



Sen. Karina Villa

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LRB103 36614 JRC 70543 a

1 AMENDMENT TO SENATE BILL 2758

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2758 by replacing  
3 everything after the enacting clause with the following:

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

1 the spouse is not a fit and competent person to have that  
2 custody and education. The guardian shall assist the ward in  
3 the development of maximum self-reliance and independence. The  
4 guardian of the person may petition the court for an order  
5 directing the guardian of the estate to pay an amount  
6 periodically for the provision of the services specified by  
7 the court order. If the ward's estate is insufficient to  
8 provide for education and the guardian of the ward's person  
9 fails to provide education, the court may award the custody of  
10 the ward to some other person for the purpose of providing  
11 education. If a person makes a settlement upon or provision  
12 for the support or education of a ward, the court may make an  
13 order for the visitation of the ward by the person making the  
14 settlement or provision as the court deems proper. A guardian  
15 of the person may not admit a ward to a mental health facility  
16 except at the ward's request as provided in Article IV of the  
17 Mental Health and Developmental Disabilities Code and unless  
18 the ward has the capacity to consent to such admission as  
19 provided in Article IV of the Mental Health and Developmental  
20 Disabilities Code.

21 (a-3) If a guardian of an estate has not been appointed,  
22 the guardian of the person may, without an order of court,  
23 open, maintain, and transfer funds to an ABLE account on  
24 behalf of the ward and the ward's minor and adult dependent  
25 children as specified under Section 16.6 of the State  
26 Treasurer Act.

1 (a-5) If the ward filed a petition for dissolution of  
2 marriage under the Illinois Marriage and Dissolution of  
3 Marriage Act before the ward was adjudicated a person with a  
4 disability under this Article, the guardian of the ward's  
5 person and estate may maintain that action for dissolution of  
6 marriage on behalf of the ward. Upon petition by the guardian  
7 of the ward's person or estate, the court may authorize and  
8 direct a guardian of the ward's person or estate to file a  
9 petition for dissolution of marriage or to file a petition for  
10 legal separation or declaration of invalidity of marriage  
11 under the Illinois Marriage and Dissolution of Marriage Act on  
12 behalf of the ward if the court finds by clear and convincing  
13 evidence that the relief sought is in the ward's best  
14 interests. In making its determination, the court shall  
15 consider the standards set forth in subsection (e) of this  
16 Section.

17 (a-10) A ward who understands the nature, effect, duties,  
18 and obligations of marriage retains the fundamental right to  
19 marriage. Prior consent of the guardian of the person or  
20 estate or approval of the court is not required for the ward to  
21 enter into a marriage. The ward, guardian of the person, or  
22 guardian of the estate may petition for the approval or  
23 ratification of marriage. ~~Upon petition by the guardian of the~~  
24 ~~ward's person or estate, the court may authorize and direct a~~  
25 ~~guardian of the ward's person or estate to consent, on behalf~~  
26 ~~of the ward, to the ward's marriage pursuant to Part II of the~~

1 ~~Illinois Marriage and Dissolution of Marriage Act if the court~~  
2 ~~finds by clear and convincing evidence that the marriage is in~~  
3 ~~the ward's best interests.~~ In making its determination, the  
4 court shall consider the standards set forth in subsection (e)  
5 of this Section. Upon presentation of a court order  
6 authorizing and directing a guardian of the ward's person and  
7 estate to consent to the ward's marriage, the county clerk  
8 shall accept the guardian's application, appearance, and  
9 signature on behalf of the ward for purposes of issuing a  
10 license to marry under Section 203 of the Illinois Marriage  
11 and Dissolution of Marriage Act.

12 (a-15) A court may remove the ward's right to marriage if  
13 the request for removal is brought at the time of the petition  
14 for appointment of a limited or plenary guardian. A court may  
15 remove the ward's right to marriage based on evidence  
16 presented at a hearing under Section 11a-11 if it finds, while  
17 taking into consideration the expressed preferences of the  
18 ward, by clear and convincing evidence that the ward lacks the  
19 capacity to understand the nature, effect, duties, and  
20 obligations of marriage or if the court finds other good  
21 cause, by clear and convincing evidence, that the right to  
22 marriage should be removed. A guardian may petition the court  
23 to remove the right to marriage at any time during the  
24 guardianship if not addressed at the time of appointment. Any  
25 marriage entered into after the removal of the right to  
26 marriage is void unless the court had reinstated the right to

1 marriage. A ward, guardian of the person, or guardian of the  
2 estate may seek judicial approval to reinstate the right to  
3 marriage and, if the court finds that the right to marriage  
4 should be reinstated, the court may enter an order declaring  
5 the right restored.

6 (a-20) A guardian may petition the probate court for an  
7 order voiding the marriage for the reason that the marriage  
8 will result in substantial harm to the ward or the ward's  
9 estate; this petition must be proved by clear and convincing  
10 evidence and the guardian bears the burden of proof. Any  
11 action brought to void the marriage, pursuant to this  
12 provision, is brought before the probate court. An action to  
13 void the marriage survives the death of the ward and may be  
14 brought as an action in an estate administration.

15 (b) If the court directs, the guardian of the person shall  
16 file with the court at intervals indicated by the court, a  
17 report that shall state briefly: (1) the current mental,  
18 physical, and social condition of the ward and the ward's  
19 minor and adult dependent children; (2) their present living  
20 arrangement, and a description and the address of every  
21 residence where they lived during the reporting period and the  
22 length of stay at each place; (3) a summary of the medical,  
23 educational, vocational, and other professional services given  
24 to them; (4) a resume of the guardian's visits with and  
25 activities on behalf of the ward and the ward's minor and adult  
26 dependent children; (5) a recommendation as to the need for

1 continued guardianship; (6) any other information requested by  
2 the court or useful in the opinion of the guardian. The Office  
3 of the State Guardian shall assist the guardian in filing the  
4 report when requested by the guardian. The court may take such  
5 action as it deems appropriate pursuant to the report.

6 (c) Absent court order pursuant to the Illinois Power of  
7 Attorney Act directing a guardian to exercise powers of the  
8 principal under an agency that survives disability, the  
9 guardian has no power, duty, or liability with respect to any  
10 personal or health care matters covered by the agency. This  
11 subsection (c) applies to all agencies, whenever and wherever  
12 executed.

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

1 guardian acting as agent may execute his or her authority  
2 under that act without further court order.

3 (e) Decisions made by a guardian on behalf of a ward shall  
4 be made in accordance with the following standards for  
5 decision making. The guardian shall consider the ward's  
6 current preferences to the extent the ward has the ability to  
7 participate in decision making when those preferences are  
8 known or reasonably ascertainable by the guardian. Decisions  
9 by the guardian shall conform to the ward's current  
10 preferences: (1) unless the guardian reasonably believes that  
11 doing so would result in substantial harm to the ward's  
12 welfare or personal or financial interests; and (2) so long as  
13 such decisions give substantial weight to what the ward, if  
14 competent, would have done or intended under the  
15 circumstances, taking into account evidence that includes, but  
16 is not limited to, the ward's personal, philosophical,  
17 religious and moral beliefs, and ethical values relative to  
18 the decision to be made by the guardian. Where possible, the  
19 guardian shall determine how the ward would have made a  
20 decision based on the ward's previously expressed preferences,  
21 and make decisions in accordance with the preferences of the  
22 ward. If the ward's wishes are unknown and remain unknown  
23 after reasonable efforts to discern them, or if the guardian  
24 reasonably believes that a decision made in conformity with  
25 the ward's preferences would result in substantial harm to the  
26 ward's welfare or personal or financial interests, the

1 decision shall be made on the basis of the ward's best  
2 interests as determined by the guardian. In determining the  
3 ward's best interests, the guardian shall weigh the reason for  
4 and nature of the proposed action, the benefit or necessity of  
5 the action, the possible risks and other consequences of the  
6 proposed action, and any available alternatives and their  
7 risks, consequences and benefits, and shall take into account  
8 any other information, including the views of family and  
9 friends, that the guardian believes the ward would have  
10 considered if able to act for herself or himself.

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

23 (g) (1) Unless there is a court order to the contrary, the  
24 guardian, consistent with the standards set forth in  
25 subsection (e) of this Section, shall use reasonable efforts  
26 to notify the ward's known adult children, who have requested



1 notification and provided contact information, of the ward's  
2 admission to a hospital, hospice, or palliative care program,  
3 the ward's death, and the arrangements for the disposition of  
4 the ward's remains.

5 (2) If a guardian unreasonably prevents an adult child,  
6 spouse, adult grandchild, parent, or adult sibling of the ward  
7 from visiting the ward, the court, upon a verified petition,  
8 may order the guardian to permit visitation between the ward  
9 and the adult child, spouse, adult grandchild, parent, or  
10 adult sibling. In making its determination, the court shall  
11 consider the standards set forth in subsection (e) of this  
12 Section. The court shall not allow visitation if the court  
13 finds that the ward has capacity to evaluate and communicate  
14 decisions regarding visitation and expresses a desire not to  
15 have visitation with the petitioner. This subsection (g) does  
16 not apply to duly appointed public guardians or the Office of  
17 State Guardian.

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