

FIRST REGULAR SESSION

HOUSE BILL NO. 571

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PRATT AND CAMPBELL (Co-sponsors).

Read 1st time February 27, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1924L.011

AN ACT

To repeal sections 475.010 and 475.045, RSMo, and to enact in lieu thereof three new sections relating to standby guardians.

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Section A. Sections 475.010 and 475.045, RSMo, are repealed and three new sections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

475.010. When used in this chapter, unless otherwise apparent from the context, the
2 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 otherwise, before
5 or after the appointment of a conservator, and liabilities of the estate which arise at or after the
6 adjudication of disability or after the appointment of a conservator of the estate, including
7 expenses of the adjudication and of administration. The term does not include demands or
8 disputes regarding title of the protectee to specific assets alleged to be included in the estate;

9 (3) "Conservator", one appointed by a court to have the care and custody of the estate
10 of a minor or a disabled person. A "limited conservator" is one whose duties or powers are
11 limited. The term "conservator", as used in this chapter, includes "limited conservator" unless
12 otherwise specified or apparent from the context;

13 (4) "Disabled" or "disabled person", one who is:

14 (a) Unable by reason of any physical or mental condition to receive and evaluate
15 information or to communicate decisions to such an extent that the person lacks ability to

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

16 manage his **or her** financial resources, or

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

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

23 (6) "Guardian", one appointed by a court to have the care and custody of the person of
24 a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are
25 limited. A **"standby guardian" is one approved by the court to temporarily assume the**
26 **duties of guardian of a minor child pursuant to the provisions of section 475.046.** The term
27 "guardian", as used in this chapter, includes "limited guardian" unless otherwise specified or
28 apparent from the context;

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

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

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

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

47 (11) "Manage financial resources", either those actions necessary to obtain, administer,
48 and dispose of real and personal property, intangible property, business property, benefits,
49 income or any assets, or those actions necessary to prevent waste, loss or dissipation of property,
50 or those actions necessary to provide for the care and support of such person or anyone legally
51 dependent upon him **or her** by a person of ordinary skills and intelligence commensurate with

52 his **or her** training and education;

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

54 (13) "Partially disabled person", one who is unable by reason of any physical or mental
55 condition to receive and evaluate information or to communicate decisions to such an extent that
56 he **or she** lacks capacity to manage, in part, his **or her** financial resources;

57 (14) "Partially incapacitated person", one who is unable by reason of any physical or
58 mental condition to receive and evaluate information or to communicate decisions to the extent
59 that he **or she** lacks capacity to meet, in part, essential requirements for food, clothing, shelter,
60 safety, or other care without court-ordered assistance;

61 (15) "Protectee", a person for whose estate a conservator or limited conservator has been
62 appointed or with respect to whose estate a transaction has been authorized by the court under
63 section 475.092 without appointment of a conservator or limited conservator;

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

68 (17) "Treatment", the prevention, amelioration or cure of a person's physical and mental
69 illnesses or incapacities;

70 (18) "Ward" is a minor or an incapacitated person for whom a guardian or limited
71 guardian has been appointed.

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

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

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

9 (3) [Where both parents of a minor are dead, any person appointed by the will of the last
10 surviving parent, who has not been adjudged unfit or incompetent for the duties of guardian or
11 conservator.] **Any person appointed by will or other signed writing by an appointing
12 parent, who 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 of
15 guardianship or conservatorship may be adjudged by the court after due notice and hearing.]
16 **Without surrendering parental rights, any parent or other party interested in the minor's**

17 **welfare, may appoint a standby guardian of a minor in accordance with the provisions of**
18 **section 475.046.**

19 3. [If no appointment is made under subsection 1, the court shall appoint as guardian or
20 conservator of a minor the most suitable person who is willing to serve.] **Unfitness of any of the**
21 **persons mentioned in subsection 1 of this section for the duties of guardianship or**
22 **conservatorship may be adjudged by the court after due notice and hearing.**

23 4. **If no appointment is made under subsection 1 of this section, the court shall**
24 **appoint as guardian or conservator of a minor the most suitable person who is willing to**
25 **serve.**

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

5 2. **The appointment of a standby guardian becomes effective upon the disability or**
6 **incapacitation of the appointing parent pursuant to the definitions in section 475.010 or**
7 **upon the appointing parent's death.**

8 3. **The standby guardian becomes eligible to act upon the filing of an acceptance**
9 **of appointment, which must be filed within thirty days after the standby guardian's**
10 **confirmation by the court becomes effective. The standby guardian shall:**

11 (1) **File the acceptance of appointment and a copy of the will with the court of the**
12 **county in which the will was or could be probated, or in the case of another appointing**
13 **instrument, file the acceptance of appointment and the appointing instrument with the**
14 **court of the county in which the minor resides or is present; and**

15 (2) **Give written notice of the acceptance of appointment as provided in section**
16 **475.070.**

17 4. **The standby guardian shall have the same general powers and duties as provided**
18 **for a guardian in section 475.120.**

19 5. **The appointment of a standby guardian by a parent does not supersede parental**
20 **rights of either parent.**

21 6. **Until the court has confirmed an appointee under this provision, a minor who**
22 **is the subject of an appointment by a parent and who has attained fourteen years of age,**
23 **the other parent, or a person other than a parent or guardian having care or custody of the**
24 **minor may attempt to prevent or terminate the appointment at any time by filing a written**
25 **objection in the court in which the appointing instrument is filed. An objection may be**
26 **withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial**
27 **appointment of the person selected by the parent.**