

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2618**

BY DELEGATE ROWAN, MARTIN, C., ROHRBACH, SYPOLT,

GRAVES, LOVEJOY, LONGSTRETH, BOGGS, MANDT,

MAYNARD AND KELLY, J.

[Passed March 9, 2019; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §55-7J-1 of the Code of West Virginia, 1931, as amended, relating  
2 to amending the definition of the terms “financial exploitation” or “financially exploit” to  
3 include the use of undue influence resulting in diminishment of assets of an elderly person,  
4 protected person or incapacitated adult; authorizing cause of action in magistrate and  
5 circuit court for financial exploitation due to intentional misappropriation or misuse of funds  
6 or undue influence against an elderly person, protected person or incapacitated adult;  
7 temporary relief may be granted without notice to the respondent; providing for issuance  
8 of protective orders; providing protective orders issued by a magistrate court are  
9 temporary; requiring magistrate court to transfer matter to circuit court upon issuance of a  
10 temporary protective order; setting time frame for hearing; and authorizing circuit court to  
11 issue a permanent protective order under stated circumstances.

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

**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.

4 (b) For the purposes of this article:

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

6 (2) “Elderly person” means a person who is 65 years or older;

7 (3) “Financial exploitation” or “financially exploit” means the intentional misappropriation  
8 or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly  
9 person, protected person, or incapacitated adult, but may not apply to a transaction or disposition  
10 of funds or assets where the defendant made a good-faith effort to assist the elderly person,

11 protected person, or incapacitated adult with the management of his or her money or other things  
12 of value; and

13 (4) "Protected person" means any person who is defined as a "protected person" in §44A-  
14 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  
15 this code.

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

24 (d) An action under this section is commenced by the filing of a verified petition. Temporary  
25 relief may be granted without notice to the person alleged to be engaging in financial exploitation  
26 and without that person being present.

27 (e) If a magistrate court grants the petition and issues a temporary protective order, the  
28 magistrate court shall immediately transfer the matter to the circuit court of the county in which  
29 the petition was filed. Upon receipt of the notice of transfer from the magistrate court, the circuit  
30 court shall set the matter for a review hearing within 20 days. After a hearing, the circuit court may  
31 issue a permanent protective order containing any relief the circuit court determines necessary to  
32 protect the alleged victim if the court finds by a preponderance of the evidence that:

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

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

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



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*

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The within ..... this the.....  
day of ....., 2019.

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*Governor*