioner, psychologist, mental health professional, social worker, day care center worker or other child-care worker, juvenile officer, probation or parole officer, jail or detention center personnel, teacher, principal or other school official, minister as provided by section 352.400, peace officer or law enforcement official, **volunteer or personnel of a community service program that offers support services for families in crisis to assist in the delegation of any powers regarding the care and custody of a child by a properly executed power of attorney pursuant to sections 475.600 to 475.604**, or other person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately report to the division in accordance with the provisions of sections 210.109 to 210.183. No internal investigation shall be initiated until such a report has been made. As used in this section, the term "abuse" is not

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.

16 limited to abuse inflicted by a person responsible for the child's care, custody and control as
17 specified in section 210.110, but shall also include abuse inflicted by any other person.

18 2. If two or more members of a medical institution who are required to report jointly
19 have knowledge of a known or suspected instance of child abuse or neglect, a single report may
20 be made by a designated member of that medical team. Any member who has knowledge that
21 the member designated to report has failed to do so shall thereafter immediately make the report.
22 Nothing in this section, however, is meant to preclude any person from reporting abuse or
23 neglect.

24 3. The reporting requirements under this section are individual, and no supervisor or
25 administrator may impede or inhibit any reporting under this section. No person making a report
26 under this section shall be subject to any sanction, including any adverse employment action, for
27 making such report. Every employer shall ensure that any employee required to report pursuant
28 to subsection 1 of this section has immediate and unrestricted access to communications
29 technology necessary to make an immediate report and is temporarily relieved of other work
30 duties for such time as is required to make any report required under subsection 1 of this section.

31 4. Notwithstanding any other provision of sections 210.109 to 210.183, any child who
32 does not receive specified medical treatment by reason of the legitimate practice of the religious
33 belief of the child's parents, guardian, or others legally responsible for the child, for that reason
34 alone, shall not be found to be an abused or neglected child, and such parents, guardian or other
35 persons legally responsible for the child shall not be entered into the central registry. However,
36 the division may accept reports concerning such a child and may subsequently investigate or
37 conduct a family assessment as a result of that report. Such an exception shall not limit the
38 administrative or judicial authority of the state to ensure that medical services are provided to
39 the child when the child's health requires it.

40 5. In addition to those persons and officials required to report actual or suspected abuse
41 or neglect, any other person may report in accordance with sections 210.109 to 210.183 if such
42 person has reasonable cause to suspect that a child has been or may be subjected to abuse or
43 neglect or observes a child being subjected to conditions or circumstances which would
44 reasonably result in abuse or neglect.

45 6. Any person or official required to report pursuant to this section, including employees
46 of the division, who has probable cause to suspect that a child who is or may be under the age
47 of eighteen, who is eligible to receive a certificate of live birth, has died shall report that fact to
48 the appropriate medical examiner or coroner. If, upon review of the circumstances and medical
49 information, the medical examiner or coroner determines that the child died of natural causes
50 while under medical care for an established natural disease, the coroner, medical examiner or
51 physician shall notify the division of the child's death and that the child's attending physician

52 shall be signing the death certificate. In all other cases, the medical examiner or coroner shall
53 accept the report for investigation, shall immediately notify the division of the child's death as
54 required in section 58.452 and shall report the findings to the child fatality review panel
55 established pursuant to section 210.192.

56 7. Any person or individual required to report may also report the suspicion of abuse or
57 neglect to any law enforcement agency or juvenile office. Such report shall not, however, take
58 the place of reporting to the division.

59 8. If an individual required to report suspected instances of abuse or neglect pursuant to
60 this section has reason to believe that the victim of such abuse or neglect is a resident of another
61 state or was injured as a result of an act which occurred in another state, the person required to
62 report such abuse or neglect may, in lieu of reporting to the Missouri children's division, make
63 such a report to the child protection agency of the other state with the authority to receive such
64 reports pursuant to the laws of such other state. If such agency accepts the report, no report is
65 required to be made, but may be made, to the children's division.

456.4-420. 1. If a trust instrument containing a no-contest clause is or has become
2 irrevocable, an interested person may file a petition to the court for an interlocutory
3 determination whether a particular motion, petition, or other claim for relief by the interested
4 person would trigger application of the no-contest clause or would otherwise trigger a forfeiture
5 that is enforceable under applicable law and public policy.

6 2. The petition described in subsection 1 of this section shall be verified under oath. The
7 petition may be filed by an interested person either as a separate judicial proceeding, or brought
8 with other claims for relief in a single judicial proceeding, all in the manner prescribed generally
9 for such proceedings under this chapter. If a petition is joined with other claims for relief, the
10 court shall enter its order or judgment on the petition before proceeding any further with any
11 other claim for relief joined therein. In ruling on such a petition, the court shall consider the text
12 of the clause, the context to the terms of the trust instrument as a whole, and in the context of the
13 verified factual allegations in the petition. No evidence beyond the pleadings and the trust
14 instrument shall be taken except as required to resolve an ambiguity in the no-contest clause.

15 3. An order or judgment determining a petition described in subsection 1 of this section
16 shall have the effect set forth in subsections 4 and 5 of this section, and shall be subject to appeal
17 as with other final judgments. If the order disposes of fewer than all claims for relief in a judicial
18 proceeding, that order is subject to interlocutory appeal in accordance with the applicable rules
19 for taking such an appeal. If an interlocutory appeal is taken, the court may stay the pending
20 judicial proceeding until final disposition of said appeal on such terms and conditions as the
21 court deems reasonable and proper under the circumstances. A final ruling on the applicability

22 of a no-contest clause shall not preclude any later filing and adjudication of other claims related
23 to the trust.

24 4. An order or judgment, in whole or in part, on a petition described in subsection 1 of
25 this section shall result in the no-contest clause being enforceable to the extent of the court's
26 ruling, and shall govern application of the no-contest clause to the extent that the interested
27 person then proceeds forward with the claims described therein. In the event such an
28 interlocutory order or judgment is vacated, reversed, or otherwise modified on appeal, no
29 interested person shall be prejudiced by any reliance, through action, inaction, or otherwise, on
30 the order or judgment prior to final disposition of the appeal.

31 5. An order or judgment shall have effect only as to the specific trust terms and factual
32 basis recited in the petition. If claims are later filed that are materially different than those upon
33 which the order or judgment is based, then to the extent such new claims are raised, the party in
34 whose favor the order or judgment was entered shall have no protection from enforcement of the
35 no-contest clause otherwise afforded by the order and judgment entered under this section.

36 6. For purposes of this section, a "no-contest clause" shall mean a provision in a trust
37 instrument purporting to rescind a donative transfer to, or a fiduciary appointment of, any person,
38 or that otherwise effects a forfeiture of some or all of an interested person's beneficial interest
39 in a trust estate as a result of some action taken by the beneficiary. This definition shall not be
40 construed in any way as determining whether a no-contest clause is enforceable under applicable
41 law and public policy in a particular factual situation. As used in this section, the term "no-
42 contest clause" shall also mean an "in terrorem clause".

43 7. A no-contest clause is not enforceable against an interested person in, but not limited
44 to, the following circumstances:

45 (1) Filing a motion, petition, or other claim for relief objecting to the jurisdiction or
46 venue of the court over a proceeding concerning a trust, or over any person joined, or attempted
47 to be joined, in such a proceeding;

48 (2) Filing a motion, petition, or other claim for relief concerning an accounting, report,
49 or notice that has or should have been made by a trustee, provided the interested person
50 otherwise has standing to do so under applicable law, including, but not limited to, section 456.6-
51 603;

52 (3) Filing a motion, petition, or other claim for relief under chapter 475 concerning the
53 appointment of a guardian or conservator for the settlor;

54 (4) Filing a motion, petition, or other claim for relief under chapter 404 concerning the
55 settlor;

56 (5) Disclosure to any person of information concerning a trust instrument or that is
57 relevant to a proceeding before the court concerning the trust instrument or property of the trust
58 estate, unless such disclosure is otherwise prohibited by law;

59 (6) Filing a motion, pleading, or other claim for relief seeking approval of a nonjudicial
60 settlement agreement concerning a trust instrument, as set forth in section 456.1-111;

61 (7) **Filing a motion, pleading, or other claim for relief concerning a breach of trust**
62 **by a trustee including, but not limited to, a claim under section 456.10-1001. For purposes**
63 **of this subdivision, "breach of trust" means a trustee's violation of the terms of a trust**
64 **instrument, a violation of the trustee's general fiduciary obligations, or a trustee's violation**
65 **of a duty that equity imposes on a trustee;**

66 (8) **Filing a motion, pleading, or other claim for relief concerning removal of a**
67 **trustee including, but not limited to, a claim for removal under section 456.7-706; and**

68 (9) To the extent a petition under subsection 1 of this section is limited to the procedure
69 and purpose described therein.

70 8. In any proceeding brought under this section, the court may award costs, expenses,
71 and attorneys' fees to any party, as provided in section 456.10-1004.

475.600. Sections 475.600, 475.602, and 475.604 shall be known and may be cited
2 **as the "Supporting and Strengthening Families Act".**

475.602. 1. A parent or legal custodian of a child may, by a properly executed
2 **power of attorney as provided under section 475.604, delegate to an attorney-in-fact for a**
3 **period not to exceed one year, except as provided under subsection 7 of this section, any**
4 **of the powers regarding the care and custody of the child, except the power to consent to**
5 **marriage or adoption of the child, the performance or inducement of an abortion on or for**
6 **the child, or the termination of parental rights to the child. A delegation of powers under**
7 **this section shall not be construed to change or modify any parental or legal rights,**
8 **obligations, or authority established by an existing court order or deprive the parent or**
9 **legal custodian of any parental or legal rights, obligations, or authority regarding the**
10 **custody, visitation, or support of the child.**

11 **2. The parent or legal custodian of the child shall have the authority to revoke or**
12 **withdraw the power of attorney authorized in subsection 1 of this section at any time.**
13 **Except as provided in subsection 7 of this section, if the delegation of authority lasts longer**
14 **than one year, the parent or legal custodian of the child shall execute a new power of**
15 **attorney for each additional year that the delegation exists. If a parent withdraws or**
16 **revokes the power of attorney, the child shall be returned to the custody of the parents as**
17 **soon as reasonably possible.**

18 **3. Unless the authority is revoked or withdrawn by the parent or legal custodian,**
19 **the attorney-in-fact shall exercise parental or legal authority on a continuous basis without**
20 **compensation for the duration of the power of attorney authorized by subsection 1 of this**
21 **section and shall not be subject to any statutes dealing with the licensing or regulation of**
22 **foster care homes.**

23 **4. Except as otherwise provided by law, if a parent or legal custodian uses a**
24 **community service program that offers support services for families in crisis to assist in the**
25 **delegation of any powers regarding the care and custody of a child by a properly executed**
26 **power of attorney, then the execution of a power of attorney by such parent or legal**
27 **custodian as authorized in subsection 1 of this section shall not constitute abandonment as**
28 **provided in sections 568.030 and 568.032, or abuse or neglect as provided in sections**
29 **210.110 and 568.060, unless the parent or legal guardian fails to take custody of the child**
30 **or execute a new power of attorney after the one-year time limit has elapsed. It shall be a**
31 **violation of section 453.110 for any parent or legal custodian to execute a power of attorney**
32 **with the intention of permanently avoiding or divesting himself or herself of parental or**
33 **legal responsibility for the care of the child.**

34 **5. Under a delegation of powers as authorized by subsection 1 of this section, the**
35 **child or children subject to the power of attorney shall not be considered placed in foster**
36 **care as otherwise defined in law and the parties shall not be subject to any of the**
37 **requirements or licensing regulations for foster care or other regulations relating to**
38 **community care for children.**

39 **6. If a parent or legal custodian uses a community service program that offers**
40 **support services for families in crisis to assist in the delegation of any powers regarding the**
41 **care and custody of a child by a properly executed power of attorney, then the community**
42 **service program shall ensure that a background check is completed for the attorney-in-fact**
43 **and any adult members of his or her household prior to the placement of the child. A**
44 **community service program shall not place a child or children with an attorney-in-fact**
45 **when he or she or any adult member of his or her household is found to be on the sex**
46 **offender registry as established pursuant to sections 589.400 to 589.425, or the child abuse**
47 **and neglect registry, as established pursuant to section 210.109, or has pled guilty or nolo**
48 **contendere to or is found guilty of a felony offense under federal or state law. If a**
49 **community service program has reasonable cause to suspect that a parent or legal**
50 **custodian is executing a power of attorney under this section with the intention of**
51 **permanently avoiding or divesting himself or herself of parental or legal responsibility for**
52 **the care of the child, the community service program shall notify the Missouri children's**
53 **division within the department of social services, and the division shall conduct an**

54 investigation of the parent or legal guardian to determine if there is a violation of section
55 453.110. A background check performed under this section shall include:

56 (1) A national and state fingerprint-based criminal history check;

57 (2) A sex offender registry, as established pursuant to sections 589.400 to 589.425,
58 check; and

59 (3) A child abuse and neglect registry, as established pursuant to section 210.109,
60 check.

61 7. A parent or legal custodian who is a member of the Armed Forces of the United
62 States including any reserve component thereof, the commissioned corps of the National
63 Oceanic and Atmospheric Administration, the Public Health Service of the United States
64 Department of Health and Human Services detailed by proper authority for duty with the
65 Armed Forces of the United States, or who is required to enter or serve in the active
66 military service of the United States under a call or order of the President of the United
67 States or to serve on state active duty may delegate the powers designated in subsection 1
68 of this section for a period longer than one year if on active duty service. The term of
69 delegation shall not exceed the term of active duty service plus thirty days.

70 8. Nothing in this section shall conflict or set aside the preexisting residency
71 requirements under section 167.020. An attorney-in-fact to whom powers are delegated
72 under a power of attorney authorized by this section shall make arrangements to ensure
73 that the child attends classes at an appropriate school. If enrollment is at a public school,
74 attendance shall be based upon residency or waiver of such residency requirements by the
75 school.

76 9. If enrolled at any school, as soon as reasonably possible upon execution of a
77 power of attorney for the temporary care of a child as authorized under this section, the
78 child's school shall be notified of the existence of the power of attorney and be provided a
79 copy of the power of attorney as well as the contact information for the attorney-in-fact.
80 While the power of attorney is in force, the school shall communicate with both the
81 attorney-in-fact and any parent or legal custodian with parental or legal rights, obligations,
82 or authority regarding the custody, visitation, or support of the child. The school shall also
83 be notified of the expiration, termination, or revocation of the power of attorney as soon
84 as reasonably possible following such expiration, termination, or revocation and shall no
85 longer communicate with the attorney-in-fact regarding the child upon the receipt of such
86 notice.

87 10. No delegation of powers under this section shall operate to modify a child's
88 eligibility for benefits the child is receiving at the time of the execution of the power of
89 attorney including, but not limited to, eligibility for free or reduced lunch, health care

90 costs, or other social services, except as may be inconsistent with federal or state law
91 governing the relevant program or benefit.

2 475.604. Any form for the delegation of powers authorized under section 475.602
3 shall be witnessed by a notary public and contain the following information:

4 (1) The full name of any child for whom parental and legal authority is being
5 delegated;

6 (2) The date of birth of any child for whom parental and legal authority is being
7 delegated;

8 (3) The full name and signature of the attorney-in-fact;

9 (4) The address and telephone number of the attorney-in-fact;

10 (5) The full name and signature of the parent or legal guardian;

11 (6) One of the following statements:

12 (a) "I delegate to the attorney-in-fact all of my power and authority regarding the
13 care, custody, and property of each minor child named above including, but not limited to,
14 the right to enroll the child in school, inspect and obtain copies of education and other
15 records concerning the child, the right to give or withhold any consent or waiver with
16 respect to school activities, medical and dental treatment, and any other activity, function,
17 or treatment that may concern the child. This delegation shall not include the power or
18 authority to consent to marriage or adoption of the child, the performance or inducement
19 of an abortion on or for the child, or the termination of parental rights to the child."; or

20 (b) "I delegate to the attorney-in-fact the following specific powers and
21 responsibilities (insert list). This delegation shall not include the power or authority to
22 consent to marriage or adoption of the child, the performance or inducement of an
23 abortion on or for the child, or the termination of parental rights to the child."; and

24 (7) A description of the time for which the delegation is being made and an
acknowledgment that the delegation may be revoked at any time.

2 ~~[475.024. A parent of a minor, by a properly executed power of attorney,
3 may delegate to another individual, for a period not exceeding one year, any of
4 his or her powers regarding care or custody of the minor child, except his or her
power to consent to marriage or adoption of the minor child.]~~

