

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5193

By Delegate Rohrbach and Young

[Introduced January 25, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated, §55-7L-1, §55-7L-2, §55-7L-3, §55-7L-4, §55-7L-5 and §55-7L-6; and to
 3 amend said code by adding thereto a new section designated, §61-2-31; all relating to
 4 financial exploitation of a person in recovery.

Be it enacted by the Legislature of West Virginia:

CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.

**ARTICLE 7L. ACTION FOR FINANCIAL EXPLOITATION OF A PERSON IN
 RECOVERY.**

§55-7L-1. Definitions.

1 (a) For the purposes of this article:

2 (1) "Person in recovery" has the same meaning as prescribed under §61-2-31(h)(1) of this
 3 code; and,

4 (2) "Financial exploitation" or "financially exploit" means the intentional misappropriation or
 5 misuse of funds or assets or the diminishment of assets due to undue influence of a person in
 6 recovery but may not apply to a transaction or disposition of funds or assets where the defendant
 7 made a good-faith effort to assist the person in recovery with the management of his or her money
 8 or other things of value.

9 (b) Any person in recovery against whom an act of financial exploitation has been
 10 committed may bring an action under this article against any person who has committed an act of
 11 financial exploitation against him or her by filing a civil complaint for financial exploitation, a petition
 12 for a financial exploitation protective order, or both.

13 (c) Any person who believes that a person in recovery is suffering financial exploitation due
 14 to the intentional misappropriation or misuse of funds or undue influence may bring an action for a
 15 protective order pursuant to this section in the magistrate court or circuit court in the county in West
 16 Virginia in which the person in recovery resides or the financial exploitation occurred: *Provided,*

17 That an order granting a financial exploitation protective order to stay further diminution of the
18 assets of a person in recovery shall be temporary in nature.

19 (d) An action for a financial exploitation protective order brought under this section is
20 commenced by the filing of a verified petition. Temporary relief may be granted without notice to
21 the person alleged to be engaging in financial exploitation and without that person being present:
22 Provided, That notice shall be provided to the person alleged to be engaging in financial
23 exploitation as soon as practicable, and that no final relief may be granted on the petition without a
24 full, adversarial evidentiary hearing on the merits before the court.

25 (e) If a magistrate court grants the petition for a financial exploitation protective order and
26 issues a temporary financial exploitation protective order, the magistrate court shall immediately
27 transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of
28 the notice of transfer from the magistrate court, the circuit court shall set the matter for a review
29 hearing within 20 days. Any review hearing shall be a full, adversarial evidentiary hearing on the
30 merits before the court. After a hearing, the circuit court may issue a permanent protective order
31 containing any relief the circuit court determines necessary to protect the alleged victim if the court
32 finds by a preponderance of the evidence that:

33 (1) The respondent has committed an act against the victim that constitutes financial
34 exploitation; and

35 (2) There is reasonable cause to believe continued financial exploitation will occur unless
36 relief is granted; or

37 (3) The respondent consents to entry of the permanent protective order.

38 (f) An order entered under this section shall state that a violation of the order may result in
39 criminal prosecution under §61-2-31(j) of this code and state the penalties therefor.

§55-7L-2. Restriction of defenses, standing alone, based on legal relationship.

1 Notwithstanding any provision of this code to the contrary, acting in a position of trust and
2 confidence, including, but not limited to, as guardian, conservator, trustee, or attorney for or

3 holding power of attorney for a person in recovery shall not, standing alone, constitute a defense to
4 an action brought under this article.

§55-7L-3. Court authorized remedies.

1 (a) In an action brought against a person under this article upon a finding that a person in
2 recovery has been financially exploited, the court may order:

3 (1) The return of property or assets improperly obtained, controlled, or used; and

4 (2) An award of actual damages to the person who brought the action for any damages
5 incurred or for the value of the property or assets lost as a result of the violation or violations of this
6 article.

7 (b) In addition to the remedies provided in subsection (a) of this section, a court may order
8 the following:

9 (1) For violations committed by a person who is not in a position of trust and confidence,
10 payment of two times the amount of damages incurred or value of property or assets lost; and

11 (2) For violations committed by a person in a position of trust and confidence, payment of
12 treble damages.

§55-7L-4. Attorneys' fees; court costs and burden of proof; statute of limitations.

1 (a) The court may award reasonable attorneys' fees and costs to a person that brings an
2 action under this article and prevails.

3 (b) The standard of proof in proving that a person committed financial exploitation in an
4 action pursuant to this article is a preponderance of the evidence.

5 (c) An action under this article shall be brought within two years from the date of the
6 violation or from the date of discovery, whichever is later in time.

§55-7L-5. Action to freeze assets; burden of proof; options the court may exercise.

1 (a) A person in recovery may bring an action to enjoin the alleged commission of financial
2 exploitation and may petition the court to freeze the assets of the person allegedly committing the
3 financial exploitation in an amount equal to, but not greater than, the alleged value of lost property

4 or assets for purposes of restoring to the victim the value of the lost property or assets. The burden
5 of proof required to freeze the assets of a person allegedly committing financial exploitation shall
6 be a preponderance of the evidence. Upon a finding that the person in recovery has been formally
7 exploited, the court may:

8 (1) Grant injunctive relief;

9 (2) Order the violator to place in escrow an amount of money equivalent to the value of the
10 misappropriated assets for distribution to the person in recovery together with any and all
11 additional amounts allowed as remedies pursuant to this Article.

12 (3) Order the violator to return to the person in recovery any real or personal property which
13 was misappropriated;

14 (4) Provide for the appointment of a receiver; or

15 (5) Order any combination or all of the above.

16 (b) In any action under §55-7L-1 et seq. of this code, the court may void or limit the
17 application of contracts or clauses resulting from the financial exploitation.

18 (c) In any civil action brought under this article, upon the filing of the complaint or on the
19 appearance of any defendant, claimant, or other party, or at any later time, the court may require
20 the plaintiff, defendant, claimant, or other party or parties to post security, or additional security, in
21 a sum the court directs to pay all costs, expenses, and disbursements that are awarded against
22 that party or that the party may be directed to pay by any interlocutory order, by the final judgment
23 or after appeal.

24 (d) An order entered under this section shall state that a violation of the order may result in
25 criminal prosecution under §61-2-31(j) of this code and state the penalties therefor.

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

1 Any person who violates the terms of an order issued under this article shall be subject to
2 proceeding for contempt of court. The court issuing the injunction may retain jurisdiction if, in its
3 discretion, it determines that to do so is in the best interest of the elderly person, protected person,

4 or incapacitated adult. If the court determines that an injunction issued under §55-7L-5 of this code
5 has been violated, the court may award reasonable costs to the party asserting that a violation has
6 occurred.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-31. Financial exploitation of a person in recovery; penalties.

1 (a) Any person who financially exploits a person in recovery in the amount of less than
2 \$1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
3 \$1,000 or confined in jail for not more than one year, or both fined and confined. For a second or
4 subsequent offense under this subsection, the person is guilty of a felony and, upon conviction
5 thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional facility not less
6 than two nor more than 10 years.

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

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

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

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

20 county prosecuting attorney, and to the West Virginia Department of Health Office of Inspector
21 General, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to
22 report suspected cases of financial exploitation to the appropriate entities as stated above. The
23 requisite agencies shall investigate or cause the 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) "Person in recovery" means a person who is actively seeking or receiving treatment for
34 addiction to drugs or alcohol, or who has done so within the past twenty-four months next
35 preceding the transaction upon which the violation is based; and,

36 (2) "Financial Exploitation" or "financially exploit" means the intentional misappropriation or
37 misuse of funds or assets of a person in recovery but shall not apply to a transaction or disposition
38 of funds or assets where the accused made a good-faith effort to assist the person in recovery with
39 the management of his or her money or other things of value.

40 (i) Notwithstanding any provision of this code to the contrary, acting as guardian,
41 conservator, trustee, or attorney for, or holding power of attorney for, a person in recovery shall
42 not, standing alone, constitute a defense to a violation of subsection (a) of this section.

43 (j) Any person who willfully violates a material term of an order entered pursuant to §55-7L-
44 1 et seq. of this code is guilty of a misdemeanor and, upon conviction, shall:

45 (1) For the first offense, be fined not more than \$1,000 or confined in jail not more than 90

46 days, or both fined and confined; and

47 (2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail

48 not more than one year, or both fined and confined.

NOTE: The purpose of this bill is to prohibit the financial exploitation of a person in recovery.

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