

SECOND REGULAR SESSION

SENATE BILL NO. 596

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR DAYS.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3792S.011

AN ACT

To repeal sections 475.010 and 475.045, RSMo, and to enact in lieu thereof three new sections relating to guardianship of minors.

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

Section A. Sections 475.010 and 475.045, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 475.010, 475.045,
3 and 475.046, 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) "Disabled" or "disabled person", one who is:
 - 16 (a) Unable by reason of any physical or mental condition to receive and
17 evaluate information or to communicate decisions to such an extent that the
18 person lacks ability to manage his financial resources[.]; or

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

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

22 (5) "Eligible person" or "qualified person", a natural person, social service
23 agency, corporation or national or state banking organization qualified to act as
24 guardian of the person or conservator of the estate pursuant to the provisions of
25 section 475.055;

26 (6) "Guardian", one appointed by a court to have the care and custody of
27 the person of a minor or of an incapacitated person. A "limited guardian" is one
28 whose duties or powers are limited. **A "standby guardian" is one approved**
29 **by the court to temporarily assume the duties of guardian of a minor**
30 **child under section 475.045.** The term "guardian", as used in this chapter,
31 includes "limited guardian" unless otherwise specified or apparent from the
32 context;

33 (7) "Guardian ad litem", one appointed by a court, in which particular
34 litigation is pending, to represent a minor, an incapacitated person, a disabled
35 person, or an unborn person in that particular proceeding or as otherwise
36 specified in this code;

37 (8) "Habilitation", instruction, training, guidance or treatment designed
38 to enable and encourage a mentally retarded or developmentally disabled person
39 as defined in chapter 630, RSMo, to acquire and maintain those life skills needed
40 to cope more effectively with the demands of his **or her** own person and of his **or**
41 **her** environment;

42 (9) "Incapacitated person", one who is unable by reason of any physical
43 or mental condition to receive and evaluate information or to communicate
44 decisions to such an extent that he **or she** lacks capacity to meet essential
45 requirements for food, clothing, shelter, safety or other care such that serious
46 physical injury, illness, or disease is likely to occur. The term "incapacitated
47 person" as used in this chapter includes the term "partially incapacitated person"
48 unless otherwise specified or apparent from the context;

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

54 (11) "Manage financial resources", either those actions necessary to

55 obtain, administer, and dispose of real and personal property, intangible property,
56 business property, benefits, income or any assets, or those actions necessary to
57 prevent waste, loss or dissipation of property, or those actions necessary to
58 provide for the care and support of such person or anyone legally dependent upon
59 **[him] such person** by a person of ordinary skills and intelligence commensurate
60 with his **or her** training and education;

61 (12) "Minor", any person who is under the age of eighteen years;

62 (13) **"Parent", one legally established as the parent of the minor;**

63 **(14) "Parent with physical custody", the legally established**
64 **parent with physical custody of the minor;**

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

69 ~~[(14)]~~ **(16) "Partially incapacitated person", one who is unable by reason**
70 **of any physical or mental condition to receive and evaluate information or to**
71 **communicate decisions to the extent that [he] such person** lacks capacity to
72 meet, in part, essential requirements for food, clothing, shelter, safety, or other
73 care without court-ordered assistance;

74 **(17) "Presumed parent", a person defined in section 210.822,**
75 **RSMo;**

76 ~~[(15)]~~ **(18) "Protectee", a person for whose estate a conservator or limited**
77 **conservator has been appointed or with respect to whose estate a transaction has**
78 **been authorized by the court under section 475.092 without appointment of a**
79 **conservator or limited conservator;**

80 **(19) "Putative parent", a parent registered under the putative**
81 **father registry under section 192.016, RSMo;**

82 ~~[(16)]~~ **(20) "Social service agency", a charitable organization organized**
83 **and incorporated as a not-for-profit corporation under the laws of this state and**
84 **which qualifies as an exempt organization within the meaning of section 501(c)(3),**
85 **or any successor provision thereto of the federal Internal Revenue Code;**

86 ~~[(17)]~~ **(21) "Treatment", the prevention, amelioration or cure of a person's**
87 **physical and mental illnesses or incapacities;**

88 ~~[(18)]~~ **(22) "Ward" [is], a minor or an incapacitated person for whom a**
89 **guardian or limited 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 by the
11 will of the last surviving parent,] **Any person appointed by will or other**
12 **signed writing by an appointing parent** who has not been adjudged unfit or
13 incompetent for the duties of guardian or conservator.

14 **2. Without surrendering parental rights, any parent, legal**
15 **guardian, or other court-approved party interested in the minor's**
16 **welfare may appoint a standby guardian of a minor in accordance with**
17 **section 475.046.**

18 **3. Unfitness of any of the persons mentioned in subsection 1 for the duties**
19 **of guardianship or conservatorship may be adjudged by the court after due notice**
20 **and hearing.**

21 **[3.] 4. Unfitness of any of the persons listed in subsection 1 of**
22 **this section for the duties of guardianship or conservatorship may be**
23 **adjudged by the court after due notice and hearing.**

24 **5. If no appointment is made under subsection 1, the court shall appoint**
25 **as guardian or conservator of a minor the most suitable person who is willing to**
26 **serve and whose appointment serves the best interests of the child to a**
27 **stable and permanent placement.**

475.046. 1. Upon petition as provided in section 475.060 of an
2 **appointing parent, legal guardian, or other court approved party**
3 **interested in the minor's welfare, the court may, before appointment**
4 **becomes effective, confirm the parent's selection of a standby guardian**
5 **and terminate the rights of other persons to object.**

6 **2. Reasonable notice of the petition shall be provided to the**
7 **parent, presumed parent, or putative parent under section 475.070 and**
8 **section 472.100, RSMo.**

9 **3. The appointment of a standby guardian becomes effective**
10 **upon the disability or incapacitation of the appointing parent or legal**

11 guardian under the definitions in section 475.010 or upon the
12 appointing parent's or legal guardian's death. The standby guardian
13 has the responsibility to bring to the court evidence that the disability
14 or incapacitation of the appointing parent or guardian has occurred.

15 4. The standby guardian becomes eligible to act upon the filing
16 of an acceptance of appointment, which shall be filed within thirty days
17 after the standby guardian's confirmation by the court becomes
18 effective. The standby guardian shall:

19 (1) File the acceptance of appointment and a copy of the will
20 with the court of the county in which the will was or could be probated,
21 or in the case of another appointment instrument, file the acceptance
22 of appointment and the appointing instrument with the court of the
23 county in which the minor resides or is present; and

24 (2) Give written notice of the acceptance of appointment as
25 provided in section 475.070.

26 5. The standby guardian shall have the same general powers and
27 duties as provided for a guardian in section 475.120, except that after
28 the death of the appointing parent or guardian, standby guardianship
29 may be made permanent when the standby guardian petitions the court
30 to make a formal guardianship determination. The petition may be
31 filed within sixty days of the appointing parent's or guardian's death.

32 6. The appointment of a standby guardian by a parent shall not
33 supersede parental rights of either parent while alive, unless the
34 parental rights have otherwise been terminated.

35 7. Until the court confirms an appointee under this section, a
36 minor who is the subject of an appointment by a parent and who has
37 attained fourteen years of age, the other parent, or a person other than
38 a parent or guardian having care and custody of the minor, may
39 attempt to prevent or terminate the appointment at any time by filing
40 a written objection in the court in which the appointing instrument is
41 filed. An objection may be withdrawn and, if withdrawn, is of no
42 effect. The court shall have discretion and the objection shall not
43 preclude judicial appointment of the person selected by the parent.

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