

SENATE BILL NO. 569

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

2152S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 456.1-108, RSMo, and to enact in lieu thereof fifteen new sections relating to estate planning.

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

Section A. Section 456.1-108, RSMo, is repealed and
2 fifteen new sections enacted in lieu thereof, to be known as
3 sections 456.1-108, 474.540, 474.542, 474.544, 474.546,
4 474.548, 474.550, 474.552, 474.554, 474.556, 474.558, 474.560,
5 474.562, 474.564, and 474.600, to read as follows:

456.1-108. 1. Without precluding other means for
2 establishing a sufficient connection with the designated
3 jurisdiction, terms of a trust designating the principal
4 place of administration are valid and controlling if:

5 (1) a trustee's principal place of business is located
6 in or a trustee is a resident of the designated
7 jurisdiction; or

8 (2) all or part of the administration occurs in the
9 designated jurisdiction.

10 2. Without precluding the right of the court to order,
11 approve, or disapprove a transfer, the trustee may transfer
12 the trust's principal place of administration to another
13 state or to a jurisdiction outside of the United States that
14 is appropriate to the trust's purposes, its administration,
15 and the interests of the beneficiaries.

16 3. The trustee shall notify the qualified
17 beneficiaries of a proposed transfer of a trust's principal
18 place of administration not less than sixty days before

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

19 initiating the transfer. The notice of proposed transfer
20 must include:

- 21 (1) the name of the jurisdiction to which the
22 principal place of administration is to be transferred;
- 23 (2) the address and telephone number at the new
24 location at which the trustee can be contacted;
- 25 (3) an explanation of the reasons for the proposed
26 transfer;
- 27 (4) **a notice that states a change in the place of**
28 **administration may result in a change of the governing law,**
29 **which may affect the rights of any beneficiaries in ways**
30 **that are different from the current governing law;**
- 31 (5) the date on which the proposed transfer is
32 anticipated to occur; and
- 33 [(5)] (6) the date, not less than sixty days after the
34 giving of the notice, by which the qualified beneficiary
35 must notify the trustee of an objection to the proposed
36 transfer.

37 4. The authority of a trustee under this section to
38 transfer a trust's principal place of administration without
39 an order of a court terminates if a qualified beneficiary
40 notifies the trustee of an objection to the proposed
41 transfer on or before the date specified in the notice.

42 5. In connection with a transfer of the trust's
43 principal place of administration, the trustee may transfer
44 some or all of the trust property to a successor trustee
45 designated in the terms of the trust or appointed pursuant
46 to section 456.7-704.

474.540. The provisions of sections 474.540 to 474.564
2 **shall be known and may be cited as the "Missouri Electronic**
3 **Wills and Electronic Estate Planning Documents Act".**

474.542. As used in sections 474.540 to 474.564, the following terms mean:

(1) "Electronic", technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(2) "Electronic presence", the relationship of two or more individuals in different locations in real time using technology enabling live, interactive audio-visual communication that allows for observation, direct interaction, and communication between or among the individuals;

(3) "Electronic will", a will executed electronically in compliance with subsection 1 of section 474.548;

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

(5) "Security procedure", a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record, including a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure;

(6) "Sign", with present intent to authenticate or adopt a record to:

(a) Execute or adopt a tangible symbol; or

(b) Affix to or logically associate with the record an electronic symbol or process;

(7) "State", a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States;

33 (8) "Will", a codicil and any testamentary instrument
34 that appoints an executor, revokes or revises another will,
35 nominates a guardian, or expressly excludes or limits the
36 right of an individual or class to succeed to property of
37 the decedent passing by intestate succession.

 474.544. An electronic will shall be a will for all
2 purposes of the laws of this state. The provisions of law
3 applicable to wills and principals of equity shall apply to
4 an electronic will, except as modified by sections 474.540
5 to 474.564.

 474.546. A will executed electronically, but not in
2 compliance with subsection 1 of section 474.548, shall be an
3 electronic will under the provisions of sections 474.540 to
4 474.564 if executed in compliance with the law of the
5 jurisdiction where the testator is:

- 6 (1) Physically located when the will is signed; or
7 (2) Domiciled, or where the testator resides, when the
8 will is signed or when the testator dies.

 474.548. 1. An electronic will shall be:

2 (1) A record that is readable as text at the time of
3 signing as provided in subdivision (2) of this subsection
4 and remains accessible as text for later reference;

5 (2) Signed by:

6 (a) The testator; or

7 (b) Another individual in the testator's name, in the
8 testator's physical presence, and by the testator's
9 direction; and

10 (3) Signed in the physical or electronic presence of
11 the testator by at least two individuals after witnessing:

- 12 (a) The signing of the will pursuant to subdivision
13 (2) of this subsection; or

14 (b) The testator's acknowledgment of the signing of
15 the will pursuant to subdivision (2) of this subsection or
16 acknowledgment of the will.

17 2. The intent of a testator that the record in
18 subdivision (1) of subsection 1 of this section be the
19 testator's electronic will may be established by extrinsic
20 evidence.

21 3. In accordance with the provisions of sections
22 474.337 or 474.550, a witness to a will shall be a resident
23 of a state and physically located in a state at the time of
24 signing if no self-proving affidavit is signed
25 contemporaneously with the execution of the electronic will.

474.550. At the time of its execution or at any
2 subsequent date, an electronic will may be made self-proved
3 in the same manner as specified in section 474.337 or, if
4 fewer than two witnesses are physically present in the same
5 location as the testator at the time of such
6 acknowledgments, before a remote online notary authorized to
7 perform a remote online notarization in this state under the
8 law of any state or the United States, and evidenced by a
9 remote online notarial certificate, in form and content
10 substantially as follows, subject to the additional
11 requirements under section 486.1165:

12 State of _____

13 County (and/or City) of _____

14 I, the undersigned notary, certify that _____, the
15 testator, and the witnesses, whose names are signed to
16 the attached or foregoing instrument, having personally
17 appeared before me by remote online means, and having
18 been first duly sworn, each then declared to me that
19 the testator signed and executed the instrument as the
20 testator's last will, and that the testator had
21 willingly signed or willingly directed another to sign

22 for the testator, and that the testator executed it as
23 the testator's free and voluntary act for the purposes
24 therein expressed; and that each of the witnesses, in
25 the presence and hearing of the testator, signed the
26 will as witness and that to the best of the witnesses'
27 knowledge the testator was at that time eighteen or
28 more years of age, of sound mind, and under no
29 constraint or undue influence.

30
31 In witness thereof I have hereunto subscribed my name
32 and affixed my official seal this _____ (date).

33 _____ (official signature and seal of
34 notary)

474.552. 1. An electronic will may revoke all or part
2 of a previous will.

3 2. All or part of an electronic will shall be revoked
4 by:

5 (1) A subsequent will that revokes all or part of the
6 electronic will expressly or by inconsistency;

7 (2) A written instrument signed by the testator
8 declaring the revocation; or

9 (3) A physical act, if it is established by a
10 preponderance of the evidence that the testator, with the
11 intent of revoking all or part of the will, performed the
12 act or directed another individual who performed the act in
13 the testator's physical presence.

14 3. If there is evidence that a testator signed an
15 electronic will and neither the electronic will nor a
16 certified paper copy of the electronic will can be located
17 after a testator's death, there shall be a presumption that
18 the testator revoked the electronic will, even if no
19 instrument or later will revoking the electronic will can be
20 located.

474.554. Without further notice, at any time during
2 the administration of the estate or, if there is no grant of
3 administration, upon such notice and in such manner as the
4 court directs, the court may issue an order pursuant to
5 sections 472.400 to 472.490 for a custodian of an account
6 held under a terms-of-service agreement to disclose digital
7 assets for the purposes of obtaining an electronic will from
8 the account of a deceased user. If there is no grant of
9 administration at the time the court issues the order, the
10 court's order shall grant disclosure to the petitioner who
11 is deemed a personal representative for sections 472.400 to
12 472.490.

474.556. 1. An individual may create a certified
2 paper copy of an electronic will by affirming under penalty
3 of perjury that a paper copy of the electronic will is a
4 complete, true, and accurate copy of the electronic will.
5 If the electronic will is made self-proving, the certified
6 paper copy of the will shall include a self-proving
7 affidavit as provided in sections 474.337 or 474.550.

2. If a provision of law or rule of procedure requires
8 a will to be presented or retained in its original form or
9 provides legal consequences for the information not being
10 presented or retained in its original form, that provision
11 or rule shall be satisfied by a certified paper copy of an
12 electronic will.
13

474.558. In applying and construing the provisions of
2 sections 474.540 to 474.564, consideration shall be given to
3 the need to promote uniformity of the law with respect to
4 its subject matter among states that enact similar
5 provisions.

474.560. 1. Any written estate planning document may
2 be executed electronically, and no such estate planning

3 document shall be invalid or void solely because it is in
4 electronic form or because it is signed electronically by a
5 settlor, trustee, principal, grantor, declarant, or owner,
6 or by a witness to any such person's signature. For
7 purposes of this section, "estate planning document" shall
8 include, but not be limited to:

- 9 (1) A power of attorney or durable power of attorney;
- 10 (2) A health care declaration;
- 11 (3) An advance directive;
- 12 (4) A power of attorney for health care or durable
13 power of attorney for health care;
- 14 (5) A revocable trust or amendment thereto, or
15 modification or revocation thereof;
- 16 (6) An irrevocable trust;
- 17 (7) A beneficiary deed;
- 18 (8) A nonprobate transfer; or
- 19 (9) A document modifying, amending, correcting, or
20 revoking any written estate planning document.

21 2. (1) An electronic estate planning document or an
22 electronic signature on such document shall be attributable
23 to a person if it was the act of the person. The act of the
24 person may be shown in any manner, including a showing of
25 the efficacy of a security procedure applied to determine
26 the person to which the electronic record or signature was
27 attributable.

28 (2) The effect of attribution of a document or
29 signature to a person pursuant to subdivision (1) of this
30 subsection shall be determined from the context and
31 surrounding circumstances at the time of its creation,
32 execution, or adoption and as provided by other provisions
33 of law.

34 3. (1) Unless otherwise provided under its terms, any
35 electronic estate planning document may be signed in one or
36 more counterparts, and each separate counterpart may be an
37 electronic document or a paper document, provided that all
38 signed counterpart pages of each document are incorporated
39 into, or attached to, the document.

40 (2) An individual may create a certified paper copy of
41 any such electronic estate planning document by affirming
42 under penalty of perjury that a paper copy of the electronic
43 estate planning document is a complete, true, and accurate
44 copy of such document. If a provision of law or rule of
45 procedure requires an estate planning document to be
46 presented or retained in its original form or provides legal
47 consequences for the information not being presented or
48 retained in its original form, such provision or rule shall
49 be satisfied by a certified paper copy of an electronic
50 document.

51 4. Any written estate planning document, other than a
52 will, that requires one or more witnesses to the signature
53 of a principal may be witnessed by any individual or
54 individuals in the electronic presence of the principal.

55 5. A person who acts in reliance upon an
56 electronically executed written estate planning document
57 shall not be liable to any person for so relying and may
58 assume without inquiry the valid execution of the
59 electronically executed written estate planning document.

60 6. This section does not require a written estate
61 planning document to be electronically signed.

62 7. The laws of this state and principles of equity
63 applicable to any estate planning document shall apply to
64 any electronic estate planning document except as modified
65 by this section.

474.562. The provisions of sections 474.540 to 474.564
2 modify, limit, and supersede the federal Electronic
3 Signatures in Global and National Commerce Act, 15 U.S.C.
4 Section 7001 et seq., but do not modify, limit, or supersede
5 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
6 authorize electronic delivery of any of the notices
7 described in Section 103(b) of that act, 15 U.S.C. Section
8 7003(b).

474.564. The provisions of sections 474.540 to 474.564
2 shall apply to any will of a decedent who dies on or after
3 August 28, 2023, and to each written estate planning
4 document, as that term is defined in section 474.560, signed
5 or remotely witnessed on or after August 28, 2023.

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

3 (1) "Applicable state of emergency", the period
4 between April 6, 2020, and December 31, 2021, during which a
5 state of emergency existed due to a COVID-19 public health
6 threat, as proclaimed by the governor, and during which
7 executive orders 20-08, 20-10, 20-12, 20-14, 20-19, 21.07,
8 and 21.09 temporarily suspended the physical appearance
9 requirements in chapter 474 and authorized the use of audio-
10 visual technology to the extent that any Missouri statute
11 required the physical presence of any testator, settlor,
12 principal, witness, notary, or other person necessary for
13 the effective execution of any estate planning document such
14 as a will, trust, or power of attorney, or a self-proving
15 affidavit of the execution of such document, if the
16 conditions set forth in the executive orders were met;

17 (2) "Estate planning document", includes, but is not
18 limited to:

19 (a) A will;

- 20 (b) A codicil;
- 21 (c) A power of attorney or durable power of attorney;
- 22 (d) A health care declaration;
- 23 (e) An advance directive;
- 24 (f) A power of attorney for health care or a durable
25 power of attorney for health care;
- 26 (g) A revocable trust or amendment thereto, or
27 modification or revocation thereof;
- 28 (h) An irrevocable trust;
- 29 (i) A beneficiary deed;
- 30 (j) A nonprobate transfer; or
- 31 (k) A document modifying, amending, correcting, or
32 revoking any written estate planning document;
- 33 (3) "Necessary person", any testator, settlor,
34 grantor, principal, declarant, witness, notary, or other
35 person required for the effective execution of any estate
36 planning document in this state;
- 37 (4) "Physical presence requirement", includes, but is
38 not limited to, any requirement of physical presence under
39 section 404.705, 459.015, 474.320, or 474.337, or chapter
40 486.
- 41 2. With respect to the execution of an estate planning
42 document, a necessary person shall be deemed to have
43 satisfied any physical presence requirement under Missouri
44 law during the applicable state of emergency if the
45 following requirements were met:
- 46 (1) The signor affirmatively represented that the
47 signor was physically situated in the state of Missouri;
- 48 (2) The notary was physically located in the state of
49 Missouri and stated in which county the notary was
50 physically located for the jurisdiction on the
51 acknowledgment;

52 (3) The notary identified the signors to the
53 satisfaction of the notary and Missouri law;

54 (4) Any person whose signature was required appeared
55 using video conference software where live, interactive
56 audio-visual communication between the principal, notary,
57 and other necessary person allowed for observation, direct
58 interaction, and communication at the time of signing; and

59 (5) The notary recorded in the notary's journal the
60 exact time and means used to perform the notarial act, along
61 with all other required information, absent the wet
62 signatures.

63 3. The requirements of subdivisions (1) to (5) of
64 subsection 2 of this section shall be deemed satisfied if an
65 attorney who is licensed or authorized to practice law in
66 Missouri and who was present at the remote execution signs a
67 written acknowledgment made before an officer authorized to
68 administer oaths under the laws of this state, and evidenced
69 by the officer's certificate, under official seal, affixed
70 to or logically associated with the acknowledgment. The
71 form and content of the acknowledgment shall be
72 substantially as follows:

73 State of _____

74 County of _____

75 AFFIDAVIT OF REMOTE EXECUTION OF DOCUMENTS

76 I, _____, am an attorney licensed or authorized to
77 practice law in the state of Missouri.

78 On _____ (date), I convened with the following
79 individuals via video conference software that allowed
80 for live, interactive audio-visual communication between
81 the parties to the conference and that also allowed for
82 observation, direction, interaction, and communication
83 between:

84 _____, the (testator, settlor, grantor, principal,
85 or declarant);

86 _____, a witness;

87 _____, a second witness; and

88 _____, a notary public.

89 During the conference, _____, the (testator,
90 settlor, grantor, principal, or declarant) signed the
91 following estate planning document or documents: (a
92 will, codicil, power of attorney, durable power of
93 attorney, health care declaration, advance directive,
94 health care power of attorney, revocable trust,
95 irrevocable trust, beneficiary deed, nonprobate
96 transfer, self-proving affidavit of the execution of a
97 will, or a document modifying, amending, correcting, or
98 revoking one of these estate planning documents).

99 All the parties to the conference represented that they
100 were physically located in the state of Missouri at the
101 time of the signing.

102 I have reviewed and am familiar with the requirements of
103 the applicable executive order or orders in effect at
104 the time and affirm that the remote execution of the
105 estate planning document or documents met all the
106 requirements of the applicable executive order or
107 orders.

108 In witness whereof I, an officer authorized to
109 administer oaths, have hereunto subscribed my name and
110 affixed my official seal this _____ (date).

111 (Signed) _____

112 (SEAL) _____

113 (Official capacity of officer)

✓