



## 104TH GENERAL ASSEMBLY

### State of Illinois

2025 and 2026

HB5278

Introduced 2/10/2026, by Rep. Bob Morgan

#### SYNOPSIS AS INTRODUCED:

755 ILCS 45/2-10  
755 ILCS 5/11a-8

from Ch. 110 1/2, par. 802-10  
from Ch. 110 1/2, par. 11a-8

Amends the Illinois Power of Attorney Act. Provides that a power of attorney not otherwise invalidated or revoked is suspended on the appointment of the Office of State Guardian or public guardian as a temporary, limited, or plenary guardian of the principal. Provides that after the appointment the court may revoke a power of attorney only if the named agent or successor agent under the power of attorney received notice of a petition for guardianship of the principal in accordance with the Probate Act of 1975, and that the agent failed to assert authority as agent before appointment of the Office of State Guardian or public guardian. Provides that if an agent or successor agent under a power of attorney does not receive notice of the petition for guardianship of the principal or an individual does not know that the individual was named as an agent or successor agent under a power of attorney for the principal, that agent, successor agent, or individual may petition the court presiding over the guardianship to lift the suspension of the agency upon a showing by clear and convincing evidence that it is in the principal's best interests to reinstate the agency so that the agent, successor agent, or individual may act in accordance with the terms of the agency. Provides that notice of a petition to lift the suspension of the agency and a copy of the petition shall be given to the guardian, the person with a disability, to those persons whose names and addresses are listed in the petition for guardianship under the Probate Act of 1975, and any guardian ad litem not less than 14 days before the hearing.

LRB104 18244 JRC 31683 b

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 Illinois Power of Attorney Act is amended  
5 by changing Section 2-10 as follows:

6 (755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

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

8 (a) Upon petition by any interested person, notice to the  
9 agent, principal, and interested persons as the court directs  
10 and a finding by the court that the principal lacks either the  
11 capacity to control or the capacity to revoke the agency, the  
12 court may construe a power of attorney, review the agent's  
13 conduct, and grant appropriate relief including compensatory  
14 damages.

15 (b) If the court finds that the agent is not acting for the  
16 benefit of the principal in accordance with the terms of the  
17 agency or that the agent's action or inaction, including  
18 restricting or not allowing an interested person to have  
19 reasonable visitation with the principal, has caused or  
20 threatens substantial harm to the principal's person or  
21 property in a manner not authorized or intended by the  
22 principal, the court may order a guardian of the principal's  
23 person or estate to exercise any powers of the principal under

1 the agency, including the power to revoke the agency, or may  
2 enter such other orders without appointment of a guardian as  
3 the court deems necessary to provide for the best interests of  
4 the principal.

5 (c) If the court finds that the agency requires  
6 interpretation, the court may construe the agency and instruct  
7 the agent, but the court may not amend the agency.

8 (d) If the court finds that the agent has not acted for the  
9 benefit of the principal in accordance with the terms of the  
10 agency and the Illinois Power of Attorney Act, or that the  
11 agent's action caused or threatened substantial harm to the  
12 principal's person or property in a manner not authorized or  
13 intended by the principal, then the agent shall not be  
14 authorized to pay or be reimbursed from the estate of the  
15 principal the attorneys' fees and costs of the agent in  
16 defending a proceeding brought pursuant to this Section.

17 (e) Upon a finding that the agent's action has caused  
18 substantial harm to the principal's person or property, the  
19 court may assess against the agent reasonable costs and  
20 attorney's fees to a prevailing party who is a provider agency  
21 as defined in Section 2 of the Adult Protective Services Act, a  
22 representative of the Office of the State Long Term Care  
23 Ombudsman, the State Guardian, a public guardian, or a  
24 governmental agency having regulatory authority to protect the  
25 welfare of the principal.

26 (f) As used in this Section, the term "interested person"

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

16 (g) Absent court order directing a guardian to exercise  
17 powers of the principal under the agency, a guardian will have  
18 no power, duty or liability with respect to any property  
19 subject to the agency or any personal or health care matters  
20 covered by the agency. If an agent seeks guardianship of the  
21 principal pursuant to the Probate Act of 1975, the petition  
22 for guardianship must delineate the specific powers to be  
23 granted to the guardian that are not already included in the  
24 power of attorney. The petition for temporary, limited, or  
25 plenary guardianship of the principal under the Probate Act of  
26 1975 may include a prayer for relief to suspend a power of

1 attorney or to revoke a power of attorney in accordance with  
2 subsection (b).

3 (g-1) Any powers of attorney not otherwise invalidated or  
4 revoked in accordance with this Section are suspended upon the  
5 appointment of the Office of State Guardian or public guardian  
6 as a temporary, limited, or plenary guardian of the principal.  
7 Upon such an appointment, the court may revoke a power of  
8 attorney only if the named agent or successor agent under the  
9 power of attorney received notice of a petition for  
10 guardianship of the principal in accordance with Section 11a-4  
11 or Section 11a-8 of the Probate Act of 1975, and that agent  
12 failed to assert authority as agent before appointment of the  
13 Office of State Guardian or public guardian. If an agent or  
14 successor agent under a power of attorney does not receive  
15 notice of the petition for guardianship of the principal or an  
16 individual does not know about being named as an agent or  
17 successor agent under a power of attorney for the principal,  
18 that agent, successor agent, or individual may petition the  
19 court presiding over the guardianship of the principal to lift  
20 the suspension of the agency upon a showing by clear and  
21 convincing evidence that it is in the principal's best  
22 interests to reinstate the agency so that the agent, successor  
23 agent, or individual may act in accordance with the terms of  
24 the agency. Notice of a petition to lift the suspension of the  
25 agency and a copy of the petition shall be given to the  
26 guardian, the person with a disability, and to those persons

1 whose names and addresses are listed in the petition for  
2 guardianship under Section 11a-8 of the Probate Act of 1975,  
3 and any guardian ad litem not less than 14 days before the  
4 hearing.

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

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

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

12 Section 10. The Probate Act of 1975 is amended by changing  
13 Section 11a-8 as follows:

14 (755 ILCS 5/11a-8) (from Ch. 110 1/2, par. 11a-8)

15 Sec. 11a-8. Petition. The petition for adjudication of  
16 disability and for the appointment of a guardian of the estate  
17 or the person or both of an alleged person with a disability  
18 must state, if known or reasonably ascertainable: (a) the  
19 relationship and interest of the petitioner to the respondent;  
20 (b) the name, date of birth, and place of residence of the  
21 respondent; (c) the reasons for the guardianship; (d) the name  
22 and post office address of the respondent's guardian, if any,  
23 (d-1) the name and address ~~or~~ of the respondent's agent or  
24 agents appointed under the Illinois Power of Attorney Act, if

1 any, and, if no agent is identified or address provided, that  
2 diligent inquiry was made to learn this information and the  
3 specific steps taken; (e) the name and post office addresses  
4 of the nearest relatives of the respondent in the following  
5 order: (1) the spouse and adult children, parents and adult  
6 brothers and sisters, if any; if none, (2) nearest adult  
7 kindred known to the petitioner; (f) the name and address of  
8 the person with whom or the facility in which the respondent is  
9 residing; (g) the approximate value of the personal and real  
10 estate; (h) the amount of the anticipated annual gross income  
11 and other receipts; (i) the name, post office address and in  
12 case of an individual, the age, relationship to the respondent  
13 and occupation of the proposed guardian. In addition, if the  
14 petition seeks the appointment of a previously appointed  
15 standby guardian as guardian of the person with a disability,  
16 the petition must also state: (j) the facts concerning the  
17 standby guardian's previous appointment and (k) the date of  
18 death of the guardian of the person with a disability or the  
19 facts concerning the consent of the guardian of the person  
20 with a disability to the appointment of the standby guardian  
21 as guardian, or the willingness and ability of the guardian of  
22 the person with a disability to make and carry out day-to-day  
23 care decisions concerning the person with a disability. A  
24 petition for adjudication of disability and the appointment of  
25 a guardian of the estate or the person or both of an alleged  
26 person with a disability may not be dismissed or withdrawn

1 without leave of the court. A petitioner who seeks to revoke or  
2 construe a power of attorney for the alleged person with a  
3 disability, or review the agent's conduct, shall do so in  
4 conformity with the Illinois Power of Attorney Act, and as set  
5 forth in subsection (c) of Section 11a-17 and subsection (e)  
6 of Section 11a-18 of this Act.

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