



Rep. Martha Deuter

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10400HB3811ham001

LRB104 10924 JRC 35569 a

1 AMENDMENT TO HOUSE BILL 3811

2 AMENDMENT NO. _____. Amend House Bill 3811 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Sections 11a-5, 11a-15, and 23-2 and by adding Section 11a-26
6 as follows:

7 (755 ILCS 5/11a-5) (from Ch. 110 1/2, par. 11a-5)

8 Sec. 11a-5. Who may act as guardian.

9 (a) A person is qualified to act as guardian of the person
10 and as guardian of the estate of a person with a disability if
11 the court finds that the proposed guardian is capable of
12 providing an active and suitable program of guardianship for
13 the person with a disability and that the proposed guardian:

14 (1) has attained the age of 18 years;

15 (2) is a resident of the United States;

16 (3) is not of unsound mind;

1 (4) is not an adjudged person with a disability as
2 defined in this Act; and

3 (5) has not been convicted of a felony, unless the
4 court finds appointment of the person convicted of a
5 felony to be in the best interests of the person with a
6 disability, and as part of the best interests
7 determination, the court has considered the nature of the
8 offense, the date of offense, and the evidence of the
9 proposed guardian's rehabilitation. No person shall be
10 appointed who has been convicted of a felony involving
11 harm or threat to a minor or an elderly person or a person
12 with a disability, including a felony sexual offense.

13 (b) Any public agency, private professional guardian as
14 defined in Section 11a-26, or not-for-profit corporation found
15 capable by the court of providing an active and suitable
16 program of guardianship for the person with a disability,
17 taking into consideration the nature of such person's
18 disability and the nature of such organization's services, may
19 be appointed guardian of the person or of the estate, or both,
20 of the person with a disability. The court shall not appoint as
21 guardian an agency or employee of an agency that is directly
22 providing residential services to the ward. One person or
23 agency may be appointed guardian of the person and another
24 person or agency appointed guardian of the estate.

25 (b-5) (1) The court may appoint separate individuals or
26 entities that are qualified to act as guardian under

1 subsection (b) or (c) to act as the guardian of the person and
2 the guardian of the estate of a person with a disability if the
3 court finds it is in the best interests of the person with a
4 disability that separate guardians be appointed. The court
5 shall not appoint a separate person or entity to act as
6 guardian of the person or guardian of the estate with a public
7 guardian or the Office of State Guardian unless the public
8 guardian or the Office of State Guardian agrees to such an
9 appointment.

10 (2) The court may appoint co-guardians to act as guardian
11 of the person, guardian of the estate, or both the guardian of
12 the person and the guardian of the estate if the court finds it
13 is in the best interests of the person with a disability. When
14 considering appointing co-guardians, the court shall consider
15 the proposed co-guardians' history of cooperating and working
16 together on behalf of the person with a disability. The court
17 shall appoint only co-guardians who agree to serve together.
18 The court shall not appoint a public guardian or the Office of
19 State Guardian as a co-guardian for a person with a
20 disability.

21 (c) Any corporation qualified to accept and execute trusts
22 in this State may be appointed guardian or limited guardian of
23 the estate of a person with a disability.

24 (Source: P.A. 102-72, eff. 1-1-22.)

25 (755 ILCS 5/11a-15) (from Ch. 110 1/2, par. 11a-15)

1 Sec. 11a-15. Successor guardian.

2 (a) Upon the death, incapacity, resignation, or removal of
3 a guardian of the estate or person of a living ward, the court
4 shall appoint a successor guardian or terminate the
5 adjudication of disability. The powers and duties of the
6 successor guardian shall be the same as those of the
7 predecessor guardian unless otherwise modified.

8 (b) Notice of the time and place of the hearing on a
9 petition for the appointment of a successor guardian shall be
10 given not less than 3 days before the hearing for a successor
11 to a temporary guardian and not less than 14 days before the
12 hearing for a successor to a limited or plenary guardian. The
13 notice shall be by mail or in person to the alleged person with
14 a disability, to the proposed successor guardian, and to those
15 persons whose names and addresses are listed in the petition
16 for adjudication of disability and appointment of a guardian
17 under Section 11a-8. The court, upon a finding of good cause,
18 may waive the notice requirement under this Section.

19 (c) In addition to the notice requirement in subsection
20 (b), a private professional guardian serving as limited or
21 plenary guardian of a person with a disability shall provide
22 the court and the Office of State Guardian or a public guardian
23 with at least 120 days' written notice of its intent to file a
24 petition for the appointment of the Office of State Guardian
25 or public guardian as successor guardian for a person with a
26 disability.

1 (Source: P.A. 103-740, eff. 1-1-25; 104-417, eff. 8-15-25.)

2 (755 ILCS 5/11a-26 new)

3 Sec. 11a-26. Private professional guardian.

4 (a) As used in this Act, "private professional guardian"
5 means:

6 (1) a person or entity who receives compensation for
7 services as a guardian to 5 or more persons with
8 disabilities who are not related to the guardian by blood
9 or marriage; or

10 (2) a not-for-profit corporation qualified to act as
11 guardian under Section 11a-5, including that corporation's
12 officers, directors, and employees.

13 "Private professional guardian" does not include a
14 government agency, the Office of State Guardian, a public
15 guardian, a corporation qualified to accept and execute trusts
16 in this State, or a financial institution as defined by
17 Section 2 of the Illinois Banking Act.

18 (b) A petitioner who nominates a private professional
19 guardian to be appointed as temporary, limited, or plenary
20 guardian for a person with a disability shall attach an
21 affidavit to the petition for guardianship detailing the
22 petitioner's efforts at locating and contacting the
23 respondent's nearest relatives as defined in subsection (e) of
24 Section 11a-8, agent under power of attorney, or other
25 fiduciaries regarding the need for the appointment of a

1 guardian. If the petitioner is unsuccessful in locating and
2 contacting the respondent's nearest relatives, agent under
3 power of attorney, or other fiduciaries, the petitioner shall
4 provide notice of the petition for guardianship to the county
5 public guardian. This subsection does not apply if a family
6 member of the respondent nominates a private professional
7 guardian.

8 (c) A private professional guardian may be appointed as
9 guardian if, in addition to meeting the requirements of
10 subsection (a) or (b) of Section 11a-5, that guardian complies
11 with the following requirements:

12 (1) Before being appointed as guardian for a person
13 with a disability, the private professional guardian shall
14 certify, in open court or by affidavit: (i) that the
15 private professional guardian has personally met with and
16 assessed the respondent; (ii) that it is in the best
17 interests of the respondent that a guardian be appointed
18 and what is the least restrictive form of guardianship
19 that is appropriate; and (iii) an initial evaluation of
20 options regarding the respondent's living arrangements
21 including community-based, least restrictive living
22 settings that incorporate the respondent's values,
23 preferences, and known wishes.

24 (2) The president, director, or other corporate
25 officer of a not-for-profit corporation qualified to act
26 as guardian in accordance with subsection (b) of Section

1 11a-5 shall be named in the order appointing that private
2 professional guardian as guardian of a person with a
3 disability.

4 (3) A private professional guardian may not:

5 (i) have any direct or indirect beneficial
6 interest, financial or otherwise, in entities or
7 corporations that transact business with the estate or
8 receive benefits, including referral fees, from
9 persons, entities, or corporations that transact
10 business with the estate or on behalf of the person
11 under its guardianship;

12 (ii) own, acquire, or possess any pecuniary
13 interest adverse to the persons or estates under its
14 guardianship; or

15 (iii) on behalf of a person with a disability
16 under its guardianship, directly or indirectly
17 purchase, rent, lease, or sell any property or service
18 from or to any business entity in which the private
19 professional guardian, a spouse, or an immediate
20 family or household member is an owner, officer,
21 partner, director, shareholder, or retains a financial
22 interest.

23 (4) Certification. A person or the president,
24 director, or other corporate officer of a not-for-profit
25 corporation who serves as a private professional guardian
26 shall be certified as a national master guardian by the

1 Center for Guardianship Certification. Employees of the
2 private professional guardian who are responsible for
3 exercising the guardian's powers and duties as guardian of
4 a person with a disability shall be certified as national
5 certified guardians by the Center for Guardianship
6 Certification.

7 (5) Use sound fiscal controls and policies in managing
8 the estates under its guardianship and arrange for an
9 independent audit by a qualified examiner of its financial
10 records on an annual basis. This report shall be made
11 available to any court presiding over any persons with
12 disabilities for whom the private professional guardian
13 serves as guardian.

14 (6) File an annual sworn statement affirming continued
15 compliance with paragraph (3) of subsection (c) of Section
16 11a-26.

17 (7) Maintain a current fee schedule that sets forth
18 information about its hourly rate, costs for its most
19 common and anticipated services such as case management,
20 social work, property management, and such other services
21 as may be appropriate. The fee schedule shall also include
22 the anticipated hourly cost for legal services for the
23 private professional guardian and the annual rate of
24 compensation of its owners, president, directors, and
25 corporate officers. The fee schedule shall be provided to
26 the court before the appointment of the private

1 professional guardian as guardian of a person with a
2 disability.

3 (8) Upon presentation of its initial inventory and
4 with every annual account thereafter, file a budget with
5 the court that outlines the annual anticipated estate
6 expenses that also includes a statement estimating the
7 length of time the estate of the person with a disability
8 can afford the services of the private professional
9 guardian before the estate is depleted.

10 (i) If a private professional guardian estimates
11 that the estate of the person with a disability can
12 afford the services of the private professional
13 guardian for 36 months or less before the estate is
14 depleted and the person with a disability is living at
15 home, then the private professional guardian shall
16 forgo or delay the collection of court-awarded fees
17 until the person with a disability is clinically
18 unable to remain at home or until it is not financially
19 feasible, for reasons other than the collection of
20 court-awarded fees, for the person with a disability
21 to remain at home. The private professional guardian
22 may petition the court to reduce or waive the 36-month
23 no fee collection period by showing that it is in the
24 best interests of the person with a disability for the
25 private professional guardian to collect the full or
26 partial amount of court-awarded fees.

1 (ii) The private professional guardian shall
2 promptly notify the court at such time that it
3 estimates the estate of the person with a disability
4 can afford the services of the private professional
5 guardian for 36 months or less. Upon providing the
6 notification, the private professional guardian shall
7 also present a transition plan for the guardianship of
8 the person with a disability.

9 (d) Upon appointment and annually thereafter, a private
10 professional guardian acting as temporary, limited, or plenary
11 guardian of a person with a disability shall file an affidavit
12 with the court stating that all of its officers, directors,
13 and employees who are responsible for exercising the
14 guardian's powers and duties as guardian of a person with a
15 disability have, within 5 years of the affidavit filing date,
16 undergone an Illinois State Police background check. This
17 background check shall include a State criminal history, a
18 national criminal history, and the Child Abuse and Neglect
19 Tracking System and be found to be in compliance with
20 paragraph (5) of subsection (a) of Section 11a-5. The private
21 professional guardian shall pay any fees and costs associated
22 with the background checks.

23 (e) In addition to taking into consideration the
24 requirements set forth in this Section and in Section 11a-12,
25 the court may only appoint a private professional guardian as
26 guardian for a person with a disability upon a finding that the

1 appointment is in the best interests of the person with a
2 disability, taking into consideration the costs to the estate
3 in appointing a private professional guardian as compared to
4 other available and appropriate options.

5 (755 ILCS 5/23-2) (from Ch. 110 1/2, par. 23-2)

6 Sec. 23-2. Removal.

7 (a) On petition of any interested person or on the court's
8 own motion, the court may remove a representative if:

9 (1) the representative is acting under letters secured
10 by false pretenses;

11 (2) the representative is adjudged a person subject to
12 involuntary admission under the Mental Health and
13 Developmental Disabilities Code or is adjudged a person
14 with a disability;

15 (3) the representative is convicted of a felony;

16 (4) the representative wastes or mismanages the
17 estate;

18 (5) the representative conducts himself or herself in
19 such a manner as to endanger any co-representative or the
20 surety on the representative's bond;

21 (6) the representative fails to give sufficient bond
22 or security, counter security or a new bond, after being
23 ordered by the court to do so;

24 (7) the representative fails to file an inventory or
25 accounting after being ordered by the court to do so;

1 (8) the representative conceals himself or herself so
2 that process cannot be served upon the representative or
3 notice cannot be given to the representative;

4 (9) the representative becomes incapable of or
5 unsuitable for the discharge of the representative's
6 duties; ~~or~~

7 (10) the representative is a private professional
8 guardian that fails to comply with the requirements of
9 Section 11a-26; or

10 (11) ~~(10)~~ there is other good cause.

11 (b) If the representative becomes a nonresident of the
12 United States, the court may remove the representative as such
13 representative.

14 (Source: P.A. 99-143, eff. 7-27-15.)".