



Rep. Terra Costa Howard

**Filed: 3/4/2025**

10400HB2562ham001

LRB104 08064 JRC 23303 a

1 AMENDMENT TO HOUSE BILL 2562

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2562 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing  
5 Sections 11a-17 and 11a-18 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) Upon petition by the guardian of the ward's person  
18 or estate, the court may authorize and direct a guardian of the  
19 ward's person or estate to consent, on behalf of the ward, to  
20 the ward's marriage pursuant to Part II of the Illinois  
21 Marriage and Dissolution of Marriage Act if the court finds by  
22 clear and convincing evidence that the marriage is in the  
23 ward's best interests. In making its determination, the court  
24 shall consider the standards set forth in subsection (e) of  
25 this Section. Upon presentation of a court order authorizing  
26 and directing a guardian of the ward's person and estate to

1 consent to the ward's marriage, the county clerk shall accept  
2 the guardian's application, appearance, and signature on  
3 behalf of the ward for purposes of issuing a license to marry  
4 under Section 203 of the Illinois Marriage and Dissolution of  
5 Marriage Act.

6 (b) If the court directs, the guardian of the person shall  
7 file with the court at intervals indicated by the court, a  
8 report that shall state briefly: (1) the current mental,  
9 physical, and social condition of the ward and the ward's  
10 minor and adult dependent children; (2) their present living  
11 arrangement, and a description and the address of every  
12 residence where they lived during the reporting period and the  
13 length of stay at each place; (3) a summary of the medical,  
14 educational, vocational, and other professional services given  
15 to them; (4) a resume of the guardian's visits with and  
16 activities on behalf of the ward and the ward's minor and adult  
17 dependent children; (5) a recommendation as to the need for  
18 continued guardianship; (6) any other information requested by  
19 the court or useful in the opinion of the guardian. The Office  
20 of the State Guardian shall assist the guardian in filing the  
21 report when requested by the guardian. The court may take such  
22 action as it deems appropriate pursuant to the report.

23 (c) Absent court order pursuant to the Illinois Power of  
24 Attorney Act directing a guardian to exercise powers of the  
25 principal under an agency that survives disability, the  
26 guardian has no power, duty, or liability with respect to any

1 personal or health care matters covered by the agency. If the  
2 Office of State Guardian or a public guardian is appointed,  
3 all powers of attorney are suspended under subsection (g-1) of  
4 Section 2-10 of the Illinois Power of Attorney Act. This  
5 subsection (c) applies to all agencies, whenever and wherever  
6 executed.

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

23 (e) Decisions made by a guardian on behalf of a ward shall  
24 be made in accordance with the following standards for  
25 decision making. The guardian shall consider the ward's  
26 current preferences to the extent the ward has the ability to

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

1 risks, consequences and benefits, and shall take into account  
2 any other information, including the views of family and  
3 friends, that the guardian believes the ward would have  
4 considered if able to act for herself or himself.

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

17 (g) (1) Unless there is a court order to the contrary, the  
18 guardian, consistent with the standards set forth in  
19 subsection (e) of this Section, shall use reasonable efforts  
20 to notify the ward's known adult children, who have requested  
21 notification and provided contact information, of the ward's  
22 admission to a hospital, hospice, or palliative care program,  
23 the ward's death, and the arrangements for the disposition of  
24 the ward's remains.

25 (2) If a guardian unreasonably prevents an adult child,  
26 spouse, adult grandchild, parent, or adult sibling of the ward

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

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

14 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

15 Sec. 11a-18. Duties of the estate guardian.

16 (a) To the extent specified in the order establishing the  
17 guardianship, the guardian of the estate shall have the care,  
18 management and investment of the estate, shall manage the  
19 estate frugally and shall apply the income and principal of  
20 the estate so far as necessary for the comfort and suitable  
21 support and education of the ward, his minor and adult  
22 dependent children, and persons related by blood or marriage  
23 who are dependent upon or entitled to support from him, or for  
24 any other purpose which the court deems to be for the best  
25 interests of the ward, and the court may approve the making on

1 behalf of the ward of such agreements as the court determines  
2 to be for the ward's best interests. The guardian may make  
3 disbursement of his ward's funds and estate directly to the  
4 ward or other distributee or in such other manner and in such  
5 amounts as the court directs. If the estate of a ward is  
6 derived in whole or in part from payments of compensation,  
7 adjusted compensation, pension, insurance or other similar  
8 benefits made directly to the estate by the Veterans  
9 Administration, notice of the application for leave to invest  
10 or expend the ward's funds or estate, together with a copy of  
11 the petition and proposed order, shall be given to the  
12 Veterans' Administration Regional Office in this State at  
13 least 7 days before the hearing on the application.

14 (a-5) The probate court, upon petition of a guardian,  
15 other than the guardian of a minor, and after notice to all  
16 other persons interested as the court directs, may authorize  
17 the guardian to exercise any or all powers over the estate and  
18 business affairs of the ward that the ward could exercise if  
19 present and not under disability. The court may authorize the  
20 taking of an action or the application of funds not required  
21 for the ward's current and future maintenance and support in  
22 any manner approved by the court as being in keeping with the  
23 ward's wishes so far as they can be ascertained. The court must  
24 consider the permanence of the ward's disabling condition and  
25 the natural objects of the ward's bounty. In ascertaining and  
26 carrying out the ward's wishes the court may consider, but

1 shall not be limited to, minimization of State or federal  
2 income, estate, or inheritance taxes; and providing gifts to  
3 charities, relatives, and friends that would be likely  
4 recipients of donations from the ward. The ward's wishes as  
5 best they can be ascertained shall be carried out, whether or  
6 not tax savings are involved. Actions or applications of funds  
7 may include, but shall not be limited to, the following:

8 (1) making gifts of income or principal, or both, of  
9 the estate, either outright or in trust;

10 (2) conveying, releasing, or disclaiming his or her  
11 contingent and expectant interests in property, including  
12 marital property rights and any right of survivorship  
13 incident to joint tenancy or tenancy by the entirety;

14 (3) releasing or disclaiming his or her powers as  
15 trustee, personal representative, custodian for minors, or  
16 guardian;

17 (4) exercising, releasing, or disclaiming his or her  
18 powers as donee of a power of appointment;

19 (5) entering into contracts;

20 (6) creating for the benefit of the ward or others,  
21 revocable or irrevocable trusts of his or her property  
22 that may extend beyond his or her disability or life;

23 (7) exercising options of the ward to purchase or  
24 exchange securities or other property;

25 (8) exercising the rights of the ward to elect benefit  
26 or payment options, to terminate, to change beneficiaries

1 or ownership, to assign rights, to borrow, or to receive  
2 cash value in return for a surrender of rights under any  
3 one or more of the following:

4 (i) life insurance policies, plans, or benefits,

5 (ii) annuity policies, plans, or benefits,

6 (iii) mutual fund and other dividend investment  
7 plans,

8 (iv) retirement, profit sharing, and employee  
9 welfare plans and benefits;

10 (9) exercising his or her right to claim or disclaim  
11 an elective share in the estate of his or her deceased  
12 spouse and to renounce any interest by testate or  
13 intestate succession or by inter vivos transfer;

14 (10) changing the ward's residence or domicile; or

15 (11) modifying by means of codicil or trust amendment  
16 the terms of the ward's will or any revocable trust  
17 created by the ward, as the court may consider advisable  
18 in light of changes in applicable tax laws.

19 The guardian in his or her petition shall briefly outline  
20 the action or application of funds for which he or she seeks  
21 approval, the results expected to be accomplished thereby, and  
22 the tax savings, if any, expected to accrue. The proposed  
23 action or application of funds may include gifts of the ward's  
24 personal property or real estate, but transfers of real estate  
25 shall be subject to the requirements of Section 20 of this Act.  
26 Gifts may be for the benefit of prospective legatees,

1 devisees, or heirs apparent of the ward or may be made to  
2 individuals or charities in which the ward is believed to have  
3 an interest. The guardian shall also indicate in the petition  
4 that any planned disposition is consistent with the intentions  
5 of the ward insofar as they can be ascertained, and if the  
6 ward's intentions cannot be ascertained, the ward will be  
7 presumed to favor reduction in the incidents of various forms  
8 of taxation and the partial distribution of his or her estate  
9 as provided in this subsection. The guardian shall not,  
10 however, be required to include as a beneficiary or fiduciary  
11 any person who he has reason to believe would be excluded by  
12 the ward. A guardian shall be required to investigate and  
13 pursue a ward's eligibility for governmental benefits.

14 (a-6) The guardian may, without an order of court, open,  
15 maintain, and transfer funds to an ABLE account on behalf of  
16 the ward and the ward's minor and adult dependent children as  
17 specified under Section 16.6 of the State Treasurer Act.

18 (b) Upon the direction of the court which issued his  
19 letters, a guardian may perform the contracts of his ward  
20 which were legally subsisting at the time of the commencement  
21 of the ward's disability. The court may authorize the guardian  
22 to execute and deliver any bill of sale, deed or other  
23 instrument.

24 (c) The guardian of the estate of a ward shall appear for  
25 and represent the ward in all legal proceedings unless another  
26 person is appointed for that purpose as guardian or next

1 friend. This does not impair the power of any court to appoint  
2 a guardian ad litem or next friend to defend the interests of  
3 the ward in that court, or to appoint or allow any person as  
4 the next friend of a ward to commence, prosecute or defend any  
5 proceeding in his behalf. Without impairing the power of the  
6 court in any respect, if the guardian of the estate of a ward  
7 and another person as next friend shall appear for and  
8 represent the ward in a legal proceeding in which the  
9 compensation of the attorney or attorneys representing the  
10 guardian and next friend is solely determined under a  
11 contingent fee arrangement, the guardian of the estate of the  
12 ward shall not participate in or have any duty to review the  
13 prosecution of the action, to participate in or review the  
14 appropriateness of any settlement of the action, or to  
15 participate in or review any determination of the  
16 appropriateness of any fees awarded to the attorney or  
17 attorneys employed in the prosecution of the action.

18 (d) Adjudication of disability shall not revoke or  
19 otherwise terminate a trust which is revocable by the ward. A  
20 guardian of the estate shall have no authority to revoke a  
21 trust that is revocable by the ward, except that the court may  
22 authorize a guardian to revoke a Totten trust or similar  
23 deposit or withdrawable capital account in trust to the extent  
24 necessary to provide funds for the purposes specified in  
25 paragraph (a) of this Section. If the trustee of any trust for  
26 the benefit of the ward has discretionary power to apply

1 income or principal for the ward's benefit, the trustee shall  
2 not be required to distribute any of the income or principal to  
3 the guardian of the ward's estate, but the guardian may bring  
4 an action on behalf of the ward to compel the trustee to  
5 exercise the trustee's discretion or to seek relief from an  
6 abuse of discretion. This paragraph shall not limit the right  
7 of a guardian of the estate to receive accountings from the  
8 trustee on behalf of the ward.

9 (d-5) Upon a verified petition by the plenary or limited  
10 guardian of the estate or the request of the ward that is  
11 accompanied by a current physician's report that states the  
12 ward possesses testamentary capacity, the court may enter an  
13 order authorizing the ward to execute a will or codicil. In so  
14 ordering, the court shall authorize the guardian to retain  
15 independent counsel for the ward with whom the ward may  
16 execute or modify a will or codicil.

17 (e) Absent court order pursuant to the Illinois Power of  
18 Attorney Act directing a guardian to exercise powers of the  
19 principal under an agency that survives disability, the  
20 guardian will have no power, duty or liability with respect to  
21 any property subject to the agency. If the Office of State  
22 Guardian or a public guardian is appointed, all powers of  
23 attorney are suspended under subsection (g-1) of Section 2-10  
24 of the Illinois Power of Attorney Act. This subsection (e)  
25 applies to all agencies, whenever and wherever executed.

26 (f) Upon petition by any interested person (including the

1 standby or short-term guardian), with such notice to  
2 interested persons as the court directs and a finding by the  
3 court that it is in the best interests of the person with a  
4 disability, the court may terminate or limit the authority of  
5 a standby or short-term guardian or may enter such other  
6 orders as the court deems necessary to provide for the best  
7 interests of the person with a disability. The petition for  
8 termination or limitation of the authority of a standby or  
9 short-term guardian may, but need not, be combined with a  
10 petition to have another guardian appointed for the person  
11 with a disability.

12 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22.)

13 Section 10. The Illinois Power of Attorney Act is amended  
14 by changing Section 2-10 as follows:

15 (755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

16 Sec. 2-10. Agency-court relationship.

17 (a) Upon petition by any interested person, notice to the  
18 agent, principal, and interested persons as the court directs  
19 and a finding by the court that the principal lacks either the  
20 capacity to control or the capacity to revoke the agency, the  
21 court may construe a power of attorney, review the agent's  
22 conduct, and grant appropriate relief including compensatory  
23 damages.

24 (b) If the court finds that the agent is not acting for the

1 benefit of the principal in accordance with the terms of the  
2 agency or that the agent's action or inaction, including  
3 restricting or not allowing an interested person to have  
4 reasonable visitation with the principal, has caused or  
5 threatens substantial harm to the principal's person or  
6 property in a manner not authorized or intended by the  
7 principal, the court may order a guardian of the principal's  
8 person or estate to exercise any powers of the principal under  
9 the agency, including the power to revoke the agency, or may  
10 enter such other orders without appointment of a guardian as  
11 the court deems necessary to provide for the best interests of  
12 the principal.

13 (c) If the court finds that the agency requires  
14 interpretation, the court may construe the agency and instruct  
15 the agent, but the court may not amend the agency.

16 (d) If the court finds that the agent has not acted for the  
17 benefit of the principal in accordance with the terms of the  
18 agency and the Illinois Power of Attorney Act, or that the  
19 agent's action caused or threatened substantial harm to the  
20 principal's person or property in a manner not authorized or  
21 intended by the principal, then the agent shall not be  
22 authorized to pay or be reimbursed from the estate of the  
23 principal the attorneys' fees and costs of the agent in  
24 defending a proceeding brought pursuant to this Section.

25 (e) Upon a finding that the agent's action has caused  
26 substantial harm to the principal's person or property, the

1 court may assess against the agent reasonable costs and  
2 attorney's fees to a prevailing party who is a provider agency  
3 as defined in Section 2 of the Adult Protective Services Act, a  
4 representative of the Office of the State Long Term Care  
5 Ombudsman, the State Guardian, a public guardian, or a  
6 governmental agency having regulatory authority to protect the  
7 welfare of the principal.

8 (f) As used in this Section, the term "interested person"  
9 includes (1) the principal or the agent; (2) a guardian of the  
10 person, guardian of the estate, or other fiduciary charged  
11 with management of the principal's property; (3) the  
12 principal's spouse, parent, or descendant; (4) a person who  
13 would be a presumptive heir-at-law of the principal; (5) a  
14 person named as a beneficiary to receive any property,  
15 benefit, or contractual right upon the principal's death, or  
16 as a beneficiary of a trust created by or for the principal;  
17 (6) a provider agency as defined in Section 2 of the Adult  
18 Protective Services Act, a representative of the Office of the  
19 State Long Term Care Ombudsman, the State Guardian, a public  
20 guardian, or a governmental agency having regulatory authority  
21 to protect the welfare of the principal; and (7) the  
22 principal's caregiver or another person who demonstrates  
23 sufficient interest in the principal's welfare.

24 (g) Except as provided in subsection (g-1) of this  
25 Section, absent ~~Absent~~ court order directing a guardian to  
26 exercise powers of the principal under the agency, a guardian

1 will have no power, duty or liability with respect to any  
2 property subject to the agency or any personal or health care  
3 matters covered by the agency. If an agent seeks guardianship  
4 of the principal pursuant to the Probate Act of 1975, the  
5 petition for guardianship must delineate the specific powers  
6 to be granted to the guardian that are not already included in  
7 the power of attorney. The petition for temporary, limited, or  
8 plenary guardianship of the principal under the Probate Act of  
9 1975 may include a prayer for relief to suspend a power of  
10 attorney or to revoke a power of attorney in accordance with  
11 subsection (b).

12 (g-1) If the Office of State Guardian or a public guardian  
13 is appointed as temporary, limited, or plenary guardian of the  
14 principal, any powers of attorney are suspended. Any suspended  
15 agent or other interested person may seek reinstatement of a  
16 suspended agency in the guardianship proceeding by showing the  
17 reinstatement is in the best interests of the principal or  
18 with the agreement of the Office of State Guardian or the  
19 public guardian.

20 (h) Proceedings under this Section shall be commenced in  
21 the county where the guardian was appointed or, if no Illinois  
22 guardian is acting, then in the county where the agent or  
23 principal resides or where the principal owns real property.

24 (i) This Section shall not be construed to limit any other  
25 remedies available.

26 (Source: P.A. 102-72, eff. 1-1-22; 103-55, eff. 1-1-24.)"