SB1389

104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB1389

Introduced 1/29/2025, by Sen. Mike Simmons

SYNOPSIS AS INTRODUCED:

320 ILCS 20/2 from Ch. 23, par. 6602
320 ILCS 20/2.5 new

Amends the Adult Protective Services Act. Expands the list of mandated reporters under the Act to include broker-dealers and officers, managers, and employees of financial institutions. Provides that financial exploitation of an adult with disabilities or a person aged 60 or older occurs when a person or entity (i) takes, secretes, appropriates, obtains, or retains real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both; (ii) assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both; (iii) knowingly aids and abets in the taking, secreting, appropriating, obtaining, or retaining of real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both; or (iv) takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an eligible adult by undue influence. Sets forth when a financial institution or an officer, manager, or employee of a financial institution, a broker-dealer, or an investment adviser is deemed to have assisted in taking, secreting, appropriating, obtaining, or retaining real or personal property of an eligible adult. Sets forth when all other mandated reporters are deemed to have assisted in taking, secreting, appropriating, obtaining, or retaining real or personal property of an eligible adult. Exempts from liability nonsupervisory employees of a financial institution. Contains other provisions.

LRB104 10854 KTG 20936 b

A BILL FOR

AN ACT concerning aging.

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

Section 5. The Adult Protective Services Act is amended by changing Section 2 and by adding Section 2.5 as follows:

(320 ILCS 20/2) (from Ch. 23, par. 6602)

Sec. 2. Definitions. As used in this Act, unless the context requires otherwise:

(a) "Abandonment" means the desertion or willful forsaking of an eligible adult by an individual responsible for the care and custody of that eligible adult under circumstances in which a reasonable person would continue to provide care and custody. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abandonment because of health care services provided or not provided by licensed health care professionals.

(a-1) "Abuse" means causing any physical, mental or sexual injury to an eligible adult, including exploitation of such adult's financial resources, and abandonment or subjecting an eligible adult to an environment which creates a likelihood of harm to the eligible adult's health, physical and emotional well-being, or welfare.

Nothing in this Act shall be construed to mean that an

eligible adult is a victim of abuse, abandonment, neglect, or self-neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination.

Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.

Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse in cases of criminal activity by strangers, telemarketing scams, consumer fraud, internet fraud, home repair disputes, complaints against a homeowners' association, or complaints between landlords and tenants.

(a-5) "Abuser" means a person who is a family member, caregiver, or another person who has a continuing relationship with the eligible adult and abuses, abandons, neglects, or financially exploits an eligible adult.

(a-6) "Adult with disabilities" means a person aged 18 through 59 who resides in a domestic living situation and whose disability as defined in subsection (c-5) impairs his or her ability to seek or obtain protection from abuse, abandonment, neglect, or exploitation.

<u>(a-7) "Broker-dealer" means any person engaged in the business of effecting transactions in securities in this State</u>

for the account of others or for that person's own account and who is registered with the United States Securities and Exchange Commission.

(a-10) ~~(a-7)~~ "Caregiver" means a person who either as a result of a family relationship, voluntarily, or in exchange for compensation has assumed responsibility for all or a portion of the care of an eligible adult who needs assistance with activities of daily living or instrumental activities of daily living.

(b) "Department" means the Department on Aging of the State of Illinois.

(c) "Director" means the Director of the Department.

(c-5) "Disability" means a physical or mental disability, including, but not limited to, a developmental disability, an intellectual disability, a mental illness as defined under the Mental Health and Developmental Disabilities Code, or dementia as defined under the Alzheimer's Disease Assistance Act.

(d) "Domestic living situation" means a residence where the eligible adult at the time of the report lives alone or with his or her family or a caregiver, or others, or other community-based unlicensed facility, but is not:

(1) A licensed facility as defined in Section 1-113 of the Nursing Home Care Act;

(1.5) A facility licensed under the ID/DD Community Care Act;

(1.6) A facility licensed under the MC/DD Act;

(1.7) A facility licensed under the Specialized Mental Health Rehabilitation Act of 2013;

(2) A "life care facility" as defined in the Life Care Facilities Act;

(3) A home, institution, or other place operated by the federal government or agency thereof or by the State of Illinois;

(4) A hospital, sanitarium, or other institution, the principal activity or business of which is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor, which is required to be licensed under the Hospital Licensing Act;

(5) A "community living facility" as defined in the Community Living Facilities Licensing Act;

(6) (Blank);

(7) A "community-integrated living arrangement" as defined in the Community-Integrated Living Arrangements Licensure and Certification Act or a "community residential alternative" as licensed under that Act;

(8) An assisted living or shared housing establishment as defined in the Assisted Living and Shared Housing Act; or

(9) A supportive living facility as described in Section 5-5.01a of the Illinois Public Aid Code.

(e) "Eligible adult" means either an adult with

disabilities aged 18 through 59 or a person aged 60 or older who resides in a domestic living situation and is, or is alleged to be, abused, abandoned, neglected, or financially exploited by another individual or who neglects himself or herself. "Eligible adult" also includes an adult who resides in any of the facilities that are excluded from the definition of "domestic living situation" under paragraphs (1) through (9) of subsection (d), if either: (i) the alleged abuse, abandonment, or neglect occurs outside of the facility and not under facility supervision and the alleged abuser is a family member, caregiver, or another person who has a continuing relationship with the adult; or (ii) the alleged financial exploitation is perpetrated by a family member, caregiver, or another person who has a continuing relationship with the adult, but who is not an employee of the facility where the adult resides.

(f) "Emergency" means a situation in which an eligible adult is living in conditions presenting a risk of death or physical, mental or sexual injury and the provider agency has reason to believe the eligible adult is unable to consent to services which would alleviate that risk.

(f-1) "Financial exploitation" means the use of an eligible adult's resources by another to the disadvantage of that adult or the profit or advantage of a person other than that adult.

(f-3) "Investment advisor" means any person required to

register as an investment adviser or investment adviser representative under Section 8 of the Illinois Securities Law of 1953, which for purposes of this Act excludes any bank, trust company, savings bank, or credit union, or their respective employees.

(f-5) "Mandated reporter" means any of the following persons while engaged in carrying out their professional duties:

(1) a professional or professional's delegate while engaged in: (i) social services, (ii) law enforcement, (iii) education, (iv) the care of an eligible adult or eligible adults, or (v) any of the occupations required to be licensed under the Behavior Analyst Licensing Act, the Clinical Psychologist Licensing Act, the Clinical Social Work and Social Work Practice Act, the Illinois Dental Practice Act, the Dietitian Nutritionist Practice Act, the Marriage and Family Therapy Licensing Act, the Medical Practice Act of 1987, the Naprapathic Practice Act, the Nurse Practice Act, the Nursing Home Administrators Licensing and Disciplinary Act, the Illinois Occupational Therapy Practice Act, the Illinois Optometric Practice Act of 1987, the Pharmacy Practice Act, the Illinois Physical Therapy Act, the Physician Assistant Practice Act of 1987, the Podiatric Medical Practice Act of 1987, the Respiratory Care Practice Act, the Professional Counselor and Clinical Professional Counselor Licensing and Practice

Act, the Illinois Speech-Language Pathology and Audiology Practice Act, the Veterinary Medicine and Surgery Practice Act of 2004, and the Illinois Public Accounting Act;

(1.5) an employee of an entity providing developmental disabilities services or service coordination funded by the Department of Human Services;

(2) an employee of a vocational rehabilitation facility prescribed or supervised by the Department of Human Services;

(3) an administrator, employee, or person providing services in or through an unlicensed community based facility;

(4) any religious practitioner who provides treatment by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination, except as to information received in any confession or sacred communication enjoined by the discipline of the religious denomination to be held confidential;

(5) field personnel of the Department of Healthcare and Family Services, Department of Public Health, and Department of Human Services, and any county or municipal health department;

(6) personnel of the Department of Human Services, the Guardianship and Advocacy Commission, the State Fire Marshal, local fire departments, the Department on Aging

and its subsidiary Area Agencies on Aging and provider agencies, except the State Long Term Care Ombudsman and any of his or her representatives or volunteers where prohibited from making such a report pursuant to 45 CFR 1324.11(e)(3)(iv);

(7) any employee of the State of Illinois not otherwise specified herein who is involved in providing services to eligible adults, including professionals providing medical or rehabilitation services and all other persons having direct contact with eligible adults;

(8) a person who performs the duties of a coroner or medical examiner;

(9) a person who performs the duties of a paramedic or an emergency medical technician; ~~or~~

(10) a person who performs the duties of an investment advisor; ~~.~~

(11) a person who performs the duties of a broker-advisor; or

(12) an officer, manager, or employee of a financial institution.

(g) "Neglect" means another individual's failure to provide an eligible adult with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or health care. This subsection does not create any new affirmative duty to provide support to eligible adults. Nothing in this Act shall be

construed to mean that an eligible adult is a victim of neglect because of health care services provided or not provided by licensed health care professionals.

(h) "Provider agency" means any public or nonprofit agency in a planning and service area that is selected by the Department or appointed by the regional administrative agency with prior approval by the Department on Aging to receive and assess reports of alleged or suspected abuse, abandonment, neglect, or financial exploitation. A provider agency is also referenced as a "designated agency" in this Act.

(i) "Regional administrative agency" means any public or nonprofit agency in a planning and service area that provides regional oversight and performs functions as set forth in subsection (b) of Section 3 of this Act. The Department shall designate an Area Agency on Aging as the regional administrative agency or, in the event the Area Agency on Aging in that planning and service area is deemed by the Department to be unwilling or unable to provide those functions, the Department may serve as the regional administrative agency or designate another qualified entity to serve as the regional administrative agency; any such designation shall be subject to terms set forth by the Department.

(i-5) "Self-neglect" means a condition that is the result of an eligible adult's inability, due to physical or mental impairments, or both, or a diminished capacity, to perform

essential self-care tasks that substantially threaten his or her own health, including: providing essential food, clothing, shelter, and health care; and obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety. The term includes compulsive hoarding, which is characterized by the acquisition and retention of large quantities of items and materials that produce an extensively cluttered living space, which significantly impairs the performance of essential self-care tasks or otherwise substantially threatens life or safety.

(j) "Substantiated case" means a reported case of alleged or suspected abuse, abandonment, neglect, financial exploitation, or self-neglect in which a provider agency, after assessment, determines that there is reason to believe abuse, abandonment, neglect, or financial exploitation has occurred.

(k) "Verified" means a determination that there is "clear and convincing evidence" that the specific injury or harm alleged was the result of abuse, abandonment, neglect, or financial exploitation.

(Source: P.A. 102-244, eff. 1-1-22; 102-953, eff. 5-27-22; 103-329, eff. 1-1-24; 103-626, eff. 1-1-25.)

(320 ILCS 20/2.5 new)

<u>Sec. 2.5. Financial exploitation.</u>

<u>(a) As used in this Section, unless the context requires</u>

otherwise:

"Financial institution" means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. 1786(r)).

"Representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an eligible adult.

(2) An attorney-in-fact of an eligible adult who acts within the authority of the power of attorney.

(b) Financial exploitation of an eligible adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating,

obtaining, or retaining real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both.

(3) Knowingly aids and abets in the taking, secreting, appropriating, obtaining, or retaining of real or personal property of an eligible adult for a wrongful use or with intent to defraud, or both.

(4) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an eligible adult by undue influence.

(c) A person or entity is deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use or assisted in taking, secreting, appropriating, obtaining, or retaining property for a wrongful use, if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property or assists in taking, secreting, appropriating, obtaining, or retaining the property and the person or entity knew or should have known that this conduct is likely to be harmful to the eligible adult.

(d) A person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an eligible adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a

representative of an eligible adult.

(e) Assisting in the financial exploitation of an eligible adult occurs when a person or entity does either of the following:

(1) For a financial institution or an officer, manager, or employee of a financial institution, a broker-dealer, or an investment advisor, executing a transaction with or processing a transaction on behalf of an eligible adult for which both of the following apply:

(A) The eligible adult interacts with one or more officers, managers, or employees of the financial institution or with the broker-dealer or investment advisor in the process of requesting, initiating, or completing the transaction.

(B) The financial institution or the officer, manager, or employee of the financial institution, the broker-dealer, or the investment advisor fails to act as a reasonable person or entity in a like position would, considering the surrounding facts and circumstances, including the transaction history of the eligible adult, whether the transaction is aligned with prevailing business practices, and whether the eligible adult exhibits multiple red flags, in executing the transaction with or processing the transaction on behalf of the eligible adult. As used in this subparagraph, "red flags" refers to the

behavioral and financial red flags enumerated in Elder Financial Exploitation Advisory in FinCEN Advisory FIN-2022-A002 by the United States Department of the Treasury.

(2) For any other mandated reporter not listed in paragraph (1), failing to act as a reasonable person in a like position would, considering the surrounding facts and circumstances, including, but not limited to, any of the following:

(A) The vulnerability of the eligible adult.

(B) The extent to which the eligible adult relied on the mandated reporter to handle the eligible adult's finances or for financial advice or financial decisions.

(C) Any information the eligible adult provided to the mandated reporter about the situation.

(D) The mandated reporter's past interactions with the eligible adult and whether the eligible adult's behavior was markedly different than in the eligible adult's prior interactions with the mandated reporter.

(E) Whether the mandated reporter has a fiduciary duty to the eligible adult.

(F) Any instructions or information the mandated reporter has been given about the eligible adult's capacity or ability to make decisions.

(G) Any trainings the mandated reporter has taken

or should have taken, or information the mandated reporter has received or should have received, on the subjects of elder abuse and financial exploitation.

(f)(1) For purposes of paragraph (1) of subsection (e), a financial institution or an officer, manager, or employee of a financial institution, a broker-dealer, or an investment advisor shall be deemed to have acted reasonably if the person or entity proves that, at the time that the transaction was requested, the person or entity gave the eligible adult an explanation and warning, verbally and in writing, regarding the person's or entity's knowledge of, or suspicion of, financial exploitation occurring with respect to that transaction, and if either of the following is met:

(A) If the eligible adult has designated a trusted contact person to receive notification of any known or suspected financial exploitation, or there is a joint holder on the account for which the transaction is requested, the person or entity contacted the trusted contact person or joint account holder and obtained consent for the transaction.

(B)(i) If the financial institution or an officer, manager, or employee of the financial institution, the broker-dealer, or the investment advisor was unable to communicate with and obtain the consent of a secondary authorized account holder or trusted contact person, or there was no joint account holder or designated trusted

contact person, the person or entity refused the transaction, or notified the appropriate provider agency and law enforcement and held the transaction for 15 business days or until the provider agency or law enforcement informed the person or entity that the transaction should be completed. If, at any time during the 15-day period, the eligible adult informs the person or entity that the eligible adult does not wish to complete the transaction, the person or entity does not act reasonably if they complete the transaction anyway.

(ii) Notwithstanding any other law to the contrary, for the purposes of item (i), a financial institution or an officer, manager, or employee of a financial institution, a broker-dealer, or an investment advisor is authorized to delay or refuse a requested transaction if the person or entity notified the provider agency and law enforcement.

(2) For the purposes of paragraph (1) of subsection (e), a nonsupervisory employee of a financial institution may not be held personally liable in his or her individual capacity for violations of this Section. However, this Section does not affect the liability of the financial institution for its own acts or under the theory of respondeat superior.

(g) Nothing in this Section shall in any way affect or contravene any other reporting requirements under this Act.

(h) Nothing in this Section shall apply to criminal

prosecutions of financial exploitation of an elderly person or a person with a disability.

(i) Nothing in this Section shall be construed to prevent or significantly interfere with any financial institution's exercise of its powers under federal law.

(j) If any provision of this Section or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Section that can be given effect without the invalid provision or application.