



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2539

Introduced 2/20/2009, by Rep. Angelo Saviano

SYNOPSIS AS INTRODUCED:

755 ILCS 5/13-1	from Ch. 110 1/2, par. 13-1
755 ILCS 5/13-1.2 new	
755 ILCS 5/13-3.1	from Ch. 110 1/2, par. 13-3.1
755 ILCS 5/13-5	from Ch. 110 1/2, par. 13-5

Amends the Probate Act of 1975. Provides that the Governor may appoint one person to serve as public guardian and public administrator in one or more counties (instead of one in each county). Provides that each public guardian must be certified by the Center for Guardianship Certification and that the Guardianship and Advocacy Commission shall provide professional training. Provides for fees and expenses for a public guardian and his or her temporary guardianship duties and establishes guidelines for fees. Makes other changes.

LRB096 09610 AJO 21820 b

FISCAL NOTE ACT
MAY APPLY

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 Sections 13-1, 13-3.1, and 13-5 and by adding Section 13-1.2 as
6 follows:

7 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

8 Sec. 13-1. Appointment and term of public administrator and
9 public guardian.) Except as provided in Section 13-1.1, before
10 the first Monday of December, 1977 and every 4 years
11 thereafter, and as often as vacancies occur, the Governor, by
12 and with the advice and consent of the Senate, shall appoint in
13 each county a suitable person to serve as public administrator
14 and a suitable person to serve as public guardian of the
15 county. The Governor may appoint the same person to serve as
16 public guardian and public administrator in one or more
17 counties. In considering the number of counties of service for
18 any prospective public guardian or public administrator the
19 Governor may consider the population of the county and the
20 ability of the prospective public guardian or public
21 administrator to travel to multiple counties and manage estates
22 in multiple counties. Each person so appointed holds his office
23 for 4 years from the first Monday of December, 1977 and every 4

1 years thereafter or until his successor is appointed and
2 qualified.

3 (Source: P.A. 81-1052.)

4 (755 ILCS 5/13-1.2 new)

5 Sec. 13-1.2. Certification requirement. Each person
6 appointed as a public guardian shall be certified as a National
7 Certified Guardian by the Center for Guardianship
8 Certification within 6 months after his or her appointment. The
9 Guardianship and Advocacy Commission shall provide public
10 guardians with professional training opportunities and
11 facilitate testing and certification opportunities at
12 locations in Springfield and Chicago with the Center for
13 Guardianship Certification. The cost of certification shall be
14 considered an expense connected with the operation of the
15 public guardian's office within the meaning of subsection (b)
16 of Section 13-3.1 of this Article.

17 (755 ILCS 5/13-3.1) (from Ch. 110 1/2, par. 13-3.1)

18 Sec. 13-3.1.

19 (a) Compensation of public guardian.) In counties having a
20 population in excess of 1,000,000 the public guardian shall be
21 paid an annual salary, to be set by the County Board at a
22 figure not to exceed the salary of the public defender for the
23 county. All expenses connected with the operation of the office
24 shall be subject to the approval of the County Board and shall

1 be paid from the county treasury. All fees collected shall be
2 paid into the county treasury.

3 (b) In counties having a population of 1,000,000 or less
4 the public guardian shall receive all the fees of his office
5 and bear the expenses connected with the operation of the
6 office. A public guardian shall be entitled to reasonable and
7 appropriate compensation for services related to guardianship
8 duties but all fees must be reviewed and approved by the court.
9 A public guardian may petition the court for the payment of
10 reasonable and appropriate fees on not less than a yearly
11 basis, or sooner as approved by the court. Any fees or expenses
12 charged by a public guardian shall be documented through
13 billings and maintained by the guardian and supplied to the
14 court for review. In considering the reasonableness of any fee
15 petition brought by a public guardian under this Section, the
16 court shall consider the following:

17 (1) the powers and duties assigned to the public
18 guardian by the court;

19 (2) the necessity of any services provided;

20 (3) the time required, the degree of difficulty, and
21 the experience needed to complete the task;

22 (4) the needs of the ward and the costs of
23 alternatives; and

24 (5) other facts and circumstances material to the best
25 interests of the ward or his or her estate.

26 (c) When the public guardian is appointed as the temporary

1 guardian of a disabled adult pursuant to an emergency petition
2 under circumstances when the court finds that the immediate
3 establishment of a temporary guardianship is necessary to
4 protect the disabled adult's health, welfare, or estate, the
5 public guardian shall be entitled to reasonable and appropriate
6 fees, as determined by the court, for the period of the
7 temporary guardianship, including fees directly associated
8 with establishing the temporary guardianship.

9 (Source: P.A. 81-1052.)

10 (755 ILCS 5/13-5) (from Ch. 110 1/2, par. 13-5)

11 Sec. 13-5. Powers and duties of public guardian.) The court
12 may appoint the public guardian as the guardian of any disabled
13 adult who is in need of a public guardian and whose estate
14 exceeds \$25,000. When a disabled adult who has a smaller estate
15 is in need of guardianship services, the court shall appoint
16 the State guardian pursuant to Section 30 of the Guardianship
17 and Advocacy Act. If the public guardian is appointed guardian
18 of a disabled adult and the estate of the disabled adult is
19 thereafter reduced to less than \$25,000, the court may, upon
20 the petition of the public guardian and the approval by the
21 court of a final accounting of the disabled adult's estate,
22 discharge the public guardian and transfer the guardianship to
23 the State guardian. The public guardian shall serve not less
24 than 14 days' notice to the State guardian of the hearing date
25 regarding the transfer. When appointed by the court, the public

1 guardian has the same powers and duties as other guardians
2 appointed under this Act, with the following additions and
3 modifications:

4 (a) The public guardian shall monitor the ward and his care
5 and progress on a continuous basis. Monitoring shall at minimum
6 consist of monthly contact with the ward, and the receipt of
7 periodic reports from all individuals and agencies, public or
8 private, providing care or related services to the ward.

9 (b) Placement of a ward outside of the ward's home may be
10 made only after the public guardian or his representative has
11 visited the facility in which placement is proposed.

12 (c) The public guardian shall prepare an inventory of the
13 ward's belongings and assets and shall maintain insurance on
14 all of the ward's real and personal property. No personal
15 property shall be removed from the ward's possession except for
16 storage pending final placement or for liquidation in
17 accordance with this Act.

18 (d) The public guardian shall make no substantial
19 distribution of the ward's estate without a court order.

20 (e) The public guardian may liquidate assets of the ward to
21 pay for the costs of the ward's care and for storage of the
22 ward's personal property only after notice of such pending
23 action is given to all potential heirs at law, unless notice is
24 waived by the court; provided, however, that a person who has
25 been so notified may elect to pay for care or storage or to pay
26 fair market value of the asset or assets sought to be sold in

1 lieu of liquidation.

2 (f) Real property of the ward may be sold at fair market
3 value after an appraisal of the property has been made by a
4 licensed appraiser; provided, however, that the ward's
5 residence may be sold only if the court finds that the ward is
6 not likely to be able to return home at a future date.

7 (g) The public guardian shall, at such intervals as the
8 court may direct, submit to the court an affidavit setting
9 forth in detail the services he has provided for the benefit of
10 the ward. ~~The court shall set reasonable and appropriate fees~~
11 ~~for such services. Except in a county that has a population~~
12 ~~exceeding 3,000,000 people, the public guardian may petition~~
13 ~~the court for the payment of reasonable and appropriate fees on~~
14 ~~not less than a quarterly basis, or sooner as approved by the~~
15 ~~court.~~

16 (h) Upon the death of the ward, the public guardian shall
17 turn over to the court-appointed administrator all of the
18 ward's assets and an account of his receipt and administration
19 of the ward's property. A guardian ad litem shall be appointed
20 for an accounting when the estate exceeds the amount set in
21 Section 25-1 of this Act for administration of small estates.

22 (i) (1) On petition of any person who appears to have an
23 interest in the estate, the court by temporary order may
24 restrain the public guardian from performing specified
25 acts of administration, disbursement or distribution, or
26 from exercise of any powers or discharge of any duties of

1 his office, or make any other order to secure proper
2 performance of his duty, if it appears to the court that
3 the public guardian might otherwise take some action
4 contrary to the best interests of the ward. Persons with
5 whom the public guardian may transact business may be made
6 parties.

7 (2) The matter shall be set for hearing within 10 days
8 unless the parties otherwise agree or unless for good cause
9 shown the court determines that additional time is
10 required. Notice as the court directs shall be given to the
11 public guardian and his attorney of record, if any, and to
12 any other parties named defendant in the petition.

13 (j) On petition of the public guardian, the court in its
14 discretion may for good cause shown transfer guardianship to
15 the State guardian.

16 (k) No later than January 31 of each year, the public
17 guardian shall file an annual report with the clerk of the
18 Circuit Court, indicating, with respect to the period covered
19 by the report, the number of cases which he has handled, the
20 date on which each case was assigned, the date of termination
21 of each case which has been closed during the period, the
22 disposition of each terminated case, and the total amount of
23 fees collected during the period from each ward.

24 (l) (Blank). ~~When the public guardian is appointed~~
25 ~~temporary guardian of a disabled adult pursuant to an emergency~~
26 ~~petition under circumstances where the court finds that the~~

1 ~~immediate establishment of a temporary guardianship is~~
2 ~~necessary to protect the disabled adult's health, welfare, or~~
3 ~~estate, the public guardian shall be entitled to reasonable and~~
4 ~~appropriate fees, as determined by the court, for the period of~~
5 ~~the temporary guardianship, including fees directly associated~~
6 ~~with establishing the temporary guardianship.~~

7 (Source: P.A. 92-840, eff. 8-22-02.)