

FIRST REGULAR SESSION

SENATE BILL NO. 54

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DAYS.

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TERRY L. SPIELER, Secretary.

0151S.011

AN ACT

To repeal sections 475.010, 475.045, and 475.105, RSMo, and to enact in lieu thereof four new sections relating to guardianship of minors and incapacitated adults.

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

Section A. Sections 475.010, 475.045, and 475.105, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 475.010,
3 475.045, 475.046, and 475.105, to read as follows:

475.010. When used in this chapter, unless otherwise apparent from the
2 context, the following terms mean:

- 3 (1) "Adult", a person who has reached the age of eighteen years;
- 4 (2) "Claims", liabilities of the protectee arising in contract, in tort or
5 otherwise, before or after the appointment of a conservator, and liabilities of the
6 estate which arise at or after the adjudication of disability or after the
7 appointment of a conservator of the estate, including expenses of the adjudication
8 and of administration. The term does not include demands or disputes regarding
9 title of the protectee to specific assets alleged to be included in the estate;
- 10 (3) "Conservator", one appointed by a court to have the care and custody
11 of the estate of a minor or a disabled person. A "limited conservator" is one
12 whose duties or powers are limited. The term "conservator", as used in this
13 chapter, includes "limited conservator" unless otherwise specified or apparent
14 from the context;
- 15 (4) "Custodial parent", the parent of a minor who has been
16 awarded sole or joint physical custody of such minor, or the parent of
17 an incapacitated person who has been appointed as guardian of such
18 person, by an order or judgment of a court of this state or of another

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

19 state or territory of the United States, or if there is no such order or
20 judgment, the parent with whom the minor or incapacitated person
21 primarily resides;

22 (5) "Disabled" or "disabled person", one who is:

23 (a) Unable by reason of any physical or mental condition to receive and
24 evaluate information or to communicate decisions to such an extent that the
25 person lacks ability to manage his financial resources[.]; or

26 (b) The term "disabled" or "disabled person", as used in this chapter
27 includes the terms "partially disabled" or "partially disabled person" unless
28 otherwise specified or apparent from the context;

29 [(5)] (6) "Eligible person" or "qualified person", a natural person, social
30 service agency, corporation or national or state banking organization qualified to
31 act as guardian of the person or conservator of the estate pursuant to the
32 provisions of section 475.055;

33 [(6)] (7) "Guardian", one appointed by a court to have the care and
34 custody of the person of a minor or of an incapacitated person. A "limited
35 guardian" is one whose duties or powers are limited. **A "standby guardian" is**
36 **one approved by the court to temporarily assume the duties of**
37 **guardian of a minor or of an incapacitated person under section**
38 **475.046.** The term "guardian", as used in this chapter, includes "limited
39 guardian" **and "standby guardian"** unless otherwise specified or apparent from
40 the context;

41 [(7)] (8) "Guardian ad litem", one appointed by a court, in which
42 particular litigation is pending, to represent a minor, an incapacitated person, a
43 disabled person, or an unborn person in that particular proceeding or as
44 otherwise specified in this code;

45 [(8)] (9) "Habilitation", instruction, training, guidance or treatment
46 designed to enable and encourage a mentally retarded or developmentally
47 disabled person as defined in chapter 630, RSMo, to acquire and maintain those
48 life skills needed to cope more effectively with the demands of his **or her** own
49 person and of his **or her** environment;

50 [(9)] (10) "Incapacitated person", one who is unable by reason of any
51 physical or mental condition to receive and evaluate information or to
52 communicate decisions to such an extent that he **or she** lacks capacity to meet
53 essential requirements for food, clothing, shelter, safety or other care such that
54 serious physical injury, illness, or disease is likely to occur. The term

55 "incapacitated person" as used in this chapter includes the term "partially
56 incapacitated person" unless otherwise specified or apparent from the context;

57 [(10)] **(11)** "Least restrictive environment", that there shall be imposed
58 on the personal liberty of the ward only such restraint as is necessary to prevent
59 [him] **the ward** from injuring himself **or herself** and others and to provide
60 [him] **the ward** with such care, habilitation and treatment as are appropriate
61 for [him] **the ward** considering his **or her** physical and mental condition and
62 financial means;

63 [(11)] **(12)** "Manage financial resources", either those actions necessary
64 to obtain, administer, and dispose of real and personal property, intangible
65 property, business property, benefits, income or any assets, or those actions
66 necessary to prevent waste, loss or dissipation of property, or those actions
67 necessary to provide for the care and support of such person or anyone legally
68 dependent upon [him] **such person** by a person of ordinary skills and
69 intelligence commensurate with his **or her** training and education;

70 [(12)] **(13)** "Minor", any person who is under the age of eighteen years;

71 **(14)** "Parent", **the biological or adoptive mother or father of a**
72 **child whose parental rights have not been terminated under chapter**
73 **211, RSMo, including:**

74 **(a) A person registered as the father of the child by reason of an**
75 **unrevoked notice of intent to claim paternity under section 192.016,**
76 **RSMo;**

77 **(b) A person who has acknowledged paternity of the child and**
78 **has not rescinded that acknowledgment under section 193.215, RSMo;**
79 **and**

80 **(c) A person presumed to be the natural father of the child under**
81 **section 210.822, RSMo;**

82 [(13)] **(15)** "Partially disabled person", one who is unable by reason of
83 any physical or mental condition to receive and evaluate information or to
84 communicate decisions to such an extent that [he] **such person** lacks capacity
85 to manage, in part, his **or her** financial resources;

86 [(14)] **(16)** "Partially incapacitated person", one who is unable by reason
87 of any physical or mental condition to receive and evaluate information or to
88 communicate decisions to the extent that [he] **such person** lacks capacity to
89 meet, in part, essential requirements for food, clothing, shelter, safety, or other
90 care without court-ordered assistance;

91 [(15)] (17) "Protectee", a person for whose estate a conservator or limited
92 conservator has been appointed or with respect to whose estate a transaction has
93 been authorized by the court under section 475.092 without appointment of a
94 conservator or limited conservator;

95 (18) "Seriously ill", a significant likelihood that a person will
96 become incapacitated or die within twelve months;

97 [(16)] (19) "Social service agency", a charitable organization organized
98 and incorporated as a not-for-profit corporation under the laws of this state and
99 which qualifies as an exempt organization within the meaning of section 501(c)(3),
100 or any successor provision thereto of the federal Internal Revenue Code;

101 (20) "Standby guardian", one who is authorized to have the
102 temporary care and custody of the person of a minor or of an
103 incapacitated person under the provisions of section 475.046;

104 [(17)] (21) "Treatment", the prevention, amelioration or cure of a person's
105 physical and mental illnesses or incapacities;

106 [(18)] (22) "Ward" [is], a minor or an incapacitated person for whom a
107 guardian [or], limited guardian, or standby guardian has been appointed.

475.045. 1. Except in cases where they fail or refuse to give required
2 security or are adjudged unfit for the duties of guardianship or conservatorship,
3 or waive their rights to be appointed, the following persons, if otherwise qualified,
4 shall be appointed as guardians or conservators of minors:

5 (1) The parent or parents of the minor, except as provided in section
6 475.030;

7 (2) If any minor over the age of fourteen years has no qualified parent
8 living, a person nominated by the minor, unless the court finds appointment
9 contrary to the best interests of the minor;

10 (3) Where both parents of a minor are dead, any person appointed **under**
11 **this section or section 475.046** by the will of the last surviving parent, who
12 has not been adjudged unfit or incompetent for the duties of guardian or
13 conservator.

14 2. Unfitness of any of the persons mentioned in subsection 1 for the duties
15 of guardianship or conservatorship may be adjudged by the court after due notice
16 and hearing.

17 3. If no appointment is made under subsection 1 **of this section**, the
18 court shall appoint as guardian or conservator of a minor the most suitable
19 person who is willing to serve **and whose appointment serves the best**

20 interests of the child to a stable and permanent placement.

475.046. 1. A custodial parent may designate a person to act as
2 standby guardian of a minor or incapacitated person by a will that
3 complies with the requirements of section 474.320, RSMo, or by a
4 separate written instrument which is dated and is either duly executed
5 and acknowledged by the custodial parent or is signed by the custodial
6 parent in the presence of at least two disinterested witnesses and
7 subscribed by the witnesses. If the custodial parent executes more than
8 one document designating a standby guardian and there is a conflict
9 between the documents as to the person designated, the document
10 bearing the latest date shall control.

11 2. If a custodial parent who has designated a standby guardian
12 is or becomes seriously ill, the custodial parent or the person
13 designated as standby guardian may file a petition in the probate
14 division of the circuit court of the county which would be of proper
15 venue for the appointment of a guardian of the minor or incapacitated
16 person seeking appointment of the designated person as standby
17 guardian. A copy of the will or separate written instrument
18 designating the standby guardian and a consent to act as standby
19 guardian signed by the person designated shall be filed with the
20 petition, which petition shall state:

21 (1) The name, age, domicile, actual place of residence, and
22 mailing address of the minor or incapacitated person;

23 (2) The name and address of the custodial parent and of the
24 designated standby guardian;

25 (3) The name and address of each parent of the minor or
26 incapacitated person and whether that parent is living or dead;

27 (4) The name and address of the spouse, if applicable, and the
28 names, ages, and addresses of all living children of the minor or
29 incapacitated person;

30 (5) If the person for whom appointment of a standby guardian is
31 sought has been adjudicated incapacitated, the date of adjudication and
32 the name and address of the court which entered the judgment; and

33 (6) The reasons why the appointment of a standby guardian is
34 sought.

35 Proceedings on the petition shall be conducted in the same manner as
36 would be applicable in a case for appointment of a successor guardian

37 under section 475.115.

38 **3. The court shall determine appointment of a standby guardian**
39 **in accordance with the best interests of the minor or incapacitated**
40 **person after considering all relevant factors, including:**

41 **(1) Whether there is a parent other than the custodial parent**
42 **and, if so, whether the other parent is willing, able, and fit to assume**
43 **the duties of a parent;**

44 **(2) The suitability of a person nominated by the minor or**
45 **incapacitated person if he or she is, at the time of hearing, able to**
46 **communicate a reasonable choice; and**

47 **(3) The desirability of providing arrangements for the care,**
48 **custody, and control of the minor or incapacitated person which shall**
49 **minimize stress and disruption and avoid his or her placement in foster**
50 **or similar care pending appointment of a guardian if the custodial**
51 **parent is adjudicated incapacitated or dies.**

52 **4. If it appears to the court that a standby guardian should be**
53 **appointed for a minor or incapacitated person, the court may appoint**
54 **a standby guardian.**

55 **5. The authority of a person to act as standby guardian for a**
56 **minor or incapacitated person shall only take effect as follows:**

57 **(1) If the person has previously been appointed by the court as**
58 **standby guardian, upon the granting of letters of standby guardianship**
59 **to the person previously appointed as provided in the order appointing**
60 **the standby guardian; or**

61 **(2) If the person has not previously been appointed by the court**
62 **as standby guardian, either because a petition for appointment has not**
63 **been filed or because a petition has been filed but the proceedings are**
64 **still pending, upon the first to occur of the following:**

65 **(a) The consent of the custodial parent in a writing duly**
66 **executed and acknowledged by the custodial parent;**

67 **(b) Entry of an order adjudicating the custodial parent to be**
68 **incapacitated; or**

69 **(c) The death of the custodial parent.**

70 **The person shall, within ten days after he or she begins to act as**
71 **standby guardian, notify the court in writing of that fact and of the**
72 **reasons therefor. The court may grant letters of standby guardianship**
73 **to the person or, if the court deems it advisable, conduct a hearing to**

74 **determine the propriety of the person having begun, and continuing,**
 75 **to act as standby guardian and the propriety of issuing letters of**
 76 **standby guardianship to the person.**

77 **6. A person acting as standby guardian of a minor or**
 78 **incapacitated person shall, within sixty days after he or she begins to**
 79 **act, petition the court for appointment of the standby guardian or some**
 80 **other qualified person as guardian of the minor or incapacitated**
 81 **person. Proceedings on the petition shall be conducted in the same**
 82 **manner as would be applicable in a case for appointment of a successor**
 83 **guardian under section 475.115.**

84 **7. Nothing in this section shall be construed to:**

85 **(1) Deprive a parent of his or her legal rights with respect to a**
 86 **minor or incapacitated person who is a child of that parent, including**
 87 **court ordered visitation with the child, nor to authorize a grant of**
 88 **authority to a standby guardian which would supersede any such**
 89 **rights; or**

90 **(2) Relieve a parent of his or her legal obligations or duties to a**
 91 **minor or incapacitated person who is a child of that parent, including**
 92 **a duty to support the child in accordance with a court or**
 93 **administrative order.**

94 **8. Except to the extent determined by the court to be**
 95 **inconsistent with the provisions of this section or as expressly provided**
 96 **in this section, the laws applicable to guardianship proceedings shall**
 97 **apply to all proceedings under this section.**

475.105. 1. When a duly appointed guardian or conservator has given
 2 bond, as required by law, and the bond has been approved, letters under the seal
 3 of the court shall be issued to **[him] the person appointed.** Such letters shall
 4 specify whether they are of guardianship [or], limited guardianship, **or standby**
 5 **guardianship** of the person, or conservatorship or limited conservatorship of the
 6 estate, or both, and the original or duly certified copies thereof shall be prima
 7 facie evidence of the facts therein stated.

8 **2. Letters of guardianship and conservatorship for minors may be in the**
 9 **following form:**

10 **IN THE PROBATE DIVISION**
 11 **OF THE CIRCUIT COURT OF**
 12 **..... COUNTY, MISSOURI**
 13 **LETTERS OF (STANDBY) GUARDIANSHIP**

14 (AND CONSERVATORSHIP)
15 OF MINOR

16 Estate No.

17 On, was appointed and has qualified
18 as (standby) guardian of the person (and conservator of the estate) for the
19 following minor(s):

- 20 Born, 19.
21 Born, 19.
22 Born, 19.
23 Born, 19.

24 By reason thereof, the above-named (standby) guardian (and conservator)
25 is authorized and empowered to perform the duties of such (standby) guardian
26 (and conservator) as provided by law under the supervision of the court having
27 care and custody of the person (and of the estate) of the above-named minor(s).

28 IN TESTIMONY WHEREOF, the undersigned Clerk has signed these
29 letters and affixed the seal of this court on

30
31 Clerk

32 Recorded on, in Book at Page

33
34 Clerk

35 3. Letters of guardianship and conservatorship for incapacitated and
36 disabled persons may be in the following form:

37 IN THE PROBATE DIVISION
38 OF THE CIRCUIT COURT OF
39 COUNTY, MISSOURI
40 LETTERS OF (STANDBY) GUARDIANSHIP
41 OF INCAPACITATED PERSON
42 (AND CONSERVATORSHIP
43 OF DISABLED PERSON)

44 Estate No.

45 On, was appointed and has qualified as
46 (standby) guardian of the person (and conservator of the estate) for
47, an incapacitated (and disabled) person.

48 By reason thereof, the above-named (standby) guardian (and conservator)
49 is authorized and empowered to perform the duties of such (standby) guardian

50 (and conservator) as provided by law under the supervision of the court having
51 care and custody of the person (and estate) of the above-named incapacitated (and
52 disabled) person.

53 IN TESTIMONY WHEREOF, the undersigned Clerk has signed these
54 letters and affixed the seal of this court on, 20. .

55

56 Clerk

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