



Sen. Don Harmon

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09800SB1048sam001

LRB098 05314 HEP 58261 a

1 AMENDMENT TO SENATE BILL 1048

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1048 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing  
5 Section 11a-2 and by adding Article IVa as follows:

6 (755 ILCS 5/Art. IVa heading new)

7 ARTICLE IVa

8 PRESUMPTIVELY VOID TRANSFERS

9 (755 ILCS 5/4a-5 new)

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

11 (1) "Caregiver" means a person who, either as a result of a  
12 family relationship, voluntarily, or in exchange for  
13 compensation, has assumed responsibility for all or a portion  
14 of the care of another person who needs assistance with  
15 activities of daily living. "Caregiver" does not include the

1 spouse of the person receiving assistance.

2 (2) "Independent attorney" means an attorney, other than an  
3 attorney who:

4 (A) is described in subsection (b) of Section 4a-10; or

5 (B) has served as an attorney for a person who is  
6 described in subsection (b) of Section 4a-10.

7 (3) "Transfer instrument" means the legal document  
8 intended to effectuate a transfer effective on or after the  
9 transferor's death and includes, without limitation, a will,  
10 trust, deed, form designated as payable on death, contract, or  
11 other beneficiary designation form.

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

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

18 (755 ILCS 5/4a-10 new)

19 Sec. 4a-10. Presumption of void transfer. Except as  
20 provided in Section 4a-15, a transfer instrument is presumed to  
21 be void if the transferee is a caregiver, or person related to  
22 a caregiver, and the fair fair market value of the transferred  
23 property exceeds \$20,000.

24 (755 ILCS 5/4a-15 new)

1       Sec. 4a-15. Exceptions. The presumption established by  
2 Section 4a-10 does not apply if the transferee either:

3           (1) establishes that the transferee's share under the  
4 transfer instrument is not greater than the share the  
5 transferee was entitled to under the transferrer's  
6 testamentary plan in effect prior to the transferee  
7 becoming a caregiver;

8           (2) establishes by clear and convincing evidence that  
9 the transfer was not the product of fraud, duress, or undue  
10 influence, provided that the determination of the court  
11 pursuant to this paragraph must not be based solely upon  
12 the testimony of the caregiver; or

13           (3) establishes that the transfer instrument was  
14 reviewed by an independent attorney who signed and  
15 delivered to the transferor an original certificate of that  
16 review, in a dated form consisting of substantially the  
17 following:

18                           CERTIFICATE OF INDEPENDENT REVIEW

19           I, ..... (attorney's name), have reviewed  
20 ..... (name of transfer instrument) prior to its  
21 execution, and have counseled my client, .....  
22 (name of client), on the nature and consequences of the  
23 transfer or transfers of property to ..... (name  
24 of transferee) contained in the transfer instrument. I  
25 am disassociated from the interest of the transferee to  
26 the extent that I am in a position to advise my client

1           independently, impartially, and confidentially as to  
2           the consequences of the transfer. On the basis of this  
3           counsel, I conclude that the transfer or transfers of  
4           property in the transfer instrument that otherwise  
5           might be invalid pursuant to Section 4a-10 of the  
6           Probate Act of 1975 are valid because the transfer or  
7           transfers are not the product of fraud, duress, or  
8           undue influence.

9           (755 ILCS 5/4a-20 new)

10          Sec. 4a-20. Common law. The provisions of this Article do  
11          not abrogate or limit any principle or rule of the common law,  
12          unless the common law principle or rule is inconsistent with  
13          the provisions of this Article.

14          (755 ILCS 5/4s-25 new)

15          Sec. 4s-25. Attorney's fees and costs. If the caregiver  
16          attempts and fails to overcome the presumption under Section  
17          4a-15, the caregiver shall bear the costs of the proceedings,  
18          including, without limitation, reasonable attorney's fees.

19          (755 ILCS 5/11a-2) (from Ch. 110 1/2, par. 11a-2)

20          Sec. 11a-2. "Disabled person" defined.) "Disabled person"  
21          means a person 18 years or older who (a) because of mental  
22          deterioration or physical incapacity is not fully able to  
23          manage his person or estate or is unable to resist fraud or

1 undue influence, or (b) is a person with mental illness or a  
2 person with a developmental disability and who because of his  
3 mental illness or developmental disability is not fully able to  
4 manage his person or estate or is unable to resist fraud or  
5 undue influence, or (c) because of gambling, idleness,  
6 debauchery or excessive use of intoxicants or drugs, so spends  
7 or wastes his estate as to expose himself or his family to want  
8 or suffering, or (d) is diagnosed with fetal alcohol syndrome  
9 or fetal alcohol effects.

10 (Source: P.A. 95-561, eff. 1-1-08.)".