

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 Sections 11-5, 11-5.4, 11-8, 11-8.1, 11-10.1, and 11-13 as
6 follows:

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

8 Sec. 11-5. Appointment of guardian.

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

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

1 person qualified to act under Section 11-3 to be appointed as
2 successor guardian of the minor's person or estate, or both.
3 The designation must be witnessed by 2 or more credible
4 witnesses at least 18 years of age, neither of whom is the
5 person designated as the guardian. The designation may be
6 proved by any competent evidence. If the designation is
7 executed and attested in the same manner as a will, it shall
8 have prima facie validity. The designation of a guardian or
9 successor guardian does not affect the rights of the other
10 parent in the minor.

11 (b) The court lacks jurisdiction to proceed on a petition
12 for the appointment of a guardian of a minor if it finds that
13 (i) the minor has a living parent, adoptive parent or
14 adjudicated parent, whose parental rights have not been
15 terminated, whose whereabouts are known, and who is willing and
16 able to make and carry out day-to-day child care decisions
17 concerning the minor, unless: (1) the parent or parents
18 voluntarily relinquished physical custody of the minor; (2)
19 after receiving notice of the hearing under Section 11-10.1,
20 the parent or parents fail to object to the appointment at the
21 hearing on the petition; or (3) the parent or parents consent
22 to the appointment as evidenced by a written document that has
23 been notarized and dated, or by a personal appearance and
24 consent in open court; or (ii) there is a guardian for the
25 minor appointed by a court of competent jurisdiction. There
26 shall be a rebuttable presumption that a parent of a minor is

1 willing and able to make and carry out day-to-day child care
2 decisions concerning the minor, but the presumption may be
3 rebutted by a preponderance of the evidence. If a short-term
4 guardian has been appointed for the minor prior to the filing
5 of the petition and the petitioner for guardianship is not the
6 short-term guardian, there shall be a rebuttable presumption
7 that it is in the best interest of the minor to remain in the
8 care of the short-term guardian. The petitioner shall have the
9 burden of proving by a preponderance of the evidence that it is
10 not in the child's best interest to remain with the short-term
11 guardian.

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

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

26 (d) The court shall not appoint as guardian of the person

1 of the minor any person whom the court has determined had
2 caused or substantially contributed to the minor becoming a
3 neglected or abused minor as defined in the Juvenile Court Act
4 of 1987, unless 2 years have elapsed since the last proven
5 incident of abuse or neglect and the court determines that
6 appointment of such person as guardian is in the best interests
7 of the minor.

8 (e) Previous statements made by the minor relating to any
9 allegations that the minor is an abused or neglected child
10 within the meaning of the Abused and Neglected Child Reporting
11 Act, or an abused or neglected minor within the meaning of the
12 Juvenile Court Act of 1987, shall be admissible in evidence in
13 a hearing concerning appointment of a guardian of the person or
14 estate of the minor. No such statement, however, if
15 uncorroborated and not subject to cross-examination, shall be
16 sufficient in itself to support a finding of abuse or neglect.

17 (Source: P.A. 96-1338, eff. 1-1-11.)

18 (755 ILCS 5/11-5.4)

19 Sec. 11-5.4. Short-term guardian.

20 (a) A parent, adoptive parent, or adjudicated parent whose
21 parental rights have not been terminated, or the guardian of
22 the person of a minor may appoint in writing, without court
23 approval, a short-term guardian of an unmarried minor or a
24 child likely to be born. The written instrument appointing a
25 short-term guardian shall be dated and shall identify the

1 appointing parent or guardian, the minor, and the person
2 appointed to be the short-term guardian. The written instrument
3 shall be signed by, or at the direction of, the appointing
4 parent in the presence of at least 2 credible witnesses at
5 least 18 years of age, neither of whom is the person appointed
6 as the short-term guardian. The person appointed as the
7 short-term guardian shall also sign the written instrument, but
8 need not sign at the same time as the appointing parent.

9 (b) A parent or guardian shall not appoint a short-term
10 guardian of a minor if the minor has another living parent,
11 adoptive parent or adjudicated parent, whose parental rights
12 have not been terminated, whose whereabouts are known, and who
13 is willing and able to make and carry out day-to-day child care
14 decisions concerning the minor, unless the nonappointing
15 parent consents to the appointment by signing the written
16 instrument of appointment.

17 (c) The appointment of the short-term guardian is effective
18 immediately upon the date the written instrument is executed,
19 unless the written instrument provides for the appointment to
20 become effective upon a later specified date or event. Except
21 as provided in subsection (e-5) of this Section, the short-term
22 guardian shall have authority to act as guardian of the minor
23 as provided in Section 11-13.2 for a period of 365 days from
24 the date the appointment is effective, unless the written
25 instrument provides for the appointment to terminate upon an
26 earlier specified date or event. Only one written instrument

1 appointing a short-term guardian may be in force at any given
2 time.

3 (d) Every appointment of a short-term guardian may be
4 amended or revoked by the appointing parent or by the
5 appointing guardian of the person of the minor at any time and
6 in any manner communicated to the short-term guardian or to any
7 other person. Any person other than the short-term guardian to
8 whom a revocation or amendment is communicated or delivered
9 shall make all reasonable efforts to inform the short-term
10 guardian of that fact as promptly as possible.

11 (e) The appointment of a short-term guardian or successor
12 short-term guardian does not affect the rights of the other
13 parent in the minor. The short-term guardian appointment does
14 not constitute consent for court appointment of a guardian.

15 (e-5) Any time after the appointment of a temporary
16 custodian under Section 2-10, 3-12, 4-9, 5-410, or 5-501 of the
17 Juvenile Court Act of 1987, and after notice to all parties,
18 including the short-term guardian, as required by the Juvenile
19 Court Act of 1987, a court may vacate any short-term
20 guardianship for the minor appointed under this Section,
21 provided the vacation is consistent with the minor's best
22 interests as determined using the factors listed in paragraph
23 (4.05) of Section 1-3 of the Juvenile Court Act of 1987.

24 (f) The written instrument appointing a short-term
25 guardian may, but need not, be in the following form:

1 APPOINTMENT OF SHORT-TERM GUARDIAN

2 [IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS:

3 By properly completing this form, a parent or the guardian
4 of the person of the child is appointing a guardian of a child
5 of the parent (or a minor ward of the guardian, as the case may
6 be) for a period of up to 365 days. A separate form should be
7 completed for each child. The person appointed as the guardian
8 must sign the form, but need not do so at the same time as the
9 parent or parents or guardian.

10 This form may not be used to appoint a guardian if there is
11 a guardian already appointed for the child, except that if a
12 guardian of the person of the child has been appointed, that
13 guardian may use this form to appoint a short-term guardian.
14 Both living parents of a child may together appoint a guardian
15 of the child, or the guardian of the person of the child may
16 appoint a guardian of the child, for a period of up to 365 days
17 through the use of this form. If the short-term guardian is
18 appointed by both living parents of the child, the parents need
19 not sign the form at the same time.]

20 1. Parent (or guardian) and Child. I, (insert name of
21 appointing parent or guardian), currently residing at
22 (insert address of appointing parent or guardian), am a
23 parent (or the guardian of the person) of the following
24 child (or of a child likely to be born): (insert name and
25 date of birth of child, or insert the words "not yet born"

1 to appoint a short-term guardian for a child likely to be
2 born and the child's expected date of birth).

3 2. Guardian. I hereby appoint the following person as
4 the short-term guardian for the child: (insert name and
5 address of appointed person).

6 3. Effective date. This appointment becomes effective:
7 (check one if you wish it to be applicable)

8 () On the date that I state in writing that I am
9 no longer either willing or able to make and carry out
10 day-to-day child care decisions concerning the child.

11 () On the date that a physician familiar with my
12 condition certifies in writing that I am no longer
13 willing or able to make and carry out day-to-day child
14 care decisions concerning the child.

15 () On the date that I am admitted as an in-patient
16 to a hospital or other health care institution.

17 () On the following date: (insert date).

18 () Other: (insert other).

19 [NOTE: If this item is not completed, the appointment is
20 effective immediately upon the date the form is signed and
21 dated below.]

22 4. Termination. This appointment shall terminate 365
23 days after the effective date, unless it terminates sooner
24 as determined by the event or date I have indicated below:
25 (check one if you wish it to be applicable)

26 () On the date that I state in writing that I am

1 willing and able to make and carry out day-to-day child
2 care decisions concerning the child.

3 () On the date that a physician familiar with my
4 condition certifies in writing that I am willing and
5 able to make and carry out day-to-day child care
6 decisions concerning the child.

7 () On the date that I am discharged from the
8 hospital or other health care institution where I was
9 admitted as an in-patient, which established the
10 effective date.

11 () On the date which is (state a number of days,
12 but no more than 365 days) days after the effective
13 date.

14 () Other: (insert other).

15 [NOTE: If this item is not completed, the appointment will be
16 effective for a period of 365 days, beginning on the effective
17 date.]

18 5. Date and signature of appointing parent or guardian.

19 This appointment is made this (insert day) day of (insert
20 month and year).

21 Signed: (appointing parent)

22 6. Witnesses. I saw the parent (or the guardian of the
23 person of the child) sign this instrument or I saw the
24 parent (or the guardian of the person of the child) direct
25 someone to sign this instrument for the parent (or the
26 guardian). Then I signed this instrument as a witness in

1 the presence of the parent (or the guardian). I am not
2 appointed in this instrument to act as the short-term
3 guardian for the child. (Insert space for names, addresses,
4 and signatures of 2 witnesses)

5 7. Acceptance of short-term guardian. I accept this
6 appointment as short-term guardian on this (insert day) day
7 of (insert month and year).

8 Signed: (short-term guardian)

9 8. Consent of child's other parent. I, (insert name of
10 the child's other living parent), currently residing at
11 (insert address of child's other living parent), hereby
12 consent to this appointment on this (insert day) day of
13 (insert month and year).

14 Signed: (consenting parent)

15 [NOTE: The signature of a consenting parent is not necessary if
16 one of the following applies: (i) the child's other parent has
17 died; or (ii) the whereabouts of the child's other parent are
18 not known; or (iii) the child's other parent is not willing or
19 able to make and carry out day-to-day child care decisions
20 concerning the child; or (iv) the child's parents were never
21 married and no court has issued an order establishing
22 parentage.]

23 (Source: P.A. 98-568, eff. 1-1-14.)

24 (755 ILCS 5/11-8) (from Ch. 110 1/2, par. 11-8)

25 Sec. 11-8. Petition for guardian of minor.

1 (a) The petition for appointment of a guardian of the
2 estate, or of both the person and estate, of a minor, or for
3 appointment of the guardian of the person only of a minor or
4 minors must state, if known: (1) the name, date of birth and
5 residence of the minor; (2) the names and post office addresses
6 of the nearest relatives of the minor in the following order:
7 (i) the spouse, if any; if none, (ii) the parents, ~~and~~ adult
8 brothers and sisters, and the short-term guardian, if any; if
9 none, (iii) the nearest adult kindred; (3) the name and post
10 office address of the person having the custody of the minor;
11 (4) the approximate value of the personal estate; (5) the
12 amount of the anticipated gross annual income and other
13 receipts; (6) the name, post office address and, in case of an
14 individual, the age and occupation of the proposed guardian;
15 (7) the facts concerning the execution or admission to probate
16 of the written designation of the guardian, if any, a copy of
17 which shall be attached to or filed with the petition; and (8)
18 the facts concerning any juvenile, adoption, parentage,
19 dissolution, or guardianship court actions pending concerning
20 the minor or the parents of the minor and whether any guardian
21 is currently acting for the minor. In addition, if the petition
22 seeks the appointment of a previously appointed standby
23 guardian as guardian of the minor, the petition must also
24 state: (9) the facts concerning the standby guardian's previous
25 appointment and (10) the date of death of the minor's parent or
26 parents or the facts concerning the consent of the minor's

1 parent or parents to the appointment of the standby guardian as
2 guardian, or the willingness and ability of the minor's parent
3 or parents to make and carry out day-to-day child care
4 decisions concerning the minor.

5 If a short-term guardian who has been appointed by the
6 minor's parent or guardian prior to the filing of the petition
7 subsequently petitions for court-ordered guardianship of the
8 minor, the petition shall state the facts concerning the
9 appointment of the short-term guardian, including: (i) the date
10 of the appointment; (ii) the circumstances surrounding the
11 appointment; (iii) the date the short-term guardian
12 appointment ends; and (iv) the reasons why a court-ordered
13 guardian is also needed for the minor. A copy of the short-term
14 guardianship appointment shall be attached to the petition.

15 (b) A single petition for appointment of only a guardian of
16 the person of a minor may include more than one minor. The
17 statements required in items (1) and (2) of subsection (a)
18 shall be listed separately for each minor.

19 (Source: P.A. 90-796, eff. 12-15-98.)

20 (755 ILCS 5/11-8.1)

21 Sec. 11-8.1. Petition for standby guardian of minor. The
22 petition for appointment of a standby guardian of the person or
23 the estate, or both, of a minor must state, if known: (a) the
24 name, date of birth, and residence of the minor; (b) the names
25 and post office addresses of the nearest relatives of the minor

1 in the following order: (1) the parents, if any; ~~if none,~~ (2)
2 the adult brothers and sisters, if any; if none, (3) the
3 nearest adult kindred; (4) the short-term guardian, if any; (c)
4 the name and post office address of the person having custody
5 of the minor; (d) the name, post office address, and, in case
6 of any individual, the age and occupation of the proposed
7 standby guardian; (e) the facts concerning the consent of the
8 minor's parent or parents or the guardian of the person of the
9 minor to the appointment of the standby guardian, or the
10 willingness and ability of the minor's parent or parents, if
11 any, or the guardian of the person of the minor to make and
12 carry out day-to-day child care decisions concerning the minor;
13 (f) the facts concerning the execution or admission to probate
14 of the written designation of the standby guardian, if any, a
15 copy of which shall be attached to or filed with the petition;
16 and (g) the facts concerning any juvenile, adoption, parentage,
17 dissolution, or guardianship court actions pending concerning
18 the minor or the parents of the minor and whether any guardian
19 is currently acting for the minor. If a short-term guardian has
20 been appointed by the minor's parent or guardian and
21 subsequently petitions for standby guardianship of the minor,
22 the petition shall state the facts concerning the appointment
23 of the short-term guardian, including: (i) the date of the
24 appointment; (ii) the circumstances surrounding the
25 appointment; (iii) the date the short-term guardian
26 appointment ends; and (iv) the reasons why a standby guardian

1 is also needed for the minor. A copy of the short-term
2 guardianship appointment shall be attached to the petition.

3 (Source: P.A. 90-796, eff. 12-15-98.)

4 (755 ILCS 5/11-10.1) (from Ch. 110 1/2, par. 11-10.1)

5 Sec. 11-10.1. Procedure for appointment of a standby
6 guardian or a guardian of a minor.

7 (a) Unless excused by the court for good cause shown, it is
8 the duty of the petitioner to give notice of the time and place
9 of the hearing on the petition, in person or by mail, to the
10 minor, if the minor is 14 years, or older, and to the relatives
11 and the short-term guardian of the minor whose names and
12 addresses are stated in the petition, not less than 3 days
13 before the hearing, but failure to give notice to any relative
14 is not jurisdictional.

15 (b) In any proceeding for the appointment of a standby
16 guardian or a guardian the court may appoint a guardian ad
17 litem to represent the minor in the proceeding.

18 (Source: P.A. 88-529.)

19 (755 ILCS 5/11-13) (from Ch. 110 1/2, par. 11-13)

20 Sec. 11-13. Duties of guardian of a minor. Before a
21 guardian of a minor may act, the guardian shall be appointed by
22 the court of the proper county and, in the case of a guardian
23 of the minor's estate, the guardian shall give the bond
24 prescribed in Section 12-2. Except as provided in Section

1 11-13.1 and Section 11-13.2 with respect to the standby or
2 short-term guardian of the person of a minor, the court shall
3 have control over the person and estate of the ward. Under the
4 direction of the court:

5 (a) The guardian of the person shall have the custody,
6 nurture and tuition and shall provide education of the ward and
7 of his children, but the ward's spouse may not be deprived of
8 the custody and education of the spouse's children, without
9 consent of the spouse, unless the court finds that the spouse
10 is not a fit and competent person to have such custody and
11 education. If the ward's estate is insufficient to provide for
12 the ward's education and the guardian of his person fails to
13 provide education, the court may award the custody of the ward
14 to some other person for the purpose of providing education. If
15 a person makes a settlement upon or provision for the support
16 or education of a ward and if either parent of the ward is
17 dead, the court may make such order for the visitation of the
18 ward by the person making the settlement or provision as the
19 court deems proper. The guardian of the minor shall inform the
20 court of the minor's current address by certified mail within
21 30 days of any change of residence.

22 (b) The guardian or other representative of the ward's
23 estate shall have the care, management and investment of the
24 estate, shall manage the estate frugally and shall apply the
25 income and principal of the estate so far as necessary for the
26 comfort and suitable support and education of the ward, his

1 children, and persons related by blood or marriage who are
2 dependent upon or entitled to support from him, or for any
3 other purpose which the court deems to be for the best
4 interests of the ward, and the court may approve the making on
5 behalf of the ward of such agreements as the court determines
6 to be for the ward's best interests. The representative may
7 make disbursement of his ward's funds and estate directly to
8 the ward or other distributee or in such other manner and in
9 such amounts as the court directs. If the estate of a ward is
10 derived in whole or in part from payments of compensation,
11 adjusted compensation, pension, insurance or other similar
12 benefits made directly to the estate by the Veterans
13 Administration, notice of the application for leave to invest
14 or expend the ward's funds or estate, together with a copy of
15 the petition and proposed order, shall be given to the
16 Veterans' Administration Regional Office in this State at least
17 7 days before the hearing on the application. The court, upon
18 petition of a guardian of the estate of a minor, may permit the
19 guardian to make a will or create a revocable or irrevocable
20 trust for the minor that the court considers appropriate in
21 light of changes in applicable tax laws that allow for
22 minimization of State or federal income, estate, or inheritance
23 taxes; however, the will or trust must make distributions only
24 to the persons who would be entitled to distributions if the
25 minor were to die intestate and the will or trust must make
26 distributions to those persons in the same amounts to which

1 they would be entitled if the minor were to die intestate.

2 (c) Upon the direction of the court which issued his
3 letters a representative may perform the contracts of his ward
4 which were legally subsisting at the time of the commencement
5 of the guardianship. The court may authorize the guardian to
6 execute and deliver any bill of sale, deed or other instrument.

7 (d) The representative of the estate of a ward shall appear
8 for and represent the ward in all legal proceedings unless
9 another person is appointed for that purpose as representative
10 or next friend. This does not impair the power of any court to
11 appoint a representative or next friend to defend the interests
12 of the ward in that court, or to appoint or allow any person as
13 the next friend of a ward to commence, prosecute or defend any
14 proceeding in his behalf. Any proceeding on behalf of a minor
15 may be commenced and prosecuted by his next friend, without any
16 previous authority or appointment by the court if the next
17 friend enters bond for costs and files it in the court where
18 the proceeding is pending. Without impairing the power of the
19 court in any respect, if the representative of the estate of a
20 minor and another person as next friend shall appear for and
21 represent the minor in a legal proceeding in which the
22 compensation of the attorney or attorneys representing the
23 guardian and next friend is solely determined under a
24 contingent fee arrangement, the guardian of the estate of the
25 minor shall not participate in or have any duty to review the
26 prosecution of the action, to participate in or review the

1 appropriateness of any settlement of the action, or to
2 participate in or review any determination of the
3 appropriateness of any fees awarded to the attorney or
4 attorneys employed in the prosecution of the action.

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

15 (f) The court may grant leave to the guardian of a minor
16 child or children to remove such child or children from
17 Illinois whenever such approval is in the best interests of
18 such child or children. The guardian may not remove a minor
19 from Illinois except as permitted under this Section and must
20 seek leave of the court prior to removing a child for 30 days
21 or more. The burden of proving that such removal is in the best
22 interests of such child or children is on the guardian. When
23 such removal is permitted, the court may require the guardian
24 removing such child or children from Illinois to give
25 reasonable security guaranteeing the return of such children.

26 The court shall consider the wishes of the minor's parent

1 or parents and the effect of removal on visitation and the
2 wishes of the minor if he or she is 14 years of age or older.
3 The court may not consider the availability of electronic
4 communication as a factor in support of the removal of a child
5 by the guardian from Illinois.

6 Before a minor child is temporarily removed from Illinois
7 for more than 48 hours but less than 30 days, the guardian
8 shall inform the parent or parents of the address and telephone
9 number where the child may be reached during the period of
10 temporary removal and the date on which the child shall return
11 to Illinois. The State of Illinois retains jurisdiction when
12 the minor child is absent from the State pursuant to this
13 subsection. The guardianship order may incorporate language
14 governing out-of-state travel with the minor.

15 (Source: P.A. 90-345, eff. 8-8-97; 91-149, eff. 1-1-00.)