

SENATE BILL NO. 613

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

2132S.03I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 475.010 and 475.084, RSMo, and to enact in lieu thereof three new sections relating to guardianships.

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

Section A. Sections 475.010 and 475.084, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 473.777, 475.010, and 475.084, to read as
4 follows:

473.777. 1. **There is hereby created in the state**
2 **treasury the "Missouri Public Administrator Fund", which**
3 **shall consist of moneys appropriated and gifts,**
4 **contributions, devises, bequests, and grants received**
5 **relating to the purposes provided in this section, shall be**
6 **credited to the fund. The state treasurer shall be**
7 **custodian of the fund. In accordance with sections 30.170**
8 **and 30.180, the state treasurer may approve disbursements.**
9 **The fund shall be a dedicated fund and, upon appropriation,**
10 **money in the fund shall be used solely for the purposes set**
11 **forth in this section.**

12 2. **Notwithstanding the provisions of 33.080 to the**
13 **contrary, any moneys remaining in the fund at the end of the**
14 **biennium shall not revert to the credit of the general**
15 **revenue fund.**

16 3. **The state treasurer shall invest moneys in the fund**
17 **in the same manner as other funds are invested. Any**

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

18 interest and moneys earned on such investments shall be
19 credited to the fund.

20 4. Moneys in the fund shall be available for the
21 following purposes:

22 (1) Any purchase of computer software or computer
23 hardware to improve the efficiency of the management of the
24 letters of public administrators of this state and to
25 improve the security of sensitive information relating to
26 the letters and office of public administrators of this
27 state;

28 (2) Any travel expenses incurred by a public
29 administrator holding letters of guardianship or letters of
30 conservatorship for in-person or home visits to the wards or
31 protectees of the public administrator; and

32 (3) Any programs, seminars, or activities relating to
33 training or instruction in guardianships, conservatorships,
34 or the operations of the public administrator's office.

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

3 (1) "Adult", a person who has reached the age of
4 eighteen years;

5 (2) "Claims", liabilities of the protectee arising in
6 contract, in tort or otherwise, before or after the
7 appointment of a conservator, and liabilities of the estate
8 which arise at or after the adjudication of disability or
9 after the appointment of a conservator of the estate,
10 including expenses of the adjudication and of
11 administration. The term does not include demands or
12 disputes regarding title of the protectee to specific assets
13 alleged to be included in the estate;

14 (3) "Conservator", one appointed by a court to have
15 the care and custody of the estate of a minor or a disabled

16 person. A "limited conservator" is one whose duties or
17 powers are limited. The term "conservator", as used in this
18 chapter, includes limited conservator unless otherwise
19 specified or apparent from the context;

20 (4) "Conservator ad litem", one appointed by the court
21 in which particular litigation is pending regarding the
22 management of financial resources on behalf of a minor, a
23 disabled person, or an unborn person in that particular
24 proceeding or as otherwise specified in this chapter;

25 (5) "Custodial parent", the parent of a minor who has
26 been awarded sole or joint physical custody of such minor,
27 or the parent of an incapacitated person who has been
28 appointed as guardian of such person, by an order or
29 judgment of a court of this state or of another state or
30 territory of the United States, or if there is no such order
31 or judgment, the parent with whom the minor or incapacitated
32 person primarily resides;

33 (6) "Disabled" or "disabled person", one who is:

34 (a) Unable by reason of any physical, mental, or
35 cognitive condition to receive and evaluate information or
36 to communicate decisions to such an extent that the person
37 lacks ability to manage the person's financial resources; or

38 (b) The term disabled or disabled person, as used in
39 this chapter includes the terms partially disabled or
40 partially disabled person unless otherwise specified or
41 apparent from the context;

42 (7) "Eligible person" or "qualified person", a natural
43 person, social service agency, corporation or national or
44 state banking organization qualified to act as guardian of
45 the person or conservator of the estate pursuant to the
46 provisions of section 475.055;

47 (8) "Guardian", one appointed by a court to have the
48 care and custody of the person of a minor or of an
49 incapacitated person. A "limited guardian" is one whose
50 duties or powers are limited. A "standby guardian" is one
51 approved by the court to temporarily assume the duties of
52 guardian of a minor or of an incapacitated person under
53 section 475.046. The term guardian, as used in this
54 chapter, includes limited guardian and standby guardian
55 unless otherwise specified or apparent from the context;

56 (9) "Guardian ad litem", one appointed by a court, in
57 which particular litigation is pending on behalf of a minor,
58 an incapacitated person, a disabled person, or an unborn
59 person in that particular proceeding or as otherwise
60 specified in this code;

61 (10) "Habilitation", a process of treatment, training,
62 care, or specialized attention that seeks to enhance and
63 maximize the ability of a person with an intellectual
64 disability or a developmental disability to cope with the
65 environment and to live as determined by the person as much
66 as possible, as is appropriate for the person considering
67 his or her physical and mental condition and financial means;

68 (11) "Incapacitated person", one who is unable by
69 reason of any physical, mental, or cognitive condition to
70 receive and evaluate information or to communicate decisions
71 to such an extent that the person, even with appropriate
72 services and assistive technology, lacks capacity to manage
73 the person's essential requirements for food, clothing,
74 shelter, safety or other care such that serious physical
75 injury, illness, or disease is likely to occur. The term
76 incapacitated person as used in this chapter includes the
77 term partially incapacitated person unless otherwise
78 specified or apparent from the context;

79 (12) "Interested persons", spouses, children, parents,
80 adult members of a ward's or protectee's family, creditors
81 or any others having a property right or claim against the
82 estate of a protectee being administered, trustees of a
83 trust of which the ward or protectee is a beneficiary,
84 agents of a durable power of attorney for a ward or
85 protectee, [and] children of a protectee who may have a
86 property right or claim against or an interest in the estate
87 of a protectee, **and any person concerned about the health**
88 **and welfare of a ward or protectee.** This meaning may vary
89 at different stages and different parts of a proceeding and
90 shall be determined according to the particular purpose and
91 matter involved;

92 (13) "Least restrictive alternative", with respect to
93 the guardianship order and the exercise of power by the
94 guardian, a course of action or an alternative that allows
95 the incapacitated person to live, learn, and work with
96 minimum restrictions on the person, as are appropriate for
97 the person considering his or her physical and mental
98 condition and financial means. Least restrictive
99 alternative also means choosing the decision or approach
100 that:

101 (a) Places the least possible restriction on the
102 person's personal liberty and exercise of rights and that
103 promotes the greatest possible inclusion of the person into
104 his or her community, as is appropriate for the person
105 considering his or her physical and mental condition and
106 financial means; and

107 (b) Is consistent with meeting the person's essential
108 requirements for health, safety, habilitation, treatment,
109 and recovery and protecting the person from abuse, neglect,
110 and financial exploitation;

111 (14) "Manage financial resources", either those
112 actions necessary to obtain, administer, and dispose of real
113 and personal property, intangible property, business
114 property, benefits, income or any assets, or those actions
115 necessary to prevent waste, loss or dissipation of property,
116 or those actions necessary to provide for the care and
117 support of such person or anyone legally dependent upon such
118 person by a person of ordinary skills and intelligence
119 commensurate with his or her training and education;

120 (15) "Minor", any person who is under the age of
121 eighteen years;

122 (16) "Parent", the biological or adoptive mother or
123 father of a child whose parental rights have not been
124 terminated under chapter 211, including:

125 (a) A person registered as the father of the child by
126 reason of an unrevoked notice of intent to claim paternity
127 under section 192.016;

128 (b) A person who has acknowledged paternity of the
129 child and has not rescinded that acknowledgment under
130 section 193.215; and

131 (c) A person presumed to be the natural father of the
132 child under section 210.822;

133 (17) "Partially disabled person", one who is unable by
134 reason of any physical, mental, or cognitive condition to
135 receive and evaluate information or to communicate decisions
136 to such an extent that such person lacks capacity to manage,
137 in part, his or her financial resources;

138 (18) "Partially incapacitated person", one who is
139 unable by reason of any physical, mental, or cognitive
140 condition to receive and evaluate information or to
141 communicate decisions to the extent that such person lacks
142 capacity to meet, in part, essential requirements for food,

143 clothing, shelter, safety, or other care without court-
144 ordered assistance;

145 (19) "Protectee", a person for whose estate a
146 conservator or limited conservator has been appointed or
147 with respect to whose estate a transaction has been
148 authorized by the court under section 475.092 without
149 appointment of a conservator or limited conservator;

150 (20) "Seriously ill", a significant likelihood that a
151 person will become incapacitated or die within twelve months;

152 (21) "Social service agency", a charitable
153 organization organized and incorporated as a not-for-profit
154 corporation under the laws of this state and which qualifies
155 as an exempt organization within the meaning of Section
156 501(c)(3), or any successor provision thereto of the federal
157 Internal Revenue Code;

158 (22) "Standby guardian", one who is authorized to have
159 the temporary care and custody of the person of a minor or
160 of an incapacitated person under the provisions of section
161 475.046;

162 (23) "Treatment", the prevention, amelioration or cure
163 of a person's physical and mental illnesses or incapacities;

164 (24) "Ward", a minor or an incapacitated person for
165 whom a guardian, limited guardian, or standby guardian has
166 been appointed.

475.084. [If a guardian has been appointed for a minor
2 under the provisions of subdivision (2) of subsection 4 of
3 section 475.030, then a parent of the minor may petition the
4 court for periods of visitation. The court may order
5 visitation if visitation is in the best interest of the
6 child.] **1. Unless otherwise limited by a court order, a**
7 **ward or protectee is entitled to unimpeded, private, and**

8 uncensored communication and visitation with persons of the
9 ward's or protectee's choice.

10 2. If a guardian or conservator believes that certain
11 communication or visitation causes substantial harm to the
12 ward's health, safety, or well-being or to the protectee's
13 estate, the guardian or conservator may move the court to
14 order limitations or restrictions on such communication or
15 visitation to the extent necessary to protect the ward or
16 the estate of the protectee from substantial harm.

17 3. Upon good cause shown by the guardian or
18 conservator in a motion pursuant to subsection 2 of this
19 section, the court shall consider and may order limitations
20 and restrictions in the following sequence:

21 (1) Placing reasonable time, manner, or place
22 restrictions on the communication or visitation between the
23 person and the ward or protectee based on the ward's wishes
24 or the history between the person and the ward or protectee;

25 (2) Requiring that communication or visitation between
26 the person and the ward or protectee be supervised; or

27 (3) Denying communication or visitation between the
28 person and the ward or protectee, except that supervised
29 communication or visitation shall be ordered pursuant to
30 subdivision (2) of this subsection prior to the denial of
31 any communication or visitation unless the person poses a
32 threat to the ward.

33 4. Good cause shown by the guardian or conservator
34 shall include:

35 (1) Whether any protective orders have been issued to
36 protect the ward or protectee from the person seeking access
37 to the ward or protectee;

38 (2) Whether abuse, neglect, or financial exploitation
39 of the ward or protectee by the person seeking access to the
40 ward or protectee has occurred or is likely to occur;

41 (3) Documented wishes of the ward or protectee to
42 reject communication or visitation with the person seeking
43 access to the ward or protectee;

44 (4) If the ward or protectee is unable to communicate,
45 whether a properly executed living will, durable power of
46 attorney, or advance directive contains a preference by the
47 ward or protectee with regard to communication or visitation
48 of the person seeking access to the ward or protectee; or

49 (5) Any other factor deemed relevant by the court.

50 5. If a ward or protectee, guardian or conservator, or
51 any interested person reasonably believes that any provision
52 of subsection 1 of this section or an order issued pursuant
53 to subsection 3 of this section has been violated, the ward
54 or protectee, the guardian or conservator, or the interested
55 person may move the court to:

56 (1) Require the guardian or conservator to grant the
57 restricted person access to the ward or protectee;

58 (2) Restrict, or further restrict, a person's access
59 to the ward or protectee;

60 (3) Modify the guardian's or conservator's duties; or

61 (4) Discharge and replace the guardian or conservator
62 pursuant to section 475.097.

63 6. The court shall hold a hearing on a motion filed
64 pursuant to subsections 2 or 5 of this section within thirty
65 days after the motion is filed or within ten days if the
66 health of the ward or protectee is in significant decline or
67 if the death of the ward or protectee is imminent.

68 7. The court may award court costs and reasonable
69 attorney's fees to the prevailing party of a motion filed

70 pursuant to subsections 2 or 5 of this section, but no award
71 of costs or fees shall be funded by the estate of the ward
72 or protectee.

73 8. A guardian or conservator shall promptly notify
74 interested persons, including persons designated by the ward
75 or protectee to be notified, upon knowledge of the following
76 events:

77 (1) A change of residence of the ward or protectee;

78 (2) The ward staying at a location other than his or
79 her primary residence for more than seven consecutive days;

80 (3) The ward is admitted to or is discharged from a
81 facility licensed pursuant to chapter 198;

82 (4) The ward is admitted to a hospital, as that term
83 is defined in section 197.020, for acute care or for
84 emergency care in response to a life-threatening injury or
85 medical condition; and

86 (5) The death of the ward or protectee and any funeral
87 or burial arrangements to the extent that such notification
88 does not interfere with the rights of next-of-kin to direct
89 the disposition of the body of the ward or protectee upon
90 death under section 194.119.

91 A guardian or conservator is not required to provide notice
92 if the interested person informs the guardian or conservator
93 that the person does not wish to receive such notice or the
94 ward or a court order has expressly prohibited the guardian
95 or conservator from providing notice to the interested
96 person.

97 9. Any notification pursuant to subdivision (5) of
98 subsection 8 of this section shall be made in person or by
99 telephone.

100 10. As used in this section, the terms "communication"
101 and "visitation" includes receiving visitors, telephone
102 calls, and personal mail.

✓