



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1387

Introduced 2/13/2019, by Sen. Julie A. Morrison

#### SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.6	
755 ILCS 5/11-13	from Ch. 110 1/2, par. 11-13
755 ILCS 5/11a-17	from Ch. 110 1/2, par. 11a-17
755 ILCS 5/11a-18	from Ch. 110 1/2, par. 11a-18

Amends the State Treasurer Act. Modifies and reorganizes provisions concerning the ABLE account program. Provides that a designated representative under the program includes, among other persons, the account owner's guardian of the person or any other State-appointed guardian. Provides that the State Treasurer may enter into agreements with other states to either allow Illinois residents to participate in a plan operated by another state or to allow residents of other states to participate in the Illinois ABLE plan. Modifies terms under the Act. Amends the Probate Act of 1975. Modifies provisions concerning duties of a guardian of a minor, duties of a personal guardian, and duties of an estate guardian to allow a specified guardian to, without an order of court, open, maintain, and transfer funds to an ABLE account on behalf of the ward and the ward's dependent children as specified under the ABLE account program. Makes conforming and other changes. Effective immediately.

LRB101 08069 JRG 53132 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The State Treasurer Act is amended by changing  
5 Section 16.6 as follows:

6 (15 ILCS 505/16.6)

7 Sec. 16.6. ABLE account program.

8 (a) As used in this Section:

9 "ABLE account" or "account" means an account established  
10 for the purpose of financing certain qualified expenses of  
11 eligible individuals as specifically provided for in this  
12 Section and authorized by Section 529A of the Internal Revenue  
13 Code.

14 "ABLE account plan" or "plan" means the savings account  
15 plan provided for in this Section.

16 "Account administrator" means the person or entity  
17 selected by the State Treasurer to administer the daily  
18 operations of the ABLE account plan and provide marketing,  
19 recordkeeping, investment management, and other services for  
20 the plan.

21 "Aggregate account balance" means the amount in an account  
22 on a particular date or the fair market value of an account on  
23 a particular date.

1 "Beneficiary" means the ABLE account owner.

2 ~~"Board" means the Illinois State Board of Investment.~~

3 "Contracting state" means a state without a qualified ABLE  
4 program which has entered into a contract with Illinois to  
5 provide residents of the contracting state access to a  
6 qualified ABLE program.

7 "Designated representative" means a person who is  
8 authorized to act on behalf of an account owner. An account  
9 owner is authorized to act on his or her own behalf unless the  
10 account owner is a minor or the account owner has been  
11 adjudicated to have a disability so that a guardian has been  
12 appointed. A designated representative acts in a fiduciary  
13 capacity to the account owner. The State Treasurer shall  
14 recognize the following a person as a designated representative  
15 without appointment by a court ~~in the following order of~~  
16 ~~priority:~~

17 (1) The account owner's guardian of the person, plenary  
18 guardian of the estate, ~~or the account owner's~~ limited  
19 guardian of financial or contractual matters, or any other  
20 State-appointed guardian. A ~~Any~~ guardian acting in this  
21 capacity shall not be required to seek court approval for  
22 any ABLE account activity ~~qualified distributions~~.

23 (2) The agent named by the account owner in a property  
24 power of attorney recognized as a statutory short form  
25 power of attorney for property.

26 (3) Such individual or entity that the account owner so

1 designates in writing, in a manner to be established by the  
2 State Treasurer.

3 (4) Such other individual or entity designated by the  
4 State Treasurer pursuant to its rules.

5 "Disability certification" has the meaning given to that  
6 term under Section 529A of the Internal Revenue Code.

7 "Eligible individual" has the meaning given to that term  
8 under Section 529A of the Internal Revenue Code.

9 "Participation agreement" means an agreement to  
10 participate in the ABLE account plan between an account owner  
11 and the State, through its agencies and the State Treasurer.

12 "Qualified disability expenses" has the meaning given to  
13 that term under Section 529A of the Internal Revenue Code.

14 "Qualified withdrawal" or "qualified distribution" means a  
15 withdrawal from an ABLE account to pay the qualified disability  
16 expenses of the beneficiary of the account.

17 (b) Establishment of the ABLE Program. The "Achieving a  
18 Better Life Experience" or "ABLE" account program is hereby  
19 created and shall be administered by the State Treasurer. The  
20 purpose of the ABLE program plan ~~plan~~ is to encourage and assist  
21 individuals and families in saving private funds for the  
22 purpose of supporting individuals with disabilities to  
23 maintain health, independence, and quality of life, and to  
24 provide secure funding for disability-related expenses on  
25 behalf of designated beneficiaries with disabilities that will  
26 supplement, but not supplant, benefits provided through

1 private insurance, federal and State medical and disability  
2 insurance, the beneficiary's employment, and other sources.  
3 Under the plan, a person may make contributions to an ABLE  
4 account to meet the qualified disability expenses of the  
5 designated beneficiary of the account. The plan must be  
6 operated as an accounts-type plan that permits persons to save  
7 for qualified disability expenses incurred by or on behalf of  
8 an eligible individual.

9 (c) Promotion of the ABLE Program. The State Treasurer  
10 shall promote awareness of the availability and advantages of  
11 the ABLE account plan as a way to assist individuals and  
12 families in saving private funds for the purpose of supporting  
13 individuals with disabilities. ~~The cost of these promotional~~  
14 ~~efforts shall not be funded with fees imposed on participants~~  
15 ~~by the State Treasurer.~~

16 ~~The State Treasurer shall not accept contributions for ABLE~~  
17 ~~accounts under this Section until the Internal Revenue Service~~  
18 ~~has issued its final regulations or interim guidance concerning~~  
19 ~~ABLE accounts.~~

20 ~~A separate account must be maintained for each beneficiary~~  
21 ~~for whom contributions are made, and no more than one account~~  
22 ~~shall be established per beneficiary. If an ABLE account is~~  
23 ~~established for a designated beneficiary, no account~~  
24 ~~subsequently established for such beneficiary shall be treated~~  
25 ~~as an ABLE account. The preceding sentence shall not apply in~~  
26 ~~the case of an ABLE account established for purposes of a~~

1 ~~rollover as permitted under Section 529A of the Internal~~  
2 ~~Revenue Code.~~

3 (d) Availability of the ABLE Program. An ABLE account may  
4 be established under this Section for a designated beneficiary  
5 who is a resident of Illinois, a resident of a contracting  
6 state, or a resident of any other state.

7 ~~Prior to the establishment of an ABLE account, an account~~  
8 ~~owner must provide documentation to the State Treasurer that~~  
9 ~~the account beneficiary is an eligible individual.~~

10 Annual contributions to an ABLE account on behalf of a  
11 beneficiary are subject to the requirements of subsection (b)  
12 of Section 529A of the Internal Revenue Code. No person may  
13 make a contribution to an ABLE account if such a contribution  
14 would result in the aggregate account balance of an ABLE  
15 account exceeding the account balance limit authorized under  
16 Section 529A of the Internal Revenue Code. The Treasurer shall  
17 review the contribution limit at least annually. A separate  
18 account must be maintained for each beneficiary for whom  
19 contributions are made, and no more than one account shall be  
20 established per beneficiary. If an ABLE account is established  
21 for a designated beneficiary, no account subsequently  
22 established for such beneficiary shall be treated as an ABLE  
23 account. The preceding sentence shall not apply in the case of  
24 an ABLE account established for purposes of a rollover as  
25 permitted under Sections 529 and 529A of the Internal Revenue  
26 Code.

1       (e) Administration of the ABLE Program. The State Treasurer  
2 shall administer the plan, including accepting and processing  
3 applications, maintaining account records, making payments,  
4 and undertaking any other necessary tasks to administer the  
5 plan, including the appointment of an account administrator.  
6 The State Treasurer may contract with one or more third parties  
7 to carry out some or all of these administrative duties,  
8 including, but not limited to, providing investment management  
9 services, incentives, and marketing the plan. The State  
10 Treasurer may enter into agreements with other states to either  
11 allow Illinois residents to participate in a plan operated by  
12 another state or to allow residents of other states to  
13 participate in the Illinois ABLE plan.

14       (f) Fees. ~~In designing and establishing the plan's~~  
15 ~~requirements and in negotiating or entering into contracts with~~  
16 ~~third parties under this Section, the State Treasurer shall~~  
17 ~~consult with the Board.~~ The State Treasurer may ~~shall~~ establish  
18 fees to be imposed on participants to cover ~~recover~~ the costs  
19 of administration, recordkeeping, and investment management.  
20 The State Treasurer must use his or her best efforts to keep  
21 these fees as low as possible, consistent with efficient  
22 administration.

23       (g) The Illinois ABLE Accounts Administrative Fund. The  
24 Illinois ABLE Accounts Administrative Fund is created as a  
25 nonappropriated trust fund in the State treasury. ~~The State~~  
26 ~~Treasurer shall use moneys in the Administrative Fund to pay~~

1 ~~for administrative expenses he or she incurs in the performance~~  
2 ~~of his or her duties under this Section.~~ The State Treasurer  
3 shall use moneys in the Administrative Fund to cover  
4 administrative expenses incurred under this Section. The  
5 Administrative Fund may receive any grants or other moneys  
6 designated for administrative purposes from the State, or any  
7 unit of federal, state, or local government, or any other  
8 person, firm, partnership, or corporation. Any interest  
9 earnings that are attributable to moneys in the Administrative  
10 Fund must be deposited into the Administrative Fund. Any fees  
11 established by the State Treasurer to cover ~~recover~~ the costs  
12 of administration, recordkeeping, and investment management  
13 shall be deposited into the Administrative Fund.

14 Subject to appropriation, the State Treasurer may pay  
15 administrative costs associated with the creation and  
16 management of the plan until sufficient assets are available in  
17 the Administrative Fund for that purpose.

18 (h) Privacy. Applications for accounts, account owner  
19 data, account data, and data on beneficiaries of accounts are  
20 confidential and exempt from disclosure under the Freedom of  
21 Information Act.

22 ~~(c) The State Treasurer may invest the moneys in ABLE~~  
23 ~~accounts in the same manner and in the same types of~~  
24 ~~investments provided for the investment of moneys by the Board.~~  
25 ~~To enhance the safety and liquidity of ABLE accounts, to ensure~~  
26 ~~the diversification of the investment portfolio of accounts,~~



1 ~~and in an effort to keep investment dollars in the State, the~~  
2 ~~State Treasurer may make a percentage of each account available~~  
3 ~~for investment in participating financial institutions doing~~  
4 ~~business in the State, except that the accounts may be invested~~  
5 ~~without limit in investment options from open ended investment~~  
6 ~~companies registered under Section 80a of the federal~~  
7 ~~Investment Company Act of 1940. The State Treasurer may~~  
8 ~~contract with one or more third parties for investment~~  
9 ~~management, recordkeeping, or other services in connection~~  
10 ~~with investing the accounts.~~

11 (i) Investment Policy. The Treasurer ~~account administrator~~  
12 shall ~~annually~~ prepare and adopt a written statement of  
13 investment policy that includes a risk management and oversight  
14 program which shall be reviewed annually and posted on the  
15 Treasurer's website prior to implementation. The risk  
16 management and oversight program shall be designed to ensure  
17 that an effective risk management system is in place to monitor  
18 the risk levels of the ABLE plan, to ensure that the risks  
19 taken are prudent and properly managed, to provide an  
20 integrated process for overall risk management, and to assess  
21 investment returns as well as risk to determine if the risks  
22 taken are adequately compensated compared to applicable  
23 performance benchmarks and standards. To enhance the safety and  
24 liquidity of ABLE accounts, to ensure the diversification of  
25 the investment portfolio of accounts, and in an effort to keep  
26 investment dollars in the State, the State Treasurer may make a

1 percentage of each account available for investment in  
2 participating financial institutions doing business in the  
3 State, except that the accounts may be invested without limit  
4 in investment options from open-ended investment companies  
5 registered under Section 80a of the federal Investment Company  
6 Act of 1940. The State Treasurer may contract with one or more  
7 third parties for investment management, recordkeeping, or  
8 other services in connection with investing the accounts.

9 ~~The State Treasurer may enter into agreements with other~~  
10 ~~states to either allow Illinois residents to participate in a~~  
11 ~~plan operated by another state or to allow residents of other~~  
12 ~~states to participate in the Illinois ABLE plan.~~

13 (j) Investment restrictions. ~~(d)~~ The State Treasurer shall  
14 ensure that the plan meets the requirements for an ABLE account  
15 under Section 529A of the Internal Revenue Code. The State  
16 Treasurer may request a private letter ruling or rulings from  
17 the Internal Revenue Service and must take any necessary steps  
18 to ensure that the plan qualifies under relevant provisions of  
19 federal law. Notwithstanding the foregoing, any determination  
20 by the Secretary of the Treasury of the United States that an  
21 account was utilized to make non-qualified distributions shall  
22 not result in an ABLE account being disregarded as a resource.

23 (k) Contributions. A person may make contributions to an  
24 ABLE account on behalf of a beneficiary. Contributions to an  
25 account made by persons other than the account owner become the  
26 property of the account owner. Contributions to an account

1 shall be considered as a transfer of assets for fair market  
2 value. A person does not acquire an interest in an ABLE account  
3 by making contributions to an account. A contribution to any  
4 account for a beneficiary must be rejected if the contribution  
5 would cause either the aggregate or annual account balance of  
6 the account to exceed the limits imposed by Section 529A of the  
7 Internal Revenue Code.

8 Any change in account owner must be done in a manner  
9 consistent with Section 529A of the Internal Revenue Code.

10 (l) Notice. Notice of any proposed amendments to the rules  
11 and regulations shall be provided to all owners or their  
12 designated representatives prior to adoption. Amendments to  
13 rules and regulations shall apply only to contributions made  
14 after the adoption of the amendment. Amendments to this Section  
15 automatically amend the participation agreement. Any  
16 amendments to the operating procedures and policies of the plan  
17 shall automatically amend the participation agreement after  
18 adoption by the State Treasurer.

19 (m) Plan assets. All assets of the plan, including any  
20 contributions to accounts, are held in trust for the exclusive  
21 benefit of the account owner and shall be considered  
22 spendthrift accounts exempt from all of the owner's creditors.  
23 The plan shall provide separate accounting for each designated  
24 beneficiary sufficient to satisfy the requirements of  
25 paragraph (3) of subsection (b) of Section 529A of the Internal  
26 Revenue Code. Assets must be held in either a state trust fund

1 outside the State treasury, to be known as the Illinois ABLE  
2 plan trust fund, or in accounts with a third-party provider  
3 selected pursuant to this Section. Amounts contributed to ABLE  
4 accounts shall not be commingled with State funds and the State  
5 shall have no claim to or against, or interest in, such funds.

6 Plan assets are not subject to claims by creditors of the  
7 State and are not subject to appropriation by the State.  
8 Payments from the Illinois ABLE account plan shall be made  
9 under this Section.

10 The assets of ABLE accounts and their income may not be  
11 used as security for a loan.

12 (n) Taxation. The assets of ABLE accounts and their income  
13 and operation shall be exempt from all taxation by the State of  
14 Illinois and any of its subdivisions to the extent exempt from  
15 federal income taxation. The accrued earnings on investments in  
16 an ABLE account once disbursed on behalf of a designated  
17 beneficiary shall be similarly exempt from all taxation by the  
18 State of Illinois and its subdivisions to the extent exempt  
19 from federal income taxation, so long as they are used for  
20 qualified expenses.

21 Notwithstanding any other provision of law that requires  
22 consideration of one or more financial circumstances of an  
23 individual, for the purpose of determining eligibility to  
24 receive, or the amount of, any assistance or benefit authorized  
25 by such provision to be provided to or for the benefit of such  
26 individual, any amount, including earnings thereon, in the ABLE

1 account of such individual, any contributions to the ABLE  
2 account of the individual, and any distribution for qualified  
3 disability expenses shall be disregarded for such purpose with  
4 respect to any period during which such individual maintains,  
5 makes contributions to, or receives distributions from such  
6 ABLE account.

7 (o) Distributions. ~~(e)~~ The account owner or the designated  
8 representative of the account owner may make ~~request that~~ a  
9 qualified distribution ~~be made~~ for the benefit of the account  
10 owner. Qualified distributions shall be made for qualified  
11 disability expenses allowed pursuant to Section 529A of the  
12 Internal Revenue Code. Qualified distributions must be  
13 withdrawn proportionally from contributions and earnings in an  
14 account owner's account on the date of distribution as provided  
15 in Section 529A of the Internal Revenue Code. Unless prohibited  
16 by federal law, upon the death of a designated beneficiary,  
17 proceeds from an account may be transferred to the estate of a  
18 designated beneficiary, or to an account for another eligible  
19 individual specified by the designated beneficiary or the  
20 estate of the designated beneficiary. An agency or  
21 instrumentality of the State may not seek payment under  
22 subsection (f) of Section 529A of the federal Internal Revenue  
23 Code from the account or its proceeds for benefits provided to  
24 a designated beneficiary.

25 (p) Rules. ~~(f)~~ The State Treasurer may adopt rules to carry  
26 out the purposes of this Section. The State Treasurer shall

1 further have the power to issue peremptory rules necessary to  
2 ensure that ABLE accounts meet all of the requirements for a  
3 qualified state ABLE program under Section 529A of the Internal  
4 Revenue Code and any regulations issued by the Internal Revenue  
5 Service.

6 (Source: P.A. 99-145, eff. 1-1-16; 99-563, eff. 7-15-16;  
7 100-713, eff. 8-3-18.)

8 Section 10. The Probate Act of 1975 is amended by changing  
9 Sections 11-13, 11a-17, and 11a-18 as follows:

10 (755 ILCS 5/11-13) (from Ch. 110 1/2, par. 11-13)

11 Sec. 11-13. Duties of guardian of a minor. Before a  
12 guardian of a minor may act, the guardian shall be appointed by  
13 the court of the proper county and, in the case of a guardian  
14 of the minor's estate, the guardian shall give the bond  
15 prescribed in Section 12-2. Except as provided in Section  
16 11-13.1 and Section 11-13.2 with respect to the standby or  
17 short-term guardian of the person of a minor, the court shall  
18 have control over the person and estate of the ward. Under the  
19 direction of the court:

20 (a) The guardian of the person shall have the custody,  
21 nurture and tuition and shall provide education of the ward and  
22 of his children, but the ward's spouse may not be deprived of  
23 the custody and education of the spouse's children, without  
24 consent of the spouse, unless the court finds that the spouse

1 is not a fit and competent person to have such custody and  
2 education. If the ward's estate is insufficient to provide for  
3 the ward's education and the guardian of his person fails to  
4 provide education, the court may award the custody of the ward  
5 to some other person for the purpose of providing education. If  
6 a person makes a settlement upon or provision for the support  
7 or education of a ward and if either parent of the ward is  
8 dead, the court may make such order for the visitation of the  
9 ward by the person making the settlement or provision as the  
10 court deems proper. The guardian of the minor shall inform the  
11 court of the minor's current address by certified mail, hand  
12 delivery, or other method in accordance with court rules within  
13 30 days of any change of residence.

14 (a-5) The guardian of estate, or the guardian of the person  
15 if a guardian of the estate has not been appointed, may,  
16 without an order of court, open, maintain, and transfer funds  
17 to an ABLE account on behalf of the ward to provide for the  
18 ward as specified under Section 16.6 of the State Treasurer  
19 Act.

20 (b) The guardian or other representative of the ward's  
21 estate shall have the care, management and investment of the  
22 estate, shall manage the estate frugally and shall apply the  
23 income and principal of the estate so far as necessary for the  
24 comfort and suitable support and education of the ward, his  
25 children, and persons related by blood or marriage who are  
26 dependent upon or entitled to support from him, or for any

1 other purpose which the court deems to be for the best  
2 interests of the ward, and the court may approve the making on  
3 behalf of the ward of such agreements as the court determines  
4 to be for the ward's best interests. The representative may  
5 make disbursement of his ward's funds and estate directly to  
6 the ward or other distributee or in such other manner and in  
7 such amounts as the court directs. If the estate of a ward is  
8 derived in whole or in part from payments of compensation,  
9 adjusted compensation, pension, insurance or other similar  
10 benefits made directly to the estate by the Veterans  
11 Administration, notice of the application for leave to invest  
12 or expend the ward's funds or estate, together with a copy of  
13 the petition and proposed order, shall be given to the  
14 Veterans' Administration Regional Office in this State at least  
15 7 days before the hearing on the application. The court, upon  
16 petition of a guardian of the estate of a minor, may permit the  
17 guardian to make a will or create a revocable or irrevocable  
18 trust for the minor that the court considers appropriate in  
19 light of changes in applicable tax laws that allow for  
20 minimization of State or federal income, estate, or inheritance  
21 taxes; however, the will or trust must make distributions only  
22 to the persons who would be entitled to distributions if the  
23 minor were to die intestate and the will or trust must make  
24 distributions to those persons in the same amounts to which  
25 they would be entitled if the minor were to die intestate.

26 (c) Upon the direction of the court which issued his



1 letters a representative may perform the contracts of his ward  
2 which were legally subsisting at the time of the commencement  
3 of the guardianship. The court may authorize the guardian to  
4 execute and deliver any bill of sale, deed or other instrument.

5 (d) The representative of the estate of a ward shall appear  
6 for and represent the ward in all legal proceedings unless  
7 another person is appointed for that purpose as representative  
8 or next friend. This does not impair the power of any court to  
9 appoint a representative or next friend to defend the interests  
10 of the ward in that court, or to appoint or allow any person as  
11 the next friend of a ward to commence, prosecute or defend any  
12 proceeding in his behalf. Any proceeding on behalf of a minor  
13 may be commenced and prosecuted by his next friend, without any  
14 previous authority or appointment by the court if the next  
15 friend enters bond for costs and files it in the court where  
16 the proceeding is pending. Without impairing the power of the  
17 court in any respect, if the representative of the estate of a  
18 minor and another person as next friend shall appear for and  
19 represent the minor in a legal proceeding in which the  
20 compensation of the attorney or attorneys representing the  
21 guardian and next friend is solely determined under a  
22 contingent fee arrangement, the guardian of the estate of the  
23 minor shall not participate in or have any duty to review the  
24 prosecution of the action, to participate in or review the  
25 appropriateness of any settlement of the action, or to  
26 participate in or review any determination of the

1     appropriateness of any fees awarded to the attorney or  
2     attorneys employed in the prosecution of the action.

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

13           (f) The court may grant leave to the guardian of a minor  
14    child or children to remove such child or children from  
15    Illinois whenever such approval is in the best interests of  
16    such child or children. The guardian may not remove a minor  
17    from Illinois except as permitted under this Section and must  
18    seek leave of the court prior to removing a child for 30 days  
19    or more. The burden of proving that such removal is in the best  
20    interests of such child or children is on the guardian. When  
21    such removal is permitted, the court may require the guardian  
22    removing such child or children from Illinois to give  
23    reasonable security guaranteeing the return of such children.

24           The court shall consider the wishes of the minor's parent  
25    or parents and the effect of removal on visitation and the  
26    wishes of the minor if he or she is 14 years of age or older.

1 The court may not consider the availability of electronic  
2 communication as a factor in support of the removal of a child  
3 by the guardian from Illinois. The guardianship order may  
4 incorporate language governing removal of the minor from the  
5 State. Any order for removal, including one incorporated into  
6 the guardianship order, must include the date of the removal,  
7 the reason for removal, and the proposed residential and  
8 mailing address of the minor after removal. A copy of the order  
9 must be provided to any parent whose location is known, within  
10 3 days of entry, either by personal delivery or by certified  
11 mail, return receipt requested.

12 Before a minor child is temporarily removed from Illinois  
13 for more than 48 hours but less than 30 days, the guardian  
14 shall inform the parent or parents of the address and telephone  
15 number where the child may be reached during the period of  
16 temporary removal and the date on which the child shall return  
17 to Illinois. The State of Illinois retains jurisdiction when  
18 the minor child is absent from the State pursuant to this  
19 subsection. The guardianship order may incorporate language  
20 governing out-of-state travel with the minor.

21 (Source: P.A. 98-1082, eff. 1-1-15; 99-207, eff. 7-30-15.)

22 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

23 Sec. 11a-17. Duties of personal guardian.

24 (a) To the extent ordered by the court and under the  
25 direction of the court, the guardian of the person shall have

1 custody of the ward and the ward's minor and adult dependent  
2 children and shall procure for them and shall make provision  
3 for their support, care, comfort, health, education and  
4 maintenance, and professional services as are appropriate, but  
5 the ward's spouse may not be deprived of the custody and  
6 education of the ward's minor and adult dependent children,  
7 without the consent of the spouse, unless the court finds that  
8 the spouse is not a fit and competent person to have that  
9 custody and education. The guardian shall assist the ward in  
10 the development of maximum self-reliance and independence. The  
11 guardian of the person may petition the court for an order  
12 directing the guardian of the estate to pay an amount  
13 periodically for the provision of the services specified by the  
14 court order. If the ward's estate is insufficient to provide  
15 for education and the guardian of the ward's person fails to  
16 provide education, the court may award the custody of the ward  
17 to some other person for the purpose of providing education. If  
18 a person makes a settlement upon or provision for the support  
19 or education of a ward, the court may make an order for the  
20 visitation of the ward by the person making the settlement or  
21 provision as the court deems proper. A guardian of the person  
22 may not admit a ward to a mental health facility except at the  
23 ward's request as provided in Article IV of the Mental Health  
24 and Developmental Disabilities Code and unless the ward has the  
25 capacity to consent to such admission as provided in Article IV  
26 of the Mental Health and Developmental Disabilities Code.

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

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

21       (a-10) Upon petition by the guardian of the ward's person  
22 or estate, the court may authorize and direct a guardian of the  
23 ward's person or estate to consent, on behalf of the ward, to  
24 the ward's marriage pursuant to Part II of the Illinois  
25 Marriage and Dissolution of Marriage Act if the court finds by  
26 clear and convincing evidence that the marriage is in the

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

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

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

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

24           (e) Decisions made by a guardian on behalf of a ward shall  
25 be made in accordance with the following standards for decision  
26 making. Decisions made by a guardian on behalf of a ward may be

1 made by conforming as closely as possible to what the ward, if  
2 competent, would have done or intended under the circumstances,  
3 taking into account evidence that includes, but is not limited  
4 to, the ward's personal, philosophical, religious and moral  
5 beliefs, and ethical values relative to the decision to be made  
6 by the guardian. Where possible, the guardian shall determine  
7 how the ward would have made a decision based on the ward's  
8 previously expressed preferences, and make decisions in  
9 accordance with the preferences of the ward. If the ward's  
10 wishes are unknown and remain unknown after reasonable efforts  
11 to discern them, the decision shall be made on the basis of the  
12 ward's best interests as determined by the guardian. In  
13 determining the ward's best interests, the guardian shall weigh  
14 the reason for and nature of the proposed action, the benefit  
15 or necessity of the action, the possible risks and other  
16 consequences of the proposed action, and any available  
17 alternatives and their risks, consequences and benefits, and  
18 shall take into account any other information, including the  
19 views of family and friends, that the guardian believes the  
20 ward would have considered if able to act for herself or  
21 himself.

22 (f) Upon petition by any interested person (including the  
23 standby or short-term guardian), with such notice to interested  
24 persons as the court directs and a finding by the court that it  
25 is in the best interest of the person with a disability, the  
26 court may terminate or limit the authority of a standby or



1 short-term guardian or may enter such other orders as the court  
2 deems necessary to provide for the best interest of the person  
3 with a disability. The petition for termination or limitation  
4 of the authority of a standby or short-term guardian may, but  
5 need not, be combined with a petition to have another guardian  
6 appointed for the person with a disability.

7 (g) (1) Unless there is a court order to the contrary, the  
8 guardian, consistent with the standards set forth in subsection  
9 (e) of this Section, shall use reasonable efforts to notify the  
10 ward's known adult children, who have requested notification  
11 and provided contact information, of the ward's admission to a  
12 hospital or hospice program, the ward's death, and the  
13 arrangements for the disposition of the ward's remains.

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

1 (Source: P.A. 99-143, eff. 7-27-15; 99-821, eff. 1-1-17;  
2 100-1054, eff. 1-1-19.)

3 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

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

5 (a) To the extent specified in the order establishing the  
6 guardianship, the guardian of the estate shall have the care,  
7 management and investment of the estate, shall manage the  
8 estate frugally and shall apply the income and principal of the  
9 estate so far as necessary for the comfort and suitable support  
10 and education of the ward, his minor and adult dependent  
11 children, and persons related by blood or marriage who are  
12 dependent upon or entitled to support from him, or for any  
13 other purpose which the court deems to be for the best  
14 interests of the ward, and the court may approve the making on  
15 behalf of the ward of such agreements as the court determines  
16 to be for the ward's best interests. The guardian may make  
17 disbursement of his ward's funds and estate directly to the  
18 ward or other distributee or in such other manner and in such  
19 amounts as the court directs. If the estate of a ward is  
20 derived in whole or in part from payments of compensation,  
21 adjusted compensation, pension, insurance or other similar  
22 benefits made directly to the estate by the Veterans  
23 Administration, notice of the application for leave to invest  
24 or expend the ward's funds or estate, together with a copy of  
25 the petition and proposed order, shall be given to the

1 Veterans' Administration Regional Office in this State at least  
2 7 days before the hearing on the application.

3 (a-5) The probate court, upon petition of a guardian, other  
4 than the guardian of a minor, and after notice to all other  
5 persons interested as the court directs, may authorize the  
6 guardian to exercise any or all powers over the estate and  
7 business affairs of the ward that the ward could exercise if  
8 present and not under disability. The court may authorize the  
9 taking of an action or the application of funds not required  
10 for the ward's current and future maintenance and support in  
11 any manner approved by the court as being in keeping with the  
12 ward's wishes so far as they can be ascertained. The court must  
13 consider the permanence of the ward's disabling condition and  
14 the natural objects of the ward's bounty. In ascertaining and  
15 carrying out the ward's wishes the court may consider, but  
16 shall not be limited to, minimization of State or federal  
17 income, estate, or inheritance taxes; and providing gifts to  
18 charities, relatives, and friends that would be likely  
19 recipients of donations from the ward. The ward's wishes as  
20 best they can be ascertained shall be carried out, whether or  
21 not tax savings are involved. Actions or applications of funds  
22 may include, but shall not be limited to, the following:

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

25 (2) conveying, releasing, or disclaiming his or her  
26 contingent and expectant interests in property, including

1 marital property rights and any right of survivorship  
2 incident to joint tenancy or tenancy by the entirety;

3 (3) releasing or disclaiming his or her powers as  
4 trustee, personal representative, custodian for minors, or  
5 guardian;

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

8 (5) entering into contracts;

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

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

14 (8) exercising the rights of the ward to elect benefit  
15 or payment options, to terminate, to change beneficiaries  
16 or ownership, to assign rights, to borrow, or to receive  
17 cash value in return for a surrender of rights under any  
18 one or more of the following:

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

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

21 (iii) mutual fund and other dividend investment  
22 plans,

23 (iv) retirement, profit sharing, and employee  
24 welfare plans and benefits;

25 (9) exercising his or her right to claim or disclaim an  
26 elective share in the estate of his or her deceased spouse

1 and to renounce any interest by testate or intestate  
2 succession or by inter vivos transfer;

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

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

8 The guardian in his or her petition shall briefly outline  
9 the action or application of funds for which he or she seeks  
10 approval, the results expected to be accomplished thereby, and  
11 the tax savings, if any, expected to accrue. The proposed  
12 action or application of funds may include gifts of the ward's  
13 personal property or real estate, but transfers of real estate  
14 shall be subject to the requirements of Section 20 of this Act.  
15 Gifts may be for the benefit of prospective legatees, devisees,  
16 or heirs apparent of the ward or may be made to individuals or  
17 charities in which the ward is believed to have an interest.  
18 The guardian shall also indicate in the petition that any  
19 planned disposition is consistent with the intentions of the  
20 ward insofar as they can be ascertained, and if the ward's  
21 intentions cannot be ascertained, the ward will be presumed to  
22 favor reduction in the incidents of various forms of taxation  
23 and the partial distribution of his or her estate as provided  
24 in this subsection. The guardian shall not, however, be  
25 required to include as a beneficiary or fiduciary any person  
26 who he has reason to believe would be excluded by the ward. A

1 guardian shall be required to investigate and pursue a ward's  
2 eligibility for governmental benefits.

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

7 (b) Upon the direction of the court which issued his  
8 letters, a guardian may perform the contracts of his ward which  
9 were legally subsisting at the time of the commencement of the  
10 ward's disability. The court may authorize the guardian to  
11 execute and deliver any bill of sale, deed or other instrument.

12 (c) The guardian of the estate of a ward shall appear for  
13 and represent the ward in all legal proceedings unless another  
14 person is appointed for that purpose as guardian or next  
15 friend. This does not impair the power of any court to appoint  
16 a guardian ad litem or next friend to defend the interests of  
17 the ward in that court, or to appoint or allow any person as  
18 the next friend of a ward to commence, prosecute or defend any  
19 proceeding in his behalf. Without impairing the power of the  
20 court in any respect, if the guardian of the estate of a ward  
21 and another person as next friend shall appear for and  
22 represent the ward in a legal proceeding in which the  
23 compensation of the attorney or attorneys representing the  
24 guardian and next friend is solely determined under a  
25 contingent fee arrangement, the guardian of the estate of the  
26 ward shall not participate in or have any duty to review the

1 prosecution of the action, to participate in or review the  
2 appropriateness of any settlement of the action, or to  
3 participate in or review any determination of the  
4 appropriateness of any fees awarded to the attorney or  
5 attorneys employed in the prosecution of the action.

6 (d) Adjudication of disability shall not revoke or  
7 otherwise terminate a trust which is revocable by the ward. A  
8 guardian of the estate shall have no authority to revoke a  
9 trust that is revocable by the ward, except that the court may  
10 authorize a guardian to revoke a Totten trust or similar  
11 deposit or withdrawable capital account in trust to the extent  
12 necessary to provide funds for the purposes specified in  
13 paragraph (a) of this Section. If the trustee of any trust for  
14 the benefit of the ward has discretionary power to apply income  
15 or principal for the ward's benefit, the trustee shall not be  
16 required to distribute any of the income or principal to the  
17 guardian of the ward's estate, but the guardian may bring an  
18 action on behalf of the ward to compel the trustee to exercise  
19 the trustee's discretion or to seek relief from an abuse of  
20 discretion. This paragraph shall not limit the right of a  
21 guardian of the estate to receive accountings from the trustee  
22 on behalf of the ward.

23 (d-5) Upon a verified petition by the plenary or limited  
24 guardian of the estate or the request of the ward that is  
25 accompanied by a current physician's report that states the  
26 ward possesses testamentary capacity, the court may enter an

1 order authorizing the ward to execute a will or codicil. In so  
2 ordering, the court shall authorize the guardian to retain  
3 independent counsel for the ward with whom the ward may execute  
4 or modify a will or codicil.

5 (e) Absent court order pursuant to the Illinois Power of  
6 Attorney Act directing a guardian to exercise powers of the  
7 principal under an agency that survives disability, the  
8 guardian will have no power, duty or liability with respect to  
9 any property subject to the agency. This subsection (e) applies  
10 to all agencies, whenever and wherever executed.

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

22 (Source: P.A. 99-143, eff. 7-27-15; 99-302, eff. 1-1-16;  
23 99-642, eff. 7-28-16.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.