

FIRST REGULAR SESSION

HOUSE BILL NO. 137

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PORTWOOD (Sponsor) AND LEMBKE (Co-sponsor).

Pre-filed December 29, 2004 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0693L.011

AN ACT

To repeal section 475.083, RSMo, and to enact in lieu thereof one new section relating to guardianship of a minor.

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

Section A. Section 475.083, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 475.083, to read as follows:

475.083. 1. The authority of a guardian or conservator terminates:

- (1) When a minor ward becomes eighteen years of age;
- (2) Upon an adjudication that an incapacitated or disabled person has been restored to his **or her** capacity or ability;
- (3) Upon revocation of the letters of the guardian or conservator;
- (4) Upon the acceptance by the court of the resignation of the guardian or conservator;
- (5) Upon the death of the ward or protectee except that if there is no person other than the estate of the ward or protectee liable for the funeral and burial expenses of the ward or protectee the guardian or conservator may, with the approval of the court, contract for the funeral and burial of the deceased ward or protectee;
- (6) Upon the expiration of an order appointing a guardian or conservator ad litem unless the court orders extension of the appointment;
- (7) Upon an order of court terminating the guardianship or conservatorship.

2. A guardianship or conservatorship may be terminated by court order after such notice as the court may require:

- (1) If the conservatorship estate is exhausted;

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) If the conservatorship is no longer necessary for any other reason;

18 (3) If the court finds that a parent is fit, suitable and able to assume the duties of
19 guardianship and it is in the best interest of the minor that the guardianship be terminated. **For**
20 **purposes of this subsection, absent clear and convincing evidence to the contrary, it is in**
21 **the best interest of a minor that guardianship granted to a person other than a parent be**
22 **terminated in favor of a parent who is fit, suitable, and able to assume the duties of**
23 **guardianship.**

24 3. Notwithstanding the termination of the authority of a conservator, [he] **the**
25 **conservator** shall continue to have such authority as may be necessary to wind up [his] **the**
26 **conservator's** administration.

27 4. At any time the guardian, conservator or any person on behalf of the ward or protectee
28 may, individually or jointly with the ward or protectee, or the ward or protectee individually may
29 petition the court to restore the ward or protectee, or to decrease the powers of the guardian or
30 conservator, except that if the court determines that the petition is frivolous, the court may
31 summarily dismiss the petition without hearing.

32 5. Upon the filing of a joint petition by the guardian or conservator and the ward or
33 protectee, the court, if it finds restoration or modification to be in the best interests of the ward
34 or protectee, may summarily order restoration or modification of the powers of the guardian or
35 conservator without the necessity of notice and hearing.

36 6. Upon the filing of a petition without the joinder of the guardian or conservator, the
37 court shall cause the petition to be set for hearing with notice to the guardian or conservator. If
38 the ward or protectee is not represented by an attorney, the court shall appoint an attorney to
39 represent the ward or protectee in such proceeding. The burden of proof by a preponderance of
40 the evidence shall be upon the petitioner. Such a petition may not be filed more than once every
41 one hundred eighty days.

42 7. At any time the guardian or conservator may petition the court to increase his **or her**
43 powers. Proceedings on the petition shall be in accordance with the provisions of section
44 475.075.