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FILED

2004 APR -1 P 4: 41

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*REGULAR SESSION, 2004*

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**ENROLLED**

SENATE BILL NO. 558

(By Senator CALDWELL, ET AL )

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PASSED MARCH 13, 2004

In Effect 90 Days From Passage

FILED

2004 APR -1 P 4: 41

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 558**

(BY SENATORS CALDWELL, ROWE AND MCKENZIE)

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[Passed March 13, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §61-3-20 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-20a, all relating to crimes of embezzlement; removing certain evidentiary presumptions which have been deemed unconstitutional; creating a new crime of embezzlement related to the wilful and fraudulent misuse of a power of attorney or other fiduciary relationship; and providing that such crimes of embezzlement or fraudulent conversion to be punishable as larceny.

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

That §61-3-20 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-3-20a, all to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-20. Embezzlement.**

1 If any officer, agent, clerk or servant of this state, or of  
2 any county, district, school district or municipal corpora-  
3 tion, or of any banking institution, or other corporation, or  
4 any officer of public trust in this state, or any agent, clerk  
5 or servant of any firm or person, or company or association  
6 of persons not incorporated, embezzles or fraudulently  
7 converts to his own use, bullion, money, bank notes, drafts,  
8 security for money, or any effects or property of any other  
9 person, which shall have come into his possession, or been  
10 placed under his care or management, by virtue of his  
11 office, place or employment, he shall be guilty of the  
12 larceny thereof. If such guilty person be an officer, agent,  
13 clerk or servant of any banking institution, he shall be  
14 guilty of a felony and, upon conviction thereof, shall be  
15 imprisoned in the penitentiary not less than ten years.  
16 And it shall not be necessary to describe in the indictment,  
17 or to identify upon the trial, the particular bullion, money,  
18 bank note, draft or security for money which is so taken,  
19 converted to his own use or embezzled by him.

20 And whenever any officer, agent, clerk or servant of this  
21 state, or of any county, district, school district or municipi-  
22 pal corporation, shall appropriate or use for his own  
23 benefit, or for the benefit of any other person, any bullion,  
24 money, bank notes, drafts, security for money or funds  
25 belonging to this state or to any such county, district,  
26 school district or municipal corporation, he shall be held  
27 to have embezzled the same and be guilty of the larceny  
28 thereof. In the prosecution of any such officer, agent, clerk  
29 or servant of this state or of any county, district, school  
30 district or municipal corporation charged with appropriati-  
31 on or use for his own benefit or the benefit of any other  
32 person, any bullion, money, bank notes, drafts, security for  
33 money or funds belonging to this state or to any county,  
34 district, school district or municipal corporation, it shall  
35 not be necessary to describe in the indictment, or to  
36 identify upon the trial, the particular bullion, money, bank  
37 notes, drafts, security for money or funds appropriated or  
38 used for his own benefit or for the benefit of any other  
39 person.

**§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.**

1 Any person who holds a fiduciary power of attorney or  
2 who has a fiduciary relationship with a person and in so  
3 doing wilfully and with intent to defraud embezzles,  
4 misappropriates or fraudulently converts for his or her  
5 own benefit, or for the benefit of another, the assets or  
6 property, real or personal, with which he or she has been  
7 entrusted, or misuses or misappropriates funds from the  
8 person to whom he or she owes a fiduciary duty or misuses  
9 any account, line of credit or credit card of the principal  
10 for purposes not contemplated by the terms of the power  
11 of attorney instrument or fiduciary relationship, or for  
12 purposes not intended by the principal in the execution of  
13 the power of attorney or for purposes not intended by the  
14 fiduciary relationship, shall be held to have embezzled the  
15 same and, upon conviction, shall be deemed guilty of the  
16 larceny thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Carly Fiorina*  
.....  
Chairman Senate Committee

*Greg Kutcher*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*David E. Jones*  
.....  
Clerk of the Senate

*Buffy W. Bond*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert H. Liss*  
.....  
Speaker House of Delegates

The within is approved this the 1st  
Day of April ....., 2004.

*Bill*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4-1-04

Time 10:00 AM