

HOUSE BILL NO. 2124

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

4848H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 475.050 and 475.055, RSMo, and to enact in lieu thereof two new sections relating to the appointment of guardians.

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

Section A. Sections 475.050 and 475.055, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 475.050 and 475.055, to read as follows:

2 475.050. 1. **Notwithstanding any provision of law**, before appointing any other
2 eligible person as guardian of an incapacitated person, or conservator of a disabled person, the
3 court shall [~~consider the suitability of appointing any of~~] **appoint** the following persons, listed
4 in the order of priority, who **are qualified under section 475.055, suitable, and** appear to be
5 willing to serve:

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

8 (2) **Any eligible person nominated by a previous guardian, provided that the**
9 **guardian was in good standing with the court;**

10 (3) 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
13 request, before the inception of the person's incapacity or disability;

14 [~~3~~] (4) The spouse, parents, adult children, adult brothers and sisters and other close
15 adult relatives of the incapacitated or disabled person;

16 [~~4~~] (5) Any other eligible person or, with respect to the estate only, any eligible
17 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.

18 2. Consistent with subsection 4 of section 475.120 or section 475.343, when
19 making its decision regarding who to appoint as guardian of an incapacitated person,
20 the court shall not include the financial resources of the prospective guardian in
21 determining who is an eligible person under subsection 1 of this section.

22 3. If the incapacitated person is to reside with the prospective guardian and a
23 complaint is made against the prospective guardian claiming the guardian is unsuitable
24 because the guardian resides in substandard housing that presents a dangerous or
25 insanitary condition for the incapacitated person and such condition would jeopardize
26 the incapacitated person's health, safety, welfare, or life, the court shall not disqualify
27 the prospective guardian unless it is proved that the substandard housing exists and is
28 the result of the prospective guardian's willful negligence. The court shall cause the
29 department of health and senior services to investigate and file a report with the court
30 on its findings before the court makes a determination regarding whom to appoint as
31 guardian.

32 4. If an incapacitated person currently resides in or will reside in any dwelling
33 other than with the prospective guardian and a complaint is filed with the court that
34 either the current or the prospective dwelling is substandard and presents a dangerous
35 or insanitary condition that would jeopardize the incapacitated person's life, health,
36 safety, or welfare, the court shall cause the department of health and senior services to
37 investigate and file a report with the court on its findings, for which the court shall give
38 weight to when determining whom to appoint as guardian.

39 5. Substandard housing includes, but is not limited to, any existing or
40 prospective circumstance or situation that places the incapacitated person in jeopardy
41 of being physically, sexually, or emotionally abused or neglected or killed because of the
42 willful negligence to prevent or correct the circumstance or situation by the eligible
43 person under subsection 1 of this section.

44 6. The court shall not deny a petition for guardianship because:

45 (1) The petitioner resides in a low-income dwelling or low-income housing
46 district or area;

47 (2) The petitioner's financial income is the result of any disability that qualifies
48 him or her for any type of Social Security income;

49 (3) Of the petitioner's employment wages; or

50 (4) The petitioner is unemployed at the time of petitioning the court for
51 guardianship.

52 7. Consistent with the rights given to wards under subdivision (5) of subsection 1
53 of section 475.361, the court shall consider the wishes of the incapacitated person as to
54 whom the incapacitated person wishes to reside with and where the incapacitated

55 **person wishes to reside when determining the eligible person under subsection 1 of this**
56 **section, provided that the court finds the wishes of the incapacitated person are in his or**
57 **her best interests in accordance with this section.**

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

64 ~~[3-]~~ **9.** Except for good cause shown, the court shall make its appointment in
65 accordance with the incapacitated or disabled person's most recent valid nomination of an
66 eligible person qualified to serve as guardian of the person or conservator of the estate.

67 ~~[4-]~~ **10.** Except for those individuals specified in subdivisions (1) and (2) of this
68 subsection, the court shall require all guardians and conservators who are seeking
69 appointment and who have a fiduciary responsibility to a ward, an incapacitated person, or
70 a disabled person to submit at their own expense to a background screening that shall include
71 the disqualification lists of the departments of mental health, social services, and health and
72 senior services; the abuse and neglect registries for adults and children; a Missouri criminal
73 record review; and the sexual offender registry. Individuals seeking appointment as a
74 conservator shall also submit, at their own expense, to a credit history investigation. The
75 nominated guardian or conservator shall file the results of the reports with the court at least
76 ten days prior to the appointment hearing date unless waived or modified by the court for
77 good cause shown by an affidavit filed simultaneously with the petition for appointment or in
78 the event the protected person requests an expedited hearing. The provisions of this
79 subsection shall not apply to:

80 (1) Public administrators; or

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

83 ~~[5-]~~ **11.** Guardians certified by a national accrediting organization may file proof of
84 certification in lieu of the requirements of subsections 4 and 6 of this section.

85 ~~[6-]~~ **12.** An order appointing a guardian or conservator shall not be signed by the
86 judge until such reports have been filed with the court and reviewed by the judge, who shall
87 consider the reports in determining whether to appoint a guardian or conservator. Such
88 reports, or lack thereof, shall be certified either by an affidavit or by obtaining a certified copy
89 of the reports. No reports or national criminal history record check shall be required by the
90 court upon the application of a petitioner for an emergency temporary guardianship or
91 emergency temporary conservatorship. The court may waive the requirements of this

92 subsection for good cause shown. If appointed, a guardian or conservator may petition the
93 court for reimbursement of the reasonable expenses of the credit history investigation and
94 background screenings.

475.055. 1. Except as herein otherwise provided:

2 (1) Any adult person may be appointed guardian of the person or conservator of the
3 estate, or both, of a minor or incapacitated or disabled person, except that a parent shall not be
4 denied appointment as guardian of the person of a minor for the reason that the parent is a
5 minor;

6 (2) Any charitable organization organized and incorporated as a not-for-profit
7 corporation under the laws of this state prior to January 1, 1902, shall be qualified to continue
8 to serve as guardian of the person of any ward for whom such charitable organization has
9 been appointed guardian of the person prior to September 28, 1983, or to be appointed
10 guardian of the person or persons adjudicated incapacitated subsequent to September 28,
11 1983;

12 (3) Any social service agency located within a county of the first classification or
13 within a city not within a county except any county of the first classification without a charter
14 form of government with a population of one hundred thousand or more inhabitants which
15 contains all or part of a city with a population of three hundred fifty thousand or more
16 inhabitants, which is found capable by the court of providing an active and suitable program
17 of guardianship for the incapacitated person, taking into consideration the nature of such
18 person's disability and the nature of such organization's services, may be appointed as
19 guardian of the person; however, no social service agency shall be appointed as guardian of
20 the person under this subdivision unless it employs a licensed professional found by the court
21 to have sufficient expertise to meet the needs of the ward, and it is found by the court that
22 such professional shall have primary responsibility for providing guardianship services to the
23 incapacitated person for which such social service agency is appointed guardian. The court
24 shall not appoint as guardian of the person under this subdivision a social service agency
25 which is providing residential services to the ward;

26 (4) Any corporation authorized to do business in this state and empowered by its
27 charter so to act or any national banking association authorized so to act in this state may be
28 appointed conservator of the estate of a minor or disabled person. No corporation other than a
29 social service agency may be appointed to serve as guardian of the incapacitated person.

30 2. No person or corporation, other than the public administrator of the county, shall be
31 appointed guardian or conservator unless the appointee has filed a consent to act. Except as
32 otherwise provided by this section, no person or corporation licensed as a facility by the
33 Missouri department of mental health or the Missouri department of social services, nor any
34 administrator, owner, operator, manager or employee of such a facility shall be appointed

35 guardian of the person or conservator of the estate of any resident of that facility, unless
36 related within the fourth degree of consanguinity or affinity to the resident. No full-time
37 judge of any court of this state and no clerk, deputy clerk or division clerk shall be appointed
38 as guardian of the person or conservator of the estate, but a judge, clerk, deputy clerk or
39 division clerk may serve as a guardian or conservator for a ward or protectee who is a spouse
40 or is within the third degree of relationship by consanguinity or affinity as calculated
41 according to civil law. No natural person under eighteen years of age, other than as provided
42 in subsection 1 of this section, no incapacitated or disabled person, and no habitual drunkard
43 shall be appointed guardian of the person or conservator of the estate. No person whose
44 letters of guardianship or conservatorship are revoked shall be appointed guardian or
45 conservator within two years after the revocation. No one shall be appointed guardian of the
46 person or conservator of the estate unless qualified to perform the duties of said office or
47 offices.

48 3. A person becomes a guardian or conservator of a minor or incapacitated or
49 disabled person upon issuance of letters of guardianship or conservatorship by the court. A
50 person so appointed need not reside within this state in order to accept or serve as guardian or
51 conservator, unless the court finds that such person, taking into consideration his place of
52 residence, is unable to effectively perform the duties of guardian or conservator as provided
53 by this code. The guardianship or conservatorship status continues until terminated, without
54 regard to the location from time to time, whether within or outside of this state, of the
55 guardian and ward or conservator and protectee.

56 4. Subsections 3 and 4 of section 473.117, section 473.689, and section 475.338 are
57 applicable to nonresident guardians and conservators.

58 5. If a social service agency is appointed to act as guardian under this section, any
59 other eligible person listed in subdivision [~~3~~] (4) of subsection 1 of section 475.050 may
60 petition the court to have the social service agency removed as guardian. The court shall
61 grant the petition if it finds that the petitioner is qualified and will act in the best interests of
62 the disabled or incapacitated person. The removal of a social service agency under such
63 circumstances does not require evidence that the agency committed acts of misfeasance
64 warranting the agency's removal pursuant to section 475.110.

65 6. A social service agency acting as a guardian pursuant to subdivision (4) of
66 subsection 1 of this section may only authorize the withholding or withdrawal of artificially
67 provided nutrition or hydration as prescribed under section 404.820.

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