

Senate Bill No. 397

(By Senators Williams, Laird, Unger, Tucker, Plymale, Palumbo and
Stollings)

[Introduced January 21, 2014; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §61-2-29b of the Code of West Virginia,
1931, as amended, relating to expanding the scope of
activities considered to be financial exploitation of the
elderly or certain other protected persons; and redefining the
age of an elderly person for purposes of the statute, reducing
it from sixty-five to sixty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

1 **definitions.**

2 (a) Financial exploitation occurs when a person intentionally
3 misappropriates or misuses the funds, property or assets of an
4 elderly person, protected person or incapacitated adult, and
5 includes, but is not limited to, the misappropriation by undue
6 influence, fraud, deception, extortion, intimidation, force or
7 threat of force, false pretenses, embezzlement, conspiracy,
8 forgery, falsifying records, coerced property transfers,
9 misappropriation of cash or assets, abuse of joint accounts,
10 violation of a guardianship or conservatorship order, obtaining a
11 power of attorney through misrepresentation or undue influence, or
12 preventing the elderly person, protected person or incapacitated
13 adult from using their funds, assets or property. Any person who
14 violates this section is guilty of larceny, or the underlying
15 crime, and shall be ordered to pay restitution.

16 (b) In determining the value of the money, goods, property or
17 services referred to in subsection (a) of the section, it shall be
18 permissible to cumulate amounts or values where such money, goods,
19 property or services were fraudulently obtained as part of a common
20 scheme or plan.

21 (c) Financial institutions and their employees, as defined by
22 section one, article two-a, chapter thirty-one-a of this code and
23 as permitted by section four, subsection thirteen of that article,

1 others engaged in financially related activities as defined by
2 section one, article eight-c, chapter thirty-one-a of this code,
3 caregivers, relatives and other concerned persons are permitted to
4 report suspected cases of financial exploitation to state or
5 federal law-enforcement authorities, the county prosecuting
6 attorney and to the Department of Health and Human Resources, Adult
7 Protective Services Division or Medicaid Fraud Division, as
8 appropriate. Public officers and employees are required to report
9 suspected cases of financial exploitation to the appropriate
10 entities as stated above. The requisite agencies shall investigate
11 or cause the investigation of the allegations.

12 (d) When financial exploitation is suspected and to the extent
13 permitted by federal law, financial institutions and their
14 employees or other business entities required by federal law or
15 regulation to file suspicious activity reports and currency
16 transaction reports shall also be permitted to disclose suspicious
17 activity reports or currency transaction reports to the prosecuting
18 attorney of any county in which the transactions underlying the
19 suspicious activity reports or currency transaction reports
20 occurred.

21 (e) Any person or entity that in good faith reports a
22 suspected case of financial exploitation pursuant to this section
23 is immune from civil liability founded upon making that report.

1 (f) For the purposes of this section:

2 (1) "Incapacitated adult" means a person as defined by section
3 twenty-nine of this article;

4 (2) "Elderly person" means a person who is ~~sixty-five~~ sixty
5 years or older; and

6 (3) "Protected person" means any person who is defined as a
7 "protected person" in subsection thirteen, section four, article
8 one, chapter forty-four-a of this code and who is subject to the
9 protections of chapter forty-four-a or forty-four-c of this code.

NOTE: The purpose of this bill is to more broadly define the scope of financial exploitation of the elderly and other protected persons, and to decrease from sixty-five to sixty, the age at which the statute is applicable to an elderly person.

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