

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 397**

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

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

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12 AN ACT to amend and reenact §61-2-29b of the Code of West Virginia,
13 1931, as amended, relating to clarifying definition of
14 "financial exploitation" of the elderly or certain other
15 protected persons; and declaring that being a guardian,
16 conservator, trustee or attorney or holding power of attorney
17 is statutorily alone not a defense to financial exploitation.

18 *Be it enacted by the Legislature of West Virginia:*

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

21 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

22 **§61-2-29b. Financial exploitation of an elderly person, protected
23 person or incapacitated adult; penalties; definitions.**

24 (a) Any person who financially exploits an elderly person,

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

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

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

1 (d) When financial exploitation is suspected and to the extent
2 permitted by federal law, financial institutions and their
3 employees or other business entities required by federal law or
4 regulation to file suspicious activity reports and currency
5 transaction reports shall also be permitted to disclose suspicious
6 activity reports or currency transaction reports to the prosecuting
7 attorney of any county in which the transactions underlying the
8 suspicious activity reports or currency transaction reports
9 occurred.

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

13 (f) For the purposes of this section:

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

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

18 (3) "Financial exploitation" or "financially exploit" means
19 the intentional misappropriation or misuse of funds or assets of an
20 elderly person, protected person or incapacitated adult, but shall
21 not apply to a transaction or disposition of funds or assets where
22 the accused made a good-faith effort to assist the elderly person,
23 protected person or incapacitated adult with the management of his
24 or her money or other things of value; and

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

5 (g) Notwithstanding any provision of this code to the
6 contrary, acting as guardian, conservator, trustee or attorney for
7 or holding power of attorney for an elderly person, protected
8 person or incapacitated adult shall not, standing alone, constitute
9 a defense to a violation of subsection (a) of this section.