



Sen. Don Harmon

**Filed: 5/6/2014**

09800SB1048sam002

LRB098 05314 HEP 59119 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 voluntarily, or in  
12 exchange for compensation, has assumed responsibility for all  
13 or a portion of the care of another person who needs assistance  
14 with activities of daily living. "Caregiver" includes a  
15 caregiver's spouse, cohabitant, child, or employee.

1 "Caregiver" does not include a family member of the person  
2 receiving assistance.

3 (2) "Family member" means a spouse, child, grandchild,  
4 sibling, aunt, uncle, niece, nephew, first cousin, or parent of  
5 the person receiving assistance.

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

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

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

17 (755 ILCS 5/4a-10 new)

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

19 (a) In any civil action in which a transfer instrument is  
20 being challenged, there is a rebuttable presumption, except as  
21 provided in Section 4a-15, that the transfer instrument is void  
22 if the transferee is a caregiver and the fair market value of  
23 the transferred property exceeds \$20,000.

24 (b) Unless a shorter limitations period is required by  
25 Section 8-1 or 18-12 of this Act, any action under this Section

1 shall be filed within 2 years of the date of death of the  
2 transferor.

3 (c) If the holder of any property subject to the provisions  
4 of this Section is a financial institution, trust company,  
5 trustee, or similar entity or person, the holder is not liable  
6 for any distribution or release of the property, benefit, or  
7 other interest to the caregiver unless the holder knowingly  
8 distributes or releases the property, benefit, or other  
9 interest to the caregiver after first having received actual  
10 written notice of a legal action challenging the testamentary  
11 instrument with sufficient time to act upon the notice.

12 (755 ILCS 5/4a-15 new)

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

16 (1) by a preponderance of evidence that the  
17 transferee's share under the transfer instrument is not  
18 greater than the share the transferee was entitled to under  
19 the transferor's transfer instrument in effect prior to the  
20 transferee becoming a caregiver; or

21 (2) by clear and convincing evidence that the transfer  
22 was not the product of fraud, duress, or undue influence,  
23 provided that the determination of the court pursuant to  
24 this paragraph must not be based solely upon the testimony  
25 of the caregiver.

1 (755 ILCS 5/4a-20 new)

2 Sec. 4a-20. Common law. The provisions of this Article do  
3 not abrogate or limit any principle or rule of the common law,  
4 unless the common law principle or rule is inconsistent with  
5 the provisions of this Article. Notwithstanding the limited  
6 definition of "caregiver" in Section 4a-5 of this Article,  
7 nothing in this Article precludes any action against any  
8 individual under the common law, or any other applicable law,  
9 regardless of the individual's familial relationship with the  
10 person receiving assistance.

11 (755 ILCS 5/4a-25 new)

12 Sec. 4a-25. Attorney's fees and costs. If the caregiver  
13 attempts and fails to overcome the presumption under Section  
14 4a-15, the caregiver shall bear the costs of the proceedings,  
15 including, without limitation, reasonable attorney's fees.

16 (755 ILCS 5/4a-30 new)

17 Sec. 4a-30. No independent duty. The rebuttable  
18 presumption set forth in Section 4a-10 of this Article applies  
19 only in a civil action in which a transfer instrument is being  
20 challenged. Nothing in this Article creates or imposes, or  
21 shall be construed to create or impose, an independent duty on  
22 any financial institution, trust company, trustee, or similar  
23 entity or person related to any transfer instrument.

1 (755 ILCS 5/4a-35 new)

2 Sec. 4a-35. Applicability. This Article applies only to  
3 transfer instruments executed after the effective date of this  
4 amendatory Act of the 98th General Assembly."