



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1230

Introduced 2/9/2007, by Sen. Dan Cronin

SYNOPSIS AS INTRODUCED:

755 ILCS 5/2-6.2

755 ILCS 5/18-1.1

from Ch. 110 1/2, par. 18-1.1

Amends the Probate Act of 1975. Provides that a person convicted of financial exploitation shall not receive payment for a statutory custodial claim (at present, a person may not receive property or a benefit as an heir, legatee, beneficiary, survivor, appointee, or in any other capacity). Provides that a statutory custodial claim shall be disallowed if the decedent expressly bars a relative from being paid a statutory custodial claim in a will or codicil executed by the decedent on a date that is after the relative dedicated himself or herself to the care of the decedent, lived with the decedent, and personally cared for the decedent for at least 3 years. Provides that the court may take into account and reduce the claim to the extent to which the person submitting the claim benefitted from the living arrangements with the decedent. Effective immediately.

LRB095 10643 AJ0 30870 b

1 AN ACT concerning civil law.

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

4 Section 5. The Probate Act of 1975 is amended by changing
5 Sections 2-6.2 and 18-1.1 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 of the
11 Criminal Code of 1961.

12 "Financial exploitation" means any offense described in
13 Section 16-1.3 of the Criminal Code of 1961.

14 "Neglect" means any offense described in Section 12-19 of
15 the Criminal Code of 1961.

16 (b) Persons convicted of financial exploitation, abuse, or
17 neglect of an elderly person or a person with a disability
18 shall not receive any property, benefit, or other interest by
19 reason of the death of that elderly person or person with a
20 disability, whether as heir, legatee, beneficiary, survivor,
21 appointee, claimant under Section 18-1.1, or in any other
22 capacity and whether the property, benefit, or other interest
23 passes pursuant to any form of title registration, testamentary

1 or nontestamentary instrument, intestacy, renunciation, or any
2 other circumstance. The property, benefit, or other interest
3 shall pass as if the person convicted of the financial
4 exploitation, abuse, or neglect died before the decedent,
5 provided that with respect to joint tenancy property the
6 interest possessed prior to the death by the person convicted
7 of the financial exploitation, abuse, or neglect shall not be
8 diminished by the application of this Section. Notwithstanding
9 the foregoing, a person convicted of financial exploitation,
10 abuse, or neglect of an elderly person or a person with a
11 disability shall be entitled to receive property, a benefit, or
12 an interest in any capacity and under any circumstances
13 described in this subsection (b) if it is demonstrated by clear
14 and convincing evidence that the victim of that offense knew of
15 the conviction and subsequent to the conviction expressed or
16 ratified his or her intent to transfer the property, benefit,
17 or interest to the person convicted of financial exploitation,
18 abuse, or neglect of an elderly person or a person with a
19 disability in any manner contemplated by this subsection (b).

20 (c) (1) The holder of any property subject to the
21 provisions of this Section shall not be liable for
22 distributing or releasing the property to the person
23 convicted of financial exploitation, abuse, or neglect of
24 an elderly person or a person with a disability if the
25 distribution or release occurs prior to the conviction.

26 (2) If the holder is a financial institution, trust

1 company, trustee, or similar entity or person, the holder
2 shall not be liable for any distribution or release of the
3 property, benefit, or other interest to the person
4 convicted of a violation of Section 12-19, 12-21, or 16-1.3
5 of the Criminal Code of 1961 unless the holder knowingly
6 distributes or releases the property, benefit, or other
7 interest to the person so convicted after first having
8 received actual written notice of the conviction in
9 sufficient time to act upon the notice.

10 (d) If the holder of any property subject to the provisions
11 of this Section knows that a potential beneficiary has been
12 convicted of financial exploitation, abuse, or neglect of an
13 elderly person or a person with a disability within the scope
14 of this Section, the holder shall fully cooperate with law
15 enforcement authorities and judicial officers in connection
16 with any investigation of the financial exploitation, abuse, or
17 neglect. If the holder is a person or entity that is subject to
18 regulation by a regulatory agency pursuant to the laws of this
19 or any other state or pursuant to the laws of the United
20 States, including but not limited to the business of a
21 financial institution, corporate fiduciary, or insurance
22 company, then such person or entity shall not be deemed to be
23 in violation of this Section to the extent that privacy laws
24 and regulations applicable to such person or entity prevent it
25 from voluntarily providing law enforcement authorities or
26 judicial officers with information.

1 (Source: P.A. 93-299, eff. 1-1-04.)

2 (755 ILCS 5/18-1.1) (from Ch. 110 1/2, par. 18-1.1)

3 Sec. 18-1.1. Statutory custodial claim. Any spouse,
4 parent, brother, sister, or child of a disabled person, as
5 defined in Section 11a-3, who dedicates himself or herself to
6 the care of the disabled person by living with and personally
7 caring for the disabled person for at least 3 years shall be
8 entitled to a claim against the estate upon the death of the
9 disabled person. The claim shall take into consideration the
10 claimant's lost employment opportunities, lost lifestyle
11 opportunities, and emotional distress experienced as a result
12 of personally caring for the disabled person. The claim shall
13 be mitigated to the extent that the living arrangements
14 provided a benefit to the claimant including but not limited to
15 free or low-cost housing, freedom from the necessity of
16 employment, and care provided to the claimant by the decedent
17 or, indirectly, from others as a result of the nature of the
18 living arrangement. The claim shall be in addition to any other
19 claim, including without limitation a reasonable claim for
20 nursing and other care. The claim shall be based upon the
21 nature and extent of the person's disability and, at a minimum
22 but subject to the extent of the assets available, shall be in
23 the amounts set forth below:

24 1. 100% disability, \$100,000

25 2. 75% disability, \$75,000

1 3. 50% disability, \$50,000

2 4. 25% disability, \$25,000

3 A claim under this Section shall be disallowed if the
4 decedent expressly barred by name a spouse, parent, brother,
5 sister, or child from being paid a statutory custodial claim in
6 a will or codicil executed on a date that is after the named
7 person dedicated himself or herself to the care of the
8 decedent, lived with the decedent, and personally cared for the
9 decedent for at least 3 years.

10 (Source: P.A. 87-908.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.