

SECOND REGULAR SESSION

# HOUSE BILL NO. 2281

100TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE ROGERS.

4984H.011

DANA RADEMAN MILLER, Chief Clerk

---

## AN ACT

To repeal sections 475.046, 475.110, and 475.115, RSMo, and to enact in lieu thereof three new sections relating to guardianships.

---

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

Section A. Sections 475.046, 475.110, and 475.115, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 475.046, 475.110, and 475.117, to read as follows:

475.046. 1. A custodial parent may designate a person to act as standby guardian of a minor or incapacitated person by a will that complies with the requirements of section 474.320 or by a separate written instrument which is dated and is either duly executed and acknowledged by the custodial parent or is signed by the custodial parent in the presence of at least two disinterested witnesses and subscribed by the witnesses. If the custodial parent executes more than one document designating a standby guardian and there is a conflict between the documents as to the person designated, the document bearing the latest date shall control.

2. If a custodial parent who has designated a standby guardian is or becomes seriously ill, the custodial parent or the person designated as standby guardian may file a petition in the probate division of the circuit court of the county which would be of proper venue for the appointment of a guardian of the minor or incapacitated person seeking appointment of the designated person as standby guardian. A copy of the will or separate written instrument designating the standby guardian and a consent to act as standby guardian signed by the person designated shall be filed with the petition, which petition shall state:

(1) The name, age, domicile, actual place of residence, and mailing address of the minor or incapacitated person;

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) The name and address of the custodial parent and of the designated standby guardian;  
18 (3) The name and address of each parent of the minor or incapacitated person and  
19 whether that parent is living or dead;  
20 (4) The name and address of the spouse, if applicable, and the names, ages, and  
21 addresses of all living children of the minor or incapacitated person;  
22 (5) If the person for whom appointment of a standby guardian is sought has been  
23 adjudicated incapacitated, the date of adjudication and the name and address of the court which  
24 entered the judgment; and  
25 (6) The reasons why the appointment of a standby guardian is sought.

26

27 Proceedings on the petition shall be conducted in the same manner as would be applicable in a  
28 case for appointment of a successor guardian under section ~~[475.115]~~ **475.117**.

29 3. The court shall determine appointment of a standby guardian in accordance with the  
30 best interests of the minor or incapacitated person after considering all relevant factors,  
31 including:

32 (1) Whether there is a parent other than the custodial parent and, if so, whether the other  
33 parent is willing, able, and fit to assume the duties of a parent;

34 (2) The suitability of a person nominated by the minor or incapacitated person if he or  
35 she is, at the time of hearing, able to communicate a reasonable choice; and

36 (3) The desirability of providing arrangements for the care, custody, and control of the  
37 minor or incapacitated person which shall minimize stress and disruption and avoid his or her  
38 placement in foster or similar care pending appointment of a guardian if the custodial parent is  
39 adjudicated incapacitated or dies.

40 4. If it appears to the court that a standby guardian should be appointed for a minor or  
41 incapacitated person, the court may appoint a standby guardian.

42 5. The authority of a person to act as standby guardian for a minor or incapacitated  
43 person shall only take effect as follows:

44 (1) If the person has previously been appointed by the court as standby guardian, upon  
45 the granting of letters of standby guardianship to the person previously appointed as provided  
46 in the order appointing the standby guardian; or

47 (2) If the person has not previously been appointed by the court as standby guardian,  
48 either because a petition for appointment has not been filed or because a petition has been filed  
49 but the proceedings are still pending, upon the first to occur of the following:

50 (a) The consent of the custodial parent in a writing duly executed and acknowledged by  
51 the custodial parent;

52 (b) Entry of an order adjudicating the custodial parent to be incapacitated; or

53 (c) The death of the custodial parent.

54

55 The person shall, within ten days after he or she begins to act as standby guardian, notify the  
56 court in writing of that fact and of the reasons therefor. The court may grant letters of standby  
57 guardianship to the person or, if the court deems it advisable, conduct a hearing to determine the  
58 propriety of the person having begun, and continuing, to act as standby guardian and the  
59 propriety of issuing letters of standby guardianship to the person.

60 6. A person acting as standby guardian of a minor or incapacitated person shall, within  
61 sixty days after he or she begins to act, petition the court for appointment of the standby guardian  
62 or some other qualified person as guardian of the minor or incapacitated person. Proceedings  
63 on the petition shall be conducted in the same manner as would be applicable in a case for  
64 appointment of a successor guardian under section ~~[475.115]~~ **475.117**.

65 7. Nothing in this section shall be construed to:

66 (1) Deprive a parent of his or her legal rights with respect to a minor or incapacitated  
67 person who is a child of that parent, including court-ordered visitation with the child, nor to  
68 authorize a grant of authority to a standby guardian which would supersede any such rights; or

69 (2) Relieve a parent of his or her legal obligations or duties to a minor or incapacitated  
70 person who is a child of that parent, including a duty to support the child in accordance with a  
71 court or administrative order.

72 8. Except to the extent determined by the court to be inconsistent with the provisions of  
73 this section or as expressly provided in this section, the laws applicable to guardianship  
74 proceedings shall apply to all proceedings under this section.

475.110. 1. When a minor ward has attained the age of fourteen years, the guardian of  
2 his or her person may be removed on petition of the ward to have another person appointed  
3 guardian if it is for the best interests of the ward that such other person be appointed. When the  
4 spouse of an incapacitated or disabled person is appointed his or her guardian or conservator,  
5 such spouse shall be removed as guardian or conservator upon dissolution of his or her marriage  
6 with the incapacitated or disabled person. A guardian or conservator may also be removed on  
7 the same grounds as is provided in section 473.140 for the removal of personal representatives.

8 2. Notwithstanding subsection 1 of this section, a spouse whose marriage to the ward  
9 was dissolved may petition the court to remain as or be reappointed guardian or conservator of  
10 the incapacitated or disabled person in accordance with section ~~[475.115]~~ **475.117**.

**475.117. 1. A person having previously been appointed a guardian, conservator,  
2 or both because of incapacitation, disability, or both shall remain adjudged incapacitated,  
3 disabled, or both if his or her guardian or conservator dies, and the probate court  
4 appointing the previous guardian or conservator shall retain jurisdiction over the ward or**

5 protectee to appoint a successor guardian or conservator unless the guardianship or  
6 conservatorship was transferred to another county, in which case the court that received  
7 the transfer shall appoint a successor guardian or conservator in the following manner:

8 (1) Any interested private party or a public administrator in a county where a ward  
9 or protectee lives may file a pro se application for transfer of guardianship,  
10 conservatorship, or both, along with a copy of the death certificate of the previously  
11 appointed guardian or conservator, to be appointed guardian or conservator of the ward  
12 or protectee upon the death of the previous guardian or conservator. The application shall  
13 contain a statement under penalty of perjury of:

14 (a) The previous guardian's or conservator's death;

15 (b) A request to transfer either guardianship, conservatorship, or both;

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.

133

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 public~~  
10 ~~administrator of the receiving county consents to the transfer, the court shall~~  
11 ~~transfer the case. The court with jurisdiction over the receiving county shall,~~  
12 ~~without the necessity of any hearing as required by section 475.075, appoint the~~  
13 ~~public administrator of the receiving county as successor guardian and/or~~  
~~successor conservator and issue letters therein. In the case of a conservatorship,~~

14 ~~the final settlement of the public administrator's conservatorship shall be filed~~  
15 ~~within thirty days of the court's transfer of the case, in the court with jurisdiction~~  
16 ~~over the original conservatorship, and forwarded to the receiving county upon~~  
17 ~~audit and approval.]~~

✓