

FIRST REGULAR SESSION

# HOUSE BILL NO. 881

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

1644H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 474, RSMo, by adding thereto fourteen new sections relating to electronic estate planning documents.

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

Section A. Chapter 474, RSMo, is amended by adding thereto fourteen new sections, to be known as sections 474.540, 474.542, 474.544, 474.546, 474.548, 474.550, 474.552, 474.554, 474.556, 474.558, 474.560, 474.562, 474.564, and 474.600, to read as follows:

**474.540. Sections 474.540 to 474.564 shall be known and may be cited as the "Missouri Electronic Wills and Electronic Estate Planning Documents Act".**

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

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

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

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

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

**(5) "Security procedure", a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **electronic record, including a procedure that uses an algorithm, code, identifying word**  
15 **or number, encryption, or callback or other acknowledgment procedure;**

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

17 **(a) Execute or adopt a tangible symbol; or**

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

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

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

**474.544. An electronic will is a will for all purposes of the law of this state. The**  
2 **law of this state applicable to wills and principles of equity apply to an electronic will**  
3 **except as modified by sections 474.540 to 474.564.**

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

4 **(1) Physically located when the will is signed; or**

5 **(2) Domiciled, or where the testator resides, when the will is signed or when the**  
6 **testator dies.**

**474.548. 1. An electronic will shall be:**

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

4 **(2) Signed by:**

5 **(a) The testator; or**

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

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

10 **(a) The signing of the will under subdivision (2) of this subsection; or**

11 **(b) The testator's acknowledgment of the signing of the will under subdivision**  
12 **(2) of this subsection or acknowledgment of the will.**

13 **2. The intent of a testator that the record under subdivision (1) of subsection 1 of**  
14 **this section be the testator's electronic will may be established by extrinsic evidence.**

15           **3. In accordance with section 474.337 or 474.550, a witness to a will shall be a**  
16 **resident of a state and physically located in a state at the time of signing if no self-**  
17 **proving affidavit is signed contemporaneously with the execution of the electronic will.**

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

8           **State of \_\_\_\_\_**  
9           **County (and/or City) of \_\_\_\_\_**

10           **I, the undersigned notary, certify that \_\_\_\_\_, the testator, and the witnesses,**  
11 **whose names are signed to the attached or foregoing instrument, having**  
12 **personally appeared before me by remote online means, and having been first**  
13 **duly sworn, each then declared to me that the testator signed and executed the**  
14 **instrument as the testator's last will, and that the testator had willingly signed or**  
15 **willingly directed another to sign for the testator, and that the testator executed it**  
16 **as the testator's free and voluntary act for the purposes therein expressed; and**  
17 **that each of the witnesses, in the presence and hearing of the testator, signed the**  
18 **will as witness and that to the best of the witnesses' knowledge the testator was at**  
19 **that time eighteen or more years of age, of sound mind, and under no constraint**  
20 **or undue influence.**

21           **In witness thereof I have hereunto subscribed my name and affixed my official**  
22 **seal this \_\_\_\_\_ (date).**

23           **\_\_\_\_\_ (official signature and seal of notary)**

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

2           **2. All or part of an electronic will is revoked by:**

3           **(1) A subsequent will that revokes all or part of the electronic will expressly or**  
4 **by inconsistency;**

5           **(2) A written instrument signed by the testator declaring the revocation; or**

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

9           **3. If there is evidence that a testator signed an electronic will and neither an**  
10 **electronic will nor a certified paper copy of the electronic will can be located after a**

11 testator's death, there is a presumption that the testator revoked the electronic will even  
12 if no instrument or later will revoking the electronic will can be located.

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

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

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

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

474.560. 1. Any written estate planning document may be executed  
2 electronically, and no such estate planning document shall be invalid or void solely  
3 because it is in electronic form or because it is signed electronically by a settlor, trustee,  
4 principal, grantor, declarant, or owner, or by a witness to any such person's signature.  
5 For purposes of this section, "estate planning document" shall include, but not be  
6 limited to:

- 7 (1) A power of attorney or durable power of attorney;
- 8 (2) A health care declaration;
- 9 (3) An advance directive;
- 10 (4) A power of attorney for health care or durable power of attorney for health  
11 care;
- 12 (5) A revocable trust or amendment thereto, or modification or revocation  
13 thereof;
- 14 (6) An irrevocable trust;
- 15 (7) A beneficiary deed;

16           **(8) A nonprobate transfer; or**

17           **(9) A document modifying, amending, correcting, or revoking any written estate**  
18 **planning document.**

19           **2. (1) An electronic estate planning document or an electronic signature on such**  
20 **document shall be attributable to a person if it was the act of the person. The act of the**  
21 **person may be shown in any manner, including a showing of the efficacy of a security**  
22 **procedure applied to determine the person to which the electronic record or signature**  
23 **was attributable.**

24           **(2) The effect of attribution of a document or signature to a person under**  
25 **subdivision (1) of this subsection shall be determined from the context and surrounding**  
26 **circumstances at the time of its creation, execution, or adoption and as provided by**  
27 **other law.**

28           **3. (1) Unless otherwise provided under its terms, any electronic estate planning**  
29 **document may be signed in one or more counterparts, and each separate counterpart**  
30 **may be an electronic document or a paper document, provided that all signed**  
31 **counterpart pages of each document are incorporated into, or attached to, the**  
32 **document.**

33           **(2) An individual may create a certified paper copy of any such electronic estate**  
34 **planning document by affirming under penalty of perjury that a paper copy of the**  
35 **electronic estate planning document is a complete, true, and accurate copy of such**  
36 **document. If a rule of law or procedure requires an estate planning document to be**  
37 **presented or retained in its original form or provides consequences for the information**  
38 **not being presented or retained in its original form, such rule of law or procedure shall**  
39 **be satisfied by a certified paper copy of an electronic document.**

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

43           **5. A person who acts in reliance upon an electronically executed written estate**  
44 **planning document shall not be liable to any person for so relying and may assume**  
45 **without inquiry the valid execution of the electronically executed written estate planning**  
46 **document.**

47           **6. This section does not require a written estate planning document to be**  
48 **electronically signed.**

49           **7. The laws of this state and principles of equity applicable to any estate**  
50 **planning document shall apply to any electronic estate planning document except as**  
51 **modified by this section.**

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

474.564. The provisions of sections 474.540 to 474.564 shall apply to the will of a  
2 decedent who dies on or after August 28, 2023, and to each other written estate planning  
3 document signed or remotely witnessed on or after August 28, 2023.

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

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

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

13 (a) A will;  
14 (b) A codicil;  
15 (c) A power of attorney or durable power of attorney;  
16 (d) A health care declaration;  
17 (e) An advance directive;  
18 (f) A power of attorney for health care or a durable power of attorney for health  
19 care;  
20 (g) A revocable trust or amendment thereto, or modification or revocation  
21 thereof;  
22 (h) An irrevocable trust;  
23 (i) A beneficiary deed;  
24 (j) A nonprobate transfer; or  
25 (k) A document modifying, amending, correcting, or revoking any written estate  
26 planning document;

27 (3) "Necessary person", any testator, settlor, grantor, principal, declarant,  
28 witness, notary, or other person required for the effective execution of any estate  
29 planning document in this state;

30 (4) "Physical presence requirement", includes, but is not limited to, any  
31 requirement of physical presence under section 404.705, 459.015, 474.320, or 474.337 or  
32 chapter 486.

33 2. With respect to the execution of an estate planning document, a necessary  
34 person shall be deemed to have satisfied any physical presence requirement under  
35 Missouri statute during the applicable state of emergency if the following requirements  
36 were met:

37 (1) The signor affirmatively represented that the signor was physically situated  
38 in the state of Missouri;

39 (2) The notary was physically located in the state of Missouri and stated in which  
40 county the notary was physically located for the jurisdiction on the acknowledgment;

41 (3) The notary identified the signors to the satisfaction of the notary and current  
42 law;

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

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

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

57 State of \_\_\_\_\_

58 County of \_\_\_\_\_

59 **AFFIDAVIT OF REMOTE EXECUTION OF DOCUMENTS**

60 I, \_\_\_\_\_, am an attorney licensed or authorized to practice law in the state  
61 of Missouri.

62 On \_\_\_\_\_ (date), I convened with the following individuals via video conference  
63 software that allowed for live, interactive audio-visual communication between  
64 the parties to the conference and that also allowed for observation, direction,  
65 interaction, and communication between:

66 \_\_\_\_\_, the (testator, settlor, grantor, principal, or declarant);

67 \_\_\_\_\_, a witness;  
 68 \_\_\_\_\_, a second witness; and  
 69 \_\_\_\_\_ a notary public.

70 **During the conference, \_\_\_\_\_, the (testator, settlor, grantor, principal, or**  
 71 **declarant) signed the following estate planning document or documents: (a will,**  
 72 **codicil, power of attorney, durable power of attorney, health care declaration,**  
 73 **advance directive, health care power of attorney, revocable trust, irrevocable**  
 74 **trust, beneficiary deed, nonprobate transfer, self-proving affidavit of the**  
 75 **execution of a will, or a document modifying, amending, correcting, or**  
 76 **revoking one of these estate planning documents).**

77 **All the parties to the conference represented that they were physically located in**  
 78 **the state of Missouri at the time of the signing.**

79 **I have reviewed and am familiar with the requirements of the applicable**  
 80 **executive order or orders in effect at the time and affirm that the remote**  
 81 **execution of the estate planning document or documents met all the requirements**  
 82 **of the applicable executive order or orders.**

83 **In witness whereof I, an officer authorized to administer oaths, have hereunto**  
 84 **subscribed my name and affixed my official seal this \_\_\_\_\_ (date).**

85 **(Signed)**

86 \_\_\_\_\_

87 **(SEAL)**

88 \_\_\_\_\_

89 **(Official capacity of officer)**

✓