



Rep. Sara Feigenholtz

Filed: 5/28/2012

09700SB3592ham002

LRB097 20182 KTG 70228 a

1 AMENDMENT TO SENATE BILL 3592

2 AMENDMENT NO. _____. Amend Senate Bill 3592, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

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

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

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

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

9 (705 ILCS 105/27.3f new)

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

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

1 against the State Guardian, any State agency under the
2 jurisdiction of the Governor, any public guardian, or any
3 State's Attorney.

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

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

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

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

1 person or his or her family.

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

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

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

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

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

26 (2) For administration of the estate of a ward that

1 results in the appointment of the Office of State Guardian,
2 the fee shall be \$250, plus the fees specified in paragraph
3 (3).

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

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

10 (B) For filing a claim in an estate when the amount
11 claimed is \$150 or more but less than \$500, the fee
12 shall be \$50; when the amount claimed is \$500 or more
13 but less than \$10,000, the fee shall be \$100; when the
14 amount claimed is \$10,000 or more, the fee shall be
15 \$150; provided that the court in allowing a claim may
16 add to the amount allowed the filing fee paid by the
17 claimant.

18 (C) For filing in an estate a claim, petition, or
19 supplemental proceeding based upon an action seeking
20 equitable relief including the construction or contest
21 of a will, enforcement of a contract to make a will,
22 and proceedings involving a testamentary trust or the
23 appointment of a testamentary trustee, the fee shall be
24 \$60.

25 (D) For filing in an estate (i) the appearance of
26 any person for the purpose of consent or (ii) the

1 appearance of an executor, administrator,
2 administrator to collect, guardian, guardian ad litem,
3 or special administrator, no fee.

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

7 (F) For each jury demand, the fee shall be \$90.

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

18 (4) The guardianship and advocacy operations fees, as
19 outlined in this Section, shall be in addition to all other
20 fees and charges and assessable as costs. Twenty percent of
21 the fee shall be retained by the clerk for deposit into the
22 Circuit Court Clerk Operation and Administrative Fund to
23 defray costs of collection and 80% of the fee shall be
24 disbursed within 60 days after receipt by the circuit clerk
25 to the State Treasurer for deposit by the State Treasurer
26 into the Guardianship and Advocacy Fund.

1 Section 15. The Probate Act of 1975 is amended by changing
2 Sections 11a-12 and 11a-20 as follows:

3 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

4 Sec. 11a-12. Order of appointment.)

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

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

19 (c) If the respondent is adjudged to be disabled and to be
20 totally without ~~lack some but not all of the~~ capacity as
21 specified in Section 11a-3, and if the court finds that limited
22 guardianship will not provide sufficient ~~is necessary for the~~
23 protection for ~~of~~ the disabled person, his or her estate, or
24 both, the court shall appoint a plenary guardian for ~~limited~~

1 ~~guardian of~~ the respondent's person or estate or both. The
2 court shall enter a written order stating the factual basis for
3 its findings ~~and specifying the duties and powers of the~~
4 ~~guardian and the legal disabilities to which the respondent is~~
5 ~~subject.~~

6 (d) The selection of the guardian shall be in the
7 discretion of the court, which shall give due consideration to
8 the preference of the disabled person as to a guardian, as well
9 as the qualifications of the proposed guardian, in making its
10 appointment.

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

12 (755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

13 Sec. 11a-20. Termination of adjudication of disability -
14 Revocation of letters - modification.) (a) Except as provided
15 in subsection (b-5), upon ~~Upon~~ the filing of a petition by or
16 on behalf of a disabled person or on its own motion, the court
17 may terminate the adjudication of disability of the ward,
18 revoke the letters of guardianship of the estate or person, or
19 both, or modify the duties of the guardian if the ward's
20 capacity to perform the tasks necessary for the care of his
21 person or the management of his estate has been demonstrated by
22 clear and convincing evidence. A report or testimony by a
23 licensed physician is not a prerequisite for termination,
24 revocation or modification of a guardianship order under this
25 subsection (a).

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

12 (b-5) Upon the filing of a verified petition by the
13 guardian of the disabled person or the disabled person, the
14 court may terminate the adjudication of disability of the ward,
15 revoke the letters of guardianship of the estate or person, or
16 both, or modify the duties of the guardian if: (i) a report
17 completed in accordance with subsection (a) of Section 11a-9
18 states that the disabled person is no longer in need of
19 guardianship or that the type and scope of guardianship should
20 be modified; (ii) the disabled person no longer wishes to be
21 under guardianship or desires that the type and scope of
22 guardianship be modified; and (iii) the guardian of the
23 disabled person states that it is in the best interest of the
24 disabled person to terminate the adjudication of disability of
25 the ward, revoke the letters of guardianship of the estate or
26 person, or both, or modify the duties of the guardian, and

1 provides the basis thereof. In a proceeding brought pursuant to
2 this subsection (b-5), the court may terminate the adjudication
3 of disability of the ward, revoke the letters of guardianship
4 of the estate or person, or both, or modify the duties of the
5 guardian, unless it has been demonstrated by clear and
6 convincing evidence that the ward is incapable of performing
7 the tasks necessary for the care of his or her person or the
8 management of his or her estate.

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

14 (Source: P.A. 86-605.)".