

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4297**

BY DELEGATE WESTFALL

[Introduced January 20, 2022; referred to the  
Committee on Government Organization then the  
Judiciary]



1 A BILL to amend and reenact §9-6-8 of the Code of West Virginia, 1931, as amended, relating to  
2 the coordination of efforts and sharing of information between the Department of Health  
3 and Human Resources and the State Auditor's Office for the purpose of conducting  
4 investigations of financial exploitation of a vulnerable adult.

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

**ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

**§9-6-8. Confidentiality of records.**

1 (a) Except as otherwise provided in this section, all records of the department, state and  
2 regional long-term care ombudsmen, nursing home or facility administrators, the Office of Health  
3 Facility Licensure and Certification, and all protective services agencies concerning an adult or  
4 facility resident under this article are confidential and may not be released, except in accordance  
5 with the provisions of §9-6-11 of this code.

6 (b) Unless the vulnerable adult concerned is receiving adult protective services, or unless  
7 there are pending proceedings regarding the vulnerable adult, the records maintained by the adult  
8 protective services agency shall be destroyed 30 years following their preparation.

9 (c) Notwithstanding the provisions of subsection (a) of this section or any other provision  
10 of this code to the contrary, records concerning reports of abuse, neglect, or financial exploitation  
11 of a vulnerable adult, including all records generated as a result of such reports, may be made  
12 available to:

13 (1) Employees or agents of the department who need access to the records for official  
14 business;

15 (2) Any law-enforcement agency investigating a report of known or suspected abuse,  
16 neglect, or financial exploitation of a vulnerable adult;

17 (3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or  
18 in which the alleged abuse, neglect, or financial exploitation occurred;

19 (4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court  
20 shall, before permitting use of the records in connection with any court proceeding, review the  
21 records for relevancy and materiality to the issues in the proceeding. The court may issue an  
22 order to limit the examination and use of the records or any part of the record;

23 (5) A grand jury, by subpoena, upon its determination that access to the records is  
24 necessary in the conduct of its official business;

25 (6) The recognized protection and advocacy agency for the disabled of the State of West  
26 Virginia;

27 (7) The victim; and

28 (8) The victim's legal representative, unless he or she is the subject of an investigation  
29 under this article.

30 (d) Notwithstanding the provisions of subsection (a) of this section or any other provision  
31 of this code to the contrary, summaries concerning substantiated investigative reports of abuse,  
32 neglect, or financial exploitation of vulnerable adults may be made available to:

33 Any person who the department has determined to have abused, neglected, or financially  
34 exploited the victim.

35 (e) Notwithstanding the provisions of subsection (a) of this section or any other provision  
36 of this code to the contrary, summaries concerning substantiated and unsubstantiated  
37 investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made  
38 available to:

39 (1) Any appropriate official of the state or regional long-term care ombudsman  
40 investigating a report of known or suspected abuse, neglect or financial exploitation of a  
41 vulnerable adult;

42 (2) Any person engaged in bona fide research or auditing, as defined by the department.  
43 However, information identifying the subjects of the report may not be made available to the  
44 researcher;

45 (3) Employees or agents of an agency of another state that has jurisdiction to investigate  
46 known or suspected abuse, neglect, or exploitation of vulnerable adults;

47 (4) A professional person when the information is necessary for the diagnosis and  
48 treatment of, and service delivery to, a vulnerable adult; and

49 (5) A department administrative hearing officer when the hearing officer determines the  
50 information is necessary for the determination of an issue before the officer.

51 (f) Notwithstanding the provisions of subsection (a), subsection (e), or any other provision  
52 of this code to the contrary, all records concerning substantiated and unsubstantiated referrals of  
53 financial exploitation of a vulnerable adult may be made available to the State Auditor's Office in  
54 order to carry out any investigations which that office or its appropriate divisions are required or  
55 authorized to undertake.

56 ~~(f)~~(g) The identity of any person reporting abuse, neglect, or financial exploitation of a  
57 vulnerable adult may not be released without that person's written consent to any person other  
58 than employees of the department responsible for protective services or the appropriate  
59 prosecuting attorney or law-enforcement agency. This subsection grants protection only for the  
60 person who reported the abuse, neglect, or financial exploitation and protects only the fact that  
61 the person is the reporter. This subsection does not prohibit the subpoena of a person reporting  
62 the abuse, neglect, or financial exploitation when deemed necessary by the prosecuting attorney  
63 or the department to protect a vulnerable adult who is the subject of a report, if the fact that the  
64 person made the report is not disclosed.

NOTE: The purpose of this bill is to facilitate the sharing of information between the Department of Health and Human Resources and the State Auditor's office in order to investigate reports of financial abuse and neglect of a vulnerable adult.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.