



Sen. Ira I. Silverstein

**Filed: 3/7/2012**

09700SB2894sam002

LRB097 17188 KTG 67184 a

1 AMENDMENT TO SENATE BILL 2894

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2894 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Guardianship and Advocacy Act is amended by  
5 changing Section 31 as follows:

6 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

7 Sec. 31. Appointment; availability of State Guardian;  
8 available private guardian. The State Guardian shall not be  
9 appointed if another suitable person is available and willing  
10 to accept the guardianship appointment. In all cases where a  
11 court appoints the State Guardian, the court shall indicate in  
12 the order appointing the guardian as a finding of fact that no  
13 other suitable and willing person could be found to accept the  
14 guardianship appointment. On and after the effective date of  
15 this amendatory Act of the 97th General Assembly, the court  
16 shall also indicate in the order, as a finding of fact, the

1 reasons that the State Guardian appointment, rather than the  
2 appointment of another interested party, is required. This  
3 requirement shall be waived where the Office of State Guardian  
4 petitions for its own appointment as guardian.

5 (Source: P.A. 89-396, eff. 8-20-95.)

6 Section 10. The Clerks of Courts Act is amended by adding  
7 Section 27.3f as follows:

8 (705 ILCS 105/27.3f new)

9 Sec. 27.3f. Guardianship and advocacy operations fee.

10 (a) As used in this Section, "guardianship and advocacy"  
11 means the guardianship and advocacy services provided by the  
12 Guardianship and Advocacy Commission and defined in the  
13 Guardianship and Advocacy Act. Viable public guardianship and  
14 advocacy programs, including the public guardianship programs  
15 created and supervised in probate proceedings in the Illinois  
16 courts, are essential to the administration of justice and  
17 ensure that incapacitated persons and their estates are  
18 protected. To defray the expense of maintaining and operating  
19 the divisions and programs of the Guardianship and Advocacy  
20 Commission and to support viable guardianship and advocacy  
21 programs throughout Illinois, each circuit court clerk shall  
22 charge and collect a fee on all matters filed in probate cases  
23 in accordance with this Section, but no fees shall be assessed  
24 against the State Guardian, any State agency under the

1 jurisdiction of the Governor, any public guardian, or any  
2 State's Attorney.

3 (b) No fees specified in this Section shall be imposed in  
4 any minor guardianship established under Article XI of the  
5 Probate Act of 1975, or against an indigent person. An indigent  
6 person shall include any person who meets one or more of the  
7 following criteria:

8 (1) He or she is receiving assistance under one or more  
9 of the following public benefits programs: Supplemental  
10 Security Income (SSI), Aid to the Aged, Blind, and Disabled  
11 (AABD), Temporary Assistance for Needy Families (TANF),  
12 Food Stamps, General Assistance, State Transitional  
13 Assistance, or State Children and Family Assistance.

14 (2) His or her available income is 125% or less of the  
15 current poverty level as established by the United States  
16 Department of Health and Human Services, unless the  
17 applicant's assets that are not exempt under Part 9 or 10  
18 of Article XII of this Code are of a nature and value that  
19 the court determines that the applicant is able to pay the  
20 fees, costs, and charges.

21 (3) He or she is, in the discretion of the court,  
22 unable to proceed in an action without payment of fees,  
23 costs, and charges and whose payment of those fees, costs,  
24 and charges would result in substantial hardship to the  
25 person or his or her family.

26 (4) He or she is an indigent person pursuant to Section

1       5-105.5 of the Code of Civil Procedure, providing that an  
2       "indigent person" means a person whose income is 125% or  
3       less of the current official federal poverty guidelines or  
4       who is otherwise eligible to receive civil legal services  
5       under the Legal Services Corporation Act of 1974.

6       (c) The clerk is entitled to receive the fees specified in  
7       this Section, which shall be paid in advance, and managed by  
8       the clerk as set out in paragraph (4), except that, for good  
9       cause shown, the court may suspend, reduce, or release the  
10      costs payable under this Section:

11       (1) For administration of the estate of a decedent  
12      (whether testate or intestate) or of a missing person, a  
13      fee of \$50, plus the fees specified in paragraph (3),  
14      except:

15           (A) When the value of the real and personal  
16           property of a decedent (whether testate or intestate)  
17           does not exceed \$15,000, no fee shall be assessed.

18           (B) When (i) proof of heirship alone is made, (ii)  
19           a domestic or foreign will is admitted to probate  
20           without administration (including proof of heirship),  
21           or (iii) letters of office are issued for a particular  
22           purpose without administration of the estate, the fee  
23           shall be \$40.

24       (2) For administration of the estate of a ward that  
25      results in the appointment of the Office of State Guardian,  
26      the fee shall be \$250, plus the fees specified in paragraph

1       (3).

2           (3) In addition to the fees payable under paragraph (1)  
3 or (2) of this subsection (c), the following fees are  
4 payable:

5           (A) For each account (other than one final account)  
6 filed in the estate of a decedent, or ward, the fee  
7 shall be \$25.

8           (B) For filing a claim in an estate when the amount  
9 claimed is \$150 or more but less than \$500, the fee  
10 shall be \$100; when the amount claimed is \$500 or more  
11 but less than \$10,000, the fee shall be \$115; when the  
12 amount claimed is \$10,000 or more, the fee shall be  
13 \$135; provided that the court in allowing a claim may  
14 add to the amount allowed the filing fee paid by the  
15 claimant.

16           (C) For filing in an estate a claim, petition, or  
17 supplemental proceeding based upon an action seeking  
18 equitable relief including the construction or contest  
19 of a will, enforcement of a contract to make a will,  
20 and proceedings involving a testamentary trust or the  
21 appointment of a testamentary trustee, the fee shall be  
22 \$60.

23           (D) For filing in an estate (i) the appearance of  
24 any person for the purpose of consent or (ii) the  
25 appearance of an executor, administrator,  
26 administrator to collect, guardian, guardian ad litem,

1           or special administrator, no fee.

2           (E) Except as provided in subparagraph (D) of this  
3 paragraph (3), for filing the appearance of any person  
4 or persons, the fee shall be \$30.

5           (F) For each jury demand, the fee shall be \$180.

6           (G) For disposition of the collection of a judgment  
7 or settlement of an action or claim for wrongful death  
8 of a decedent or of any cause of action of a ward, when  
9 there is no other administration of the estate, the fee  
10 shall be \$50, less any amount paid under subparagraph  
11 (B) of paragraph (1) or subparagraph (B) of this  
12 paragraph (3), except that if the amount involved does  
13 not exceed \$5,000, the fee, including any amount paid  
14 under subparagraph (B) of paragraph (1) or  
15 subparagraph (B) of this paragraph (3), shall be \$20.

16           (4) The guardianship and advocacy operations fees, as  
17 outlined in this Section, shall be in addition to all other  
18 fees and charges and assessable as costs and shall not be  
19 subject to disbursement under Section 27.5 or 27.6 of this  
20 Act. Twenty percent of the fee shall be retained by the  
21 clerk to defray costs of collection and 80% of the fee  
22 shall be disbursed within 60 days after receipt by the  
23 circuit clerk to the State Treasurer for deposit by the  
24 State Treasurer into the Guardianship and Advocacy Fund.

25           Section 15. The Probate Act of 1975 is amended by changing

1 Sections 11a-3, 11a-12, 11a-20, and 13-1 and by adding Section  
2 13-1.3 as follows:

3 (755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

4 Sec. 11a-3. Adjudication of disability; Power to appoint  
5 guardian.

6 (a) Upon the filing of a petition by a reputable person or  
7 by the alleged disabled person himself or on its own motion,  
8 the court may adjudge a person to be a disabled person, but  
9 only if it has been demonstrated by clear and convincing  
10 evidence that the person is a disabled person as defined in  
11 Section 11a-2. If the court adjudges a person to be a disabled  
12 person, the court may appoint (1) a guardian of his person, if  
13 it has been demonstrated by clear and convincing evidence that  
14 because of his disability he lacks sufficient understanding or  
15 capacity to make or communicate responsible decisions  
16 concerning the care of his person, or (2) a guardian of his  
17 estate, if it has been demonstrated by clear and convincing  
18 evidence that because of his disability he is unable to manage  
19 his estate or financial affairs, or (3) a guardian of his  
20 person and of his estate.

21 (b) Guardianship shall be utilized only as is necessary to  
22 promote the well-being of the disabled person, to protect him  
23 from neglect, exploitation, or abuse, and to encourage  
24 development of his maximum self-reliance and independence.  
25 Guardianship shall be implemented in the least restrictive

1 alternative, shall maximize the alleged disabled person's  
2 right to self-determination and autonomy, and Guardianship  
3 shall be ordered only to the extent necessitated by the  
4 individual's actual mental, physical and adaptive limitations.  
5 In determining the least restrictive alternative, the court  
6 shall consider options that allow the ward to live, learn, and  
7 work in a setting that places as few limits as possible on the  
8 ward's rights and personal freedom as appropriate to meet the  
9 needs of the ward.

10 (Source: P.A. 93-435, eff. 1-1-04.)

11 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)  
12 Sec. 11a-12. Order of appointment.)

13 (a) If basis for the appointment of a guardian as specified  
14 in Section 11a-3 is not found, the court shall dismiss the  
15 petition.

16 (b) If the respondent is adjudged to be disabled and to  
17 lack some but not all of the ~~be totally without~~ capacity as  
18 specified in Section 11a-3, and if the court finds that ~~limited~~  
19 guardianship is necessary for the protection of ~~will not~~  
20 ~~provide sufficient protection for~~ the disabled person, his or  
21 her estate, or both, the court shall appoint a limited ~~plenary~~  
22 guardian for the respondent's person or estate or both. The  
23 court shall enter a written order stating the factual basis for  
24 its findings and specifying the duties and powers of the  
25 guardian and the legal disabilities to which the respondent is



1 subject.

2 (c) If the respondent is adjudged to be disabled and to be  
3 totally without ~~lack some but not all of the~~ capacity as  
4 specified in Section 11a-3, and if the court finds that limited  
5 guardianship will not provide sufficient ~~is necessary for the~~  
6 protection for ~~of~~ the disabled person, his or her estate, or  
7 both, the court shall appoint a plenary guardian for ~~limited~~  
8 ~~guardian of~~ the respondent's person or estate or both. The  
9 court shall enter a written order stating the factual basis for  
10 its findings ~~and specifying the duties and powers of the~~  
11 ~~guardian and the legal disabilities to which the respondent is~~  
12 ~~subject.~~

13 (d) The selection of the guardian shall be in the  
14 discretion of the court, which shall give due consideration to  
15 the preference of the disabled person as to a guardian, as well  
16 as the qualifications of the proposed guardian, in making its  
17 appointment.

18 (Source: P.A. 89-396, eff. 8-20-95.)

19 (755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

20 Sec. 11a-20. Termination of adjudication of disability -  
21 Revocation of letters - modification.) (a) Except as provided  
22 in subsection (b-5), upon ~~Upon~~ the filing of a petition by or  
23 on behalf of a disabled person or on its own motion, the court  
24 may terminate the adjudication of disability of the ward,  
25 revoke the letters of guardianship of the estate or person, or

1 both, or modify the duties of the guardian if the ward's  
2 capacity to perform the tasks necessary for the care of his  
3 person or the management of his estate has been demonstrated by  
4 clear and convincing evidence. A report or testimony by a  
5 licensed physician is not a prerequisite for termination,  
6 revocation or modification of a guardianship order under this  
7 subsection (a).

8 (b) Except as provided in subsection (b-5), a ~~A~~ request by  
9 the ward or any other person on the ward's behalf, under this  
10 Section may be communicated to the court or judge by any means,  
11 including but not limited to informal letter, telephone call or  
12 visit. Upon receipt of a request from the ward or another  
13 person, the court may appoint a guardian ad litem to  
14 investigate and report to the court concerning the allegations  
15 made in conjunction with said request, and if the ward wishes  
16 to terminate, revoke, or modify the guardianship order, to  
17 prepare the ward's petition and to render such other services  
18 as the court directs.

19 (b-5) Upon the filing of a verified petition by the  
20 guardian of the disabled person or the disabled person, the  
21 court may terminate the adjudication of disability of the ward,  
22 revoke the letters of guardianship of the estate or person, or  
23 both, or modify the duties of the guardian if: (i) a report  
24 completed in accordance with subsection (a) of Section 11a-9  
25 states that the disabled person is no longer in need of  
26 guardianship or that the type and scope of guardianship should

1 be modified; (ii) the disabled person no longer wishes to be  
2 under guardianship or desires that the type and scope of  
3 guardianship be modified; and (iii) the guardian of the  
4 disabled person states that it is in the best interest of the  
5 disabled person to terminate the adjudication of disability of  
6 the ward, revoke the letters of guardianship of the estate or  
7 person, or both, or modify the duties of the guardian, and  
8 provides the basis thereof. In a proceeding brought pursuant to  
9 this subsection (b-5), the court may terminate the adjudication  
10 of disability of the ward, revoke the letters of guardianship  
11 of the estate or person, or both, or modify the duties of the  
12 guardian, unless it has been demonstrated by clear and  
13 convincing evidence that the ward is incapable of performing  
14 the tasks necessary for the care of his or her person or the  
15 management of his or her estate.

16 (c) Notice of the hearing on a petition under this Section,  
17 together with a copy of the petition, shall be given to the  
18 ward, unless he is the petitioner, and to each and every  
19 guardian to whom letters of guardianship have been issued and  
20 not revoked, not less than 14 days before the hearing.

21 (Source: P.A. 86-605.)

22 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

23 Sec. 13-1. Appointment and term of public administrator and  
24 public guardian.) Except as provided in Sections ~~Section~~ 13-1.1  
25 and 13-1.3, before the first Monday of December, 1977 and every

1 4 years thereafter, and as often as vacancies occur, the  
2 Governor, by and with the advice and consent of the Senate,  
3 shall appoint in each county a suitable person to serve as  
4 public administrator and a suitable person to serve as public  
5 guardian of the county. The Governor may appoint the same  
6 person to serve as public guardian and public administrator in  
7 one or more counties. In considering the number of counties of  
8 service for any prospective public guardian or public  
9 administrator the Governor may consider the population of the  
10 county and the ability of the prospective public guardian or  
11 public administrator to travel to multiple counties and manage  
12 estates in multiple counties. Each person so appointed holds  
13 his office for 4 years from the first Monday of December, 1977  
14 and every 4 years thereafter or until his successor is  
15 appointed and qualified.

16 (Source: P.A. 96-752, eff. 1-1-10.)

17 (755 ILCS 5/13-1.3 new)

18 Sec. 13-1.3. Transition to Office of State Guardian. In  
19 counties having a population of 1,000,000 or less, and in which  
20 there is no currently serving public guardian, the Governor  
21 shall, within 90 days after the effective date of this  
22 amendatory Act of the 97th General Assembly, appoint the Office  
23 of State Guardian the public guardian. In counties having a  
24 population of 1,000,000 or less, and in which a public guardian  
25 is currently serving but that public guardian's term of office

1 has expired, the Governor shall, no earlier than 9 months and  
2 no later than 15 months after the effective date of this  
3 amendatory Act of the 97th General Assembly, appoint the Office  
4 of State Guardian the public guardian. Subsequently, in  
5 counties having a population of 1,000,000 or less and upon the  
6 expiration of the public guardian's term, the State Guardian  
7 shall be appointed the public guardian. The State Guardian  
8 appointed as public guardian shall serve continuously and not  
9 be subject to 4-year terms of appointment. In cases in which  
10 the State Guardian serves as public guardian, the State  
11 Guardian shall assume only the duties described in Sections 30  
12 and 32 of the Guardianship and Advocacy Act and shall be  
13 otherwise subject to the provisions of the Guardianship and  
14 Advocacy Act and not this Article XIII."