WEST VIRGINIA CODE CHAPTER 55 ARTICLE 7J

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§55-7J-1. Action for financial exploitation of an elderly person, protected person, or incapacitated adult; definitions.

(a) Any elderly person, protected person, 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, 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, or incapacitated adult with the management of his or her money or other things of value; 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, 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, or incapacitated adult resides or the financial exploitation occurred: *Provided*, That an order granting a financial exploitation protective order to stay further diminution of the assets of an elderly person, protected person, or incapacitated adult shall be temporary in nature.

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

(e) If a magistrate court grants the petition for a financial exploitation protective order and issues a temporary financial exploitation protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was

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filed. Upon receipt of the notice of transfer from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days. Any review hearing shall be a full, adversarial evidentiary hearing on the merits before the court. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

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

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

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

(f) 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.

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

Notwithstanding any provision of this code to the contrary, acting in a position of trust and confidence, including, but not limited to, as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult shall not, standing alone, constitute a defense to an action brought under this article.

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§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 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.

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§55-7J-4. Attorneys' fees; court costs and burden of proof; statute of limitations.

(a) The court may award reasonable attorneys' fees and costs to a person that brings an action under this article and prevails.

(b) The standard of proof in proving that a person committed financial exploitation in an action pursuant to this article is a preponderance of the evidence.

(c) An action under this article shall be brought within two years from the date of the violation or from the date of discovery, whichever is later in time.

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

(a) An elderly person, protected person, 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, 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, or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person, 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.

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§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, 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.

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