



Sen. Laura Fine

Filed: 2/1/2023

10300SB0055sam001

LRB103 04523 LNS 55831 a

1 AMENDMENT TO SENATE BILL 55

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 55 by replacing  
3 everything after the enacting clause with the following:

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

1 agency or that the agent's action or inaction, including  
2 restricting or not allowing an interested person to have  
3 reasonable visitation with the principal, has caused or  
4 threatens substantial harm to the principal's person or  
5 property in a manner not authorized or intended by the  
6 principal, the court may order a guardian of the principal's  
7 person or estate to exercise any powers of the principal under  
8 the agency, including the power to revoke the agency, or may  
9 enter such other orders without appointment of a guardian as  
10 the court deems necessary to provide for the best interests of  
11 the principal.

12 (c) If the court finds that the agency requires  
13 interpretation, the court may construe the agency and instruct  
14 the agent, but the court may not amend the agency.

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

24 (e) Upon a finding that the agent's action has caused  
25 substantial harm to the principal's person or property, the  
26 court may assess against the agent reasonable costs and

1 attorney's fees to a prevailing party who is a provider agency  
2 as defined in Section 2 of the Adult Protective Services Act, a  
3 representative of the Office of the State Long Term Care  
4 Ombudsman, the State Guardian, a public guardian, or a  
5 governmental agency having regulatory authority to protect the  
6 welfare of the principal.

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

23 (g) Absent court order directing a guardian to exercise  
24 powers of the principal under the agency, a guardian will have  
25 no power, duty or liability with respect to any property  
26 subject to the agency or any personal or health care matters

1 covered by the agency. If an agent seeks guardianship of the  
2 principal pursuant to the Probate Act of 1975, the petition  
3 for guardianship must delineate the specific powers to be  
4 granted to the guardian that are not already included in the  
5 power of attorney. The petition for temporary, limited, or  
6 plenary guardianship of the principal under the Probate Act of  
7 1975 may include a prayer for relief to suspend a power of  
8 attorney or to revoke a power of attorney in accordance with  
9 subsection (b).

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

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

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