

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND Senate Committee Substitute for Senate Bill No. 672, Page 3, Section 210.115, Line 79,  
2 by inserting immediately after all of said section and line the following:

3  
4 "456.985. 1. Except as otherwise provided in the terms of an instrument creating or  
5 exercising a power of appointment, sections 456.970 to 456.1135 govern powers of appointment.

6 2. The terms of an instrument creating or exercising a power of appointment prevail over  
7 any provisions of sections 456.970 to 456.1135 except:

8 (1) The requisites for the creation of a power of appointment under subsections 1 to 4 of  
9 section 456.990;

10 (2) The transferability of a power of appointment by a powerholder under subsection 1 of  
11 section 456.995;

12 [(2)] (3) The limitations on the authority of a donor to extend a general power of  
13 appointment beyond the death of a powerholder under subsection 3 of section 456.995;

14 [(3)] (4) The power is exclusionary if the permissible appointees of a power of appointment  
15 are not defined and limited under subsection 3 of section 456.1005;

16 [(4)] (5) The requisites for the exercise of a power of appointment under section 456.1015;

17 [(5)] (6) The effect of an impermissible appointment under section 456.1045;

18 [(6)] (7) A general power of appointment which is presently exercisable may be reached by  
19 the creditors of the powerholder or the powerholder's estate under section 456.1100.

20 456.1035. 1. A powerholder of a general power of appointment that permits appointment to  
21 the powerholder or the powerholder's estate may make any appointment, including an appointment  
22 in trust or creating a new power of appointment, that the powerholder could make in disposing of  
23 the powerholder's own property.

24 2. A powerholder of a general power of appointment that permits appointment only to the  
25 creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

26 3. The powerholder of a nongeneral power may:

27 (1) Make an appointment in any form, including an appointment in trust, in favor of a  
28 permissible appointee;

29 (2) Create a general power or nongeneral power in a permissible appointee; or

30 (3) Create a nongeneral power in any person to appoint to one or more of the permissible  
31 appointees of the original nongeneral power.

32 456.1080. As provided by sections 469.010 to ~~[469.210]~~ 469.120, a powerholder may  
33 disclaim all or part of a power of appointment, and a permissible appointee, appointee, or taker in  
34 default of appointment may disclaim all or part of an interest in appointive property.

35 456.4-414. 1. After notice to the qualified beneficiaries, the trustee of a trust consisting of  
36 trust property having a total value less than ~~[one hundred thousand]~~ two hundred fifty thousand

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dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

2. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

4. This section does not apply to an easement for conservation or preservation.

472.400. Sections 472.400 to 472.490 shall be known and may be cited as the "Missouri Fiduciary Access to Digital Assets Act".

472.405. As used in sections 472.400 to 472.490, the following terms mean:

(1) "Access", includes view, marshal, manage, copy, distribute, or delete;

(2) "Account", an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user;

(3) "Agent", an attorney-in-fact granted authority under a durable or nondurable power of attorney;

(4) "Carries", engages in the transmission of electronic communications;

(5) "Catalogue of electronic communications", information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person;

(6) "Conservator", a person appointed by a court to have the care and custody of the estate of a minor or a disabled person. A "limited conservator" is one whose duties or powers are limited. The term "conservator", as used in sections 472.400 to 472.490, includes limited conservator unless otherwise specified or apparent from the context;

(7) "Content of an electronic communication", information concerning the substance or meaning of the communication which:

(a) Has been sent or received by a user;

(b) Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(c) Is not readily accessible to the public;

(8) "Court", any court with competent jurisdiction within this state;

(9) "Custodian", a person that carries, maintains, processes, receives, or stores a digital asset of a user;

(10) "Designated recipient", a person chosen by a user using an online tool to administer digital assets of the user;

(11) "Digital asset", an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

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

(13) "Electronic communication", the same meaning as set forth in 18 U.S.C. Section 2510(12), as amended;

(14) "Electronic communication service", a custodian that provides to a user the ability to send or receive an electronic communication;

(15) "Fiduciary", an original, additional, or successor personal representative, conservator, agency, or trustee;

1       (16) "Information", data, text, images, videos, sounds codes, computer programs, software,  
 2 databases, or the like;

3       (17) "Online tool", an electronic service provided by a custodian that allows the user, in an  
 4 agreement distinct from the terms-of-service agreement between the custodian and user, to provide  
 5 directions for disclosure or nondisclosure of digital assets to a third person;

6       (18) "Person", an individual, estate, trust, business or nonprofit entity, public corporation,  
 7 government or governmental subdivision, agency, instrumentality, or other legal entity;

8       (19) "Personal representative", executor or administrator, including an administrator with  
 9 the will annexed, an administrator de bonis non, an administrator pending contest, an administrator  
 10 during minority or absence, and any other type of administrator of the estate of a decedent whose  
 11 appointment is permitted, or any person who performs substantially the same function under the law  
 12 of Missouri, including without limitation an affiant who has filed a small estate affidavit under  
 13 section 473.097. It does not include an executor de son tort;

14       (20) "Power of attorney", a record that grants an agent authority to act in the place of a  
 15 principal;

16       (21) "Principal", an individual who grants authority to an agent in a power of attorney;

17       (22) "Protected person", an individual for whom a conservator has been appointed,  
 18 including a protectee, a disabled person, and an individual for whom an application for the  
 19 appointment of a conservator is pending;

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

22       (24) "Remote computing service", a custodian that provides to a user computer processing  
 23 services or the storage of digital assets by means of an electronic communications system, as  
 24 defined in 18 U.S.C. Section 2510(14), as amended;

25       (25) "Terms-of-service agreement", an agreement that controls the relationship between a  
 26 user and a custodian;

27       (26) "Trustee", a fiduciary with legal title to property under an agreement or declaration that  
 28 creates a beneficial interest in another, including an original, additional, and successor trustee, and a  
 29 co-trustee;

30       (27) "User", a person that has an account with a custodian;

31       (28) "Will", includes a testamentary instrument, a codicil, a testamentary instrument that  
 32 only appoints an executor, and an instrument that revokes or revises a testamentary instrument.  
 33 472.410. 1. Sections 472.400 to 472.490 shall apply to:

34       (1) A fiduciary or agent acting under a will or power of attorney executed before, on, or  
 35 after the effective date of sections 472.400 to 472.490;

36       (2) A personal representative acting for a decedent who dies before, on, or after the  
 37 effective date of sections 472.400 to 472.490;

38       (3) A conservatorship proceeding commenced before, on, or after the effective date of  
 39 sections 472.400 to 472.490; and

40       (4) A trustee acting under a trust created before, on, or after the effective date of sections  
 41 472.400 to 472.490.

42       2. Sections 472.400 to 472.490 shall apply to a custodian if the user resides in this state or  
 43 resided in this state at the time of the user's death.

44       3. Sections 472.400 to 472.490 shall not apply to a digital asset of an employer used by an  
 45 employee in the ordinary course of the employer's business.

46       472.415. 1. A user may use an online tool to direct the custodian to disclose to a designated  
 47 recipient or not to disclose some or all of the user's digital assets, including the content of electronic  
 48 communications. If the online tool allows the user to modify or delete a direction at all times, a

1 direction regarding disclosure using an online tool overrides a contrary direction by the user in a  
 2 will, trust, power of attorney, or other record.

3 2. If a user has not used an online tool to give direction under subsection 1 of this section or  
 4 if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust,  
 5 power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets,  
 6 including the content of electronic communications sent or received by the user.

7 3. A user's direction under subsection 1 or 2 of this section overrides a contrary provision in  
 8 a terms-of-service agreement that does not require the user to act affirmatively and distinctly from  
 9 the user's assent to the terms of service.

10 472.420. 1. Sections 472.400 to 472.490 shall not change or impair a right of a custodian or  
 11 a user under a terms-of-service agreement to access and use digital assets of the user.

12 2. Sections 472.400 to 472.490 shall not give a fiduciary or a designated recipient any new  
 13 or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or  
 14 designated recipient acts or represents.

15 3. A fiduciary's or a designated recipient's access to digital assets may be modified or  
 16 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided  
 17 direction under section 472.415.

18 472.425. 1. When disclosing digital assets of a user under sections 472.400 to 472.490, the  
 19 custodian may, at its sole discretion:

20 (1) Grant a fiduciary or designated recipient full access to the user's account;

21 (2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to  
 22 perform the tasks with which the fiduciary or designated recipient is charged; or

23 (3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on  
 24 the date the custodian received the request for disclosure, the user could have accessed if the user  
 25 were alive and had full capacity and access to the account.

26 2. A custodian may assess a reasonable administrative charge for the cost of disclosing  
 27 digital assets under sections 472.400 to 472.490.

28 3. A custodian shall not disclose under sections 472.400 to 472.490 a digital asset deleted  
 29 by a user.

30 4. If a user directs or a fiduciary requests a custodian to disclose under sections 472.400 to  
 31 472.490 some, but not all, of the user's digital assets, the custodian need not disclose the assets if  
 32 segregation of the assets would impose an undue burden on the custodian. If the custodian believes  
 33 the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from  
 34 the court to disclose:

35 (1) A subset limited by date of the user's digital assets;

36 (2) All of the user's digital assets to the fiduciary or designated recipient;

37 (3) None of the user's digital assets; or

38 (4) All of the user's digital assets to the court for review in camera.

39 472.430. If a deceased user consented or a court directs disclosure of the contents of  
 40 electronic communications of the user, the custodian shall disclose to the personal representative of  
 41 the estate of the user the content of an electronic communication sent or received by the user if the  
 42 representative gives the custodian:

43 (1) A written request for disclosure in physical or electronic form;

44 (2) A certified copy of the death certificate of the user;

45 (3) A certified copy of the letters testamentary or letters of administration of the  
 46 representative or a certified copy of the certificate of clerk in connection with a small-estate  
 47 affidavit or court order;

48 (4) Unless the user provided direction using an online tool, then in the case of user consent

1 to disclosure, a copy of the user's will, trust, power of attorney, or other record evidencing the user's  
 2 consent to disclosure of the content of electronic communications; and

3 (5) If requested by the custodian for the purpose of identifying the correct account of the  
 4 user:

5 (a) A number, username, address, or other unique subscriber or account identifier assigned  
 6 by the custodian to identify the user's account;

7 (b) Evidence linking the account to the user; or

8 (c) A finding by the court that:

9 a. The user had a specific account with the custodian, identifiable by the information  
 10 specified in paragraph (a) of this subdivision;

11 b. Disclosure of the content of electronic communications of the user would not violate 18  
 12 U.S.C. Section 2701, et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable  
 13 law;

14 c. Unless the user provided direction using an online tool, the user consented to disclosure  
 15 of the content of electronic communications; or

16 d. Disclosure of the content of electronic communications of the user is reasonably  
 17 necessary for administration of the estate.

18 472.435. Unless the user prohibited disclosure of digital assets or the court directs  
 19 otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a  
 20 catalogue of electronic communications sent or received by the user and digital assets, other than the  
 21 content of electronic communications, of the user, if the representative gives the custodian:

22 (1) A written request for disclosure in physical or electronic form;

23 (2) A certified copy of the death certificate of the user;

24 (3) A certified copy of the letters testamentary or letters of administration of the  
 25 representative or a certified copy of certificate of clerk in connection with a small-estate affidavit or  
 26 court order; and

27 (4) If requested by the custodian for the purpose of identifying the correct account of the  
 28 correct user:

29 (a) A number, username, address, or other unique subscriber or account identifier assigned  
 30 by the custodian to identify the user's account;

31 (b) Evidence linking the account to the user;

32 (c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for  
 33 administration of the estate; or

34 (d) A finding by the court that:

35 a. The user had a specific account with the custodian, identifiable by the information  
 36 specified in paragraph (a) of this subdivision; or

37 b. Disclosure of the user's digital assets is reasonably necessary for administration of the  
 38 estate.

39 472.440. To the extent a power of attorney expressly grants an agent authority over the  
 40 content of an electronic communication sent or received by the principal and unless directed  
 41 otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent  
 42 gives the custodian:

43 (1) A written request for disclosure in physical or electronic form;

44 (2) An original or copy of the power of attorney expressly granting the agent authority over  
 45 the content of electronic communications of the principal;

46 (3) A certification by the agent, under penalty of perjury, that the power of attorney is in  
 47 effect; and

48 (4) If requested by the custodian for the purpose of identifying the correct account of the

1 correct user:

2 (a) A number, username, address, or other unique subscriber or account identifier assigned  
3 by the custodian to identify the principal's account; or

4 (b) Evidence linking the account to the principal.

5 472.445. Unless otherwise ordered by the court, directed by the principal, or provided by a  
6 power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or  
7 general authority to act on behalf of a principal a catalogue of electronic communications sent or  
8 received by the principal and digital assets, other than the content of electronic communications, of  
9 the principal if the agent gives the custodian:

10 (1) A written request for disclosure in physical or electronic form;

11 (2) An original or a copy of the power of attorney that gives the agent specific authority  
12 over digital assets or general authority to act on behalf of the principal;

13 (3) A certification by the agent, under penalty of perjury, that the power of attorney is in  
14 effect; and

15 (4) If requested by the custodian for the purpose of identifying the correct account of the  
16 correct user:

17 (a) A number, username, address, or other unique subscriber or account identifier assigned  
18 by the custodian to identify the principal's account; or

19 (b) Evidence linking the account to the principal.

20 472.450. Unless otherwise ordered by the court or provided in a trust, a custodian shall  
21 disclose to a trustee that is an original user of an account any digital asset of the account held in  
22 trust, including a catalogue of electronic communications of the trustee and the content of the  
23 electronic communications.

24 472.455. Unless otherwise ordered by the court, directed by the user, or provided in a trust,  
25 a custodian shall disclose to a trustee that is not an original user of an account the content of an  
26 electronic communication sent or received by an original or successor user and carried, maintained,  
27 processed, received, or stored by the custodian in the account of the trust if the trustee gives the  
28 custodian:

29 (1) A written request for disclosure in physical or electronic form;

30 (2) A certified copy of the trust instrument or a certification of the trust under section  
31 456.10-1013 that includes consent to disclosure of the content of electronic communications to the  
32 trustee;

33 (3) A certification by the trustee, under penalty of perjury, that the trust exists and the  
34 trustee is a currently acting trustee of the trust; and

35 (4) If requested by the custodian for the purpose of identifying the correct account of the  
36 correct user:

37 (a) A number, username, address, or other unique subscriber or account identifier assigned  
38 by the custodian to identify the trust's account; or

39 (b) Evidence linking the account to the trust.

40 472.460. Unless otherwise ordered by the court, directed by the user, or provided in a trust,  
41 a custodian shall disclose to a trustee that is not an original user of an account a catalogue of  
42 electronic communications sent or received by an original or successor user and stored, carried, or  
43 maintained by the custodian in an account of the trust and any digital assets, other than the content  
44 of electronic communications, in which the trust has a right or interest if the trustee gives the  
45 custodian:

46 (1) A written request for disclosure in physical or electronic form;

47 (2) A certified copy of the trust instrument or a certification of the trust under section  
48 456.10-1013;

1       (3) A certification by the trustee, under penalty of perjury, that the trust exists and the  
2 trustee is a currently acting trustee of the trust; and

3       (4) If requested by the custodian for the purpose of identifying the correct account of the  
4 correct user:

5       (a) A number, username, address, or other unique subscriber or account identifier assigned  
6 by the custodian to identify the trust's account; or

7       (b) Evidence linking the account to the trust.

8       472.465. 1. After an opportunity for a hearing under Missouri conservatorship law, the  
9 court may grant a conservator access to the digital assets of a protected person.

10       2. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to  
11 a conservator the catalogue of electronic communications sent or received by a protected person and  
12 any digital assets, other than the content of electronic communications, in which the protected  
13 person has a right or interest if the conservator gives the custodian:

14       (1) A written request for disclosure in physical or electronic form;

15       (2) A certified copy of the court order that gives the conservator authority over the digital  
16 assets of the protected person; and

17       (3) If requested by the custodian for the purpose of identifying the correct account of the  
18 correct user:

19       (a) A number, username, address, or other unique subscriber or account identifier assigned  
20 by the custodian to identify the account of the protected person; or

21       (b) Evidence linking the account to the protected person.

22       3. A conservator with general authority to manage the assets of a protected person may  
23 request a custodian of the digital assets of the protected person to suspend or terminate an account  
24 of the protected person for good cause. A request made under this subsection shall be accompanied  
25 by a certified copy of the court order giving the conservator authority over the protected person's  
26 property.

27       472.470. 1. The legal duties imposed on a fiduciary charged with managing tangible  
28 property apply to the management of digital assets, including:

29       (1) The duty of care;

30       (2) The duty of loyalty; and

31       (3) The duty of confidentiality.

32       2. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

33       (1) Except as otherwise provided in section 472.415, is subject to the applicable terms-of-  
34 service agreement;

35       (2) Is subject to other applicable law, including copyright law;

36       (3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

37       (4) Shall not be used to impersonate the user.

38       3. A fiduciary with authority over the property of a decedent, protected person, principal, or  
39 settlor has the right to access any digital asset in which the decedent, protected person, principal, or  
40 settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service  
41 agreement.

42       4. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the  
43 property of the decedent, protected person, principal, or settlor for the purpose of applicable  
44 computer-fraud and unauthorized-computer-access laws, including Missouri law on unauthorized  
45 computer access.

46       5. A fiduciary with authority over the tangible, personal property of a decedent, protected  
47 person, principal, or settlor:

48       (1) Has the right to access the property and any digital asset stored in it; and

1       (2) Is an authorized user for the purpose of computer-fraud and unauthorized-computer-  
2 access laws, including Missouri law on unauthorized computer access.

3       6. A custodian may disclose information in an account to a fiduciary of the user when the  
4 information is required to terminate an account used to access digital assets licensed to the user.

5       7. A fiduciary of a user may request a custodian to terminate the user's account. A request  
6 for termination shall be in writing, in either physical or electronic form, and accompanied by:

7       (1) If the user is deceased, a certified copy of the death certificate of the user;

8       (2) A certified copy of the letter of testamentary or letters of administration of the  
9 representative or a certified copy of the certificate of clerk in connection with a small-estate  
10 affidavit or court order, power of attorney, or trust giving the fiduciary authority over the account;  
11 and

12       (3) If requested by the custodian for the purpose of identifying the correct account of the  
13 correct user:

14       (a) A number, username, address, or other unique subscriber or account identifier assigned  
15 by the custodian to identify the user's account;

16       (b) Evidence linking the account to the user; or

17       (c) A finding by the court that the user had a specific account with the custodian,  
18 identifiable by the information specified in paragraph (a) of this subdivision.

19       472.475. 1. Not later than sixty days after receipt of the information required under sections  
20 472.430 to 472.470, a custodian shall comply with a request under sections 472.400 to 472.490  
21 from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the  
22 custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order  
23 directing compliance.

24       2. An order under subsection 1 of this section directing compliance shall contain a finding  
25 that compliance is not in violation of 18 U.S.C. Section 2702, as amended.

26       3. A custodian may notify the user that a request for disclosure or to terminate an account  
27 was made under sections 472.400 to 472.490.

28       4. A custodian may deny a request under sections 472.400 to 472.490 from a fiduciary or  
29 designated recipient for disclosure of digital assets or to terminate an account if the custodian is  
30 aware of any lawful access to the account following the receipt of the fiduciary's request.

31       5. Sections 472.400 to 472.490 do not limit a custodian's ability to obtain or require a  
32 fiduciary or designated recipient requesting disclosure or termination under such sections to obtain a  
33 court order which:

34       (1) Specifies that an account belongs to the protected person or principal;

35       (2) Specifies that there is sufficient consent from the protected person or principal to  
36 support the requested disclosure; and

37       (3) Contains a finding required by law other than as provided under sections 472.400 to  
38 472.490.

39       6. A custodian and its officers, employees, and agents are immune from liability for an act  
40 or omission done in good faith in compliance with sections 472.400 to 472.490.

41       472.480. In applying and construing sections 472.400 to 472.490, consideration may be  
42 given to the need to promote uniformity of the law with respect to its subject matter among states  
43 that enact similar provisions.

44       472.485. Sections 472.400 to 472.490 modify, limit, or supersede the Electronic Signatures  
45 in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but do not modify, limit, or  
46 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of  
47 any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

48       472.490. If any provision of sections 472.400 to 472.490 or the application of such sections



1 to any person or circumstance is held invalid, the invalidity does not affect other provisions or  
2 application of sections 472.400 to 472.490 which can be given effect without the invalid provision  
3 or application, and to this end the provisions of sections 472.400 to 472.490 are severable.

4 474.150. 1. Any gift made by a married person, whether dying testate or intestate, in fraud  
5 of the marital rights of ~~[his]~~ the surviving spouse ~~[to share in his estate]~~ to whom the decedent was  
6 married at the time of such gift and who may share in the decedent's estate, shall, at the election of  
7 ~~[the]~~ such surviving spouse, be treated as a testamentary disposition and may be recovered from the  
8 donee and persons taking from ~~[him]~~ the decedent without adequate consideration and applied to the  
9 payment of the spouse's share, as in case of his or her election to take against the will.

10 2. Any conveyance of real estate made by a married person at any time without the joinder  
11 or other written express assent of ~~[his]~~ such spouse, made at any time, duly acknowledged, is  
12 deemed to be in fraud of the marital rights of ~~[his]~~ such spouse, if the spouse becomes a surviving  
13 spouse, unless the contrary is shown.

14 3. Any conveyance of the property of the spouse of a disabled person is deemed not to be in  
15 fraud of the marital rights of the disabled person if the probate division of the circuit court  
16 authorizes the conservator of the disabled person to join in or assent to the conveyance after finding  
17 that it is not made in fraud of the marital rights. Any conveyance of the property of a minor or  
18 disabled person made by a conservator pursuant to an order of court is deemed not to be in fraud of  
19 the marital rights of the spouse of the protectee."; and

20  
21 Further amend said bill by amending the title, enacting clause, and intersectional references  
22 accordingly.