

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 308

SENATORS WELD, IHLENFELD, AND JEFFRIES, *original sponsors*

[Originating in the Committee on the Judiciary;

reported on January 30, 2020]

1 A BILL to amend and reenact §55-7J-6 of the Code of West Virginia, 1931, as amended, relating
2 to creating criminal penalties for violation of orders issued for the protection of victims of
3 financial exploitation; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.

**ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED
PERSON, OR INCAPACITATED ADULT.**

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

1 (a) An elderly person, protected person, or incapacitated adult may bring an action to
2 enjoin the alleged commission of financial exploitation and may petition the court to freeze the
3 assets of the person allegedly committing the financial exploitation in an amount equal to, but not
4 greater than, the alleged value of lost property or assets for purposes of restoring to the victim
5 the value of the lost property or assets. The burden of proof required to freeze the assets of a
6 person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon
7 a finding that the elderly person, protected person, or incapacitated adult has been formally
8 exploited, the court may:

9 (1) Grant injunctive relief;

10 (2) Order the violator to, in escrow an amount of money equivalent to the value of the
11 misappropriated assets for distribution to the aggrieved elderly person, protected person, or
12 incapacitated adult;

13 (3) Order the violator to return to the elderly person, protected person, or incapacitated
14 person any real or personal property which was misappropriated; or

15 (4) Provide for the appointment of a receiver.

16 (b) In an action under §55-7J-1 of this code, the court may void or limit the application of
17 contracts or clauses resulting from the financial exploitation.

18 (c) In an action brought under this article, upon the filing of the complaint or on the
19 appearance of any defendant, claimant, or other party, or at any later time, the court may require
20 the plaintiff, defendant, claimant, or other party or parties to post security, or additional security,
21 in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against
22 that party or that the party may be directed to pay by any interlocutory order, by the final judgment
23 or after appeal.

24 (d) An order entered under this section shall state that a violation of the order may result
25 in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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 in the amount of less than \$1,000 is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one
4 year, or both fined and confined.

5 (b) Any person who financially exploits an elderly person, protected person, or an
6 incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction
7 thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not
8 less than two nor more than 20 years.

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

11 (d) In determining the value of the money, goods, property, or services referred to in
12 subsection (a) of this section, it shall be permissible to cumulate amounts or values where such

13 money, goods, property, or services were fraudulently obtained as part of a common scheme or
14 plan.

15 (e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and
16 as permitted by ~~subsection thirteen, section four of said article~~ §31A-2A-4 of this code, others
17 engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers,
18 relatives, and other concerned persons are permitted to report suspected cases of financial
19 exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and
20 to the Department of Health and Human Resources, Adult Protective Services Division, or
21 Medicaid Fraud Division, as appropriate. Public officers and employees are required to report
22 suspected cases of financial exploitation to the appropriate entities as stated above. The requisite
23 agencies shall investigate or cause the investigation of the allegations.

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

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

32 (h) For the purposes of this section:

33 (1) "Incapacitated adult" means a person as defined by §61-2-29 of this code;

34 (2) "Elderly person" means a person who is 65 years or older;

35 (3) "Financial exploitation" or "financially exploit" means the intentional misappropriation
36 or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but
37 shall not apply to a transaction or disposition of funds or assets where the accused made a good-

38 faith effort to assist the elderly person, protected person, or incapacitated adult with the
39 management of his or her money or other things of value; and

40 (4) "Protected person" means any person who is defined as a "protected person" in §44A-
41 1-4 of this code and who is subject to the protections of chapter 44A or 44C of this code.

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

46 (j) Any person who willfully violates a material term of an order entered pursuant to §55-
47 7J-5 of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

48 (1) For the first offense, be fined not more than \$1,000 or confined in jail not more than 90
49 days, or both fined and confined; and

50 (2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail
51 not more than one year, or both fined and confined.