

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

**Senate Bill 362**

**FISCAL  
NOTE**

BY SENATORS GAUNCH, BOSO, MULLINS, PALUMBO,

WALTERS, WILLIAMS, UNGER, PLYMALE, TRUMP AND

PREZIOSO

[Introduced January 21, 2016;

Referred to the Committee on Judiciary.]

1 A BILL to amend and reenact §61-2-29b of the Code of West Virginia, 1931, as amended, relating  
2 to increasing criminal penalties for conviction of certain offenses of financial exploitation  
3 of an elderly person, protected person or incapacitated adult; and increasing the criminal  
4 penalty for the offense of financial exploitation of \$1,000 or more.

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

1 That §61-2-29b of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted 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; definitions.**

1 (a) Any person who financially exploits an elderly person, protected person or an  
2 incapacitated adult ~~shall be guilty of larceny and subject to the penalties contained in section~~  
3 ~~thirteen, article three of this chapter in the amount of less than \$1,000 is guilty of a misdemeanor~~  
4 ~~and, upon conviction thereof shall be fined not more than \$1,000 or confined in jail for not more~~  
5 ~~than one year, or both fined and confined.~~

6 (b) Any person who financially exploits an elderly person, protected person or an  
7 incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction  
8 thereof shall be fined not more than \$10,000 and imprisoned in a state correctional facility not  
9 less than two nor more than twenty years.

10 (c) Any person convicted of a violation of this section shall, in addition to any other  
11 penalties at law, be subject to an order of restitution.

12 (b) (d) In determining the value of the money, goods, property or services referred to in  
13 subsection (a) of this section, it shall be permissible to cumulate amounts or values where such  
14 money, goods, property or services were fraudulently obtained as part of a common scheme or  
15 plan.

16 (e) (e) Financial institutions and their employees, as defined by section one, article two-a,

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

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

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

34 ~~(f)~~ (h) For the purposes of this section:

35 (1) "Incapacitated adult" means a person as defined by section twenty-nine of this article;  
36 (2) "Elderly person" means a person who is sixty-five years or older;  
37 (3) "Financial exploitation" or "financially exploit" means the intentional misappropriation  
38 or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but  
39 shall not apply to a transaction or disposition of funds or assets where the accused made a good-  
40 faith effort to assist the elderly person, protected person or incapacitated adult with the  
41 management of his or her money or other things of value; and

42           (4) "Protected person" means any person who is defined as a "protected person" in section  
43 four, article one, chapter forty-four-a of this code and who is subject to the protections of chapter  
44 forty-four-a or forty-four-c of this code.

45           ~~(g)~~ (i) Notwithstanding any provision of this code to the contrary, acting as guardian,  
46 conservator, trustee or attorney for or holding power of attorney for an elderly person, protected  
47 person or incapacitated adult shall not, standing alone, constitute a defense to a violation of  
48 subsection (a) of this section.

NOTE: The purpose of this bill is to increase the criminal penalties for conviction of the offense of financial exploitation of an elderly person, protected person or incapacitated person.

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