

HB0347



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0347

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

755 ILCS 5/2-6.2

Amends the Probate Act of 1975. Provides that a person convicted of assault, aggravated assault, battery, or aggravated battery of an elderly person shall not receive any property, benefit, or other interest by reason of the death of that elderly person.

LRB101 04884 LNS 49893 b

A BILL FOR

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 2-6.2 as follows:

6 (755 ILCS 5/2-6.2)

7 Sec. 2-6.2. Financial exploitation, abuse, or neglect of an
8 elderly person or a person with a disability.

9 (a) In this Section:

10 "Abuse" means any offense described in Section 12-1, 12-2,
11 12-3, 12-3.05, or 12-21 or subsection (b) of Section 12-4.4a of
12 the Criminal Code of 1961 or the Criminal Code of 2012.

13 "Elderly person" has the meaning provided in subsection (e)
14 of Section 12-4.4a of the Criminal Code of 2012.

15 "Financial exploitation" means any offense or act
16 described or defined in Section 16-1.3 or 17-56 of the Criminal
17 Code of 1961 or the Criminal Code of 2012, and, in the context
18 of civil proceedings, the taking, use, or other
19 misappropriation of the assets or resources of an elderly
20 person or a person with a disability contrary to law,
21 including, but not limited to, misappropriation of assets or
22 resources by undue influence, breach of a fiduciary
23 relationship, fraud, deception, extortion, and conversion.

1 "Neglect" means any offense described in Section 12-19 or
2 subsection (a) of Section 12-4.4a of the Criminal Code of 1961
3 or the Criminal Code of 2012.

4 (b) Persons convicted of financial exploitation, abuse, or
5 neglect of an elderly person or a person with a disability or
6 persons who have been found by a preponderance of the evidence
7 to be civilly liable for financial exploitation shall not
8 receive any property, benefit, or other interest by reason of
9 the death of that elderly person or person with a disability,
10 whether as heir, legatee, beneficiary, survivor, appointee,
11 claimant under Section 18-1.1, or in any other capacity and
12 whether the property, benefit, or other interest passes
13 pursuant to any form of title registration, testamentary or
14 nontestamentary instrument, intestacy, renunciation, or any
15 other circumstance. Except as provided in subsection (f) of
16 this Section, the property, benefit, or other interest shall
17 pass as if the person convicted of the financial exploitation,
18 abuse, or neglect or person found civilly liable for financial
19 exploitation died before the decedent, provided that with
20 respect to joint tenancy property the interest possessed prior
21 to the death by the person convicted of the financial
22 exploitation, abuse, or neglect shall not be diminished by the
23 application of this Section. Notwithstanding the foregoing, a
24 person convicted of financial exploitation, abuse, or neglect
25 of an elderly person or a person with a disability or a person
26 who has been found by a preponderance of the evidence to be

1 civilly liable for financial exploitation shall be entitled to
2 receive property, a benefit, or an interest in any capacity and
3 under any circumstances described in this subsection (b) if it
4 is demonstrated by clear and convincing evidence that the
5 victim of that offense knew of the conviction or finding of
6 civil liability and subsequent to the conviction or finding of
7 civil liability expressed or ratified his or her intent to
8 transfer the property, benefit, or interest to the person
9 convicted of financial exploitation, abuse, or neglect of an
10 elderly person or a person with a disability or the person
11 found by a preponderance of the evidence to be civilly liable
12 for financial exploitation in any manner contemplated by this
13 subsection (b).

14 (c) (1) The holder of any property subject to the provisions
15 of this Section shall not be liable for distributing or
16 releasing the property to the person convicted of financial
17 exploitation, abuse, or neglect of an elderly person or a
18 person with a disability or the person who has been found by a
19 preponderance of the evidence to be civilly liable for
20 financial exploitation if the distribution or release occurs
21 prior to the conviction or finding of civil liability.

22 (2) If the holder is a financial institution, trust
23 company, trustee, or similar entity or person, the holder shall
24 not be liable for any distribution or release of the property,
25 benefit, or other interest to the person convicted of a
26 violation of Section 12-19, 12-21, 16-1.3, or 17-56, or

1 subsection (a) or (b) of Section 12-4.4a, of the Criminal Code
2 of 1961 or the Criminal Code of 2012 or the person who has been
3 found by a preponderance of the evidence to be civilly liable
4 for financial exploitation unless the holder knowingly
5 distributes or releases the property, benefit, or other
6 interest to the person so convicted or found civilly liable
7 after first having received actual written notice of the
8 conviction in sufficient time to act upon the notice.

9 (d) If the holder of any property subject to the provisions
10 of this Section knows that a potential beneficiary has been
11 convicted of financial exploitation, abuse, or neglect of an
12 elderly person or a person with a disability or has been found
13 by a preponderance of the evidence to be civilly liable for
14 financial exploitation within the scope of this Section, the
15 holder shall fully cooperate with law enforcement authorities
16 and judicial officers in connection with any investigation of
17 the financial exploitation, abuse, or neglect. If the holder is
18 a person or entity that is subject to regulation by a
19 regulatory agency pursuant to the laws of this or any other
20 state or pursuant to the laws of the United States, including
21 but not limited to the business of a financial institution,
22 corporate fiduciary, or insurance company, then such person or
23 entity shall not be deemed to be in violation of this Section
24 to the extent that privacy laws and regulations applicable to
25 such person or entity prevent it from voluntarily providing law
26 enforcement authorities or judicial officers with information.

1 (e) A civil action against a person for financial
2 exploitation may be brought by an interested person, pursuant
3 to this Section, after the death of the victim or during the
4 lifetime of the victim if the victim is adjudicated a person
5 with a disability. A guardian is under no duty to bring a civil
6 action under this subsection during the ward's lifetime, but
7 may do so if the guardian believes it is in the best interests
8 of the ward.

9 (f) The court may, in its discretion, consider such facts
10 and circumstances as it deems appropriate to allow the person
11 found civilly liable for financial exploitation to receive a
12 reduction in interest or benefit rather than no interest or
13 benefit as stated under subsection (b) of this Section.

14 (Source: P.A. 98-833, eff. 8-1-14; 99-143, eff. 7-27-15.)