



Sen. Ira I. Silverstein

**Filed: 3/11/2013**

09800SB1280sam001

LRB098 08941 HEP 42595 a

1 AMENDMENT TO SENATE BILL 1280

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1280 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power of Attorney Act is amended  
5 by changing Sections 2-7 and 2-10 as follows:

6 (755 ILCS 45/2-7) (from Ch. 110 1/2, par. 802-7)

7 Sec. 2-7. Duty - standard of care - record-keeping -  
8 exoneration.

9 (a) The agent shall be under no duty to exercise the powers  
10 granted by the agency or to assume control of or responsibility  
11 for any of the principal's property, care or affairs,  
12 regardless of the principal's physical or mental condition.  
13 Whenever a power is exercised, the agent shall act in good  
14 faith for the benefit of the principal using due care,  
15 competence, and diligence in accordance with the terms of the  
16 agency and shall be liable for negligent exercise. An agent who

1 acts with due care for the benefit of the principal shall not  
2 be liable or limited merely because the agent also benefits  
3 from the act, has individual or conflicting interests in  
4 relation to the property, care or affairs of the principal or  
5 acts in a different manner with respect to the agency and the  
6 agent's individual interests. The agent shall not be affected  
7 by any amendment or termination of the agency until the agent  
8 has actual knowledge thereof. The agent shall not be liable for  
9 any loss due to error of judgment nor for the act or default of  
10 any other person.

11 (b) An agent that has accepted appointment must act in  
12 accordance with the principal's expectations to the extent  
13 actually known to the agent and otherwise in the principal's  
14 best interests.

15 (c) An agent shall keep a record of all receipts,  
16 disbursements, and significant actions taken under the  
17 authority of the agency and shall provide a copy of this record  
18 when requested to do so by:

19 (1) the principal, a guardian, another fiduciary  
20 acting on behalf of the principal, and, after the death of  
21 the principal, the personal representative or successors  
22 in interest of the principal's estate;

23 (2) a representative of a provider agency, as defined  
24 in Section 2 of the Elder Abuse and Neglect Act, acting in  
25 the course of an assessment of a complaint of elder abuse  
26 or neglect under that Act;

1 (3) a representative of the Office of the State Long  
2 Term Care Ombudsman, acting in the course of an  
3 investigation of a complaint of financial exploitation of a  
4 nursing home resident under Section 4.04 of the Illinois  
5 Act on the Aging;

6 (4) a representative of the Office of Inspector General  
7 for the Department of Human Services, acting in the course  
8 of an assessment of a complaint of financial exploitation  
9 of an adult with disabilities pursuant to Section 35 of the  
10 Abuse of Adults with Disabilities Intervention Act; ~~or~~

11 (5) a court under Section 2-10 of this Act; or -

12 (6) a representative of the Office of State Guardian or  
13 public guardian for the county in which the principal  
14 resides acting in the course of investigating whether to  
15 file a petition for guardianship of the principal under  
16 Section 11a-4 or 11a-8 of the Probate Act of 1975.

17 (d) If the agent fails to provide his or her record of all  
18 receipts, disbursements, and significant actions within 21  
19 days after a request under subsection (c), the elder abuse  
20 provider agency, the State Guardian, the public guardian, or  
21 the State Long Term Care Ombudsman may petition the court for  
22 an order requiring the agent to produce his or her record of  
23 receipts, disbursements, and significant actions. If the court  
24 finds that the agent's failure to provide his or her record in  
25 a timely manner to the elder abuse provider agency, the State  
26 Guardian, the public guardian, or the State Long Term Care

1 Ombudsman was without good cause, the court may assess  
2 reasonable costs and attorney's fees against the agent, and  
3 order such other relief as is appropriate.

4 (e) An agent is not required to disclose receipts,  
5 disbursements, or other significant actions conducted on  
6 behalf of the principal except as otherwise provided in the  
7 power of attorney or as required under subsection (c).

8 (f) An agent that violates this Act is liable to the  
9 principal or the principal's successors in interest for the  
10 amount required (i) to restore the value of the principal's  
11 property to what it would have been had the violation not  
12 occurred, and (ii) to reimburse the principal or the  
13 principal's successors in interest for the attorney's fees and  
14 costs paid on the agent's behalf. This subsection does not  
15 limit any other applicable legal or equitable remedies.

16 (Source: P.A. 96-1195, eff. 7-1-11.)

17 (755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

18 Sec. 2-10. Agency-court relationship.

19 (a) Upon petition by any interested person (including the  
20 agent), with such notice to interested persons as the court  
21 directs and a finding by the court that the principal lacks  
22 either the capacity to control or the capacity to revoke the  
23 agency, the court may construe a power of attorney, review the  
24 agent's conduct, and grant appropriate relief including  
25 compensatory damages.

1           (b) If the court finds that the agent is not acting for the  
2 benefit of the principal in accordance with the terms of the  
3 agency or that the agent's action or inaction has caused or  
4 threatens substantial harm to the principal's person or  
5 property in a manner not authorized or intended by the  
6 principal, the court may order a guardian of the principal's  
7 person or estate to exercise any powers of the principal under  
8 the agency, including the power to revoke the agency, or may  
9 enter such other orders without appointment of a guardian as  
10 the court deems necessary to provide for the best interests of  
11 the principal.

12           (c) If the court finds that the agency requires  
13 interpretation, the court may construe the agency and instruct  
14 the agent, but the court may not amend the agency.

15           (d) If the court finds that the agent has not acted for the  
16 benefit of the principal in accordance with the terms of the  
17 agency and the Illinois Power of Attorney Act, or that the  
18 agent's action caused or threatened substantial harm to the  
19 principal's person or property in a manner not authorized or  
20 intended by the principal, then the agent shall not be  
21 authorized to pay or be reimbursed from the estate of the  
22 principal the attorneys' fees and costs of the agent in  
23 defending a proceeding brought pursuant to this Section.

24           (e) Upon a finding that the agent's action has caused  
25 substantial harm to the principal's person or property, the  
26 court may assess against the agent reasonable costs and

1 attorney's fees to a prevailing party who is a provider agency  
2 as defined in Section 2 of the Elder Abuse and Neglect Act, a  
3 representative of the Office of the State Long Term Care  
4 Ombudsman, the State Guardian, a public guardian, or a  
5 governmental agency having regulatory authority to protect the  
6 welfare of the principal.

7 (f) As used in this Section, the term "interested person"  
8 includes (1) the principal or the agent; (2) a guardian of the  
9 person, guardian of the estate, or other fiduciary charged with  
10 management of the principal's property; (3) the principal's  
11 spouse, parent, or descendant; (4) a person who would be a  
12 presumptive heir-at-law of the principal; (5) a person named as  
13 a beneficiary to receive any property, benefit, or contractual  
14 right upon the principal's death, or as a beneficiary of a  
15 trust created by or for the principal; (6) a provider agency as  
16 defined in Section 2 of the Elder Abuse and Neglect Act, a  
17 representative of the Office of the State Long Term Care  
18 Ombudsman, the State Guardian, a public guardian, or a  
19 governmental agency having regulatory authority to protect the  
20 welfare of the principal; and (7) the principal's caregiver or  
21 another person who demonstrates sufficient interest in the  
22 principal's welfare.

23 (g) Absent court order directing a guardian to exercise  
24 powers of the principal under the agency, a guardian will have  
25 no power, duty or liability with respect to any property  
26 subject to the agency or any personal or health care matters

1 covered by the agency.

2 (h) Proceedings under this Section shall be commenced in  
3 the county where the guardian was appointed or, if no Illinois  
4 guardian is acting, then in the county where the agent or  
5 principal resides or where the principal owns real property.

6 (i) This Section shall not be construed to limit any other  
7 remedies available.

8 (Source: P.A. 96-1195, eff. 7-1-11.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law."