

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 327

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Judiciary

Civil Actions - Financial Exploitation of Susceptible Adults and Older Adults
(Maryland SAFE Act)

This bill establishes a civil cause of action that a financially exploited “susceptible adult” or “older adult” may bring against a financial exploiter of the susceptible or older adult. The cause of action authorized under the bill survives the death of the susceptible or older adult and is in addition to and cumulative with any other criminal or administrative claims, legal or equitable cause of action, and other remedies available to the susceptible or older adult. The bill includes additional provisions specifying individuals and entities who may bring a cause of action on the susceptible or older adult’s behalf, damages and relief that may be awarded, and a statute of limitations for this cause of action. The bill applies prospectively to causes of action arising on or after the bill’s October 1, 2021 effective date.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Civil Action for Financial Exploitation of a Susceptible or Vulnerable Adult

A “susceptible adult” is an adult who is unable to perform, without prompting or assistance, one or more activities of daily living, is unable to protect the adult’s rights, or has diminished executive functioning due to advanced age; mental, emotional, sensory, or physical disability or disease; impaired mobility; habitual drunkenness; addiction to drugs; or hospitalization. An “older adult” is an individual who is at least age 68.

A susceptible or older adult who has been subject to “financial exploitation,” as defined under the bill, may bring a cause of action for damages and other appropriate relief against a person who committed financial exploitation against the susceptible or older adult. Other specified individuals serving in various representative capacities for a susceptible or older adult are also authorized to bring this cause of action. Examples of these individuals include a guardian, a trustee, the susceptible or older adult’s presumptive heir, the personal representative or special administrator of a deceased susceptible or older adult’s estate, and a government agency that otherwise has authority and jurisdiction.

A plaintiff may recover compensatory damages, and a party who brings an action to recover for injury or loss and is awarded compensatory damages may also seek and be awarded up to three times the compensatory damages and prejudgment interest. Damages awarded in accordance with the bill are in addition to and cumulative with other lawful and administrative damages available to a party. A party who brings a cause of action is also entitled to other appropriate remedial relief as specified under the bill, including injunctive relief. These remedies are in addition to and cumulative with other legal, equitable, and administrative remedies available to a party.

The court may award reasonable attorney’s fees and expenses to any person who brings an action for injury or loss and is awarded damages or any other remedy. However, if a court finds that an action was brought in bad faith or is frivolous, the court may order the offending party to pay the other party’s attorney’s fees and expenses.

In general, the cause of action authorized under the bill must be brought within five years after the susceptible or older adult or the susceptible or older adult’s representative discovers or through the exercise of reasonable diligence, should have discovered the facts constituting financial exploitation. However, if a criminal prosecution is commenced that arises out of the same facts as the civil cause of action, the time during which the prosecution is pending does not contribute towards calculation of the five-year statute of

limitations. Once the criminal prosecution has concluded, the action may be brought within the later of one year or the remaining period of the five-year statute of limitations.

Exception for Financial Institutions

The bill’s provisions do not apply to an act taken by any State or federal bank, trust company, credit union, or savings and loan association, or a subsidiary or affiliate of any of these institutions.

Office of the Attorney General

The Consumer Protection Division (CPD) of the Office of the Attorney General (OAG) and the Securities Commissioner of the Division of Securities in OAG may bring the civil action established under the bill on behalf of a susceptible adult or an older adult. If CPD or the Securities Commissioner prevails in an action brought under the bill, CPD or the Securities Commissioner may recover the costs of the action for the use of OAG.

Current Law:

Exploitation of a Vulnerable Adult (Section 8-801 of the Criminal Law Article)

A “vulnerable adult” is an adult who lacks the physical or mental capacity to provide for the adult’s daily needs. Under the offense of exploitation of a vulnerable adult, a person may not knowingly and willfully obtain, by deception, intimidation, or undue influence, the property of an individual that the person knows or reasonably should know is at least age 68 or is a vulnerable adult with intent to deprive the individual of the individual’s property. The statutory prohibition on exploitation of a vulnerable adult may not be construed to impose criminal liability on a person who, at the request of the victim of the offense, the victim’s family, or the court-appointed guardian of the victim, has made a good faith effort to assist the victim in the management of or transfer of the victim’s property.

Penalties for the offense vary based on the value of the property, as listed below. A sentence imposed for the offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation.

<u>Property Value</u>	<u>Maximum Penalty</u>
Less than \$1,500	Misdemeanor – 1 year and/or \$500
\$1,500 to less than \$25,000	Felony – 5 years and/or \$10,000
\$25,000 to less than \$100,000	Felony – 10 years and/or \$15,000
\$100,000 or more	Felony – 20 years and/or \$25,000

In addition to the penalties listed above, violators must restore the property taken or its value to the owner or, if the owner is deceased, restore the property or its value to the owner's estate. If a defendant fails to restore fully the property taken or its value as ordered, the defendant is disqualified, to the extent of the defendant's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant has been convicted. The defendant has the burden of proof with respect to establishing that the defendant has fully restored the property taken or its value.

Furthermore, a violation of § 8-801 of the Criminal Law Article is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) and is subject to MCPA's civil and criminal penalty provisions.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

CPD is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year. Chapter 160 of 2020 expanded CPD's authority to include bringing an action for an MCPA violation derived from the exploitation of a vulnerable adult on behalf of a victim or a deceased victim's estate. If the division prevails in an MCPA action, the costs of the action may be recovered for the use of OAG.

Office of the Attorney General

CPD is generally authorized to bring a civil action for damages against a person who violates the State's prohibition against exploitation of a vulnerable adult on behalf of a

victim of the offense or, if the victim is deceased, the victim's estate. Chapter 794 of 2018 extended this authority to the Securities Commissioner of the Division of Securities in OAG. The division and commissioner may recover damages for property loss or damage. If the division or commissioner prevails in an action, the costs of the action may be recovered for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

Chapter 3 of 2021 establishes the Senior and Vulnerable Adult Asset Recovery Unit in OAG. This dedicated unit is authorized to bring a civil action for damages, as specified, against a person who violates the State's prohibition against exploitation of a vulnerable adult on behalf of the victim of the offense or, if the victim is deceased, the victim's estate. The unit may recover damages for property loss or damage. If the unit prevails in an action, the costs of the action may be recovered for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

State Expenditures: The bill authorizes a "government agency that otherwise has authority and jurisdiction," including specified units within OAG to bring a civil action on behalf of a financially exploited susceptible or older adult (as defined under the bill). OAG did not respond to multiple requests for information on the fiscal and operational impact of the bill. However, given OAG's extensive involvement in this area of enforcement and the number of OAG units with the authority to pursue actions related to the bill, the Department of Legislative Services advises that the bill is not expected to materially affect OAG operations or finances. As noted above, units of OAG specifically authorized to bring a civil action under the bill are also authorized to recover the costs of bringing the action for the use of OAG should OAG prevail in court.

Pursuant to Chapter 3 of 2021, which was the subject of a veto override on February 11, 2021, beginning in fiscal 2022, the Governor must annually include an appropriation of at least \$250,000 in the State budget for the Senior and Vulnerable Adult Asset Recovery Unit, at the direction of the Attorney General, to (1) hire new staff for the unit and (2) investigate and assist the unit in bringing civil actions. These funds were not included in the fiscal 2022 budget.

The Judiciary advises that the bill is not expected to significantly affect the operations or finances of the trial courts.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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