

SECOND REGULAR SESSION

HOUSE BILL NO. 2109

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

3563H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 475.010, 475.045, 475.050, and 488.2300, RSMo, and to enact in lieu thereof nineteen new sections relating to the probate code.

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

Section A. Sections 475.010, 475.045, 475.050, and 488.2300, RSMo, are repealed
2 and nineteen new sections enacted in lieu thereof, to be known as sections 474.540, 474.542,
3 474.544, 474.546, 474.548, 474.550, 474.552, 474.554, 474.556, 474.558, 474.560, 474.562,
4 474.564, 474.600, 475.010, 475.045, 475.050, 475.063, and 488.2300, to read as follows:

474.540. Sections 474.540 to 474.564 shall be known and may be cited as the
2 **"Missouri Electronic Wills and Electronic Estate Planning Documents Act".**

474.542. As used in sections 474.540 to 474.564, the following terms mean:

2 (1) **"Electronic", technology having electrical, digital, magnetic, wireless,**
3 **optical, electromagnetic, or similar capabilities;**

4 (2) **"Electronic presence", the relationship of two or more individuals in**
5 **different locations in real time using technology enabling live, interactive audio-visual**
6 **communication that allows for observation, direct interaction, and communication**
7 **between or among the individuals;**

8 (3) **"Electronic will", a will executed electronically in compliance with**
9 **subsection 1 of section 474.548;**

10 (4) **"Record", information that is inscribed on a tangible medium or that is**
11 **stored in an electronic or other medium and is retrievable in perceivable form;**

12 (5) **"Security procedure", a procedure to verify that an electronic signature,**
13 **record, or performance is that of a specific person or to detect a change or error in an**

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.

14 **electronic record, including a procedure that uses an algorithm, code, identifying word**
15 **or number, encryption, or callback or other acknowledgment procedure;**

16 **(6) "Sign", with present intent to authenticate or adopt a record to:**

17 **(a) Execute or adopt a tangible symbol; or**

18 **(b) Affix to or logically associate with the record an electronic symbol or**
19 **process;**

20 **(7) "State", a state of the United States, the District of Columbia, Puerto Rico,**
21 **the United States Virgin Islands, a federally recognized Indian tribe, or any territory or**
22 **insular possession subject to the jurisdiction of the United States;**

23 **(8) "Will", includes a codicil and any testamentary instrument that appoints an**
24 **executor, revokes or revises another will, nominates a guardian, or expressly excludes or**
25 **limits the right of an individual or class to succeed to property of the decedent passing**
26 **by intestate succession.**

474.544. An electronic will is a will for all purposes of the laws of this state. The
2 **laws of this state applicable to wills and principles of equity applies to an electronic will**
3 **except as modified by sections 474.540 to 474.564.**

474.546. A will executed electronically but not in compliance with subsection 1 of
2 **section 474.548 is an electronic will under sections 474.540 to 474.564 if executed in**
3 **compliance with the law of the jurisdiction where the testator is:**

4 **(1) Physically located when the will is signed; or**

5 **(2) Domiciled, or where the testator resides, when the will is signed or when the**
6 **testator dies.**

474.548. 1. An electronic will shall be:

2 **(1) A record that is readable as text at the time of signing under subdivision (2)**
3 **of this subsection and remains accessible as text for later reference;**

4 **(2) Signed by:**

5 **(a) The testator; or**

6 **(b) Another individual in the testator's name, in the testator's physical presence,**
7 **and by the testator's direction; and**

8 **(3) Signed in the physical or electronic presence of the testator by at least two**
9 **individuals after witnessing:**

10 **(a) The signing of the will under subdivision (2) of this subsection; or**

11 **(b) The testator's acknowledgment of the signing of the will under subdivision**
12 **(2) of this subsection or acknowledgment of the will.**

13 **2. The intent of a testator that the record under subdivision (1) of subsection 1 of**
14 **this section be the testator's electronic will may be established by extrinsic evidence.**

15 **3. In accordance with section 474.337 or 474.550, a witness to a will shall be a**
16 **resident of a state and physically located in a state at the time of signing if no self-**
17 **proving affidavit is signed contemporaneously with the execution of the electronic will.**

474.550. At the time of its execution or at any subsequent date, an electronic will
2 **may be made self-proved in the same manner as specified in section 474.337 or, if fewer**
3 **than two witnesses are physically present in the same location as the testator at the time**
4 **of such acknowledgments, before a remote online notary authorized to perform a**
5 **remote online notarization in this state under the law of any state or the United States,**
6 **and evidenced by a remote online notarial certificate, in form and content substantially**
7 **as follows, subject to the additional requirements under section 486.1165:**

8 **State of _____**
9 **County (and/or City) of _____**

10 **I, the undersigned notary, certify that _____, the testator, and the witnesses,**
11 **whose names are signed to the attached or foregoing instrument, having**
12 **personally appeared before me by remote online means, and having been first**
13 **duly sworn, each then declared to me that the testator signed and executed the**
14 **instrument as the testator's last will, and that the testator had willingly signed or**
15 **willingly directed another to sign for the testator, and that the testator executed it**
16 **as the testator's free and voluntary act for the purposes therein expressed; and**
17 **that each of the witnesses, in the presence and hearing of the testator, signed the**
18 **will as witness and that to the best of the witnesses' knowledge the testator was at**
19 **that time eighteen or more years of age, of sound mind, and under no constraint**
20 **or undue influence.**

21 **In witness thereof I have hereunto subscribed my name and affixed my official**
22 **seal this _____ (date).**

23 **_____ (official signature and seal of notary)**

474.552. 1. An electronic will may revoke all or part of a previous will.

2 **2. All or part of an electronic will is revoked by:**

3 **(1) A subsequent will that revokes all or part of the electronic will expressly or**
4 **by inconsistency;**

5 **(2) A written instrument signed by the testator declaring the revocation; or**

6 **(3) A physical act, if it is established by a preponderance of the evidence that the**
7 **testator, with the intent of revoking all or part of the will, performed the act or directed**
8 **another individual who performed the act in the testator's physical presence.**

9 **3. If there is evidence that a testator signed an electronic will and neither an**
10 **electronic will nor a certified paper copy of the electronic will can be located after a**

11 testator's death, there is a presumption that the testator revoked the electronic will even
12 if no instrument or later will revoking the electronic will can be located.

474.554. Without further notice, at any time during the administration of the
2 estate or, if there is no grant of administration, upon such notice and in such manner as
3 the court directs, the court may issue an order under sections 472.400 to 472.490 for a
4 custodian of an account held under a terms-of-service agreement to disclose digital
5 assets for the purposes of obtaining an electronic will from the account of a deceased
6 user. If there is no grant of administration at the time the court issues the order, the
7 court's order shall grant disclosure to the petitioner who is deemed a personal
8 representative under sections 472.400 to 472.490.

474.556. 1. An individual may create a certified paper copy of an electronic will
2 by affirming under penalty of perjury that a paper copy of the electronic will is a
3 complete, true, and accurate copy of the electronic will. If the electronic will is made
4 self-proving, the certified paper copy of the will shall include the self-proving affidavit
5 under section 474.337 or 474.550.

6 2. If a rule of law or procedure requires a will to be presented or retained in its
7 original form or provides consequences for the information not being presented or
8 retained in its original form, that rule of law or procedure shall be satisfied by a
9 certified paper copy of an electronic will.

474.558. In applying and construing sections 474.540 to 474.564, consideration
2 shall be given to the need to promote uniformity of the law with respect to its subject
3 matter among states that enact it.

474.560. 1. Any written estate planning document may be executed
2 electronically, and no such estate planning document shall be invalid or void solely
3 because it is in electronic form or because it is signed electronically by a settlor, trustee,
4 principal, grantor, declarant, or owner, or by a witness to any such person's signature.
5 For purposes of this section, "estate planning document" shall include, but not be
6 limited to:

- 7 (1) A power of attorney or durable power of attorney;
- 8 (2) A health care declaration;
- 9 (3) An advance directive;
- 10 (4) A power of attorney for health care or durable power of attorney for health
11 care;
- 12 (5) A revocable trust or amendment thereto, or modification or revocation
13 thereof;
- 14 (6) An irrevocable trust;
- 15 (7) A beneficiary deed;

16 **(8) A nonprobate transfer; or**

17 **(9) A document modifying, amending, correcting, or revoking any written estate**
18 **planning document.**

19 **2. (1) An electronic estate planning document or an electronic signature on such**
20 **document shall be attributable to a person if it was the act of the person. The act of the**
21 **person may be shown in any manner, including a showing of the efficacy of a security**
22 **procedure applied to determine the person to which the electronic record or signature**
23 **was attributable.**

24 **(2) The effect of attribution of a document or signature to a person under**
25 **subdivision (1) of this subsection shall be determined from the context and surrounding**
26 **circumstances at the time of its creation, execution, or adoption and as provided by**
27 **other law.**

28 **3. (1) Unless otherwise provided under its terms, any electronic estate planning**
29 **document may be signed in one or more counterparts, and each separate counterpart**
30 **may be an electronic document or a paper document, provided that all signed**
31 **counterpart pages of each document are incorporated into, or attached to, the**
32 **document.**

33 **(2) An individual may create a certified paper copy of any such electronic estate**
34 **planning document by affirming under penalty of perjury that a paper copy of the**
35 **electronic estate planning document is a complete, true, and accurate copy of such**
36 **document. If a rule of law or procedure requires an estate planning document to be**
37 **presented or retained in its original form or provides consequences for the information**
38 **not being presented or retained in its original form, such rule of law or procedure shall**
39 **be satisfied by a certified paper copy of an electronic document.**

40 **4. Any written estate planning document, other than a will, that requires one or**
41 **more witnesses to the signature of a principal may be witnessed by any individual or**
42 **individuals in the electronic presence of the principal.**

43 **5. A person who acts in reliance upon an electronically executed written estate**
44 **planning document shall not be liable to any person for so relying and may assume**
45 **without inquiry the valid execution of the electronically executed written estate planning**
46 **document.**

47 **6. This section does not require a written estate planning document to be**
48 **electronically signed.**

49 **7. The laws of this state and principles of equity applicable to any estate**
50 **planning document shall apply to any electronic estate planning document except as**
51 **modified by this section.**

474.562. The provisions of sections 474.540 to 474.564 modify, limit, and
2 supersede the federal Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. Section 7001 et seq., but do not modify, limit, or supersede Section 101(c) of that
4 act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in
5 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

474.564. The provisions of sections 474.540 to 474.564 shall apply to the will of a
2 decedent who dies on or after August 28, 2024, and to each other written estate planning
3 document signed or remotely witnessed on or after August 28, 2024.

474.600. 1. As used in this section, the following terms mean:

2 (1) "Applicable state of emergency", the period between April 6, 2020, and
3 December 31, 2021, during which a state of emergency existed due to a COVID-19
4 public health threat, as proclaimed by the governor, and during which executive orders
5 20-08, 20-10, 20-12, 20-14, 20-19, 21.07, and 21.09 temporarily suspended the physical
6 appearance requirements under this chapter and authorized the use of audio-visual
7 technology to the extent that any Missouri statute required the physical presence of any
8 testator, settlor, principal, witness, notary, or other person necessary for the effective
9 execution of any estate planning document such as a will, trust, or power of attorney, or
10 a self-proving affidavit of the execution of such document, if the conditions set forth in
11 the executive orders were met;

12 (2) "Estate planning document", includes, but is not limited to:

13 (a) A will;
14 (b) A codicil;
15 (c) A power of attorney or durable power of attorney;
16 (d) A health care declaration;
17 (e) An advance directive;
18 (f) A power of attorney for health care or a durable power of attorney for health
19 care;
20 (g) A revocable trust or amendment thereto, or modification or revocation
21 thereof;
22 (h) An irrevocable trust;
23 (i) A beneficiary deed;
24 (j) A nonprobate transfer; or
25 (k) A document modifying, amending, correcting, or revoking any written estate
26 planning document;

27 (3) "Necessary person", any testator, settlor, grantor, principal, declarant,
28 witness, notary, or other person required for the effective execution of any estate
29 planning document in this state;

30 (4) "Physical presence requirement", includes, but is not limited to, any
31 requirement of physical presence under section 404.705, 459.015, 474.320, or 474.337 or
32 chapter 486.

33 2. With respect to the execution of an estate planning document, a necessary
34 person shall be deemed to have satisfied any physical presence requirement under
35 Missouri statute during the applicable state of emergency if the following requirements
36 were met:

37 (1) The signer affirmatively represented that the signer was physically situated
38 in the state of Missouri;

39 (2) The notary was physically located in the state of Missouri and stated in which
40 county the notary was physically located for the jurisdiction on the acknowledgment;

41 (3) The notary identified the signers to the satisfaction of the notary and current
42 law;

43 (4) Any person whose signature was required appeared using video conference
44 software where live, interactive audio-visual communication between the principal,
45 notary, and any other necessary person allowed for observation, direct interaction, and
46 communication at the time of signing; and

47 (5) The notary recorded in the notary's journal the exact time and means used to
48 perform the notarial act, along with all other required information, absent the wet
49 signatures.

50 3. The requirements of subdivisions (1) to (5) of subsection 2 of this section shall
51 be deemed satisfied if an attorney who is licensed or authorized to practice law in
52 Missouri and who was present at the remote execution signs a written acknowledgment
53 made before an officer authorized to administer oaths under the laws of this state, and
54 evidenced by the officer's certificate, under official seal, affixed to or logically associated
55 with the acknowledgment. The form and content of the acknowledgment shall be
56 substantially as follows:

57 State of _____

58 County of _____

59 **AFFIDAVIT OF REMOTE EXECUTION OF DOCUMENTS**

60 I, _____, am an attorney licensed or authorized to practice law in the state
61 of Missouri.

62 On _____ (date), I convened with the following individuals via video conference
63 software that allowed for live, interactive audio-visual communication between
64 the parties to the conference and that also allowed for observation, direction,
65 interaction, and communication between:

66 _____, the (testator, settlor, grantor, principal, or declarant);

67 _____, a witness;
 68 _____, a second witness; and
 69 _____ a notary public.

70 **During the conference, _____, the (testator, settlor, grantor, principal, or**
 71 **declarant) signed the following estate planning document or documents: (a will,**
 72 **codicil, power of attorney, durable power of attorney, health care declaration,**
 73 **advance directive, health care power of attorney, revocable trust, irrevocable**
 74 **trust, beneficiary deed, nonprobate transfer, self-proving affidavit of the**
 75 **execution of a will, or a document modifying, amending, correcting, or**
 76 **revoking one of these estate planning documents).**

77 **All the parties to the conference represented that they were physically located in**
 78 **the state of Missouri at the time of the signing.**

79 **I have reviewed and am familiar with the requirements of the applicable**
 80 **executive order or orders in effect at the time and affirm that the remote**
 81 **execution of the estate planning document or documents met all the requirements**
 82 **of the applicable executive order or orders.**

83 **In witness whereof I, an officer authorized to administer oaths, have hereunto**
 84 **subscribed my name and affixed my official seal this _____ (date).**

85 **(Signed)**

86 _____

87 **(SEAL)**

88 _____

89 **(Official capacity of officer)**

2 475.010. When used in this chapter, unless otherwise apparent from the context, the
 2 following terms mean:

- 3 (1) "Adult", a person who has reached the age of eighteen years;
- 4 (2) "Claims", liabilities of the protectee arising in contract, in tort or otherwise, before
 5 or after the appointment of a conservator, and liabilities of the estate which arise at or after the
 6 adjudication of disability or after the appointment of a conservator of the estate, including
 7 expenses of the adjudication and of administration. The term does not include demands or
 8 disputes regarding title of the protectee to specific assets alleged to be included in the estate;
- 9 (3) "Conservator", one appointed by a court to have the care and custody of the estate
 10 of a minor or a disabled person. A "limited conservator" is one whose duties or powers are
 11 limited. The term "conservator", as used in this chapter, includes limited conservator unless
 12 otherwise specified or apparent from the context;
- 13 (4) "Conservator ad litem", one appointed by the court in which particular litigation is
 14 pending regarding the management of financial resources on behalf of a minor, a disabled

15 person, or an unborn person in that particular proceeding or as otherwise specified in this
16 chapter;

17 (5) "Custodial parent", the parent of a minor who has been awarded sole or joint
18 physical custody of such minor, or the parent of an incapacitated person who has been
19 appointed as guardian of such person, by an order or judgment of a court of this state or of
20 another state or territory of the United States, or if there is no such order or judgment, the
21 parent with whom the minor or incapacitated person primarily resides;

22 (6) "Disabled" or "disabled person", one who is:

23 (a) Unable by reason of any physical, mental, or cognitive condition to receive and
24 evaluate information or to communicate decisions to such an extent that the person lacks
25 ability to manage the person's financial resources; or

26 (b) The term disabled or disabled person, as used in this chapter includes the terms
27 partially disabled or partially disabled person unless otherwise specified or apparent from the
28 context;

29 (7) "Eligible person" or "qualified person", a natural person, social service agency,
30 corporation or national or state banking organization qualified to act as guardian of the person
31 or conservator of the estate pursuant to the provisions of section 475.055;

32 (8) "Guardian", one appointed by a court to have the care and custody of the person of
33 a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are
34 limited. A "standby guardian" is one approved by the court to temporarily assume the duties
35 of guardian of a minor or of an incapacitated person under section 475.046. The term
36 guardian, as used in this chapter, includes limited guardian and standby guardian unless
37 otherwise specified or apparent from the context;

38 (9) "Guardian ad litem", one appointed by a court, in which particular litigation is
39 pending on behalf of a minor, an incapacitated person, a disabled person, or an unborn person
40 in that particular proceeding or as otherwise specified in this code;

41 (10) "Habilitation", a process of treatment, training, care, or specialized attention that
42 seeks to enhance and maximize the ability of a person with an intellectual disability or a
43 developmental disability to cope with the environment and to live as determined by the
44 person as much as possible, as is appropriate for the person considering his or her physical
45 and mental condition and financial means;

46 (11) "Incapacitated person", one who is unable by reason of any physical, mental, or
47 cognitive condition to receive and evaluate information or to communicate decisions to such
48 an extent that the person, even with appropriate services and assistive technology, lacks
49 capacity to manage the person's essential requirements for food, clothing, shelter, safety or
50 other care such that serious physical injury, illness, or disease is likely to occur. The term

51 incapacitated person as used in this chapter includes the term partially incapacitated person
52 unless otherwise specified or apparent from the context;

53 (12) "Interested persons", spouses, children, parents, **persons acting as parents**,
54 adult members of a ward's or protectee's family, creditors or any others having a property
55 right or claim against the estate of a protectee being administered, trustees of a trust of which
56 the ward or protectee is a beneficiary, agents of a durable power of attorney for a ward or
57 protectee, and children of a protectee who may have a property right or claim against or an
58 interest in the estate of a protectee. This meaning may vary at different stages and different
59 parts of a proceeding and shall be determined according to the particular purpose and matter
60 involved;

61 (13) "Least restrictive alternative", with respect to the guardianship order and the
62 exercise of power by the guardian, a course of action or an alternative that allows the
63 incapacitated person to live, learn, and work with minimum restrictions on the person, as are
64 appropriate for the person considering his or her physical and mental condition and financial
65 means. Least restrictive alternative also means choosing the decision or approach that:

66 (a) Places the least possible restriction on the person's personal liberty and exercise of
67 rights and that promotes the greatest possible inclusion of the person into his or her
68 community, as is appropriate for the person considering his or her physical and mental
69 condition and financial means; and

70 (b) Is consistent with meeting the person's essential requirements for health, safety,
71 habilitation, treatment, and recovery and protecting the person from abuse, neglect, and
72 financial exploitation;

73 (14) "Manage financial resources", either those actions necessary to obtain,
74 administer, and dispose of real and personal property, intangible property, business property,
75 benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation
76 of property, or those actions necessary to provide for the care and support of such person or
77 anyone legally dependent upon such person by a person of ordinary skills and intelligence
78 commensurate with his or her training and education;

79 (15) "Minor", any person who is under the age of eighteen years;

80 (16) "Parent", the biological or adoptive mother or father of a child whose parental
81 rights have not been terminated under chapter 211, including:

82 (a) A person registered as the father of the child by reason of an unrevoked notice of
83 intent to claim paternity under section 192.016;

84 (b) A person who has acknowledged paternity of the child and has not rescinded that
85 acknowledgment under section 193.215; and

86 (c) A person presumed to be the natural father of the child under section 210.822;

87 (17) "Partially disabled person", one who is unable by reason of any physical, mental,
88 or cognitive condition to receive and evaluate information or to communicate decisions to
89 such an extent that such person lacks capacity to manage, in part, his or her financial
90 resources;

91 (18) "Partially incapacitated person", one who is unable by reason of any physical,
92 mental, or cognitive condition to receive and evaluate information or to communicate
93 decisions to the extent that such person lacks capacity to meet, in part, essential requirements
94 for food, clothing, shelter, safety, or other care without court-ordered assistance;

95 (19) **"Persons acting as parents" or "person acting as a parent", a person, other**
96 **than a parent, who has physical custody of the child or has had physical custody for a**
97 **period of six consecutive months, including any temporary absence, immediately prior**
98 **to the commencement of the guardianship or conservatorship under this chapter;**

99 **(20) "Physical custody", the physical care and supervision of a child;**

100 (21) "Protectee", a person for whose estate a conservator or limited conservator has
101 been appointed or with respect to whose estate a transaction has been authorized by the court
102 under section 475.092 without appointment of a conservator or limited conservator;

103 [~~20~~] (22) "Seriously ill", a significant likelihood that a person will become
104 incapacitated or die within twelve months;

105 [~~21~~] (23) "Social service agency", a charitable organization organized and
106 incorporated as a not-for-profit corporation under the laws of this state and which qualifies as
107 an exempt organization within the meaning of Section 501(c)(3), or any successor provision
108 thereto of the federal Internal Revenue Code;

109 [~~22~~] (24) "Standby guardian", one who is authorized to have the temporary care and
110 custody of the person of a minor or of an incapacitated person under the provisions of section
111 475.046;

112 [~~23~~] (25) "Treatment", the prevention, amelioration or cure of a person's physical
113 and mental illnesses or incapacities;

114 [~~24~~] (26) "Ward", a minor or an incapacitated person for whom a guardian, limited
115 guardian, or standby 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 or
6 **475.050;**

7 (2) **A person acting as a parent for the minor entering adult guardianship or**
8 **conservatorship;**

9 **(3)** If any minor over the age of fourteen years has no qualified parent living, a person
10 nominated by the minor, unless the court finds appointment contrary to the best interests of
11 the minor;

12 ~~[(3)]~~ **(4)** Where both parents of a minor are dead, any person appointed under this
13 section or section 475.046 by the will of the last surviving parent, who has not been adjudged
14 unfit or incompetent for the duties of guardian or conservator.

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

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

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

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

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

11 (3) The spouse, parents, **persons acting as parents**, adult children, adult brothers and
12 sisters and other close adult relatives of the incapacitated or disabled person;

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

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

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

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

37 (1) Public administrators; or

38 (2) **Unless requested by any party**, the ward's, incapacitated person's, or disabled
39 person's spouse, parents, **persons acting as parents**, children who have reached eighteen
40 years of age, or siblings who have reached eighteen years of age.

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

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

**475.063. 1. A petition for emergency, temporary, and full orders regarding a
2 minor entering adult guardianship or conservatorship shall be filed as provided under
3 this chapter.**

4 **2. (1) A clerk of a court shall make available to a petitioner uniform forms
5 adopted by the Missouri supreme court for a proceeding under this section.**

6 **(2) Except as otherwise provided by law, a clerk under the supervision of a
7 circuit clerk shall provide assistance to a petitioner who is not represented by counsel
8 with the procedures for filing all forms and pleadings necessary for the presentation of
9 the petitioner's petition under this section. Notice of the fact that a clerk will provide**

10 **such assistance shall be conspicuously posted in the clerk's office. The location of the**
11 **office where a petition may be filed shall be conspicuously posted in the court building.**
12 **The performance of duties prescribed in this section shall not constitute the practice of**
13 **law as defined in section 484.010.**

14 **(3) All duties of the clerk prescribed in this section shall be performed without**
15 **cost to the petitioner. The Missouri supreme court may promulgate rules as necessary**
16 **to govern conduct of a court clerk under this chapter and provide forms for petitions**
17 **and written instructions on completing all forms and pleadings necessary for the**
18 **presentation of the petition to the court.**

19 **3. No filing fees or court costs shall be assessed to the petitioner in an action**
20 **commenced under this section.**

21 **4. Any expenses incurred by the clerk under this section may be reimbursed**
22 **from moneys deposited into a family services and justice fund under section 488.2300.**

488.2300. 1. A "Family Services and Justice Fund" is hereby established in each
2 county or circuit with a family court, for the purpose of aiding with the operation of the
3 family court divisions and services provided by those divisions. In circuits or counties having
4 a family court, the circuit clerk shall charge and collect a surcharge of thirty dollars in all
5 proceedings falling within the jurisdiction of the family court. The surcharge shall not be
6 charged when no court costs are otherwise required, shall not be charged against the petitioner
7 for actions filed pursuant to the provisions of chapter 455, but may be charged to the
8 respondent in such actions, shall not be charged to a government agency and shall not be
9 charged in any proceeding when costs are waived or are to be paid by the state, county or
10 municipality.

11 2. In juvenile proceedings under chapter 211, a judgment of up to thirty dollars may
12 be assessed against the child, parent or custodian of the child, in addition to other amounts
13 authorized by law, in informal adjustments made under the provisions of sections 211.081 and
14 211.083, and in an order of disposition or treatment under the provisions of section 211.181.
15 The judgment may be ordered paid to the clerk of the circuit where the assessment is
16 imposed.

17 3. All sums collected pursuant to this section and section 487.140 shall be payable to
18 the various county family services and justice funds.

19 **4. Nothing in this section prohibits the general assembly from appropriating**
20 **moneys into the various county family services and justice funds to be expended for the**
21 **purposes provided for in this section.**

22 **5. Any moneys in the family services and justice fund not expended for salaries of**
23 **commissioners, family court administrators and family court staff shall be used toward**
24 **funding the enhanced services provided as a result of the establishment of a family court;**

25 however, it shall not replace or reduce the current and ongoing responsibilities of the counties
26 to provide funding for the courts as required by law. Moneys collected for the family services
27 and justice fund shall be expended for the benefit of litigants and recipients of services in the
28 family court, with priority given to **fees incurred under subsection 5 or 7 of section 475.075**
29 **or expenses incurred under section 475.063, and to** services such as guardians ad litem,
30 mediation, counseling, home studies, psychological evaluation and other forms of alternative
31 dispute-resolution services. Expenditures shall be made at the discretion of the presiding
32 judge or family court administrative judge, as designated by the circuit and associate circuit
33 judges en banc, for the implementation of the family court system as set forth in this section.
34 No moneys from the family services and justice fund may be used to pay for mediation in any
35 cause of action in which domestic violence is alleged.

36 ~~[5-]~~ **6.** From the funds collected pursuant to this section and retained in the family
37 services and justice fund, each circuit or county in which a family court commissioner in
38 addition to those commissioners existing as juvenile court commissioners on August 28,
39 1993, have been appointed pursuant to sections 487.020 to 487.040 shall pay to and
40 reimburse the state for the actual costs of that portion of the salaries of family court
41 commissioners appointed pursuant to the provisions of sections 487.020 to 487.040.

42 ~~[6-]~~ **7.** No moneys deposited in the family services and justice fund may be expended
43 for capital improvements.

✓