



Sen. Mike Simmons

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1 AMENDMENT TO SENATE BILL 3804

2 AMENDMENT NO. _____. Amend Senate Bill 3804 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Adult Protective Services Act is amended
5 by 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.

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

4 Nothing in this Act shall be construed to mean that an
5 eligible adult is a victim of abuse, abandonment, neglect, or
6 self-neglect for the sole reason that he or she is being
7 furnished with or relies upon treatment by spiritual means
8 through prayer alone, in accordance with the tenets and
9 practices of a recognized church or religious denomination.

10 Nothing in this Act shall be construed to mean that an
11 eligible adult is a victim of abuse because of health care
12 services provided or not provided by licensed health care
13 professionals.

14 Nothing in this Act shall be construed to mean that an
15 eligible adult is a victim of abuse in cases of criminal
16 activity by strangers, telemarketing scams, consumer fraud,
17 internet fraud, home repair disputes, complaints against a
18 homeowners' association, or complaints between landlords and
19 tenants.

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

24 (a-6) "Adult with disabilities" means a person aged 18
25 through 59 who resides in a domestic living situation and
26 whose disability as defined in subsection (c-5) impairs his or

1 her ability to seek or obtain protection from abuse,
2 abandonment, neglect, or exploitation.

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

8 (a-10) ~~(a-7)~~ "Caregiver" means a person who either as a
9 result of a family relationship, voluntarily, or in exchange
10 for compensation has assumed responsibility for all or a
11 portion of the care of an eligible adult who needs assistance
12 with activities of daily living or instrumental activities of
13 daily living.

14 (b) "Department" means the Department on Aging of the
15 State of Illinois.

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

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

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

26 (1) A licensed facility as defined in Section 1-113 of

1 the Nursing Home Care Act;

2 (1.5) A facility licensed under the ID/DD Community
3 Care Act;

4 (1.6) A facility licensed under the MC/DD Act;

5 (1.7) A facility licensed under the Specialized Mental
6 Health Rehabilitation Act of 2013;

7 (2) A "life care facility" as defined in the Life Care
8 Facilities Act;

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

12 (4) A hospital, sanitarium, or other institution, the
13 principal activity or business of which is the diagnosis,
14 care, and treatment of human illness through the
15 maintenance and operation of organized facilities
16 therefor, which is required to be licensed under the
17 Hospital Licensing Act;

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

20 (6) (Blank);

21 (7) A "community-integrated living arrangement" as
22 defined in the Community-Integrated Living Arrangements
23 Licensure and Certification Act or a "community
24 residential alternative" as licensed under that Act;

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

1 or

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

4 (e) "Eligible adult" means either an adult with
5 disabilities aged 18 through 59 or a person aged 60 or older
6 who resides in a domestic living situation and is, or is
7 alleged to be, abused, abandoned, neglected, or financially
8 exploited by another individual or who neglects himself or
9 herself. "Eligible adult" also includes an adult who resides
10 in any of the facilities that are excluded from the definition
11 of "domestic living situation" under paragraphs (1) through
12 (9) of subsection (d), if either: (i) the alleged abuse,
13 abandonment, or neglect occurs outside of the facility and not
14 under facility supervision and the alleged abuser is a family
15 member, caregiver, or another person who has a continuing
16 relationship with the adult; or (ii) the alleged financial
17 exploitation is perpetrated by a family member, caregiver, or
18 another person who has a continuing relationship with the
19 adult, but who is not an employee of the facility where the
20 adult resides.

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

26 (f-1) "Financial exploitation" means the use of an

1 eligible adult's resources by another to the disadvantage of
2 that adult or the profit or advantage of a person other than
3 that adult.

4 (f-3) "Investment advisor" means any person required to
5 register as an investment adviser or investment adviser
6 representative under Section 8 of the Illinois Securities Law
7 of 1953, which for purposes of this Act excludes any bank,
8 trust company, savings bank, or credit union, or their
9 respective employees.

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

13 (1) a professional or professional's delegate while
14 engaged in: (i) social services, (ii) law enforcement,
15 (iii) education, (iv) the care of an eligible adult or
16 eligible adults, or (v) any of the occupations required to
17 be licensed under the Behavior Analyst Licensing Act, the
18 Clinical Psychologist Licensing Act, the Clinical Social
19 Work and Social Work Practice Act, the Illinois Dental
20 Practice Act, the Dietitian Nutritionist Practice Act, the
21 Marriage and Family Therapy Licensing Act, the Medical
22 Practice Act of 1987, the Naprapathic Practice Act, the
23 Nurse Practice Act, the Nursing Home Administrators
24 Licensing and Disciplinary Act, the Illinois Occupational
25 Therapy Practice Act, the Illinois Optometric Practice Act
26 of 1987, the Pharmacy Practice Act, the Illinois Physical

1 Therapy Act, the Physician Assistant Practice Act of 1987,
2 the Podiatric Medical Practice Act of 1987, the
3 Respiratory Care Practice Act, the Professional Counselor
4 and Clinical Professional Counselor Licensing and Practice
5 Act, the Illinois Speech-Language Pathology and Audiology
6 Practice Act, the Veterinary Medicine and Surgery Practice
7 Act of 2004, and the Illinois Public Accounting Act;

8 (1.5) an employee of an entity providing developmental
9 disabilities services or service coordination funded by
10 the Department of Human Services;

11 (2) an employee of a vocational rehabilitation
12 facility prescribed or supervised by the Department of
13 Human Services;

14 (3) an administrator, employee, or person providing
15 services in or through an unlicensed community based
16 facility;

17 (4) any religious practitioner who provides treatment
18 by prayer or spiritual means alone in accordance with the
19 tenets and practices of a recognized church or religious
20 denomination, except as to information received in any
21 confession or sacred communication enjoined by the
22 discipline of the religious denomination to be held
23 confidential;

24 (5) field personnel of the Department of Healthcare
25 and Family Services, Department of Public Health, and
26 Department of Human Services, and any county or municipal

1 health department;

2 (6) personnel of the Department of Human Services, the
3 Guardianship and Advocacy Commission, the State Fire
4 Marshal, local fire departments, the Department on Aging
5 and its subsidiary Area Agencies on Aging and provider
6 agencies, except the State Long Term Care Ombudsman and
7 any of his or her representatives or volunteers where
8 prohibited from making such a report pursuant to 45 CFR
9 1324.11(e)(3)(iv);

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

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

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

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

21 (11) a person who performs the duties of a
22 broker-advisor; or

23 (12) the manager of a financial institution.

24 (g) "Neglect" means another individual's failure to
25 provide an eligible adult with or willful withholding from an
26 eligible adult the necessities of life including, but not

1 limited to, food, clothing, shelter or health care. This
2 subsection does not create any new affirmative duty to provide
3 support to eligible adults. Nothing in this Act shall be
4 construed to mean that an eligible adult is a victim of neglect
5 because of health care services provided or not provided by
6 licensed health care professionals.

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

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

1 (i-5) "Self-neglect" means a condition that is the result
2 of an eligible adult's inability, due to physical or mental
3 impairments, or both, or a diminished capacity, to perform
4 essential self-care tasks that substantially threaten his or
5 her own health, including: providing essential food, clothing,
6 shelter, and health care; and obtaining goods and services
7 necessary to maintain physical health, mental health,
8 emotional well-being, and general safety. The term includes
9 compulsive hoarding, which is characterized by the acquisition
10 and retention of large quantities of items and materials that
11 produce an extensively cluttered living space, which
12 significantly impairs the performance of essential self-care
13 tasks or otherwise substantially threatens life or safety.

14 (j) "Substantiated case" means a reported case of alleged
15 or suspected abuse, abandonment, neglect, financial
16 exploitation, or self-neglect in which a provider agency,
17 after assessment, determines that there is reason to believe
18 abuse, abandonment, neglect, or financial exploitation has
19 occurred.

20 (k) "Verified" means a determination that there is "clear
21 and convincing evidence" that the specific injury or harm
22 alleged was the result of abuse, abandonment, neglect, or
23 financial exploitation.

24 (Source: P.A. 102-244, eff. 1-1-22; 102-953, eff. 5-27-22;
25 103-329, eff. 1-1-24.)

1 (320 ILCS 20/2.5 new)

2 Sec. 2.5. Financial exploitation.

3 (a) As used in this Section, unless the context requires
4 otherwise:

5 "Financial institution" means any of the following:

6 (1) A depository institution, as defined in Section
7 3(c) of the Federal Deposit Insurance Act (12 U.S.C.
8 1813(c)).

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

12 (3) A federal credit union or state credit union, as
13 defined in Section 101 of the Federal Credit Union Act (12
14 U.S.C. 1752), including, but not limited to, an
15 institution-affiliated party of a credit union, as defined
16 in Section 206(r) of the Federal Credit Union Act (12
17 U.S.C. 1786(r)).

18 "Representative" means a person or entity that is either
19 of the following:

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

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

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

26 (1) Takes, secretes, appropriates, obtains, or retains

1 real or personal property of an eligible adult for a
2 wrongful use or with intent to defraud, or both.

3 (2) Assists in taking, secreting, appropriating,
4 obtaining, or retaining real or personal property of an
5 eligible adult for a wrongful use or with intent to
6 defraud, or both.

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

11 (4) Takes, secretes, appropriates, obtains, or
12 retains, or assists in taking, secreting, appropriating,
13 obtaining, or retaining, real or personal property of an
14 eligible adult by undue influence.

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

25 (d) A person or entity takes, secretes, appropriates,
26 obtains, or retains real or personal property when an eligible

1 adult is deprived of any property right, including by means of
2 an agreement, donative transfer, or testamentary bequest,
3 regardless of whether the property is held directly or by a
4 representative of an eligible adult.

5 (e) Assisting in the financial exploitation of an eligible
6 adult occurs when a person or entity does either of the
7 following:

8 (1) For a financial institution, the manager of a
9 financial institution, a broker-dealer, or an investment
10 advisor, executing a transaction with or processing a
11 transaction on behalf of an eligible adult for which both
12 of the following apply:

13 (A) The eligible adult interacts with the manager
14 of the financial institution or with the broker-dealer
15 or investment advisor in the process of requesting,
16 initiating, or completing the transaction.

17 (B) The financial institution, the manager of the
18 financial institution, the broker-dealer, or the
19 investment advisor fails to act as a reasonable person
20 or entity in a like position would, considering the
21 surrounding facts and circumstances, including the
22 transaction history of the eligible adult, whether the
23 transaction is aligned with prevailing business
24 practices, and whether the eligible adult exhibits
25 multiple red flags, in executing the transaction with
26 or processing the transaction on behalf of the

1 eligible adult. As used in this subparagraph, "red
2 flags" refers to the behavioral and financial red
3 flags enumerated in Elder Financial Exploitation
4 Advisory in FinCEN Advisory FIN-2022-A002 by the
5 United States Department of the Treasury.

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

11 (A) The vulnerability of the eligible adult.

12 (B) The extent to which the eligible adult relied
13 on the mandated reporter to handle the eligible
14 adult's finances or for financial advice or financial
15 decisions.

16 (C) Any information the eligible adult provided to
17 the mandated reporter about the situation.

18 (D) The mandated reporter's past interactions with
19 the eligible adult and whether the eligible adult's
20 behavior was markedly different than in the eligible
21 adult's prior interactions with the mandated reporter.

22 (E) Whether the mandated reporter has a fiduciary
23 duty to the eligible adult.

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

1 (G) Any trainings the mandated reporter has taken
2 or should have taken, or information the mandated
3 reporter has received or should have received, on the
4 subjects of elder abuse and financial exploitation.

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

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

22 (B) (i) If the financial institution, manager of the
23 financial institution, broker-dealer, or investment
24 advisor was unable to communicate with and obtain the
25 consent of a secondary authorized account holder or
26 trusted contact person, or there was no joint account

1 holder or designated trusted contact person, the person or
2 entity refused the transaction, or notified the
3 appropriate provider agency and law enforcement and held
4 the transaction for 15 business days or until the provider
5 agency or law enforcement informed the person or entity
6 that the transaction should be completed. If, at any time
7 during the 15-day period, the eligible adult informs the
8 person or entity that the eligible adult does not wish to
9 complete the transaction, the person or entity does not
10 act reasonably if they complete the transaction anyway.

11 (ii) Notwithstanding any other law to the contrary,
12 for the purposes of item (i), a financial institution, the
13 manager of the financial institution, a broker-dealer, or
14 an investment advisor is authorized to delay or refuse a
15 requested transaction if the person or entity notified the
16 provider agency and law enforcement.

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

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

25 (h) Nothing in this Section shall apply to criminal
26 prosecutions of financial exploitation of an elderly person or

1 a person with a disability.

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

5 (j) If any provision of this Section or its application to
6 any person or circumstance is held invalid, the invalidity of
7 that provision or application does not affect other provisions
8 or applications of this Section that can be given effect
9 without the invalid provision or application."