

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 397**

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

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported February 4, 2014.]  
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12 A BILL to amend and reenact §61-2-29b of the Code of West Virginia,  
13 1931, as amended, relating to clarifying definition of  
14 "financial exploitation" of the elderly or certain other  
15 protected persons; and declaring that being a guardian,  
16 conservator, trustee or attorney or holding power of attorney  
17 is statutorily alone not a defense to financial exploitation.

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

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

21 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

22 **§61-2-29b. Financial exploitation of an elderly person, protected**  
23 **person or incapacitated adult; penalties;**  
24 **definitions.**

1           (a) ~~Financial exploitation occurs when a person intentionally~~  
2 ~~misappropriates or misuses the funds, or assets of an elderly~~  
3 ~~person, protected person or incapacitated adult, Any person who~~  
4 ~~violates this section is guilty of larceny and shall be ordered to~~  
5 ~~pay restitution.~~ Any person who financially exploits an elderly  
6 person, protected person or an incapacitated adult shall be guilty  
7 of larceny and subject to the penalties contained in section  
8 thirteen, article three of this chapter. Any person convicted of  
9 a violation of this section shall, in addition to any other  
10 penalties at law, be subject to an order of restitution.

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

16           (c) Financial institutions and their employees, as defined by  
17 section one, article two-a, chapter thirty-one-a of this code and  
18 as permitted by section four, subsection thirteen of that article,  
19 others engaged in financially related activities, as defined by  
20 section one, article eight-c, chapter thirty-one-a of this code,  
21 caregivers, relatives and other concerned persons are permitted to  
22 report suspected cases of financial exploitation to state or  
23 federal law-enforcement authorities, the county prosecuting  
24 attorney and to the Department of Health and Human Resources, Adult

1 Protective Services Division or Medicaid Fraud Division, as  
2 appropriate. Public officers and employees are required to report  
3 suspected cases of financial exploitation to the appropriate  
4 entities as stated above. The requisite agencies shall investigate  
5 or cause the investigation of the allegations.

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

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

18 (f) For the purposes of this section:

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

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

23 (3) "Financial exploitation" or "financially exploit" means  
24 the intentional misappropriation or misuse of funds or assets of an

1 elderly person, protected person or incapacitated adult by any  
2 means for the benefit of another; and

3       ~~(3)~~ (4) "Protected person" means any person who is defined as  
4 a "protected person" in ~~subsection thirteen,~~ section four, article  
5 one, chapter forty-four-a of this code and who is subject to the  
6 protections of chapter forty-four-a or forty-four-c of this code.

7       (g) Notwithstanding any provision of this code to the  
8 contrary, acting as guardian, conservator, trustee or attorney for  
9 or holding power of attorney for an elderly person, protected  
10 person or incapacitated adult shall not, standing alone, constitute  
11 a defense to a violation of subsection (a) of this section.