

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 397**

(By Senators Williams, Laird, Unger, Tucker, Plymale,  
Palumbo and Stollings)

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[Originating in the Committee on the Judiciary;  
reported February 4, 2014.]

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A BILL 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) ~~Financial exploitation occurs when a person~~  
2 ~~intentionally misappropriates or misuses the funds, or assets~~  
3 ~~of an elderly person, protected person or incapacitated adult,~~  
4 ~~Any person who violates this section is guilty of larceny and~~  
5 ~~shall be ordered to pay restitution. Any person who~~  
6 ~~financially exploits an elderly person, protected person or an~~  
7 ~~incapacitated adult shall be guilty of larceny and subject to~~  
8 ~~the penalties contained in section thirteen, article three of this~~  
9 ~~chapter. Any person convicted of a violation of this section~~  
10 ~~shall, in addition to any other penalties at law, be subject to~~  
11 ~~an order of restitution.~~

12 (b) In determining the value of the money, goods,  
13 property or services referred to in subsection (a) of the  
14 section, it shall be permissible to cumulate amounts or values  
15 where such money, goods, property or services were  
16 fraudulently obtained as part of a common scheme or plan.

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

32 (d) When financial exploitation is suspected and to the  
33 extent permitted by federal law, financial institutions and  
34 their employees or other business entities required by federal  
35 law or regulation to file suspicious activity reports and

36 currency transaction reports shall also be permitted to  
37 disclose suspicious activity reports or currency transaction  
38 reports to the prosecuting attorney of any county in which the  
39 transactions underlying the suspicious activity reports or  
40 currency transaction reports occurred.

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

45 (f) For the purposes of this section:

46 (1) “Incapacitated adult” means a person as defined by  
47 section twenty-nine of this article;

48 (2) “Elderly person” means a person who is sixty-five  
49 years or older; ~~and~~

50 (3) “Financial exploitation” or “financially exploit”  
51 means the intentional misappropriation or misuse of funds or  
52 assets of an elderly person, protected person or incapacitated  
53 adult by any means for the benefit of another; and

54 ~~(3)~~ (4) “Protected person” means any person who is  
55 defined as a “protected person” in ~~subsection thirteen~~; section

56 four, article one, chapter forty-four-a of this code and who is  
57 subject to the protections of chapter forty-four-a or  
58 forty-four-c of this code.

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