

**H. B. 3198**

(By Delegates Hamilton, Williams, Rowan,  
Moye, Duke and Boggs)  
[Introduced February 18, 2011; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §61-2-29 of the Code of West Virginia,  
1931, as amended, relating to abuse or neglect of an  
incapacitated adult; providing for forfeiture of inheritance  
upon taking the life or committing felony abuse of decedent;  
and establishing the Elder and Vulnerable Adult Victims Trust  
Fund.

*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; definitions;  
penalties; forfeiture of inheritance upon felony  
abuse of decedent; Elder and Vulnerable Adult Victims  
Trust Fund established.**

(a) The following words, when used in this section and  
sections twenty -nine-a and twenty-nine-b of this article, have the  
meaning ascribed, unless the context clearly indicates otherwise:

(1) "Abuse" means the intentional infliction of bodily injury  
on an incapacitated adult;

1 (2) "Bodily injury" means substantial physical pain, illness  
2 or any impairment of physical condition;

3 (3) "Caregiver" means any person who has assumed the legal  
4 responsibility or a contractual obligation for the care of an  
5 incapacitated adult, or has voluntarily assumed responsibility for  
6 the care of an incapacitated adult. The term includes a facility  
7 operated by any public or private agency, organization or  
8 institution which provides services to, and has assumed  
9 responsibility for the care of an incapacitated adult.

10 (4) "Incapacitated adult" means any person eighteen years of  
11 age or older who by reason of advanced age, physical, mental or  
12 other infirmity is unable to carry on the daily activities of life  
13 necessary to sustaining life and reasonable health;

14 (5) "Neglect" means the unreasonable failure by a caregiver to  
15 provide the care necessary to assure the physical safety or health  
16 of an incapacitated adult; and

17 (6) "Serious bodily injury" means bodily injury which creates  
18 a substantial risk of death, which causes serious or prolonged  
19 disfigurement, prolonged impairment of health or prolonged loss or  
20 impairment of the function of any bodily organ.

21 (b) A caregiver who neglects an incapacitated adult or who  
22 knowingly permits another person to neglect an incapacitated adult  
23 is guilty of a misdemeanor and, upon conviction thereof, shall be  
24 fined not less than \$100 nor more than \$500 or confined in jail for  
25 not more than one year, or both fined and confined.

26 (c) A caregiver who abuses an incapacitated adult or who

1 knowingly permits another person to abuse an incapacitated adult is  
2 guilty of a misdemeanor and, upon conviction thereof, shall be  
3 fined not less than \$100 nor more than \$500 or confined in jail for  
4 not less than ninety days nor more than one year, or both fined and  
5 confined.

6 (d) A caregiver of an incapacitated adult who intentionally  
7 and maliciously abuses or neglects an incapacitated adult and  
8 causes the incapacitated adult bodily injury is guilty of a felony  
9 and, upon conviction thereof, shall be fined not less than \$100 nor  
10 more than \$1,000 and imprisoned in a state correctional facility  
11 not less than two years nor more than ten years.

12 (e) A caregiver of an incapacitated adult who intentionally  
13 and maliciously abuses or neglects an incapacitated adult and  
14 causes the incapacitated adult serious bodily injury is guilty of  
15 a felony and, upon conviction thereof, shall be fined not less than  
16 \$1,000 nor more than \$5,000 and imprisoned in a state correctional  
17 facility not less than three years nor more than fifteen years.

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

24 (g) Nothing in this section or in section twenty-nine-a of  
25 this article shall be construed to mean an incapacitated adult is  
26 abused or neglected if deprivation of life-sustaining treatment or

1 other act has been provided ~~for~~ by the West Virginia Health Care  
2 Decisions Act, pursuant to article thirty, chapter sixteen of this  
3 code.

4 (h) If the husband, wife, heir-at-law, beneficiary under a  
5 will, joint tenant with the right of survivorship or the  
6 beneficiary under any insurance policy takes the life of the  
7 decedent incapacitated adult, or victimizes the decedent  
8 incapacitated adult by the commission of any felony under this  
9 section, or section twenty-nine-a or section twenty-nine-b of this  
10 article, and is convicted of such felony, the person so convicted  
11 forfeits all interest in and to the property of the decedent,  
12 including any interest he or she would receive as surviving joint  
13 tenant, and the property interest or insurable interest so  
14 forfeited descends to the decedent's other heirs-at-law,  
15 beneficiaries, or joint tenants, unless otherwise disposed of by  
16 the decedent. If there are no other heirs-at-law, beneficiaries,  
17 or joint tenants of the decedent as to all or part of the interest  
18 forfeited, the forfeited interest shall escheat to the state. The  
19 State Treasurer shall, after liquidation of the interest, pay the  
20 proceeds into the Elder and Vulnerable Adult Victims Trust Fund  
21 Established in subsection (i) of this section.

22 (i) The Elder and Vulnerable Victims Trust Fund is created as  
23 a special revenue fund in the Office of the State Treasurer.

24 (1) The moneys in the trust fund shall be expended only as  
25 provided in this section and are hereby appropriated for those  
26 purposes.

1       (3) The State Treasurer shall credit to the trust fund all  
2 amounts received for this purpose, including appropriations,  
3 grants, gifts, and any amounts received under subsection (h) of  
4 this section.

5       (4) The State Treasurer shall invest trust fund money in the  
6 same manner as surplus funds are invested. Earnings shall be  
7 credited to the trust fund.

8       (5) Any moneys remaining in the trust fund at the close of the  
9 fiscal year do not lapse but shall be carried forward into the  
10 succeeding fiscal year to be used for the purposes set forth in  
11 this subsection.

12       (6) Money shall be disbursed from the trust fund only for the  
13 purpose of providing funding to one or more public or private  
14 nonprofit organizations, including government organizations, in the  
15 development or operation of elder or vulnerable adult abuse,  
16 neglect, or financial exploitation prevention or intervention  
17 programs. An organization shall be eligible to receive funding only  
18 if:

19       (A) The organization agrees to provide at least a twenty-five  
20 percent match of the total project amount requested, which may  
21 consist of monetary or in-kind contributions;

22       (B) The organization demonstrates a willingness and ability to  
23 provide program models and consultation to other organizations and  
24 communities regarding program development and maintenance; and

25       (c) The organization funds:

26       (i) Programs which provide advocacy, crisis counseling,

1 financial guardianship, or other similar services to victims of  
2 elder or vulnerable adult abuse, neglect, or financial  
3 exploitation;

4 (ii) Law enforcement, prosecution, or court-based programs  
5 that enhance case investigations, prosecutions, or victim  
6 assistance in criminal cases involving elder or vulnerable adult  
7 abuse, neglect, or financial exploitation;

8 (iii) Programs which develop and implement public education  
9 and awareness campaigns on elder and vulnerable adult abuse,  
10 neglect, or financial exploitation by making use of electronic and  
11 print media to inform the public about the nature of these crimes  
12 and available resources such as victims rights, legal remedies,  
13 agency services, and prevention strategies; or

14 (iv) Research initiatives that provide greater insight into  
15 the dynamics of elder and vulnerable adult abuse, neglect, or  
16 financial exploitation and guidance on best practices for  
17 intervention or prevention strategies.

18 (7) (A) Fiscal, programmatic, and disbursement authority over  
19 trust fund money shall be provided by the Court of Claims, which  
20 shall develop a review panel system to award grants from the trust  
21 fund on an annual basis. Panel members shall be individuals with  
22 knowledge and operational experience in elder and vulnerable adult  
23 abuse, neglect, or financial exploitation and shall be drawn from  
24 the law enforcement, court, prosecution, and victim advocacy  
25 communities.

26 (B) In disbursing money from the trust fund, the panel shall

1 not disburse to any one program more than twenty-five percent of  
2 the total funds available for disbursement and shall seek to  
3 distribute meaningful awards to as many programs as possible  
4 throughout the state.

5 (8) The Court of Claims shall propose rules for legislative  
6 approval in accordance with the provisions of article three,  
7 chapter twenty-nine-a of this code to implement this subsection.

NOTE: The purpose of this bill is to prevent a person who has taken the life or committed felony abuse of a decedent incapacitated adult from receiving an inheritance from that decedent. The bill also establishes the Elder and Vulnerable Adult Victims Trust Fund and provides for distribution of moneys from that fund.

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