Missouri Revised Statutes

Chapter 404
Transfers to Minors--Personal Custodian and Durable Power of Attorney

August 28, 2013

Law, how cited.

404.005. Sections 404.005 to 404.094 may be cited as the "Missouri Transfers to Minors Law".

(L. 1985 S.B. 35, et al. § 16)

Definitions.

404.007. As used in sections 404.005 to 404.094, unless the context otherwise requires, the following terms shall mean:

(1) "Adult", an individual who has attained the age of twenty-one years, notwithstanding that an individual may be an adult at a different age under other laws of this state;

(2) "Benefit plan", any plan, contract, trust or account for the benefit of employees, partners, members of an organization or an individual, in which a person may designate a beneficiary for a plan benefit; the term "benefit plan" is also used to refer to the fiduciary administering the plan;

(3) "Broker", a person lawfully engaged in the business of effecting transactions in securities or commodities for the broker's own account or the account of others;

(4) "Conservator", a person appointed or qualified by a court to have care and custody of the estate of a minor or a disabled or incapacitated person, whether

denominated as general, limited or temporary conservator, or a person legally authorized to perform substantially the same functions;

(5) "Court", the circuit court, including the probate division of the circuit court;

(6) "Custodial property", all property belonging to a minor in the possession and control of a custodian under sections 404.005 to 404.094 and includes the income and proceeds of that property;

(7) "Custodian", a person so designated in a manner prescribed in sections 404.005 to 404.094 and includes a substitute custodian and successor custodian;

(8) "Donor", a transferor who makes a present or future gift of property to a minor by a transfer under sections 404.005 to 404.094 and includes a person who holds a power of appointment to make a gift of the donor's property in a similar manner;

(9) "Financial institution", a bank, trust company, savings and loan company or association, or credit union, chartered and supervised under state or federal law;

(10) "Guardian", a person appointed or qualified by a court to have care and custody of the person of a minor or incapacitated person, whether denominated as general, limited or temporary guardian, or a person legally authorized to perform substantially the same functions;

(11) "Incapacitated person", a person who is wholly or partially unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability or capacity to manage his financial resources and is a disabled or incapacitated person as defined in section 475.010;

(12) "Legal representative", a decedent's personal representative, the guardian of a person or the conservator of the estate of a person;

(13) "Member of the minor's family", the minor's parent, grandparent, uncle, aunt, brother, sister and their descendants, whether of the whole blood or the half blood, or by adoption, and the minor's spouse and stepparent;

(14) "Minor", an individual who has not attained the age of twenty-one years, notwithstanding that the individual may be an adult under other laws of this

state; the term "minor" is also used to refer to the beneficiary of a custodianship established under sections 404.005 to 404.094 of this act*;

(15) "Person", an individual, corporation, organization, or other legal entity;

(16) "Personal representative", an executor, administrator, successor personal representative, independent personal representative, or special administrator of a decedent's estate, whether court appointed or qualified, or a person legally authorized to perform substantially the same functions;

(17) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable, and includes the income and proceeds of that interest in property;

(18) "State", includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States;

(19) "Transferor", a person who transfers property to a minor under sections 404.005 to 404.094 of this act*.

(L. 1985 S.B. 35, et al. § 1, A.L. 1989 H.B. 145)

*"This act" (H.B. 145, 1989) contained numerous sections. Consult Disposition of Sections table for a definitive listing.

Transfer of property to a minor by transferring to a custodian, effect--power limitations.

404.011. Property may be transferred to a person, who is a minor on the date of the transfer, by transferring the property to a custodian for the minor under sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 2 subsec. 1)

Present transfer of property, effect.

404.014. A present transfer of property to a custodian for a minor, made by a transferor in the manner prescribed in subdivisions (1), (2), (3) and (5) of subsection 1 of section 404.047, is irrevocable and indefeasibly vests ownership of the property in the minor subject to the custodianship provided in sections 404.005 to 404.094 for the benefit of the minor, and neither the minor

nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as prescribed in sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 2 subsec. 2)

Future transfers of property are revocable by donor, exception.

404.016. A provision in a will, trust, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction, for a transfer of property to be made in the future to a custodian for a minor, made by a donor in the manner prescribed in subdivision (4) of subsection 1 of section 404.047, remains revocable by the donor until the property becomes transferable in accordance with the terms of the governing instrument to the minor or a custodian for the minor under sections 404.005 to 404.094, unless expressly made irrevocable at the time provision for the gift is made or subsequently.

(L. 1985 S.B. 35, et al. § 2 subsec. 3)

Custodian and third persons dealing with custodian, powers, duties, immunities.

404.018. By transferring property to a custodian for a minor under sections 404.005 to 404.094, the transferor incorporates in the transfer all the provisions of sections 404.005 to 404.094 and grants to the custodian and third persons dealing with the custodian the respective powers, rights and immunities provided in sections 404.005 to 404.094. By holding property for a minor as custodian under sections 404.005 to 404.094, the custodian assumes the obligation to administer the custodial property for the minor as prescribed in sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 2 subsec. 4)

Single custodianship--but custodian may serve more than one minor.

404.021. A transfer of property under sections 404.005 to 404.094 may be made to only one minor and only one person may be custodian of the property transferred. A person may be a custodian of property for more than one minor,

but the custodian shall separately hold and administer the custodial property for each minor.

(L. 1985 S.B. 35, et al. § 2 subsec. 5)

Custodians for present transfers of property, who may serve.

404.023. A donor making a present transfer of property to a minor may designate and transfer the property to any adult person or financial institution, including the donor, as custodian for the minor under sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 3 subsec. 1, A.L. 1989 H.B. 145)

Custodians for future transfers, who may serve--lapse of custodianship, effect--substitute custodians, power to designate--revocation.

404.027. 1. A donor making a future transfer of property to a beneficiary under a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction, may revocably designate, or grant to another person a general or limited power to revocably designate, any adult person or financial institution, including the holder of the power, as custodian under sections 404.005 to 404.094 for a beneficiary who may be a minor at the time the property becomes transferable.

2. When the property becomes transferable to the minor beneficiary, the donor's personal representative, trustee, benefit plan, insurance company, or contract obligor shall transfer the property to the designated custodian in the manner prescribed in subdivisions (1), (2), (3) and (5) of subsection 1 of section 404.047 for the type of property to be transferred. If, at the time the property becomes transferable, the minor beneficiary has attained twenty-one years of age, the custodian designation shall lapse and the property may be transferred directly to the beneficiary.

3. The designation of a custodian for a future transfer of property may include the designation of one or more substitute custodians to whom the property shall be transferred in the order named in the event the prior named custodian declines or is not qualified to serve as custodian, or is deceased or incapacitated. A donor or a person exercising a power from a donor may revoke or change the designation of a custodian or substitute custodian for a future

transfer of property by revoking the designation or making a new designation before the property becomes transferable.

(L. 1985 S.B. 35, et al. § 3 subsecs. 2, 3, 4, A.L. 1989 H.B. 145)

Custodian if no appointed conservator, who may serve--approval of court required when--bond required when--court's powers.

404.031. 1. If there is no appointed conservator for administration of a minor's estate, any person indebted to a minor, including a personal representative, trustee, benefit plan, insurance company, agency of any state or of the United States, or any person holding property belonging to a minor, not having a power from a donor to designate a custodian, may designate and transfer the property to any adult person or financial institution, including the transferor if a member of the minor's family, as custodian for the minor under sections 404.005 to 404.094.

2. A minor who does not have an appointed conservator for administration of the minor's estate may designate and transfer property that the minor owns to any adult person or financial institution as custodian for the minor under sections 404.005 to 404.094.

3. Approval of the court shall be obtained for any designation under subsection 1 or 2 of this section of a custodian that is not a financial institution, if the value of the property at the time of transfer to the designated custodian exceeds ten thousand dollars. The court may approve the designation under subsection 1 or 2 of this section of any person to act as custodian to hold and administer the property with or without bond and with or without court supervision, upon such terms as the court may require, and may order transfer of the property to a court supervised conservator.

(L. 1985 S.B. 35, et al. § 3 subsec. 5, A.L. 1989 H.B. 145)

Qualifications of custodians--transfers to persons not qualified, effect.

404.035. An adult person or financial institution shall not be qualified to be designated custodian for property of a minor who is a resident of this state if the person or financial institution is not qualified to be appointed conservator of the estate of the minor under subsection 2 of section 475.055 or if the financial institution is not legally authorized to do business in this state. A transfer of property to a person not qualified to act as custodian for the minor under

sections 404.005 to 404.094 subjects the person to removal as custodian under subsection 11 of section 404.057, but does not affect the minor's ownership of the property and the immunities of third persons dealing with the custodian, nor relieve the unqualified person of any duties or responsibilities imposed on custodians under sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 3 subsecs. 6, 7, A.L. 1989 H.B. 145)

Additional property of minor transferred to custodian, when--guardian or conservator appointed by court may serve as custodian, when--custodian's rights in other property of minor.

404.041. 1. When a custodianship has been established for a minor, the court may authorize the custodian to accept and receive into the custodianship any additional property that belongs to the minor, with or without bond and with or without court supervision, upon such terms and conditions as the court may require.

2. If the court determines under chapter 475 that full administration of a minor's estate is not required, the court may designate and direct that all or a part of the property owned by the minor be transferred to any adult person or financial institution, including a court-appointed conservator or guardian, to hold and administer under sections 404.005 to 404.094 as custodian for the minor, with or without bond and with or without court supervision, upon such terms and conditions as the court may require.

3. A custodian has no right, because of designation as custodian to possession, control, income or proceeds of any property belonging to the minor that is not transferred to the custodian by the minor, a donor or a person indebted to the minor, except as authorized by the court under subsection * 2 of this section.

(L. 1985 S.B. 35, et al. § 3 subsecs. 8, 9, A.L. 1989 H.B. 145)

*Word "and" appears here in original rolls.

Transfer of property to custodian, procedure, forms--receipt for delivery of property deemed a release.

404.047. 1. The designation of a custodian and transfer of property to the custodian shall be made in the following manner:

(1) If the subject of the custodianship is property for which a conveyance is filed with a recorder of deeds, property for which a certificate of ownership or similar title instrument is issued by an agency of any state or of the United States, property which is maintained in registered name, property which is evidenced by a written instrument, or property which is deposited in an account with a broker or financial institution, by executing a deed, assignment, endorsement or other appropriate writing placing the property in the name of the designated custodian followed in substance by the words: "as custodian for ..... (name of minor) under the Missouri Transfers to Minors Law";

(2) If the subject of the custodianship is money or an unregistered security, by having it paid or delivered to a broker or financial institution for the account of the person designated custodian followed in substance by the words: "as custodian for ..... (name of minor) under the Missouri Transfers to Minors Law";

(3) If the subject of the custodianship is a transfer of property by the irrevocable exercise of a power of appointment or a transfer of an irrevocable present right to a future payment, by giving written notice to the holder of the property or payment obligor that the property or right is transferred to the person designated custodian followed in substance by the words: "as custodian for ..... (name of minor) under the Missouri Transfers to Minors Law";

(4) If the subject of the custodianship is to be a future transfer of property under a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction, by making the gift or beneficiary designation in the name of the designated custodian followed in substance by the words: "as custodian for ..... (name of minor) under the Missouri Transfers to Minors Law", or by naming the minor as beneficiary of the gift and providing for alternate distribution of the property to a custodian for the minor under sections 404.005 to 404.094 in the event the beneficiary is a minor at the time the property becomes transferable;

(5) If the subject of the custodianship is property not described in subdivision (1), (2), (3) or (4) of this subsection, by causing the property to be placed in the name of the designated custodian by a written instrument in substantially the form set forth as follows:

TRANSFER UNDER THE MISSOURI TRANSFERS TO MINORS LAW

I, ..., (name of donor or transferor and representative capacity, if any) hereby assign and deliver to ....(name of custodian), as custodian for ..... (name of minor) under the Missouri Transfers to Minors Law, the following: (insert a description of the custodial property sufficient to identify it). Dated: .....

.....

.....

Signature

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Missouri Transfers to Minors Law. Dated: .....

....

Signature of Custodian

2. A present transfer of property to a minor is complete and custodial property is created when the custodian for the minor is designated in the manner provided in subdivisions (1), (2), (3) and (5) of subsection 1 of this section. A future transfer of property to a minor is complete and custodial property is created when the property becomes transferable under the governing instrument to a custodian for a minor designated in the manner provided in subdivision (4) of subsection 1 of this section.

3. In addition to the writing required by subsection 1 of this section, the transferor as soon as practicable shall do all things to put the property in the possession and control of the custodian and provide the custodian with such evidence of ownership as is customary for the property involved, but the transfer of property to the minor is not affected by a failure to comply with this subsection, the designation of a person not qualified to be named custodian for the minor, or the death, incapacity, resignation or renunciation of the person designated custodian.

4. A written acknowledgment of delivery of the property by the custodian constitutes a sufficient release and discharge for custodial property transferred to the custodian under sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 4)

Custodial trusts, transfer of property, how--legal title, beneficial title, held how--laws applicable to.

404.049. 1. A custodianship for a minor shall be treated as a custodial trust for a minor whenever property is transferred to any adult person or financial institution followed in substance with the words "as custodial trustee for ..... (name of minor) under the Missouri Transfers to Minors Law".

2. When property is placed in the name of a custodial trustee, legal title to the custodial property resides in the custodial trustee and beneficial ownership of the custodial property is indefeasibly vested in the minor, subject to the provisions of sections 404.005 to 404.094.

3. A transfer of property to a custodial trustee under the Missouri transfers to minors law incorporates in the transfer all the provisions of sections 404.005 to 404.094 and grants to the custodial trustee, minor and third persons dealing with the custodial trustee, the respective powers, rights and immunities provided in sections 404.005 to 404.094. By holding property for a minor as custodial trustee under sections 404.005 to 404.094, the custodial trustee assumes the obligation to administer the custodial property for the minor as prescribed in sections 404.005 to 404.094 and the provisions of any written trust agreement between the transferor and the custodial trustee.

4. The provisions in sections 404.005 to 404.094 respecting court proceedings, court jurisdiction and court powers shall apply to custodial trusts under this section to the same extent as they apply to custodianships for minors.

5. The law applicable to trusts and trustees, including chapter 456, shall apply to custodial trusts under this section in addition to sections 404.005 to 404.094, insofar as such law does not conflict with sections 404.005 to 404.094.

6. An inter vivos or testamentary trust that is not a custodial trust under this section may incorporate any provision of sections 404.005 to 404.094 into the governing document of the trust; and the statute as incorporated shall apply with the same force of law as it applies to a custodial trust, including sections respecting court proceedings, court jurisdiction and court powers.

(L. 1989 H.B. 145)

Powers of custodian, limitation--termination of custodianship, when, procedure--degree of care required for custodial property.

404.051. 1. The custodian shall collect, hold, maintain, manage, invest and reinvest the custodial property. The custodian may accept a transfer of additional property for the same minor into the custodianship and may consolidate into a single custodianship custodial property received for the same minor from multiple transfers or transferors.

2. The custodian may deliver, pay over to the minor for expenditure by the minor, or expend for the minor's benefit, so much of the custodial property as the custodian determines advisable for the use and benefit of the minor, without court order and without regard to the duty or ability of the custodian in the custodian's individual capacity or of any other person to support the minor, or any other income or property of the minor.

3. Upon the petition of a parent, guardian or conservator of a minor, an adult member of the minor's family, any person interested in the welfare of the minor, or of the minor if the minor has attained the age of fourteen years, the court may order the custodian to expend or to pay over to the minor or the minor's parent, guardian or conservator so much of the custodial property as the court determines advisable for the use and benefit of the minor.

4. Any delivery, payment or expenditure pursuant to subsections 2 and 3 of this section is in addition to, not in substitution for, and does not affect, the obligation of any person to support the minor.

5. (1) To the extent that the custodial property has not been expended, the custodian shall deliver the custodial property in an appropriate manner, free of the custodianship, as follows:

(a) To the minor on attaining the age of twenty-one years, or on attaining the age of eighteen years for custodial property created by a transfer of property from a person other than a donor and the minor requests the property; or

(b) On the minor's death, to the minor's estate.

(2) If the custodian does not deliver the custodial property to the minor or the minor's estate as prescribed in subdivision (1) of this subsection, the minor or the minor's personal representative may petition the court to declare the custodianship terminated and to order delivery of the custodial property to the minor or to the minor's estate free of the custodianship.

(3) To the extent the custodial property is real property, a conveyance and delivery of the real property by the minor after attaining the age at which the minor is entitled to the property free of the custodianship, or by the minor's heirs, or by the minor's personal representative, shall terminate the custodian's powers, duties and rights with respect to the real property.

(4) If the minor is an incapacitated person at the time the minor would otherwise be entitled to receive the custodial property free of the custodianship, the custodian shall deliver the custodial property to the incapacitated person's conservator. If the incapacitated person has no conservator, the custodian may transfer the custodial property to any adult person or financial institution, including the custodian, as personal custodian for the incapacitated person under any law providing for custodianship of property for incapacitated adult persons.

6. The custodian is under a duty to act in the interest of the minor and to avoid conflicts of interest that impair the custodian's ability to so act. In dealing with the custodial property, the custodian shall observe the degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections 469.900 to 469.913. The custodian is not limited by any other statute restricting investments or expenditures by fiduciaries. If the custodian has special skills or is named custodian on the basis of representations of special skills or expertise, the custodian is under a duty to use those skills. The custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received under sections 404.005 to 404.094, and may hold money or securities in the financial institution or brokerage company to which the property was delivered by the transferor.

7. The custodian may invest in and pay premiums out of custodial property for life or endowment insurance policies on the life of the minor or the life of another person in whom the minor has an insurable interest, provided the insurance proceeds will be distributed on the death of the insured life to the minor, the minor's estate or the custodian in the custodian's representative capacity.

8. Subject to the degree of care prescribed in subsection 6 of this section, the custodian, acting in the capacity of custodian for the benefit of the minor, has all rights, power and authority over the custodial property that unmarried,

nonincapacitated adult owners have over their own property, except the power to make a gift of the minor's property unless the gift to be made is approved by a court.

9. The custodian at all times shall keep custodial property separate and distinct from all other property in a manner to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest in property is sufficiently separate and distinct if the custodian's interest in the property is held as a tenant in common with the other owners of the property and the minor's proportional interest in the property is fixed. Custodial property is sufficiently so identified if it is held in the name of the custodian in the manner prescribed in section 404.707.

10. The custodian may establish checking, savings or other similar accounts with financial institutions and brokers whereby both the custodian and the minor may withdraw money from the account or draw checks against the account. Money withdrawn from an account or checks written against an account by the minor shall be treated as a delivery of custodial property from the custodian to the minor.

11. Subject to the degree of care prescribed in subsection 6 of this section, the custodian, acting in the capacity of custodian and for the benefit of the minor, may borrow money, lend money, acquire by lease the use of property for the minor, lease custodial property and enter into contracts under which the performance required by such agreements may extend beyond the date the custodianship terminates. The custodian shall hold property that is borrowed or leased for the minor as custodial property in the name of the custodian in the manner prescribed in section 404.047.

12. The custodian shall keep records of all transactions with respect to the custodial property, including information necessary for preparation of the minor's tax returns, and make them available for inspection at reasonable intervals by a parent, the minor if the minor has attained the age of fourteen years, an adult member of the minor's family if the minor has no living parent, and a legal representative of the minor.

13. The minor's custodian may comply with an agreement with a transferor of property to the minor, including an agreement respecting investment objectives, expenses, compensation, resignation and naming of successor custodians, to the extent that such agreement does not conflict with the custodian's obligations to the minor under sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 5, A.L. 1989 H.B. 145, A.L. 1993 S.B. 277, A.L. 1998 H.B. 1571, A.L. 2006 S.B. 892)

Compensation and expenses of custodian--bond required, when--custodian's claims not lien on custodial property.

404.054. 1. A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

2. A custodian who is not a donor may each year elect to receive from the custodial property reasonable compensation for services as custodian. If an election is not affirmatively made during the calendar year, the right to compensation for that year shall lapse.

3. A custodian is not required to give a bond for the performance of the custodian's duties unless required by court order.

4. No claim of a custodian for expenses or compensation shall constitute a claim or lien on custodial property transferred by the custodian to a third person or to the minor.

(L. 1985 S.B. 35, et al. § 6)

Successor custodian designation on renunciation, resignation, death, incapacity, nonresident minor or removal of custodian.

404.057. 1. A person designated as a custodian may decline to serve by delivering a written renunciation to the person who made the designation or to the transferor or the transferor's legal representative. If at the time of the transfer there is no substitute custodian who is able and willing to serve as custodian, the person who made the designation, a person with a power from the donor to designate a custodian, the transferor or the transferor's legal representative shall designate a substitute custodian.

2. The custodian may revocably designate at any time one or more successor custodians in a will or by executing and dating an instrument of designation before a subscribing witness other than a successor custodian. If the instrument of designation does not contain or is not accompanied by the custodian's resignation, the designation of a successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed. Successor custodians serve in the order named in the event a prior named custodian

declines or is not qualified to serve as custodian, or is deceased or incapacitated.

3. A custodian may resign at any time by delivering written notice to the minor and the successor custodian and delivering the custodial property and records of the custodianship to the successor custodian.

4. If the custodian dies or becomes incapacitated, the custodian's legal representative shall transfer the custodial property to a successor custodian. If no successor custodian has been effectively designated, the custodian's legal representative shall designate as successor custodian any adult person or financial institution in the manner prescribed in subsection 2 of this section and deliver the custodial property to the successor custodian.

5. The designation of a successor custodian by a custodian or the custodian's legal representative may be included in the instrument placing custodial property into the name of the successor custodian.

6. A custodian under the uniform gifts to minors law or similar law of any state may transfer custodial property to himself as custodian or to a successor custodian for the minor under the Missouri transfers to minors law in the manner prescribed in section 404.047.

7. When a minor resides in a state other than Missouri, a custodian under the Missouri uniform gifts to minors law or the Missouri transfers to minors law may deliver the custodial property to any adult person or financial institution as a successor custodian for the minor under the uniform gifts to minors law, uniform transfers to minors law or similar law of the state where the minor resides, if, under the laws of that state, the custodianship will not terminate earlier than it would terminate under section 404.051 and the ownership of the custodial property will remain indefeasibly vested in the minor.

8. If the custodian or custodian's legal representative does not timely designate a successor custodian, then:

(1) If the minor is over fourteen years of age, the minor may designate an adult member of the minor's family, the minor's conservator or guardian if the minor has one, or a financial institution as successor custodian in the manner prescribed in subsection 2 of this section; or

(2) If the minor is under fourteen years of age, the minor, a guardian or conservator of the minor, the transferor, legal representative of the transferor,

an adult member of the minor's family or any person interested in the welfare of the minor, may petition the court to designate a successor custodian.

9. A successor custodian shall hold the custodial property in the manner prescribed in section 404.047 and need not indicate the custodial capacity as a successor custodian.

10. A custodian who resigns, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall do all things within that person's lawful power to put each item of the custodial property and the records of the custodianship in the possession and control of a successor custodian.

11. A minor who has attained the age of fourteen years, the minor's legal representative, an adult member of the minor's family, a transferor, the transferor's legal representative, a successor custodian, a person who designated the custodian, or any person interested in the welfare of the minor, for good cause shown, may petition the court to remove the custodian, to designate a successor custodian, to require the custodian to give bond and to order delivery of the custodial property and records of the custodianship to the minor, a successor custodian or the minor's legal representative.

(L. 1985 S.B. 35, et al. § 7, A.L. 1989 H.B. 145)

Exemption of third person from liability.

404.061. A third person, including an issuer of securities, transfer agent, financial institution, broker, life insurance company, benefit plan, personal representative, or trustee, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make a transfer under sections 404.005 to 404.094 or purporting to act in the capacity of a custodian, successor custodian or legal representative of a custodian and, in the absence of actual knowledge, is not responsible for determining:

(1) The validity of the purported custodian's or successor custodian's designation;

(2) The propriety of, or the authority under sections 404.005 to 404.094 for, any act of the purported custodian;

(3) The validity or propriety under sections 404.005 to 404.094 of any instrument or instructions executed or given by the person purporting to make a transfer under sections 404.005 to 404.094 or by the purported custodian;

(4) The propriety of the application or use of any custodial property by the custodian;

(5) The validity of a delivery of custodial property by a custodian or legal representative of a custodian to a successor custodian; or

(6) The validity of a delivery of custodial property by the custodian to the minor or the age of the minor at the time of the delivery.

(L. 1985 S.B. 35, et al. § 8)

Liability to third persons.

404.067. 1. A claim based on: (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity.

2. A custodian is not personally liable:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

3. A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

(L. 1985 S.B. 35, et al. § 9)

Accounting by and determination of liability of custodian--time limitations for minor bringing action.

404.071. 1. A minor who has attained the age of fourteen years, the minor's legal representative, an adult member of the minor's family, a person interested in the welfare of the minor, a transferor, a transferor's legal representative, a successor custodian, or a person who designated the custodian, may petition the court for an accounting by the custodian or the custodian's legal representative.

2. In a proceeding under sections 404.005 to 404.094 of this act*, or in any other proceeding, or upon the petition of the custodian, the court may: (i) require or permit the custodian to account; (ii) authorize the custodian to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the custodian, that the court finds is, was or will be beneficial to the minor and which the court has power to authorize for a conservator under chapter 475; and (iii) determine responsibility, as between custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 404.067.

3. If the custodian is removed under subsection 11 of

section 404.057, the court may order an accounting, order delivery of the custodial property and records of the custodianship to the minor, a successor custodian or the minor's legal representative, and order the execution of all instruments required for the transfer of the custodial property.

4. Unless previously barred by adjudication, consent or limitations, any cause of action against a custodian for accounting or breach of duty shall be barred as to any minor who has received a final account or other statement fully disclosing the matter and showing termination of the custodianship for the minor unless a proceeding to assert the cause of action is commenced within two years after receipt of the final account or statement by a minor over eighteen years of age or, if the minor is under eighteen years, or is an incapacitated or deceased person, by the legal representative of the minor's estate; except that, if no final account or statement is provided by the custodian or if there is no legal representative of the minor's estate, then such cause of action shall not be barred until two years after the date the minor attains twenty-one years of age or the incapacity is removed, or one year after the minor's death. The cause of action thus barred does not include any action to recover from a custodian for fraud, misrepresentation or concealment related to the final settlement of the custodianship, or concealment of the existence of the custodianship.

(L. 1985 S.B. 35, et al. § 10, A.L. 1989 H.B. 145)

*"This act" (H.B. 145, 1989) contains numerous sections. Consult Disposition of Sections table for definitive listing.

Effect on prior existing custodianship.

404.077. Any transfer of property to a custodian, or designation of a custodian for property to be transferred in the future as now permitted in sections 404.005 to 404.094, purporting to have been made before September 28, 1985, is validated notwithstanding that there was no specific authority in the Missouri uniform gifts to minors law for the transfer of property of that kind or for a transfer from that source or in that manner at the time the transfer was made.

(L. 1985 S.B. 35, et al. § 11)

Uniformity of application and construction--not to be exclusive method of transferring property to a minor.

404.081. 1. Sections 404.005 to 404.094 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of sections 404.005 to 404.094 among states enacting a similar law.

2. Sections 404.005 to 404.094 shall not be construed as providing an exclusive method of transferring property to a minor.

(L. 1985 S.B. 35, et al. § 12)

Repeal of uniform gifts to minors not to affect transfers--use of word custodian, how defined.

404.087. 1. The repeal of the Missouri uniform gifts to minors law, sections 404.010 to 404.100, shall not affect transfers made in a manner prescribed in sections 404.010 to 404.100, nor the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians. The provisions of sections 404.005 to 404.094 henceforth apply to all transfers made in a manner and form prescribed in the Missouri uniform gifts to minors law, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on September 28, 1985. In all other respects, sections 404.005 to 404.094 shall be construed as a continuation of the provisions of the Missouri uniform gifts to minors law.

2. Any transfer of property to a custodian or successor custodian after September 28, 1985, which uses in substance the words "as custodian under the Missouri uniform gifts to minors law" shall be construed to mean "as custodian under the Missouri transfers to minors law" and sections 404.005 to 404.094 shall apply thereto.

(L. 1985 S.B. 35, et al. § 13)

Jurisdiction for transfers to minors and custodianship to be probate division of circuit court, procedure--appointment of guardian or conservator, court may specify duties.

404.091. 1. The probate division of the circuit court may hear and determine all matters pertaining to custodians for minors and the administration of minor custodianships under sections 404.005 to 404.094 of this act*, the uniform gifts to minors law and the uniform transfers to minors law.

2. The provisions of chapter 472 apply to judicial proceedings involving minor custodianships to the extent they apply to judicial proceedings involving trusts and are not inconsistent with sections 404.005 to 404.094 of this act*.

3. If the probate division of the circuit court appoints a guardian or conservator for a minor after notice and hearing, the court may specify in an order the duties and responsibilities of the minor's legal representatives and custodians and the manner in which they shall coordinate the exercise of their respective powers and duties for and on behalf of the minor.

4. Upon the filing of any petition as provided in sections 404.005 to 404.094 of this act*, the court shall issue an order directed to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, shall proceed to grant such relief as the court finds to be in the best interest of the minor beneficiary of the custodianship.

(L. 1985 S.B. 35, et al. § 14, A.L. 1989 H.B. 145)

*"This act" (H.B. 145, 1989) contains numerous sections. Consult Disposition of Sections table for definitive listing.

Conflicts of interest--guardian or conservator ad litem appointed, when, compensation.

404.093. 1. Notwithstanding any other provision of law, if it is suggested in a petition filed by the minor, a creditor, a person interested in the welfare of the minor, or other interested person, including a member of the minor's family who may have a property right or claim against or an expectancy, reversionary or other interest in the estate of the minor, or if it affirmatively appears to the court that there is a possible conflict of interest between the minor and the custodian, the court may appoint a guardian or conservator ad litem to represent the minor in any proceeding to adjudicate any right affected by the possible conflict of interest. The guardian or conservator ad litem shall have only such authority as is provided in the order of appointment and shall serve until discharged by the court.

2. If a court appoints a guardian or conservator ad litem for the minor, the court may, by order entered in the proceeding, provide reasonable compensation and reimbursement for expenses for the guardian or conservator ad litem and, in appropriate cases, allow the payment out of the custodial estate of the minor or enter a judgment for the amount as costs against some other person who is a party to the proceeding and whose conduct is determined by the court as giving rise to the necessity for the appointment of the guardian or conservator ad litem.

(L. 1989 H.B. 145)

Law of Missouri to apply, when--other state's laws applicable, when.

404.094. 1. Sections 404.005 to 404.094 apply to a transfer that refers to the Missouri transfers to minors law in the designation under section 404.047 by which the transfer is made if at the time of the transfer, the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to sections 404.005 to 404.094 despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

2. A person designated as custodian under sections 404.005 to 404.094 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

3. A transfer that purports to be made and which is valid under the uniform transfers to minors law, the uniform gifts to minors law, or a substantially similar law, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the

transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

4. A transfer that purports to be made under the uniform transfers to minors law of Missouri or the minors custodian law of Missouri is governed by sections 404.005 to 404.094.

(L. 1985 S.B. 35, et al. § 15, A.L. 1993 S.B. 277)

Law, how cited.

404.400. Sections 404.400 to 404.650 may be cited as the "Missouri Personal Custodian Law".

(L. 1986 S.B. 651 § 15)

Definitions.

404.410. As used in sections 404.400 to 404.660, unless the context otherwise requires, the following terms shall mean:

(1) "Adult", an individual who has attained the age of eighteen years, notwithstanding that an adult may be of a different age under sections 404.005 to 404.094, the Missouri transfers to minors law;

(2) "Beneficiary", a person for whom property has been transferred to a personal custodian under sections 404.400 to 404.650 for the beneficiary's use and benefit;

(3) "Benefit plan", any plan, contract, trust or account for the benefit of employees, partners, members of an organization or an individual, in which a person may designate a beneficiary for a plan benefit. The term "benefit plan" is also used to refer to the fiduciary administering the plan;

(4) "Broker", a person lawfully engaged in the business of effecting transactions in securities or commodities for the broker's own account or the account of others;

(5) "Conservator", a person appointed or qualified by a court to have care and custody of the estate of a disabled or incapacitated person, whether

denominated as general, limited or temporary conservator, or a person legally authorized to perform substantially the same functions;

(6) "Court", the circuit court, including the probate division of the circuit court;

(7) "Custodial property", all property belonging to a beneficiary in the possession and control of a personal custodian under sections 404.400 to 404.650, and includes the income and proceeds of that property;

(8) "Donor", a transferor who makes a present or future gift of property to a beneficiary by a transfer under sections 404.400 to 404.650 and includes a person who holds a power of appointment to make a gift of the donor's property in a similar manner;

(9) "Financial institution", a bank, trust company, savings and loan company or association, or credit union chartered and supervised under state or federal law;

(10) "Guardian", a person appointed or qualified by a court to have care and custody of the person of an incapacitated person, whether denominated as general, limited or temporary guardian, or a person legally authorized to perform substantially the same functions;

(11) "Incapacitated person", a person who is wholly or partially unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability or capacity to manage his financial resources and is a disabled or incapacitated person as defined in section 475.010;

(12) "Legal representative", a decedent's personal representative, the guardian of a person or the conservator of the estate of a person;

(13) "Member of the beneficiary's family", the beneficiary's parent, grandparent, uncle, aunt, brother, sister, son, daughter, grandson, granddaughter and their descendants, whether of the whole blood or the half blood, or by adoption, and the beneficiary's spouse, stepparent and stepchild;

(14) "Person", an individual, corporation, organization, or other legal entity;

(15) "Personal custodian", a person so designated in a manner prescribed in sections 404.400 to 404.650 and includes a substitute personal custodian and successor personal custodian;

(16) "Personal representative", an executor, administrator, successor personal representative, independent personal representative or special administrator of a decedent's estate, whether court appointed or qualified, or a person legally authorized to perform substantially the same functions;

(17) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable and includes the income and proceeds of that interest in property;

(18) "State", any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States;

(19) "Transferor", a person who transfers property to a beneficiary under sections 404.400 to 404.650.

(L. 1986 S.B. 651 § 1, A.L. 1989 H.B. 145)

Personal custodian established by adult beneficiary--who may serve--revocation--effect--powers, duties and immunities of custodian--single custodian may serve more than one beneficiary.

404.420. 1. An adult person who is not an incapacitated person may transfer property which he owns to any adult person or financial institution as personal custodian to hold and administer for him as beneficiary of a personal custodianship under sections 404.400 to 404.650. A transfer of property to a personal custodian made by a beneficiary in the manner prescribed in section 404.540 is revocable by the beneficiary in the manner prescribed in sections 404.560 and 404.570. Ownership of the property transferred remains indefeasibly vested in the beneficiary, subject to the personal custodianship provided in sections 404.400 to 404.650 for the benefit of the beneficiary.

2. By transferring property to a personal custodian under sections 404.400 to 404.650, the beneficiary incorporates in the transfer all the provisions of sections 404.400 to 404.650 and grants to the personal custodian, and third persons dealing with the personal custodian, the respective powers, rights and immunities provided in sections 404.400 to 404.650. By holding property for a beneficiary as personal custodian under sections 404.400 to 404.650, the personal custodian assumes the obligation to administer the custodial property for the beneficiary as prescribed in sections 404.400 to 404.650 and the

provisions of any written agreement between the beneficiary and personal custodian.

3. Only one person may be personal custodian under sections 404.400 to 404.650 for the property placed in a personal custodianship, but a beneficiary may transfer custody of different property to another personal custodian under sections 404.400 to 404.650. A person may be a personal custodian of property for more than one beneficiary, but the personal custodian shall separately hold and administer the custodial property for each beneficiary unless the property is transferred to the personal custodian for the use and benefit of multiple beneficiaries in accordance with subdivision (6) of subsection 1 of section 404.540.

(L. 1986 S.B. 651 § 2 subsecs. 1, 2, 4, A.L. 1989 H.B. 145)

Incapacitation of beneficiaries, effect on powers and duties of custodian--immunities of third parties.

404.430. The incapacitation of a beneficiary who has transferred property to a personal custodian does not terminate the personal custodianship, directions given by the beneficiary to the personal custodian, the designation of a successor personal custodian, any of the powers or authorities of the personal custodian or the immunities of third persons acting on directions of the personal custodian. When a beneficiary becomes incapacitated, the personal custodian shall hold and administer the custodial property in accordance with the provisions of sections 404.400 to 404.650 applicable to incapacitated beneficiaries and the provisions of any written agreement between the beneficiary and the personal custodian.

(L. 1986 S.B. 651 § 2 subsec. 3)

Transfer of property to personal custodian for incapacitated beneficiary--effect--powers, duties, and immunities of custodian--single custodian may serve more than one beneficiary.

404.440. 1. Property may be transferred to an adult beneficiary, including a beneficiary who is or may become an incapacitated person on or after the date of the transfer, by transferring the property to a personal custodian for the beneficiary under sections 404.400 to 404.650.

2. By transferring property to a personal custodian for a beneficiary under sections 404.400 to 404.650, the transferor incorporates in the transfer all the provisions of sections 404.400 to 404.650 and grants to the personal custodian and third persons dealing with the personal custodian, the respective powers, rights and immunities provided in sections 404.400 to 404.650. By holding property for a beneficiary as personal custodian under sections 404.400 to 404.650, the personal custodian assumes the obligation to administer the custodial property for the beneficiary as prescribed in sections 404.400 to 404.650 and the provisions of any written agreement between the transferor and personal custodian.

3. Only one person may be personal custodian under sections 404.400 to 404.650 of the property transferred. A person may be a personal custodian of property for more than one beneficiary, but the personal custodian shall separately hold and administer the custodial property for each beneficiary unless the property is transferred to the personal custodian for the use and benefit of multiple beneficiaries in accordance with subdivision (6) of subsection 1 of section 404.540.

(L. 1986 S.B. 651 § 3 subsecs. 1, 4, 5, A.L. 1989 H.B. 145)

Present transfer, effect.

404.450. A present transfer of property to a personal custodian for a beneficiary, made by a transferor in the manner prescribed in subdivisions (1), (2), (3) and (5) of subsection 1 of section 404.540, is irrevocable and indefeasibly vests ownership of the property in the beneficiary subject to the personal custodianship provided in sections 404.400 to 404.650 for the benefit of the beneficiary, and neither the beneficiary nor an incapacitated beneficiary's legal representative has any right, power, duty or authority with respect to the custodial property except as prescribed in sections 404.400 to 404.650.

(L. 1986 S.B. 651 § 3 subsec. 2)

Future transfers of property revocable by donor, exception.

404.460. A provision in a will, trust, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction, for a transfer of property to be made in the future to a custodian for a beneficiary, made by a donor in the manner prescribed in subdivision (4)

of subsection 1 of section 404.540, remains revocable by the donor until the property becomes transferable in accordance with the terms of the governing instrument to the beneficiary or a personal custodian for the beneficiary under sections 404.400 to 404.650, unless expressly made irrevocable at the time provision for the gift is made or subsequently.

(L. 1986 S.B. 651 § 3 subsec. 3)

Custodian designation by donor on present transfer, who may serve.

404.470. A donor making a present transfer of property to a beneficiary may designate and transfer the property to any adult person or financial institution, including the donor, as personal custodian for the beneficiary under sections 404.400 to 404.650.

(L. 1986 S.B. 651 § 4 subsec. 1)

Custodian designation by donor for future transfer, who may serve--lapse of custodianship, effect--substitute custodians, power to designate--revocation.

404.480. 1. A donor making a future transfer of property to a beneficiary under a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction, may revocably designate, or grant to another person a general or limited power to revocably designate, any adult person or financial institution, including the holder of the power, as personal custodian under sections 404.400 to 404.650 for a beneficiary who may be an incapacitated person at the time the property becomes transferable.

2. When the property becomes transferable to the beneficiary, the donor's personal representative, trustee, benefit plan, insurance company or contract obligor shall transfer the property to the designated personal custodian in the manner prescribed in subdivisions (1), (2), (3) and (5) of subsection 1 of section 404.540 for the type of property to be transferred. If, at the time the property becomes transferable, the beneficiary is not an incapacitated person, the personal custodian designation shall lapse and the property may be transferred directly to the beneficiary.

3. The designation of a personal custodian for a future transfer of property may include the designation of one or more substitute personal custodians to whom

the property shall be transferred in the order named in the event the prior named personal custodian declines or is not qualified to serve as personal custodian, or is deceased or incapacitated. A donor or a person exercising a power from a donor may revoke or change the designation of a personal custodian or substitute personal custodian for a future transfer of property by revoking the designation or making a new designation before the property becomes transferable.

(L. 1986 S.B. 651 § 4 subsec. 2)

Custodian designation by person indebted to beneficiary, who may serve--court approval required, court's powers.

404.490. 1. If there is no appointed conservator for administration of an incapacitated beneficiary's estate, any person indebted to an incapacitated beneficiary, including a personal representative, trustee, benefit plan, insurance company, agency of any state or of the United States, or any person holding property belonging to an incapacitated beneficiary, not having a power from a donor to designate a personal custodian, may designate and transfer the property to any adult person or financial institution, including the transferor if a member of the beneficiary's family, as personal custodian for the incapacitated beneficiary under sections 404.400 to 404.650.

2. Approval of the court shall be obtained for any designation under subsection 1 of this section of a personal custodian that is not a financial institution, if the value of the property at the time of transfer to the designated personal custodian exceeds ten thousand dollars. The court may approve the designation under subsection 1 of this section of any person to act as personal custodian to hold and administer the property with or without bond and with or without court supervision, upon such terms as the court may require, and may order transfer of the property to a court supervised conservator.

(L. 1986 S.B. 651 § 4 subsecs. 3, 4)

Acceptance of additional property by custodian, court approval required, court's powers.

404.500. When a personal custodianship has been established for a beneficiary, the court may authorize the personal custodian to accept and receive into the personal custodianship any additional property that belongs to a beneficiary

who is or has become incapacitated, with or without bond and with or without court supervision, upon such terms and conditions as the court may require.

(L. 1986 S.B. 651 § 4 subsec. 6)

Court's designation of custodian, when--who may serve, court's powers.

404.510. If the court determines under chapter 475 that full administration of an incapacitated person's estate is not required, the court may designate and direct that all or a part of the property owned by the incapacitated person be transferred to any adult person or financial institution, including a court appointed conservator or guardian, to hold and administer under sections 404.400 to 404.650 as personal custodian for the incapacitated beneficiary, with or without bond and with or without court supervision, upon such terms and conditions as the court may require.

(L. 1986 S.B. 651 § 4 subsec. 7)

Custodian's rights in other property of beneficiary.

404.520. A personal custodian has no right because of designation as personal custodian to possession, control, income or proceeds of any property belonging to the beneficiary that is not transferred to the personal custodian by the beneficiary, a donor or a person indebted to the beneficiary, except as authorized by the court under sections 404.500 and 404.510.

(L. 1986 S.B. 651 § 4 subsec. 8)

Qualifications of personal custodians, transfer to person not qualified, effect.

404.530. An adult person or financial institution shall not be qualified to be designated personal custodian for property of a beneficiary who is a resident of this state if the person or financial institution is not qualified to be appointed conservator of the estate of the beneficiary under subsection 2 of section 475.055 or if the financial institution is not legally authorized to do business in this state. A transfer of property to a person not qualified to act as personal custodian for the beneficiary under sections 404.400 to 404.650 subjects the person to removal as personal custodian under subsection 9 of section 404.590, but does not affect the beneficiary's ownership of the property and the

immunities of third persons dealing with the personal custodian, nor relieve the unqualified person of any duties or responsibilities imposed on personal custodians under sections 404.400 to 404.650.

(L. 1986 S.B. 651 § 4 subsec. 5, A.L. 1989 H.B. 145)

Transfer of property to custodian, procedure, forms--receipt for delivery of property deemed a release.

404.540. 1. The designation of a personal custodian and transfer of property to the personal custodian shall be made in the following manner:

(1) If the subject of the custodianship is property for which a conveyance is filed with a recorder of deeds, property for which a certificate of ownership or similar title instrument is issued by an agency of any state or of the United States, property which is maintained in registered name, property which is evidenced by a written instrument or property which is deposited in an account with a broker or financial institution, by executing a deed, assignment, endorsement or other appropriate writing placing the property in the name of the designated personal custodian followed in substance by the words: "as personal custodian for ..... (name of beneficiary) under the Missouri Personal Custodian Law";

(2) If the subject of the custodianship is money or an unregistered security, by having it paid or delivered to a broker or financial institution for the account of the person designated personal custodian followed in substance by the words: "as personal custodian for ..... (name of beneficiary) under the Missouri Personal Custodian Law";

(3) If the subject of the custodianship is a transfer of property by the irrevocable exercise of a power of appointment or a transfer of an irrevocable present right to future payment, by giving written notice to the holder of the property or payment obligor that the property or right is transferred to the person designated personal custodian followed in substance by the words: "as personal custodian for ..... (name of beneficiary) under the Missouri Personal Custodian Law";

(4) If the subject of the custodianship is to be a future transfer of property under a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction, by making the gift or beneficiary designation in the name of the

designated personal custodian followed in substance by the words: "as personal custodian for ..... (name of beneficiary) under the Missouri Personal Custodian Law", or by naming the beneficiary of the gift and providing for alternate distribution of the property to a personal custodian for the beneficiary under sections 404.400 to 404.650 in the event the beneficiary is incapacitated at the time the property becomes transferable;

(5) If the subject of the custodianship is property not described in subdivision (1), (2), (3) or (4) of this subsection, by causing the property to be placed in the name of the designated personal custodian by a written instrument in substantially the form set forth as follows: TRANSFER UNDER THE MISSOURI PERSONAL CUSTODIAN LAW

I, ... (name of beneficiary, donor or transferor and representative capacity, if any) hereby assign and deliver to ..... (name of personal custodian), as personal custodian for ..... (myself or name of beneficiary) under the Missouri Personal Custodian Law, the following: (insert a description of the custodial property sufficient to identify it). Dated: .....

....

Signature

..... (name of personal custodian) acknowledges receipt of the property described above as personal custodian for the beneficiary named above under the Missouri Personal Custodian Law. Dated: .....

....

Signature of Personal Custodian

(6) Property is transferred to a personal custodian for the use and benefit of two or more persons by placing the property in the name of the designated personal custodian and stating the names of the multiple beneficiaries in substance as follows: "..... (name of personal custodian) as personal custodian for ..... and ..... (names of beneficiaries), under the Missouri Personal Custodian Law." The style in which the property is placed may include the interests and estates of the custodial beneficiaries in the custodial property as among themselves.

2. A present transfer of property to a beneficiary is complete and custodial property is created when the personal custodian for the beneficiary is designated in the manner provided in subdivisions (1), (2), (3), (5) and (6) of subsection 1 of this section. A future transfer of property to a beneficiary is complete and custodial property is created when the property becomes transferable under the governing instrument to a personal custodian for a beneficiary designated in the manner provided in subdivision (4) of subsection 1 of this section.

3. In addition to the writing required by subsection 1 of this section, the transferor, as soon as practicable, shall do all things to put the property in the possession and control of the personal custodian and provide the personal custodian with such evidence of ownership as is customary for the property involved; but the transfer of property to the beneficiary is not affected by a failure to comply with this subsection, the designation of a person not qualified to be named personal custodian for the beneficiary, or the death, incapacity, resignation or renunciation of the person designated personal custodian.

4. A written acknowledgment of delivery of the property by the personal custodian constitutes a sufficient release and discharge for custodial property transferred to the personal custodian under sections 404.400 to 404.650.

(L. 1986 S.B. 651 § 5, A.L. 1989 H.B. 145)

Custodial trusts, transfer of property, how--legal title, beneficial title, held how--laws applicable to.

404.545. 1. A personal custodianship for an adult beneficiary shall be treated as a custodial trust whenever property is transferred to any adult person or financial institution followed in substance with the words "as custodial trustee for ..... (name of beneficiary or beneficiaries) under the Missouri Personal Custodian Law".

2. When property is placed in the name of a custodial trustee, legal title to the custodial property resides in the custodial trustee and beneficial ownership of the custodial property is indefeasibly vested in the custodial beneficiary, subject to the provisions of sections 404.400 to 404.650.

3. A transfer of property to a custodial trustee under the Missouri personal custodian law incorporates in the transfer all the provisions of sections 404.400 to 404.650 and grants to the custodial trustee, beneficiary and third persons

dealing with the custodial trustee, the respective powers, rights and immunities provided in sections 404.400 to 404.650. By holding property for a beneficiary as custodial trustee under sections 404.400 to 404.650, the custodial trustee assumes the obligation to administer the custodial property for the beneficiary as prescribed in sections 404.400 to 404.650 and the provisions of any written trust agreement between the transferor or beneficiary and the custodial trustee.

4. The provisions in sections 404.400 to 404.650 respecting court proceedings, court jurisdiction and court powers shall apply to custodial trusts under this section to the same extent as they apply to personal custodianships.

5. The law applicable to trusts and trustees, including chapter 456, shall apply to custodial trusts under this section in addition to sections 404.400 to 404.650, insofar as such law does not conflict with sections 404.400 to 404.650.

6. An inter vivos or testamentary trust that is not a custodial trust under this section may incorporate any provision of sections 404.400 to 404.650 into the governing document of the trust; and the statute as incorporated shall apply with the same force of law as it applies to a custodial trust, including sections respecting court proceedings, court jurisdiction and court powers.

(L. 1989 H.B. 145)

Duties and powers of personal custodian, directions of beneficiary, court's powers, contract with beneficiary.

404.550. 1. The personal custodian shall collect, hold, maintain, manage, invest and reinvest the custodial property. The personal custodian may accept a transfer of additional property for the same beneficiary into the personal custodianship and may consolidate into a single custodianship custodial property received for the same beneficiary from multiple transfers or transferors.

2. The personal custodian shall deliver, pay over to the beneficiary for expenditure by the beneficiary or expend for the beneficiary's benefit so much of the custodial property as the beneficiary may from time to time direct. If the beneficiary is an incapacitated person, the personal custodian may deliver, pay over to the beneficiary for expenditure by the beneficiary or expend for the beneficiary's benefit so much of the custodial property as the personal custodian determines advisable for the use and benefit of the beneficiary and those members of the beneficiary's family who are legally entitled to support by

the beneficiary or who were supported by the beneficiary at the time the beneficiary became incapacitated, without court order and without regard to the duty or ability of the personal custodian in the personal custodian's individual capacity or of any other person to support the beneficiary, or any other income or property of the beneficiary.

3. (1) Upon the petition of the beneficiary, guardian or conservator of an incapacitated beneficiary, an adult member of a beneficiary's family or any person interested in the welfare of the beneficiary, the court may order the personal custodian to expend or to pay over to the beneficiary or the beneficiary's guardian or conservator so much of the custodial property as the court determines advisable for the use and benefit of the beneficiary.

(2) Upon petition of a personal custodian, the beneficiary, an adult member of the beneficiary's family or any person interested in the welfare of the beneficiary, the probate division of the circuit court shall determine and declare whether the beneficiary is a disabled or incapacitated person.

4. Any delivery, payment or expenditure under subsections 2 and 3 of this section is in addition to, not in substitution for, and does not affect the obligation of any person to support the incapacitated beneficiary or the incapacitated beneficiary's dependents.

5. The personal custodian is under a duty to act in the interest of the beneficiary and to avoid conflicts of interest that impair the personal custodian's ability to so act. In dealing with the custodial property, the personal custodian shall follow the investment and other directions of a beneficiary who is not incapacitated and shall observe the degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections 469.900 to 469.913. The personal custodian is not limited by any other statute restricting investments or expenditures by fiduciaries. If the personal custodian has special skills or is named personal custodian on the basis of representation of special skills or expertise, the custodian is under a duty to use those skills. The personal custodian, in the custodian's discretion and without liability to the beneficiary or the beneficiary's estate, may retain any custodial property received under sections 404.400 to 404.650, and may hold money or securities in the financial institution or brokerage company to which the property was delivered by the transferor.

6. The personal custodian may invest in and pay premiums out of custodial property for life or endowment insurance policies on the life of the beneficiary or the life of another person in whom the beneficiary has an insurable interest, provided the insurance proceeds will be distributed on the death of the insured life to the beneficiary, the persons designated by an adult nonincapacitated beneficiary, the beneficiary's estate or the personal custodian in the personal custodian's representative capacity.

7. Subject to the degree of care prescribed in subsection 5 of this section, the personal custodian, acting in the capacity of personal custodian for the benefit of the beneficiary, has all rights, power and authority over the custodial property that unmarried, nonincapacitated adult owners have over their own property, except the power to make a gift of the beneficiary's property (i) unless granted such power by a nonincapacitated beneficiary in a writing signed and dated, and acknowledged or proved and certified in the manner provided by law for conveyances of real estate, or (ii) unless the gift to be made is approved by a court under section 475.094.

8. The personal custodian at all times shall keep custodial property separate and distinct from all other property in a manner to identify it clearly as custodial property of the beneficiary. Custodial property consisting of an undivided interest in property is sufficiently separate and distinct if the personal custodian's interest in the property is held as a tenant in common with the other owners of the property and the beneficiary's proportional interest in the property is fixed. Custodial property is sufficiently so identified if it is held in the name of the personal custodian in the manner prescribed in section 404.540.

9. The personal custodian may establish checking, savings or other similar accounts with financial institutions and brokers whereby both the personal custodian and the beneficiary may withdraw money from the account or draw or issue checks or drafts against the account. Money withdrawn from an account or checks written against an account by the beneficiary shall be treated as a delivery of custodial property from the personal custodian to the beneficiary.

10. Subject to the degree of care prescribed in subsection 5 of this section, the personal custodian, acting in the capacity of personal custodian and for the benefit of the beneficiary, may borrow money, lend money, acquire by lease the use of property for the beneficiary, lease custodial property and enter into contracts under which the performance required by such agreements may extend beyond the date the personal custodianship terminates. The personal

custodian shall hold property that is borrowed or leased for the beneficiary as custodial property in the name of the personal custodian in the manner prescribed in section 404.540.

11. The personal custodian shall keep records of all transactions with respect to the custodial property, including information necessary for preparation of the beneficiary's tax returns, and make them available for inspection at reasonable intervals by the beneficiary, an adult member of the beneficiary's family if the beneficiary is incapacitated, and a legal representative of the beneficiary.

12. The power, authority, duties and responsibilities of a personal custodian, as provided in sections 404.400 to 404.650, may be modified by the provisions of a written agreement between the transferor or beneficiary and personal custodian.

(L. 1986 S.B. 651 § 6 subsecs. 1 to 4, 6 to 13, A.L. 1989 H.B. 145, A.L. 1998 H.B. 1571, A.L. 2006 S.B. 892)

Termination of custodianship, demand of or at death of beneficiary--TOD agreement with personal custodian absent a will, payment of claims, distribution.

404.560. 1. To the extent that the custodial property has not been expended, the personal custodian shall deliver the custodial property in an appropriate manner, free of the custodianship, as follows:

(1) To an adult beneficiary on demand, if the beneficiary at the time is not incapacitated; or

(2) On the beneficiary's death, to the beneficiary's estate, unless the beneficiary has made provision for a distribution under subsection 2 of this section.

2. A beneficiary competent to execute a will may enter into a written agreement with the personal custodian in which the personal custodian is directed and authorized on death of the beneficiary to:

(1) Settle the affairs of the personal custodianship and pay all expenses incurred by the custodianship before the beneficiary's death and in connection with settling the affairs of the custodianship and distributing the custodial property at death;

(2) Pay any debts or taxes that were owing by the beneficiary before death and any debts, taxes and expense owing as a result of the beneficiary's death and distribution of the custodial property at death, including the expense of the beneficiary's last illness, funeral and the cost of a grave marker; and

(3) Transfer and distribute the custodial property remaining in accordance with a written beneficiary designation or transfer on death direction that has been delivered to the personal custodian and that has been signed by the beneficiary, dated and acknowledged or proved and certified in the manner prescribed by law for conveyances of real estate.

3. A beneficiary's written agreement with the personal custodian and any beneficiary designation or transfer on death direction executed pursuant to subsection 2 of this section remains revocable during the beneficiary's lifetime unless expressly made irrevocable at the time executed or subsequently, and may not be made or revoked for the beneficiary by an attorney in fact or legal representative unless approved by court order.

4. A personal custodian closing a beneficiary's custodial estate by making a distribution of property under subsection 2 of this section shall give the beneficiary's spouse, children and heirs at law thirty days' advance written notice of the distribution to be made; and shall file for record in the probate division of the circuit court within thirty days of making distribution, a notice setting forth the names and addresses of the deceased beneficiary, the personal custodian and each person that received a distribution of custodial property.

5. If the personal custodian does not deliver the custodial property in accordance with subsection 1 or 2 of this section, a beneficiary who is not incapacitated, a person entitled to the custodial property or the beneficiary's personal representative may petition the court to declare the personal custodianship terminated and to order delivery of the custodial property free of the custodianship to the beneficiary, the persons entitled thereto or the beneficiary's estate.

6. To the extent the custodial property is real property, a conveyance and delivery of the real property by a nonincapacitated beneficiary, by the persons entitled thereto or by the beneficiary's personal representative, shall terminate the personal custodian's powers, duties and rights with respect to the real property.

(L. 1986 S.B. 651 § 6 subsec. 5 subdivs. (1) to (6), A.L. 1989 H.B. 145, A.L. 1993 S.B. 277)

Multiple beneficiaries of custodial property, administered, how--termination of custodianship, death of beneficiaries, effect.

404.565. 1. During the lifetimes of multiple beneficiaries, ownership of custodial property between a husband and wife is presumed to be held as tenants by the entireties and among other persons, custodial property is presumed to be of equal undivided interests in the custodial property which are indefeasibly vested in the beneficiaries as tenants in common, subject to the provisions of sections 404.400 to 404.650, unless the title document provides otherwise or there is clear and convincing written evidence of a different intent of the beneficiaries or the persons creating the personal custodianship.

2. Unless held for a husband and wife as tenants by the entireties or otherwise directed by the beneficiaries or governed by a custodial agreement, the personal custodian shall administer the custodial property as separate undivided interests for the use and benefit of the custodial beneficiaries during their lifetimes and shall separately account to each beneficiary for the administration of the beneficiary's interest in the custodial property.

3. During the lifetimes of the multiple beneficiaries, the personal custodian shall follow the directions of the beneficiaries who are not incapacitated. If one of the beneficiaries becomes incapacitated, the personal custodian shall follow the directions of the beneficiaries who are not incapacitated to the extent that the directions do not conflict with the rights of the incapacitated beneficiary in the custodial property.

4. If one of two or more beneficiaries who has a right to sever his or her interest in the custodial property demands termination of the personal custodianship, the personal custodian shall deliver to the terminating beneficiary custodial property in an amount equal in value to the beneficiary's interest in the custodial property, free and clear of the custodianship, and the custodianship continues for the remaining beneficiaries.

5. At death of one of two or more beneficiaries who hold their interest in the custodial property as tenants in common, the interest of the decedent in the custodial property shall be distributed in accordance with a transfer on death direction executed under subsection 2 of section 404.560 and, if none, to the decedent's estate.

6. At death of one of two or more beneficiaries, who hold their interests in the custodial property as joint tenants with right of survivorship or as tenants by the entirety, the custodial property belongs to the surviving beneficiary or beneficiaries as against the estate of the decedent. If there are two or more surviving beneficiaries, their respective ownerships during lifetime shall be in proportion to their previous ownership interest, augmented by an equal share for each survivor of any interest the deceased beneficiary may have owned in the custodial property immediately before death, unless the decedent is the spouse of a beneficiary, in which case, the interest owned by the decedent shall be applied solely to augment the ownership interest of the surviving spouse in the custodial property, and the right of survivorship continues as between the surviving beneficiaries. When only one of two or more beneficiaries survives, the personal custodianship shall in all respects become a personal custodianship of property for a single individual.

(L. 1989 H.B. 145)

Rights of creditors, surviving spouse and unmarried minor children--action for accounting by distributee of nonprobate transfer.

404.570. 1. If a deceased beneficiary's probate estate is not sufficient to pay claims, taxes and expenses of administration, including statutory allowances to the surviving spouse and unmarried minor children, the persons that receive a nonprobate transfer of the beneficiary's custodial property under sections 404.560 and 404.565 shall be liable to account to the deceased beneficiary's personal representative for a pro rata share of the value received from the personal custodianship that the decedent owned beneficially immediately before death to the extent necessary to discharge the claims and charges remaining unpaid after application of the funds and property in the decedent's estate. This subsection does not apply to a death benefit paid pursuant to a life or accidental death insurance policy held by the custodian; and it does not apply to survivorship rights in custodial property held as tenants by the entireties.

2. Only decedent's personal representative may enforce the obligation of the beneficiary's custodial distributees under this section by bringing an action for accounting, but no proceeding to assert this liability shall be commenced unless the personal representative has received a written demand therefor by a creditor, surviving spouse or one acting for an unmarried minor child of the deceased beneficiary, and no proceeding shall be brought for accounting under this section more than two years following the beneficiary's death. Sums

recovered by the personal representative shall be administered as part of the decedent's estate.

3. After an action for accounting has been commenced under this section, any party to the proceeding may join and bring into the action for accounting distributees of custodial property from other personal custodianships of the decedent, parties and beneficiaries of multiple-party accounts in which the decedent was an account party, beneficiaries of other types of nonprobate transfers who by law are liable to contribute to the satisfaction of creditor claims in a similar proceeding for accounting, and persons who succeed to property not subject to probate administration that was subject to satisfaction of the decedent's debts during the decedent's lifetime, including the decedent's interest in property distributed at the decedent's death by a trustee of a revocable trust created by the decedent and property held as a joint tenant with rights of survivorship, but only to the extent of decedent's contribution to the value of the joint property.

4. This section shall not affect the right of the personal custodian to execute a direction of the beneficiary to make a payment or to make a nonprobate transfer on death of the beneficiary, or to make that person liable to the beneficiary's estate, unless before the payment or transfer, the personal custodian has been served with process in a proceeding brought by the deceased beneficiary's personal representative and the personal custodian has had a reasonable time to act on it.

5. This section does not create a lien on any property that is the subject of a nonprobate transfer, except as a lien may be perfected by way of attachment, garnishment or judgment in an accounting proceeding authorized by this section.

(L. 1986 S.B. 651 § 6 subsec. 5 subdiv. (7), A.L. 1989 H.B. 145, A.L. 1993 S.B. 277)

Compensation and expenses of custodian--bond required, when--custodian's claims not lien on custodial property.

404.580. 1. Subject to any written agreement with the beneficiary, a personal custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the personal custodian's duties.

2. Subject to any written agreement, a personal custodian who is not a donor may each year elect to receive from the custodial property reasonable

compensation for services as personal custodian. If an election is not affirmatively made during the calendar year, the right to compensation for that year shall lapse.

3. A personal custodian is not required to give a bond for the performance of the personal custodian's duties unless required by court order.

4. No claim of a personal custodian for expenses or compensation shall constitute a claim or lien on custodial property transferred by the personal custodian to a third person or to the beneficiary.

(L. 1986 S.B. 651 § 7)

Successor custodian designation on renunciation, resignation, death, incapacity or removal of custodian.

404.590. 1. A person designated as a personal custodian may decline to serve by delivering a written renunciation to the person who made the designation or to the transferor or the transferor's legal representative. If at the time of the transfer there is no substitute personal custodian who is able and willing to serve as custodian, the person who made the designation, a person with a power from the donor to designate a personal custodian, the transferor or the transferor's legal representative shall designate a substitute personal custodian.

2. A nonincapacitated beneficiary may revocably designate, or grant to another person a general or limited power to revocably designate, at any time one or more successor personal custodians by executing and dating an instrument of designation before a subscribing witness other than a successor personal custodian. If the beneficiary does not designate a successor personal custodian or is incapacitated, the personal custodian may revocably designate at any time one or more successor personal custodians in a will or by executing and dating an instrument of designation before a subscribing witness other than a successor personal custodian. If the instrument of designation does not contain or is not accompanied by the personal custodian's resignation, the designation of a successor does not take effect until the personal custodian resigns, dies, becomes incapacitated or is removed. Successor personal custodians serve in the order named in the event a prior named personal custodian declines or is not qualified to serve as personal custodian, or is deceased or incapacitated.

3. A personal custodian may resign at any time by delivering written notice to the beneficiary and the successor personal custodian and delivering the

custodial property and records of the personal custodianship to the beneficiary, if not incapacitated, or to the successor personal custodian.

4. If the personal custodian dies or becomes incapacitated, the personal custodian's legal representative shall deliver the custodial property to a beneficiary who is not incapacitated or to a successor personal custodian. If no successor personal custodian has been effectively designated and if the beneficiary is incapacitated, the personal custodian's legal representative shall designate as successor personal custodian any adult person or financial institution in the manner provided in subsection 2 of this section and deliver the custodial property to the successor personal custodian.

5. The designation of a successor personal custodian by a personal custodian or the personal custodian's legal representative may be included in the instrument placing custodial property into the name of the successor personal custodian.

6. If the personal custodian or the personal custodian's legal representative does not timely designate a successor personal custodian for an incapacitated beneficiary, the legal representative of an incapacitated beneficiary, an adult member of the incapacitated beneficiary's family or any person interested in the welfare of the beneficiary, may petition the court to designate a successor personal custodian.

7. A successor personal custodian shall hold the custodial property in the manner prescribed in section 404.540 and need not indicate the custodial capacity as a successor personal custodian.

8. A personal custodian who resigns, or the legal representative of a deceased or incapacitated personal custodian, as soon as practicable, shall do all things within that person's lawful power to put each item of the custodial property and the records of the personal custodianship in the possession and control of the beneficiary or of a successor personal custodian.

9. The beneficiary, the beneficiary's legal representative, an adult member of an incapacitated beneficiary's family, a successor personal custodian or any person interested in the welfare of the beneficiary, for good cause shown, may petition the court to remove the personal custodian, to designate a successor personal custodian, to require the personal custodian to give bond and to order delivery of the custodial property and records of the custodianship to the beneficiary, a successor personal custodian or the beneficiary's legal representative.

(L. 1986 S.B. 651 § 8, A.L. 1989 H.B. 145)

Exemption of third person from liability.

404.600. A third person, including an issuer of securities, transfer agent, financial institution, broker, life insurance company, benefit plan, personal representative or trustee, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make a transfer under sections 404.400 to 404.650 or purporting to act in the capacity of a personal custodian, successor personal custodian or legal representative of a personal custodian and, in the absence of actual knowledge, is not responsible for determining:

(1) The validity of the purported personal custodian's or successor personal custodian's designation;

(2) The propriety of, or the authority under sections 404.400 to 404.650 or under a contract between the beneficiary and personal custodian for, any act of the purported personal custodian;

(3) The validity or propriety under sections 404.400 to 404.650 of any instrument or instructions executed or given by the person purporting to make a transfer under sections 404.400 to 404.650 or by the purported personal custodian;

(4) The propriety of the application or use of any custodial property by the personal custodian;

(5) The validity of a delivery of custodial property by a personal custodian or legal representative of a personal custodian to a successor personal custodian;

(6) The validity of a delivery of custodial property by the personal custodian to the beneficiary or whether the beneficiary is incapacitated at the time of the delivery; or

(7) Whether the beneficiary is under any legal disability or incapacity at the time or subsequent to when any act is performed by or for the beneficiary with respect to the personal custodianship.

(L. 1986 S.B. 651 § 9)

Liability to third persons.

404.610. 1. A claim based on: (i) a contract entered into by a personal custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the personal custodianship, may be asserted against the custodial property by proceeding against the personal custodian in the custodial capacity.

2. A personal custodian is not personally liable:

(1) On a contract properly entered into in the custodial capacity unless the personal custodian fails to reveal that capacity and to identify the personal custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the personal custodianship unless the personal custodian is personally at fault.

3. A beneficiary is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the personal custodianship unless the beneficiary is personally at fault.

(L. 1986 S.B. 651 § 10)

Accounting by custodian, approval by court, waiver--determination of liability of custodian--time limitations for beneficiary to bring actions.

404.620. 1. The beneficiary, the legal representative of an incapacitated or deceased beneficiary, a successor personal custodian, an adult member of an incapacitated beneficiary's family or any interested person, including any person interested in the welfare of the beneficiary, may petition the court for an accounting by the personal custodian or the personal custodian's legal representative.

2. Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a beneficiary who is not disabled, or by a beneficiary whose legal capacity has been restored, or by all creditors and distributees of a deceased beneficiary's estate whose claims or distributions theretofore have not been

satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

3. For the purposes of subsection 2 of this section, a legal representative or a person providing services to the beneficiary's estate shall not be considered a creditor of the beneficiary's estate; and no express approval or waiver shall be required from the legal representative of a disabled or incapacitated beneficiary if the beneficiary's legal capacity has been restored, or from the personal representative of a deceased beneficiary's estate, or from any other person entitled to compensation or expense for services rendered to a disabled, incapacitated or deceased beneficiary's estate, unless the beneficiary or the beneficiary's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

4. In a proceeding under sections 404.400 to 404.650, or in any other proceeding, or upon the petition of the personal custodian, the court may: (i) require or permit the personal custodian to account; (ii) authorize the personal custodian to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the personal custodian, that the court finds is, was or will be beneficial to the beneficiary and which the court has power to authorize for a conservator under chapter 475; and (iii) determine responsibility, as between custodial property and the personal custodian personally, for claims against custodial property unless the responsibility has been adjudicated in an action under section 404.610.

5. If the personal custodian is removed under subsection 9 of section 404.590, the court may order an accounting, order delivery of the custodial property and records of the personal custodianship to the beneficiary, a successor personal custodian or the beneficiary's legal representative, and order the execution of all instruments required for the transfer of the custodial property.

6. Unless previously barred by adjudication, consent or limitations, any cause of action against a personal custodian for accounting or breach of duty shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the personal custodianship for the beneficiary unless a proceeding to assert the cause of action is commenced within two years after receipt of the final account or statement by the beneficiary or, if the beneficiary is an incapacitated or deceased person, by the legal representative of the beneficiary's estate; except that, if no final account or statement is provided by the personal custodian or if there is no legal representative of the beneficiary's estate, then such cause of

action shall not be barred until two years after the removal of the beneficiary's legal disability or one year after the beneficiary's death. The cause of action thus barred does not include any action to recover from the personal custodian for fraud, misrepresentation or concealment related to the final settlement of the personal custodianship, or concealment of the existence of the personal custodianship.

(L. 1986 S.B. 651 § 11, A.L. 1989 H.B. 145)

Uniformity of application and construction--not to be exclusive method of transferring property to an incapacitated person.

404.630. 1. Sections 404.400 to 404.650 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of sections 404.400 to 404.650 among states enacting a similar law.

2. Sections 404.400 to 404.650 shall not be construed as providing an exclusive method of placing property in the custody of another person or transferring property to an incapacitated person.

(L. 1986 S.B. 651 § 12)

Jurisdiction for transfers to personal custodianship.

404.640. 1. The probate division of the circuit court may hear and determine all matters pertaining to personal custodians and the administration of personal custodianships under sections 404.400 to 404.650.

2. The provisions of chapter 472 apply to judicial proceedings involving personal custodianships to the extent they apply to judicial proceedings involving trusts and are not inconsistent with sections 404.400 to 404.650.

3. If the probate division of the circuit court appoints a guardian or conservator for a beneficiary of a personal custodianship, after notice and hearing, the court may specify in an order the duties and responsibilities of the beneficiary's legal representatives and personal custodians and the manner in which they shall coordinate the exercise of their respective powers and duties for and on behalf of the beneficiary.

4. Upon the filing of any petition as provided in sections 404.400 to 404.650, the court shall issue an order directed to such persons and returnable on such

notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, shall proceed to grant such relief as the court finds to be in the best interest of the beneficiary of the personal custodianship.

(L. 1986 S.B. 651 § 13)

Conflicts of interest--guardian or conservator ad litem appointed, when, compensation.

404.648. 1. Notwithstanding any other provision of law, if it is suggested in a petition filed by the beneficiary, a creditor, a person interested in the welfare of the beneficiary, or other interested person, including a member of the beneficiary's family who may have a property right or claim against or an expectancy, reversionary or other interest in the estate of the beneficiary, or if it affirmatively appears to the court that the beneficiary is disabled or incapacitated and there is a possible conflict of interest between the beneficiary and the personal custodian or a custodial trustee, the court may appoint a guardian or conservator ad litem to represent the beneficiary in any proceeding to adjudicate any right affected by the possible conflict of interest. The guardian or conservator ad litem shall have only such authority as is provided in the order of appointment and shall serve until discharged by the court.

2. If a court appoints a guardian or conservator ad litem for the beneficiary, the court may, by order entered in the proceeding, provide reasonable compensation and reimbursement for expenses for the guardian or conservator ad litem and, in appropriate cases, allow the payment out of the custodial property of the beneficiary or enter a judgment for the amount as costs against some other person who is a party to the proceeding and whose conduct is determined by the court as giving rise to the necessity for the appointment of the guardian or conservator ad litem.

(L. 1989 H.B. 145)

Law of Missouri to apply, when--other state's laws applicable, when.

404.650. 1. Sections 404.400 to 404.650 apply to a transfer that refers to the Missouri personal custodian law in the designation under section 404.540 by which the transfer is made if at the time of the transfer the transferor, the beneficiary or the personal custodian is a resident of this state or the custodial

property is located in this state. The personal custodianship so created remains subject to sections 404.400 to 404.650 despite a subsequent change in residence of a transferor, the beneficiary or the personal custodian, or the removal of custodial property from this state.

2. A person designated as a personal custodian under sections 404.400 to 404.650 is subject to personal jurisdiction in this state with respect to any matter relating to the personal custodianship.

3. A transfer that purports to be made and which is valid under the uniform custodial trust law, personal custodian law, or a substantially similar law, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer the transferor, the beneficiary or the custodian is a resident of the designated state or the custodial property is located in the designated state.

4. A transfer that purports to be made under the uniform custodial trust law of Missouri or the adult custodian law of Missouri is governed by sections 404.400 to 404.650.

(L. 1986 S.B. 651 § 14, A.L. 1989 H.B. 145, A.L. 1993 S.B. 277)

Law, how cited.

404.700. Sections 404.700 to 404.735 may be cited as the "Durable Power of Attorney Law of Missouri".

(L. 1989 H.B. 145 § 1)

Definitions.

404.703. As used in sections 404.700 to 404.735 the following terms mean:

(1) "Attorney in fact", an individual or corporation appointed to act as agent of a principal in a written power of attorney;

(2) "Court", the circuit court including the probate division of the circuit court;

(3) "Disabled" or "incapacitated", a person who is wholly or partially disabled or incapacitated as defined in section 475.010 or in a similar law of the place having jurisdiction of the person whose capacity is in question;

(4) "Durable power of attorney", a written power of attorney in which the authority of the attorney in fact does not terminate in the event the principal becomes disabled or incapacitated or in the event of later uncertainty as to whether the principal is dead or alive and which complies with subsection 1 of section 404.705 or is durable under the laws of any of the following places:

(a) The law of the place where executed;

(b) The law of the place of the residence of the principal when executed; or

(c) The law of a place designated in the written power of attorney if that place has a reasonable relationship to the purpose of the instrument;

(5) "Legal representative", a decedent's personal representative, a guardian of a person or the conservator of the estate of a person, whether denominated as general, limited or temporary, or a person legally authorized to perform substantially the same functions;

(6) "Person", an individual, corporation, or other legal entity;

(7) "Personal representative", a legal representative of a decedent's estate as defined in section 472.010;

(8) "Power of attorney", a written power of attorney, either durable or not durable;

(9) "Principal's family", the principal's parent, grandparent, uncle, aunt, brother, sister, son, daughter, grandson, granddaughter and their descendants, whether of the whole blood or the half blood, or by adoption, and the principal's spouse, stepparent and stepchild;

(10) "Third person", any individual, corporation or legal entity that acts on a request from, contracts with, relies on or otherwise deals with an attorney in fact pursuant to authority granted by a principal in a power of attorney and includes a partnership, either general or limited, governmental agency, financial institution, issuer of securities, transfer agent, securities or commodities broker, real estate broker, title insurance company, insurance company, benefit plan, legal representative, custodian or trustee.

(L. 1989 H.B. 145 § 2, A.L. 1997 S.B. 265)

Durable power of attorney, procedure to create, requirements, effect,

recording not required, exception--person appointed has no duty to exercise authority conferred, exception.

404.705. 1. The authority granted by a principal to an attorney in fact in a written power of attorney is not terminated in the event the principal becomes wholly or partially disabled or incapacitated or in the event of later uncertainty as to whether the principal is dead or alive if:

(1) The power of attorney is denominated a "Durable Power of Attorney";

(2) The power of attorney includes a provision that states in substance one of the following:

(a) "THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT SHALL NOT TERMINATE IF I BECOME DISABLED OR INCAPACITATED OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER I AM DEAD OR ALIVE"; or

(b) "THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT, WHEN EFFECTIVE, SHALL NOT TERMINATE OR BE VOID OR VOIDABLE IF I AM OR BECOME DISABLED OR INCAPACITATED OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER I AM DEAD OR ALIVE"; and

(3) The power of attorney is subscribed by the principal, and dated and acknowledged in the manner prescribed by law for conveyances of real estate.

2. All acts done by an attorney in fact pursuant to a durable power of attorney shall inure to the benefit of and bind the principal and the principal's successors in interest, notwithstanding any disability or incapacity of the principal or any uncertainty as to whether the principal is dead or alive.

3. A durable power of attorney does not have to be recorded to be valid and binding between the principal and attorney in fact or between the principal and third persons, except to the extent that recording may be required for transactions affecting real estate under sections 442.360 and 442.370.

4. A person who is appointed an attorney in fact under a durable power of attorney has no duty to exercise the authority conferred in the power of attorney, whether or not the principal has become disabled or incapacitated, is missing or is held in a foreign country, unless the attorney in fact has agreed expressly in writing to act for the principal in such circumstances. An

agreement to act on behalf of the principal is enforceable against the attorney in fact as a fiduciary without regard to whether there is any consideration to support a contractual obligation to do so. Acting for the principal in one or more transactions does not obligate an attorney in fact to act for the principal in subsequent transactions.

(L. 1989 H.B. 145 § 3, A.L. 1997 S.B. 265)

Principal may appoint multiple attorneys in fact--authority may be joint or several--qualifications--persons disqualified.

404.707. 1. A principal may appoint more than one attorney in fact in one or more powers of attorney and may provide that the authority conferred on two or more attorneys in fact shall or may be exercised either jointly or severally or in a manner, with such priority and with respect to such subjects as is provided in the power of attorney.

2. Any person, other than a person who is disqualified from being appointed a guardian or conservator of the principal under subsection 2 of section 475.055, shall be qualified to be designated an attorney in fact under a durable power of attorney.

3. The designation of a person not qualified to act as an attorney in fact for a principal under a durable power of attorney subjects the person to removal as attorney in fact but does not affect the immunities of third persons nor relieve the unqualified person of any duties or responsibilities to the principal or the principal's successors.

(L. 1989 H.B. 145 § 4)

Power of attorney with general powers.

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

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general

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

3. If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section.

4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to his or her own person or property, including property owned jointly or by the entireties with another or others, as a nondisabled and nonincapacitated adult; and without limiting the foregoing has with respect to the subjects or purposes of the power complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless

any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact, and such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

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

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

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

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

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

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

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

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

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

(8) To make an anatomical gift of, or prohibit an anatomical gift of, all or part of the principal's body under the Revised Uniform Anatomical Gift Act or to exercise the right of sepulcher over the principal's body under section 194.119;

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

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

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

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

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

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

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

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

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

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

10. Sections 404.700 to 404.735 shall not be construed to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal; and any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.

(L. 1989 H.B. 145 § 5, A.L. 1991 S.B. 148, A.L. 1997 S.B. 265, A.L. 2011 S.B. 59)

Name in which acts are performed and property held--property and accounts of principal to be kept separate--how identified.

404.712. 1. An attorney in fact acting for the principal under a power of attorney shall clearly indicate his capacity and shall keep the principal's

property and accounts separate and distinct from all other property and accounts in a manner to identify the property and accounts clearly as belonging to the principal.

2. An attorney in fact holding property for a principal complies with subsection 1 of this section if the property is held in the name of the principal, in the name of the attorney in fact as attorney in fact for the principal or in the name of the attorney in fact as personal custodian for the principal under the Missouri personal custodian law, uniform custodial trust law or similar law of any state.

(L. 1989 H.B. 145 § 6)

Duties of attorney in fact.

404.714. 1. An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney, either durable or not durable, who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries; and in the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections 469.900 to 469.913. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's behalf.

2. On matters undertaken or to be undertaken in the principal's behalf and to the extent reasonably possible under the circumstances, an attorney in fact has a

duty to keep in regular contact with the principal, to communicate with the principal and to obtain and follow the instructions of the principal.

3. If the principal is not available to communicate in person with the attorney in fact because:

(1) The principal is missing under such circumstances that it is not known whether the principal is alive or dead; or

(2) The principal is captured, interned, besieged or held hostage or prisoner in a foreign country;

the authority of the attorney in fact under a power of attorney, whether durable or not, shall not terminate and the attorney in fact may continue to exercise the authority conferred, faithfully and in the best interests of the principal, until the principal returns or is publicly declared dead by a governmental agency, domestic or foreign, or is presumed dead because of continuous absence of five years as provided in section 472.290, RSMo 1986, or a similar law of the place of the last known domicile of the person whose absence is in question.

4. If, following execution of a power of attorney, the principal is absent or becomes wholly or partially disabled or incapacitated, or if there is a question with regard to the ability or capacity of the principal to give instructions to and supervise the acts and transactions of the attorney in fact, an attorney in fact exercising authority under a power of attorney, either durable or not durable, may consult with any person or persons previously designated by the principal for such purpose, and may also consult with and obtain information from the principal's spouse, physician, attorney, accountant, any member of the principal's family or other person, corporation or government agency with respect to matters to be undertaken in the principal's behalf and affecting the principal's personal affairs, welfare, family, property and business interests.

5. If, following execution of a durable power of attorney, a court appoints a legal representative for the principal, the attorney in fact shall follow the instructions of the court or of the legal representative, and shall communicate with and be accountable to the principal's guardian on matters affecting the principal's personal welfare and to the principal's conservator on matters affecting the principal's property and business interests, to the extent that the responsibilities of the guardian or conservator and the authority of the attorney in fact involve the same subject matter.

6. The authority of an attorney in fact, under a power of attorney that is not durable, is suspended during any period that the principal is disabled or incapacitated to the extent that the principal is unable to receive or evaluate information or to communicate decisions with respect to the subject of the power of attorney; and an attorney in fact exercising authority under a power of attorney that is not durable shall not act in the principal's behalf during any period that the attorney in fact knows the principal is so disabled or incapacitated.

7. An attorney in fact shall exercise authority granted by the principal in accordance with the instrument setting forth the power of attorney, any modification made therein by the principal or the principal's legal representative or a court, and the oral and written instructions of the principal, or the written instructions of the principal's legal representative or a court.

8. An attorney in fact may be instructed in a power of attorney that the authority granted shall not be exercised until, or shall terminate on, the happening of a future event, condition or contingency, as determined in a manner prescribed in the instrument.

9. On the death of the principal, the attorney in fact shall follow the instructions of the court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall communicate with and be accountable to the principal's personal representative, or if none, the principal's successors; and the attorney in fact shall promptly deliver to and put in the possession and control of the principal's personal representative or successors any property of the principal and copies of any records of the attorney in fact relating to transactions undertaken in the principal's behalf that are deemed by the personal representative or the court to be necessary or helpful in the administration of the decedent's estate.

10. If an attorney in fact has a property or contract interest in the subject of the power of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a person other than the principal, this section does not impose any duties on the attorney in fact that would conflict or be inconsistent with that interest.

(L. 1989 H.B. 145 § 7, A.L. 1997 S.B. 265, A.L. 1998 H.B. 1571, A.L. 2006 S.B. 892)

Modification and termination of power of attorney--liability between principal and attorney in fact.

404.717. 1. As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

(1) On the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;

(2) When the principal, orally or in writing, or the principal's legal representative with approval of the court in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated;

(3) When a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record in the office of the recorder of deeds in the city or county of the principal's residence or, if the principal is a nonresident of the state, in the city or county of the residence of the attorney in fact last known to the principal, or in the city or county in which is located any property specifically referred to in the power of attorney;

(4) On the death of the principal, except that if the power of attorney grants authority under subdivision (7) or (8) of subsection 6 of section 404.710, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of said subdivisions for a reasonable length of time after the death of the principal;

(5) When the attorney in fact under a durable power of attorney is not qualified to act for the principal;

(6) On the filing of any action for divorce or dissolution of the marriage of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

2. Whenever any of the events described in subsection 1 of this section operate merely to terminate the authority of the particular person designated as the attorney in fact, rather than terminating the power of attorney, if the power of attorney designates a successor or contingent attorney in fact or prescribes a procedure whereby a successor or contingent attorney in fact may be designated, then the authority provided in the power of attorney shall extend to and vest in the successor or contingent attorney in fact in lieu of the attorney in

fact whose power and authority was terminated under any of the circumstances referred to in subsection 1 of this section.

3. As between the principal and attorney in fact or successor, acts and transactions of the attorney in fact or successor undertaken in good faith, in accordance with section 404.714, and without actual knowledge of the death of the principal or without actual knowledge, or constructive knowledge pursuant to subdivision (3) of subsection 1 of this section, that the authority granted in the power of attorney has been suspended, modified or terminated, relieves the attorney in fact or successor from liability to the principal and the principal's successors in interest.

4. This section does not prohibit the principal, acting individually, and the person designated as the attorney in fact from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of sections 404.700 to 404.735, with the exception of those acts enumerated in subsection 7 of section 404.710.

5. As between the principal and any attorney in fact or successor, if the attorney in fact or successor undertakes to act, and if in respect to such act, the attorney in fact or successor acts in bad faith, fraudulently or otherwise dishonestly, or if the attorney in fact or successor intentionally acts after receiving actual notice that the power of attorney has been revoked or terminated, and thereby causes damage or loss to the principal or to the principal's successors in interest, such attorney in fact or successor shall be liable to the principal or to the principal's successors in interest, or both, for such damages, together with reasonable attorney's fees, and punitive damages as allowed by law.

(L. 1989 H.B. 145 § 8, A.L. 1997 S.B. 265)

Exemption of third persons from liability.

404.719. 1. A third person, who is acting in good faith, without liability to the principal or the principal's successors in interest, may rely and act on any power of attorney executed by the principal; and, with respect to the subjects and purposes encompassed by or separately expressed in the power of attorney, may rely and act on the instructions of or otherwise contract and deal with the principal's attorney in fact or successor attorney in fact and, in the absence of actual knowledge, as defined in subsection 3 of this section, is not responsible for determining and has no duty to inquire as to any of the following:

(1) The authenticity of a certified true copy of a power of attorney furnished by the principal's attorney in fact or successor;

(2) The validity of the designation of the attorney in fact or successor;

(3) Whether the attorney in fact or successor is qualified to act as an attorney in fact for the principal;

(4) The propriety of any act of the attorney in fact or successor in the principal's behalf, including, but not limited to, whether or not an act taken or proposed to be taken by the attorney in fact, constitutes a breach of any duty or obligation owed to the principal, including, but not limited to, the obligation to the principal not to modify or alter the principal's estate plan or other provisions for distributions of assets at death, as provided in subsection 1 of section 404.714;

(5) Whether any future event, condition or contingency making effective or terminating the authority conferred in a power of attorney has occurred;

(6) Whether the principal is disabled or incapacitated or has been adjudicated disabled or incapacitated;

(7) Whether the principal, the principal's legal representative or a court has given the attorney in fact any instructions or the content of any instructions, or whether the attorney in fact is following any instructions received;

(8) Whether the authority granted in a power of attorney has been modified by the principal, a legal representative of the principal or a court;

(9) Whether the authority of the attorney in fact has been terminated, except by an express provision in the power of attorney showing the date on which the power of attorney terminates;

(10) Whether the power of attorney, or any modification or termination thereof, has been recorded, except as to transactions affecting real estate;

(11) Whether the principal had legal capacity to execute the power of attorney at the time the power of attorney was executed;

(12) Whether, at the time the principal executed the power of attorney, the principal was subjected to duress, undue influence or fraud, or the power of attorney was for any other reason void or voidable, if the power of attorney appears to be regular on its face;

(13) Whether the principal is alive;

(14) Whether the principal and attorney in fact were married at or subsequent to the time the power of attorney was created and whether the marriage has been dissolved; or

(15) The truth or validity of any facts or statements made in an affidavit of the attorney in fact or successor with regard to the ability or capacity of the principal, the authority of the attorney in fact or successor under the power of attorney, the happening of any event or events vesting authority in any successor or contingent attorney in fact, the identity or authority of a person designated in the power of attorney to appoint a substitute or successor attorney in fact or that the principal is alive.

2. A third person, in good faith and without liability to the principal or the principal's successors in interest, even with knowledge that the principal is disabled or incapacitated, may rely and act on the instructions of or otherwise contract and deal with the principal's attorney in fact or successor attorney in fact acting pursuant to authority granted in a durable power of attorney.

3. A third person that conducts activities through employees shall not be charged under sections 404.700 to 404.735 with actual knowledge of any fact relating to a power of attorney, nor of a change in the authority of an attorney in fact, unless the information is received at a home office or a place where there is an employee with responsibility to act on the information, and the employee has a reasonable time in which to act on the information using the procedures and facilities that are available to the third person in the regular course of its operations.

4. A third person, when being requested to engage in transactions with a principal through the principal's attorney in fact, may require the attorney in fact to provide specimens of his or her signature and any other information reasonably necessary or appropriate in order to facilitate the actions of the third person in transacting business through the attorney in fact, may require the attorney in fact to indemnify the third person against forgery of the power of attorney, by bond or otherwise; provided, however, that if the power of attorney is durable as defined in subsection 1 of section 404.705 and if either the principal or the attorney in fact seeking to act is and has been a resident of this state for at least two years, and if the attorney in fact has executed in the name of the principal and delivered to the third person an indemnity agreement reasonably satisfactory in form to such third person, no such bond shall be required; and may prescribe the place and manner in which the third person

will be given any notice respecting the principal's power of attorney and the time in which the third person has to comply with any notice.

(L. 1989 H.B. 145 § 9, A.L. 1995 S.B. 178, A.L. 1997 S.B. 265)

Liability as between principal and third person.

404.721. 1. As between the principal and third persons, the authority granted in a power of attorney shall terminate on the date of termination, if any, set out in the power of attorney or on the date when the third person acquires actual knowledge of the death of the principal or that the authority granted in the power of attorney has been suspended, modified or terminated.

2. As between the principal and third persons, the acts and transactions of an attorney in fact are binding on the principal and the principal's successors in interest in any situation in which a third person is entitled to rely under section 404.719.

3. This section does not prohibit the principal, acting individually, and a third person from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of sections 404.700 to 404.735, except that no agreement shall limit or restrict the right of the principal to act with respect to the third person through an attorney in fact appointed in a durable power of attorney.

(L. 1989 H.B. 145 § 10)

Delegation of powers, successor attorneys in fact--court's powers, appointments for incapacitated or disabled persons.

404.723. 1. An attorney in fact or successor from time to time may revocably delegate any or all of the powers granted in a durable power of attorney to one or more qualified persons, subject to any directions or limitations of the principal expressed in the power of attorney, but the attorney in fact making the delegation shall remain responsible to the principal for the exercise or nonexercise of the powers delegated.

2. The principal in a durable power of attorney may revocably name one or more qualified persons as successor attorneys in fact to exercise the authority granted in the power of attorney in the order named in the event a prior named attorney in fact resigns, dies, becomes disabled or incapacitated, is not qualified

to act or refuses to act; and the principal in a durable power of attorney may revocably grant a power to another person, designated by name, by office, or by function, including the initial and any successor attorney in fact, whereby there may be revocably named at any time one or more successor attorneys in fact.

3. A delegated or successor attorney in fact need not indicate his or her capacity as a delegated or successor attorney in fact.

4. If a wholly or partially incapacitated or wholly or partially disabled person has provided for personal care or property management in an unrevoked durable power of attorney which the court finds is reasonably adequate to provide guidance to the attorney in fact for the conduct of the principal's personal or business affairs, and there is no attorney in fact or successor designated in the durable power of attorney who is willing, able and available to act, the court in lieu of appointing a full or limited guardian or a full or a limited conservator may appoint any adult person or financial institution as successor attorney in fact to act pursuant to the incapacitated or disabled principal's durable power of attorney, with or without bond and with or without court supervision, upon such terms and conditions as the court may require. In lieu of or in addition to appointing a successor attorney in fact or a limited or full conservator for management of a disabled person's estate the court may appoint any adult person or financial institution to act as personal custodian of the disabled person's estate pursuant to section 404.510. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal; except that in the event of an emergency as determined by the court, the court may, without notice, enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than thirty days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

(L. 1989 H.B. 145 § 11, A.L. 1997 S.B. 265)

Compensation of attorney in fact.

404.725. Subject to the provisions of the power of attorney and any separate agreement, an attorney in fact is entitled to reasonable compensation for services rendered to the principal as attorney in fact and reimbursement for

reasonable expenses incurred as a result of acting as attorney in fact for the principal.

(L. 1989 H.B. 145 § 12)

Accounting, determination of disability, modification and termination, limitation or removal of attorney in fact and limitations for principal to bring actions.

404.727. 1. The principal may petition the court for an accounting by the principal's attorney in fact or the legal representative of the attorney in fact. If the principal is disabled, incapacitated or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

2. Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a principal who is not disabled, or by a principal whose legal capacity has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions theretofore have not been satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

3. For the purposes of subsection 2 of this section, a legal representative or a person providing services to the principal's estate shall not be considered a creditor of the principal's estate; and no express approval or waiver shall be required from the legal representative of a disabled or incapacitated principal if the principal's legal capacity has been restored, or from the personal representative of a deceased principal's estate, or from any other person entitled to compensation or expense for services rendered to a disabled, incapacitated or deceased principal's estate, unless the principal or the principal's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

4. The principal, the principal's attorney in fact, an adult member of the principal's family or any person interested in the welfare of the principal may petition the probate division of the circuit court in the county or city where the principal is then residing to determine and declare whether a principal, who has executed a power of attorney, is a disabled or incapacitated person.

5. If the principal is a disabled or incapacitated person, on petition of the principal's legal representative, an adult member of the principal's family or any interested person, including a person interested in the welfare of the principal, for good cause shown the court, may:

(1) Order the attorney in fact to exercise or refrain from exercising authority in a durable power of attorney in a particular manner or for a particular purpose;

(2) Modify the authority of an attorney in fact under a durable power of attorney;

(3) Declare suspended a power of attorney that is not durable;

(4) Terminate a durable power of attorney;

(5) Remove the attorney in fact under a durable power of attorney;

(6) Confirm the authority of an attorney in fact or a successor attorney in fact to act under a durable power of attorney; and

(7) Issue such other orders as the court finds will be in the best interest of the disabled or incapacitated principal, including appointment of a guardian or conservator for the principal.

6. If, after notice and hearing, the court determines that there has been a prima facie showing that the principal is a disabled or incapacitated person and that the attorney in fact has breached his fiduciary duty to the principal or that there is a reasonable likelihood that he may do so in the immediate future, the court may, in its discretion, issue an order that some or all of the authority granted by the power of attorney be suspended or modified, and that a different attorney in fact be authorized to exercise some or all of the powers granted by the power of attorney. Such attorney in fact may be designated by the court. The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the attorney in fact who has been acting on behalf of the principal or the principal and the principal's successors in interest for the expenses, including attorney's fees, incurred by any such persons with respect to such proceeding. The court may, after hearing, allow payment or enter judgment for any such amount in the manner as provided by subsection 6 of section 404.731. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives

of the principal and any other persons known to the petitioner to be interested in the welfare of the principal; except that in the event of an emergency as determined by the court, the court may, without notice, enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than thirty days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

7. If a power of attorney is suspended or terminated by the court or the attorney in fact is removed by the court, the court may require an accounting from the attorney in fact and order delivery of any property belonging to the principal and copies of any necessary records of the attorney in fact concerning the principal's property and affairs to a successor attorney in fact or the principal's legal representative.

8. In a proceeding under sections 404.700 to 404.735 or in any other proceeding, or upon petition of an attorney in fact or successor, the court may:

(1) Require or permit an attorney in fact under a durable power of attorney to account;

(2) Authorize the attorney in fact under a durable power of attorney to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the attorney in fact that the court finds is, was or will be beneficial to the principal and which the court has power to authorize for a guardian or conservator under chapter 475; and

(3) Relieve the attorney in fact of any obligation to exercise authority for a disabled or incapacitated principal under a durable power of attorney.

9. Unless previously barred by adjudication, consent or limitation, any cause of action against an attorney in fact or successor for breach of duty to the principal shall be barred as to any principal who has received an account or other statement fully disclosing the matter unless a proceeding to assert the cause of action is commenced within two years after receipt of the account or statement by him or, if the principal is a disabled or incapacitated person, by a guardian or conservator of his estate; provided that, if a disabled or incapacitated person has no guardian or conservator of his estate at the time an account or statement is presented, then the cause of action shall not be barred until one year after the removal of the principal's disability or incapacity, one year after the appointment of a conservator for the principal, or one year after the death of the principal. The cause of action thus barred does not include any action to recover from an attorney in fact or successor for fraud, misrepresentation or

concealment related to the settlement of any transaction involving the agency relationship of the attorney in fact with the principal.

(L. 1989 H.B. 145 § 13, A.L. 1997 S.B. 265)

Scope and application of law--application of law to nondurable powers of attorney.

404.730. 1. Sections 404.700 to 404.735 apply to the acts and transactions in this state of attorneys in fact under powers of attorney executed in this state or by residents of this state; and also apply to acts and transactions of attorneys in fact in this state or outside this state under powers of attorney that refer to the durable power of attorney law of Missouri in the instrument creating the power of attorney, if any of the following conditions are met:

(1) The principal or attorney in fact was a resident of this state at the time the power of attorney was executed;

(2) The powers and authority conferred relate to property, acts or transactions in this state;

(3) The acts and transactions of the attorney in fact or successor occurred or were to occur in this state;

(4) The power of attorney was executed in this state; or

(5) There is otherwise a reasonable relationship between this state and the subject matters of the power of attorney. The power of attorney so created remains subject to sections 404.700 to 404.735 despite a subsequent change in residence of the principal or the attorney in fact and any successor, or the removal from this state of property which was the subject of the power of attorney.

2. A person who acts as an attorney in fact or successor pursuant to a power of attorney governed by sections 404.700 to 404.735 is subject to personal jurisdiction in this state with respect to matters relating to acts and transactions of the attorney in fact or successor performed in this state, performed for a resident of this state or affecting property in this state.

3. Sections 404.700 to 404.735 shall not be construed as providing an exclusive method for creating powers of attorney that are in fact durable or that may be

durable as to one or more acts by reason of the fact that the attorney in fact or other person has a property or contract interest in the authority conferred.

4. Sections 404.700 to 404.735 shall not be construed to apply to powers of attorney that are not durable except where specifically so stated; and sections 404.700 to 404.735, insofar as they apply to powers of attorney that are not durable, are intended to be declaratory of existing law.

5. A durable power of attorney that purports to have been made under the provisions of the uniform durable power of attorney act or a substantially similar law of another state is governed by the law of the designated state and, if durable where executed, is durable and may be carried out and enforced in this state.

6. A power of attorney, whether durable or not, executed by a resident of another state, may authorize the carrying out in this state of all acts permitted to be delegated to an agent by the laws of the state of the residence of the principal, the laws of the state where the power of attorney is executed, or the laws of this state, whichever law is most favorable toward authorizing such delegation, and is durable if so designated either under the laws of this state, under the laws of the state of residence of the principal, or under the laws of the state where the power of attorney is executed.

(L. 1989 H.B. 145 § 14, A.L. 1997 S.B. 265)

Jurisdiction of probate division of circuit court--guardian or conservator ad litem appointed, when.

404.731. 1. The probate division of the circuit court may hear and determine all matters pertaining to acts and transactions of an attorney in fact performed or undertaken under a power of attorney on behalf of a principal who is disabled or incapacitated, or who has become deceased.

2. The provisions of chapter 472 apply to judicial proceedings involving powers of attorney to the extent that they apply to judicial proceedings involving trusts and are not inconsistent with sections 404.700 to 404.735.

3. If the probate division of the circuit court appoints a guardian or conservator for a principal who has appointed an attorney in fact under a durable power of attorney, after notice and hearing, the court may specify in an order the powers, duties and responsibilities of the principal's legal representative and any

attorney in fact appointed under a durable power of attorney and the manner in which they shall coordinate the exercise of their respective powers and duties for and on behalf of the principal.

4. Upon filing of a petition under sections 404.700 to 404.735, the court shall issue an order to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, shall proceed to grant such relief as the court finds to be in the best interest of the principal.

5. Notwithstanding any other provision of law, if it is suggested in a petition filed by the principal, a creditor, a person interested in the welfare of the principal, or other interested person, including a member of the principal's family who may have a property right or claim against or an expectancy, reversionary or other interest in the estate of the principal, or if it affirmatively appears to the court that the principal is disabled or incapacitated and there is a possible conflict of interest between the principal and the attorney in fact, the court may appoint a guardian or conservator ad litem to represent the principal in any proceeding to adjudicate any right affected by the possible conflict of interest. The guardian or conservator ad litem shall have only such authority as is provided in the order of appointment and shall serve until discharged by the court.

6. If a court appoints a guardian or conservator ad litem for the principal, the court may, by order entered in the proceeding, provide reasonable compensation and reimbursement for expenses for the guardian or conservator ad litem and, in appropriate cases, allow the payment out of the estate of the principal or enter a judgment for the amount as costs against some other person who is a party to the proceeding and whose conduct is determined by the court as giving rise to the necessity for the appointment of the guardian or conservator ad litem.

(L. 1989 H.B. 145 § 15)

Repeal of sections 486.550 to 486.595 does not affect validity of existing durable powers of attorney.

404.735. 1. The repeal of the Missouri durable power of attorney law, sections 486.550 to 486.595, shall not affect the validity of durable powers of attorney created under that law, the validity of the acts and transactions of attorneys in fact under authority granted in durable powers of attorney executed under that

law, or the duties of attorneys in fact under durable powers of attorney executed under that law.

2. The provisions of sections 404.700 and 404.703, subsections 2, 3 and 4 of section 404.705, and sections 404.707 to 404.735 henceforth apply to durable powers of attorney executed before August 28, 1989, insofar as the application of sections 404.700 to 404.735 does not impair constitutionally vested rights.

3. A power of attorney that complies with the provisions of subsection 1 of section 404.705 and that was executed before August 28, 1989, is durable and valid after August 28, 1989.

4. A durable power of attorney executed under prior law need not be recorded as provided in that law to be effective and durable except as to conveyances of real estate; and the appointment of a legal representative for the principal or the principal's estate shall not require an accounting by an attorney in fact acting under a power of attorney executed under prior law, unless ordered by a court pursuant to a petition to the court under section 404.727.

5. Compliance with the provisions of subsection 1 of section 404.705 is not required for durability of a power of attorney executed prior to January 1, 1990, if the form of the power of attorney was sufficient for durability under subdivision (2) of section 486.555, RSMo 1986.

(L. 1989 H.B. 145 § 16)

Exceptions to amendments of durable power of attorney law enacted in 1997.

404.737. The amendments to the durable power of attorney law of Missouri enacted in 1997 are effective August 28, 1997, and shall apply, except that, as to powers of attorney executed prior to January 1, 1999, the laws in effect prior to August 28, 1997, shall apply if such prior laws shall be more favorable to construing said powers of attorney to:

(1) Be durable; or

(2) Grant a power sought to be exercised by the attorney-in-fact.

(L. 1998 H.B. 1103 § 404.734 merged with S.B. 537)

Short title.

404.800. Sections 404.800 to 404.865 may be cited as the "Durable Power of Attorney for Health Care Act".

(L. 1991 S.B. 148)

Definitions.

404.805. 1. As used in sections 404.800 to 404.865, the following terms mean:

(1) "Certification", a written instrument or a written entry in a medical record;

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

(3) "Patient", the principal of a durable power of attorney for health care under sections 404.800 to 404.865.

2. The definitions of section 404.703 shall apply to sections 404.800 to 404.865 except as modified by this section.

(L. 1991 S.B. 148)

Applicability of general law.

404.810. Section 404.710, section 404.714, section 404.705, subsections 1 and 2 of section 404.707, section 404.717, subsection 1 and 2 of section 404.723, section 404.727, and section 404.731 shall apply to powers granted under sections 404.800 to 404.865. No other provisions of sections 404.700 to 404.735 shall apply to the durable power of attorney for health care act unless specifically incorporated by reference therein.

(L. 1991 S.B. 148)

Physician, health care facility, not to serve as attorney in fact--exceptions.

404.815. Notwithstanding any other provision of law to the contrary, an attending physician or an employee of the attending physician, or an owner, operator or employee of a health care facility in which the patient is a resident, shall not serve as an attorney in fact unless:

(1) The patient and attorney in fact are related by affinity or consanguinity within the second degree;

(2) The patient and attorney in fact are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conducting of religious services and actually and regularly engage in religious, benevolent, charitable, or educational ministry, or the performance of health care services.

(L. 1991 S.B. 148)

Withdrawing or withholding treatment, specific authority required--restrictions.

404.820. 1. If a patient wishes to confer on an attorney in fact the authority to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration, the patient shall specifically grant such authority in the power of attorney. This limitation shall not be construed to require that artificially supplied nutrition and hydration be continued when, in the medical judgment of the attending physician, the patient cannot tolerate it.

2. Notwithstanding any other provision of sections 404.800 to 404.865 to the contrary, no attorney in fact may, with the intent of causing the death of the patient, authorize the withdrawal of nutrition or hydration which the patient may ingest through natural means.

3. Attorneys in fact shall consider appropriate measures in accord with current standards of medical practice to provide comfort to the patient.

4. Before an attorney in fact or physician may authorize the withdrawal of nutrition or hydration which the patient may ingest through artificial means, the physician must:

(1) Attempt to explain to the patient the intention to withdraw nutrition and hydration and the consequences for the patient and to provide the opportunity for the patient to refuse the withdrawal of nutrition and hydration; or

(2) Insert in the patient's file a certification that the patient is comatose or consistently in a condition which makes it impossible for the patient to understand the intention to withdraw nutrition and hydration and the consequences to the patient.

(L. 1991 S.B. 148)

Health care decisions, attorney in fact to consider medical diagnosis.

404.822. In making any health care decision in accordance with sections 404.800 to 404.865, the attorney in fact shall seek and consider information concerning the patient's medical diagnosis, the patient's prognosis and the benefits and burdens of the treatment to the patient. In withdrawing treatment, which withdrawal will allow the preexisting condition to run its natural course, the attorney in fact shall seek evidence of the medical diagnosis and the prognosis and the benefit and burden of the treatment to the patient to the extent possible within prevailing medical standards.

(L. 1991 S.B. 148)

Examination of patient required, content.

404.825. Unless the patient expressly authorizes otherwise in the power of attorney, the powers and duties of the attorney in fact to make health care decisions shall commence upon a certification by two licensed physicians based upon an examination of the patient that the patient is incapacitated and will continue to be incapacitated for the period of time during which treatment decisions will be required and the powers and duties shall cease upon certification that the patient is no longer incapacitated. One of the certifying physicians may be the patient's attending physician. The certification shall be made according to accepted medical standards. The determination of incapacity shall be periodically reviewed by the attending physician. The certification shall be incorporated into the medical records and shall set forth the facts upon which the determination of incapacity is based and the expected duration of the incapacity. Other provisions of this section to the contrary notwithstanding, certification of incapacity by at least one physician is required.

(L. 1991 S.B. 148)

Physician, health care facility, may refuse decision of attorney in fact, when--transfer from facility allowed.

404.830. 1. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the individual's religious beliefs, or sincerely held moral convictions.

2. No hospital, nursing facility, residential care facility, or other health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the hospital's or facility's institutional policy based on religious beliefs or sincerely held moral convictions unless the hospital or facility received a copy of the durable power of attorney for health care prior to commencing the current series of treatments or current confinement.

3. Any health care provider or facility which, pursuant to subsection 1 or 2 of this section, refuses to honor a health care decision of an attorney in fact shall not impede the attorney in fact from transferring the patient to another health care provider or facility.

(L. 1991 S.B. 148)

Execution of durable power of attorney not to be required.

404.835. 1. It shall be unlawful for a physician, nurse or other individual who is a health care provider or an employee of a health care facility, hospital, nursing facility, residential care facility or other health care facility to require an individual to execute a durable power of attorney for health care as a condition for the provision of health care services or admission to a health care facility.

2. It shall be unlawful for an insurance company authorized to transact health insurance business in this state, nonprofit health care service plan, health maintenance organization, or other similar person or entity who contracts or agrees to the provision of health care benefits to require an individual to execute a durable power of attorney for health care as a condition to being insured or to receive benefits for health care services.

(L. 1991 S.B. 148)

Medical records to include durable power of attorney, when--effect.

404.840. 1. A copy of a power of attorney for health care decisions shall be made a part of the patient's medical record when the existence of the power of attorney becomes known to the patient's health care provider and prior to the provider's taking any action pursuant to the decision of the attorney in fact.

2. Except to the extent the right is limited by the power of attorney or any federal law, an attorney in fact designated to make health care decisions has the same right as the patient to receive information regarding the proposed health care, to receive and review medical records and to consent to the disclosure of medical records. However, the right to access to medical records is not a waiver of any evidentiary privilege.

(L. 1991 S.B. 148)

Death resulting from withholding treatment, not to be suicide or homicide, when.

404.845. 1. Nothing contained in sections 404.800 to 404.865 shall revoke, amend or limit the operation of chapter 565.

2. If the patient's death results from withholding or withdrawing life-sustaining treatment in accordance with the terms of the durable power of attorney for health care act, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law and shall not impair or invalidate any insurance, annuity or other type of contract that is conditioned on the life or death of the patient, any term of the contract to the contrary notwithstanding.

(L. 1991 S.B. 148)

Prior durable power of attorney remains valid, when.

404.847. Nothing contained in sections 404.800 to 404.865 shall be construed to invalidate any durable power of attorney executed prior to August 28, 1991, which permits an attorney in fact to make health care decisions for the principal. The provisions of sections 404.710 and 404.820 henceforth apply to durable powers of attorney for health care executed prior to August 28, 1991.

In the absence of a specific writing, decisions regarding nutrition and hydration must be made in accordance with state and federal law.

(L. 1991 S.B. 148)

Revocation, procedure, effect.

404.850. 1. A power of attorney for health care may be revoked at any time and in any manner by which the patient is able to communicate the intent to revoke. Revocation shall be effective upon communication of such revocation by the patient to the attorney in fact or to the attending physician or health care provider.

2. Upon learning of the revocation of a power of attorney for health care, the attending physician or other health care provider shall cause the revocation to be made a part of the patient's medical records.

3. Unless the power of attorney provides otherwise, execution by the patient of a valid power of attorney for health care revokes any prior power of attorney for health care.

(L. 1991 S.B. 148)

Liability, immunity from, when.

404.855. A third person, if acting in good faith, may rely and act on the instruction of and deal with the attorney in fact acting pursuant to the authority granted in a power of attorney for health care without liability to the patient or the patient's successors in interest.

(L. 1991 S.B. 148)

Delegation of decision-making authority by attorney in fact prohibited, when.

404.865. Notwithstanding the provisions of subsection 1 of section 404.723, an attorney in fact shall not be authorized to delegate such health care decision-making power to another person unless explicitly authorized by the patient in the durable power of attorney for health care to make such delegation.

(L. 1991 S.B. 148)

Handicapped or disabled, discrimination against not allowed.

404.870. Nothing in sections 404.710 to 404.865 shall be construed to authorize, approve or condone discrimination against the handicapped or the disabled in the exercise of the authority of a durable power of attorney for health care. Decisions based on factors listed in section 404.822 shall not be considered discriminatory.

(L. 1991 S.B. 148 § 1)

Refusal to honor health care decision, discrimination prohibited, when.

404.872. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be discharged or otherwise discriminated against in his employment or employment application for refusing to honor a health care decision withholding or withdrawing life-sustaining treatment if such refusal is based upon the individual's religious beliefs, or sincerely held moral convictions.

(L. 1992 S.B. 573 & 634 § 7)