



Rep. Diane Blair-Sherlock

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LRB104 08064 JRC 24540 a

1 AMENDMENT TO HOUSE BILL 2562

2 AMENDMENT NO. _____. Amend House Bill 2562 as follows:

3 on page 2, by replacing line 12 with the following: "Section
4 11a-12, 11a-17, and 11a-18 as follows:"; and

5 on page 4, by inserting below line 20 the following:

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,

1 without the consent of the spouse, unless the court finds that
2 the spouse is not a fit and competent person to have that
3 custody and education. The guardian shall assist the ward in
4 the development of maximum self-reliance and independence. The
5 guardian of the person may petition the court for an order
6 directing the guardian of the estate to pay an amount
7 periodically for the provision of the services specified by
8 the court order. If the ward's estate is insufficient to
9 provide for education and the guardian of the ward's person
10 fails to provide education, the court may award the custody of
11 the ward to some other person for the purpose of providing
12 education. If a person makes a settlement upon or provision
13 for the support or education of a ward, the court may make an
14 order for the visitation of the ward by the person making the
15 settlement or provision as the court deems proper. A guardian
16 of the person may not admit a ward to a mental health facility
17 except at the ward's request as provided in Article IV of the
18 Mental Health and Developmental Disabilities Code and unless
19 the ward has the capacity to consent to such admission as
20 provided in Article IV of the Mental Health and Developmental
21 Disabilities Code.

22 (a-3) If a guardian of an estate has not been appointed,
23 the guardian of the person may, without an order of court,
24 open, maintain, and transfer funds to an ABLE account on
25 behalf of the ward and the ward's minor and adult dependent
26 children as specified under Section 16.6 of the State

1 Treasurer Act.

2 (a-5) If the ward filed a petition for dissolution of
3 marriage under the Illinois Marriage and Dissolution of
4 Marriage Act before the ward was adjudicated a person with a
5 disability under this Article, the guardian of the ward's
6 person and estate may maintain that action for dissolution of
7 marriage on behalf of the ward. Upon petition by the guardian
8 of the ward's person or estate, the court may authorize and
9 direct a guardian of the ward's person or estate to file a
10 petition for dissolution of marriage or to file a petition for
11 legal separation or declaration of invalidity of marriage
12 under the Illinois Marriage and Dissolution of Marriage Act on
13 behalf of the ward if the court finds by clear and convincing
14 evidence that the relief sought is in the ward's best
15 interests. In making its determination, the court shall
16 consider the standards set forth in subsection (e) of this
17 Section.

18 (a-10) Upon petition by the guardian of the ward's person
19 or estate, the court may authorize and direct a guardian of the
20 ward's person or estate to consent, on behalf of the ward, to
21 the ward's marriage pursuant to Part II of the Illinois
22 Marriage and Dissolution of Marriage Act if the court finds by
23 clear and convincing evidence that the marriage is in the
24 ward's best interests. In making its determination, the court
25 shall consider the standards set forth in subsection (e) of
26 this Section. Upon presentation of a court order authorizing

1 and directing a guardian of the ward's person and estate to
2 consent to the ward's marriage, the county clerk shall accept
3 the guardian's application, appearance, and signature on
4 behalf of the ward for purposes of issuing a license to marry
5 under Section 203 of the Illinois Marriage and Dissolution of
6 Marriage Act.

7 (b) If the court directs, the guardian of the person shall
8 file with the court at intervals indicated by the court, a
9 report that shall state briefly: (1) the current mental,
10 physical, and social condition of the ward and the ward's
11 minor and adult dependent children; (2) their present living
12 arrangement, and a description and the address of every
13 residence where they lived during the reporting period and the
14 length of stay at each place; (3) a summary of the medical,
15 educational, vocational, and other professional services given
16 to them; (4) a resume of the guardian's visits with and
17 activities on behalf of the ward and the ward's minor and adult
18 dependent children; (5) a recommendation as to the need for
19 continued guardianship; (6) any other information requested by
20 the court or useful in the opinion of the guardian. The Office
21 of the State Guardian shall assist the guardian in filing the
22 report when requested by the guardian. The court may take such
23 action as it deems appropriate pursuant to the report.

24 (c) Absent court order pursuant to the Illinois Power of
25 Attorney Act directing a guardian to exercise powers of the
26 principal under an agency that survives disability, the

1 guardian has no power, duty, or liability with respect to any
2 personal or health care matters covered by the agency. If the
3 Office of State Guardian or a public guardian is appointed,
4 all powers of attorney are suspended under subsection (g-1) of
5 Section 2-10 of the Illinois Power of Attorney Act. This
6 subsection (c) applies to all agencies, whenever and wherever
7 executed.

8 (d) A guardian acting as a surrogate decision maker under
9 the Health Care Surrogate Act shall have all the rights of a
10 surrogate under that Act without court order including the
11 right to make medical treatment decisions such as decisions to
12 forgo or withdraw life-sustaining treatment. Any decisions by
13 the guardian to forgo or withdraw life-sustaining treatment
14 that are not authorized under the Health Care Surrogate Act
15 shall require a court order. Nothing in this Section shall
16 prevent an agent acting under a power of attorney for health
17 care from exercising his or her authority under the Illinois
18 Power of Attorney Act without further court order, unless a
19 court has acted under Section 2-10 of the Illinois Power of
20 Attorney Act. If a guardian is also a health care agent for the
21 ward under a valid power of attorney for health care, the
22 guardian acting as agent may execute his or her authority
23 under that act without further court order.

24 (e) Decisions made by a guardian on behalf of a ward shall
25 be made in accordance with the following standards for
26 decision making. The guardian shall consider the ward's

1 current preferences to the extent the ward has the ability to
2 participate in decision making when those preferences are
3 known or reasonably ascertainable by the guardian. Decisions
4 by the guardian shall conform to the ward's current
5 preferences: (1) unless the guardian reasonably believes that
6 doing so would result in substantial harm to the ward's
7 welfare or personal or financial interests; and (2) so long as
8 such decisions give substantial weight to what the ward, if
9 competent, would have done or intended under the
10 circumstances, taking into account evidence that includes, but
11 is not limited to, the ward's personal, philosophical,
12 religious and moral beliefs, and ethical values relative to
13 the decision to be made by the guardian. Where possible, the
14 guardian shall determine how the ward would have made a
15 decision based on the ward's previously expressed preferences,
16 and make decisions in accordance with the preferences of the
17 ward. If the ward's wishes are unknown and remain unknown
18 after reasonable efforts to discern them, or if the guardian
19 reasonably believes that a decision made in conformity with
20 the ward's preferences would result in substantial harm to the
21 ward's welfare or personal or financial interests, the
22 decision shall be made on the basis of the ward's best
23 interests as determined by the guardian. In determining the
24 ward's best interests, the guardian shall weigh the reason for
25 and nature of the proposed action, the benefit or necessity of
26 the action, the possible risks and other consequences of the

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

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

18 (g)(1) Unless there is a court order to the contrary, the
19 guardian, consistent with the standards set forth in
20 subsection (e) of this Section, shall use reasonable efforts
21 to notify the ward's known adult children, who have requested
22 notification and provided contact information, of the ward's
23 admission to a hospital, hospice, or palliative care program,
24 the ward's death, and the arrangements for the disposition of
25 the ward's remains.

26 (2) If a guardian unreasonably prevents an adult child,

1 spouse, adult grandchild, parent, or adult sibling of the ward
2 from visiting the ward, the court, upon a verified petition,
3 may order the guardian to permit visitation between the ward
4 and the adult child, spouse, adult grandchild, parent, or
5 adult sibling. In making its determination, the court shall
6 consider the standards set forth in subsection (e) of this
7 Section. The court shall not allow visitation if the court
8 finds that the ward has capacity to evaluate and communicate
9 decisions regarding visitation and expresses a desire not to
10 have visitation with the petitioner. This subsection (g) does
11 not apply to duly appointed public guardians or the Office of
12 State Guardian.

13 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22;
14 102-258, eff. 8-6-21; 102-813, eff. 5-13-22.)

15 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

16 Sec. 11a-18. Duties of the estate guardian.

17 (a) To the extent specified in the order establishing the
18 guardianship, the guardian of the estate shall have the care,
19 management and investment of the estate, shall manage the
20 estate frugally and shall apply the income and principal of
21 the estate so far as necessary for the comfort and suitable
22 support and education of the ward, his minor and adult
23 dependent children, and persons related by blood or marriage
24 who are dependent upon or entitled to support from him, or for
25 any other purpose which the court deems to be for the best

1 interests of the ward, and the court may approve the making on
2 behalf of the ward of such agreements as the court determines
3 to be for the ward's best interests. The guardian may make
4 disbursement of his ward's funds and estate directly to the
5 ward or other distributee or in such other manner and in such
6 amounts as the court directs. If the estate of a ward is
7 derived in whole or in part from payments of compensation,
8 adjusted compensation, pension, insurance or other similar
9 benefits made directly to the estate by the Veterans
10 Administration, notice of the application for leave to invest
11 or expend the ward's funds or estate, together with a copy of
12 the petition and proposed order, shall be given to the
13 Veterans' Administration Regional Office in this State at
14 least 7 days before the hearing on the application.

15 (a-5) The probate court, upon petition of a guardian,
16 other than the guardian of a minor, and after notice to all
17 other persons interested as the court directs, may authorize
18 the guardian to exercise any or all powers over the estate and
19 business affairs of the ward that the ward could exercise if
20 present and not under disability. The court may authorize the
21 taking of an action or the application of funds not required
22 for the ward's current and future maintenance and support in
23 any manner approved by the court as being in keeping with the
24 ward's wishes so far as they can be ascertained. The court must
25 consider the permanence of the ward's disabling condition and
26 the natural objects of the ward's bounty. In ascertaining and

1 carrying out the ward's wishes the court may consider, but
2 shall not be limited to, minimization of State or federal
3 income, estate, or inheritance taxes; and providing gifts to
4 charities, relatives, and friends that would be likely
5 recipients of donations from the ward. The ward's wishes as
6 best they can be ascertained shall be carried out, whether or
7 not tax savings are involved. Actions or applications of funds
8 may include, but shall not be limited to, the following:

9 (1) making gifts of income or principal, or both, of
10 the estate, either outright or in trust;

11 (2) conveying, releasing, or disclaiming his or her
12 contingent and expectant interests in property, including
13 marital property rights and any right of survivorship
14 incident to joint tenancy or tenancy by the entirety;

15 (3) releasing or disclaiming his or her powers as
16 trustee, personal representative, custodian for minors, or
17 guardian;

18 (4) exercising, releasing, or disclaiming his or her
19 powers as donee of a power of appointment;

20 (5) entering into contracts;

21 (6) creating for the benefit of the ward or others,
22 revocable or irrevocable trusts of his or her property
23 that may extend beyond his or her disability or life;

24 (7) exercising options of the ward to purchase or
25 exchange securities or other property;

26 (8) exercising the rights of the ward to elect benefit

1 or payment options, to terminate, to change beneficiaries
2 or ownership, to assign rights, to borrow, or to receive
3 cash value in return for a surrender of rights under any
4 one or more of the following:

5 (i) life insurance policies, plans, or benefits,

6 (ii) annuity policies, plans, or benefits,

7 (iii) mutual fund and other dividend investment
8 plans,

9 (iv) retirement, profit sharing, and employee
10 welfare plans and benefits;

11 (9) exercising his or her right to claim or disclaim
12 an elective share in the estate of his or her deceased
13 spouse and to renounce any interest by testate or
14 intestate succession or by inter vivos transfer;

15 (10) changing the ward's residence or domicile; or

16 (11) modifying by means of codicil or trust amendment
17 the terms of the ward's will or any revocable trust
18 created by the ward, as the court may consider advisable
19 in light of changes in applicable tax laws.

20 The guardian in his or her petition shall briefly outline
21 the action or application of funds for which he or she seeks
22 approval, the results expected to be accomplished thereby, and
23 the tax savings, if any, expected to accrue. The proposed
24 action or application of funds may include gifts of the ward's
25 personal property or real estate, but transfers of real estate
26 shall be subject to the requirements of Section 20 of this Act.

1 Gifts may be for the benefit of prospective legatees,
2 devisees, or heirs apparent of the ward or may be made to
3 individuals or charities in which the ward is believed to have
4 an interest. The guardian shall also indicate in the petition
5 that any planned disposition is consistent with the intentions
6 of the ward insofar as they can be ascertained, and if the
7 ward's intentions cannot be ascertained, the ward will be
8 presumed to favor reduction in the incidents of various forms
9 of taxation and the partial distribution of his or her estate
10 as provided in this subsection. The guardian shall not,
11 however, be required to include as a beneficiary or fiduciary
12 any person who he has reason to believe would be excluded by
13 the ward. A guardian shall be required to investigate and
14 pursue a ward's eligibility for governmental benefits.

15 (a-6) The guardian may, without an order of court, open,
16 maintain, and transfer funds to an ABLE account on behalf of
17 the ward and the ward's minor and adult dependent children as
18 specified under Section 16.6 of the State Treasurer Act.

19 (b) Upon the direction of the court which issued his
20 letters, a guardian may perform the contracts of his ward
21 which were legally subsisting at the time of the commencement
22 of the ward's disability. The court may authorize the guardian
23 to execute and deliver any bill of sale, deed or other
24 instrument.

25 (c) The guardian of the estate of a ward shall appear for
26 and represent the ward in all legal proceedings unless another

1 person is appointed for that purpose as guardian or next
2 friend. This does not impair the power of any court to appoint
3 a guardian ad litem or next friend to defend the interests of
4 the ward in that court, or to appoint or allow any person as
5 the next friend of a ward to commence, prosecute or defend any
6 proceeding in his behalf. Without impairing the power of the
7 court in any respect, if the guardian of the estate of a ward
8 and another person as next friend shall appear for and
9 represent the ward in a legal proceeding in which the
10 compensation of the attorney or attorneys representing the
11 guardian and next friend is solely determined under a
12 contingent fee arrangement, the guardian of the estate of the
13 ward shall not participate in or have any duty to review the
14 prosecution of the action, to participate in or review the
15 appropriateness of any settlement of the action, or to
16 participate in or review any determination of the
17 appropriateness of any fees awarded to the attorney or
18 attorneys employed in the prosecution of the action.

19 (d) Adjudication of disability shall not revoke or
20 otherwise terminate a trust which is revocable by the ward. A
21 guardian of the estate shall have no authority to revoke a
22 trust that is revocable by the ward, except that the court may
23 authorize a guardian to revoke a Totten trust or similar
24 deposit or withdrawable capital account in trust to the extent
25 necessary to provide funds for the purposes specified in
26 paragraph (a) of this Section. If the trustee of any trust for

1 the benefit of the ward has discretionary power to apply
2 income or principal for the ward's benefit, the trustee shall
3 not be required to distribute any of the income or principal to
4 the guardian of the ward's estate, but the guardian may bring
5 an action on behalf of the ward to compel the trustee to
6 exercise the trustee's discretion or to seek relief from an
7 abuse of discretion. This paragraph shall not limit the right
8 of a guardian of the estate to receive accountings from the
9 trustee on behalf of the ward.

10 (d-5) Upon a verified petition by the plenary or limited
11 guardian of the estate or the request of the ward that is
12 accompanied by a current physician's report that states the
13 ward possesses testamentary capacity, the court may enter an
14 order authorizing the ward to execute a will or codicil. In so
15 ordering, the court shall authorize the guardian to retain
16 independent counsel for the ward with whom the ward may
17 execute or modify a will or codicil.

18 (e) Absent court order pursuant to the Illinois Power of
19 Attorney Act directing a guardian to exercise powers of the
20 principal under an agency that survives disability, the
21 guardian will have no power, duty or liability with respect to
22 any property subject to the agency. If the Office of State
23 Guardian or a public guardian is appointed, all powers of
24 attorney are suspended under subsection (g-1) of Section 2-10
25 of the Illinois Power of Attorney Act. This subsection (e)
26 applies to all agencies, whenever and wherever executed.

1 (f) Upon petition by any interested person (including the
2 standby or short-term guardian), with such notice to
3 interested persons as the court directs and a finding by the
4 court that it is in the best interests of the person with a
5 disability, the court may terminate or limit the authority of
6 a standby or short-term guardian or may enter such other
7 orders as the court deems necessary to provide for the best
8 interests of the person with a disability. The petition for
9 termination or limitation of the authority of a standby or
10 short-term guardian may, but need not, be combined with a
11 petition to have another guardian appointed for the person
12 with a disability.

13 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22.)

14 Section 15. The Illinois Power of Attorney Act is amended
15 by changing Section 2-10 as follows:

16 (755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

17 Sec. 2-10. Agency-court relationship.

18 (a) Upon petition by any interested person, notice to the
19 agent, principal, and interested persons as the court directs
20 and a finding by the court that the principal lacks either the
21 capacity to control or the capacity to revoke the agency, the
22 court may construe a power of attorney, review the agent's
23 conduct, and grant appropriate relief including compensatory
24 damages.

1 (b) If the court finds that the agent is not acting for the
2 benefit of the principal in accordance with the terms of the
3 agency or that the agent's action or inaction, including
4 restricting or not allowing an interested person to have
5 reasonable visitation with the principal, has caused or
6 threatens substantial harm to the principal's person or
7 property in a manner not authorized or intended by the
8 principal, the court may order a guardian of the principal's
9 person or estate to exercise any powers of the principal under
10 the agency, including the power to revoke the agency, or may
11 enter such other orders without appointment of a guardian as
12 the court deems necessary to provide for the best interests of
13 the principal.

14 (c) If the court finds that the agency requires
15 interpretation, the court may construe the agency and instruct
16 the agent, but the court may not amend the agency.

17 (d) If the court finds that the agent has not acted for the
18 benefit of the principal in accordance with the terms of the
19 agency and the Illinois Power of Attorney Act, or that the
20 agent's action caused or threatened substantial harm to the
21 principal's person or property in a manner not authorized or
22 intended by the principal, then the agent shall not be
23 authorized to pay or be reimbursed from the estate of the
24 principal the attorneys' fees and costs of the agent in
25 defending a proceeding brought pursuant to this Section.

26 (e) Upon a finding that the agent's action has caused

1 substantial harm to the principal's person or property, the
2 court may assess against the agent reasonable costs and
3 attorney's fees to a prevailing party who is a provider agency
4 as defined in Section 2 of the Adult Protective Services Act, a
5 representative of the Office of the State Long Term Care
6 Ombudsman, the State Guardian, a public guardian, or a
7 governmental agency having regulatory authority to protect the
8 welfare of the principal.

9 (f) As used in this Section, the term "interested person"
10 includes (1) the principal or the agent; (2) a guardian of the
11 person, guardian of the estate, or other fiduciary charged
12 with management of the principal's property; (3) the
13 principal's spouse, parent, or descendant; (4) a person who
14 would be a presumptive heir-at-law of the principal; (5) a
15 person named as a beneficiary to receive any property,
16 benefit, or contractual right upon the principal's death, or
17 as a beneficiary of a trust created by or for the principal;
18 (6) a provider agency as defined in Section 2 of the Adult
19 Protective Services Act, a representative of the Office of the
20 State Long Term Care Ombudsman, the State Guardian, a public
21 guardian, or a governmental agency having regulatory authority
22 to protect the welfare of the principal; and (7) the
23 principal's caregiver or another person who demonstrates
24 sufficient interest in the principal's welfare.

25 (g) Except as provided in subsection (g-1) of this
26 Section, absent ~~Absent~~ court order directing a guardian to

1 exercise powers of the principal under the agency, a guardian
2 will have no power, duty or liability with respect to any
3 property subject to the agency or any personal or health care
4 matters covered by the agency. If an agent seeks guardianship
5 of the principal pursuant to the Probate Act of 1975, the
6 petition for guardianship must delineate the specific powers
7 to be granted to the guardian that are not already included in
8 the power of attorney. The petition for temporary, limited, or
9 plenary guardianship of the principal under the Probate Act of
10 1975 may include a prayer for relief to suspend a power of
11 attorney or to revoke a power of attorney in accordance with
12 subsection (b).

13 (g-1) If the Office of State Guardian or a public guardian
14 is appointed as temporary, limited, or plenary guardian of the
15 principal, any powers of attorney are suspended. Any suspended
16 agent or other interested person may seek reinstatement of a
17 suspended agency in the guardianship proceeding by showing the
18 reinstatement is in the best interests of the principal or
19 with the agreement of the Office of State Guardian or the
20 public guardian.

21 (h) Proceedings under this Section shall be commenced in
22 the county where the guardian was appointed or, if no Illinois
23 guardian is acting, then in the county where the agent or
24 principal resides or where the principal owns real property.

25 (i) This Section shall not be construed to limit any other
26 remedies available.

1 (Source: P.A. 102-72, eff. 1-1-22; 103-55, eff. 1-1-24.)".