WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 397

(SENATORS WILLIAMS, LAIRD, UNGER, TUCKER, PLYMALE, PALUMBO AND STOLLINGS, ORIGINAL SPONSORS)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]
AN ACT to amend and reenact §61-2-29b of the Code of West Virginia, 1931, as amended, relating to clarifying definition of "financial exploitation" of the elderly or certain other protected persons; and declaring that being a guardian, conservator, trustee or attorney or holding power of attorney is statutorily alone not a defense to financial exploitation.

Be it enacted by the Legislature of West Virginia:

That §61-2-29b of the Code of West Virginia, 1931, as amended, be amended to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§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 shall be guilty of
larceny, and subject to the penalties contained in section thirteen, article three of this chapter. 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.

(b) 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 such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

(c) Financial institutions and their employees, as defined by section one, article two-a, chapter thirty-one-a of this code and as permitted by section four, subsection thirteen of said article, others engaged in financially related activities, as defined by section one, article eight-c, chapter thirty-one-a 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 Department of Health and Human Resources, 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.

(d) 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.
(c) 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.

(f) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by section twenty-nine of this article;

(2) "Elderly person" means a person who is sixty-five 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 section four, article one, chapter forty-four-a of this code and who is subject to the protections of chapter forty-four-a or forty-four-c of this code.

(g) 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.
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 of the House of Delegates

The within ....................... this............. Day of .................., 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 1:20 pm