

1 AMENDMENT TO SENATE BILL 844

2 AMENDMENT NO. _____. Amend Senate Bill 844, AS AMENDED,
3 as follows:

4 by replacing everything after the enacting clause with the
5 following:

6 "Section 5. The Probate Act of 1975 is amended by
7 changing Sections 11-3, 11-5, 11-6, and 11-7 as follows:

8 (755 ILCS 5/11-3) (from Ch. 110 1/2, par. 11-3)

9 Sec. 11-3. Who may act as guardian.

10 (a) A person who is not a relative of the minor, who has
11 attained the age of 18 years, is a resident of the United
12 States, is not of unsound mind, is not an adjudged disabled
13 person as defined in this Act, has not been convicted of a
14 felony, and who the court finds is capable of providing an
15 active and suitable program of guardianship for the minor is
16 qualified to act as guardian of the person and as guardian of
17 the estate. One person may be appointed guardian of the
18 person and another person appointed guardian of the estate.

19 (a-5) A person who is a relative of the minor, who has
20 attained the age of 18 years, is a resident of the United
21 States, is not of unsound mind, is not an adjudged disabled

1 person as defined in this Act, has not been convicted of a
2 felony or incarcerated for a felony conviction within 10
3 years preceding the commencement of the guardianship
4 proceeding, and who has never been convicted of a felony
5 involving harm or threat to a child or a felony sexual
6 offense as defined in the Criminal Code of 1961; and who the
7 court finds is capable of providing an active and suitable
8 program of guardianship for the minor is qualified to act as
9 guardian of the person and as guardian of the estate. The
10 court shall conduct a best-interest hearing in all cases in
11 which a proposed guardian has been convicted of a felony or
12 incarcerated for a felony conviction more than 10 years prior
13 to the commencement of the guardianship proceeding. If the
14 court finds that it is in the best interests of the minor to
15 appoint the guardian, the court shall state in writing the
16 factual bases supporting its finding. One person may be
17 appointed guardian of the person and another appointed
18 guardian of the estate.

19 (b) The Department of Human Services or the Department
20 of Children and Family Services may with the approval of the
21 court designate one of its employees to serve without fees as
22 guardian of the estate of a minor patient in a State mental
23 hospital or a resident in a State institution when the value
24 of the personal estate does not exceed \$1,000.

25 (Source: P.A. 89-507, eff. 7-1-97; 90-430, eff. 8-16-97;
26 90-472, eff. 8-17-97.)

27 (755 ILCS 5/11-5) (from Ch. 110 1/2, par. 11-5)
28 Sec. 11-5. Appointment of guardian.

29 (a) Upon the filing of a petition for the appointment of
30 a guardian or on its own motion, the court may appoint a
31 guardian, who is either a relative or a non-relative, of the
32 estate or of both the person and estate, of a minor, or may
33 appoint a guardian of the person only of a minor or minors,

1 as the court finds to be in the best interest of the minor or
2 minors. Circumstances in which a court may appoint a guardian
3 for an unmarried minor include but are not limited to:

4 (1) The parental rights of both parents or the
5 surviving parent are terminated or suspended by a prior
6 court order, by judgment of divorce, by judgment of
7 custody, by legal separation, by death, by judicial
8 determination of mental incompetency, by disappearance,
9 or by confinement in a place of detention; or

10 (2) The parent or parents permit the minor to
11 reside with another person and do not provide the other
12 person with legal authority for the minor's care and
13 maintenance, and the minor is not residing with his or
14 her parent or parents at the time the petition is filed;
15 or

16 (3) When all of the following conditions exist:

17 (i) The minor's biological parents have never
18 been married to one another, and there has been no
19 judicial finding of paternity; and

20 (ii) The minor's parent who has custody of the
21 minor dies or is missing and the other parent has
22 not been granted legal custody under court order;
23 and

24 (iii) The person whom the petition asks to be
25 appointed guardian is related to the minor.

26 (a-1) A parent, adoptive parent or adjudicated parent,
27 whose parental rights have not been terminated, may designate
28 in any writing, including a will, a person, who is either a
29 relative or non-relative, qualified to act under Section 11-3
30 to be appointed as guardian of the person or estate, or both,
31 of an unmarried minor or of a child likely to be born. A
32 parent, adoptive parent or adjudicated parent, whose parental
33 rights have not been terminated, or a guardian or a standby
34 guardian of an unmarried minor or of a child likely to be

1 born may designate in any writing, including a will, a person
2 qualified to act under Section 11-3 to be appointed as
3 successor guardian of the minor's person or estate, or both.
4 The designation must be witnessed by 2 or more credible
5 witnesses at least 18 years of age, neither of whom is the
6 person designated as the guardian. The designation may be
7 proved by any competent evidence. If the designation is
8 executed and attested in the same manner as a will, it shall
9 have prima facie validity. The designation of a guardian or
10 successor guardian does not affect the rights of the other
11 parent in the minor.

12 (b) The court lacks jurisdiction to proceed on a
13 petition for the appointment of a guardian of a minor if (i)
14 the minor has a living parent, adoptive parent or adjudicated
15 parent, whose parental rights have not been terminated, whose
16 whereabouts are known, and who is willing and able to make
17 and carry out day-to-day child care decisions concerning the
18 minor, unless the parent or parents consent to the
19 appointment or, after receiving notice of the hearing under
20 Section 11-10.1, fail to object to the appointment at the
21 hearing on the petition or (ii) there is a guardian for the
22 minor appointed by a court of competent jurisdiction. There
23 shall be a rebuttable presumption that a parent of a minor is
24 willing and able to make and carry out day-to-day child care
25 decisions concerning the minor, but the presumption may be
26 rebutted by a preponderance of the evidence.

27 (b-1) If the court finds the appointment of a guardian
28 of the minor to be in the best interest of the minor, and if
29 a standby guardian has previously been appointed for the
30 minor under Section 11-5.3, the court shall appoint the
31 standby guardian as the guardian of the person or estate, or
32 both, of the minor unless the court finds, upon good cause
33 shown, that the appointment would no longer be in the best
34 interest of the minor.

1 (c) If the minor is 14 years of age or more, the minor
2 may nominate the guardian of the minor's person and estate,
3 subject to approval of the court. If the minor's nominee is
4 not approved by the court or if, after notice to the minor,
5 the minor fails to nominate a guardian of the minor's person
6 or estate, the court may appoint the guardian without
7 nomination.

8 (d) The court shall not appoint as guardian of the
9 person of the minor any person whom the court has determined
10 had caused or substantially contributed to the minor becoming
11 a neglected or abused minor as defined in the Juvenile Court
12 Act of 1987 unless 2 years have elapsed since the last proven
13 incident of abuse or neglect and the court determines that
14 appointment of such person as guardian is in the best
15 interests of the minor.

16 (e) Previous statements made by the minor relating to
17 any allegations that the minor is an abused or neglected
18 child within the meaning of the Abused and Neglected Child
19 Reporting Act, or an abused or neglected minor within the
20 meaning of the Juvenile Court Act of 1987, shall be
21 admissible in evidence in a hearing concerning appointment of
22 a guardian of the person or estate of the minor. No such
23 statement, however, if uncorroborated and not subject to
24 cross-examination, shall be sufficient in itself to support a
25 finding of abuse or neglect.

26 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;
27 90-796, eff. 12-15-98.)

28 (755 ILCS 5/11-6) (from Ch. 110 1/2, par. 11-6)
29 Sec. 11-6. Venue.) If the minor is a resident of this
30 State, the proceeding shall be instituted in the court of the
31 county in which he resides. If the minor is not a resident
32 of this State, the proceeding shall be instituted in the
33 court of a county in which his real or personal estate is

1 located. If the minor is the subject of a proceeding in
2 juvenile court, the proceeding may be instituted in the court
3 of the county in which the juvenile court proceeding is
4 pending or in the county where the minor resides.

5 (Source: P.A. 80-1415.)

6 (755 ILCS 5/11-7) (from Ch. 110 1/2, par. 11-7)
7 Sec. 11-7. Parental right to custody.)

8 (a) In all cases except cases in which there is a
9 concurrent juvenile court proceeding, if the birth parents
10 were not married at the time of the minor's birth or if there
11 has never been a finding of paternity, the court shall
12 conduct a hearing to determine paternity.

13 (b) If both parents of a minor are living and are
14 competent to transact their own business and are fit persons,
15 they are entitled to the custody of the person of the minor
16 and the direction of his education. If one parent is dead and
17 the surviving parent is competent to transact his own
18 business and is a fit person, he is similarly entitled. The
19 parents have equal powers, rights and duties concerning the
20 minor. If the parents live apart, the court for good reason
21 may award the custody and education of the minor to either
22 parent or to some other person.

23 (Source: P.A. 79-328.)".