

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2671

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[Introduced February 23, 2021; referred to the
Committee on Senior, Children and Family issues
then to the Judiciary]

1 A BILL 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; including criminal penalties for violation or contempt of
5 protective orders for victims of financial exploitation; and requiring notice of penalties in all
6 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 action for~~ order granting a financial exploitation protective order relief brought in the
23 ~~magistrate court of the county of residence of the elderly person, protected person, or~~
24 ~~incapacitated adult believed to be the victim of financial exploitation~~ to stay further diminution of
25 the persons assets shall be temporary in nature.

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

32 (e) If a magistrate court grants the petition for a financial exploitation protective order and
33 issues a temporary protective order, the magistrate court shall immediately transfer the matter to
34 the circuit court of the county in which the petition was filed. Upon receipt of the notice of transfer
35 from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days.
36 Any review hearing shall be a full, adversarial evidentiary hearing on the merits before the court.
37 After a hearing, the circuit court may issue a permanent protective order containing any relief the
38 circuit court determines necessary to protect the alleged victim if the court finds by a
39 preponderance of the evidence that:

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

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

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

45 (f) An order entered under this section shall state that a violation of the order may result
46 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 ~~section~~ 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; or

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

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

17 (b) In ~~an~~ any action brought under ~~§55-7J-4 of this code~~ article, the court may void or limit
18 the application of contracts or clauses resulting from the financial exploitation.

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

1 Any person who violates the terms of any order issued under ~~section five of~~ this article
2 shall be subject to proceeding for contempt of court. The court issuing the injunction may retain
3 jurisdiction if, in its discretion, it determines that to do so is in the best interest of the elderly
4 person, protected person or incapacitated adult. Whenever the court determines that an injunction
5 issued under section five of this article has been violated, the court may award reasonable costs
6 to the party asserting that a 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 twenty 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 ~~section one, article two a,~~
16 ~~chapter thirty one a of this code~~ §31A-2A-1 and as permitted by subsection thirteen, section four
17 of said article, others engaged in financially related activities, as defined by §31A-8c-1~~section~~
18 ~~one, of article eight c, chapter thirty one a this code~~ caregivers, relatives and other concerned
19 persons are permitted to report suspected cases of financial exploitation to state or federal law-
20 enforcement authorities, the county prosecuting attorney and to the Department of Health and
21 Human Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate.
22 Public officers and employees are required to report suspected cases of financial exploitation to

23 the appropriate entities as stated above. The requisite agencies shall investigate or cause the
24 investigation of the allegations.

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

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

33 (h) For the purposes of this section:

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

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

36 (3) "Financial exploitation" or "financially exploit" means the intentional misappropriation
37 or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but
38 shall not apply to a transaction or disposition of funds or assets where the accused made a good-
39 faith effort to assist the elderly person, protected person or incapacitated adult with the
40 management of his or her money or other things of value; and

41 (4) "Protected person" means any person who is defined as a "protected person" in ~~section~~
42 ~~four, article one, chapter forty-four-a of this code §44A-1-4~~ and who is subject to the protections
43 of ~~chapter forty-four-a or forty-four-c of this code~~ §44A-1-1 et seq. or §44C-1-1 et seq.

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

48 (j) Any person who willfully violates a material term of an order entered pursuant to ~~§55-~~
49 ~~7J-5~~ §55-7J-1 et seq. of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

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

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

54 ~~(k) Any order issued under §55-7J-1 et seq. of this code shall state that a violation of the~~
55 ~~order may result in (1) criminal prosecution and/or (2) incarceration and list the fines and penalties~~
56 ~~therefor: *Provided*, That any criminal charges for violation of an order issued under §55-7J-1 et~~
57 ~~seq. of this code must be brought in accordance with the West Virginia Rules of Criminal~~
58 ~~Procedure by criminal complaint, indictment and/or information properly obtained by the~~
59 ~~prosecuting authority of the county where the violation of such order has taken place and that any~~
60 ~~order for arrest of an individual allegedly in violation of any such order shall only be issued in~~
61 ~~accordance with the West Virginia Rules of Criminal Procedure or §§53-7-1 through 53-7-8 of this~~
62 ~~code, except that the court in its discretion, for good cause shown, may waive the plaintiff's bond~~
63 ~~requirement set forth in §53-7-2 of this code.~~

64 ~~(l) A law enforcement officer of this state, upon determining a valid financial exploitation~~
65 ~~protective order exists and that the order has been violated as set forth in §61-2-29b(k) of this~~
66 ~~code, shall enforce the order and arrest the individual violating the order with a warrant as set~~
67 ~~forth in §15-2-12 of this code or pursuant to judicial order issued under §53-7-1 of this code and~~
68 ~~take him or her into custody.~~

NOTE: The purpose of this bill is to update and coordinate the financial exploitation statute with applicable rules and other related statutes. The bill clarifies proceedings regarding civil complaints and petitions for financial exploitation protective orders; makes technical changes; includes potential criminal penalties for violation of the provisions of a financial exploitation protective order and requires notices of fines and penalties in all injunctive or protective orders.

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