

SB0055



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB0055

Introduced 1/20/2023, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

755 ILCS 45/2-10

from Ch. 110 1/2, par. 802-10

Amends the Illinois Power of Attorney Act. Provides that restricting or not allowing an interested person to have reasonable visitation with a principal is an action upon which a court may find that an agent is not acting for the benefit of the principal.

LRB103 04523 LNS 49529 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 Illinois Power of Attorney Act is amended
5 by changing Section 2-10 as follows:

6 (755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

7 Sec. 2-10. Agency-court relationship.

8 (a) Upon petition by any interested person (including the
9 agent), with such notice to interested persons as the court
10 directs and a finding by the court that the principal lacks
11 either the capacity to control or the capacity to revoke the
12 agency, the court may construe a power of attorney, review the
13 agent's conduct, and grant appropriate relief including
14 compensatory damages.

15 (b) If the court finds that the agent is not acting for the
16 benefit of the principal in accordance with the terms of the
17 agency or that the agent's action or inaction, including
18 restricting or not allowing an interested person to have
19 reasonable visitation with the principal, has caused or
20 threatens substantial harm to the principal's person or
21 property in a manner not authorized or intended by the
22 principal, the court may order a guardian of the principal's
23 person or estate to exercise any powers of the principal under

1 the agency, including the power to revoke the agency, or may
2 enter such other orders without appointment of a guardian as
3 the court deems necessary to provide for the best interests of
4 the principal.

5 (c) If the court finds that the agency requires
6 interpretation, the court may construe the agency and instruct
7 the agent, but the court may not amend the agency.

8 (d) If the court finds that the agent has not acted for the
9 benefit of the principal in accordance with the terms of the
10 agency and the Illinois Power of Attorney Act, or that the
11 agent's action caused or threatened substantial harm to the
12 principal's person or property in a manner not authorized or
13 intended by the principal, then the agent shall not be
14 authorized to pay or be reimbursed from the estate of the
15 principal the attorneys' fees and costs of the agent in
16 defending a proceeding brought pursuant to this Section.

17 (e) Upon a finding that the agent's action has caused
18 substantial harm to the principal's person or property, the
19 court may assess against the agent reasonable costs and
20 attorney's fees to a prevailing party who is a provider agency
21 as defined in Section 2 of the Adult Protective Services Act, a
22 representative of the Office of the State Long Term Care
23 Ombudsman, the State Guardian, a public guardian, or a
24 governmental agency having regulatory authority to protect the
25 welfare of the principal.

26 (f) As used in this Section, the term "interested person"

1 includes (1) the principal or the agent; (2) a guardian of the
2 person, guardian of the estate, or other fiduciary charged
3 with management of the principal's property; (3) the
4 principal's spouse, parent, or descendant; (4) a person who
5 would be a presumptive heir-at-law of the principal; (5) a
6 person named as a beneficiary to receive any property,
7 benefit, or contractual right upon the principal's death, or
8 as a beneficiary of a trust created by or for the principal;
9 (6) a provider agency as defined in Section 2 of the Adult
10 Protective Services Act, a representative of the Office of the
11 State Long Term Care Ombudsman, the State Guardian, a public
12 guardian, or a governmental agency having regulatory authority
13 to protect the welfare of the principal; and (7) the
14 principal's caregiver or another person who demonstrates
15 sufficient interest in the principal's welfare.

16 (g) Absent court order directing a guardian to exercise
17 powers of the principal under the agency, a guardian will have
18 no power, duty or liability with respect to any property
19 subject to the agency or any personal or health care matters
20 covered by the agency. If an agent seeks guardianship of the
21 principal pursuant to the Probate Act of 1975, the petition
22 for guardianship must delineate the specific powers to be
23 granted to the guardian that are not already included in the
24 power of attorney. The petition for temporary, limited, or
25 plenary guardianship of the principal under the Probate Act of
26 1975 may include a prayer for relief to suspend a power of

1 attorney or to revoke a power of attorney in accordance with
2 subsection (b).

3 (h) Proceedings under this Section shall be commenced in
4 the county where the guardian was appointed or, if no Illinois
5 guardian is acting, then in the county where the agent or
6 principal resides or where the principal owns real property.

7 (i) This Section shall not be construed to limit any other
8 remedies available.

9 (Source: P.A. 102-72, eff. 1-1-22.)