

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 552

(By Senators Laird, Williams, Wells, Jenkins, Miller, Minard,
Sypolt and Kessler (Acting President))

[Originating in the Committee on the Judiciary;
reported February 23, 2011.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-29c, relating to crimes against the elderly, protected persons or incapacitated persons; financial exploitation of the elderly, protected persons and incapacitated adults for misappropriating or misusing assets; permitting the prosecutor to cumulate amounts or values when charging; permitting banking institutions and others to report suspected financial exploitation to law-enforcement authorities and other entities; permitting financial institutions to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney;

providing civil immunity for reporting; ordering restitution;
and establishing the criminal penalty of larceny.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-29c, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29c. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

1 (a) Financial exploitation occurs when a person intention-
2 ally misappropriates or misuses the funds or assets of an
3 elderly person, protected person or incapacitated adult. Any
4 person who violates this section is guilty of larceny and shall
5 be ordered to pay restitution.

6 (b) In determining the value of the money, goods, property
7 or services referred to in subsection (a) of the section, it shall
8 be permissible to cumulate amounts or values where such
9 money, goods, property or services were fraudulently
10 obtained as part of a common scheme or plan.

11 (c) Financial institutions and their employees, as defined
12 by section one, article two-a, chapter thirty-one-a of this

13 code and as permitted by section four, subsection thirteen of
14 that article, others engaged in financially related activities
15 as defined by section one, article eight-c, chapter thirty-one-
16 a of this code, caregivers, relatives and other concerned
17 persons are permitted to report suspected cases of financial
18 exploitation to state or federal law enforcement authorities,
19 the county prosecuting attorney and to the Department of
20 Health and Human Resources, Adult Protective Services
21 Division or Medicaid Fraud Division, as appropriate. Public
22 officers and employees are required to report suspected cases
23 of financial exploitation to the appropriate entities as stated
24 above. The requisite agencies shall investigate or cause the
25 investigation of the allegations.

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

35 (e) Any person or entity is immune from civil liability for
36 reporting suspected cases of financial exploitation pursuant
37 to this section.

38 (f) For the purposes of this section:

39 (1) “Incapacitated adult” means a person as defined by
40 section twenty-nine of this article;

41 (2) “Elderly person” means a person who is sixty-five years
42 or older; and

43 (3) “Protected person” means any person who is defined as
44 a “protected person” in subsection thirteen, section four,
45 article one, chapter forty-four-a of this code and who is
46 subject to the protections of chapters forty-four-a or forty-
47 four-c of this code.

(NOTE: This section is new; therefore, strike-throughs and underscoring have been omitted.)