

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 59

96TH GENERAL ASSEMBLY

2011

0491S.04T

AN ACT

To repeal sections 404.710, 456.3-301, 456.5-505, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, 475.115, 482.305, and 482.315, RSMo, and to enact in lieu thereof forty-two new sections relating to judicial procedures.

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

Section A. Sections 404.710, 456.3-301, 456.5-505, 456.8-813, 469.411, 2 469.437, 469.459, 475.060, 475.061, 475.115, 482.305, and 482.315, RSMo, are 3 repealed and forty-two new sections enacted in lieu thereof, to be known as 4 sections 34.376, 34.378, 34.380, 404.710, 456.3-301, 456.4-419, 456.5-505, 456.5- 5 508, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, 475.115, 475.501, 6 475.502, 475.503, 475.504, 475.505, 475.506, 475.521, 475.522, 475.523, 475.524, 7 475.525, 475.526, 475.527, 475.528, 475.529, 475.531, 475.532, 475.541, 475.542, 8 475.543, 475.544, 475.551, 475.552, 475.555, 482.305, and 482.315 and 1, to read 9 as follows:

34.376. 1. Sections 34.376 to 34.380 may be known as the
2 **"Transparency in Private Attorney Contracts Act".**

3 **2. As used in sections 34.376 to 34.380, the following terms shall**
4 **mean:**

5 **(1) "Government attorney", an attorney employed by the state as**
6 **an assistant attorney general;**

7 **(2) "Private attorney", any private attorney or law firm;**

8 **(3) "State", the state of Missouri, in any action instituted by the**
9 **attorney general pursuant to section 27.060.**

34.378. 1. The state shall not enter into a contingency fee

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

2 contract with a private attorney unless the attorney general makes a
3 written determination prior to entering into such a contract that
4 contingency fee representation is both cost-effective and in the public
5 interest. Any written determination shall include specific findings for
6 each of the following factors:

7 (1) Whether there exists sufficient and appropriate legal and
8 financial resources within the attorney general's office to handle the
9 matter;

10 (2) The time and labor required; the novelty, complexity, and
11 difficulty of the questions involved; and the skill requisite to perform
12 the attorney services properly;

13 (3) The geographic area where the attorney services are to be
14 provided; and

15 (4) The amount of experience desired for the particular kind of
16 attorney services to be provided and the nature of the private
17 attorney's experience with similar issues or cases.

18 2. If the attorney general makes the determination described in
19 subsection 1 of this section, the attorney general shall request written
20 proposals from private attorneys to represent the state, unless the
21 attorney general determines that requesting proposals is not feasible
22 under the circumstances and sets forth the basis for this determination
23 in writing. If a request for proposals is issued, the attorney general
24 shall choose the lowest and best bid or request the office of
25 administration establish an independent panel to evaluate the
26 proposals and choose the lowest and best bid.

27 3. The state shall not enter into a contract for contingency fee
28 attorney services unless the following requirements are met throughout
29 the contract period and any extensions to the contract:

30 (1) The government attorneys shall retain complete control over
31 the course and conduct of the case;

32 (2) A government attorney with supervisory authority shall
33 oversee the litigation;

34 (3) The government attorneys shall retain veto power over any
35 decisions made by outside counsel;

36 (4) A government attorney with supervisory authority for the
37 case shall attend all settlement conferences; and

38 (5) Decisions regarding settlement of the case shall be reserved
39 exclusively to the discretion of the attorney general.

40 4. The attorney general shall develop a standard addendum to
41 every contract for contingent fee attorney services that shall be used
42 in all cases, describing in detail what is expected of both the contracted
43 private attorney and the state, including, without limitation, the
44 requirements listed in subsection 4 of this section.

45 5. Copies of any executed contingency fee contract and the
46 attorney general's written determination to enter into a contingency
47 fee contract with the private attorney shall be posted on the attorney
48 general's website for public inspection within five business days after
49 the date the contract is executed and shall remain posted on the
50 website for the duration of the contingency fee contract, including any
51 extensions or amendments to the contract. Any payment of contingency
52 fees shall be posted on the attorney general's website within fifteen
53 days after the payment of such contingency fees to the private attorney
54 and shall remain posted on the website for at least three hundred sixty-
55 five days.

56 6. Any private attorney under contract to provide services to the
57 state on a contingency fee basis shall, from the inception of the
58 contract until at least four years after the contract expires or is
59 terminated, maintain detailed current records, including
60 documentation of all expenses, disbursements, charges, credits,
61 underlying receipts and invoices, and other financial transactions that
62 concern the provision of such attorney services. The private attorney
63 shall maintain detailed contemporaneous time records for the attorneys
64 and paralegals working on the matter in increments of no greater than
65 one tenth of an hour and shall promptly provide these records to the
66 attorney general, upon request. Any request under chapter 610 for
67 inspection and copying of such records shall be served upon and
68 responded to by the attorney general's office.

69 7. By February first of each year, the attorney general shall
70 submit a report to the president pro tem of the senate and the speaker
71 of the house of representatives describing the use of contingency fee
72 contracts with private attorneys in the preceding calendar year. At a
73 minimum, the report shall:

74 (1) Identify all new contingency fee contracts entered into
75 during the year and all previously executed contingency fee contracts
76 that remain current during any part of the year, and for each contract
77 describe:

- 78 **(a) The name of the private attorney with whom the department**
79 **has contracted, including the name of the attorney's law firm;**
80 **(b) The nature and status of the legal matter;**
81 **(c) The name of the parties to the legal matter;**
82 **(d) The amount of any recovery; and**
83 **(e) The amount of any contingency fee paid.**
84 **(2) Include copies of any written determinations made under**
85 **subsections 1 and 2 of this section.**

34.380. Nothing in sections 34.376 to 34.380 shall be construed to
2 **expand the authority of any state agency or state agent to enter into**
3 **contracts where no such authority previously existed.**

 404.710. 1. A principal may delegate to an attorney in fact in a power of
2 attorney general powers to act in a fiduciary capacity on the principal's behalf
3 with respect to all lawful subjects and purposes or with respect to one or more
4 express subjects or purposes. A power of attorney with general powers may be
5 durable or not durable.

6 2. If the power of attorney states that general powers are granted to the
7 attorney in fact and further states in substance that it grants power to the
8 attorney in fact to act with respect to all lawful subjects and purposes or that it
9 grants general powers for general purposes or does not by its terms limit the
10 power to the specific subject or purposes set out in the instrument, then the
11 authority of the attorney in fact acting under the power of attorney shall extend
12 to and include each and every action or power which an adult who is nondisabled
13 and nonincapacitated may carry out through an agent specifically authorized in
14 the premises, with respect to any and all matters whatsoever, except as provided
15 in subsections 6 and 7 of this section. When a power of attorney grants general
16 powers to an attorney in fact to act with respect to all lawful subjects and
17 purposes, the enumeration of one or more specific subjects or purposes does not
18 limit the general authority granted by that power of attorney, unless otherwise
19 provided in the power of attorney.

20 3. If the power of attorney states that general powers are granted to an
21 attorney in fact with respect to one or more express subjects or purposes for
22 which general powers are conferred, then the authority of the attorney in fact
23 acting under the power of attorney shall extend to and include each and every
24 action or power, but only with respect to the specific subjects or purposes
25 expressed in the power of attorney that an adult who is nondisabled and
26 nonincapacitated may carry out through an agent specifically authorized in the
27 premises, with respect to any and all matters whatsoever, except as provided in

28 subsections 6 and 7 of this section.

29 4. Except as provided in subsections 6 and 7 of this section, an attorney
30 in fact with general powers has, with respect to the subjects or purposes for which
31 the powers are conferred, all rights, power and authority to act for the principal
32 that the principal would have with respect to his or her own person or property,
33 including property owned jointly or by the entirety with another or others, as
34 a nondisabled and nonincapacitated adult; and without limiting the foregoing has
35 with respect to the subjects or purposes of the power complete discretion to make
36 a decision for the principal, to act or not act, to consent or not consent to, or
37 withdraw consent for, any act, and to execute and deliver or accept any deed, bill
38 of sale, bill of lading, assignment, contract, note, security instrument, consent,
39 receipt, release, proof of claim, petition or other pleading, tax document, notice,
40 application, acknowledgment or other document necessary or convenient to
41 implement or confirm any act, transaction or decision. An attorney in fact with
42 general powers, whether power to act with respect to all lawful subjects and
43 purposes, or only with respect to one or more express subjects or purposes, shall
44 have the power, unless specifically denied by the terms of the power of attorney,
45 to make, execute and deliver to or for the benefit of or at the request of a third
46 person, who is requested to rely upon an action of the attorney in fact, an
47 agreement indemnifying and holding harmless any third person or persons from
48 any liability, claims or expenses, including legal expenses, incurred by any such
49 third person by reason of acting or refraining from acting pursuant to the request
50 of the attorney in fact, and such indemnity agreement shall be binding upon the
51 principal who has executed such power of attorney and upon the principal's
52 successor or successors in interest. No such indemnity agreement shall protect
53 any third person from any liability, claims or expenses incurred by reason of the
54 fact that, and to the extent that, the third person has honored the power of
55 attorney for actions outside the scope of authority granted by the power of
56 attorney. In addition, the attorney in fact has complete discretion to employ and
57 compensate real estate agents, brokers, attorneys, accountants and subagents of
58 all types to represent and act for the principal in any and all matters, including
59 tax matters involving the United States government or any other government or
60 taxing entity, including, but not limited to, the execution of supplemental or
61 additional powers of attorney in the name of the principal in form that may be
62 required or preferred by any such taxing entity or other third person, and to deal
63 with any or all third persons in the name of the principal without limitation. No
64 such supplemental or additional power of attorney shall broaden the scope of
65 authority granted to the attorney in fact in the original power of attorney

66 executed by the principal.

67 5. An attorney in fact, who is granted general powers for all subjects and
68 purposes or with respect to any express subjects or purposes, shall exercise the
69 powers conferred according to the principal's instructions, in the principal's best
70 interest, in good faith, prudently and in accordance with sections 404.712 and
71 404.714.

72 6. Any power of attorney, whether durable or not durable, and whether
73 or not it grants general powers for all subjects and purposes or with respect to
74 express subjects or purposes, shall be construed to grant power or authority to an
75 attorney in fact to carry out any of the actions described in this subsection if the
76 actions are expressly enumerated and authorized in the power of attorney. Any
77 power of attorney may grant power of authority to an attorney in fact to carry out
78 any of the following actions if the actions are expressly authorized in the power
79 of attorney:

80 (1) To execute, amend or revoke any trust agreement;

81 (2) To fund with the principal's assets any trust not created by the
82 principal;

83 (3) To make or revoke a gift of the principal's property in trust or
84 otherwise;

85 (4) To disclaim a gift or devise of property to or for the benefit of the
86 principal;

87 (5) To create or change survivorship interests in the principal's property
88 or in property in which the principal may have an interest; provided, however,
89 that the inclusion of the authority set out in this [paragraph] **subdivision** shall
90 not be necessary in order to grant to an attorney in fact acting under a power of
91 attorney granting general powers with respect to all lawful subjects and purposes
92 the authority to withdraw funds or other property from any account, contract or
93 other similar arrangement held in the names of the principal and one or more
94 other persons with any financial institution, brokerage company or other
95 depository to the same extent that the principal would be authorized to do if the
96 principal were present, not disabled or incapacitated, and seeking to act in the
97 principal's own behalf;

98 (6) To designate or change the designation of beneficiaries to receive any
99 property, benefit or contract right on the principal's death;

100 (7) To give or withhold consent to an autopsy or postmortem examination;

101 (8) To make [a] **an anatomical** gift of, or [decline to make a] **prohibit**
102 **an anatomical** gift of, **all or part of** the principal's body [parts] under the
103 **Revised Uniform Anatomical Gift Act or to exercise the right of sepulcher**

104 **over the principal's body under section 194.119;**

105 (9) To nominate a guardian or conservator for the principal; and if so
106 stated in the power of attorney, the attorney in fact may nominate himself as
107 such;

108 (10) To give consent to or prohibit any type of health care, medical care,
109 treatment or procedure to the extent authorized by sections 404.800 to 404.865;
110 or

111 (11) To designate one or more substitute or successor or additional
112 attorneys in fact.

113 7. No power of attorney, whether durable or not durable, and whether or
114 not it delegates general powers, may delegate or grant power or authority to an
115 attorney in fact to do or carry out any of the following actions for the principal:

116 (1) To make, publish, declare, amend or revoke a will for the principal;

117 (2) To make, execute, modify or revoke a living will declaration for the
118 principal;

119 (3) To require the principal, against his or her will, to take any action or
120 to refrain from taking any action; or

121 (4) To carry out any actions specifically forbidden by the principal while
122 not under any disability or incapacity.

123 8. A third person may freely rely on, contract and deal with an attorney
124 in fact delegated general powers with respect to the subjects and purposes
125 encompassed or expressed in the power of attorney without regard to whether the
126 power of attorney expressly identifies the specific property, account, security,
127 storage facility or matter as being within the scope of a subject or purpose
128 contained in the power of attorney, and without regard to whether the power of
129 attorney expressly authorizes the specific act, transaction or decision by the
130 attorney in fact.

131 9. It is the policy of this state that an attorney in fact acting pursuant to
132 the provisions of a power of attorney granting general powers shall be accorded
133 the same rights and privileges with respect to the personal welfare, property and
134 business interests of the principal, and if the power of attorney enumerates some
135 express subjects or purposes, with respect to those subjects or purposes, as if the
136 principal himself or herself were personally present and acting or seeking to act;
137 and any provision of law and any purported waiver, consent or agreement
138 executed or granted by the principal to the contrary shall be void and
139 unenforceable.

140 10. Sections 404.700 to 404.735 shall not be construed to preclude any
141 person or business enterprise from providing in a contract with the principal as

142 to the procedure that thereafter must be followed by the principal or the
143 principal's attorney in fact in order to give a valid notice to the person or business
144 enterprise of any modification or termination of the appointment of an attorney
145 in fact by the principal; and any such contractual provision for notice shall be
146 valid and binding on the principal and the principal's successors so long as such
147 provision is reasonably capable of being carried out.

456.3-301. 1. Notice to a person who may represent and bind another
2 person under sections 456.3-301 to 456.3-305 has the same effect as if notice were
3 given directly to the other person.

4 2. The consent of a person who may represent and bind another person
5 under sections 456.3-301 to 456.3-305 is binding on the person represented unless
6 the person represented objects to the representation before the consent would
7 otherwise have become effective. **Except that, such consent is binding on**
8 **the person represented regardless of whether the person represented**
9 **objects under this subsection, if the person who may represent and**
10 **bind is:**

11 (1) **The holder of a testamentary power of appointment described**
12 **in section 456.3-302 and the interests of the person represented are**
13 **subject to the power;**

14 (2) **The conservator, conservator ad litem, or guardian described**
15 **in subdivisions (1), (2), or (3) of section 456.3-303 and the person**
16 **represented is disabled; or**

17 (3) **A parent described in subdivision (4) of section 456.3-303 and**
18 **the person represented is a minor or unborn child of the parent.**

19 3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a
20 person who under sections 456.3-301 to 456.3-305 may represent a settlor who
21 lacks capacity may receive notice and give a binding consent on the settlor's
22 behalf.

23 4. A settlor may not represent and bind a beneficiary under sections
24 456.3-301 to 456.3-305 with respect to the termination or modification of a trust
25 under section 456.4A-411.

456.4-419. 1. **Unless the terms of the trust instrument expressly**
2 **provide otherwise, a trustee who has discretionary power under the**
3 **terms of a trust to make a distribution of income or principal, whether**
4 **or not limited by an ascertainable standard, to or for the benefit of one**
5 **or more beneficiaries of a trust, the "first trust", may instead exercise**
6 **such discretionary power by appointing all or part of the income or**
7 **principal subject to such discretionary power in favor of a trustee of a**

8 second trust, the "second trust", created under either the same or
9 different trust instrument in the event that the trustee of the first trust
10 decides that the appointment is necessary or desirable after taking into
11 account the terms and purposes of the first trust, the terms and
12 purposes of the second trust, and the consequences of the distribution.

13 2. The following provisions apply to any exercise of the authority
14 granted by subsection 1 of this section:

15 (1) The second trust may have as beneficiaries only one or more
16 of those beneficiaries of the first trust to or for whom any discretionary
17 distribution may be made from the first trust and who are proper
18 objects of the exercise of the power, or one or more of those other
19 beneficiaries of the first trust to or for whom a distribution of income
20 or principal may have been made in the future from the first trust at
21 a time or upon the happening of an event specified under the first
22 trust;

23 (2) Unless the exercise of such power is limited by an
24 ascertainable standard, no trustee of the first trust may exercise such
25 authority to make a distribution from the first trust if:

26 (a) Such trustee is a beneficiary of the first trust; or

27 (b) Any beneficiary may remove and replace the trustee of the
28 first trust with a related or subordinate party to such beneficiary
29 within the meaning of Section 672(c) of the Internal Revenue Code;

30 (3) Except if participating in a change that is needed for a
31 distribution to any such beneficiary under an ascertainable standard,
32 no trustee shall exercise such authority to the extent that doing so
33 would have the effect either of:

34 (a) Increasing the distributions that can be made in the future
35 from the second trust to the trustee of the first trust or to a beneficiary
36 who can remove and replace the trustee of the first trust with a related
37 or subordinate party to such beneficiary within the meaning of Section
38 672(c) of the Internal Revenue Code; or

39 (b) Removing restrictions on discretionary distributions imposed
40 by the instrument under which the first trust was created;

41 (4) In the case of any trust contributions which have been
42 treated as gifts qualifying for the exclusion from gift tax described in
43 Section 2503(b) of the Internal Revenue Code, by reason of the
44 application of Section 2503(c), the governing instrument for the second
45 trust shall provide that the beneficiary's remainder interest shall vest

46 no later than the date upon which such interest would have vested
47 under the terms of the governing instrument for the first trust;

48 (5) The exercise of such authority may not reduce any income
49 interest of any income beneficiary of any of the following trusts:

50 (a) A trust for which a marital deduction has been taken for
51 federal tax purposes under Section 2056 or 2523 of the Internal
52 Revenue Code or for state tax purposes under any comparable
53 provision of applicable state law;

54 (b) A charitable remainder trust under Section 664 of the
55 Internal Revenue Code;

56 (c) A grantor retained annuity trust under Section 2702 of the
57 Internal Revenue Code; or

58 (d) A trust which has been qualified as a Subchapter S trust
59 under Section 1361(d) of the Internal Revenue Code or an electing small
60 business trust under Section 1361(e) of the Internal Revenue Code;

61 (6) The exercise of such authority does not apply to trust
62 property subject to a presently exercisable power of withdrawal held
63 by a trust beneficiary to whom, or for the benefit of whom, the trustee
64 has authority to make distributions, unless after the exercise of such
65 authority, such beneficiary's power of withdrawal is unchanged with
66 respect to the trust property; and

67 (7) A spendthrift clause or a provision in the trust instrument
68 that prohibits amendment or revocation of the trust shall not preclude
69 the trustee from exercising the authority granted by subsection 1 of
70 this section.

71 3. At least sixty days prior to making a discretionary distribution
72 under subsection 1 of this section, the trustee of the first trust shall
73 notify the permissible distributees of the second trust, or the qualified
74 beneficiaries of the second trust if there are no permissible distributees
75 of the second trust, of the distribution. A beneficiary may waive the
76 right to the notice required by this subsection and, with respect to
77 future distributions, may withdraw a waiver previously given.

78 4. In exercising the authority granted by subsection 1 of this
79 section, the trustee shall remain subject to all fiduciary duties
80 otherwise imposed under the trust instrument and Missouri law.

81 5. This section does not impose on a trustee a duty to exercise
82 the authority granted by subsection 1 of this section in favor of another
83 trust or to consider exercising such authority in favor of another trust.

84 **6. This section is intended to codify and, from and after**
 85 **enactment, to provide certain limitations to the common law of this**
 86 **state, and this section applies to any trust governed by the laws of this**
 87 **state, including a trust whose principal place of administration is**
 88 **transferred to this state before or after the enactment of this section.**

 456.5-505. 1. Whether or not the terms of a trust contain a spendthrift
 2 provision, during the lifetime of the settlor, the property of a revocable trust is
 3 subject to claims of the settlor's creditors.

4 2. With respect to an irrevocable trust without a spendthrift provision, a
 5 creditor or assignee of the settlor may reach the maximum amount that can be
 6 distributed to or for the settlor's benefit. If a trust has more than one settlor, the
 7 amount the creditor or assignee of a particular settlor may reach may not exceed
 8 the settlor's interest in the portion of the trust attributable to that settlor's
 9 contribution.

10 3. With respect to an irrevocable trust with a spendthrift provision, a
 11 spendthrift provision will prevent the settlor's creditors from satisfying claims
 12 from the trust assets except:

13 (1) Where the conveyance of assets to the trust was fraudulent as to
 14 creditors pursuant to the provisions of chapter 428; or

15 (2) To the extent of the settlor's beneficial interest in the trust assets, if
 16 at the time the trust became irrevocable:

17 (a) The settlor was the sole beneficiary of either the income or principal
 18 of the trust or retained the power to amend the trust; or

19 (b) The settlor was one of a class of beneficiaries and retained a right to
 20 receive a specific portion of the income or principal of the trust that was
 21 determinable solely from the provisions of the trust instrument.

22 4. **In the event that a trust meets the requirements set forth in**
 23 **subsection 3 of this section, a settlor's creditors may not reach the**
 24 **settlor's beneficial interest in that trust regardless of any testamentary**
 25 **power of appointment retained by the settlor that is exercisable by the**
 26 **settlor in favor of any appointees other than the settlor, the settlor's**
 27 **estate, the settlor's creditors, or the creditors of the settlor's estate.**

28 5. Any trustee who has a duty or power to pay the debts of a deceased
 29 settlor may publish a notice in a newspaper published in the county designated
 30 in subdivision (3) of this subsection once a week for four consecutive weeks in
 31 substantially the following form:

32 To all persons interested in the estate of,
 33 decedent. The undersigned is acting as Trustee

34 under a trust the terms of which provide that the debts of the decedent may be
35 paid by the Trustee(s) upon receipt of proper proof thereof. The address of the
36 Trustee is All creditors of the decedent are noticed
37 to present their claims to the undersigned within six (6) months from the date of
38 the first publication of this notice or be forever barred.

39

40 Trustee

41 (1) If such publication is duly made by the trustee, any debts not
42 presented to the trustee within six months from the date of the first publication
43 of the preceding notice shall be forever barred as against the trustee and the
44 trust property.

45 (2) A trustee shall not be liable to account to the decedent's personal
46 representative under the provisions of section 461.300 by reason of any debt
47 barred under the provisions of this subsection.

48 (3) Such publication shall be in a newspaper published in:

49 (a) The county in which the domicile of the settlor at the time of his or her
50 death is situated;

51 (b) If the settlor had no domicile in this state at the time of his or her
52 death, any county wherein trust assets are located; except that, when the major
53 part of the trust assets in this state consist of real estate, the notice shall be
54 published in the county in which the real estate or the major part thereof is
55 located; or

56 (c) If the settlor had no domicile in this state at the time of his or her
57 death and no trust assets are located therein, the county wherein the principal
58 place of administration of the trust is located.

59 (4) For purposes of this subsection, the term "domicile" means the place
60 in which the settlor voluntarily fixed his or her abode, not for a mere special or
61 temporary purpose, but with a present intention of remaining there permanently
62 or for an indefinite term.

63 [5.] 6. For purposes of this section:

64 (1) During the period the power may be exercised, the holder of a power
65 of withdrawal is treated in the same manner as the settlor of a revocable trust
66 to the extent of the property subject to the power; and

67 (2) Upon the lapse, release, or waiver of the power, the holder is treated
68 as the settlor of the trust only to the extent the value of the property affected by
69 the lapse, release, or waiver exceeds the greater of the amount specified in
70 Sections 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code.

71 [6.] 7. This section shall not apply to a spendthrift trust described,

72 defined, or established in section 456.014.

456.5-508. 1. A creditor or other claimant of a beneficiary or
2 other person holding a special power of appointment or a testamentary
3 general power of appointment may not attach trust property or
4 beneficial interests subject to the power, obtain an order from a court
5 forcing a judicial sale of the trust property, compel the exercise of the
6 power, or reach the trust property or beneficial interests by any other
7 means.

8 2. This section shall not limit the ability of a creditor or other
9 claimant to reach a beneficial interest as otherwise provided in
10 sections 456.5-501 to 456.5-507.

11 3. In this section "special power of appointment" means a power
12 of appointment exercisable in favor of one or more appointees other
13 than the holder, the holder's estate, the holder's creditors, or the
14 creditors of the holder's estate, and a "testamentary general power of
15 appointment" means a power of appointment exercisable at the death
16 of the holder, without the consent of the creator of the power or of a
17 person holding an adverse interest in favor of the holder, the holder's
18 estate, the holder's creditors, or the creditors of the holder's estate.

456.8-813. 1. (1) A trustee shall keep the qualified beneficiaries of the
2 trust reasonably informed about the administration of the trust and of the
3 material facts necessary for them to protect their interests. A trustee shall be
4 presumed to have fulfilled this duty if the trustee complies with the notice and
5 information requirements prescribed in subsections 2 to 7 of this section.

6 (2) Unless unreasonable under the circumstances, a trustee shall promptly
7 respond to a beneficiary's request for information related to the administration
8 of the trust.

9 2. A trustee:

10 (1) upon request of a beneficiary, shall promptly furnish to the beneficiary
11 a copy of the trust instrument;

12 (2) within [60] **one hundred and twenty** days after accepting a
13 trusteeship, shall notify the qualified beneficiaries of the acceptance and of the
14 trustee's name, address, and telephone number;

15 (3) within [sixty] **one hundred and twenty** days after the date the
16 trustee acquires knowledge of the creation of an irrevocable trust, or the date the
17 trustee acquires knowledge that a formerly revocable trust has become
18 irrevocable, whether by the death of the settlor or otherwise, shall notify the
19 qualified beneficiaries of the trust's existence, of the identity of the settlor or

20 settlors, of the right to request a copy of the trust instrument, and of the right to
21 a trustee's report as provided in subsection 3 of this section; and

22 (4) shall notify the qualified beneficiaries in advance of any change in the
23 method or rate of the trustee's compensation.

24 3. A trustee shall send to the permissible distributees of trust income or
25 principal, and to other beneficiaries who request it, at least annually and at the
26 termination of the trust, a report of the trust property, liabilities, receipts, and
27 disbursements, including the source and amount of the trustee's compensation,
28 a listing of the trust assets and, if feasible, their respective market values. Upon
29 a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
30 sent to the qualified beneficiaries by the former trustee. A personal
31 representative, conservator, or guardian may send the qualified beneficiaries a
32 report on behalf of a deceased or incapacitated trustee.

33 4. A beneficiary may waive the right to a trustee's report or other
34 information otherwise required to be furnished under this section. A beneficiary,
35 with respect to future reports and other information, may withdraw a waiver
36 previously given.

37 5. A trustee may charge a reasonable fee to a beneficiary for providing
38 information under this section.

39 6. The request of any beneficiary for information under any provision of
40 this section shall be with respect to a single trust that is sufficiently identified
41 to enable the trustee to locate the records of the trust.

42 7. If the trustee is bound by any confidentiality restrictions with respect
43 to an asset of a trust, any beneficiary who is eligible to receive information
44 pursuant to this section about such asset shall agree to be bound by the
45 confidentiality restrictions that bind the trustee before receiving such information
46 from the trustee.

47 8. This section does not apply to a trust created under a trust instrument
48 that became irrevocable before January 1, 2005, and the law in effect prior to
49 January 1, 2005, regarding the subject matter of this section shall continue to
50 apply to those trusts.

469.411. 1. If the provisions of this section apply to a trust, the unitrust
2 amount [shall be determined as follows:] **determined for each accounting**
3 **year of the trust shall be a percentage between three and five percent**
4 **of the average net fair market value of the trust, as of the first day of**
5 **the trust's current accounting year. The percentage applicable to a**
6 **trust shall be that percentage specified by the terms of the governing**
7 **instrument or by the election made in accordance with subdivision (2)**

8 **of subsection 5 of this section.**

9 (1) [For the first three accounting periods of the trust, the unitrust
10 amount for a current valuation year of the trust shall be a percentage between
11 three and five percent that is specified by the terms of the governing instrument
12 or by the election made in accordance with subdivision (2) of subsection 5 of this
13 section, of the net fair market values of the assets held in the trust on the first
14 business day of the current valuation year;

15 (2) Beginning with the fourth accounting period of the trust, the unitrust
16 amount for a current valuation year of the trust shall be a percentage between
17 three and five percent that is specified by the terms of the governing instrument
18 or by the election made in accordance with subdivision (2) of subsection 5 of this
19 section, of the average of the net fair market values of the assets held in the trust
20 on the first business day of the current valuation year and the net fair market
21 values of the assets held in the trust on the first business day of each prior
22 valuation year, regardless of whether this section applied to the ascertainment
23 of net income for all valuation years;

24 (3) The unitrust amount for the current [valuation] **accounting** year
25 computed pursuant to [subdivision (1) or (2) of this subsection] **this section**
26 shall be proportionately reduced for any distributions, in whole or in part, other
27 than distributions of the unitrust amount, and for any payments of expenses,
28 including debts, disbursements and taxes, from the trust within a current
29 [valuation] **accounting** year that the trustee determines to be material and
30 substantial, and shall be proportionately increased for the receipt, other than a
31 receipt that represents a return on investment, of any additional property into
32 the trust within a current [valuation] **accounting** year;

33 [(4)] (2) For purposes of [subdivision (2) of this subsection] **this section**,
34 the net fair market values of the assets held in the trust on the first business day
35 of a prior [valuation year] **accounting quarter** shall be adjusted to reflect any
36 reduction, in the case of a distribution or payment, or increase, in the case of a
37 receipt, for the prior [valuation] **accounting** year pursuant to subdivision [(3)]
38 (1) of this subsection, as if the distribution, payment or receipt had occurred on
39 the first day of the prior [valuation] **accounting** year;

40 [(5)] (3) In the case of a short accounting period, the trustee shall prorate
41 the unitrust amount on a daily basis;

42 [(6)] (4) In the case where the net fair market value of an asset held in
43 the trust has been incorrectly determined [either in a current valuation year or
44 in a prior valuation year] **in any quarter**, the unitrust amount shall be
45 increased in the case of an undervaluation, or be decreased in the case of an

46 overvaluation, by an amount equal to the difference between the unitrust amount
47 determined based on the correct valuation of the asset and the unitrust amount
48 originally determined.

49 2. As used in this section, the following terms mean:

50 (1) "**Average net fair market value**", a rolling average of the fair
51 market value of the assets held in the trust on the first business day of
52 the lessor of the number of accounting quarters of the trust from the
53 date of inception of the trust to the determination of the trust's average
54 net fair market value, or twelve accounting quarters of the trust,
55 regardless of whether this section applied to the ascertainment of net
56 income for all valuation quarters;

57 (2) "Current [valuation] **accounting year**", the accounting period of the
58 trust for which the unitrust amount is being determined[;

59 (2) "Prior valuation year", each of the two accounting periods of the trust
60 immediately preceding the current valuation year].

61 3. In determining the [sum of the] **average** net fair market [values]
62 value of the assets held in the trust [for purposes of subdivisions (1) and (2) of
63 subsection 1 of this section], there shall not be included the value of:

64 (1) Any residential property or any tangible personal property that, as of
65 the first business day of the current valuation year, one or more income
66 beneficiaries of the trust have or had the right to occupy, or have or had the right
67 to possess or control, other than in a capacity as trustee, and instead the right of
68 occupancy or the right to possession or control shall be deemed to be the unitrust
69 amount with respect to the residential property or the tangible personal property;
70 or

71 (2) Any asset specifically given to a beneficiary under the terms of the
72 trust and the return on investment on that asset, which return on investment
73 shall be distributable to the beneficiary.

74 4. In determining the **average** net fair market value of [each asset] **the**
75 **assets** held in the trust pursuant to [subdivisions (1) and (2) of] subsection 1 of
76 this section, the trustee shall, not less often than annually, determine the fair
77 market value of each asset of the trust that consists primarily of real property or
78 other property that is not traded on a regular basis in an active market by
79 appraisal or other reasonable method or estimate, and that determination, if
80 made reasonably and in good faith, shall be conclusive as to all persons interested
81 in the trust. Any claim based on a determination made pursuant to this
82 subsection shall be barred if not asserted in a judicial proceeding brought by any
83 beneficiary with any interest whatsoever in the trust within two years after the

84 trustee has sent a report to all qualified beneficiaries that adequately discloses
85 the facts constituting the claim. The rules set forth in subsection 2 of section
86 469.409 shall apply to the barring of claims pursuant to this subsection.

87 5. This section shall apply to the following trusts:

88 (1) Any trust created after August 28, 2001, with respect to which the
89 terms of the trust clearly manifest an intent that this section apply;

90 (2) Any trust created under an instrument that became irrevocable on,
91 before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects
92 to have this section apply unless the instrument creating the trust specifically
93 prohibits an election under this subdivision. The trustee shall deliver notice to
94 all qualified beneficiaries and the settlor of the trust, if he or she is then living,
95 of the trustee's intent to make such an election at least sixty days before making
96 that election. The trustee shall have sole authority to make the election. Section
97 469.402 shall apply for all purposes of this subdivision. An action or order by any
98 court shall not be required. The election shall be made by a signed writing
99 delivered to the settlor of the trust, if he or she is then living, and to all qualified
100 beneficiaries. The election is irrevocable, unless revoked by order of the court
101 having jurisdiction of the trust. The election may specify the percentage used to
102 determine the unitrust amount pursuant to this section, provided that such
103 percentage is between three and five percent, or if no percentage is specified, then
104 that percentage shall be three percent. In making an election pursuant to this
105 subsection, the trustee shall be subject to the same limitations and conditions as
106 apply to an adjustment between income and principal pursuant to subsections 3
107 and 4 of section 469.405; **and**

108 (3) No action of any kind based on an election made by a trustee pursuant
109 to subdivision (2) of this subsection shall be brought against the trustee by any
110 beneficiary of that trust three years from the effective date of that election[;

111 (4) If this section is made applicable under this subdivision to an
112 institutional endowment fund, as defined in section 402.130, the restrictions
113 contained in section 402.134 shall not apply to the extent payment of a unitrust
114 amount would otherwise be prohibited].

115 **6. (1) Once the provisions of this section become applicable to**
116 **a trust, the net income of the trust shall be the unitrust amount.**

117 **(2) Unless otherwise provided by the governing instrument, the**
118 **unitrust amount distributed each year shall be paid from the following**
119 **sources for that year up to the full value of the unitrust amount in the**
120 **following order:**

121 **(a) Net income as determined if the trust were not a unitrust;**

122 **(b) Other ordinary income as determined for federal income tax**
123 **purposes;**

124 **(c) Assets of the trust principal for which there is a readily**
125 **available market value; and**

126 **(d) Other trust principal.**

127 **(3) Additionally, the trustee may allocate to trust income for**
128 **each taxable year of the trust, or portion thereof:**

129 **(a) Net short-term capital gain described in the Internal Revenue**
130 **Code, 26 U.S.C. Section 1222(5), for such year, or portion thereof, but**
131 **only to the extent that the amount so allocated together with all other**
132 **amounts to trust income, as determined under the provisions of this**
133 **chapter without regard to this section, for such year, or portion**
134 **thereof, does not exceed the unitrust amount for such year, or portion**
135 **thereof;**

136 **(b) Net long-term capital gain described in the Internal Revenue**
137 **Code, 26 U.S.C. Section 1222(7), for such year, or portion thereof, but**
138 **only to the extent that the amount so allocated together with all other**
139 **amounts, including amounts described in paragraph (a) of this**
140 **subdivision, allocated to trust income for such year, or portion thereof,**
141 **does not exceed the unitrust amount for such year, or portion thereof.**

142 **7. A trust with respect to which this section applies on August**
143 **28, 2011, may calculate the unitrust amount in accordance with the**
144 **provisions of this section, as it existed either before or after such date,**
145 **as the trustee of such trust shall determine in a writing kept with the**
146 **records of the trust in the trustee's discretion.**

469.437. 1. As used in this section, the following terms mean:

2 (1) "Payment", an amount that is:

3 (a) Received or withdrawn from a plan; or

4 (b) One of a series of distributions that have been or will be received over
5 a fixed number of years or during the life of one or more individuals under any
6 contractual or other arrangement, or is a single payment from a plan that the
7 trustee could have received over a fixed number of years or during the life of one
8 or more individuals;

9 (2) "Plan", a contractual, custodial, trust or other arrangement that
10 provides for distributions to the trust, including, but not limited to, qualified
11 retirement plans, Individual Retirement Accounts, Roth Individual Retirement
12 Accounts, public and private annuities, and deferred compensation, including
13 payments received directly from an entity as defined in section 469.423 regardless

14 of whether or not such distributions are made from a specific fund or account.

15 2. If any portion of a payment is characterized as a distribution to the
16 trustee of interest, dividends or a dividend equivalent, the trustee shall allocate
17 the portion so characterized to income. The trustee shall allocate the balance of
18 that payment to principal.

19 3. If no part of a payment is allocated to income pursuant to subsection
20 2 of this section, then for each accounting period of the trust that any payment
21 is received by the trust with respect to the trust's interest in a plan, the trustee
22 shall allocate to income that portion of the aggregate value of all payments
23 received by the trustee in that accounting period equal to the amount of plan
24 income attributable to the trust's interest in the plan for that calendar year. The
25 trustee shall allocate the balance of that payment to principal.

26 4. For purposes of this section, if a payment is received from a plan that
27 maintains a separate account or fund for its participants or account holders,
28 including, but not limited to, defined contribution retirement plans, Individual
29 Retirement Accounts, Roth Individual Retirement Accounts, and some types of
30 deferred compensation plans, the phrase "plan income" shall mean either the
31 amount of the plan account or fund held for the benefit of the trust that, if the
32 plan account or fund were a trust, would be allocated to income pursuant to
33 sections 469.401 to 469.467 for that accounting period, or four percent of the
34 value of the plan account or fund on the first day of that accounting period. The
35 method of determining plan income pursuant to this subsection shall be chosen
36 by the trustee in the trustee's discretion. The trustees may change the method
37 of determining plan income pursuant to this subsection for any future accounting
38 period.

39 5. For purposes of this section if the payment is received from a plan that
40 does not maintain a separate account or fund for its participants or account
41 holders, including by way of example and not limitation defined benefit
42 retirement plans and some types of deferred compensation plans, the term "plan
43 income" shall mean four percent of the total present value of the trust's interest
44 in the plan as of the first day of the accounting period, based on reasonable
45 actuarial assumptions as determined by the trustee.

46 **6. Notwithstanding subsections 1 to 5 of this section, with respect**
47 **to a trust where an election to qualify for a marital deduction under**
48 **Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code of**
49 **1986, as amended, has been made, or a trust that qualified for the**
50 **marital deduction under either Section 2056(b)(5) or Section 2523(e) of**
51 **the Internal Revenue Code of 1986, as amended, a trustee shall**

52 **determine the plan income for the accounting period as if the plan**
53 **were a trust subject to sections 469.401 to 469.467. Upon request of the**
54 **surviving spouse, the trustee shall demand that the person**
55 **administering the plan distribute the plan income to the trust. The**
56 **trustee shall allocate a payment from the plan to income to the extent**
57 **of the plan income and distribute that amount to the surviving**
58 **spouse. The trustee shall allocate the balance of the payment to**
59 **principal. Upon request of the surviving spouse, the trustee shall**
60 **allocate principal to income to the extent the plan income exceeds**
61 **payments made from the plan to the trust during the accounting period.**

62 7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee
63 shall allocate more of a payment to income than provided for by this section, the
64 trustee shall allocate to income the additional amount necessary to obtain the
65 marital deduction.

469.459. 1. A tax required to be paid by a trustee based on receipts
2 allocated to income shall be paid from income.

3 2. A tax required to be paid by a trustee based on receipts allocated to
4 principal shall be paid from principal, even if the tax is called an income tax by
5 the taxing authority.

6 3. A tax required to be paid by a trustee on the trust's share of an entity's
7 taxable income shall be paid [proportionately]:

8 (1) From income to the extent that receipts from the entity are allocated
9 to income; and

10 (2) From principal to the extent that[:

11 (a)] receipts from the entity are allocated **only** to principal[; and

12 (b) The trust's share of the entity's taxable income exceeds the total
13 receipts described in subdivision (1) of this subsection and paragraph (a) of this
14 subdivision].

15 4. [For purposes of this section, receipts allocated to principal or income
16 shall be reduced by the amount distributed to a beneficiary from principal or
17 income for which the trust receives a deduction in calculating the tax] **After**
18 **applying subsections 1 to 3 of this section, the trustee shall adjust**
19 **income or principal receipts to the extent that the trust's taxes are**
20 **reduced because the trust receives a deduction for payment made to a**
21 **beneficiary.**

475.060. 1. Any person may file a petition for the appointment of himself
2 **or herself** or some other qualified person as guardian of a minor [or guardian
3 of an incapacitated person]. Such petition shall state:

4 (1) The name, age, domicile, actual place of residence and post office
5 address of the minor [or incapacitated person] if known and if any of these facts
6 is unknown, the efforts made to ascertain that fact;

7 (2) The estimated value of [his] **the minor's** real and personal property,
8 **and the location and value of any real property owned by the minor**
9 **outside of this state;**

10 (3) If the minor [or incapacitated person] has no domicile or place of
11 residence in this state, the county in which the property or major part thereof of
12 the minor [or incapacitated person] is located;

13 (4) The name and address of the parents of the minor [or incapacitated
14 person] and whether they are living or dead;

15 (5) The name and address of the spouse, and the names, ages and
16 addresses of all living children of the minor [or incapacitated person];

17 (6) The name and address of the person having custody of the person of
18 the minor [or incapacitated person];

19 (7) The name and address of any guardian of the person or conservator
20 of the estate of the minor [or incapacitated person] appointed in this or any other
21 state;

22 (8) If appointment is sought for a natural person, other than the public
23 administrator, the names and addresses of wards and disabled persons for whom
24 such person is already guardian or conservator;

25 (9) [In the case of an incapacitated person, the fact that the person for
26 whom guardianship is sought is unable by reason of some specified physical or
27 mental condition to receive and evaluate information or to communicate decisions
28 to such an extent that the person lacks capacity to meet essential requirements
29 for food, clothing, shelter, safety or other care such that serious physical injury,
30 illness or disease is likely to occur] **The name and address of the trustees**
31 **and the purpose of any trust of which the minor is a qualified**
32 **beneficiary;**

33 (10) The reasons why the appointment of a guardian is sought;

34 (11) A petition for the appointment of a guardian of a minor may be filed
35 for the sole and specific purpose of school registration or medical insurance
36 coverage. Such a petition shall clearly set out this limited request and shall not
37 be combined with a petition for conservatorship.

38 **2. Any person may file a petition for the appointment of himself**
39 **or herself or some other qualified person as guardian of an**
40 **incapacitated person. Such petition shall state:**

41 (1) **If known, the name, age, domicile, actual place of residence**

42 and post office address of the alleged incapacitated person and for the
43 period of three years before the filing of the petition, the most recent
44 addresses, up to three, at which the alleged incapacitated person lived
45 prior to the most recent address, and if any of these facts is unknown,
46 the efforts made to ascertain that fact. In the case of a petition filed by
47 a public official in his or her official capacity, the information required
48 by this subdivision need only be supplied to the extent it is reasonably
49 available to the petitioner;

50 (2) The estimated value of the alleged incapacitated person's real
51 and personal property, and the location and value of any real property
52 owned by the alleged incapacitated person outside of this state;

53 (3) If the alleged incapacitated person has no domicile or place
54 of residence in this state, the county in which the property or major
55 part thereof of the alleged incapacitated person is located;

56 (4) The name and address of the parents of the alleged
57 incapacitated person and whether they are living or dead;

58 (5) The name and address of the spouse, the names, ages, and
59 addresses of all living children of the alleged incapacitated person, the
60 names and addresses of the alleged incapacitated person's closest
61 known relatives, and the names and relationship, if known, of any
62 adults living with the alleged incapacitated person; if no spouse, adult
63 child, or parent is listed, the names and addresses of the siblings and
64 children of deceased siblings of the alleged incapacitated person; the
65 name and address of any agent appointed by the alleged incapacitated
66 person in any durable power of attorney, and of the presently acting
67 trustees of any trust of which the alleged incapacitated person is the
68 grantor or is a qualified beneficiary or is or was the trustee or co-
69 trustee and the purpose of the power of attorney or trust;

70 (6) The name and address of the person having custody of the
71 person of the alleged incapacitated person;

72 (7) The name and address of any guardian of the person or
73 conservator of the estate of the alleged incapacitated person appointed
74 in this or any other state;

75 (8) If appointment is sought for a natural person, other than the
76 public administrator, the names and addresses of wards and disabled
77 persons for whom such person is already guardian or conservator;

78 (9) The fact that the person for whom guardianship is sought is
79 unable by reason of some specified physical or mental condition to

80 receive and evaluate information or to communicate decisions to such
81 an extent that the person lacks capacity to meet essential requirements
82 for food, clothing, shelter, safety, or other care such that serious
83 physical injury, illness, or disease is likely to occur;

84 **(10) The reasons why the appointment of a guardian is sought.**

475.061. 1. Any person may file a petition in the probate division of the
2 circuit court of the county of proper venue for the appointment of himself or some
3 other qualified person as conservator of the estate of a minor or disabled
4 person. The petition shall contain the same allegations as are set forth in
5 subdivisions (1), (8), and (10) of **subsection 2** of section 475.060 with respect to
6 the appointment of a guardian for an incapacitated person and, in addition
7 thereto, an allegation that the respondent is unable by reason of some specific
8 physical or mental condition to receive and evaluate information or to
9 communicate decisions to such an extent that the respondent lacks ability to
10 manage his financial resources or that the respondent is under the age of
11 eighteen years.

12 2. A petition for appointment of a conservator or limited conservator of
13 the estate may be combined with a petition for appointment of a guardian or
14 limited guardian of the person. In such a combined petition allegations need not
15 be repeated.

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
3 court shall have the same authority as it has in like cases over personal
4 representatives and their sureties and may appoint another guardian or
5 conservator in the same manner and subject to the same requirements as are
6 herein provided for an 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**
9 **receiving county meets the venue requirements of section 475.035 and**
10 **the public administrator of the receiving county consents to the**
11 **transfer, the court shall transfer the case. The court with jurisdiction**
12 **over the receiving county shall, without the necessity of any hearing as**
13 **required by section 475.075, appoint the public administrator of the**
14 **receiving county as successor guardian and/or successor conservator**
15 **and issue letters therein. In the case of a conservatorship, the final**
16 **settlement of the public administrator's conservatorship shall be filed**
17 **within thirty days of the court's transfer of the case, in the court with**
18 **jurisdiction over the original conservatorship, and forwarded to the**

19 receiving county upon audit and approval.

20

ARTICLE 1

21

GENERAL PROVISIONS

2 475.501. Sections 475.501 to 475.555 may be cited as the "Uniform
2 Adult Guardianship and Protective Proceedings Jurisdiction Act".

2 475.502. Notwithstanding the definitions in section 475.010, when
2 used in sections 475.501 to 475.555, the following terms mean:

3 (1) "Adult", an individual who has attained eighteen years of age;

4 (2) "Conservator", a person appointed by the court to administer
5 the property of an adult, including a person appointed under this
6 chapter;

7 (3) "Guardian", a person appointed by the court to make
8 decisions regarding the person of an adult, including a person
9 appointed under this chapter;

10 (4) "Guardianship order", an order appointing a guardian;

11 (5) "Guardianship proceeding", a proceeding in which an order
12 for the appointment of a guardian is sought or has been issued;

13 (6) "Incapacitated person", an adult for whom a guardian has
14 been appointed;

15 (7) "Party", the respondent, petitioner, guardian, conservator, or
16 any other person allowed by the court to participate in a guardianship
17 or protective proceeding;

18 (8) "Person", except in the term "incapacitated person" or
19 "protected person", an individual, corporation, business trust, estate,
20 trust, partnership, limited liability company, association, joint venture,
21 public corporation, government or governmental subdivision, agency,
22 or instrumentality, or any other legal or commercial entity;

23 (9) "Protected person", an adult for whom a protective order has
24 been issued;

25 (10) "Protective order", an order appointing a conservator or
26 other order related to management of an adult's property;

27 (11) "Protective proceeding", a judicial proceeding in which a
28 protective order is sought or has been issued;

29 (12) "Record", information that is inscribed on a tangible medium
30 or that is stored in an electronic or other medium and is retrievable in
31 perceivable form;

32 (13) "Respondent", an adult for whom a protective order or the
33 appointment of a guardian is sought;

34 (14) "State", a state of the United States, the District of Columbia,
35 Puerto Rico, the United States Virgin Islands, a federally recognized
36 Indian tribe, or any territory or insular possession subject to the
37 jurisdiction of the United States.

 475.503. A court of this state may treat a foreign country as if it
2 were a state for the purpose of applying this article and articles 2, 3,
3 and 5.

 475.504. 1. A court of this state may communicate with a court
2 in another state concerning a proceeding arising under sections 475.501
3 to 475.555. The court may allow the parties to participate in the
4 communication. Except as otherwise provided in subsection 2 of this
5 section, the court shall make a record of the communication. The
6 record may be limited to the fact that the communication occurred.

 2. Courts may communicate concerning schedules, calendars,
8 court records, and other administrative matters without making a
9 record.

 475.505. 1. In a guardianship or protective proceeding in this
2 state, a court of this state may request the appropriate court of another
3 state to:

4 (1) Hold an evidentiary hearing;

5 (2) Order a person in that state to produce evidence or give
6 testimony pursuant to procedures of that state;

7 (3) Order that an evaluation or assessment be made of the
8 respondent;

9 (4) Order any appropriate investigation of a person involved in
10 a proceeding;

11 (5) Forward to the court of this state a certified copy of the
12 transcript or other record of a hearing under subdivision (1) of
13 subsection 1 of this section or any other proceeding, any evidence
14 otherwise produced under subdivision (2) of subsection 1 of this
15 section, and any evaluation or assessment prepared in compliance with
16 an order under subdivisions (3) and (4) of subsection 1 of this section;

17 (6) Issue any order necessary to assure the appearance in the
18 proceeding of a person whose presence is necessary for the court to
19 make a determination, including the respondent or the incapacitated
20 or protected person;

21 (7) Issue an order authorizing the release of medical, financial,
22 criminal, or other relevant information in that state, including

23 **protected health information as defined in 45 CFR 160.103, as amended.**

24 **2. If a court of another state in which a guardianship or**
 25 **protective proceeding is pending requests assistance of the kind**
 26 **provided in subsection 1 of this section, a court of this state has**
 27 **jurisdiction for the limited purpose of granting the request or making**
 28 **reasonable efforts to comply with the request.**

475.506. 1. In a guardianship or protective proceeding, in
 2 **addition to other procedures that may be available, testimony of a**
 3 **witness who is located in another state may be offered by deposition or**
 4 **other means allowable in this state for testimony taken in another**
 5 **state. The court on its own motion may order that the testimony of a**
 6 **witness be taken in another state and may prescribe the manner in**
 7 **which and the terms upon which the testimony is to be taken.**

8 **2. In a guardianship or protective proceeding, a court in this**
 9 **state may permit a witness located in another state to be deposed or to**
 10 **testify by telephone or audiovisual or other electronic means. A court**
 11 **of this state shall cooperate with court of the other state in designating**
 12 **an appropriate location for the deposition or testimony.**

13 **3. Documentary evidence transmitted from another state to a**
 14 **court of this state by technological means that do not produce an**
 15 **original writing may not be excluded from evidence on an objection**
 16 **based on the best evidence rule.**

17 **ARTICLE 2**
 18 **JURISDICTION**

475.521. 1. In this article, the following terms mean:

2 **(1) "Emergency", a circumstance that likely will result in**
 3 **substantial harm to a respondent's health, safety, or welfare, and for**
 4 **which the appointment of a guardian is necessary because no other**
 5 **person has authority and is willing to act on the respondent's behalf;**

6 **(2) "Home state", the state in which the respondent was**
 7 **physically present, including any period of temporary absence, for at**
 8 **least six consecutive months immediately before the filing of a petition**
 9 **for a protective order or the appointment of a guardian; or if none, the**
 10 **state in which the respondent was physically present, including any**
 11 **period of temporary absence, for at least six consecutive months ending**
 12 **within the six months prior to the filing of the petition;**

13 **(3) "Significant-connection state", a state, other than the home**
 14 **state, with which a respondent has a significant connection other than**

15 mere physical presence and in which substantial evidence concerning
16 the respondent is available.

17 2. In determining under section 475.523 and subsection 5 of
18 section 475.531 whether a respondent has a significant connection with
19 a particular state, the court shall consider:

20 (1) The location of the respondent's family and other persons
21 required to be notified of the guardianship or protective proceeding;

22 (2) The length of time the respondent at any time was physically
23 present in the state and the duration of any absence;

24 (3) The location of the respondent's property; and

25 (4) The extent to which the respondent has ties to the state such
26 as voting registration, state or local tax return filing, vehicle
27 registration, driver's license, social relationship, and receipt of
28 services.

475.522. This article provides the exclusive jurisdictional basis
2 for a court of this state to appoint a guardian or issue a protective
3 order for an adult.

475.523. A court of this state has jurisdiction to appoint a
2 guardian or issue a protective order for a respondent if:

3 (1) This state is the respondent's home state;

4 (2) On the date a petition is filed, this state is a significant-
5 connection state and:

6 (a) The respondent does not have a home state or a court of the
7 respondent's home state has declined to exercise jurisdiction because
8 this state is a more appropriate forum; or

9 (b) The respondent has a home state, a petition for an
10 appointment or order is not pending in a court of that state or another
11 significant-connection state, and, before the court makes the
12 appointment or issues the order:

13 a. A petition for an appointment or order is not filed in the
14 respondent's home state;

15 b. An objection to the court's jurisdiction is not filed by a person
16 required to be notified of the proceeding; and

17 c. The court in this state concludes that it is an appropriate
18 forum under the factors set forth in section 475.526;

19 (3) This state does not have jurisdiction under either
20 subdivisions (1) or (2) of this section, the respondent's home state and
21 all significant-connection states have declined to exercise jurisdiction

22 because this state is the more appropriate forum, and jurisdiction in
23 this state is consistent with the constitutions of this state and the
24 United States; or

25 (4) The requirements for special jurisdiction under section
26 475.524 are met.

475.524. 1. A court of this state lacking jurisdiction under
2 section 475.523 has special jurisdiction to do any of the following:

3 (1) Appoint a guardian in an emergency for a term not exceeding
4 ninety days for a respondent who is physically present in this state;

5 (2) Issue a protective order with respect to real or tangible
6 personal property located in this state;

7 (3) Appoint a guardian or conservator for an incapacitated or
8 protected person for whom a provisional order to transfer the
9 proceeding from another state has been issued under procedures
10 similar to section 475.531.

11 2. If a petition for the appointment of a guardian in an
12 emergency is brought in this state and this state was not the
13 respondent's home state on the date the petition was filed, the court
14 shall dismiss the proceeding at the request of the court of the home
15 state, if any, whether dismissal is requested before or after the
16 emergency appointment.

475.525. Except as otherwise provided in section 475.524, a court
2 that has appointed a guardian or issued a protective order consistent
3 with sections 475.501 to 475.555 has exclusive and continuing
4 jurisdiction over the proceeding until it is terminated by the court or
5 the appointment or order expires by its own terms.

475.526. 1. A court of this state having jurisdiction under section
2 475.523 to appoint a guardian or issue a protective order may decline
3 to exercise its jurisdiction if it determines at any time that a court of
4 another state is a more appropriate forum.

5 2. If a court of this state declines to exercise its jurisdiction
6 under subsection 1 of this section, it shall either dismiss or stay the
7 proceeding. The court may impose any condition the court considers
8 just and proper, including the condition that a petition for the
9 appointment of a guardian or protective order be promptly filed in
10 another state.

11 3. In determining whether it is an appropriate forum, the court
12 shall consider all relevant factors, including:

- 13 **(1) Any expressed preference of the respondent;**
14 **(2) Whether abuse, neglect, or exploitation of the respondent has**
15 **occurred or is likely to occur and which state could best protect the**
16 **respondent from the abuse, neglect, or exploitation;**
17 **(3) The length of time the respondent was physically present in**
18 **or was a legal resident of this or another state;**
19 **(4) The distance of the respondent from the court in each state;**
20 **(5) The financial circumstances of the respondent's estate;**
21 **(6) The nature and location of the evidence;**
22 **(7) The ability of the court in each state to decide the issue**
23 **expeditiously and the procedures necessary to present evidence;**
24 **(8) The familiarity of the court of each state with the facts and**
25 **issues in the proceeding; and**
26 **(9) If an appointment were made, the court's ability to monitor**
27 **the conduct of the guardian or conservator.**

475.527. 1. If at any time a court of this state determines that it
2 **acquired jurisdiction to appoint a guardian or issue a protective order**
3 **because of unjustifiable conduct, the court may:**

- 4 **(1) Decline to exercise jurisdiction;**
5 **(2) Exercise jurisdiction for the limited purpose of fashioning an**
6 **appropriate remedy to ensure the health, safety, and welfare of the**
7 **respondent or the protection of the respondent's property or prevent**
8 **a repetition of the unjustifiable conduct, including staying the**
9 **proceeding until a petition for the appointment of a guardian or**
10 **issuance of a protective order is filed in a court of another state having**
11 **jurisdiction; or**
12 **(3) Continue to exercise jurisdiction after considering:**
13 **(a) The extent to which the respondent and all persons required**
14 **to be notified of the proceedings have acquiesced in the exercise of the**
15 **court's jurisdiction;**
16 **(b) Whether it is a more appropriate forum than the court of any**
17 **other state under the factors set forth in subsection 3 of section 475.526;**
18 **and**
19 **(c) Whether the court of any other state would have jurisdiction**
20 **under factual circumstances in substantial conformity with the**
21 **jurisdictional standards of section 475.523.**

22 **2. If a court of this state determines that it acquired jurisdiction**
23 **to appoint a guardian or issue a protective order because a party**

24 seeking to invoke its jurisdiction engaged in unjustifiable conduct, it
25 may assess against that party necessary and reasonable expenses,
26 including attorney's fees, investigative fees, court costs, communication
27 expenses, witness fees and expenses, and travel expenses. The court
28 may not assess fees, costs, or expenses of any kind against this state or
29 a governmental subdivision, agency, or instrumentality of this state
30 unless authorized by law other than sections 475.501 to 475.555.

475.528. If a petition for the appointment of a guardian or
2 issuance of a protective order is brought in this state and this state was
3 not the respondent's home state on the date the petition was filed, in
4 addition to complying with the notice requirements of this state, notice
5 of the petition shall be given to those persons who would be entitled to
6 notice of the petition if a proceeding were brought in the respondent's
7 home state. The notice shall be given in the same manner as notice is
8 required to be given in this state.

475.529. Except for a petition for the appointment of a guardian
2 in an emergency or issuance of a protective order limited to property
3 located in this state as provided in subdivision (1) or (2) of subsection
4 1 of section 475.524, if a petition for the appointment of a guardian or
5 issuance of a protective order is filed in this and in another state and
6 neither petition has been dismissed or withdrawn, the following rules
7 apply:

8 (1) If the court in this state has jurisdiction under section
9 475.523, it may proceed with the case unless a court in another state
10 acquires jurisdiction under provisions similar to section 475.523 before
11 the appointment or issuance of the order.

12 (2) If the court in this state does not have jurisdiction under
13 section 475.523, whether at the time the petition is filed or at any time
14 before the appointment or issuance of the order, the court shall stay
15 the proceeding and communicate with the court in the other state. If
16 the court in the other state has jurisdiction, the court in this state shall
17 dismiss the petition unless the court in the other state determines that
18 the court in this state is a more appropriate forum.

19

ARTICLE 3

20

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

475.531. 1. A guardian or conservator appointed in this state
2 may petition the court to transfer the guardianship or conservatorship
3 to another state.

4 **2. Notice of a petition under subsection 1 of this section shall be**
5 **given to those persons that would be entitled to notice of a petition in**
6 **this state for the appointment of a guardian or conservator.**

7 **3. On the court's own motion or on request of the guardian or**
8 **conservator, the incapacitated or protected person, or other person**
9 **required to be notified of the petition, the court shall hold a hearing on**
10 **a petition filed pursuant to subsection 1 of this section.**

11 **4. The court shall issue an order provisionally granting a**
12 **petition to transfer a guardianship and shall direct the guardian to**
13 **petition for guardianship in the other state if the court is satisfied that**
14 **the guardianship will be accepted by the court in the other state and**
15 **the court finds that:**

16 **(1) The incapacitated person is physically present in or is**
17 **reasonably expected to move permanently to the other state;**

18 **(2) An objection to the transfer has not been made or, if an**
19 **objection has been made, the objector has not established that the**
20 **transfer would be contrary to the interests of the incapacitated person;**
21 **and**

22 **(3) Plans for care and services for the incapacitated person in**
23 **the other state are reasonable and sufficient.**

24 **5. The court shall issue a provisional order granting a petition**
25 **to transfer a conservatorship and shall direct the conservator to**
26 **petition for conservatorship in the other state if the court is satisfied**
27 **that the conservatorship will be accepted by the court of the other state**
28 **and the court finds that:**

29 **(1) The protected person is physically present in or is reasonably**
30 **expected to move permanently to the other state, or the protected**
31 **person has a significant connection to the other state considering the**
32 **factors set forth in subsection 2 of section 475.521;**

33 **(2) An objection to the transfer has not been made or, if an**
34 **objection has been made, the objector has not established that the**
35 **transfer would be contrary to the interests of the protected person; and**

36 **(3) Adequate arrangements will be made for management of the**
37 **protected person's property.**

38 **6. The court shall issue a final order confirming the transfer and**
39 **terminating the guardianship or conservatorship upon its receipt of:**

40 **(1) A provisional order accepting the proceeding from the court**
41 **to which the proceeding is to be transferred which is issued under**

42 provisions similar to section 475.532; and

43 (2) The documents required to terminate a guardianship or
44 conservatorship in this state.

475.532. 1. To confirm transfer of a guardianship or
2 conservatorship transferred to this state under provisions similar to
3 those in section 475.531, the guardian or conservator shall petition the
4 court in this state to accept the guardianship or conservatorship. The
5 petition shall include a certified copy of the other state's provisional
6 order of transfer.

7 2. Notice of a petition under subsection 1 of this section shall be
8 given to those persons that would be entitled to notice if the petition
9 were a petition for the appointment of a guardian or issuance of a
10 protective order in both the transferring state and this state. The
11 notice shall be given in the same manner as notice is required to be
12 given in this state.

13 3. On the court's own motion or on request of the guardian or
14 conservator, the incapacitated or protected person, or other person
15 required to be notified of the proceeding, the court shall hold a hearing
16 on a petition filed pursuant to subsection 1 of this section.

17 4. The court shall issue an order provisionally granting a
18 petition filed under subsection 1 of this section unless:

19 (1) An objection is made and the objector establishes that
20 transfer of the proceeding would be contrary to the interests of the
21 incapacitated or protected person; or

22 (2) The guardian or conservator is ineligible for appointment in
23 this state.

24 5. The court shall issue a final order accepting the proceeding
25 and appointing the guardian or conservator as guardian or conservator
26 in this state upon its receipt from the court from which the proceeding
27 is being transferred of a final order issued under provisions similar to
28 section 475.531 transferring the proceeding to this state.

29 6. Not later than ninety days after issuance of a final order
30 accepting transfer of a guardianship or conservatorship, the court shall
31 determine whether the guardianship or conservatorship needs to be
32 modified to conform to the law of this state.

33 7. In granting a petition under this section, the court shall
34 recognize a guardianship or conservatorship order from the other state,
35 including the determination of the incapacitated or protected person's

36 incapacity and the appointment of the guardian or conservator.

37 8. The denial by a court of this state of a petition to accept
38 guardianship or conservatorship transferred from another state does
39 not affect the ability of the guardian or conservator to seek
40 appointment as guardian or conservator in this state under this
41 chapter if the court has jurisdiction to make an appointment other than
42 by reason of the provisional order of transfer.

43 ARTICLE 4

44 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

475.541. If a guardian has been appointed in another state and
2 a petition for the appointment of a guardian is not pending in this
3 state, the guardian appointed in the other state, after giving notice to
4 the appointing court of an intent to register, may register the
5 guardianship order in this state by filing as a foreign judgment in a
6 court, in any appropriate county of this state, certified copies of the
7 order and letters of office.

475.542. If a conservator has been appointed in another state and
2 a petition for a protective order is not pending in this state, the
3 conservator appointed in the other state, after giving notice to the
4 appointing court of an intent to register, may register the protective
5 order in this state by filing as a foreign judgment in a court of this
6 state, in any county in which property belonging to the protected
7 person is located, certified copies of the order and letters of office and
8 of any bond.

475.543. 1. Upon registration of a guardianship or protective
2 order from another state, the guardian or conservator may exercise in
3 this state all powers authorized in the order of appointment except as
4 prohibited under the laws of this state, including maintaining actions
5 and proceedings in this state and, if the guardian or conservator is not
6 a resident of this state, subject to any conditions imposed upon
7 nonresident parties.

8 2. A court of this state may grant any relief available under
9 sections 475.501 to 475.555 and other law of this state to enforce a
10 registered order.

475.544. Except where inconsistent with sections 475.541, 475.542,
2 and 475.543, the laws of this state relating to the registration and
3 recognition of the acts of a foreign guardian, curator, or conservator
4 contained in sections 475.335 to 475.340 shall be applicable.

5

ARTICLE 5

6

MISCELLANEOUS PROVISIONS

475.551. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

475.552. Sections 475.501 to 475.555 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

475.555. 1. Sections 475.501 to 475.555 apply to guardianship and protective proceedings begun on or after August 28, 2011.

2. Articles 1, 3, 4, and sections 475.551 and 475.552 apply to proceedings begun before August 28, 2011, regardless of whether a guardianship or protective order has been issued.

482.305. When sitting as a small claims court, the judge shall have original jurisdiction of all civil cases, whether tort or contract, where the amount in controversy does not exceed [three] five thousand dollars, exclusive of interest or costs, or as provided in this chapter.

482.315. 1. If the amount in controversy in an action exceeds [three] five thousand dollars, a plaintiff may file and prosecute a small claims action for recovery of money, but such plaintiff waives any claim for any sum in excess of [three] five thousand dollars in that or in any subsequent proceeding involving the same parties and issues.

2. In an action transferred under section 482.325, the plaintiff or defendant may amend the claim or counterclaim to a dollar amount not to exceed the jurisdictional limit of the division of the circuit court to which the action was transferred.

Section 1. 1. As used in this section, "qualified spousal trust" means a trust:

(1) The settlors of which are husband and wife at the time of the creation of the trust; and

(2) The terms of which provide that during the joint lives of the settlors all property or interests in property transferred to, or held by, the trustee are either:

(a) Held and administered in one trust for the benefit of both settlors, revocable by either or both settlors acting together while

10 either or both are alive, and each settlor having the right to receive
11 distributions of income or principal, whether mandatory or within the
12 discretion of the trustee, from the entire trust for the joint lives of the
13 settlors and for the survivor's life; or

14 (b) Held and administered in two separate shares of one trust for
15 the benefit of each of the settlors, with the trust revocable by each
16 settlor with respect to that settlor's separate share of that trust without
17 the participation or consent of the other settlor, and each settlor
18 having the right to receive distributions of income or principal,
19 whether mandatory or within the discretion of the trustee, from that
20 settlor's separate share for that settlor's life.

21 2. A qualified spousal trust may contain any other trust terms
22 that are not inconsistent with the provisions of this section.

23 3. Property or interests in property held as tenants by the
24 entirety by a husband and wife that is at any time transferred to the
25 trustee of a qualified spousal trust of which the husband and wife are
26 the settlors shall be held and administered as provided by the trust
27 terms in accordance with either paragraph (a) or (b) of subdivision (2)
28 of subsection 1 of this section, and all such property and interests in
29 property, including the proceeds thereof, the income thereon, and any
30 property into which such property, proceeds, or income may be
31 converted, shall thereafter have the same immunity from the claims of
32 the separate creditors of the settlors as would have existed if the
33 settlors had continued to hold that property as husband and wife as
34 tenants by the entirety, so long as:

35 (1) Both settlors are alive and remain married; and

36 (2) The property, proceeds, or income continue to be held in
37 trust by the trustee of the qualified spousal trust.

38 4. Property or interests in property held by a husband and wife
39 or held in the sole name of a husband or wife that is not held as tenants
40 by the entirety and is transferred to a qualified spousal trust shall be
41 held as directed in the qualified spousal trust's governing instrument
42 or in the instrument of transfer and the rights of any claimant to any
43 interest in that property shall not be affected by this section.

44 5. Upon the death of each settlor, all property and interests in
45 property held by the trustee of the qualified spousal trust shall be
46 distributed as directed by the then current terms of the governing
47 instrument of such trust. Upon the death of the first settlor to die, if

48 immediately prior to death the predeceased settlor's interest in the
49 qualified spousal trust was then held in such settlor's separate share,
50 the property or interests in property in such settlor's separate share
51 may pass into an irrevocable trust for the benefit of the surviving
52 settlor upon such terms as the governing instrument shall direct,
53 including without limitation a spendthrift provision as provided in
54 section 456.5-502.

55 6. No transfer by a husband and wife as settlors to a qualified
56 spousal trust shall affect or change either settlor's marital property
57 rights to the transferred property or interest therein immediately prior
58 to such transfer in the event of dissolution of marriage of the spouses,
59 unless both spouses otherwise expressly agree in writing.

60 7. This section shall apply to all trusts which fulfill the criteria
61 set forth in this section for a qualified spousal trust regardless of
62 whether such trust was created before or after August 28, 2011.

✓

Bill

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