

AN ACT concerning civil law.

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

Section 5. The Probate Act of 1975 is amended by changing Section 11-5 as follows:

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

Sec. 11-5. Appointment of guardian.

(a) Upon the filing of a petition for the appointment of a guardian or on its own motion, the court may appoint a guardian of the estate or of both the person and estate, of a minor, or may appoint a guardian of the person only of a minor or minors, as the court finds to be in the best interest of the minor or minors.

(a-1) A parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, may designate in any writing, including a will, a person qualified to act under Section 11-3 to be appointed as guardian of the person or estate, or both, of an unmarried minor or of a child likely to be born. A parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, or a guardian or a standby guardian of an unmarried minor or of a child likely to be born may designate in any writing, including a will, a person qualified to act under Section 11-3 to be

appointed as successor guardian of the minor's person or estate, or both. The designation must be witnessed by 2 or more credible witnesses at least 18 years of age, neither of whom is the person designated as the guardian. The designation may be proved by any competent evidence. If the designation is executed and attested in the same manner as a will, it shall have prima facie validity. The designation of a guardian or successor guardian does not affect the rights of the other parent in the minor.

(b) The court lacks jurisdiction to proceed on a petition for the appointment of a guardian of a minor if it finds that (i) the minor has a living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to make and carry out day-to-day child care decisions concerning the minor, unless: (1) the parent or parents voluntarily relinquished physical custody of the minor; (2) after receiving notice of the hearing under Section 11-10.1, the parent or parents fail to object to the appointment at the hearing on the petition; (3) the parent or parents consent to the appointment as evidenced by a written document that has been notarized and dated, or by a personal appearance and consent in open court; or (4) the parent or parents, due to an administrative separation, are unable to give consent to the appointment in person or by a notarized, written document as evidenced by a sworn affidavit submitted by the petitioner

describing the parent's or parents' inability to receive notice or give consent; or (ii) there is a guardian for the minor appointed by a court of competent jurisdiction. There shall be a rebuttable presumption that a parent of a minor is willing and able to make and carry out day-to-day child care decisions concerning the minor, but the presumption may be rebutted by a preponderance of the evidence. If a short-term guardian has been appointed for the minor prior to the filing of the petition and the petitioner for guardianship is not the short-term guardian, there shall be a rebuttable presumption that it is in the best interest of the minor to remain in the care of the short-term guardian. The petitioner shall have the burden of proving by a preponderance of the evidence that it is not in the child's best interest to remain with the short-term guardian.

(b-1) If the court finds the appointment of a guardian of the minor to be in the best interest of the minor, and if a standby guardian has previously been appointed for the minor under Section 11-5.3, the court shall appoint the standby guardian as the guardian of the person or estate, or both, of the minor unless the court finds, upon good cause shown, that the appointment would no longer be in the best interest of the minor.

(b-2) No petition for the appointment of a guardian of a minor shall be filed if the primary purpose of the filing is to reduce the financial resources available to the minor in order

to cause the minor to qualify for public or private financial assistance from an educational institution. The court may deny the petition if it finds by a preponderance of the evidence that the primary purpose of the filing is to enable the minor to declare financial independence so that the minor may obtain public or private financial assistance from an educational institution or a State or federal student financial aid program.

(c) If the minor is 14 years of age or more, the minor may nominate the guardian of the minor's person and estate, subject to approval of the court. If the minor's nominee is not approved by the court or if, after notice to the minor, the minor fails to nominate a guardian of the minor's person or estate, the court may appoint the guardian without nomination.

(d) The court shall not appoint as guardian of the person of the minor any person whom the court has determined had caused or substantially contributed to the minor becoming a neglected or abused minor as defined in the Juvenile Court Act of 1987, unless 2 years have elapsed since the last proven incident of abuse or neglect and the court determines that appointment of such person as guardian is in the best interests of the minor.

(e) Previous statements made by the minor relating to any allegations that the minor is an abused or neglected child within the meaning of the Abused and Neglected Child Reporting Act, or an abused or neglected minor within the meaning of the

Juvenile Court Act of 1987, shall be admissible in evidence in a hearing concerning appointment of a guardian of the person or estate of the minor. No such statement, however, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect. (Source: P.A. 101-120, eff. 7-23-19.)

Section 10. The Educational Planning Services Consumer Protection Act is amended by changing Sections 10, 15, 20, 25, 30, 40, and 90 as follows:

(815 ILCS 616/10)

Sec. 10. Purpose and construction. The purpose of this Act is to protect consumers who enter into agreements with educational planning service providers ~~and to regulate educational planning service providers~~. This Act shall be construed as a consumer protection law for all purposes. This Act shall be liberally construed to effectuate its purpose. (Source: P.A. 102-571, eff. 1-1-22.)

(815 ILCS 616/15)

Sec. 15. Definitions. As used in this Act:

"Consumer" means any person who purchases or contracts for the purchase of educational planning services.

"Educational planning services" means college and career preparatory planning services, including, but not limited to,

advice regarding and assistance with college and career searches; college application preparation or submission; financial aid application planning, preparation, or submission; and scholarship searches and applications.

"Educational planning service provider" means any person or entity engaging in or holding itself out as engaging in the business of providing educational planning services in exchange for any fee or compensation, or any person who solicits or acts on behalf of any person or entity engaging in or holding itself out as engaging in the business of providing educational planning services in exchange for any fee or compensation. "Educational planning service provider" does not include any of the following:

(1) An ~~A not for profit or public~~ institution of higher learning, as defined in the Higher Education Student Assistance Act, and the individuals employed by that institution where educational planning services are provided as part of the financial aid or career counseling services offered by the institution.

(2) Public entities and their officers while acting in their official capacities.

(3) Persons acting on behalf of a consumer under court order or as a legal representative.

"Enrollment fee" or "set up fee" means any fee, obligation, or compensation paid or to be paid by the consumer to an educational planning service provider in consideration

of or in connection with establishing a contract or other agreement with a consumer related to the provision of educational planning services.

"Maintenance fee" means any fee, obligation, or compensation paid or to be paid by the consumer on a periodic basis to an educational planning service provider in consideration for maintaining the relationship and services to be provided by the educational planning service provider in accordance with a contract with a consumer related to the provision of educational planning services.

(Source: P.A. 102-571, eff. 1-1-22.)

(815 ILCS 616/20)

Sec. 20. Prohibitions and requirements.

(a) It shall be unlawful for any person or entity to act as an educational planning service provider unless it remains in compliance with ~~except as authorized by~~ this Act.

(b) An educational planning service provider may not provide educational planning services to a consumer for a fee without a written contract signed and dated by both the consumer and the educational planning service provider. A contract between an educational planning service provider and a consumer for the provision of educational planning services shall disclose clearly and conspicuously all of the following:

- (1) The name and address of the consumer.
- (2) The date of execution of the contract.

(3) The legal name of the educational planning service provider, including any other business names used by the educational planning service provider.

(4) The corporate address and regular business address, including a street address, of the educational planning service provider.

(5) The telephone number at which the consumer may speak with a representative of the educational planning service provider during normal business hours.

(6) A description of the services and an itemized list of all fees to be paid by the consumer for each service and the date, approximate date, or circumstances under which each fee will become due.

(7) The contents of the Consumer Notice and Rights Form provided in Section 25 of this Act.

(8) A written notice to the consumer that the consumer may cancel the contract at any time until after the educational planning service provider has fully performed each service the educational planning service provider contracted to perform or represented he or she would perform and that the consumer may not be required to pay for services the consumer did not receive and shall be entitled to a full refund of any fees paid for educational planning services not provided.

(9) A form the consumer may use to cancel the contract pursuant to this Act. The form shall include the name and



mailing address of the educational planning service provider and shall disclose clearly and conspicuously how the consumer can cancel the contract, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the consumer can use to cancel the contract. Notwithstanding any other provision of this paragraph (9) to the contrary, a consumer's lack of strict adherence to an educational planning service provider's cancellation form or processes does not invalidate a consumer's good faith and reasonable method or form of cancellation.

(c) If an educational planning service provider communicates with a consumer primarily in a language other than English, then the educational planning service provider shall furnish to the consumer a translation of all the disclosures and documents required by this Act, including, but not limited to, the contract, in that other language.

(d) An educational planning service provider may not charge or receive from a consumer any enrollment fee, set up fee, up-front fee of any kind, or maintenance fee, and a consumer shall pay only for the educational planning services provided.

(e) An educational planning service provider may not do any of the following:

(1) Represent, expressly or by implication, any results or outcomes of its educational planning services

in any advertising, marketing, or other communication to consumers unless the educational planning service provider possesses substantiation for such representation at the time such representation is made.

(2) Expressly or by implication, make any unfair or deceptive representations or any omissions of material facts in any of its advertising or marketing communications concerning educational planning services.

(3) Advertise or market educational planning services, enter into a contract for educational planning services, or provide educational planning services without making the disclosures required in this Act at the times and in the form and manner as described in this Act.

(4) Advise about or represent, expressly or by implication, any unlawful services to be provided or fees to be collected by the educational planning service provider.

(5) Advise or represent, expressly or by implication, that consumers pay any fees that are unearned by the educational planning service provider.

(6) Advise, encourage, or represent, expressly or by implication, that a consumer provide false or misleading information about financial or other circumstances to gain admission into a higher education institution or to be eligible for student financial aid, including, but not limited to, advising a consumer to petition for the

appointment of a guardian for a minor for the primary purpose of reducing the financial resources available to the minor in order to cause the minor to qualify for public or private financial aid.

(Source: P.A. 102-571, eff. 1-1-22.)

(815 ILCS 616/25)

Sec. 25. Required disclosures.

(a) In any marketing or advertising communications, an education planning service provider must provide the following disclosure verbatim, both orally and in writing, with the caption:

CONSUMER NOTICE OF AVAILABILITY  
OF FREE ~~THESE~~ SERVICES ~~FOR FREE~~

General educational ~~Educational~~ planning services may be available ~~of this type are provided~~ free of charge from ~~at no cost to you by~~ the Illinois Student Assistance Commission and may also be offered by other public or not-for-profit entities, such as a public library or an institution of higher learning.

(b) An educational planning service provider must provide the following warning verbatim, both orally and in writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in at least 18-point ~~28-point~~ font and the remaining portion in at least

12-point ~~14-point~~ font, to a consumer before the consumer signs a contract for the educational planning service provider's services:

CONSUMER NOTICE AND RIGHTS FORM

AVAILABILITY OF FREE ~~THESE~~ SERVICES ~~FOR FREE~~

General educational ~~Educational~~ planning services may be available ~~of this type are provided~~ free of charge from ~~at no cost to you by~~ the Illinois Student Assistance Commission and may be offered by other public or not-for-profit entities, such as a public library or an institution of higher learning.

YOUR RIGHT TO CANCEL

If you sign a contract with an educational planning service provider, you have the right to cancel at any time and receive a full refund of all unearned fees you have paid to the provider. You will not be responsible for payment of services that are not fully performed.

IF YOU ARE DISSATISFIED OR YOU HAVE QUESTIONS

If you are dissatisfied with an educational planning service provider or have any questions, please bring it to the attention of the Illinois Attorney General's Office.

(c) The educational planning service provider must maintain proof that it has provided to the consumer the Consumer Notice and Rights Form in accordance with subsection (b) of this Section.

(d) The consumer shall sign and date an acknowledgment form titled "Consumer Notice and Rights Form" that states: "I, the consumer, have received from the educational planning service provider a copy of the form titled "Consumer Notice and Rights Form," and I have been provided the Illinois Student Assistance Commission's Internet website address where I can obtain general educational planning services ~~are provided~~ free of charge.". The educational planning service provider or its representative shall also sign and date the acknowledgment form, which shall include the name and address of the educational planning service provider. The acknowledgment form shall be in duplicate and shall be incorporated into the Consumer Notice and Rights Form under subsection (b) of this Section. The original acknowledgment form shall be retained by the educational planning service provider, and the duplicate copy shall be retained by the consumer.

(e) If the acknowledgment form under subsection (d) of this Section is in an electronic format, then, in addition to the other requirements of this Act, the acknowledgment form shall:

- (1) contain a live link to the Illinois Student

Assistance Commission's Internet website where general educational planning services may be available ~~are offered~~ free of charge; and

(2) be digitally signed by the consumer in compliance with the provisions of the federal Electronic Signatures in Global and National Commerce Act concerning consumer disclosures, including subsection (c) of Section 101 of that Act.

(Source: P.A. 102-571, eff. 1-1-22.)

(815 ILCS 616/30)

Sec. 30. Cancellation of contract; refund.

(a) A consumer may cancel a contract with an educational planning service provider at any time before the educational planning service provider has fully performed each service the educational planning service provider contracted to perform or represented it would perform.

(b) If a consumer cancels a contract with an educational planning service provider, then the educational planning service provider shall refund all fees and compensation, with the exception of any earned fees for services provided.

(c) At any time upon a material violation of this Act on the part of the educational planning service provider, the educational planning service provider shall refund all fees and compensation to the consumer.

(d) An educational planning service provider shall make

any refund required under this Act within 5 business days after the notice of cancellation or voiding of the contract due to a violation of this Act and shall include with the refund a full statement of account showing fees received and fees refunded.

(e) Upon cancellation or voiding of the contract, all direct debit authorizations granted to the educational planning service provider by the consumer shall be considered revoked and voided.

(f) Upon the termination of the contract for any reason, the educational planning service provider shall provide a timely and accurate response to any postsecondary institution, agency, or other entity that contacts the provider in reference to the consumer, indicating that the provider ~~notice that it no longer represents the consumer to any entity or agency with whom the educational planning service provider has had any prior communication on behalf of the consumer in connection with the provision of any educational planning services.~~

(Source: P.A. 102-571, eff. 1-1-22.)

(815 ILCS 616/40)

Sec. 40. Civil remedies; injunction.

(a) A material violation of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. All remedies, penalties, and authority

granted to the Attorney General or State's Attorney by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for the enforcement of this Act.

(b) A consumer who suffers loss by reason of a material violation of this Act may bring a civil action in accordance with the Consumer Fraud and Deceptive Business Practices Act to enforce a provision of this Act. All remedies and rights granted to a consumer by the Consumer Fraud and Deceptive Business Practices Act shall be available to the consumer bringing such an action. The remedies and rights provided for in this Act are not exclusive, but cumulative, and all other applicable claims are specifically preserved.

(c) Any contract for educational planning services made in material violation of this Act shall be null and void and of no legal effect.

(d) To engage in educational planning services in violation of this Act is declared to be inimical to the public welfare and to constitute a public nuisance. The Illinois Student Assistance Commission may, in the name of the people of the State of Illinois, through the Attorney General, file a complaint for an injunction in the circuit court to enjoin such person from engaging in that unlawful business. An injunction proceeding shall be in addition to and not in lieu of penalties and remedies otherwise provided in this Act.

(Source: P.A. 102-571, eff. 1-1-22.)



Public Act 103-0475

SB0195 Enrolled

LRB103 27018 LNS 53385 b

(815 ILCS 616/90)

Sec. 90. Rules. The Illinois Student Assistance Commission shall adopt ~~and enforce all~~ reasonable rules necessary or appropriate for the administration of this Act.

(Source: P.A. 102-571, eff. 1-1-22.)