

FIRST REGULAR SESSION

HOUSE BILL NO. 826

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PHILLIPS (Sponsor) AND PRATT (Co-sponsor).

Read 1st time March 17, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2116L.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Section A. Sections 475.010 and 475.045, RSMo, are repealed and three new sections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 the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill 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 under section 475.046.** The term "guardian", as used in
27 this chapter, includes "limited guardian" unless otherwise specified or apparent from the context;

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

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

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

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

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

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

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

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

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

59 [(14)] (16) "Partially incapacitated person", one who is unable by reason of any physical
60 or mental condition to receive and evaluate information or to communicate decisions to the
61 extent that [he] **such person** lacks capacity to meet, in part, essential requirements for food,
62 clothing, shelter, safety, or other care without court-ordered assistance;

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

64 [(15)] (18) "Protectee", a person for whose estate a conservator or limited conservator
65 has been appointed or with respect to whose estate a transaction has been authorized by the court
66 under section 475.092 without appointment of a conservator or limited conservator;

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

69 [(16)] (20) "Social service agency", a charitable organization organized and incorporated
70 as a not-for-profit corporation under the laws of this state and which qualifies as an exempt
71 organization within the meaning of section 501(c)(3), or any successor provision thereto of the
72 federal Internal Revenue Code;

73 [(17)] (21) "Treatment", the prevention, amelioration or cure of a person's physical and
74 mental illnesses or incapacities;

75 [(18)] (22) "Ward" is a minor or an incapacitated person for whom a guardian or limited
76 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 parent**

12 **who has not been adjudged unfit or incompetent for the duties of guardian or conservator.**

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

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

18 **[3.] 4. Unfitness of any of the persons listed in subsection 1 of this section for the**
19 **duties of guardianship or conservatorship may be adjudged by the court after due notice**
20 **and hearing.**

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

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

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

7 **3. The appointment of a standby guardian becomes effective upon the disability or**
8 **incapacitation of the appointing parent or legal guardian under the definitions in section**
9 **475.010 or upon the appointing parent's or legal guardian's death. The standby guardian**
10 **has the responsibility to bring to the court evidence that the disability or incapacitation of**
11 **the appointing parent or guardian has occurred.**

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

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

19 **(2) Give written notice of the acceptance of appointment as provided in section**
20 **475.070.**

21 **5. The standby guardian shall have the same general powers and duties as provided**
22 **for a guardian in section 475.120; except that, after the death of the appointing parent or**
23 **guardian, standby guardianship may be made permanent when the standby guardian**

24 petitions the court to make a formal guardianship determination. The petition may be filed
25 within sixty days of the appointing parent's or guardian's death.

26 **6. The appointment of a standby guardian by a parent shall not supersede parental**
27 **rights of either parent while alive, unless the parental rights have otherwise been**
28 **terminated.**

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