



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
SB2282

Introduced 1/22/2004, by Jeffrey M. Schoenberg

SYNOPSIS AS INTRODUCED:

210 ILCS 30/4	from Ch. 111 1/2, par. 4164
210 ILCS 45/3-608	from Ch. 111 1/2, par. 4153-608
210 ILCS 45/3-702	from Ch. 111 1/2, par. 4153-702
320 ILCS 20/2	from Ch. 23, par. 6602
320 ILCS 20/4.1	

Amends the Abused and Neglected Long Term Care Facility Residents Reporting Act, the Nursing Home Care Act, and the Elder Abuse and Neglect Act. Eliminates Christian Science practitioners as mandated reporters of possible nursing home resident abuse or neglect. Provides that a mandated reporter or nursing home resident or employee who suffers damages as a result of a nursing home's retaliation for making a report of possible nursing home resident abuse or neglect may bring an action against the nursing home. Provides that a person who suffers damages as a result of an employer's discrimination against an employee who makes a report of possible elder abuse or neglect may bring an action against the employer. Effective immediately.

LRB093 14934 DRJ 40502 b

1 AN ACT concerning abuse and neglect.

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

4 Section 5. The Abused and Neglected Long Term Care
5 Facility Residents Reporting Act is amended by changing Section
6 4 as follows:

7 (210 ILCS 30/4) (from Ch. 111 1/2, par. 4164)

8 Sec. 4. Any long term care facility administrator, agent or
9 employee or any physician, hospital, surgeon, dentist,
10 osteopath, chiropractor, podiatrist, ~~Christian Science~~
11 ~~practitioner,~~ coroner, social worker, social services
12 administrator, registered nurse, law enforcement officer,
13 field personnel of the Illinois Department of Public Aid, field
14 personnel of the Illinois Department of Public Health and
15 County or Municipal Health Departments, personnel of the
16 Department of Human Services (acting as the successor to the
17 Department of Mental Health and Developmental Disabilities or
18 the Department of Public Aid), personnel of the Guardianship
19 and Advocacy Commission, personnel of the State Fire Marshal,
20 local fire department inspectors or other personnel, or
21 personnel of the Illinois Department on Aging, or its
22 subsidiary Agencies on Aging, or employee of a facility
23 licensed under the Assisted Living and Shared Housing Act,
24 having reasonable cause to believe any resident with whom they
25 have direct contact has been subjected to abuse or neglect
26 shall immediately report or cause a report to be made to the
27 Department. Persons required to make reports or cause reports
28 to be made under this Section include all employees of the
29 State of Illinois who are involved in providing services to
30 residents, including professionals providing medical or
31 rehabilitation services and all other persons having direct
32 contact with residents; and further include all employees of

1 community service agencies who provide services to a resident
2 of a public or private long term care facility outside of that
3 facility. Any long term care surveyor of the Illinois
4 Department of Public Health who has reasonable cause to believe
5 in the course of a survey that a resident has been abused or
6 neglected and initiates an investigation while on site at the
7 facility shall be exempt from making a report under this
8 Section but the results of any such investigation shall be
9 forwarded to the central register in a manner and form
10 described by the Department.

11 The requirement of this Act shall not relieve any long term
12 care facility administrator, agent or employee of
13 responsibility to report the abuse or neglect of a resident
14 under Section 3-610 of the Nursing Home Care Act.

15 In addition to the above persons required to report
16 suspected resident abuse and neglect, any other person may make
17 a report to the Department, or to any law enforcement officer,
18 if such person has reasonable cause to suspect a resident has
19 been abused or neglected.

20 This Section also applies to residents whose death occurs
21 from suspected abuse or neglect before being found or brought
22 to a hospital.

23 A person required to make reports or cause reports to be
24 made under this Section who fails to comply with the
25 requirements of this Section is guilty of a Class A
26 misdemeanor. A person who is required to make reports or cause
27 reports to be made under this Section who suffers damages as a
28 result of making or causing to be made a report of a violation
29 committed by a licensee or its agents or employees may bring an
30 action against the licensee and its agents and employees.

31 (Source: P.A. 91-656, eff. 1-1-01.)

32 Section 10. The Nursing Home Care Act is amended by
33 changing Sections 3-608 and 3-702 as follows:

34 (210 ILCS 45/3-608) (from Ch. 111 1/2, par. 4153-608)

1 Sec. 3-608. Discrimination; private right of action. A
2 licensee or its agents or employees shall not transfer,
3 discharge, evict, harass, dismiss, or retaliate against a
4 resident, a resident's representative, or an employee or agent
5 who makes a report under Section 2-107, brings or testifies in
6 an action under Sections 3-601 through 3-607, or files a
7 complaint under Section 3-702, because of the report,
8 testimony, or complaint.

9 A person who suffers damages as a result of a violation of
10 this Section committed by the licensee or its agents or
11 employees may bring an action against the licensee or its
12 agents or employees.

13 (Source: P.A. 81-223.)

14 (210 ILCS 45/3-702) (from Ch. 111 1/2, par. 4153-702)

15 Sec. 3-702. (a) A person who believes that this Act or a
16 rule promulgated under this Act may have been violated may
17 request an investigation. The request may be submitted to the
18 Department in writing, by telephone, or by personal visit. An
19 oral complaint shall be reduced to writing by the Department.
20 The Department shall request information identifying the
21 complainant, including the name, address and telephone number,
22 to help enable appropriate follow-up. The Department shall act
23 on such complaints via on-site visits or other methods deemed
24 appropriate to handle the complaints with or without such
25 identifying information, as otherwise provided under this
26 Section. The complainant shall be informed that compliance with
27 such request is not required to satisfy the procedures for
28 filing a complaint under this Act.

29 (b) The substance of the complaint shall be provided in
30 writing to the licensee, owner or administrator no earlier than
31 at the commencement of an on-site inspection of the facility
32 which takes place pursuant to the complaint.

33 (c) The Department shall not disclose the name of the
34 complainant unless the complainant consents in writing to the
35 disclosure or the investigation results in a judicial

1 proceeding, or unless disclosure is essential to the
2 investigation. The complainant shall be given the opportunity
3 to withdraw the complaint before disclosure. Upon the request
4 of the complainant, the Department may permit the complainant
5 or a representative of the complainant to accompany the person
6 making the on-site inspection of the facility.

7 (d) Upon receipt of a complaint, the Department shall
8 determine whether this Act or a rule promulgated under this Act
9 has been or is being violated. The Department shall investigate
10 all complaints alleging abuse or neglect within 7 days after
11 the receipt of the complaint except that complaints of abuse or
12 neglect which indicate that a resident's life or safety is in
13 imminent danger shall be investigated within 24 hours after
14 receipt of the complaint. All other complaints shall be
15 investigated within 30 days after the receipt of the complaint.
16 The Department employees investigating a complaint shall
17 conduct a brief, informal exit conference with the facility to
18 alert its administration of any suspected serious deficiency
19 that poses a direct threat to the health, safety or welfare of
20 a resident to enable an immediate correction for the
21 alleviation or elimination of such threat. Such information and
22 findings discussed in the brief exit conference shall become a
23 part of the investigating record but shall not in any way
24 constitute an official or final notice of violation as provided
25 under Section 3-301. All complaints shall be classified as "an
26 invalid report", "a valid report", or "an undetermined report".
27 For any complaint classified as "a valid report", the
28 Department must determine within 30 working days if any rule or
29 provision of this Act has been or is being violated. The
30 Department may extend the period in which such determinations
31 must be made in individual cases for additional periods of up
32 to 30 days each for good cause shown. The Department shall by
33 rule establish what shall constitute good cause.

34 (d-1) The Department shall, whenever possible, combine an
35 on-site investigation of a complaint in a facility with other
36 inspections in order to avoid duplication of inspections.

1 (e) In all cases, the Department shall inform the
2 complainant of its findings within 10 days of its determination
3 unless otherwise indicated by the complainant, and the
4 complainant may direct the Department to send a copy of such
5 findings to another person. The Department's findings may
6 include comments or documentation provided by either the
7 complainant or the licensee pertaining to the complaint. The
8 Department shall also notify the facility of such findings
9 within 10 days of the determination, but the name of the
10 complainant or residents shall not be disclosed in this notice
11 to the facility. The notice of such findings shall include a
12 copy of the written determination; the correction order, if
13 any; the warning notice, if any; the inspection report; or the
14 State licensure form on which the violation is listed.

15 (f) A written determination, correction order, or warning
16 notice concerning a complaint, together with the facility's
17 response, shall be available for public inspection, but the
18 name of the complainant or resident shall not be disclosed
19 without his consent.

20 (g) A complainant who is dissatisfied with the
21 determination or investigation by the Department may request a
22 hearing under Section 3-703. The facility shall be given notice
23 of any such hearing and may participate in the hearing as a
24 party. If a facility requests a hearing under Section 3-703
25 which concerns a matter covered by a complaint, the complainant
26 shall be given notice and may participate in the hearing as a
27 party. A request for a hearing by either a complainant or a
28 facility shall be submitted in writing to the Department within
29 30 days after the mailing of the Department's findings as
30 described in subsection (e) of this Section. Upon receipt of
31 the request the Department shall conduct a hearing as provided
32 under Section 3-703.

33 (h) Any person who knowingly transmits a false report to
34 the Department commits the offense of disorderly conduct under
35 subsection (a)(8) of Section 26-1 of the "Criminal Code of
36 1961".

1 (Source: P.A. 85-1378.)

2 Section 15. The Elder Abuse and Neglect Act is amended by
3 changing Sections 2 and 4.1 as follows:

4 (320 ILCS 20/2) (from Ch. 23, par. 6602)

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

7 (a) "Abuse" means causing any physical, mental or sexual
8 injury to an eligible adult, including exploitation of such
9 adult's financial resources.

10 Nothing in this Act shall be construed to mean that an
11 eligible adult is a victim of abuse or neglect for the sole
12 reason that he or she is being furnished with or relies upon
13 treatment by spiritual means through prayer alone, in
14 accordance with the tenets and practices of a recognized church
15 or religious denomination.

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

20 (a-5) "Abuser" means a person who abuses, neglects, or
21 financially exploits an eligible adult.

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

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

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

30 (d) "Domestic living situation" means a residence where the
31 eligible adult lives alone or with his or her family or a
32 caregiver, or others, or a board and care home or other
33 community-based unlicensed facility, but is not:

34 (1) A licensed facility as defined in Section 1-113 of

1 the Nursing Home Care Act;

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

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

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

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

15 (6) A "community residential alternative" as defined
16 in the Community Residential Alternatives Licensing Act;
17 and

18 (7) A "community-integrated living arrangement" as
19 defined in the Community-Integrated Living Arrangements
20 Licensure and Certification Act.

21 (e) "Eligible adult" means a person 60 years of age or
22 older who resides in a domestic living situation and is, or is
23 alleged to be, abused, neglected, or financially exploited by
24 another individual.

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

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

33 (1) a professional or professional's delegate while
34 engaged in: (i) social services, (ii) law enforcement,
35 (iii) education, (iv) the care of an eligible adult or
36 eligible adults, or (v) any of the occupations required to

1 be licensed under the Clinical Psychologist Licensing Act,
2 the Clinical Social Work and Social Work Practice Act, the
3 Illinois Dental Practice Act, the Dietetic and Nutrition
4 Services Practice Act, the Marriage and Family Therapy
5 Licensing Act, the Medical Practice Act of 1987, the
6 Naprapathic Practice Act, the Nursing and Advanced
7 Practice Nursing Act, the Nursing Home Administrators
8 Licensing and Disciplinary Act, the Illinois Occupational
9 Therapy Practice Act, the Illinois Optometric Practice Act
10 of 1987, the Pharmacy Practice Act of 1987, the Illinois
11 Physical Therapy Act, the Physician Assistant Practice Act
12 of 1987, the Podiatric Medical Practice Act of 1987, the
13 Respiratory Care Practice Act, the Professional Counselor
14 and Clinical Professional Counselor Licensing Act, the
15 Illinois Speech-Language Pathology and Audiology Practice
16 Act, the Veterinary Medicine and Surgery Practice Act of
17 2004, and the Illinois Public Accounting Act;

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

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

24 (4) (blank) ~~a Christian Science Practitioner;~~

25 (5) field personnel of the Department of Public Aid,
26 Department of Public Health, and Department of Human
27 Services, and any county or municipal health department;

28 (6) personnel of the Department of Human Services, the
29 Guardianship and Advocacy Commission, the State Fire
30 Marshal, local fire departments, the Department on Aging
31 and its subsidiary Area Agencies on Aging and provider
32 agencies, and the Office of State Long Term Care Ombudsman;

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

1 direct contact with eligible adults;

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

4 (9) a person who performs the duties of a paramedic or
5 an emergency medical technician.

6 (g) "Neglect" means another individual's failure to
7 provide an eligible adult with or willful withholding from an
8 eligible adult the necessities of life including, but not
9 limited to, food, clothing, shelter or medical care. This
10 subsection does not create any new affirmative duty to provide
11 support to eligible adults. Nothing in this Act shall be
12 construed to mean that an eligible adult is a victim of neglect
13 because of health care services provided or not provided by
14 licensed health care professionals.

15 (h) "Provider agency" means any public or nonprofit agency
16 in a planning and service area appointed by the regional
17 administrative agency with prior approval by the Department on
18 Aging to receive and assess reports of alleged or suspected
19 abuse, neglect, or financial exploitation.

20 (i) "Regional administrative agency" means any public or
21 nonprofit agency in a planning and service area so designated
22 by the Department, provided that the designated Area Agency on
23 Aging shall be designated the regional administrative agency if
24 it so requests. The Department shall assume the functions of
25 the regional administrative agency for any planning and service
26 area where another agency is not so designated.

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

32 (Source: P.A. 92-16, eff. 6-28-01; 93-281 eff. 12-31-03;
33 93-300, eff. 1-1-04; revised 9-22-03.)

34 (320 ILCS 20/4.1)

35 Sec. 4.1. Employer discrimination; private right of

1 action. No employer shall discharge, demote or suspend, or
2 threaten to discharge, demote or suspend, or in any manner
3 discriminate against any employee who makes any good faith oral
4 or written report of suspected elder abuse, neglect, or
5 financial exploitation or who is or will be a witness or
6 testify in any investigation or proceeding concerning a report
7 of suspected elder abuse, neglect, or financial exploitation.

8 A person who suffers damages as a result of a violation of
9 this Section committed by an employer may bring an action
10 against the employer.

11 (Source: P.A. 90-628, eff. 1-1-99.)

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