

SECOND REGULAR SESSION

HOUSE BILL NO. 1932

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

4446H.011

DANA RADEMAN MILLER, Chief Clerk

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.

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Section A. Section 475.050, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 475.050, to read as follows: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~~ **appoint** the following persons, listed in the order of priority, who **are qualified under section 475.055, suitable, and** appear to be willing to serve, **and each such person shall be determined by the court to be deficient in his or her ability to serve prior to the court selecting another eligible person as guardian or conservator:**

(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.

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.

17 **2. If the claim is made that a person given priority under subsection 1 of this**
18 **section is deficient due to substandard living conditions, the court shall require an**
19 **investigation and report about the living conditions be completed by the department of**
20 **health and senior services prior to making a determination. In order to find a person**
21 **given priority deficient due to substandard living conditions, the court shall make the**
22 **findings that the living conditions are dangerous or insanitary and would materially**
23 **affect the life, health, or safety of the incapacitated or disabled person.**

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

30 ~~[3-]~~ **4.** Except for good cause shown, the court shall make its appointment in
31 accordance with the incapacitated or disabled person's most recent valid nomination of an
32 eligible person qualified to serve as guardian of the person or conservator of the estate.

33 ~~[4-]~~ **5.** Except for those individuals specified in subdivisions (1) and (2) of this
34 subsection, the court shall require all guardians and conservators who are seeking
35 appointment and who have a fiduciary responsibility to a ward, an incapacitated person, or
36 a disabled person to submit at their own expense to a background screening that shall include
37 the disqualification lists of the departments of mental health, social services, and health and
38 senior services; the abuse and neglect registries for adults and children; a Missouri criminal
39 record review; and the sexual offender registry. Individuals seeking appointment as a
40 conservator shall also submit, at their own expense, to a credit history investigation. The
41 nominated guardian or conservator shall file the results of the reports with the court at least
42 ten days prior to the appointment hearing date unless waived or modified by the court for
43 good cause shown by an affidavit filed simultaneously with the petition for appointment or in
44 the event the protected person requests an expedited hearing. The provisions of this
45 subsection shall not apply to:

46 (1) Public administrators; or

47 (2) The ward's, incapacitated person's, or disabled person's spouse, parents, children
48 who have reached eighteen years of age, or siblings who have reached eighteen years of age.

49 ~~[5-]~~ **6.** Guardians certified by a national accrediting organization may file proof of
50 certification in lieu of the requirements of subsections ~~[4]~~ **5** and ~~[6]~~ **7** of this section.

51 ~~[6-]~~ **7.** An order appointing a guardian or conservator shall not be signed by the judge
52 until such reports have been filed with the court and reviewed by the judge, who shall
53 consider the reports in determining whether to appoint a guardian or conservator. Such

54 reports, or lack thereof, shall be certified either by an affidavit or by obtaining a certified copy
55 of the reports. No reports or national criminal history record check shall be required by the
56 court upon the application of a petitioner for an emergency temporary guardianship or
57 emergency temporary conservatorship. The court may waive the requirements of this
58 subsection for good cause shown. If appointed, a guardian or conservator may petition the
59 court for reimbursement of the reasonable expenses of the credit history investigation and
60 background screenings.

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