

SECOND REGULAR SESSION

HOUSE BILL NO. 1271

93RD GENERAL ASSEMBLY

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

Read 1st time January 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4236L.01I

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Section A. Sections 475.010 and 475.045, RSMo, are repealed and three new sections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) **"Acknowledged parent", a person defined in section 210.823, RSMo;**

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

5 [(2)] (3) "Claims", liabilities of the protectee arising in contract, in tort or otherwise,
6 before or after the appointment of a conservator, and liabilities of the estate which arise at or
7 after the adjudication of disability or after the appointment of a conservator of the estate,
8 including expenses of the adjudication and of administration. The term does not include
9 demands or disputes regarding title of the protectee to specific assets alleged to be included in
10 the estate;

11 [(3)] (4) "Conservator", one appointed by a court to have the care and custody of the
12 estate of a minor or a disabled person. A "limited conservator" is one whose duties or powers
13 are limited. The term "conservator", as used in this chapter, includes "limited conservator"
14 unless otherwise specified or apparent from the context;

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.

15 [(4)] (5) "Disabled" or "disabled person", one who is:

16 (a) Unable by reason of any physical or mental condition to receive and evaluate
17 information or to communicate decisions to such an extent that the person lacks ability to
18 manage his financial resources[.]; or

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

22 [(5)] (6) "Eligible person" or "qualified person", a natural person, social service agency,
23 corporation or national or state banking organization qualified to act as guardian of the person
24 or conservator of the estate pursuant to the provisions of section 475.055;

25 [(6)] (7) "Guardian", one appointed by a court to have the care and custody of the person
26 of a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers
27 are limited. **A "standby guardian" is one approved by the court to temporarily assume the**
28 **duties of guardian of a minor child under section 475.046.** The term "guardian", as used in
29 this chapter, includes "limited guardian" **and "standby guardian"** unless otherwise specified
30 or apparent from the context;

31 [(7)] (8) "Guardian ad litem", one appointed by a court, in which particular litigation is
32 pending, to represent a minor, an incapacitated person, a disabled person, or an unborn person
33 in that particular proceeding or as otherwise specified in this code;

34 [(8)] (9) "Habilitation", instruction, training, guidance or treatment designed to enable
35 and encourage a mentally retarded or developmentally disabled person as defined in chapter 630,
36 RSMo, to acquire and maintain those life skills needed to cope more effectively with the
37 demands of his **or her** own person and of his **or her** environment;

38 [(9)] (10) "Incapacitated person", one who is unable by reason of any physical or mental
39 condition to receive and evaluate information or to communicate decisions to such an extent that
40 he **or she** lacks capacity to meet essential requirements for food, clothing, shelter, safety or other
41 care such that serious physical injury, illness, or disease is likely to occur. The term
42 "incapacitated person" as used in this chapter includes the term "partially incapacitated person"
43 unless otherwise specified or apparent from the context;

44 [(10)] (11) "Least restrictive environment", that there shall be imposed on the personal
45 liberty of the ward only such restraint as is necessary to prevent [him] **the ward** from injuring
46 himself **or herself** and others and to provide [him] **the ward** with such care, habilitation and
47 treatment as are appropriate for [him] **the ward** considering [his] **the ward's** physical and mental
48 condition and financial means;

49 [(11)] (12) "Manage financial resources", either those actions necessary to obtain,
50 administer, and dispose of real and personal property, intangible property, business property,

51 benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation
52 of property, or those actions necessary to provide for the care and support of such person or
53 anyone legally dependent upon [him] **such person** by a person of ordinary skills and intelligence
54 commensurate with [his] **such person's** training and education;

55 [(12)] (13) "Minor", any person who is under the age of eighteen years;

56 (14) "Parent", a natural or adoptive parent with a parent-child relationship under
57 section 210.817, RSMo;

58 (15) "Parent with physical custody", the parent with whom a child resides or who
59 is primarily responsible for the care and supervision of the child under section 452.375,
60 RSMo;

61 [(13)] (16) "Partially disabled person", one who is unable by reason of any physical or
62 mental condition to receive and evaluate information or to communicate decisions to such an
63 extent that [he] **such person** lacks capacity to manage, in part, his **or her** financial resources;

64 [(14)] (17) "Partially incapacitated person", one who is unable by reason of any physical
65 or mental condition to receive and evaluate information or to communicate decisions to the
66 extent that he **or she** lacks capacity to meet, in part, essential requirements for food, clothing,
67 shelter, safety, or other care without court-ordered assistance;

68 (18) "Presumed parent", a person defined in section 210.822, RSMo;

69 [(15)] (19) "Protectee", a person for whose estate a conservator or limited conservator has
70 been appointed or with respect to whose estate a transaction has been authorized by the court
71 under section 475.092 without appointment of a conservator or limited conservator;

72 (20) "Putative parent", a parent registered with the putative father registry under
73 section 192.016, RSMo, who has established parental rights to the child;

74 (21) "Seriously ill", for the purposes of section 475.046, a significant risk that the
75 petitioner will die or become an incapacitated person as defined in this section within two
76 years;

77 [(16)] (22) "Social service agency", a charitable organization organized and incorporated
78 as a not-for-profit corporation under the laws of this state and which qualifies as an exempt
79 organization within the meaning of section 501(c)(3), or any successor provision thereto of the
80 federal Internal Revenue Code;

81 [(17)] (23) "Treatment", the prevention, amelioration or cure of a person's physical and
82 mental illnesses or incapacities;

83 [(18)] (24) "Ward" [is], a minor or an incapacitated person for whom a guardian or
84 limited 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 **under section**
10 **475.046** or by the will of the last surviving parent, who has not been adjudged unfit or
11 incompetent for the duties of guardian or conservator.

12 2. Unfitness of any of the persons mentioned in subsection 1 for the duties of
13 guardianship or conservatorship may be adjudged by the court after due notice and hearing.

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

475.046. 1. This section shall permit a seriously ill parent to make arrangements
2 **for the care, custody, and control of such parent's minor children to minimize the stress**
3 **and disruption for the minor children when the parent becomes mentally or physically**
4 **incapacitated or dies, and to avoid placement of the children in foster care pending**
5 **appointment of a guardian as might otherwise be required.**

6 2. Nothing in the chapter shall be construed to deprive either parent of legal
7 parental rights or court-ordered visitation, or to relieve either parent of the parent's duty
8 to support a child under court or administrative order, or under section 210.824, RSMo,
9 or section 452.340, RSMo.

10 3. A seriously ill parent or guardian having physical and legal custody of a minor
11 child may appoint a standby guardian for such parent's minor children. Such
12 appointment shall be made under section 475.060. Unfitness of any person for the duties
13 of standby guardian may be adjudged by the court after due notice and hearing under
14 sections 475.045 and 475.070. A standby guardian shall file an acceptance of appointment
15 with the appropriate court under section 475.035 within thirty days of the court's
16 confirmation of the appointment. The court shall issue a letter of standby guardianship
17 to the standby guardian to confirm the status of a standby guardian.

18 4. (1) The standby guardian shall have the same powers and duties as provided for
19 a guardian in section 475.120. The standby guardian's authority shall take effect as
20 outlined in an order of standby guardianship upon:

21 (a) The death of the parent;

22 (b) The mental incapacity of the parent; or

23 (c) The physical debilitation and consent of the parent.

24 (2) The standby guardian shall immediately assume the role of guardian of the
25 minor child or children upon the death or incapacity of the appointing parent. The
26 standby guardian shall notify the court upon the death, incapacity, or debilitation of the
27 appointing parent. Such notification shall include documentation to the satisfaction of the
28 court of the appointing parent's death, incapacity, or debilitation.

29 (3) Standby guardianship may be made permanent after the death of the
30 appointing parent or guardian when the standby guardian petitions the court to make a
31 formal guardianship determination. The petition shall be filed within ninety days of the
32 appointing parent's or guardian's death.

33 (4) If the parent designating the standby guardian dies, the designation shall be
34 deemed to confer a preference upon the standby guardian as the parent's choice for a
35 permanent guardian, notwithstanding a valid will or any law to the contrary and subject
36 to the rights of the other parent and the best interests of the child.

37 5. Reasonable notice of the petition for appointment of a standby guardian shall
38 be provided to the acknowledged parent, parent, parent with physical custody, presumed
39 parent, and putative parent in accordance with sections 475.070 and 472.100, RSMo. Until
40 the court confirms an appointment under this section, written objections may be filed by:

41 (1) A minor child who is the subject of the appointment by a parent and who has
42 attained fourteen years of age;

43 (2) The child's other acknowledged parent, parent, parent with physical custody,
44 presumed parent, or putative parent;

45 (3) The child's legal guardian; or

46 (4) A person other than a parent or guardian having care and custody of the minor
47 child.

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49 Objections shall not preclude judicial appointment of the person selected by the parent if
50 the court finds the appointment to be in the best interest of the child. The authority of a
51 standby guardian shall not supersede parental rights of either parent while such parent
52 is alive, subject to sections 211.444 and 211.447, RSMo.

53 6. A standby guardian may resign upon petition to the court under section 475.083.
54 The court may rescind its appointment of the standby guardian at any time after the
55 court's confirmation, but before the authority of the standby guardian takes effect as
56 outlined in subdivision (1) of subsection 4 of this section if the court finds that the
57 requirements of subsection 3 of this section are no longer satisfied. The court may

58 **terminate authority of the standby guardian at any time if the court finds the standby**
59 **guardian to be an unfit guardian under and by means of sections 475.045 and 475.083. An**
60 **appointing parent may, at any time before the filing of the appointment, revoke the**
61 **appointment by executing a written revocation and notifying the standby guardian in**
62 **writing of the revocation.**

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