

HB0370



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0370

Introduced 1/29/2021, by Rep. Jennifer Gong-Gershowitz

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-5

from Ch. 110 1/2, par. 11-5

Amends the Probate Act of 1975. Provides that no petition for the appointment of a guardian of a minor shall be filed in which 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. Provides that the court may deny such a petition if it finds 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.

LRB102 02739 LNS 12742 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 11-5 as follows:

6 (755 ILCS 5/11-5) (from Ch. 110 1/2, par. 11-5)

7 Sec. 11-5. Appointment of guardian.

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

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

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

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

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

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

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

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

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

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

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

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