

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 672,
2 Page 5, Section 456.4-420, Line 71, by inserting immediately after said section and line the
3 following:
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5 "475.050. 1. Before appointing any other eligible person as guardian of an incapacitated
6 person, or conservator of a disabled person, the court shall consider the suitability of appointing any
7 of the following persons, listed in the order of priority, who appear to be willing to serve:

8 (1) If the incapacitated or disabled person is, at the time of the hearing, able to make and
9 communicate a reasonable choice, any eligible person nominated by the person;

10 (2) Any eligible person nominated in a durable power of attorney executed by the
11 incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or
12 disabled person and by two witnesses who signed at the incapacitated or disabled person's request,
13 before the inception of the person's incapacity or disability, at a time within five years before the
14 hearing when the person was able to make and communicate a reasonable choice;

15 (3) The spouse, parents, adult children, adult brothers and sisters and other close adult
16 relatives of the incapacitated or disabled person;

17 (4) Any other eligible person or, with respect to the estate only, any eligible organization or
18 corporation, nominated in a duly probated will of such a spouse or relative executed within five
19 years before the hearing.

20 2. The court shall not appoint an unrelated third party as a guardian or conservator unless
21 there is no relative suitable and willing to serve, or if the appointment of a relative or nominee is
22 otherwise contrary to the best interests of the incapacitated or disabled person. If the incapacitated
23 or disabled person is a minor under the care of the children's division and is entering adult
24 guardianship, it shall be a rebuttable presumption that he or she has no relative suitable and willing
25 to serve as guardian or conservator.

26 3. Except for good cause shown, the court shall make its appointment in accordance with
27 the incapacitated or disabled person's most recent valid nomination of an eligible person qualified to
28 serve as guardian of the person or conservator of the estate. In the event there is not brought to the
29 attention of the court any such valid nomination executed within five years before the hearing, then
30 the court shall give consideration to the most recent valid nomination brought to its attention, but
31 the court shall not be required to follow such nomination.

32 475.070. 1. Before appointing a guardian or conservator for a minor, notice of the petition
33 therefor shall be served upon the following unless they have signed such petition or have waived
34 notice thereof:

35 (1) The minor, if over fourteen years of age;

36 (2) The parents of the minor;

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1 (3) The spouse of the minor;

2 (4) The person or entity nominated to serve as guardian or conservator;

3 (5) If directed by the court:

4 (a) Any person who has been appointed guardian or any person having care and custody of
5 the minor;

6 (b) Any department, bureau or agency of the United States or of this state or any political
7 subdivision thereof, which makes or awards compensation, pension, insurance or other allowance
8 for the benefit of the ward's estate;

9 (c) Any department, bureau or agency of this state or any political subdivision thereof or
10 any charitable organization of this state, which may be charged with the supervision, control or
11 custody of the minor.

12 2. If the minor is over fourteen years of age, there shall be personal service upon him if
13 personal service can be had. Service on others may be had in accordance with section 472.100.

14 3. If a petition for the appointment of a guardian of a minor is filed for the sole and specific
15 purpose of school registration or medical insurance coverage, upon the filing of an affidavit by the
16 petitioner stating that, after due and diligent effort to the best of his or her ability, the whereabouts
17 or identity of either or both parents of the minor remains unknown, the court may proceed with the
18 appointment of such a guardian without having obtained service upon the parents of the minor.

19 475.075. 1. Except as otherwise provided in section 475.062, when a petition for the
20 appointment of a guardian ad litem, guardian or conservator against any person, hereinafter referred
21 to as the respondent, is filed on grounds other than minority, the court, if satisfied that there is good
22 cause for the exercise of its jurisdiction, shall promptly set the petition for hearing.

23 2. The respondent shall be served in person with the following: A copy of the petition; a
24 written notice stating the time and place the proceeding will be heard by the court, the name and
25 address of appointed counsel, and the names and addresses of the witnesses who may be called to
26 testify in support of the petition; and with a copy of the respondent's rights as set forth in
27 subsections 7 and 8 of this section. The notice shall be signed by the judge or clerk of the court and
28 served in person on the respondent a reasonable time before the date set for the hearing. The
29 petition shall state the names and addresses of the spouse, parents, children who have reached
30 eighteen, any person serving as his guardian, conservator, limited guardian or limited conservator,
31 any person having power to act in a fiduciary capacity with respect to any of the respondent's
32 financial resources, and any person having his care and custody known to the petitioner. Each
33 person so listed shall be served with like notice in any manner permitted by section 472.100. If no
34 such spouse, parent or child is known, notice shall be given to at least one of his closest relatives
35 who has reached eighteen.

36 3. If the public administrator is nominated as guardian or conservator or at any stage of the
37 proceeding is being considered by the court to be nominated as guardian or conservator, the public
38 administrator shall receive a copy of the petition from the petitioner or the court and any
39 accompanying documents, including exhibits and medical opinions, receive written notice
40 indicating the date and time of the proceeding, and have an opportunity to attend and be heard.

41 4. Upon the filing of a petition under the provisions of subsection 1 of this section or for the
42 approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the
43 rendition of emergency medical treatment under the provisions of section 475.123, the court shall
44 immediately appoint an attorney to represent the respondent in the proceeding. The attorney shall
45 visit his client prior to the hearing. If the client is capable of understanding the matter in question or
46 of contributing to the advancement of the client's interest, the attorney shall obtain from the client
47 all possible aid. If the disability of a client compels the attorney to make decisions for the client, the
48 attorney shall consider all circumstances then prevailing and act with care to safeguard and advance

1 the interests of the client. The court shall allow a reasonable attorney's fee for the services rendered,
2 to be taxed as costs of the proceeding. The court-appointed attorney may be permitted to withdraw
3 if the respondent employs private counsel who enters an appearance on behalf of said person.

4 [4-] 5. The court may direct that the respondent be examined by a physician or licensed
5 psychologist or other appropriate professional designated by the court, and may allow a reasonable
6 fee for the services rendered, to be taxed as costs in the proceeding. The court-appointed physician,
7 licensed psychologist or other professional shall, prior to examination, explain to the respondent in
8 simple language, the following:

- 9 (1) Incapacity or disability as defined in section 475.010;
- 10 (2) That the purpose of the examination is to produce evidence which may be used to
11 determine whether the respondent is incapacitated, disabled or partially incapacitated or disabled;
- 12 (3) That respondent has the right to remain silent;
- 13 (4) That anything respondent says may be used at the court hearing, and in making the
14 determination of incapacity or disability.

15 [5-] 6. The court-appointed physician, licensed psychologist or other professional shall
16 submit his report in writing to the court and to counsel for all parties.

17 [6-] 7. If prima facie proof of partial or complete incapacity or disability is made, a
18 physician or licensed psychologist is competent and may be compelled to testify as to information
19 acquired from the respondent, despite otherwise applicable testimonial privileges. Evidence
20 received under this subsection which would otherwise be privileged may not be used in any other
21 civil action or criminal proceeding without the consent of the holder of the privilege.

22 [7-] 8. The petitioner has the burden of proving incapacity, partial incapacity, disability, or
23 partial disability by clear and convincing evidence.

24 [8-] 9. The respondent shall have the following rights in addition to those elsewhere
25 specified:

- 26 (1) The right to be represented by an attorney;
- 27 (2) The right to have a jury trial;
- 28 (3) The right to present evidence in his behalf;
- 29 (4) The right to cross-examine witnesses who testify against him;
- 30 (5) The right to remain silent;
- 31 (6) The right to have the hearing opened or closed to the public as he elects;
- 32 (7) The right to a hearing conducted in accordance with the rules of evidence in civil
33 proceedings, except as modified by this chapter;
- 34 (8) The right to be present at the hearing.

35 [9-] 10. If the court finds that the respondent possesses capacity to meet his essential
36 requirements for food, clothing, shelter, safety and other care or that he possesses the ability to
37 manage his financial resources, it shall deny the petition. On the other hand, if the court finds that
38 the capacity of the respondent to receive and evaluate information or to communicate decisions is
39 impaired to such an extent as to render him incapable of meeting some or all of his essential
40 requirements for food, clothing, shelter, safety or other care so that serious physical injury, illness,
41 or disease is likely to occur, or that the ability of the respondent to receive and evaluate information
42 or to communicate decisions is impaired to such an extent so as to render him unable to manage
43 some or all of his financial resources, it shall make and recite in its order detailed findings of fact
44 stating:

- 45 (1) The extent of his physical and mental incapacity to care for his person;
- 46 (2) The extent of his physical and mental disability to manage his financial resources;
- 47 (3) Whether or not he requires placement in a supervised living situation and, if so, the
48 degree of supervision needed;

1 (4) Whether or not his financial resources require supervision and, if so, the nature and
2 extent of supervision needed.

3 ~~[10-]~~ 11. If the court finds the respondent to be in some degree incapacitated or disabled, or
4 both, the court, in determining the degree of supervision necessary, shall apply the least restrictive
5 environment principle as defined in this chapter and shall not restrict his personal liberty or his
6 freedom to manage his financial resources to any greater extent than is necessary to protect his
7 person and his financial resources. The court shall consider whether or not the respondent may be
8 fully protected by the rendition of temporary protective services provided by a private or public
9 agency or agencies; or by the appointment of a guardian or conservator ad litem; or by the
10 appointment of a limited guardian or conservator; or, as a last resort, by the appointment of a
11 guardian or conservator. The limitations imposed upon the authority of the guardian or conservator
12 as set forth in the findings of the court shall be stated in the letters of the guardian or conservator
13 and shall be set forth in the notice of first publication of letters of conservatorship granted.

14 ~~[11-]~~ 12. If an alleged incapacitated or disabled person has no guardian or conservator and
15 an emergency exists which presents a substantial risk that serious physical harm will occur to his
16 person or irreparable damage will occur to his property because of his failure or inability to provide
17 for his essential human needs or to protect his property, the court may, with notice to such person's
18 attorney, as provided in subsection ~~[3]~~ 4 of this section, and service of notice upon such person as
19 provided in subsection 2 of this section, and, with or without notice to other persons interested in
20 the proceeding, after hearing, appoint a guardian or conservator ad litem for a specified period not
21 to exceed thirty days and for specified purposes. Orders appointing the guardian or conservator ad
22 litem may be modified upon motion and hearing. After hearing and a showing of continuing
23 emergency need, orders appointing the guardian or conservator ad litem may be extended from time
24 to time, not to exceed thirty days each. A guardian or conservator ad litem may be removed at any
25 time and shall make any report the court requires. Proceedings under this subsection shall not be
26 employed as alternative to proceedings for the involuntary detention and treatment of a mentally ill
27 person under the provisions of chapter 632.

28 475.290. 1. Conservators shall make final settlement of their conservatorship at a time
29 fixed by the court, either by rule or otherwise, within sixty days after termination of their authority,
30 except for those cases where the court has ordered that no letters of administration be granted under
31 section 475.320. For the purpose of settlement, the conservator shall make a just and true exhibit of
32 the account between himself and his protectee, and file the same in the court having jurisdiction
33 thereof, and cause a copy of the account, together with a written notice stating the day on which and
34 the court in which he will make settlement, to be delivered to his protectee or, in case of revocation
35 or resignation, to the succeeding conservator or in case of death of his protectee to his executor or
36 administrator or other person designated by the court, at least twenty days before the date set for
37 settlement.

38 2. If, for any cause, a copy of the account and written notice cannot be delivered to the
39 protectee or other person entitled thereto, the court may order notice of the filing of the account, and
40 of the time and place at which final settlement is to be made, to be given by publication once a week
41 for four weeks next before the date set for settlement in accordance with section 472.100.

42 3. At the time specified in the notice, the court, upon satisfactory proof of the delivery of a
43 copy of the account and written notice of the settlement to the protectee or person entitled thereto,
44 or his written waiver thereof, or in case the court has ordered notice to be given by publication, then
45 upon proof of compliance with such order, shall proceed to examine the accounts of the conservator,
46 correct all errors therein, if any there be, and make a final settlement with the conservator; or the
47 court may, for good cause, continue the settlement and proceed therein at any time agreed upon by
48 the parties or fixed by the court.

1 475.320. 1. Except in cases mentioned in subsection 2, the court, upon the death of any
2 protectee, may order that no letters of administration shall be granted upon his estate, but the funeral
3 and burial expenses and estate taxes for which the estate of the deceased protectee is liable, and
4 obligations of the protectee incurred by the conservator, as well as expenses of administration, may
5 be paid out of the estate by the conservator on order of the court and after the final settlement of the
6 conservator is approved, and upon a showing that all obligations of the estate which have been
7 authorized by the court have been paid, the court shall order the conservator to make distribution to
8 the heirs in the same manner and with the same effect as in the case of an administrator. In such
9 case the conservator is subject in all respects and to the same extent to the liabilities of an
10 administrator and liability on the conservator's bond continues and applies to the complete
11 administration of the estate of the deceased protectee, including settlements as required by section
12 473.540.

13 2. Whenever a protectee dies leaving debts, other than those payable by the conservator
14 under subsection 1 hereof, for which his estate would be liable in an action, or whenever a protectee
15 dies, leaving a will valid under the law respecting wills, letters testamentary or of administration
16 shall be granted on the estate of the deceased protectee, in the manner provided by law, as in case of
17 other testators or intestates."; and
18

19 Further amend said bill by amending the title, enacting clause, and intersectional references
20 accordingly.