

SECOND REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 806

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CRAWFORD.

Pre-filed December 15, 2017, and ordered printed.

Read 2nd time January 17, 2018, and referred to the Committee on Seniors, Families and Children.

Reported from the Committee February 15, 2018, with recommendation that the bill do pass.

Taken up for Perfection February 27, 2018. Bill declared Perfected and Ordered Printed.

5457S.01P

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal sections 475.050, 475.070, 475.075, 475.290, and 475.320, RSMo, and to enact in lieu thereof five new sections relating to the appointment of a guardian or conservator for certain persons.

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

Section A. Sections 475.050, 475.070, 475.075, 475.290, and 475.320, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 475.050, 475.070, 475.075, 475.290, and 475.320, to read as follows: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 the following persons, **listed in the order of priority**, who appear to be willing to serve:

(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.**

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

19 **2. The court shall not appoint an unrelated third party as a**  
20 **guardian or conservator unless there is no relative suitable and willing**  
21 **to serve, or if the appointment of a relative or nominee is otherwise**  
22 **contrary to the best interests of the incapacitated or disabled person.**

23 **3.** Except for good cause shown, the court shall make its appointment in  
24 accordance with the incapacitated or disabled person's most recent valid  
25 nomination of an eligible person qualified to serve as guardian of the person or  
26 conservator of the estate. In the event there is not brought to the attention of the  
27 court any such valid nomination executed within five years before the hearing,  
28 then the court shall give consideration to the most recent valid nomination  
29 brought to its attention, but the court shall not be required to follow such  
30 nomination.

475.070. 1. Before appointing a guardian or conservator for a minor,  
2 notice of the petition therefor shall be served upon the following unless they have  
3 signed such petition or have waived notice thereof:

4 (1) The minor, if over fourteen years of age;

5 (2) The parents of the minor;

6 (3) The spouse of the minor;

7 (4) **The person or entity nominated to serve as guardian or**  
8 **conservator;**

9 (5) If directed by the court:

10 (a) Any person who has been appointed guardian or any person having  
11 care and custody of the minor;

12 (b) Any department, bureau or agency of the United States or of this state  
13 or any political subdivision thereof, which makes or awards compensation,  
14 pension, insurance or other allowance for the benefit of the ward's estate;

15 (c) Any department, bureau or agency of this state or any political  
16 subdivision thereof or any charitable organization of this state, which may be  
17 charged with the supervision, control or custody of the minor.

18 2. If the minor is over fourteen years of age, there shall be personal  
19 service upon him if personal service can be had. Service on others may be had  
20 in accordance with section 472.100.

21 3. If a petition for the appointment of a guardian of a minor is filed for

22 the sole and specific purpose of school registration or medical insurance coverage,  
23 upon the filing of an affidavit by the petitioner stating that, after due and  
24 diligent effort to the best of his or her ability, the whereabouts or identity of  
25 either or both parents of the minor remains unknown, the court may proceed with  
26 the appointment of such a guardian without having obtained service upon the  
27 parents of the minor.

475.075. 1. Except as otherwise provided in section 475.062, when a  
2 petition for the appointment of a guardian ad litem, guardian or conservator  
3 against any person, hereinafter referred to as the respondent, is filed on grounds  
4 other than minority, the court, if satisfied that there is good cause for the exercise  
5 of its jurisdiction, shall promptly set the petition for hearing.

6 2. The respondent shall be served in person with the following: A copy  
7 of the petition; a written notice stating the time and place the proceeding will be  
8 heard by the court, the name and address of appointed counsel, and the names  
9 and addresses of the witnesses who may be called to testify in support of the  
10 petition; and with a copy of the respondent's rights as set forth in subsections [7]  
11 8 and [8] 9 of this section. The notice shall be signed by the judge or clerk of the  
12 court and served in person on the respondent a reasonable time before the date  
13 set for the hearing. The petition shall state the names and addresses of the  
14 spouse, parents, children who have reached eighteen, any person serving as his  
15 guardian, conservator, limited guardian or limited conservator, any person having  
16 power to act in a fiduciary capacity with respect to any of the respondent's  
17 financial resources, and any person having his care and custody known to the  
18 petitioner. Each person so listed shall be served with like notice in any manner  
19 permitted by section 472.100. If no such spouse, parent or child is known, notice  
20 shall be given to at least one of his closest relatives who has reached eighteen.

21 **3. If the public administrator is nominated as guardian or**  
22 **conservator or at any state of the proceeding is being considered by the**  
23 **court to be nominated as guardian or conservator, the public**  
24 **administrator shall receive a copy of the petition from the petitioner**  
25 **or the court and any accompanying documents, including exhibits and**  
26 **medical opinions, and receive written notice indicating the date and**  
27 **time of the proceeding, and have an opportunity to attend and be**  
28 **heard.**

29 4. Upon the filing of a petition under the provisions of subsection 1 of this  
30 section or for the approval on behalf of the respondent of a transaction pursuant

31 to section 475.092 or for the rendition of emergency medical treatment under the  
32 provisions of section 475.123, the court shall immediately appoint an attorney to  
33 represent the respondent in the proceeding. The attorney shall visit his client  
34 prior to the hearing. If the client is capable of understanding the matter in  
35 question or of contributing to the advancement of the client's interest, the  
36 attorney shall obtain from the client all possible aid. If the disability of a client  
37 compels the attorney to make decisions for the client, the attorney shall consider  
38 all circumstances then prevailing and act with care to safeguard and advance the  
39 interests of the client. The court shall allow a reasonable attorney's fee for the  
40 services rendered, to be taxed as costs of the proceeding. The court-appointed  
41 attorney may be permitted to withdraw if the respondent employs private counsel  
42 who enters an appearance on behalf of said person.

43 [4.] 5. The court may direct that the respondent be examined by a  
44 physician or licensed psychologist or other appropriate professional designated  
45 by the court, and may allow a reasonable fee for the services rendered, to be taxed  
46 as costs in the proceeding. The court-appointed physician, licensed psychologist  
47 or other professional shall, prior to examination, explain to the respondent in  
48 simple language, the following:

- 49 (1) Incapacity or disability as defined in section 475.010;  
50 (2) That the purpose of the examination is to produce evidence which may  
51 be used to determine whether the respondent is incapacitated, disabled or  
52 partially incapacitated or disabled;  
53 (3) That respondent has the right to remain silent;  
54 (4) That anything respondent says may be used at the court hearing, and  
55 in making the determination of incapacity or disability.

56 [5.] 6. The court-appointed physician, licensed psychologist or other  
57 professional shall submit his report in writing to the court and to counsel for all  
58 parties.

59 [6.] 7. If prima facie proof of partial or complete incapacity or disability  
60 is made, a physician or licensed psychologist is competent and may be compelled  
61 to testify as to information acquired from the respondent, despite otherwise  
62 applicable testimonial privileges. Evidence received under this subsection which  
63 would otherwise be privileged may not be used in any other civil action or  
64 criminal proceeding without the consent of the holder of the privilege.

65 [7.] 8. The petitioner has the burden of proving incapacity, partial  
66 incapacity, disability, or partial disability by clear and convincing evidence.

67 [8.] 9. The respondent shall have the following rights in addition to those  
68 elsewhere specified:

- 69 (1) The right to be represented by an attorney;
- 70 (2) The right to have a jury trial;
- 71 (3) The right to present evidence in his behalf;
- 72 (4) The right to cross-examine witnesses who testify against him;
- 73 (5) The right to remain silent;
- 74 (6) The right to have the hearing opened or closed to the public as he  
75 elects;
- 76 (7) The right to a hearing conducted in accordance with the rules of  
77 evidence in civil proceedings, except as modified by this chapter;
- 78 (8) The right to be present at the hearing.

79 [9.] 10. If the court finds that the respondent possesses capacity to meet  
80 his essential requirements for food, clothing, shelter, safety and other care or that  
81 he possesses the ability to manage his financial resources, it shall deny the  
82 petition. On the other hand, if the court finds that the capacity of the respondent  
83 to receive and evaluate information or to communicate decisions is impaired to  
84 such an extent as to render him incapable of meeting some or all of his essential  
85 requirements for food, clothing, shelter, safety or other care so that serious  
86 physical injury, illness, or disease is likely to occur, or that the ability of the  
87 respondent to receive and evaluate information or to communicate decisions is  
88 impaired to such an extent so as to render him unable to manage some or all of  
89 his financial resources, it shall make and recite in its order detailed findings of  
90 fact stating:

- 91 (1) The extent of his physical and mental incapacity to care for his person;
- 92 (2) The extent of his physical and mental disability to manage his  
93 financial resources;
- 94 (3) Whether or not he requires placement in a supervised living situation  
95 and, if so, the degree of supervision needed;
- 96 (4) Whether or not his financial resources require supervision and, if so,  
97 the nature and extent of supervision needed.

98 [10.] 11. If the court finds the respondent to be in some degree  
99 incapacitated or disabled, or both, the court, in determining the degree of  
100 supervision necessary, shall apply the least restrictive environment principle as  
101 defined in this chapter and shall not restrict his personal liberty or his freedom  
102 to manage his financial resources to any greater extent than is necessary to

103 protect his person and his financial resources. The court shall consider whether  
104 or not the respondent may be fully protected by the rendition of temporary  
105 protective services provided by a private or public agency or agencies; or by the  
106 appointment of a guardian or conservator ad litem; or by the appointment of a  
107 limited guardian or conservator; or, as a last resort, by the appointment of a  
108 guardian or conservator. The limitations imposed upon the authority of the  
109 guardian or conservator as set forth in the findings of the court shall be stated  
110 in the letters of the guardian or conservator and shall be set forth in the notice  
111 of first publication of letters of conservatorship granted.

112 [11.] 12. If an alleged incapacitated or disabled person has no guardian  
113 or conservator and an emergency exists which presents a substantial risk that  
114 serious physical harm will occur to his person or irreparable damage will occur  
115 to his property because of his failure or inability to provide for his essential  
116 human needs or to protect his property, the court may, with notice to such  
117 person's attorney, as provided in subsection [3] 4 of this section, and service of  
118 notice upon such person as provided in subsection 2 of this section, and, with or  
119 without notice to other persons interested in the proceeding, after hearing,  
120 appoint a guardian or conservator ad litem for a specified period not to exceed  
121 thirty days and for specified purposes. Orders appointing the guardian or  
122 conservator ad litem may be modified upon motion and hearing. After hearing  
123 and a showing of continuing emergency need, orders appointing the guardian or  
124 conservator ad litem may be extended from time to time, not to exceed thirty days  
125 each. A guardian or conservator ad litem may be removed at any time and shall  
126 make any report the court requires. Proceedings under this subsection shall not  
127 be employed as alternative to proceedings for the involuntary detention and  
128 treatment of a mentally ill person under the provisions of chapter 632.

475.290. 1. Conservators shall make final settlement of their  
2 conservatorship at a time fixed by the court, either by rule or otherwise, within  
3 sixty days after termination of their authority, **except for those cases where**  
4 **the court has ordered that no letters of administration be granted**  
5 **pursuant to section 475.320.** For the purpose of settlement, the conservator  
6 shall make a just and true exhibit of the account between himself and his  
7 protectee, and file the same in the court having jurisdiction thereof, and cause a  
8 copy of the account, together with a written notice stating the day on which and  
9 the court in which he will make settlement, to be delivered to his protectee or, in  
10 case of revocation or resignation, to the succeeding conservator or in case of death

11 of his protectee to his executor or administrator or other person designated by the  
12 court, at least twenty days before the date set for settlement.

13 2. If, for any cause, a copy of the account and written notice cannot be  
14 delivered to the protectee or other person entitled thereto, the court may order  
15 notice of the filing of the account, and of the time and place at which final  
16 settlement is to be made, to be given by publication once a week for four weeks  
17 next before the date set for settlement in accordance with section 472.100.

18 3. At the time specified in the notice, the court, upon satisfactory proof of  
19 the delivery of a copy of the account and written notice of the settlement to the  
20 protectee or person entitled thereto, or his written waiver thereof, or in case the  
21 court has ordered notice to be given by publication, then upon proof of compliance  
22 with such order, shall proceed to examine the accounts of the conservator, correct  
23 all errors therein, if any there be, and make a final settlement with the  
24 conservator; or the court may, for good cause, continue the settlement and  
25 proceed therein at any time agreed upon by the parties or fixed by the court.

475.320. 1. Except in cases mentioned in subsection 2, the court, upon the  
2 death of any protectee, may order that no letters of administration shall be  
3 granted upon his estate, but the funeral and burial expenses and estate taxes for  
4 which the estate of the deceased protectee is liable, and obligations of the  
5 protectee incurred by the conservator, as well as expenses of administration, may  
6 be paid out of the estate by the conservator on order of the court and after the  
7 final settlement of the conservator is approved, and upon a showing that all  
8 obligations of the estate which have been authorized by the court have been paid,  
9 the court shall order the conservator to make distribution to the heirs in the same  
10 manner and with the same effect as in the case of an administrator. In such case  
11 the conservator is subject in all respects and to the same extent to the liabilities  
12 of an administrator and liability on the conservator's bond continues and applies  
13 to the complete administration of the estate of the deceased protectee, **including**  
14 **settlements as required by section 473.540.**

15 2. Whenever a protectee dies leaving debts, other than those payable by  
16 the conservator under subsection 1 hereof, for which his estate would be liable in  
17 an action, or whenever a protectee dies, leaving a will valid under the law  
18 respecting wills, letters testamentary or of administration shall be granted on the  
19 estate of the deceased protectee, in the manner provided by law, as in case of  
20 other testators or intestates.