

FIRST REGULAR SESSION

SENATE BILL NO. 104

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0560S.02I

AN ACT

To repeal section 475.050, RSMo, and to enact in lieu thereof one new section relating to the appointment of a guardian for an incapacitated person.

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Section A. Section 475.050, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 475.050, to read as follows: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 and give priority to** the following persons, **as listed**, who are **qualified under section 475.055, suitable, and** appear to be willing to serve, **and such persons 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, at a time within five years before the hearing when the person was able to make and communicate a reasonable choice;

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 (4) Any other eligible person or, with respect to the estate only, any
21 eligible organization or corporation, nominated in a duly probated will of such a
22 spouse or relative executed within five years before the hearing.

23 **2. If the claim is made that a person given priority in subsection**
24 **1 of this section is deficient due to substandard living conditions, then**
25 **the court shall require an investigation and report about the living**
26 **conditions by the department of health and senior services prior to**
27 **making a determination. In order to find a person given priority**
28 **deficient due to substandard living conditions, the court shall make the**
29 **findings that the living conditions are dangerous or unsanitary and**
30 **materially affect the life, health, or safety of the incapacitated person.**

31 **3.** Except for good cause shown, the court shall make its appointment in
32 accordance with the incapacitated or disabled person's most recent valid
33 nomination of an eligible person qualified to serve as guardian of the person or
34 conservator of the estate. In the event there is not brought to the attention of the
35 court any such valid nomination executed within five years before the hearing,
36 then the court shall give consideration to the most recent valid nomination
37 brought to its attention, but the court shall not be required to follow such
38 nomination.

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