

AN ACT concerning civil law.

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

Section 5. The Probate Act of 1975 is amended by by adding Article IVa as follows:

(755 ILCS 5/Art. IVa heading new)

ARTICLE IVa

PRESUMPTIVELY VOID TRANSFERS

(755 ILCS 5/4a-5 new)

Sec. 4a-5. Definitions. As used in this Article:

(1) "Caregiver" means a person who voluntarily, or in exchange for compensation, has assumed responsibility for all or a portion of the care of another person who needs assistance with activities of daily living. "Caregiver" includes a caregiver's spouse, cohabitant, child, or employee. "Caregiver" does not include a family member of the person receiving assistance.

(2) "Family member" means a spouse, child, grandchild, sibling, aunt, uncle, niece, nephew, first cousin, or parent of the person receiving assistance.

(3) "Transfer instrument" means the legal document intended to effectuate a transfer effective on or after the

transferor's death and includes, without limitation, a will, trust, deed, form designated as payable on death, contract, or other beneficiary designation form.

(4) "Transferee" means a legatee, a beneficiary of a trust, a grantee of a deed, or any other person designated in a transfer instrument to receive a nonprobate transfer.

(5) "Transferor" means a testator, settlor, grantor of a deed, or a decedent whose interest is transferred pursuant to a nonprobate transfer.

(755 ILCS 5/4a-10 new)

Sec. 4a-10. Presumption of void transfer.

(a) In any civil action in which a transfer instrument is being challenged, there is a rebuttable presumption, except as provided in Section 4a-15, that the transfer instrument is void if the transferee is a caregiver and the fair market value of the transferred property exceeds \$20,000.

(b) Unless a shorter limitations period is required by Section 8-1 or 18-12 of this Act, any action under this Section shall be filed within 2 years of the date of death of the transferor.

(755 ILCS 5/4a-15 new)

Sec. 4a-15. Exceptions. The rebuttable presumption established by Section 4a-10 can be overcome if the transferee proves to the court either:

(1) by a preponderance of evidence that the transferee's share under the transfer instrument is not greater than the share the transferee was entitled to under the transferor's transfer instrument in effect prior to the transferee becoming a caregiver; or

(2) by clear and convincing evidence that the transfer was not the product of fraud, duress, or undue influence.

(755 ILCS 5/4a-20 new)

Sec. 4a-20. Common law. The provisions of this Article do not abrogate or limit any principle or rule of the common law, unless the common law principle or rule is inconsistent with the provisions of this Article. Notwithstanding the limited definition of "caregiver" in Section 4a-5 of this Article, nothing in this Article precludes any action against any individual under the common law, or any other applicable law, regardless of the individual's familial relationship with the person receiving assistance. The provisions of this Article are in addition to any other principle or rule of law.

(755 ILCS 5/4a-25 new)

Sec. 4a-25. Attorney's fees and costs. If the caregiver attempts and fails to overcome the presumption under Section 4a-15, the caregiver shall bear the costs of the proceedings, including, without limitation, reasonable attorney's fees.

(755 ILCS 5/4a-30 new)

Sec. 4a-30. No independent duty. The rebuttable presumption set forth in Section 4a-10 of this Article applies only in a civil action in which a transfer instrument is being challenged, and does not create or impose an independent duty on any financial institution, trust company, trustee, or similar entity or person related to any transfer instrument.

(755 ILCS 5/4a-35 new)

Sec. 4a-35. Applicability. This Article applies only to transfer instruments executed after the effective date of this amendatory Act of the 98th General Assembly.