



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB3804

Introduced 2/9/2024, by Sen. Mike Simmons

#### SYNOPSIS AS INTRODUCED:

320 ILCS 20/2

from Ch. 23, par. 6602

320 ILCS 20/2.5 new

Amends the Adult Protective Services Act. Expands the list of mandated reporters under the Act to include broker-dealers and officers and employees of financial institutions. Provides that financial exploitation of an adult with disabilities or a person aged 60 or older occurs when a person or entity (i) takes, secretes, appropriates, obtains, or retains real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both; (ii) assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both; (iii) knowingly aids and abets in the taking, secreting, appropriating, obtaining, or retaining of real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both; or (iv) takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an eligible adult by undue influence. Sets forth when a financial institution, the officers and employees of a financial institution, a broker-dealer, or an investment adviser is deemed to have assisted in taking, secreting, appropriating, obtaining, or retaining real or personal property of an eligible adult. Sets forth when all other mandated reporters are deemed to have assisted in taking, secreting, appropriating, obtaining, or retaining real or personal property of an eligible adult. Exempts from liability nonsupervisory employees of a financial institution. Contains other provisions.

LRB103 35144 KTG 65108 b

1 AN ACT concerning aging.

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

4 Section 5. The Adult Protective Services Act is amended by  
5 changing Section 2 and by adding Section 2.5 as follows:

6 (320 ILCS 20/2) (from Ch. 23, par. 6602)

7 Sec. 2. Definitions. As used in this Act, unless the  
8 context requires otherwise:

9 (a) "Abandonment" means the desertion or willful forsaking  
10 of an eligible adult by an individual responsible for the care  
11 and custody of that eligible adult under circumstances in  
12 which a reasonable person would continue to provide care and  
13 custody. Nothing in this Act shall be construed to mean that an  
14 eligible adult is a victim of abandonment because of health  
15 care services provided or not provided by licensed health care  
16 professionals.

17 (a-1) "Abuse" means causing any physical, mental or sexual  
18 injury to an eligible adult, including exploitation of such  
19 adult's financial resources, and abandonment.

20 Nothing in this Act shall be construed to mean that an  
21 eligible adult is a victim of abuse, abandonment, neglect, or  
22 self-neglect for the sole reason that he or she is being  
23 furnished with or relies upon treatment by spiritual means

1 through prayer alone, in accordance with the tenets and  
2 practices of a recognized church or religious denomination.

3 Nothing in this Act shall be construed to mean that an  
4 eligible adult is a victim of abuse because of health care  
5 services provided or not provided by licensed health care  
6 professionals.

7 Nothing in this Act shall be construed to mean that an  
8 eligible adult is a victim of abuse in cases of criminal  
9 activity by strangers, telemarketing scams, consumer fraud,  
10 internet fraud, home repair disputes, complaints against a  
11 homeowners' association, or complaints between landlords and  
12 tenants.

13 (a-5) "Abuser" means a person who is a family member,  
14 caregiver, or another person who has a continuing relationship  
15 with the eligible adult and abuses, abandons, neglects, or  
16 financially exploits an eligible adult.

17 (a-6) "Adult with disabilities" means a person aged 18  
18 through 59 who resides in a domestic living situation and  
19 whose disability as defined in subsection (c-5) impairs his or  
20 her ability to seek or obtain protection from abuse,  
21 abandonment, neglect, or exploitation.

22 (a-7) "Broker-dealer" means any person engaged in the  
23 business of effecting transactions in securities in this State  
24 for the account of others or for that person's own account and  
25 who is registered with the United States Securities and  
26 Exchange Commission.

1        (a-10) ~~(a-7)~~ "Caregiver" means a person who either as a  
2 result of a family relationship, voluntarily, or in exchange  
3 for compensation has assumed responsibility for all or a  
4 portion of the care of an eligible adult who needs assistance  
5 with activities of daily living or instrumental activities of  
6 daily living.

7        (b) "Department" means the Department on Aging of the  
8 State of Illinois.

9        (c) "Director" means the Director of the Department.

10       (c-5) "Disability" means a physical or mental disability,  
11 including, but not limited to, a developmental disability, an  
12 intellectual disability, a mental illness as defined under the  
13 Mental Health and Developmental Disabilities Code, or dementia  
14 as defined under the Alzheimer's Disease Assistance Act.

15       (d) "Domestic living situation" means a residence where  
16 the eligible adult at the time of the report lives alone or  
17 with his or her family or a caregiver, or others, or other  
18 community-based unlicensed facility, but is not:

19            (1) A licensed facility as defined in Section 1-113 of  
20 the Nursing Home Care Act;

21            (1.5) A facility licensed under the ID/DD Community  
22 Care Act;

23            (1.6) A facility licensed under the MC/DD Act;

24            (1.7) A facility licensed under the Specialized Mental  
25 Health Rehabilitation Act of 2013;

26            (2) A "life care facility" as defined in the Life Care

1 Facilities Act;

2 (3) A home, institution, or other place operated by  
3 the federal government or agency thereof or by the State  
4 of Illinois;

5 (4) A hospital, sanitarium, or other institution, the  
6 principal activity or business of which is the diagnosis,  
7 care, and treatment of human illness through the  
8 maintenance and operation of organized facilities  
9 therefor, which is required to be licensed under the  
10 Hospital Licensing Act;

11 (5) A "community living facility" as defined in the  
12 Community Living Facilities Licensing Act;

13 (6) (Blank);

14 (7) A "community-integrated living arrangement" as  
15 defined in the Community-Integrated Living Arrangements  
16 Licensure and Certification Act or a "community  
17 residential alternative" as licensed under that Act;

18 (8) An assisted living or shared housing establishment  
19 as defined in the Assisted Living and Shared Housing Act;  
20 or

21 (9) A supportive living facility as described in  
22 Section 5-5.01a of the Illinois Public Aid Code.

23 (e) "Eligible adult" means either an adult with  
24 disabilities aged 18 through 59 or a person aged 60 or older  
25 who resides in a domestic living situation and is, or is  
26 alleged to be, abused, abandoned, neglected, or financially

1 exploited by another individual or who neglects himself or  
2 herself. "Eligible adult" also includes an adult who resides  
3 in any of the facilities that are excluded from the definition  
4 of "domestic living situation" under paragraphs (1) through  
5 (9) of subsection (d), if either: (i) the alleged abuse,  
6 abandonment, or neglect occurs outside of the facility and not  
7 under facility supervision and the alleged abuser is a family  
8 member, caregiver, or another person who has a continuing  
9 relationship with the adult; or (ii) the alleged financial  
10 exploitation is perpetrated by a family member, caregiver, or  
11 another person who has a continuing relationship with the  
12 adult, but who is not an employee of the facility where the  
13 adult resides.

14 (f) "Emergency" means a situation in which an eligible  
15 adult is living in conditions presenting a risk of death or  
16 physical, mental or sexual injury and the provider agency has  
17 reason to believe the eligible adult is unable to consent to  
18 services which would alleviate that risk.

19 (f-1) "Financial exploitation" means the use of an  
20 eligible adult's resources by another to the disadvantage of  
21 that adult or the profit or advantage of a person other than  
22 that adult.

23 (f-3) "Investment advisor" means any person required to  
24 register as an investment adviser or investment adviser  
25 representative under Section 8 of the Illinois Securities Law  
26 of 1953, which for purposes of this Act excludes any bank,

1 trust company, savings bank, or credit union, or their  
2 respective employees.

3 (f-5) "Mandated reporter" means any of the following  
4 persons while engaged in carrying out their professional  
5 duties:

6 (1) a professional or professional's delegate while  
7 engaged in: (i) social services, (ii) law enforcement,  
8 (iii) education, (iv) the care of an eligible adult or  
9 eligible adults, or (v) any of the occupations required to  
10 be licensed under the Behavior Analyst Licensing Act, the  
11 Clinical Psychologist Licensing Act, the Clinical Social  
12 Work and Social Work Practice Act, the Illinois Dental  
13 Practice Act, the Dietitian Nutritionist Practice Act, the  
14 Marriage and Family Therapy Licensing Act, the Medical  
15 Practice Act of 1987, the Naprapathic Practice Act, the  
16 Nurse Practice Act, the Nursing Home Administrators  
17 Licensing and Disciplinary Act, the Illinois Occupational  
18 Therapy Practice Act, the Illinois Optometric Practice Act  
19 of 1987, the Pharmacy Practice Act, the Illinois Physical  
20 Therapy Act, the Physician Assistant Practice Act of 1987,  
21 the Podiatric Medical Practice Act of 1987, the  
22 Respiratory Care Practice Act, the Professional Counselor  
23 and Clinical Professional Counselor Licensing and Practice  
24 Act, the Illinois Speech-Language Pathology and Audiology  
25 Practice Act, the Veterinary Medicine and Surgery Practice  
26 Act of 2004, and the Illinois Public Accounting Act;

1           (1.5) an employee of an entity providing developmental  
2           disabilities services or service coordination funded by  
3           the Department of Human Services;

4           (2) an employee of a vocational rehabilitation  
5           facility prescribed or supervised by the Department of  
6           Human Services;

7           (3) an administrator, employee, or person providing  
8           services in or through an unlicensed community based  
9           facility;

10          (4) any religious practitioner who provides treatment  
11          by prayer or spiritual means alone in accordance with the  
12          tenets and practices of a recognized church or religious  
13          denomination, except as to information received in any  
14          confession or sacred communication enjoined by the  
15          discipline of the religious denomination to be held  
16          confidential;

17          (5) field personnel of the Department of Healthcare  
18          and Family Services, Department of Public Health, and  
19          Department of Human Services, and any county or municipal  
20          health department;

21          (6) personnel of the Department of Human Services, the  
22          Guardianship and Advocacy Commission, the State Fire  
23          Marshal, local fire departments, the Department on Aging  
24          and its subsidiary Area Agencies on Aging and provider  
25          agencies, except the State Long Term Care Ombudsman and  
26          any of his or her representatives or volunteers where



1 prohibited from making such a report pursuant to 45 CFR  
2 1324.11(e)(3)(iv);

3 (7) any employee of the State of Illinois not  
4 otherwise specified herein who is involved in providing  
5 services to eligible adults, including professionals  
6 providing medical or rehabilitation services and all other  
7 persons having direct contact with eligible adults;

8 (8) a person who performs the duties of a coroner or  
9 medical examiner;

10 (9) a person who performs the duties of a paramedic or  
11 an emergency medical technician; ~~or~~

12 (10) a person who performs the duties of an investment  
13 advisor; ~~or~~

14 (11) a person who performs the duties of a  
15 broker-advisor; or

16 (12) an officer or employee of a financial  
17 institution.

18 (g) "Neglect" means another individual's failure to  
19 provide an eligible adult with or willful withholding from an  
20 eligible adult the necessities of life including, but not  
21 limited to, food, clothing, shelter or health care. This  
22 subsection does not create any new affirmative duty to provide  
23 support to eligible adults. Nothing in this Act shall be  
24 construed to mean that an eligible adult is a victim of neglect  
25 because of health care services provided or not provided by  
26 licensed health care professionals.

1 (h) "Provider agency" means any public or nonprofit agency  
2 in a planning and service area that is selected by the  
3 Department or appointed by the regional administrative agency  
4 with prior approval by the Department on Aging to receive and  
5 assess reports of alleged or suspected abuse, abandonment,  
6 neglect, or financial exploitation. A provider agency is also  
7 referenced as a "designated agency" in this Act.

8 (i) "Regional administrative agency" means any public or  
9 nonprofit agency in a planning and service area that provides  
10 regional oversight and performs functions as set forth in  
11 subsection (b) of Section 3 of this Act. The Department shall  
12 designate an Area Agency on Aging as the regional  
13 administrative agency or, in the event the Area Agency on  
14 Aging in that planning and service area is deemed by the  
15 Department to be unwilling or unable to provide those  
16 functions, the Department may serve as the regional  
17 administrative agency or designate another qualified entity to  
18 serve as the regional administrative agency; any such  
19 designation shall be subject to terms set forth by the  
20 Department.

21 (i-5) "Self-neglect" means a condition that is the result  
22 of an eligible adult's inability, due to physical or mental  
23 impairments, or both, or a diminished capacity, to perform  
24 essential self-care tasks that substantially threaten his or  
25 her own health, including: providing essential food, clothing,  
26 shelter, and health care; and obtaining goods and services

1 necessary to maintain physical health, mental health,  
2 emotional well-being, and general safety. The term includes  
3 compulsive hoarding, which is characterized by the acquisition  
4 and retention of large quantities of items and materials that  
5 produce an extensively cluttered living space, which  
6 significantly impairs the performance of essential self-care  
7 tasks or otherwise substantially threatens life or safety.

8 (j) "Substantiated case" means a reported case of alleged  
9 or suspected abuse, abandonment, neglect, financial  
10 exploitation, or self-neglect in which a provider agency,  
11 after assessment, determines that there is reason to believe  
12 abuse, abandonment, neglect, or financial exploitation has  
13 occurred.

14 (k) "Verified" means a determination that there is "clear  
15 and convincing evidence" that the specific injury or harm  
16 alleged was the result of abuse, abandonment, neglect, or  
17 financial exploitation.

18 (Source: P.A. 102-244, eff. 1-1-22; 102-953, eff. 5-27-22;  
19 103-329, eff. 1-1-24.)

20 (320 ILCS 20/2.5 new)

21 Sec. 2.5. Financial exploitation.

22 (a) As used in this Section, unless the context requires  
23 otherwise:

24 "Financial institution" means any of the following:

25 (1) A depository institution, as defined in Section

1       3(c) of the Federal Deposit Insurance Act (12 U.S.C.  
2       1813(c)).

3       (2) An institution-affiliated party, as defined in  
4       Section 3(u) of the Federal Deposit Insurance Act (12  
5       U.S.C. 1813(u)).

6       (3) A federal credit union or state credit union, as  
7       defined in Section 101 of the Federal Credit Union Act (12  
8       U.S.C. 1752), including, but not limited to, an  
9       institution-affiliated party of a credit union, as defined  
10       in Section 206(r) of the Federal Credit Union Act (12  
11       U.S.C. 1786(r)).

12       "Representative" means a person or entity that is either  
13       of the following:

14       (1) A conservator, trustee, or other representative of  
15       the estate of an eligible adult.

16       (2) An attorney-in-fact of an eligible adult who acts  
17       within the authority of the power of attorney.

18       (b) Financial exploitation of an eligible adult occurs  
19       when a person or entity does any of the following:

20       (1) Takes, secretes, appropriates, obtains, or retains  
21       real or personal property of an eligible adult for a  
22       wrongful use or with intent to defraud, or both.

23       (2) Assists in taking, secreting, appropriating,  
24       obtaining, or retaining real or personal property of an  
25       eligible adult for a wrongful use or with intent to  
26       defraud, or both.

1           (3) Knowingly aids and abets in the taking, secreting,  
2           appropriating, obtaining, or retaining of real or personal  
3           property of an eligible adult for a wrongful use or with  
4           intent to defraud, or both.

5           (4) Takes, secretes, appropriates, obtains, or  
6           retains, or assists in taking, secreting, appropriating,  
7           obtaining, or retaining, real or personal property of an  
8           eligible adult by undue influence.

9           (c) A person or entity is deemed to have taken, secreted,  
10          appropriated, obtained, or retained property for a wrongful  
11          use or assisted in taking, secreting, appropriating,  
12          obtaining, or retaining property for a wrongful use, if, among  
13          other things, the person or entity takes, secretes,  
14          appropriates, obtains, or retains the property or assists in  
15          taking, secreting, appropriating, obtaining, or retaining the  
16          property and the person or entity knew or should have known  
17          that this conduct is likely to be harmful to the eligible  
18          adult.

19          (d) A person or entity takes, secretes, appropriates,  
20          obtains, or retains real or personal property when an eligible  
21          adult is deprived of any property right, including by means of  
22          an agreement, donative transfer, or testamentary bequest,  
23          regardless of whether the property is held directly or by a  
24          representative of an eligible adult.

25          (e) Assisting in the financial exploitation of an eligible  
26          adult occurs when a person or entity does either of the

1 following:

2 (1) For a financial institution, an officer or  
3 employee of a financial institution, a broker-dealer, or  
4 an investment advisor, executing a transaction with or  
5 processing a transaction on behalf of an eligible adult  
6 for which both of the following apply:

7 (A) The eligible adult interacts with one or more  
8 officers or employees of the financial institution or  
9 with the broker-dealer or investment advisor in the  
10 process of requesting, initiating, or completing the  
11 transaction.

12 (B) The financial institution, the officer or  
13 employee of the financial institution, the  
14 broker-dealer, or the investment advisor fails to act  
15 as a reasonable person or entity in a like position  
16 would, considering the surrounding facts and  
17 circumstances, including the transaction history of  
18 the eligible adult, whether the transaction is aligned  
19 with prevailing business practices, and whether the  
20 eligible adult exhibits multiple red flags, in  
21 executing the transaction with or processing the  
22 transaction on behalf of the eligible adult. As used  
23 in this subparagraph, "red flags" refers to the  
24 behavioral and financial red flags enumerated in Elder  
25 Financial Exploitation Advisory in FinCEN Advisory  
26 FIN-2022-A002 by the United States Department of the

1 Treasury.

2 (2) For any other mandated reporter not listed in  
3 paragraph (1), failing to act as a reasonable person in a  
4 like position would, considering the surrounding facts and  
5 circumstances, including, but not limited to, any of the  
6 following:

7 (A) The vulnerability of the eligible adult.

8 (B) The extent to which the eligible adult relied  
9 on the mandated reporter to handle the eligible  
10 adult's finances or for financial advice or financial  
11 decisions.

12 (C) Any information the eligible adult provided to  
13 the mandated reporter about the situation.

14 (D) The mandated reporter's past interactions with  
15 the eligible adult and whether the eligible adult's  
16 behavior was markedly different than in the eligible  
17 adult's prior interactions with the mandated reporter.

18 (E) Whether the mandated reporter has a fiduciary  
19 duty to the eligible adult.

20 (F) Any instructions or information the mandated  
21 reporter has been given about the eligible adult's  
22 capacity or ability to make decisions.

23 (G) Any trainings the mandated reporter has taken  
24 or should have taken, or information the mandated  
25 reporter has received or should have received, on the  
26 subjects of elder abuse and financial exploitation.

1       (f) (1) For purposes of paragraph (1) of subsection (e), a  
2       financial institution, an officer or employee of a financial  
3       institution, a broker-dealer, or an investment advisor shall  
4       be deemed to have acted reasonably if the person or entity  
5       proves that, at the time that the transaction was requested,  
6       the person or entity gave the eligible adult an explanation  
7       and warning, verbally and in writing, regarding the person's  
8       or entity's knowledge of, or suspicion of, financial  
9       exploitation occurring with respect to that transaction, and  
10      if either of the following is met:

11           (A) If the eligible adult has designated a trusted  
12           contact person to receive notification of any known or  
13           suspected financial exploitation, or there is a joint  
14           holder on the account for which the transaction is  
15           requested, the person or entity contacted the trusted  
16           contact person or joint account holder and obtained  
17           consent for the transaction.

18           (B) (i) If the financial institution, officer or  
19           employee of the financial institution, broker-dealer, or  
20           investment advisor was unable to communicate with and  
21           obtain the consent of a secondary authorized account  
22           holder or trusted contact person, or there was no joint  
23           account holder or designated trusted contact person, the  
24           person or entity refused the transaction, or notified the  
25           appropriate provider agency and law enforcement and held  
26           the transaction for 15 business days or until the provider



1 agency or law enforcement informed the person or entity  
2 that the transaction should be completed. If, at any time  
3 during the 15-day period, the eligible adult informs the  
4 person or entity that the eligible adult does not wish to  
5 complete the transaction, the person or entity does not  
6 act reasonably if they complete the transaction anyway.

7 (ii) Notwithstanding any other law to the contrary,  
8 for the purposes of item (i), a financial institution,  
9 officer or employee of the financial institution,  
10 broker-dealer, or investment advisor is authorized to  
11 delay or refuse a requested transaction if the person or  
12 entity notified the provider agency and law enforcement.

13 (2) For the purposes of paragraph (1) of subsection (e), a  
14 nonsupervisory employee of a financial institution may not be  
15 held personally liable in his or her individual capacity for  
16 violations of this Section. However, this Section does not  
17 affect the liability of the financial institution for its own  
18 acts or under the theory of respondeat superior.

19 (g) Nothing in this Section shall in any way affect or  
20 contravene any other reporting requirements under this Act.

21 (h) Nothing in this Section shall apply to criminal  
22 prosecutions of financial exploitation of an elderly person or  
23 a person with a disability.

24 (i) Nothing in this Section shall be construed to prevent  
25 or significantly interfere with any financial institution's  
26 exercise of its powers under federal law.

1       (j) If any provision of this Section or its application to  
2       any person or circumstance is held invalid, the invalidity of  
3       that provision or application does not affect other provisions  
4       or applications of this Section that can be given effect  
5       without the invalid provision or application.