

# HB1761



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB1761

by Rep. Michael J. Madigan

### SYNOPSIS AS INTRODUCED:

755 ILCS 5/4-1

from Ch. 110 1/2, par. 4-1

Amends the Probate Act of 1975. Makes a technical change to a Section concerning a testator's capacity.

LRB100 03400 HEP 13405 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing  
5 Section 4-1 as follows:

6 (755 ILCS 5/4-1) (from Ch. 110 1/2, par. 4-1)

7 Sec. 4-1. Capacity of testator.

8 (a) Every person who has attained the ~~the~~ age of 18 years  
9 and is of sound mind and memory has power to bequeath by will  
10 the real and personal estate which he has at the time of his  
11 death.

12 (b) Except as stated herein, there is a rebuttable  
13 presumption that a will or codicil is void if it was executed  
14 or modified after the testator is adjudicated disabled under  
15 Article XIa of this Act and either (1) a plenary guardian has  
16 been appointed for the testator under subsection (c) of Section  
17 11a-12 of this Act or (2) a limited guardian has been appointed  
18 for the testator under subsection (b) of Section 11a-12 of this  
19 Act and the court has found that the testator lacks  
20 testamentary capacity. The rebuttable presumption is overcome  
21 by clear and convincing evidence that the testator had the  
22 capacity to execute the will or codicil at the time the will or  
23 codicil was executed. The rebuttable presumption does not apply

1 if the will or codicil was completed in compliance with  
2 subsection (d-5) of Section 11a-18 of this Act. This subsection  
3 (b) applies only to wills or codicils executed or modified  
4 after the effective date of this amendatory Act of the 99th  
5 General Assembly.

6 (Source: P.A. 99-302, eff. 1-1-16.)