

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4377**

BY DELEGATES WESTFALL, NELSON, QUEEN, CRISS,  
STORCH, ROHRBACH, HOTT, D. JEFFRIES, ATKINSON AND  
TONEY

[Introduced January 16, 2020; Referred to the  
Committee on Senior, Children, and Family Issues  
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §32-6-601, §32-6-602, §32-6-603, §32-6-604, §32-6-605, §32-6-606, §32-6-  
 3 607, §32-6-608, §32-6-609 and §32-6-610, all relating to the creation of The Protection of  
 4 Vulnerable Adults From Financial Exploitation; defining “financial exploitation” and “eligible  
 5 adult”; and the obligations and duties of broker-dealers or investment advisers to notify  
 6 certain agencies of potential financial exploitation.

**ARTICLE 6. THE PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL  
 EXPLOITATION.**

**§32-6-601. Short title.**

1 This article may be cited as “The Protection of Vulnerable Adults from Financial  
 2 Exploitation Act”.

**§32-6-602. Definitions. In this article, unless the context otherwise requires:**

1 “Eligible adult” means:

2 (1) A person 65 years of age or older; or

3 (2) A person subject to §9-6-1 et seq. of this code. “Financial exploitation” means:

4 (1) The wrongful or unauthorized taking, withholding, appropriation or use of securities,  
 5 money, assets or property of an eligible adult; or

6 (2) Any act or omission taken by a person, including using a power of attorney,  
 7 guardianship, or conservatorship of an eligible adult to:

8 (i) Obtain control, through deception, intimidation or undue influence, over the eligible  
 9 adult’s money, assets or property to deprive the eligible adult of the ownership, use, benefit or  
 10 possession of his or her money, assets or property; or

11 (ii) Convert money, assets or property of the eligible adult to deprive such eligible adult of  
 12 the ownership, use, benefit or possession of his or her money, assets or property.

**§32-6-603. Governmental Disclosures.**

1 If a broker-dealer or investment adviser reasonably believes that financial exploitation of  
2 an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-  
3 dealer or investment adviser shall promptly notify Adult Protective Services and the Securities  
4 Commission, a Division of the State Auditor's office (collectively "the agencies").

**§32-6-604. Immunity for Governmental Disclosures.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
2 makes a disclosure of information pursuant to section 603 of this article is immune from  
3 administrative or civil liability that might otherwise arise from such disclosure or for any failure to  
4 notify the customer of the disclosure.

**§32-6-605. Third-Party Disclosures.**

1 If a broker-dealer or investment adviser reasonably believes that financial exploitation of  
2 an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-  
3 dealer or investment adviser may notify any reasonably associated individuals. Disclosure may  
4 not be made to any third party that is suspected of financial exploitation or other abuse of the  
5 eligible adult.

**§32-6-606. Immunity for Third-Party Disclosures.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
2 complies with section 605 of this article is immune from any administrative or civil liability that  
3 might arise from such disclosure.

**§32-6-607. Delaying Transactions or Disbursements.**

1 (a) A broker-dealer or investment adviser may delay a transaction or disbursement from  
2 an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

3 (1) The broker-dealer or investment adviser reasonably believes, after initiating an internal  
4 review of the requested transaction or disbursement and the suspected financial exploitation, that  
5 the requested transaction or disbursement may result in financial exploitation of an eligible adult;  
6 and

7 (2) The broker-dealer or investment adviser:

8 (i) Immediately, but in no event more than two business days after the broker-dealer or  
9 investment adviser first delayed the transaction or disbursement, provides written notification of  
10 the delay and the reason for the delay to all parties authorized to transact business on the account,  
11 unless any party is reasonably believed to have engaged in suspected or attempted financial  
12 exploitation of the eligible adult;

13 (ii) Immediately, but in no event more than two business days after the date on which the  
14 transaction or disbursement was first delayed, notifies the agencies; and

15 (iii) Continues its internal review of the suspected or attempted financial exploitation of  
16 the eligible adult as necessary and reports the investigation's results to the agencies on a  
17 reasonable and periodic basis, up to and including the resolution of the investigation.

18 (b) Any delay of a transaction or disbursement as authorized by this section will expire  
19 upon the sooner of:

20 (1) A determination by the broker-dealer or investment adviser that the disbursement will  
21 not result in financial exploitation of the eligible adult; or

22 (2) Fifteen business days after the date on which the broker-dealer or investment adviser  
23 first delayed the transaction or disbursement of the funds, unless either of the agencies requests  
24 that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire  
25 when requested by an order of a court of competent jurisdiction.

**§32-6-608. Immunity for Delaying Transactions or Disbursements.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
2 complies with section 607 of this article is immune from any administrative or civil liability that  
3 might otherwise arise from such delay in a transaction or disbursement.

**§32-6-609. Records.**

1 A broker-dealer or investment adviser shall provide access to or copies of records that are  
2 relevant to the suspected or attempted financial exploitation of an eligible adult to agencies

3 charged with administering state adult protective services laws and to law enforcement, either as  
 4 part of a referral to the agency or to law enforcement, or upon request of the agency or law  
 5 enforcement pursuant to an investigation. The records may include historical records as well as  
 6 records relating to the most recent transaction or transactions that may comprise financial  
 7 exploitation of an eligible adult. All records made available to agencies under this section shall  
 8 not be considered a public record as defined in §29B-1-1 *et seq.* of this code. Nothing in this  
 9 provision may limit or otherwise impede the authority of the Securities Commission, to access or  
 10 examine the books and records of broker-dealers and investment advisers as otherwise provided  
 11 by law.

**§32-6-610. Immunity for Complying with Records Requests.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
 2 complies with section 609 of this article is immune from any administrative or civil liability that  
 3 might otherwise arise from such disclosure.

NOTE: The purpose of this bill is to create The Protection of Vulnerable Adults from Financial Exploitation Act. The bill defines “financial exploitation” and “eligible adult”; and details the obligations and duties of broker-dealers or investment advisers to notify certain agencies of potential financial exploitation of vulnerable adults.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.