

SECOND REGULAR SESSION

# SENATE BILL NO. 693

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

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ADRIANE D. CROUSE, Secretary.

4531S.011

## AN ACT

To repeal sections 475.050 and 475.075, RSMo, and to enact in lieu thereof two new sections relating to the appointment of a guardian or conservator for certain persons.

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

Section A. Sections 475.050 and 475.075, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 475.050 and 475.075, to read as follows:

475.050. 1. Before appointing any other eligible person as guardian of an incapacitated person, or conservator of a disabled person, the court shall **[consider the suitability of appointing any of] appoint and give priority to the following persons, as listed, who are qualified under section 475.055, suitable, and appear to be willing to serve, and such persons shall be determined by the court to be deficient in his or her ability to serve prior to the court selecting another eligible person as guardian or conservator:**

(1) If the incapacitated or disabled person is, at the time of the hearing, able to make and communicate a reasonable choice, any eligible person nominated by the person;

(2) Any eligible person nominated in a durable power of attorney executed by the incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or disabled person and by two witnesses who signed at the incapacitated or disabled person's request, before the inception of the person's incapacity or disability, at a time within five years before the hearing when the person was able to make and communicate a reasonable choice;

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

18 (3) The spouse, parents, adult children, adult brothers and sisters and  
19 other close adult relatives of the incapacitated or disabled person;

20 (4) Any other eligible person or, with respect to the estate only, any  
21 eligible organization or corporation, nominated in a duly probated will of such a  
22 spouse or relative executed within five years before the hearing.

23 **2. If the claim is made that a person given priority in subsection**  
24 **1 of this section is deficient due to substandard living conditions, then**  
25 **the court shall require an investigation of and report concerning the**  
26 **current or proposed living conditions of the incapacitated person by**  
27 **the department of health and senior services prior to making a**  
28 **determination. In order to find a person given priority deficient due**  
29 **to substandard living conditions, the court shall make the findings that**  
30 **the current or proposed living conditions of the incapacitated person**  
31 **are dangerous or unsanitary and materially affect the life, health, or**  
32 **safety of the incapacitated person.**

33 **3.** Except for good cause shown, the court shall make its appointment in  
34 accordance with the incapacitated or disabled person's most recent valid  
35 nomination of an eligible person qualified to serve as guardian of the person or  
36 conservator of the estate. In the event there is not brought to the attention of the  
37 court any such valid nomination executed within five years before the hearing,  
38 then the court shall give consideration to the most recent valid nomination  
39 brought to its attention, but the court shall not be required to follow such  
40 nomination.

41 **4. When the incapacitated or disabled person is in the custody**  
42 **of the children's division, then the court shall review and consider the**  
43 **incapacitated or disabled person's juvenile court file when selecting an**  
44 **eligible person as guardian or conservator in accordance with**  
45 **subsection 1 of this section.**

475.075. 1. Except as otherwise provided in section 475.062, when a  
2 petition for the appointment of a guardian ad litem, guardian or conservator  
3 against any person, hereinafter referred to as the respondent, is filed on grounds  
4 other than minority, the court, if satisfied that there is good cause for the exercise  
5 of its jurisdiction, shall promptly set the petition for hearing.

6 **2.** The respondent shall be served in person with the following: A copy  
7 of the petition; a written notice stating the time and place the proceeding will be  
8 heard by the court, the name and address of appointed counsel, and the names

9 and addresses of the witnesses who may be called to testify in support of the  
10 petition; and with a copy of the respondent's rights as set forth in subsections 7  
11 and 8 of this section. The notice shall be signed by the judge or clerk of the court  
12 and served in person on the respondent a reasonable time before the date set for  
13 the hearing. The petition shall state the names and addresses of the spouse,  
14 parents, children who have reached eighteen, any person serving as his guardian,  
15 conservator, limited guardian or limited conservator, any person having power to  
16 act in a fiduciary capacity with respect to any of the respondent's financial  
17 resources, and any person having his care and custody known to the  
18 petitioner. Each person so listed shall be served with like notice [in any manner  
19 permitted by section 472.100] **by certified mail, addressed to the person to**  
20 **be notified, with all postage charges prepaid, and return receipt**  
21 **requested.** If no such spouse, parent or child is known, notice shall be given to  
22 at least one of his closest relatives who has reached eighteen. **A copy of the**  
23 **notice shall also be published in a newspaper having general**  
24 **circulation within the county in which the court is held. The notice**  
25 **shall be published at least seven days prior to the petition hearing**  
26 **date. If there is no newspaper published in the county, then notice**  
27 **shall be published in a newspaper published in an adjoining county**  
28 **which has a general circulation within the county in which the court**  
29 **is held.**

30 3. Upon the filing of a petition under the provisions of subsection 1 of this  
31 section or for the approval on behalf of the respondent of a transaction pursuant  
32 to section 475.092 or for the rendition of emergency medical treatment under the  
33 provisions of section 475.123, the court shall immediately appoint an attorney to  
34 represent the respondent in the proceeding. The attorney shall visit his client  
35 prior to the hearing. If the client is capable of understanding the matter in  
36 question or of contributing to the advancement of the client's interest, the  
37 attorney shall obtain from the client all possible aid. If the disability of a client  
38 compels the attorney to make decisions for the client, the attorney shall consider  
39 all circumstances then prevailing and act with care to safeguard and advance the  
40 interests of the client. The court shall allow a reasonable attorney's fee for the  
41 services rendered, to be taxed as costs of the proceeding. The court-appointed  
42 attorney may be permitted to withdraw if the respondent employs private counsel  
43 who enters an appearance on behalf of said person.

44 4. The court may direct that the respondent be examined by a physician

45 or licensed psychologist or other appropriate professional designated by the court,  
46 and may allow a reasonable fee for the services rendered, to be taxed as costs in  
47 the proceeding. The court-appointed physician, licensed psychologist or other  
48 professional shall, prior to examination, explain to the respondent in simple  
49 language, the following:

50 (1) Incapacity or disability as defined in section 475.010;

51 (2) That the purpose of the examination is to produce evidence which may  
52 be used to determine whether the respondent is incapacitated, disabled or  
53 partially incapacitated or disabled;

54 (3) That respondent has the right to remain silent;

55 (4) That anything respondent says may be used at the court hearing, and  
56 in making the determination of incapacity or disability.

57 5. The court-appointed physician, licensed psychologist or other  
58 professional shall submit his report in writing to the court and to counsel for all  
59 parties.

60 6. If prima facie proof of partial or complete incapacity or disability is  
61 made, a physician or licensed psychologist is competent and may be compelled to  
62 testify as to information acquired from the respondent, despite otherwise  
63 applicable testimonial privileges. Evidence received under this subsection which  
64 would otherwise be privileged may not be used in any other civil action or  
65 criminal proceeding without the consent of the holder of the privilege.

66 7. The petitioner has the burden of proving incapacity, partial incapacity,  
67 disability, or partial disability by clear and convincing evidence.

68 8. The respondent shall have the following rights in addition to those  
69 elsewhere specified:

70 (1) The right to be represented by an attorney;

71 (2) The right to have a jury trial;

72 (3) The right to present evidence in his behalf;

73 (4) The right to cross-examine witnesses who testify against him;

74 (5) The right to remain silent;

75 (6) The right to have the hearing opened or closed to the public as he  
76 elects;

77 (7) The right to a hearing conducted in accordance with the rules of  
78 evidence in civil proceedings, except as modified by this chapter;

79 (8) The right to be present at the hearing.

80 9. If the court finds that the respondent possesses capacity to meet his

81 essential requirements for food, clothing, shelter, safety and other care or that he  
82 possesses the ability to manage his financial resources, it shall deny the petition.  
83 On the other hand, if the court finds that the capacity of the respondent to  
84 receive and evaluate information or to communicate decisions is impaired to such  
85 an extent as to render him incapable of meeting some or all of his essential  
86 requirements for food, clothing, shelter, safety or other care so that serious  
87 physical injury, illness, or disease is likely to occur, or that the ability of the  
88 respondent to receive and evaluate information or to communicate decisions is  
89 impaired to such an extent so as to render him unable to manage some or all of  
90 his financial resources, it shall make and recite in its order detailed findings of  
91 fact stating:

92 (1) The extent of his physical and mental incapacity to care for his person;

93 (2) The extent of his physical and mental disability to manage his  
94 financial resources;

95 (3) Whether or not he requires placement in a supervised living situation  
96 and, if so, the degree of supervision needed;

97 (4) Whether or not his financial resources require supervision and, if so,  
98 the nature and extent of supervision needed.

99 10. If the court finds the respondent to be in some degree incapacitated  
100 or disabled, or both, the court, in determining the degree of supervision  
101 necessary, shall apply the least restrictive environment principle as defined in  
102 this chapter and shall not restrict his personal liberty or his freedom to manage  
103 his financial resources to any greater extent than is necessary to protect his  
104 person and his financial resources. The court shall consider whether or not the  
105 respondent may be fully protected by the rendition of temporary protective  
106 services provided by a private or public agency or agencies; or by the appointment  
107 of a guardian or conservator ad litem; or by the appointment of a limited  
108 guardian or conservator; or, as a last resort, by the appointment of a guardian or  
109 conservator. The limitations imposed upon the authority of the guardian or  
110 conservator as set forth in the findings of the court shall be stated in the letters  
111 of the guardian or conservator and shall be set forth in the notice of first  
112 publication of letters of conservatorship granted.

113 11. If an alleged incapacitated or disabled person has no guardian or  
114 conservator and an emergency exists which presents a substantial risk that  
115 serious physical harm will occur to his person or irreparable damage will occur  
116 to his property because of his failure or inability to provide for his essential

117 human needs or to protect his property, the court may, with notice to such  
118 person's attorney, as provided in subsection 3 of this section, and service of notice  
119 upon such person as provided in subsection 2 of this section, and, with or without  
120 notice to other persons interested in the proceeding, after hearing, appoint a  
121 guardian or conservator ad litem for a specified period not to exceed thirty days  
122 and for specified purposes. Orders appointing the guardian or conservator ad  
123 litem may be modified upon motion and hearing. After hearing and a showing of  
124 continuing emergency need, orders appointing the guardian or conservator ad  
125 litem may be extended from time to time, not to exceed thirty days each. A  
126 guardian or conservator ad litem may be removed at any time and shall make any  
127 report the court requires. Proceedings under this subsection shall not be  
128 employed as alternative to proceedings for the involuntary detention and  
129 treatment of a mentally ill person under the provisions of chapter 632.

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