



Sen. Ira I. Silverstein

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09800SB2955sam001

LRB098 17134 HEP 56894 a

1 AMENDMENT TO SENATE BILL 2955

2 AMENDMENT NO. _____. Amend Senate Bill 2955 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Sections 2-6.2 and 2-6.6 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 12-21 or
11 subsection (b) of Section 12-4.4a of the Criminal Code of 1961
12 or the Criminal Code of 2012.

13 "Financial exploitation" means any offense or act
14 described or defined in Section 16-1.3 or 17-56 of the Criminal
15 Code of 1961 or the Criminal Code of 2012, and, in the context
16 of civil proceedings, the taking, use, or other

1 misappropriation of the assets or resources of an elderly
2 person or a person with a disability contrary to law,
3 including, but not limited to, misappropriation of assets or
4 resources by undue influence, breach of a fiduciary
5 relationship, fraud, deception, extortion, and conversion.

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

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

1 financial exploitation, abuse, or neglect shall not be
2 diminished by the application of this Section. Notwithstanding
3 the foregoing, a person convicted of financial exploitation,
4 abuse, or neglect of an elderly person or a person with a
5 disability or a person who has been found by a preponderance of
6 the evidence to be civilly liable for financial exploitation
7 shall be entitled to receive property, a benefit, or an
8 interest in any capacity and under any circumstances described
9 in this subsection (b) if it is demonstrated by clear and
10 convincing evidence that the victim of that offense knew of the
11 conviction or finding of civil liability and subsequent to the
12 conviction or finding of civil liability expressed or ratified
13 his or her intent to transfer the property, benefit, or
14 interest to the person convicted of financial exploitation,
15 abuse, or neglect of an elderly person or a person with a
16 disability or the person found by a preponderance of the
17 evidence to be civilly liable for financial exploitation in any
18 manner contemplated by this subsection (b).

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

1 (2) If the holder is a financial institution, trust
2 company, trustee, or similar entity or person, the holder shall
3 not be liable for any distribution or release of the property,
4 benefit, or other interest to the person convicted of a
5 violation of Section 12-19, 12-21, 16-1.3, or 17-56, or
6 subsection (a) or (b) of Section 12-4.4a, of the Criminal Code
7 of 1961 or the Criminal Code of 2012 or the person who has been
8 found by a preponderance of the evidence to be civilly liable
9 for financial exploitation unless the holder knowingly
10 distributes or releases the property, benefit, or other
11 interest to the person so convicted or found civilly liable
12 after first having received actual written notice of the
13 conviction in sufficient time to act upon the notice.

14 (d) If the holder of any property subject to the provisions
15 of this Section knows that a potential beneficiary has been
16 convicted of financial exploitation, abuse, or neglect of an
17 elderly person or a person with a disability or has been found
18 by a preponderance of the evidence to be civilly liable for
19 financial exploitation within the scope of this Section, the
20 holder shall fully cooperate with law enforcement authorities
21 and judicial officers in connection with any investigation of
22 the financial exploitation, abuse, or neglect. If the holder is
23 a person or entity that is subject to regulation by a
24 regulatory agency pursuant to the laws of this or any other
25 state or pursuant to the laws of the United States, including
26 but not limited to the business of a financial institution,

1 corporate fiduciary, or insurance company, then such person or
2 entity shall not be deemed to be in violation of this Section
3 to the extent that privacy laws and regulations applicable to
4 such person or entity prevent it from voluntarily providing law
5 enforcement authorities or judicial officers with information.

6 (e) A civil action against a person for financial
7 exploitation may be brought, pursuant to this Section, after
8 the death of the victim or during the lifetime of the victim if
9 the victim is adjudicated disabled. A guardian is under no duty
10 to bring a civil action under this subsection during the ward's
11 lifetime, but may do so if the guardian believes it is in the
12 best interests of the ward.

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

18 (Source: P.A. 96-1551, Article 1, Section 995, eff. 7-1-11;
19 96-1551, Article 10, Section 10-155, eff. 7-1-11; 97-1109, eff.
20 1-1-13; 97-1150, eff. 1-25-13.)

21 (755 ILCS 5/2-6.6)

22 Sec. 2-6.6. Person convicted of or found civilly liable for
23 certain offenses against the elderly or a person with a
24 disability disabled.

25 (a) A person who is convicted of a violation of Section

1 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of
2 Section 12-4.4a, of the Criminal Code of 1961 or the Criminal
3 Code of 2012 or a person who has been found by a preponderance
4 of the evidence to be civilly liable for financial
5 exploitation, as defined in subsection (a) of Section 2-6.2 of
6 this Act, may not receive any property, benefit, or other
7 interest by reason of the death of the victim of that offense,
8 whether as heir, legatee, beneficiary, joint tenant, tenant by
9 the entirety, survivor, appointee, or in any other capacity and
10 whether the property, benefit, or other interest passes
11 pursuant to any form of title registration, testamentary or
12 nontestamentary instrument, intestacy, renunciation, or any
13 other circumstance. Except as provided in subsection (f) of
14 this Section, the ~~The~~ property, benefit, or other interest
15 shall pass as if the person convicted of a violation of Section
16 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of
17 Section 12-4.4a, of the Criminal Code of 1961 or the Criminal
18 Code of 2012 or the person found by a preponderance of the
19 evidence to be civilly liable for financial exploitation, as
20 defined in subsection (a) of Section 2-6.2 of this Act, died
21 before the decedent; provided that with respect to joint
22 tenancy property or property held in tenancy by the entirety,
23 the interest possessed prior to the death by the person
24 convicted or found civilly liable may not be diminished by the
25 application of this Section. Notwithstanding the foregoing, a
26 person convicted of a violation of Section 12-19, 12-21,

1 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a,
2 of the Criminal Code of 1961 or the Criminal Code of 2012 or a
3 person who has been found by a preponderance of the evidence to
4 be civilly liable for financial exploitation, as defined in
5 subsection (a) of Section 2-6.2 of this Act, shall be entitled
6 to receive property, a benefit, or an interest in any capacity
7 and under any circumstances described in this Section if it is
8 demonstrated by clear and convincing evidence that the victim
9 of that offense knew of the conviction or finding of civil
10 liability and subsequent to the conviction or finding of civil
11 liability expressed or ratified his or her intent to transfer
12 the property, benefit, or interest to the person convicted of a
13 violation of Section 12-19, 12-21, 16-1.3, or 17-56, or
14 subsection (a) or (b) of Section 12-4.4a, of the Criminal Code
15 of 1961 or the Criminal Code of 2012 or the person found by a
16 preponderance of the evidence to be civilly liable for
17 financial exploitation, as defined in subsection (a) of Section
18 2-6.2 of this Act, in any manner contemplated by this Section.

19 (b) The holder of any property subject to the provisions of
20 this Section is not liable for distributing or releasing the
21 property to the person convicted of violating Section 12-19,
22 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section
23 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of
24 2012 or to the person found by a preponderance of the evidence
25 to be civilly liable for financial exploitation as defined in
26 subsection (a) of Section 2-6.2 of this Act.

1 (c) If the holder is a financial institution, trust
2 company, trustee, or similar entity or person, the holder shall
3 not be liable for any distribution or release of the property,
4 benefit, or other interest to the person convicted of a
5 violation of Section 12-19, 12-21, 16-1.3, or 17-56, or
6 subsection (a) or (b) of Section 12-4.4a, of the Criminal Code
7 of 1961 or the Criminal Code of 2012 or person found by a
8 preponderance of the evidence to be civilly liable for
9 financial exploitation, as defined in subsection (a) of Section
10 2-6.2 of this Act, unless the holder knowingly distributes or
11 releases the property, benefit, or other interest to the person
12 so convicted or found civilly liable after first having
13 received actual written notice of the conviction or finding of
14 civil liability in sufficient time to act upon the notice.

15 (d) The Department of State Police shall have access to
16 State of Illinois databases containing information that may
17 help in the identification or location of persons convicted of
18 or found civilly liable for the offenses enumerated in this
19 Section. Interagency agreements shall be implemented,
20 consistent with security and procedures established by the
21 State agency and consistent with the laws governing the
22 confidentiality of the information in the databases.
23 Information shall be used only for administration of this
24 Section.

25 (e) A civil action against a person for financial
26 exploitation, as defined in subsection (a) of Section 2-6.2 of

1 this Act, may be brought, pursuant to this Section, after the
2 death of the victim or during the lifetime of the victim if the
3 victim is adjudicated disabled. A guardian is under no duty to
4 bring a civil action under this subsection during the ward's
5 lifetime, but may do so if the guardian believes it is in the
6 best interests of the ward.

7 (f) The court may, in its discretion, consider such facts
8 and circumstances as it deems appropriate to allow the person
9 convicted or found civilly liable for financial exploitation,
10 as defined in subsection (a) of Section 2-6.2 of this Act, to
11 receive a reduction in interest or benefit rather than no
12 interest or benefit as stated under subsection (a) of this
13 Section.

14 (Source: P.A. 96-1551, Article 1, Section 955, eff. 7-1-11;
15 96-1551, Article 10, Section 10-155, eff. 7-1-11; 97-1109, eff.
16 1-1-13; 97-1150, eff. 1-25-13.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law."