



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

**HB4444**

Introduced 1/16/2024, by Rep. Suzanne M. Ness

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/202	from Ch. 40, par. 202
750 ILCS 5/203	from Ch. 40, par. 203
755 ILCS 5/11a-17	from Ch. 110 1/2, par. 11a-17

Amends the Illinois Marriage and Dissolution of Marriage Act. Requires the form for an application for a marriage license to include whether either party is under a court-ordered guardianship in any State in the United States. Provides that a county clerk shall issue a license to marry and a marriage certificate form, among other requirements, upon being furnished satisfactory proof that neither party to the marriage is under a court-ordered guardianship, or that if at least one party is under a court-ordered guardianship, there has been a judicial determination that the marriage is in the best interests of the person or persons under court-ordered guardianship. Amends the Guardians For Adults With Disabilities Article of the Probate Act of 1975. Requires the court, when determining whether a marriage is in the best interests of a ward, to follow (rather than consider) specified standards. Provides that if a best interests hearing is not held before a judicial officer prior to a ward entering into marriage, then the marriage is without legal effect and void ab initio. Provides that any person who knowingly enters a marriage with a ward without following the required procedures shall be guilty of a Class 4 felony.

LRB103 35718 LNS 65797 b

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 Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Sections 202 and 203 as  
6 follows:

7 (750 ILCS 5/202) (from Ch. 40, par. 202)

8 Sec. 202. Marriage License and Marriage Certificate.†

9 (a) The Director of Public Health shall prescribe the form  
10 for an application for a marriage license, which shall include  
11 the following information:

12 (1) name, sex, occupation, address, social security  
13 number, and date and place of birth of each party to the  
14 proposed marriage;

15 (2) if either party was previously married, his name,  
16 and the date, place, and court in which the marriage was  
17 dissolved or declared invalid or the date and place of  
18 death of the former spouse;

19 (3) name and address of the parents or guardian of  
20 each party; ~~and~~

21 (4) whether the parties are related to each other and,  
22 if so, their relationship; and †

23 (5) whether either party is under a court-ordered

1           guardianship in any state in the United States.

2           (b) The Director of Public Health shall prescribe the  
3 forms for the marriage license, the marriage certificate, and,  
4 when necessary, the consent to marriage.

5           (Source: P.A. 80-923.)

6           (750 ILCS 5/203) (from Ch. 40, par. 203)

7           Sec. 203. License to Marry. When a marriage application  
8 has been completed and signed by both parties to a prospective  
9 marriage and both parties have appeared before the county  
10 clerk and the marriage license fee has been paid, the county  
11 clerk shall issue a license to marry and a marriage  
12 certificate form upon being furnished:

13           (1) satisfactory proof that each party to the marriage  
14 will have attained the age of 18 years at the time the  
15 marriage license is effective or will have attained the  
16 age of 16 years and has either the consent to the marriage  
17 of both parents or his guardian or judicial approval;  
18 provided, if one parent cannot be located in order to  
19 obtain such consent and diligent efforts have been made to  
20 locate that parent by the consenting parent, then the  
21 consent of one parent plus a signed affidavit by the  
22 consenting parent which (i) names the absent parent and  
23 states that he or she cannot be located, and (ii) states  
24 what diligent efforts have been made to locate the absent  
25 parent, shall have the effect of both parents' consent for

1 purposes of this Section;

2 (1.5) satisfactory proof that neither party to the  
3 marriage is under a court-ordered guardianship, or that if  
4 at least one party is under a court-ordered guardianship,  
5 there has been a judicial determination, as described  
6 under subsection (a-10) of Section 11a-17 of the Probate  
7 Act of 1975, that the marriage is in the best interests of  
8 the person or persons under court-ordered guardianship;

9 (2) satisfactory proof that the marriage is not  
10 prohibited; and

11 (3) an affidavit or record as prescribed in  
12 subparagraph (1) of Section 205 or a court order as  
13 prescribed in subparagraph (2) of Section 205, if  
14 applicable.

15 With each marriage license, the county clerk shall provide  
16 a pamphlet describing the causes and effects of fetal alcohol  
17 syndrome. At least annually, the county board shall submit to  
18 the Illinois Department of Public Health a report as to the  
19 county clerk's compliance with the requirement that the county  
20 clerk provide a pamphlet with each marriage license. All  
21 funding and production costs for the aforementioned  
22 educational pamphlets for distribution to each county clerk  
23 shall be provided by non-profit, non-sectarian statewide  
24 programs that provide education, advocacy, support, and  
25 prevention services pertaining to Fetal Alcohol Syndrome.

26 (Source: P.A. 96-1323, eff. 1-1-11.)

1           Section 10. The Probate Act of 1975 is amended by changing  
2 Section 11a-17 as follows:

3           (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

4           Sec. 11a-17. Duties of personal guardian.

5           (a) To the extent ordered by the court and under the  
6 direction of the court, the guardian of the person shall have  
7 custody of the ward and the ward's minor and adult dependent  
8 children and shall procure for them and shall make provision  
9 for their support, care, comfort, health, education and  
10 maintenance, and professional services as are appropriate, but  
11 the ward's spouse may not be deprived of the custody and  
12 education of the ward's minor and adult dependent children,  
13 without the consent of the spouse, unless the court finds that  
14 the spouse is not a fit and competent person to have that  
15 custody and education. The guardian shall assist the ward in  
16 the development of maximum self-reliance and independence. The  
17 guardian of the person may petition the court for an order  
18 directing the guardian of the estate to pay an amount  
19 periodically for the provision of the services specified by  
20 the court order. If the ward's estate is insufficient to  
21 provide for education and the guardian of the ward's person  
22 fails to provide education, the court may award the custody of  
23 the ward to some other person for the purpose of providing  
24 education. If a person makes a settlement upon or provision

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

10 (a-3) If a guardian of an estate has not been appointed,  
11 the guardian of the person may, without an order of court,  
12 open, maintain, and transfer funds to an ABLE account on  
13 behalf of the ward and the ward's minor and adult dependent  
14 children as specified under Section 16.6 of the State  
15 Treasurer Act.

16 (a-5) If the ward filed a petition for dissolution of  
17 marriage under the Illinois Marriage and Dissolution of  
18 Marriage Act before the ward was adjudicated a person with a  
19 disability under this Article, the guardian of the ward's  
20 person and estate may maintain that action for dissolution of  
21 marriage on behalf of the ward. Upon petition by the guardian  
22 of the ward's person or estate, the court may authorize and  
23 direct a guardian of the ward's person or estate to file a  
24 petition for dissolution of marriage or to file a petition for  
25 legal separation or declaration of invalidity of marriage  
26 under the Illinois Marriage and Dissolution of Marriage Act on

1 behalf of the ward if the court finds by clear and convincing  
2 evidence that the relief sought is in the ward's best  
3 interests. In making its determination, the court shall  
4 consider the standards set forth in subsection (e) of this  
5 Section.

6 (a-10) Upon petition by the guardian of the ward's person  
7 or estate, the court may authorize and direct a guardian of the  
8 ward's person or estate to consent, on behalf of the ward, to  
9 the ward's marriage pursuant to Part II of the Illinois  
10 Marriage and Dissolution of Marriage Act if the court finds by  
11 clear and convincing evidence that the marriage is in the  
12 ward's best interests. In making its determination, the court  
13 must follow ~~shall consider~~ the standards set forth in  
14 subsection (e) of this Section. Upon presentation of a court  
15 order authorizing and directing a guardian of the ward's  
16 person and estate to consent to the ward's marriage, the  
17 county clerk shall accept the guardian's application,  
18 appearance, and signature on behalf of the ward for purposes  
19 of issuing a license to marry under Section 203 of the Illinois  
20 Marriage and Dissolution of Marriage Act. If a best interests  
21 hearing is not held before a judicial officer prior to the ward  
22 entering into marriage, then the marriage is without legal  
23 effect and void ab initio. Any person who knowingly enters a  
24 marriage with a ward without following the procedures of this  
25 subsection shall be guilty of a Class 4 felony.

26 (b) If the court directs, the guardian of the person shall

1 file with the court at intervals indicated by the court, a  
2 report that shall state briefly: (1) the current mental,  
3 physical, and social condition of the ward and the ward's  
4 minor and adult dependent children; (2) their present living  
5 arrangement, and a description and the address of every  
6 residence where they lived during the reporting period and the  
7 length of stay at each place; (3) a summary of the medical,  
8 educational, vocational, and other professional services given  
9 to them; (4) a resume of the guardian's visits with and  
10 activities on behalf of the ward and the ward's minor and adult  
11 dependent children; (5) a recommendation as to the need for  
12 continued guardianship; (6) any other information requested by  
13 the court or useful in the opinion of the guardian. The Office  
14 of the State Guardian shall assist the guardian in filing the  
15 report when requested by the guardian. The court may take such  
16 action as it deems appropriate pursuant to the report.

17 (c) Absent court order pursuant to the Illinois Power of  
18 Attorney Act directing a guardian to exercise powers of the  
19 principal under an agency that survives disability, the  
20 guardian has no power, duty, or liability with respect to any  
21 personal or health care matters covered by the agency. This  
22 subsection (c) applies to all agencies, whenever and wherever  
23 executed.

24 (d) A guardian acting as a surrogate decision maker under  
25 the Health Care Surrogate Act shall have all the rights of a  
26 surrogate under that Act without court order including the



1 right to make medical treatment decisions such as decisions to  
2 forgo or withdraw life-sustaining treatment. Any decisions by  
3 the guardian to forgo or withdraw life-sustaining treatment  
4 that are not authorized under the Health Care Surrogate Act  
5 shall require a court order. Nothing in this Section shall  
6 prevent an agent acting under a power of attorney for health  
7 care from exercising his or her authority under the Illinois  
8 Power of Attorney Act without further court order, unless a  
9 court has acted under Section 2-10 of the Illinois Power of  
10 Attorney Act. If a guardian is also a health care agent for the  
11 ward under a valid power of attorney for health care, the  
12 guardian acting as agent may execute his or her authority  
13 under that act without further court order.

14 (e) Decisions made by a guardian on behalf of a ward shall  
15 be made in accordance with the following standards for  
16 decision making. The guardian shall consider the ward's  
17 current preferences to the extent the ward has the ability to  
18 participate in decision making when those preferences are  
19 known or reasonably ascertainable by the guardian. Decisions  
20 by the guardian shall conform to the ward's current  
21 preferences: (1) unless the guardian reasonably believes that  
22 doing so would result in substantial harm to the ward's  
23 welfare or personal or financial interests; and (2) so long as  
24 such decisions give substantial weight to what the ward, if  
25 competent, would have done or intended under the  
26 circumstances, taking into account evidence that includes, but

1 is not limited to, the ward's personal, philosophical,  
2 religious and moral beliefs, and ethical values relative to  
3 the decision to be made by the guardian. Where possible, the  
4 guardian shall determine how the ward would have made a  
5 decision based on the ward's previously expressed preferences,  
6 and make decisions in accordance with the preferences of the  
7 ward. If the ward's wishes are unknown and remain unknown  
8 after reasonable efforts to discern them, or if the guardian  
9 reasonably believes that a decision made in conformity with  
10 the ward's preferences would result in substantial harm to the  
11 ward's welfare or personal or financial interests, the  
12 decision shall be made on the basis of the ward's best  
13 interests as determined by the guardian. In determining the  
14 ward's best interests, the guardian shall weigh the reason for  
15 and nature of the proposed action, the benefit or necessity of  
16 the action, the possible risks and other consequences of the  
17 proposed action, and any available alternatives and their  
18 risks, consequences and benefits, and shall take into account  
19 any other information, including the views of family and  
20 friends, that the guardian believes the ward would have  
21 considered if able to act for herself or himself.

22 (f) Upon petition by any interested person (including the  
23 standby or short-term guardian), with such notice to  
24 interested persons as the court directs and a finding by the  
25 court that it is in the best interests of the person with a  
26 disability, the court may terminate or limit the authority of

1 a standby or short-term guardian or may enter such other  
2 orders as the court deems necessary to provide for the best  
3 interests of the person with a disability. The petition for  
4 termination or limitation of the authority of a standby or  
5 short-term guardian may, but need not, be combined with a  
6 petition to have another guardian appointed for the person  
7 with a disability.

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

16 (2) If a guardian unreasonably prevents an adult child,  
17 spouse, adult grandchild, parent, or adult sibling of the ward  
18 from visiting the ward, the court, upon a verified petition,  
19 may order the guardian to permit visitation between the ward  
20 and the adult child, spouse, adult grandchild, parent, or  
21 adult sibling. In making its determination, the court shall  
22 consider the standards set forth in subsection (e) of this  
23 Section. The court shall not allow visitation if the court  
24 finds that the ward has capacity to evaluate and communicate  
25 decisions regarding visitation and expresses a desire not to  
26 have visitation with the petitioner. This subsection (g) does

1 not apply to duly appointed public guardians or the Office of  
2 State Guardian.

3 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22;  
4 102-258, eff. 8-6-21; 102-813, eff. 5-13-22.)