ENROLLED

SENATE BILL NO. 558

(By Senator Caldwell, et al.)

PASSED March 13, 2004

In Effect 90 Days From Passage
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Senate Bill No. 558
(BY SENATORS CALDWELL, ROWE AND MCKENZIE)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3-20 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-20a, all relating to crimes of embezzlement; removing certain evidentiary presumptions which have been deemed unconstitutional; creating a new crime of embezzlement related to the wilful and fraudulent misuse of a power of attorney or other fiduciary relationship; and providing that such crimes of embezzlement or fraudulent conversion to be punishable as larceny.

Be it enacted by the Legislature of West Virginia:

That §61-3-20 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-3-20a, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-20. Embezzlement.
If any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently converts to his own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which shall have come into his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be guilty of the larceny thereof. If such guilty person be an officer, agent, clerk or servant of any banking institution, he shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten years. And it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security for money which is so taken, converted to his own use or embezzled by him.

And whenever any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, shall appropriate or use for his own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, he shall be held to have embezzled the same and be guilty of the larceny thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his own benefit or for the benefit of any other person.
§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.

1 Any person who holds a fiduciary power of attorney or who has a fiduciary relationship with a person and in so doing wilfully and with intent to defraud embezzles, misappropriates or fraudulently converts for his or her own benefit, or for the benefit of another, the assets or property, real or personal, with which he or she has been entrusted, or misuses or misappropriates funds from the person to whom he or she owes a fiduciary duty or misuses any account, line of credit or credit card of the principal for purposes not contemplated by the terms of the power of attorney instrument or fiduciary relationship, or for purposes not intended by the principal in the execution of the power of attorney or for purposes not intended by the fiduciary relationship, shall be held to have embezzled the same and, upon conviction, shall be deemed guilty of the larceny thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of April, 2004.

Governor
PRESENTED TO THE GOVERNOR

Date 4.1.04
Time 10:00 AM