



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5573

by Rep. David Harris

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-3

from Ch. 110 1/2, par. 11a-3

755 ILCS 5/11a-8.2 new

Amends the Probate Act of 1975. Provides that guardianship of a disabled adult may not be used in a retaliatory manner or as a convenience for a health care provider or family member. Provides that no petition for guardianship shall seek relief that is in conflict with any properly and previously executed will, trust, power of attorney, durable power of attorney, health care directive, advance directive, or other directive unless undue influence is proven in the creation of the document, by clear and convincing evidence, at a hearing conducted under the rules of civil procedure of this State.

LRB098 19342 HEP 54495 b

1 AN ACT concerning civil law.

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

4 Section 5. The Probate Act of 1975 is amended by changing
5 Section 11a-3 and by adding Section 11a-8.2 as follows:

6 (755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

7 Sec. 11a-3. Adjudication of disability; Power to appoint
8 guardian.

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

1 (b) Guardianship shall be utilized only as is necessary to
2 promote the well-being of the disabled person, to protect him
3 from neglect, exploitation, or abuse, and to encourage
4 development of his maximum self-reliance and independence.
5 Guardianship shall be ordered only to the extent necessitated
6 by the individual's actual mental, physical and adaptive
7 limitations. Guardianship may not be used in a retaliatory
8 manner or as a convenience for a health care provider or family
9 member.

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

11 (755 ILCS 5/11a-8.2 new)

12 Sec. 11a-8.2. Petitions; previously executed documents. No
13 petition under this Article shall seek relief that is in
14 conflict with any properly and previously executed will, trust,
15 power of attorney, durable power of attorney, health care
16 directive, advance directive, or other directive unless undue
17 influence is proven in the creation of the document, by clear
18 and convincing evidence, at a hearing conducted under the rules
19 of civil procedure of this State.