

SB2547



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2547

Introduced 1/11/2012, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17.2 new

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides procedures and standards for a guardian to initiate a dissolution of marriage or to not contest a dissolution of marriage.

LRB097 15547 AJ0 60684 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 adding
5 Section 11a-17.2 as follows:

6 (755 ILCS 5/11a-17.2 new)

7 Sec. 11a-17.2. Initiating dissolution proceedings for
8 ward.

9 (a) A guardian of the person shall not consent to the
10 initiation of a dissolution proceeding on behalf of a married
11 ward without first obtaining an order from the court granting
12 the guardian the authority to provide consent.

13 (b) A guardian seeking authority to consent to the
14 initiation of a dissolution of the marriage of the ward shall
15 seek such authority by filing a verified motion. The verified
16 motion shall allege facts which demonstrate that the proposed
17 dissolution is warranted under subsection (f), (g), or (h) of
18 this Section. The guardian ad litem will notify the ward of the
19 motion in the manner set forth in subsection (c) of this
20 Section.

21 (c) Upon the filing of a verified motion for authority to
22 initiate a dissolution of the marriage of a ward, the court
23 shall appoint a guardian ad litem to report to the court

1 consistent with the provisions of this Section. If the guardian
2 ad litem is not a licensed attorney, he or she shall be
3 qualified, by training or experience, to work with or advocate
4 for persons with a developmental disability, mental illness,
5 physical disability, or disability because of mental
6 deterioration, depending on the type of disability of the ward
7 that is alleged in the motion. The court may allow the guardian
8 ad litem reasonable compensation. The guardian ad litem may
9 consult with a person who by training or experience is
10 qualified to work with persons with a developmental disability,
11 mental illness, physical disability, or disability because of
12 mental deterioration, depending on the type of disability of
13 the ward that is alleged. The guardian ad litem may also
14 consult with health care providers knowledgeable about the
15 traumatic or psychological effects of dissolution on an
16 individual, particularly a disabled individual. Outside the
17 presence of the guardian, the guardian ad litem shall
18 personally observe the ward prior to the hearing and shall
19 inform the ward orally and in writing of the contents of the
20 verified motion for authority to consent to initiation of a
21 dissolution proceeding. Outside the presence of the guardian,
22 the guardian ad litem shall also attempt to elicit the ward's
23 position concerning the motion, and any other areas of inquiry
24 deemed appropriate by the court. At or before the hearing, the
25 guardian ad litem shall file a written report detailing his or
26 her observations of the ward; the responses of the ward to any

1 of the inquiries detailed in this Section; the opinion of the
2 guardian ad litem and any other professionals with whom the
3 guardian ad litem consulted concerning the ward's
4 understanding of and desire for or objection to, as well as
5 what is in the ward's best interest relative to, dissolution;
6 and any other material issue discovered by the guardian ad
7 litem. The guardian ad litem shall appear at the hearing and
8 testify, and may present witnesses, as to any issues presented
9 in his or her report.

10 (d) The court (1) may appoint counsel for the ward if the
11 court finds that the interests of the ward will be best served
12 by the appointment, and (2) shall appoint counsel upon the
13 ward's request, if the ward is objecting to the proposed
14 dissolution or if the ward takes a position adverse to that of
15 the guardian ad litem. The ward shall be permitted to obtain
16 the appointment of counsel either at the hearing or by any
17 written or oral request communicated to the court prior to the
18 hearing. The court shall inform the ward of this right to
19 obtain appointed counsel. The court may allow counsel for the
20 ward reasonable compensation.

21 (e) The court may order a medical and psychological
22 evaluation of the ward. The evaluation shall address the ward's
23 decision making capacity with respect to the proposed
24 dissolution, the existence of any less permanent alternatives,
25 and any other material issue.

26 (f) The court shall determine, as a threshold inquiry,

1 whether the ward has capacity to consent or withhold consent to
2 the proposed dissolution and, if the ward lacks such capacity,
3 whether the ward is likely to regain such capacity. The ward
4 shall not be deemed to lack such capacity solely on the basis
5 of the adjudication of disability and appointment of a
6 guardian. If the court finds that (1) the ward has capacity to
7 consent or withhold consent to the proposed dissolution and (2)
8 the ward objects or consents to the legal proceeding the court
9 shall enter an order consistent with the ward's objection or
10 consent and the proceedings on the verified motion shall be
11 terminated.

12 (g) If the court finds that the ward does not have capacity
13 to consent or withhold consent to the proposed dissolution and
14 is unlikely to regain such capacity, the court shall determine
15 whether the ward is expressing a clear desire for the proposed
16 divorce. If the ward is expressing a clear desire for the
17 proposed divorce, the court's decision regarding the proposed
18 divorce shall be made in accordance with the standards set
19 forth in subsection (e) of Section 11a-17 of this Act.

20 (h) If the court finds that the ward does not have capacity
21 to consent or withhold consent to the proposed dissolution and
22 is unlikely to regain such capacity, and that the ward is not
23 expressing a clear desire for the proposed dissolution the
24 court shall consider the standards set forth in subsection (e)
25 of Section 11a-17 of this Act and enter written findings of
26 fact and conclusions of law addressing those standards. In

1 addition, the court shall not authorize the guardian to consent
2 to the proposed initiation of a dissolution of marriage
3 proceeding unless the court finds, by clear and convincing
4 evidence and based on written findings of fact and conclusions
5 of law, that all of the following factors are present:

6 (1) The ward lacks decisional capacity regarding the
7 proposed dissolution.

8 (2) The benefits to the ward of the proposed
9 dissolution outweigh the harm.

10 (3) The court has considered less intrusive
11 alternatives and found them to be inadequate in this case.

12 (4) The proposed dissolution is in the best interest of
13 the ward, taking into consideration the possibility that
14 the ward will experience trauma or psychological damage if
15 she is divorced, or conversely, the possibility of trauma
16 or psychological damage if she remains married.