

SECOND REGULAR SESSION

# HOUSE BILL NO. 2218

## 100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MAYHEW.

4828H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 475.050, RSMo, and to enact in lieu thereof one new section relating to the appointment of guardians or conservators of certain persons.

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

Section A. Section 475.050, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 475.050, to read as follows:

475.050. 1. Before appointing any other eligible person as guardian of an incapacitated person, or conservator of a disabled person, the court shall consider the suitability of appointing any of the following persons, listed in the order of priority, who appear to be willing to serve:

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

(2) Any eligible person nominated in a durable power of attorney executed by the incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or disabled person and by two witnesses who signed at the incapacitated or disabled person's request, before the inception of the person's incapacity or disability;

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

(4) Any other eligible person or, with respect to the estate only, any eligible organization or corporation, nominated in a duly probated will of such a spouse or relative.

2. The court shall not appoint an unrelated third party as a guardian or conservator unless there is no relative suitable and willing to serve or if the appointment of a relative or nominee is otherwise contrary to the best interests of the incapacitated or disabled person. If the incapacitated or disabled person is a minor under the care of the children's division and is

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.

18 entering adult guardianship or conservatorship, it shall be a rebuttable presumption that he or she  
19 has no relative suitable and willing to serve as guardian or conservator.

20 3. Except for good cause shown, the court shall make its appointment in accordance with  
21 the incapacitated or disabled person's most recent valid nomination of an eligible person  
22 qualified to serve as guardian of the person or conservator of the estate.

23 4. Except for those individuals specified in subdivisions (1) and (2) of this subsection,  
24 the court shall require all guardians and conservators who are seeking appointment and who have  
25 a fiduciary responsibility to a ward, an incapacitated person, or a disabled person to submit at  
26 their own expense to a background screening that shall include the disqualification lists of the  
27 departments of mental health, social services, and health and senior services; the abuse and  
28 neglect registries for adults and children; a Missouri criminal record review; and the sexual  
29 offender registry. Individuals seeking appointment as a conservator shall also submit, at their  
30 own expense, to a credit history investigation. The nominated guardian or conservator shall file  
31 the results of the reports with the court at least ten days prior to the appointment hearing date  
32 unless waived or modified by the court for good cause shown by an affidavit filed simultaneously  
33 with the petition for appointment or in the event the protected person requests an expedited  
34 hearing. The provisions of this subsection shall not apply to:

35 (1) Public administrators; or

36 (2) The ward's, incapacitated person's, or disabled person's spouse, parents,  
37 **grandparents, uncles, aunts**, children who have reached eighteen years of age, or siblings who  
38 have reached eighteen years of age.

39 5. Guardians certified by a national accrediting organization may file proof of  
40 certification in lieu of the requirements of subsections 4 and 6 of this section.

41 6. An order appointing a guardian or conservator shall not be signed by the judge until  
42 such reports have been filed with the court and reviewed by the judge, who shall consider the  
43 reports in determining whether to appoint a guardian or conservator. Such reports, or lack  
44 thereof, shall be certified either by an affidavit or by obtaining a certified copy of the reports.  
45 No reports or national criminal history record check shall be required by the court upon the  
46 application of a petitioner for an emergency temporary guardianship or emergency temporary  
47 conservatorship. The court may waive the requirements of this subsection for good cause shown.  
48 If appointed, a guardian or conservator may petition the court for reimbursement of the  
49 reasonable expenses of the credit history investigation and background screenings.

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