

SB2758



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2758

Introduced 1/16/2024, by Sen. Karina Villa

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

from Ch. 110 1/2, par. 11a-17

Amends the Probate Act of 1975. Allows a ward in guardianship to get married who understands the nature, effect, duties, and obligations of marriage. Prior consent of the guardian of the person or estate or approval of the court is not required for the ward to enter into a marriage. A guardian may contest the validity of the marriage pursuant to Sections 301 and 302 of Illinois Marriage and Dissolution of Marriage Act.

LRB103 36614 JRC 66723 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 11a-17 as follows:

6 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

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

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

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

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

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

1 direct a guardian of the ward's person or estate to file a
2 petition for dissolution of marriage or to file a petition for
3 legal separation or declaration of invalidity of marriage
4 under the Illinois Marriage and Dissolution of Marriage Act on
5 behalf of the ward if the court finds by clear and convincing
6 evidence that the relief sought is in the ward's best
7 interests. In making its determination, the court shall
8 consider the standards set forth in subsection (e) of this
9 Section.

10 (a-10) A ward who understands the nature, effect, duties,
11 and obligations of marriage retains the fundamental right to
12 marry. Prior consent of the guardian of the person or estate or
13 approval of the court is not required for the ward to enter
14 into a marriage. A ward, guardian of the person, or guardian of
15 the estate may seek judicial approval or ratification of a
16 marriage pursuant to a petition to the court. ~~Upon petition by~~
17 ~~the guardian of the ward's person or estate, the court may~~
18 ~~authorize and direct a guardian of the ward's person or estate~~
19 ~~to consent, on behalf of the ward, to the ward's marriage~~
20 ~~pursuant to Part II of the Illinois Marriage and Dissolution~~
21 ~~of Marriage Act if the court finds by clear and convincing~~
22 ~~evidence that the marriage is in the ward's best interests.~~ In
23 making its determination, the court shall consider the
24 standards set forth in subsection (e) of this Section. A
25 guardian may contest the validity of a marriage pursuant to
26 Sections 301 and 302 of Illinois Marriage and Dissolution of

1 ~~Marriage Act. Upon presentation of a court order authorizing~~
2 ~~and directing a guardian of the ward's person and estate to~~
3 ~~consent to the ward's marriage, the county clerk shall accept~~
4 ~~the guardian's application, appearance, and signature on~~
5 ~~behalf of the ward for purposes of issuing a license to marry~~
6 ~~under Section 203 of the Illinois Marriage and Dissolution of~~
7 ~~Marriage Act.~~

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

25 (c) Absent court order pursuant to the Illinois Power of
26 Attorney Act directing a guardian to exercise powers of the

1 principal under an agency that survives disability, the
2 guardian has no power, duty, or liability with respect to any
3 personal or health care matters covered by the agency. This
4 subsection (c) applies to all agencies, whenever and wherever
5 executed.

6 (d) A guardian acting as a surrogate decision maker under
7 the Health Care Surrogate Act shall have all the rights of a
8 surrogate under that Act without court order including the
9 right to make medical treatment decisions such as decisions to
10 forgo or withdraw life-sustaining treatment. Any decisions by
11 the guardian to forgo or withdraw life-sustaining treatment
12 that are not authorized under the Health Care Surrogate Act
13 shall require a court order. Nothing in this Section shall
14 prevent an agent acting under a power of attorney for health
15 care from exercising his or her authority under the Illinois
16 Power of Attorney Act without further court order, unless a
17 court has acted under Section 2-10 of the Illinois Power of
18 Attorney Act. If a guardian is also a health care agent for the
19 ward under a valid power of attorney for health care, the
20 guardian acting as agent may execute his or her authority
21 under that act without further court order.

22 (e) Decisions made by a guardian on behalf of a ward shall
23 be made in accordance with the following standards for
24 decision making. The guardian shall consider the ward's
25 current preferences to the extent the ward has the ability to
26 participate in decision making when those preferences are

1 known or reasonably ascertainable by the guardian. Decisions
2 by the guardian shall conform to the ward's current
3 preferences: (1) unless the guardian reasonably believes that
4 doing so would result in substantial harm to the ward's
5 welfare or personal or financial interests; and (2) so long as
6 such decisions give substantial weight to what the ward, if
7 competent, would have done or intended under the
8 circumstances, taking into account evidence that includes, but
9 is not limited to, the ward's personal, philosophical,
10 religious and moral beliefs, and ethical values relative to
11 the decision to be made by the guardian. Where possible, the
12 guardian shall determine how the ward would have made a
13 decision based on the ward's previously expressed preferences,
14 and make decisions in accordance with the preferences of the
15 ward. If the ward's wishes are unknown and remain unknown
16 after reasonable efforts to discern them, or if the guardian
17 reasonably believes that a decision made in conformity with
18 the ward's preferences would result in substantial harm to the
19 ward's welfare or personal or financial interests, the
20 decision shall be made on the basis of the ward's best
21 interests as determined by the guardian. In determining the
22 ward's best interests, the guardian shall weigh the reason for
23 and nature of the proposed action, the benefit or necessity of
24 the action, the possible risks and other consequences of the
25 proposed action, and any available alternatives and their
26 risks, consequences and benefits, and shall take into account

1 any other information, including the views of family and
2 friends, that the guardian believes the ward would have
3 considered if able to act for herself or himself.

4 (f) Upon petition by any interested person (including the
5 standby or short-term guardian), with such notice to
6 interested persons as the court directs and a finding by the
7 court that it is in the best interests of the person with a
8 disability, the court may terminate or limit the authority of
9 a standby or short-term guardian or may enter such other
10 orders as the court deems necessary to provide for the best
11 interests of the person with a disability. The petition for
12 termination or limitation of the authority of a standby or
13 short-term guardian may, but need not, be combined with a
14 petition to have another guardian appointed for the person
15 with a disability.

16 (g) (1) Unless there is a court order to the contrary, the
17 guardian, consistent with the standards set forth in
18 subsection (e) of this Section, shall use reasonable efforts
19 to notify the ward's known adult children, who have requested
20 notification and provided contact information, of the ward's
21 admission to a hospital, hospice, or palliative care program,
22 the ward's death, and the arrangements for the disposition of
23 the ward's remains.

24 (2) If a guardian unreasonably prevents an adult child,
25 spouse, adult grandchild, parent, or adult sibling of the ward
26 from visiting the ward, the court, upon a verified petition,

1 may order the guardian to permit visitation between the ward
2 and the adult child, spouse, adult grandchild, parent, or
3 adult sibling. In making its determination, the court shall
4 consider the standards set forth in subsection (e) of this
5 Section. The court shall not allow visitation if the court
6 finds that the ward has capacity to evaluate and communicate
7 decisions regarding visitation and expresses a desire not to
8 have visitation with the petitioner. This subsection (g) does
9 not apply to duly appointed public guardians or the Office of
10 State Guardian.

11 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22;
12 102-258, eff. 8-6-21; 102-813, eff. 5-13-22.)