

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 308

FISCAL
NOTE

BY SENATORS WELD AND IHLENFELD

[Introduced January 10, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §55-7J-6 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §61-2-29b of said code, all relating to criminal penalties for violation
 3 or contempt of protective orders for victims of financial exploitation.

Be it enacted by the Legislature of West Virginia:

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.
ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED
PERSON OR INCAPACITATED ADULT.

§55-7J-6. Penalty for violation of injunction; retention of jurisdiction.

1 (a) Any person who violates the terms of an order issued under §55-7J-5 of this code shall
 2 be subject to proceeding for contempt of court. The court issuing the injunction may retain
 3 jurisdiction if, in its discretion, it determines that to do so is in the best interest of the elderly
 4 person, protected person or incapacitated adult. Whenever the court determines that an injunction
 5 issued under §55-7J-5 of this code has been violated, the court may award reasonable costs to
 6 the party asserting that a violation has occurred.

7 (b) A temporary financial exploitation protective order and final financial exploitation
 8 protective order issued under this article shall state that a violation of the order may result in (1)
 9 Criminal prosecution and/or (2) incarceration.

10 (c) An individual who fails to comply with the relief granted in a temporary financial
 11 exploitation protective order or a final financial exploitation protective order entered pursuant to
 12 this article is guilty of a misdemeanor and, upon conviction thereof, shall:

13 (1) For a first offense, be fined not more than \$1,000 or confined in jail not more than
 14 ninety days, or both; and

15 (2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail
 16 not more than one year, or both.

17 (d) A law-enforcement officer of this state, upon determining that there is probable cause

18 to believe that a valid financial exploitation protective order exists and that the order has been
19 violated, shall enforce the order and arrest the individual violating the order with or without a
20 warrant and take him or her into custody.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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, protected person or an
2 incapacitated adult in the amount of less than \$1,000 is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one
4 year, or both fined and confined.

5 (b) Any person who financially exploits an elderly person, protected person or an
6 incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction
7 thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not
8 less than two nor more than 20 years.

9 (c) Any person convicted of a violation of this section shall, in addition to any other
10 penalties at law, be subject to an order of restitution.

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

15 (e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and
16 as permitted by §31-2A-4(13) of this code, others engaged in financially related activities, as
17 defined by §31A-8C-1 of this code, caregivers, relatives and other concerned persons are
18 permitted to report suspected cases of financial exploitation to state or federal law-enforcement

19 authorities, the county prosecuting attorney and to the Department of Health and Human
20 Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate. Public
21 officers and employees are required to report suspected cases of financial exploitation to the
22 appropriate entities as stated above. The requisite agencies shall investigate or cause the
23 investigation of the allegations.

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

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

32 (h) For the purposes of this section:

33 ~~(1)~~ "Incapacitated adult" means a person as defined by §61-2-29 of this code;

34 ~~(2)~~ "Elderly person" means a person who is 65 years or older;

35 ~~(3)~~ "Financial exploitation" or "financially exploit" means the intentional misappropriation
36 or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but
37 shall not apply to a transaction or disposition of funds or assets where the accused made a good-
38 faith effort to assist the elderly person, protected person or incapacitated adult with the
39 management of his or her money or other things of value; and

40 ~~(4)~~ "Protected person" means any person who is defined as a "protected person" in §44A-
41 1-4 of this code and who is subject to the protections of chapter 44A or chapter 44C of this code.

42 (i) Notwithstanding any provision of this code to the contrary, acting as guardian,
43 conservator, trustee or attorney for or holding power of attorney for an elderly person, protected
44 person or incapacitated adult shall not, standing alone, constitute a defense to a violation of

45 subsection (a) of this section.

46 (j) A temporary financial exploitation protective order and final financial exploitation
47 protective order issued under §55-7J-6 of this code shall state that a violation of the order may
48 result in (1) Criminal prosecution and/or (2) incarceration.

49 (k) An individual who fails to comply with the relief granted in a temporary financial
50 exploitation protective order or a final financial exploitation protective order entered pursuant to
51 §55-7J-6 of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

52 (1) For a first offense, be fined not more than \$1,000 or confined in jail not more than 90
53 days, or both; and

54 (2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail
55 not more than one year, or both.

56 (l) A law-enforcement officer of this state, upon determining that there is probable cause
57 to believe that a valid financial exploitation protective order exists and that the order has been
58 violated, shall enforce the order and arrest the individual violating the order with or without a
59 warrant and take him or her into custody.

NOTE: The purpose of this bill is to assess criminal penalties to individuals who are in violation of a financial exploitation protective order.

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