

H. B. 2362

(By Delegates Boggs, Perdue, Ashley and Barker)

[Introduced January 12, 2011; referred to the

Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §61-2-29 of the Code of West Virginia, 1931, as amended, relating to increasing criminal penalties for financial exploitation of an elderly person or incapacitated adult.

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

That §61-2-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-29. Abuse or neglect of incapacitated adult; abuse or neglect of elder person; misappropriation or misuse of assets or funds of elder person; misappropriation or misuse of assets or funds of elder person through deception, intimidation, coercion, bodily injury or threats of bodily injury; penalties.**

1 (a) The following words when used in this section have the  
2 meaning ascribed, unless the context clearly indicates otherwise:

3 (1) "Abuse" means the infliction or threat to inflict physical  
4 pain or injury on an incapacitated adult or elder person;

5 (2) "Caregiver" means an adult who has or shares actual  
6 physical possession or care of an incapacitated adult or elder  
7 person on a full-time or temporary basis, regardless of whether  
8 such person has been designated as a guardian of such adult by any  
9 contract, agreement or legal proceeding. Caregiver includes health  
10 care providers, family members, and any person who otherwise  
11 voluntarily accepts a supervisory role towards an incapacitated  
12 adult or elder person;

13 (3) "Neglect" means: (i) The failure to provide the  
14 necessities of life to an incapacitated adult or elder person; or  
15 (ii) the unlawful expenditure or willful dissipation of the funds  
16 or other assets owned or paid to or for the benefit of an  
17 incapacitated adult or elder person;

18 (4) "Incapacitated adult" means any person who by reason of  
19 physical, mental or other infirmity is unable to physically carry  
20 on the daily activities of life necessary to sustaining life and  
21 reasonable health;

22 (5) "Elder" means a person age sixty-five years or older;

23 (6) "Bodily injury" means substantial physical pain, illness  
24 or any impairment of physical condition; and

1           (7) "Custodian" means a person over the age of eighteen years  
2 who has or shares actual physical possession of care and custody of  
3 an elder person on a full-time or temporary basis, regardless of  
4 whether the person has been granted custody of the elder person by  
5 any contract, agreement or legal proceeding.

6           (b) Any person, caregiver, guardian or custodian who neglects  
7 an incapacitated adult or elder person, or who knowingly permits  
8 another person to neglect said adult, is guilty of a misdemeanor  
9 and, upon conviction thereof, shall be fined not less than \$500 nor  
10 more than \$1,500, or ~~imprisoned~~ confined in the county or regional  
11 jail for not less than ninety days nor more than one year, or both  
12 fined and ~~imprisoned~~ confined.

13           (c) Any person, caregiver, guardian or custodian who  
14 intentionally abuses or neglects an incapacitated adult or elder  
15 person is guilty of a felony and, upon conviction thereof, shall ~~in~~  
16 ~~the discretion of the court,~~ be confined in a state correctional  
17 facility for not less than two nor more than ten years.

18           (d) If any person, caregiver, guardian or custodian of an  
19 elder person or incapacitated adult, willfully misappropriates, or  
20 misuses the funds or assets of an incapacitated adult or elder  
21 person for the person's, caregiver's, guardian's, or custodian's  
22 personal use, advantage or wrongful profit or to the advantage or  
23 wrongful profit of another, he or she is guilty of a felony and,  
24 upon conviction thereof, shall be fined not more than ~~five thousand~~

1 ~~dollars~~ \$10,000 and incarcerated in a correctional facility not  
2 less than ~~two~~ five nor more than ~~ten~~ fifteen years.

3 (e) If any person, caregiver, guardian or custodian of an  
4 elder person or incapacitated adult, by means of deception,  
5 intimidation, coercion, infliction of bodily injury or threats of  
6 the infliction of bodily injury, willfully misappropriates, or  
7 misuses the funds or assets of an incapacitated adult or elder  
8 person for the person's, caregiver's, guardian's, or custodian's  
9 personal use, advantage or wrongful profit or to the advantage or  
10 wrongful profit of another, he or she is guilty of a felony and,  
11 upon conviction thereof, shall be fined not more than ~~five thousand~~  
12 ~~dollars~~ \$10,000 and incarcerated in a correctional facility not  
13 less than ~~five~~ ten nor more than ~~fifteen~~ twenty years.

14 (f) Nothing in this article shall be construed to mean an  
15 adult is abused or neglected for the sole reason that his or her  
16 independent decision is to rely upon treatment by spiritual means  
17 in accordance with the tenets and practices of a recognized church  
18 or religious denomination or organization in lieu of medical  
19 treatment.

NOTE: The purpose of this bill is to increase the penalties for the financial exploitation of elderly persons and incapacitated adults.

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