

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5457-05
Bill No.: Truly Agreed To and Finally Passed CCS for HCS for SB 806
Subject: Estate, Wills, and Trusts; Guardians; County Officials, Children and Minors,
 Courts, Civil Procedure, Medicaid/MO HealthNet
Type: Original
Date: June 7, 2018

Bill Summary: This proposal modifies provisions relating to guardianship proceedings.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on General Revenue	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§473.397, 473.398 - Claims against an estate.

Oversight assumes the inclusion of “Debts for medical assistance owed to the state of Missouri under section 473.398” as the number 6 priority could possibly result in additional revenue to the state. Oversight assumes these claims are within the current number 9 priority, “All other claims not barred by section 473.360.” Therefore, Oversight will reflect an unknown additional amount of revenue from moving up in priority.

Oversight also assumes this could possibly reduce the amount collected by the state from the current number 7 priority, “Debts and taxes due the state of Missouri, any county, or any political subdivision of the state of Missouri”, if the reduced priority results in reduced collections.

Oversight assumes since debts for medical assistance owed to the state now has a higher priority than the current number 6 priority, “Expenses of the last sickness, wages of servants, claims for medicine and medical attendance during the last sickness, and the reasonable cost of a tombstone”, the net impact to the state would be positive.

Oversight will assume additional collections will affect the General Revenue Fund.

§§473.730, 473.770, 473.771, 475.010, 475.016, 475.060, 475.061, 475.062, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.341, 475.342, 475.343, 475.355, 475.357, 475.361, 630.005

In response to a previous version, officials at **St. Louis County** assumed a cost of \$200,000 annually from this proposal.

Oversight inquired St. Louis County further regarding their response; however, St. Louis County has not elaborated on the potential costs. Therefore, Oversight will assume there could be some impact on county public administrators and will reflect a potential cost as \$0 or (Unknown).

In response to a previous version, officials at the **Department of Public Safety’s Veterans’ Commission** assumed no fiscal impact to their agency from this proposal.

In response to a previous version, officials at **Boone County** assumed no fiscal impact from this proposal.

ASSUMPTION (continued)

§§475.050, 475.070, 475.290, 475.320

In response to a previous version, officials at the **Callaway County Commission** and the **Franklin County Public Administrator's Office** each assumed no fiscal impact to their respective entities from this proposal.

Bill as a Whole

Officials at the **Office of the State Courts Administrator** assume there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials at the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

Officials at the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Health and Senior Services**, the **Department of Mental Health**, the **Department of Social Services**, the **Department of Revenue**, the **Office of Prosecution Services** and the **Office of the State Public Defender** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE			
Income - §473.397 - new priority for claims against an estate - for Debts for medical assistance owed to the state of Missouri under Section 473.398	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Loss - §473.397 - lower priority for debts and taxes due the state	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
CITIES AND COUNTIES			
<u>Loss</u> - \$473.397 - lower priority for debts and taxes due counties or political subdivisions	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Cost</u> - potential additional costs for public administrators (§§473.730, 473.770, 473.771, 475.010, 475.016, 475.060, 475.061, 475.062, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.341, 475.342, 475.343, 475.355, 475.357, 475.361, 630.005)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO CITIES AND COUNTIES	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

DEBTS OWED TO THE STATE FROM A DECEDENT

The act specifies that debt owed to the state for medical assistance shall be sixth in the list of priority of claims paid from the estate of the deceased. Currently, claims against an estate for payments made under MO HealthNet or the State Children's Health Insurance Program are allowed upon the showing of proof of moneys expended. This act removes a certified statement from the Treasurer as substantial evidence of such payment.

GUARDIANSHIP AND CONSERVATOR PROCEEDINGS

This act modifies various provisions regarding guardianship and conservator proceedings. The act defines the term "conservator ad litem" as someone appointed by the court on behalf of a minor, a disabled person, or an unborn person in a proceeding regarding the management of such person's financial resources. The act defines the term "interested persons", and also modifies the definitions for the terms "disabled", "guardian ad litem", "habilitation", "incapacitated person", "least restrictive", "partially disabled person", and "partially incapacitated person".

FISCAL DESCRIPTION (continued)

Under current law in guardianship and conservator proceedings the court is to consider the suitability of a list of persons for appointment. This act provides that such persons are listed in the order of priority. The act removes the requirement that a durable power of attorney nominating a guardian or conservator must be executed five years before the hearing at a time when the person was able to make and communicate a reasonable choice. The court may not appoint an unrelated third party unless there is no relative suitable and willing to serve, or if the appointment of a relative or a nominee is not in the best interest of the incapacitated or disabled person. If the incapacitated or disabled person is a minor entering adult guardianship or conservatorship and under the care of the Children's Division, then there is a rebuttable presumption that there is not a suitable and willing relative to serve.

Certain persons who are seeking appointment to serve as guardian or conservator and have a fiduciary responsibility to the ward, incapacitated person, or disabled person shall submit to a background check at their own expense. Persons seeking appointment as a conservator must also submit to a credit history investigation. The results of the background check and credit history investigation shall be filed with the court ten days prior to the appointment hearing. An individual certified by a national accrediting organization as a guardian may submit proof of such certification in lieu of the background check.

Currently, any person may file a petition with the court to be appointed as a guardian of a minor or incapacitated person. This act states that if the person is requesting the appointment of co-guardians, then the petition must include a statement of reasons why such appointment is sought, whether the co-guardians are to act independently or together, and that written consent has been obtained from any person who is to be appointed as co-guardian. The petition shall also include whether the petitioner knows of any other court having jurisdiction over the minor.

When the court assigns an attorney for a person who has petitioned the court for the appointment of a conservator for him or herself or a petition is made on the person's behalf with such person's consent, the assigned attorney shall advise the person of his or her rights and the consequences of the appointment of the conservator.

Notice of a petition to appoint a guardian or conservator for a minor must be served to the person or entity nominated to serve as guardian or conservator.

Currently, when the petition for the appointment of a guardian or conservator is filed based on grounds other than minority, then certain interested persons shall be served notice of the hearing. This act adds any person proposed to serve as guardian or conservator and any cotenants or codepositors of the respondents are also to be served notice. The notice shall state the time and place for the hearing and the name and address of the attorney appointed to represent the respondent. If the public administrator is nominated, the public administrator shall receive certain

FISCAL DESCRIPTION (continued)

documents such as the petition and medical opinions and shall have an opportunity to be heard at the hearing. If the court appoints an attorney for the respondent, the order shall specify that the attorney has the right to obtain the respondent's medical and financial information. The court appointed attorney shall visit the respondent at least twenty-four hours prior to the hearing, unless the court finds good cause to waive this requirement. Currently, the court appointed attorney is allowed to withdraw if the respondent employs a private attorney. The act states that the appointed attorney may withdraw only if the court permits the withdrawal. A private attorney shall not also serve as guardian ad litem or conservator ad litem and shall not be nominated by the petitioner.

Under current law, the court may direct the respondent to be examined by a physician, psychologist, or other appropriate professional designated by the court, and such health care professional shall then submit a report to the court and to the attorneys of the parties. This act provides that the other appropriate professional is allowed if such professional has experience or training in the alleged mental, physical, or cognitive impairment of the respondent. The act removes the requirement that the court appointed health care professional is to explain to the respondent incapacity or disability as defined in law. If parties object to the report submitted by the health care professional, the court may order a hearing for determining whether the court shall admit the report.

The respondent's attorney must inform the respondent of his or her rights, as provided under current law, which includes the right to appeal the court's decision. Before appointing a guardian or conservator, the court shall consider whether the respondent's needs may be met by a less restrictive alternative than appointing a guardian or conservator. The act adds to the findings of fact that are required to be in the court order: whether the respondent retains the right to vote or marry and whether the respondent is allowed to drive.

When a petition alleges that an emergency exists that presents harm to the respondent, the court may appoint an emergency guardian ad litem or conservator ad litem for a period not to exceed ninety days, rather than thirty days as provided under current law. The hearing shall be held within five days of the petition being filed. If a petition for guardianship or conservatorship is not filed within the first ninety days of the emergency appointment, then the court may terminate the authority granted under the emergency appointment upon a finding that doing so would not be manifestly contrary to the respondent's interests.

A court may order that the respondent retains the right to vote, drive, or marry, even though he or she is adjudicated totally incapacitated.

FISCAL DESCRIPTION (continued)

The court may appoint a guardian or conservator if the respondent's needs cannot be met by a less restrictive alternative. A public administrator cannot be appointed, unless the public administrator has received notice, as provided in the act, and had the opportunity to participate in the hearings.

Currently, the court shall annually inquire into the status of every adult ward and protectee and guardians are required to file with the court a report concerning the status of the ward. This act states that the report shall include plans for future care, a summary of the guardian's visits, the extent to which the ward has participated in decision-making, any changes in the ward's condition since the last report, and a summarized plan for the coming year.

The authority of a guardian terminates if the court determines that the guardian is unable to provide the necessary services due to the ward's absence from the state or other particular circumstances of the ward.

A petition to the court to restore the ward or protectee, to decrease the powers of the guardian or conservator, or restore rights to the ward may be in the form of an informal letter. The court on its own motion may set a hearing if the court believes that powers of a guardian or conservator or rights of the ward should be increased or decreased. In determining whether to terminate or modify the guardianship or conservatorship, the court may require a report by a health care professional.

When a guardian is appointed for a minor because his or her parents are unwilling, unable, or adjudged unfit, then a parent may be granted visitation if it is in the best interests of the child.

The act repeals provisions allowing the court to take certain steps to keep a protectee's estate from being "substantially depleted" by federal estate taxes. Instead, the act states that following the express authorization of the court and notice to interested persons, a conservator may: make gifts that would reduce federal estate taxes; convey interests in property; exercise a power of appointment; create a trust of the estate property; change beneficiaries under insurance policies or surrender the policies for cash value; and exercise any right to an elective share in the estate of the protectee's deceased spouse. When approving the conservator's actions, the court must consider the decision that the protectee would have made, as well as other factors, as provided in the act.

A guardian must make decisions regarding the adult ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the adult ward's limitations and encourage the adult ward to participate in decisions.

FISCAL DESCRIPTION (continued)

The act adds that prior to a court order for the management of the estate of a protectee, in setting the amount of support allowance for the protectee or other persons entitled to such support, the court must consider the previous standard of living of the spouse or family, composition of the estate, income and other assets, and expenses.

When managing the estate of a protectee, the conservator shall use reasonable efforts to ascertain the protectee's income, assets, liabilities, needs and preferences, coordinate with the protectee's guardian, prepare a management plan, and provide oversight for the protectee's income and assets.

Current law states that a conservator may settle certain claims against the protectee and the estate and sell personal property without court approval if such actions do not exceed one thousand dollars. The act increases this amount to five thousand dollars. The act also adds to the functions a conservator may perform without court approval.

The act provides that the inventory of the protectee's estate required when a conservator has been appointed must disclose any nonprobate transferees designated to receive nonprobate transfers after the protectee's death.

A protectee shall receive ten days' notice prior to a required court hearing on a petition for the sale of the protectee's real or tangible personal property. However, the protectee is not entitled to notice of a hearing on the petition for the sale of intangible personal property.

The annual settlement of the conservator's accounts shall be filed sixty days after the anniversary of the appointment of the conservator, rather than thirty days after. The act also adds information that must be included in the settlement, which includes an opinion of the conservator as to the need for the conservatorship, compensation requested, and a plan for the coming year. If the protectee's assets are controlled by another fiduciary, the court may waive the requirements of the annual settlement.

Currently, a conservator has sixty days to make final settlement of the conservatorship. The act states that the conservator has ninety days to make the final settlement and makes an exception to the ninety day requirement for when the protectee has died and the court has ordered that no letters of administration are to be granted.

A transaction entered into by the conservator for the conservator's personal gain or in which a conflict of interest exists is voidable, unless the transaction falls into one of the four exceptions as provided in the act. A public administrator serving as conservator is prohibited from entering into transactions for personal gain. A conservator is prohibited from combining personal property and estate property. The conservator shall cause the estate property to be designated so that any ownership appears in records maintained by a financial institution or party other than the conservator or protectee.

FISCAL DESCRIPTION (continued)

A guardian is not obligated to use personal financial resources to support the ward. A guardian may not seek admission of the ward to a mental health facility for more than thirty days without court order. Only the director of a social service agency serving as a guardian is legally authorized to act on behalf of a ward and the social service agency must notify the court within fifteen days of a change in the person responsible for the providing the guardianship services.

The act states that the probate division of a circuit court has the jurisdiction over issues of the adjudication of incapacity, partial incapacity, disability, or partial disability and the appointment of a guardian or conservator of an adult over the age of eighteen whose parents have a child custody or visitation case pending. The court with the authority to enter the child support order, shall enter the order only after the adjudication and appointment of a guardian by the probate court.


Finally, the act lays out the rights of an incapacitated person in a guardianship. An adult ward may petition the court for various reasons, as provided in the act, which includes the right to contract to marry, consent to medical treatment, and drive a motor vehicle. The appointment of a guardian is not a determination that the ward lacks testamentary capacity.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator
Office of the Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Social Services
Department of Revenue
Office of Prosecution Services
Office of the State Public Defender
Department of Public Safety
 Veterans' Commission
St. Louis County
Boone County
Callaway County Commission
Franklin County Public Administrator's Office

Ross Strope



Acting Director
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