

SB2954



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2954

Introduced 2/4/2014, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

from Ch. 110 1/2, par. 11a-17

Amends the Probate Act of 1975. Provides that a guardian of an adult disabled ward's person and estate has the authority to commence proceedings, including, but not limited to, adoption, marriage, or dissolution of marriage proceedings, on behalf of the ward if the court finds the proceedings to be in the best interests of the ward.

LRB098 17135 HEP 52222 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 11a-17 as follows:

6 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

7 Sec. 11a-17. Duties of personal guardian.

8 (a) To the extent ordered by the court and under the
9 direction of the court, the guardian of the person shall have
10 custody of the ward and the ward's minor and adult dependent
11 children and shall procure for them and shall make provision
12 for their support, care, comfort, health, education and
13 maintenance, and professional services as are appropriate, but
14 the ward's spouse may not be deprived of the custody and
15 education of the ward's minor and adult dependent children,
16 without the consent of the spouse, unless the court finds that
17 the spouse is not a fit and competent person to have that
18 custody and education. The guardian shall assist the ward in
19 the development of maximum self-reliance and independence. The
20 guardian of the person may petition the court for an order
21 directing the guardian of the estate to pay an amount
22 periodically for the provision of the services specified by the
23 court order. If the ward's estate is insufficient to provide

1 for education and the guardian of the ward's person fails to
2 provide education, the court may award the custody of the ward
3 to some other person for the purpose of providing education. If
4 a person makes a settlement upon or provision for the support
5 or education of a ward, the court may make an order for the
6 visitation of the ward by the person making the settlement or
7 provision as the court deems proper. A guardian of the person
8 may not admit a ward to a mental health facility except at the
9 ward's request as provided in Article IV of the Mental Health
10 and Developmental Disabilities Code and unless the ward has the
11 capacity to consent to such admission as provided in Article IV
12 of the Mental Health and Developmental Disabilities Code.

13 (a-5) If the ward filed a petition for dissolution of
14 marriage under the Illinois Marriage and Dissolution of
15 Marriage Act before the ward was adjudicated a disabled person
16 under this Article, the guardian of the ward's person and
17 estate may maintain that action for dissolution of marriage on
18 behalf of the ward. A guardian of the ward's person and estate
19 has the authority to commence proceedings, including, but not
20 limited to, adoption, marriage, or dissolution of marriage
21 proceedings, on behalf of the ward if the court finds the
22 proceedings to be in the best interests of the ward.

23 (b) If the court directs, the guardian of the person shall
24 file with the court at intervals indicated by the court, a
25 report that shall state briefly: (1) the current mental,
26 physical, and social condition of the ward and the ward's minor

1 and adult dependent children; (2) their present living
2 arrangement, and a description and the address of every
3 residence where they lived during the reporting period and the
4 length of stay at each place; (3) a summary of the medical,
5 educational, vocational, and other professional services given
6 to them; (4) a resume of the guardian's visits with and
7 activities on behalf of the ward and the ward's minor and adult
8 dependent children; (5) a recommendation as to the need for
9 continued guardianship; (6) any other information requested by
10 the court or useful in the opinion of the guardian. The Office
11 of the State Guardian shall assist the guardian in filing the
12 report when requested by the guardian. The court may take such
13 action as it deems appropriate pursuant to the report.

14 (c) Absent court order pursuant to the Illinois Power of
15 Attorney Act directing a guardian to exercise powers of the
16 principal under an agency that survives disability, the
17 guardian has no power, duty, or liability with respect to any
18 personal or health care matters covered by the agency. This
19 subsection (c) applies to all agencies, whenever and wherever
20 executed.

21 (d) A guardian acting as a surrogate decision maker under
22 the Health Care Surrogate Act shall have all the rights of a
23 surrogate under that Act without court order including the
24 right to make medical treatment decisions such as decisions to
25 forgo or withdraw life-sustaining treatment. Any decisions by
26 the guardian to forgo or withdraw life-sustaining treatment

1 that are not authorized under the Health Care Surrogate Act
2 shall require a court order. Nothing in this Section shall
3 prevent an agent acting under a power of attorney for health
4 care from exercising his or her authority under the Illinois
5 Power of Attorney Act without further court order, unless a
6 court has acted under Section 2-10 of the Illinois Power of
7 Attorney Act. If a guardian is also a health care agent for the
8 ward under a valid power of attorney for health care, the
9 guardian acting as agent may execute his or her authority under
10 that act without further court order.

11 (e) Decisions made by a guardian on behalf of a ward shall
12 be made in accordance with the following standards for decision
13 making. Decisions made by a guardian on behalf of a ward may be
14 made by conforming as closely as possible to what the ward, if
15 competent, would have done or intended under the circumstances,
16 taking into account evidence that includes, but is not limited
17 to, the ward's personal, philosophical, religious and moral
18 beliefs, and ethical values relative to the decision to be made
19 by the guardian. Where possible, the guardian shall determine
20 how the ward would have made a decision based on the ward's
21 previously expressed preferences, and make decisions in
22 accordance with the preferences of the ward. If the ward's
23 wishes are unknown and remain unknown after reasonable efforts
24 to discern them, the decision shall be made on the basis of the
25 ward's best interests as determined by the guardian. In
26 determining the ward's best interests, the guardian shall weigh

1 the reason for and nature of the proposed action, the benefit
2 or necessity of the action, the possible risks and other
3 consequences of the proposed action, and any available
4 alternatives and their risks, consequences and benefits, and
5 shall take into account any other information, including the
6 views of family and friends, that the guardian believes the
7 ward would have considered if able to act for herself or
8 himself.

9 (f) Upon petition by any interested person (including the
10 standby or short-term guardian), with such notice to interested
11 persons as the court directs and a finding by the court that it
12 is in the best interest of the disabled person, the court may
13 terminate or limit the authority of a standby or short-term
14 guardian or may enter such other orders as the court deems
15 necessary to provide for the best interest of the disabled
16 person. The petition for termination or limitation of the
17 authority of a standby or short-term guardian may, but need
18 not, be combined with a petition to have another guardian
19 appointed for the disabled person.

20 (Source: P.A. 96-612, eff. 1-1-10.)