WEST VIRGINIA CODE: §61-2-29B

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

(a) Any person who financially exploits an elderly person, protected person, 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.

(b) Any person who financially exploits an elderly person, protected person, 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 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 suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

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

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

(h) For the purposes of this section:

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(1) "Incapacitated adult" means a person as defined by §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 of an elderly person, protected person, or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused 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.

(i) Notwithstanding any provision of this code to the contrary, acting 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 a violation of subsection (a) of this section.

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

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

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

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