

SECOND REGULAR SESSION

# HOUSE BILL NO. 1689

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE KELLEY (127).

4975H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 475.115, RSMo, and to enact in lieu thereof one new section relating to guardianships.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 475.115, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 475.117, to read as follows:

- 475.117. 1. A person having previously been appointed a guardian, conservator, or both because of incapacitation, disability, or both shall remain adjudged incapacitated, disabled, or both if his or her guardian or conservator dies, and the probate court appointing the previous guardian or conservator shall retain jurisdiction over the ward or protectee to appoint a successor guardian or conservator unless the guardianship or conservatorship was transferred to another county, in which case the court that received the transfer shall appoint a successor guardian or conservator in the following manner:**
- (1) Any interested private party or a public administrator in a county where a ward or protectee lives may file a pro se application for transfer of guardianship, conservatorship, or both, along with a copy of the death certificate of the previously appointed guardian or conservator, to be appointed guardian or conservator of the ward or protectee upon the death of the previous guardian or conservator. The application shall contain a statement under penalty of perjury of:**
- (a) The previous guardian's or conservator's death;**
- (b) A request to transfer either guardianship, conservatorship, or both;**

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 (c) Whether the transfer is for a temporary or indefinite period and, if temporary,  
17 the reason along with a named proposed successor, if known, for guardianship,  
18 conservatorship, or both;

19 (d) The relationship held with the ward or protectee and the reasons the party  
20 filing the application believes qualify him or her to be guardian, conservator, or both;

21 (e) The proposed plan that ensures the ward or protectee receives the care,  
22 treatment, and protection he or she needs; and

23 (f) Whether the ward or protectee has a known payee to receive, manage, and  
24 distribute the ward's or protectee's Social Security funds and, if so, the name, address, and  
25 telephone number for the payee; or

26 (2) Upon a court receiving notice of the previous guardian's or conservator's death,  
27 along with a copy of the death certificate, but without the court also receiving an  
28 application to transfer the guardianship, conservatorship, or both, the court shall appoint  
29 either a guardian ad litem or public administrator in the county where the ward or  
30 protectee resides, to be the guardian or conservator of the ward or protectee until such  
31 time as the court determines whether a private party or public administrator should be  
32 appointed successor guardian or conservator of the ward or protectee. If the court  
33 determines no private party is available or is willing to take guardianship, conservatorship,  
34 or both, the court shall appoint a public administrator in the county where the ward or  
35 protectee resides to be the guardian, conservator, or both of the ward or protectee. In no  
36 event is the ward or protectee to be unduly deprived a guardian or conservator when the  
37 court receives notice that the previous guardian or conservator died, and to the extent  
38 possible the court shall take into account the known wishes of the ward or protectee and  
39 any recommendations of the previous guardian or conservator in whom to appoint as  
40 successor guardian, conservator, or both.

41 2. The guardian ad litem or public administrator appointed temporary guardian  
42 or conservator of the ward or protectee shall prepare and file with the court in a timely  
43 manner a report that details:

44 (1) The ward's or protectee's wishes in whom to appoint as the successor guardian  
45 or conservator;

46 (2) Any person known to have been recommended by the previous guardian or  
47 conservator to become successor guardian or conservator of the ward or protectee;

48 (3) The name, address, and telephone number of any interested person or persons  
49 to be guardian, conservator, or both;

50 (4) The ward's or protectee's planned living arrangements;

51 (5) Any existing treatment plan for the ward or protectee;

52           (6) An accounting of all cash on hand, personal property in an amount greater than  
53 five hundred dollars, and disposable assets belonging to the ward or protectee;

54           (7) An accounting of all sources of income for the ward or protectee;

55           (8) A copy of the last will and testament of the previous guardian or conservator,  
56 if available to the guardian ad litem or public administrator; and

57           (9) The name, address, and telephone number for all physicians currently treating  
58 the ward or protectee.

59           3. If two or more parties file a joint application for transfer of guardianship,  
60 conservatorship, or both, each party named in the single application shall provide the court  
61 a separate written statement of all provisions required in subsection 1 of this section.

62           4. If two or more separate applications to transfer are filed with the court, each  
63 application shall be treated, reviewed, and decided upon by the court as competing  
64 applications. In such cases, the court shall have discretion in whom to appoint as  
65 temporary guardian, conservator, or both of the ward or protectee until a hearing on all  
66 applications filed with the court is held. In determining which application to grant,  
67 whether as temporary or successor guardian or conservator, the court shall select the  
68 applicant the court believes is the best party to appoint and take into account the known  
69 wishes of the ward or protectee and the known recommendations of the previous guardian  
70 or conservator in whom to appoint as guardian, conservator, or both.

71           5. In determining whether to appoint a conservator for a ward or protectee and  
72 whom to appoint, the court shall base its decision on the following:

73           (1) Whether there is an existing payee for the ward or protectee or a party willing  
74 to be payee for the ward or protectee to receive, manage, and distribute the ward's or  
75 protectee's Social Security funds. If there is an existing payee or a party that is willing to  
76 be payee, the ward or protectee has no sources of income other than Social Security, and  
77 the ward or protectee does not own any personal property in an amount greater than five  
78 hundred dollars, the court shall not appoint the ward or protectee a conservator and the  
79 payee shall be permitted to receive, manage, and distribute the ward's or protectee's  
80 financial income for the ward or protectee;

81           (2) Whether the previous guardianship awarded was a limited guardianship that  
82 permitted the ward or protectee to receive, manage, and distribute his or her own financial  
83 resources, assets, and personal property. In such cases where the previous guardianship  
84 permitted the ward or protectee to receive, manage, and distribute his or her own financial  
85 resources, assets, and personal property, the court shall not appoint the ward or protectee  
86 a conservator unless a new petition is filed and granted by the court to appoint a party as  
87 conservator for the ward or protectee; and

88           **(3) Whether the conservator shall be different from the guardian. In such cases**  
89 **where a guardian has a conflict of interest in being conservator, is not able to properly**  
90 **perform the duties of conservator, or if the court is made aware of the wishes of the ward**  
91 **or protectee or the recommendations from the previous guardian or conservator that a**  
92 **conservator be appointed who is different from the guardian, the court shall make its**  
93 **decision on what is in the best interest of the ward or protectee.**

94           **6. Any person appointed guardian, conservator, or both, whether temporarily or**  
95 **indefinitely, shall have the same rights, privileges, duties, and powers as the previous**  
96 **guardianship or conservatorship bestowed upon the previous guardian or conservator, and**  
97 **said person shall faithfully execute all prescribed duties and powers, regardless of whether**  
98 **such person is appointed as the temporary or successor guardian, conservator, or both.**  
99 **If the successor guardian or conservator wishes to increase or decrease his or her duties**  
100 **or powers from what previously existed in the prior guardianship or conservatorship, the**  
101 **successor guardian or conservator shall file a petition with the court after having been**  
102 **appointed successor guardian, conservator, or both for the ward or protectee to increase**  
103 **or decrease his or her duties or powers.**

104           **7. The person appointed successor guardian or conservator may request the court**  
105 **to change the venue of the court. In rendering a decision, the court shall give preference**  
106 **to the county where the ward or protectee actually resides or where the ward or protectee**  
107 **will relocate his or her residence, and the court shall act in the best interest of the ward or**  
108 **protectee in rendering a decision.**

109           **8. An application for transfer of guardianship, conservatorship, or both shall be**  
110 **treated as an emergency filing taking priority over all other cases on the court's docket,**  
111 **and expedited in process to ensure the quickest resolution is achieved in appointing a**  
112 **successor guardian, conservator, or both. An application to transfer shall not constitute**  
113 **the practice of law, nor shall an application to transfer require an attorney to prepare or**  
114 **file. The court clerk is permitted to assist a party in preparing and filing a pro se**  
115 **application, which the court clerk is to accept by regular mail, facsimile, or electronic mail**  
116 **and, upon receiving, the court clerk shall place on the court's docket for emergency**  
117 **processing.**

118           **9. Any interested party wanting to be appointed the successor guardian,**  
119 **conservator, or both who has not already filed an application shall have sixty days to file**  
120 **a petition to challenge an application for transfer that was previously granted by the court,**  
121 **providing that good cause is shown in why the petitioner did not previously file an**  
122 **application to transfer, and providing that all information required in subdivision (1) of**  
123 **subsection 1 of this section is included in the petition to challenge. Upon the court**

124 receiving a challenge, the court shall conduct a hearing on the petition to challenge in a  
125 reasonable time.

126       **10. The application for transfer of guardianship, conservatorship, or both shall**  
127 **contain a certificate of service that avers service of the application was submitted to:**

128       **(1) Any known party who is interested in becoming successor guardian,**  
129 **conservator, or both;**

130       **(2) Any known family members or spouse of the ward or protectee; and**

131       **(3) Any known payee, existing guardian, or existing conservator for the ward or**  
132 **protectee.**

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134 **The certificate of service shall contain the name, address, and telephone number for each**  
135 **party service was made upon and his or her relationship with the ward or protectee.**

136 **However, if there are no known parties, the application shall be certified as not knowing**  
137 **of any such parties.**

2       ~~[475.115. 1. When a guardian or conservator dies, is removed by order~~  
3 ~~of the court, or resigns and his or her resignation is accepted by the court, the~~  
4 ~~court shall have the same authority as it has in like cases over personal~~  
5 ~~representatives and their sureties and may appoint another guardian or~~  
6 ~~conservator in the same manner and subject to the same requirements as are~~  
7 ~~herein provided for an original appointment of a guardian or conservator.~~

8       ~~2. A public administrator may request transfer of any case to the~~  
9 ~~jurisdiction of another county by filing a petition for transfer. If the receiving~~  
10 ~~county meets the venue requirements of section 475.035 and the public~~  
11 ~~administrator of the receiving county consents to the transfer, the court shall~~  
12 ~~transfer the case. The court with jurisdiction over the receiving county shall,~~  
13 ~~without the necessity of any hearing as required by section 475.075, appoint the~~  
14 ~~public administrator of the receiving county as successor guardian and/or~~  
15 ~~successor conservator and issue letters therein. In the case of a conservatorship,~~  
16 ~~the final settlement of the public administrator's conservatorship shall be filed~~  
17 ~~within thirty days of the court's transfer of the case, in the court with jurisdiction~~  
18 ~~over the original conservatorship, and forwarded to the receiving county upon~~  
~~audit and approval.]~~

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