

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2671

BY DELEGATES ROWAN, SYPOLT, MARTIN, MANDT, QUEEN,

HANNA, ZUKOFF, PINSON, ROHRBACH, SMITH AND J. KELLY

[Passed April 10, 2021; in effect ninety days from passage.]

1 AN ACT to amend and reenact §55-7J-1, §55-7J-4, §55-7J-5, and §55-7J-6 of the Code of West
2 Virginia, 1931, as amended; and to amend and reenact §61-2-29b of said code, all relating
3 to financial exploitation of elderly persons, protected persons or incapacitated adults;
4 updating terms; clarifying actions by civil complaint, petition for financial exploitation
5 protective order, or both; providing that financial exploitation protective orders are
6 temporary; requiring notice be given to the person alleged to be engaging in financial
7 exploitation as soon as practicable; requiring a full adversarial hearing on the merits before
8 a court before final relief may be granted; including criminal penalties for violation or
9 contempt of protective orders for victims of financial exploitation; and requiring notice of
10 potential criminal penalties in all injunctive or protective orders.

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-1. Action for financial exploitation of an elderly person, protected person, or incapacitated adult; definitions.

1 (a) Any elderly person, protected person, or incapacitated adult against whom an act of
2 financial exploitation has been committed may bring an action under this article against any
3 person who has committed an act of financial exploitation against him or her by filing a civil
4 complaint for financial exploitation, a petition for a financial exploitation protective order, or both.

5 (b) For the purposes of this article:

6 (1) "Incapacitated adult" has the same meaning as prescribed under §61-2-29 of this code;

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

8 (3) "Financial exploitation" or "financially exploit" means the intentional misappropriation
9 or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly

10 person, protected person, or incapacitated adult, but may not apply to a transaction or disposition
11 of funds or assets where the defendant made a good-faith effort to assist the elderly person,
12 protected person, or incapacitated adult with the management of his or her money or other things
13 of value; and

14 (4) "Protected person" means any person who is defined as a "protected person" in §44A-
15 1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or §44C-1-1 *et seq.* of
16 this code.

17 (c) Any person who believes that an elderly person, protected person, or incapacitated
18 adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds
19 or undue influence may bring an action for a protective order pursuant to this section in the
20 magistrate court or circuit court in the county in West Virginia in which the elderly person,
21 protected person, or incapacitated adult resides or the financial exploitation occurred: *Provided,*
22 That an order granting a financial exploitation protective order to stay further diminution of the
23 assets of an elderly person, protected person, or incapacitated adult shall be temporary in nature.

24 (d) An action for a financial exploitation protective order brought under this section is
25 commenced by the filing of a verified petition. Temporary relief may be granted without notice to
26 the person alleged to be engaging in financial exploitation and without that person being present:
27 *Provided,* That notice shall be provided to the person alleged to be engaging in financial
28 exploitation as soon as practicable, and that no final relief may be granted on the petition without
29 a full, adversarial evidentiary hearing on the merits before the court.

30 (e) If a magistrate court grants the petition for a financial exploitation protective order and
31 issues a temporary financial exploitation protective order, the magistrate court shall immediately
32 transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of
33 the notice of transfer from the magistrate court, the circuit court shall set the matter for a review
34 hearing within 20 days. Any review hearing shall be a full, adversarial evidentiary hearing on the
35 merits before the court. After a hearing, the circuit court may issue a permanent protective order

36 containing any relief the circuit court determines necessary to protect the alleged victim if the court
37 finds by a preponderance of the evidence that:

38 (1) The respondent has committed an act against the victim that constitutes financial
39 exploitation; and

40 (2) There is reasonable cause to believe continued financial exploitation will occur unless
41 relief is granted; or

42 (3) The respondent consents to entry of the permanent protective order.

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

§55-7J-4. Attorneys' fees; court costs and burden of proof; statute of limitations.

1 (a) The court may award reasonable attorneys' fees and costs to a person that brings an
2 action under this article and prevails.

3 (b) The standard of proof in proving that a person committed financial exploitation in an
4 action pursuant to this article is a preponderance of the evidence.

5 (c) An action under this article shall be brought within two years from the date of the
6 violation or from the date of discovery, whichever is later in time.

§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 place in escrow an amount of money equivalent to the value of
11 the 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;

15 (4) Provide for the appointment of a receiver; or

16 (5) Order any combination or all of the above.

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

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

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

§55-7J-6. Penalty for violation of injunction; retention of jurisdiction.

1 Any person who violates the terms of an order issued under this article shall be subject to
2 proceeding for contempt of court. The court issuing the injunction may retain jurisdiction if, in its
3 discretion, it determines that to do so is in the best interest of the elderly person, protected person,
4 or incapacitated adult. If the court determines that an injunction issued under §55-7J-5 of this
5 code has been violated, the court may award reasonable costs to the party asserting that a
6 violation has occurred.

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 the
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 §31A-2A-4 of this code, others engaged in financially related activities, as defined
17 by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to
18 report suspected cases of financial exploitation to state or federal law-enforcement authorities,
19 the county prosecuting attorney, and to the Department of Health and Human Resources, Adult
20 Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and
21 employees are required to report suspected cases of financial exploitation to the appropriate
22 entities as stated above. The requisite agencies shall investigate or cause the investigation of the
23 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 §44A-1-1 *et seq.* or § 44C-1-1 *et seq.* of
42 this code.

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

47 (j) Any person who willfully violates a material term of an order entered pursuant to §55-
48 7J-1 *et seq.* of this code is guilty of a misdemeanor and, upon conviction, shall:

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor