

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 5105

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MOORE, DITTMAN, AMOS, FUNKHOUSER, AND FLANIGAN

[Originating in the Committee on the Judiciary;

Reported on February 17, 2026]

1 A BILL to amend and reenact the Code of West Virginia, 1931, §55-7J-1, §55-7J-2, §55-7J-3, §55-
2 7J-5 and §55-7J-6; and to amend and reenact §61-2-29b of said code, all relating generally
3 to protections against financial exploitation of persons in recovery; establishing a cause of
4 action against a person who commits an act of financial exploitation against a person in
5 recovery; defining terms; restricting certain defenses which, standing alone, are based on
6 legal relationship to a person in recovery; providing for court-authorized remedies;
7 authorizing the award of increased damages in certain circumstances; establishing the
8 standard of proof; establishing the statute of limitations for actions brought under the
9 article; authorizing the court to freeze assets and order injunctive relief; providing options
10 the court may exercise upon a formal finding of exploitation; authorizing the court to require
11 posting security, or additional security, under certain circumstances; clarifying and creating
12 criminal penalties and fines upon conviction of certain offenses of financial exploitation of a
13 person in recovery; creating criminal penalties and fines for second, or subsequent
14 offenses, of exploitation of an elderly person, protected person, person in recovery, or an
15 incapacitated adult; and increasing the criminal penalty for the offense of financial
16 exploitation of \$1,000 or more relating to an elderly person, protected person, person in
17 recovery, or an incapacitated adult.

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, PERSON IN RECOVERY, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person, person in

recovery, or incapacitated adult; definitions.

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

(b) For the purposes of this article:

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

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

(3) "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, person in recovery, or incapacitated adult, but may not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person, person in recovery, or incapacitated adult with the management of his or her money or other things of value; and

(4) "Person in recovery" has the same meaning as prescribed under §61-2-29b of this code; and

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

(c) Any person who believes that an elderly person, protected person, person in recovery, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence may bring an action for a protective order pursuant to this section in the magistrate court or circuit court in the county in West Virginia in which the elderly person, protected person, person in recovery, or incapacitated adult resides or the financial exploitation occurred: *Provided*, That an order granting a financial exploitation protective order to

26 stay further diminution of the assets of an elderly person, protected person, person in recovery, or
27 incapacitated adult shall be temporary in nature.

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

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

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

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

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

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

§55-7J-2. Restriction of defenses, standing alone, based on legal relationship.

1 Notwithstanding any provision of this code to the contrary, acting in a position of trust and
2 confidence, including, but not limited to, as guardian, conservator, trustee or attorney for or holding

power of attorney for an elderly person, protected person, person in recovery, or incapacitated adult shall not, standing alone, constitute a defense to an action brought under this article.

§55-7J-3. Court authorized remedies.

(a) In an action brought against a person under this article upon a finding that an elderly person, protected person, person in recovery, or incapacitated adult has been financially exploited, the court may order:

(1) The return of property or assets improperly obtained, controlled or used; and

(2) An award of actual damages to the person who brought the action for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this article.

(b) In addition to the remedies provided in subsection (a) of this section, a court may order the following:

(1) For violations committed by a person who is not in a position of trust and confidence, payment of two times the amount of damages incurred or value of property or assets lost; and

(2) For violations committed by a person in a position of trust and confidence, payment of treble damages.

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

(a) An elderly person, protected person, person in recovery, or incapacitated adult may bring an action to enjoin the alleged commission of financial exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person, person in recovery, or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to place in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person, person in recovery, or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person, person in recovery, or incapacitated person any real or personal property which was misappropriated;

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

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

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

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

(d) An order entered under this section shall state that a violation of the order may result 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.

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

(a) Any person who financially exploits an elderly person, protected person, person in recovery, or an incapacitated adult in the amount of less than \$1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined. For a second or subsequent offense under this subsection, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional facility not less than two nor more than 10 years.

(b) Any person who financially exploits an elderly person, protected person, person in recovery, or an incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not less than ~~two~~ five nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

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

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report

21 suspected cases of financial exploitation to state or federal law-enforcement authorities, the
22 county prosecuting attorney, and to the Adult Protective Services Division, West Virginia
23 Department of Health Office of Inspector General, or Medicaid Fraud Division, as appropriate.
24 Public officers and employees are required to report suspected cases of financial exploitation to
25 the appropriate entities as stated above. The requisite agencies shall investigate or cause the
26 investigation of the allegations.

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

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

35 (h) For the purposes of this section:

36 (1) "Incapacitated adult" means a person as defined by §61-2-29 of this code;

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

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

44 (4) "Person in recovery" means a person who is actively seeking or receiving treatment for
45 addiction to drugs or alcohol, or who has done so within the past twenty-four months next
46 preceding the transaction upon which the violation is based; and

47 (5) "Protected person" means any person who is defined as a "protected person" in §44A-
48 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 this
49 code.

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

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

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

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

NOTE: The purpose of this bill is to prohibit the financial exploitation of a person in recovery.

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