

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 397

(SENATORS WILLIAMS, LAIRD, UNGER, TUCKER, PLYMALE,
PALUMBO AND STOLLINGS, *ORIGINAL SPONSORS*)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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(SENATORS WILLIAMS, LAIRD, UNGER, TUCKER, PLYMALE,
PALUMBO AND STOLLINGS, *original sponsors*)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §61-2-29b of the Code of West Virginia, 1931, as amended, relating to clarifying definition of “financial exploitation” of the elderly or certain other protected persons; and declaring that being a guardian, conservator, trustee or attorney or holding power of attorney is statutorily alone not a defense to financial exploitation.

Be it enacted by the Legislature of West Virginia:

That §61-2-29b of the Code of West Virginia, 1931, as amended, be amended to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

- 1 (a) Any person who financially exploits an elderly person,
2 protected person or an incapacitated adult shall be guilty of

3 larceny and subject to the penalties contained in section
4 thirteen, article three of this chapter. Any person convicted
5 of a violation of this section shall, in addition to any other
6 penalties at law, be subject to an order of restitution.

7 (b) In determining the value of the money, goods, property
8 or services referred to in subsection (a) of this section, it shall
9 be permissible to cumulate amounts or values where such
10 money, goods, property or services were fraudulently
11 obtained as part of a common scheme or plan.

12 (c) Financial institutions and their employees, as defined
13 by section one, article two-a, chapter thirty-one-a of this code
14 and as permitted by section four, subsection thirteen of said
15 article, others engaged in financially related activities, as
16 defined by section one, article eight-c, chapter thirty-one-a of
17 this code, caregivers, relatives and other concerned persons
18 are permitted to report suspected cases of financial
19 exploitation to state or federal law-enforcement authorities,
20 the county prosecuting attorney and to the Department of
21 Health and Human Resources, Adult Protective Services
22 Division or Medicaid Fraud Division, as appropriate. Public
23 officers and employees are required to report suspected cases
24 of financial exploitation to the appropriate entities as stated
25 above. The requisite agencies shall investigate or cause the
26 investigation of the allegations.

27 (d) When financial exploitation is suspected and to the
28 extent permitted by federal law, financial institutions and
29 their employees or other business entities required by federal
30 law or regulation to file suspicious activity reports and
31 currency transaction reports shall also be permitted to
32 disclose suspicious activity reports or currency transaction
33 reports to the prosecuting attorney of any county in which the
34 transactions underlying the suspicious activity reports or
35 currency transaction reports occurred.

36 (e) Any person or entity that in good faith reports a
37 suspected case of financial exploitation pursuant to this
38 section is immune from civil liability founded upon making
39 that report.

40 (f) For the purposes of this section:

41 (1) "Incapacitated adult" means a person as defined by
42 section twenty-nine of this article;

43 (2) "Elderly person" means a person who is sixty-five
44 years or older;

45 (3) "Financial exploitation" or "financially exploit" means
46 the intentional misappropriation or misuse of funds or assets
47 of an elderly person, protected person or incapacitated adult,
48 but shall not apply to a transaction or disposition of funds or
49 assets where the accused made a good-faith effort to assist the
50 elderly person, protected person or incapacitated adult with
51 the management of his or her money or other things of value;
52 and

53 (4) "Protected person" means any person who is defined
54 as a "protected person" in section four, article one, chapter
55 forty-four-a of this code and who is subject to the protections
56 of chapter forty-four-a or forty-four-c of this code.

57 (g) Notwithstanding any provision of this code to the
58 contrary, acting as guardian, conservator, trustee or attorney
59 for or holding power of attorney for an elderly person,
60 protected person or incapacitated adult shall not, standing
61 alone, constitute a defense to a violation of subsection (a) of
62 this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the..... Day of, 2014.

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Governor