

HB4687



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4687

by Rep. Thomas M. Bennett

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

from Ch. 110 1/2, par. 11a-17

Amends the Guardians for Adults With Disabilities Article of the Probate Act of 1975. Provides that an adult child, spouse, adult grandchild, parent, adult sibling, or other interested person (instead of an adult child) may petition for visitation privileges with the ward. Provides that "other interested person" means any person who has a significant, ongoing relationship based on or productive of strong affection.

LRB100 17480 HEP 32649 b

A BILL FOR

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 Section 11a-17 as follows:

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,
16 without the consent of the spouse, unless the court finds that
17 the spouse is not a fit and competent person to have that
18 custody and education. The guardian shall assist the ward in
19 the development of maximum self-reliance and independence. The
20 guardian of the person may petition the court for an order
21 directing the guardian of the estate to pay an amount
22 periodically for the provision of the services specified by the
23 court order. If the ward's estate is insufficient to provide

1 for education and the guardian of the ward's person fails to
2 provide education, the court may award the custody of the ward
3 to some other person for the purpose of providing education. If
4 a person makes a settlement upon or provision for the support
5 or education of a ward, the court may make an order for the
6 visitation of the ward by the person making the settlement or
7 provision as the court deems proper. A guardian of the person
8 may not admit a ward to a mental health facility except at the
9 ward's request as provided in Article IV of the Mental Health
10 and Developmental Disabilities Code and unless the ward has the
11 capacity to consent to such admission as provided in Article IV
12 of the Mental Health and Developmental Disabilities Code.

13 (a-5) If the ward filed a petition for dissolution of
14 marriage under the Illinois Marriage and Dissolution of
15 Marriage Act before the ward was adjudicated a person with a
16 disability under this Article, the guardian of the ward's
17 person and estate may maintain that action for dissolution of
18 marriage on behalf of the ward. Upon petition by the guardian
19 of the ward's person or estate, the court may authorize and
20 direct a guardian of the ward's person or estate to file a
21 petition for dissolution of marriage or to file a petition for
22 legal separation or declaration of invalidity of marriage under
23 the Illinois Marriage and Dissolution of Marriage Act on behalf
24 of the ward if the court finds by clear and convincing evidence
25 that the relief sought is in the ward's best interests. In
26 making its determination, the court shall consider the

1 standards set forth in subsection (e) of this Section.

2 (a-10) Upon petition by the guardian of the ward's person
3 or estate, the court may authorize and direct a guardian of the
4 ward's person or estate to consent, on behalf of the ward, to
5 the ward's marriage pursuant to Part II of the Illinois
6 Marriage and Dissolution of Marriage Act if the court finds by
7 clear and convincing evidence that the marriage is in the
8 ward's best interests. In making its determination, the court
9 shall consider the standards set forth in subsection (e) of
10 this Section. Upon presentation of a court order authorizing
11 and directing a guardian of the ward's person and estate to
12 consent to the ward's marriage, the county clerk shall accept
13 the guardian's application, appearance, and signature on
14 behalf of the ward for purposes of issuing a license to marry
15 under Section 203 of the Illinois Marriage and Dissolution of
16 Marriage Act.

17 (b) If the court directs, the guardian of the person shall
18 file with the court at intervals indicated by the court, a
19 report that shall state briefly: (1) the current mental,
20 physical, and social condition of the ward and the ward's minor
21 and adult dependent children; (2) their present living
22 arrangement, and a description and the address of every
23 residence where they lived during the reporting period and the
24 length of stay at each place; (3) a summary of the medical,
25 educational, vocational, and other professional services given
26 to them; (4) a resume of the guardian's visits with and

1 activities on behalf of the ward and the ward's minor and adult
2 dependent children; (5) a recommendation as to the need for
3 continued guardianship; (6) any other information requested by
4 the court or useful in the opinion of the guardian. The Office
5 of the State Guardian shall assist the guardian in filing the
6 report when requested by the guardian. The court may take such
7 action as it deems appropriate pursuant to the report.

8 (c) Absent court order pursuant to the Illinois Power of
9 Attorney Act directing a guardian to exercise powers of the
10 principal under an agency that survives disability, the
11 guardian has no power, duty, or liability with respect to any
12 personal or health care matters covered by the agency. This
13 subsection (c) applies to all agencies, whenever and wherever
14 executed.

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

1 Attorney Act. If a guardian is also a health care agent for the
2 ward under a valid power of attorney for health care, the
3 guardian acting as agent may execute his or her authority under
4 that act without further court order.

5 (e) Decisions made by a guardian on behalf of a ward shall
6 be made in accordance with the following standards for decision
7 making. Decisions made by a guardian on behalf of a ward may be
8 made by conforming as closely as possible to what the ward, if
9 competent, would have done or intended under the circumstances,
10 taking into account evidence that includes, but is not limited
11 to, the ward's personal, philosophical, religious and moral
12 beliefs, and ethical values relative to the decision to be made
13 by the guardian. Where possible, the guardian shall determine
14 how the ward would have made a decision based on the ward's
15 previously expressed preferences, and make decisions in
16 accordance with the preferences of the ward. If the ward's
17 wishes are unknown and remain unknown after reasonable efforts
18 to discern them, the decision shall be made on the basis of the
19 ward's best interests as determined by the guardian. In
20 determining the ward's best interests, the guardian shall weigh
21 the reason for and nature of the proposed action, the benefit
22 or necessity of the action, the possible risks and other
23 consequences of the proposed action, and any available
24 alternatives and their risks, consequences and benefits, and
25 shall take into account any other information, including the
26 views of family and friends, that the guardian believes the

1 ward would have considered if able to act for herself or
2 himself.

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

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

21 (2) If a guardian unreasonably prevents an adult child,
22 spouse, adult grandchild, parent, or adult sibling of the ward
23 or other interested person from visiting the ward, the court,
24 upon a verified petition ~~by an adult child~~, may order the
25 guardian to permit visitation between the ward and the adult
26 child, spouse, adult grandchild, parent, adult sibling, or

1 other interested person if the court finds that the visitation
2 is in the ward's best interests. In making its determination,
3 the court shall consider the standards set forth in subsection
4 (e) of this Section. This subsection (g) does not apply to duly
5 appointed public guardians or the Office of State Guardian. As
6 used in this paragraph (2), "other interested person" means any
7 person who has a significant, ongoing relationship based on or
8 productive of strong affection.

9 (Source: P.A. 98-1107, eff. 8-26-14; 99-143, eff. 7-27-15;
10 99-821, eff. 1-1-17.)