



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5047

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

755 ILCS 5/4a-5
755 ILCS 5/4a-10

Amends the Presumptively Void Transfers Article of the Probate Act of 1975. Includes a civil union partner within the scope of the term "family member" and includes a transfer on death instrument within the scope of the term "transfer instrument". Makes changes regarding the rebuttable presumption that a transfer instrument is void if the transferee is a caregiver and the fair market value of the transferred property exceeds \$20,000. Provides that if the property in question is an interest in real property, a bona fide purchaser or mortgagee for value shall take the subject property free and clear of the action challenging the transfer instrument if the transfer to the bona fide purchaser or mortgagee for value occurs prior to the recordation of a lis pendens for an action challenging the transfer. Sets forth conditions under which a financial institution or similar entity is not liable for distributing or releasing property when the transfer is challenged. Effective immediately.

LRB100 18696 JLS 33928 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 Sections 4a-5 and 4a-10 as follows:

6 (755 ILCS 5/4a-5)

7 Sec. 4a-5. Definitions. As used in this Article:

8 (1) "Caregiver" means a person who voluntarily, or in
9 exchange for compensation, has assumed responsibility for all
10 or a portion of the care of another person who needs assistance
11 with activities of daily living. "Caregiver" includes a
12 caregiver's spouse, cohabitant, child, or employee.
13 "Caregiver" does not include a family member of the person
14 receiving assistance.

15 (2) "Family member" means a spouse, civil union partner,
16 child, grandchild, sibling, aunt, uncle, niece, nephew, first
17 cousin, or parent of the person receiving assistance.

18 (3) "Transfer instrument" means the legal document
19 intended to effectuate a transfer effective on or after the
20 transferor's death and includes, without limitation, a will,
21 trust, transfer on death instrument, deed, form designated as
22 payable on death, contract, or other beneficiary designation
23 form.

1 (4) "Transferee" means a legatee, a beneficiary of a trust,
2 a grantee of a deed, or any other person designated in a
3 transfer instrument to receive a nonprobate transfer.

4 (5) "Transferor" means a testator, settlor, grantor of a
5 deed, or a decedent whose interest is transferred pursuant to a
6 nonprobate transfer.

7 (Source: P.A. 98-1093, eff. 1-1-15.)

8 (755 ILCS 5/4a-10)

9 Sec. 4a-10. Presumption of void transfer.

10 (a) In any civil action in which a transfer instrument is
11 being challenged, there is a rebuttable presumption, except as
12 provided in Section 4a-15, that the transfer instrument is void
13 if the transferee is a caregiver and the fair market value of
14 the transferred property exceeds \$20,000.

15 (b) Unless a shorter limitations period is required by
16 Section 8-1 or 18-12 of this Act, any action under this Section
17 shall be filed within 2 years of the date of death of the
18 transferor.

19 (c) If the property in question is an interest in real
20 property, a bona fide purchaser or mortgagee for value shall
21 take the subject property free and clear of the action
22 challenging the transfer instrument if the transfer to the bona
23 fide purchaser or mortgagee for value occurs prior to the
24 recordation of a lis pendens for an action under this Section.

25 (d) If the holder of property subject to this Article is a

1 financial institution, trust company, trustee, or similar
2 entity or person, including a subsidiary or affiliate thereof,
3 it is not liable for distributing or releasing the property to
4 the transferee, if:

5 (1) in the case of funds in an account maintained by
6 the holder, the distribution or release occurs prior to the
7 date the holder imposes a prompt administrative freeze of
8 the account after first having received actual written
9 notice that a complaint has been filed challenging the
10 transfer instrument; or

11 (2) in the case of any other property, the distribution
12 or release occurs prior to the date the holder receives
13 actual written notice that a complaint has been filed
14 challenging the transfer instrument with sufficient time
15 to act upon the notice.

16 (e) The administrative freeze of an account described in
17 paragraph (1) of subsection (d) shall be implemented promptly.
18 In determining whether the administrative freeze was
19 implemented promptly, the Court shall take into consideration
20 the manner, time, and place of service and other factors
21 reasonably affecting the financial institution's ability to
22 promptly freeze the account.

23 (Source: P.A. 98-1093, eff. 1-1-15.)

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