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 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. 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.)