



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2716

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

755 ILCS 5/4a-5
755 ILCS 5/4a-10
755 ILCS 5/4a-15
755 ILCS 5/4a-30

Amends the Presumptively Void Transfers Article of the Probate Act of 1975. Replaces references to the term "transfer instrument" with "transfer". Changes the definitions of "family member" and "transfer". Provides that if the court determines the transferor lacked the requisite capacity to convey, the entire transfer instrument shall be deemed void. Provides that if the property in question is an interest in real property, a purchaser or mortgagee for value and without notice, before the recordation of a lis pendens for an action, shall take free and clear of the action. Provides that a holder of property shall not be liable for distributing or releasing the property to the transferee if the distribution or release occurs prior to the holder being made a party to an action challenging the transfer. Effective immediately.

LRB100 08470 HEP 18588 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, 4a-10, 4a-15, and 4a-30 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, step-child, grandchild, sibling, aunt, uncle, niece,
17 nephew, first cousin, or parent of the person receiving
18 assistance.

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

1 or other beneficiary designation form.

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

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

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

9 (755 ILCS 5/4a-10)

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

11 (a) In any civil action in which a transfer ~~instrument~~ is
12 being challenged, there is a rebuttable presumption, except as
13 provided in Section 4a-15, that the transfer ~~instrument~~ is void
14 if the transferee is a caregiver and the fair market value of
15 the transferred property exceeds \$20,000. If the court
16 determines the transferor lacked the requisite capacity to
17 convey, the entire transfer instrument shall be deemed void.

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

22 (c) If the property in question is an interest in real
23 property, a purchaser or mortgagee for value and without
24 notice, before the recordation of a lis pendens for an action
25 under this Section, shall take free and clear of the action.

1 (d) The holder of any property subject to this Article
2 shall not be liable for distributing or releasing the property
3 to the transferee if the distribution or release occurs prior
4 to the holder being made a party to an action challenging the
5 transfer.

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

7 (755 ILCS 5/4a-15)

8 Sec. 4a-15. Exceptions. The rebuttable presumption
9 established by Section 4a-10 can be overcome if the transferee
10 proves to the court either:

11 (1) by a preponderance of evidence that the
12 transferee's share under the transfer ~~instrument~~ is not
13 greater than the share the transferee was entitled to under
14 the transferor's transfer ~~instrument~~ in effect prior to the
15 transferee becoming a caregiver; or

16 (2) by clear and convincing evidence that the transfer
17 was not the product of fraud, duress, or undue influence.

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

19 (755 ILCS 5/4a-30)

20 Sec. 4a-30. No independent duty. The rebuttable
21 presumption set forth in Section 4a-10 of this Article applies
22 only in a civil action in which a transfer ~~instrument~~ is being
23 challenged, and does not create or impose an independent duty
24 on any financial institution, trust company, trustee, or

1 similar entity or person related to any transfer ~~instrument~~.

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

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.