
By: Senators Astle and Hollinger

Introduced and read first time: January 16, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions - Vulnerable Elderly Adults - Abuse, Neglect, or Exploitation**

3 FOR the purpose of allowing a civil action to be brought on behalf of a vulnerable elderly
4 adult who has been subjected to abuse, neglect, or exploitation while in the care of
5 certain health care facilities; specifying certain persons who may be civilly liable in
6 an action allowed under this Act; creating a certain presumption; allowing a
7 plaintiff to be awarded certain damages, costs, and attorney's fees; allowing an
8 action under this Act to be initiated or maintained if the vulnerable elderly adult
9 dies; allowing certain persons to bring a suit under this Act; allowing the State to be
10 reimbursed for certain costs under certain circumstances; encouraging parties to
11 certain disputes first to try to resolve their disputes by certain means; declaring that
12 this Act does not affect the Maryland Tort Claims Act; defining certain terms;
13 providing for the application of this Act; and generally relating to actions brought
14 on behalf of vulnerable elderly adults who are subject to abuse, neglect, or
15 exploitation.

16 BY repealing and reenacting, with amendments,
17 Article - Family Law
18 Section 14-101(a)
19 Annotated Code of Maryland
20 (1991 Replacement Volume and 1996 Supplement)

21 BY adding to
22 Article - Family Law
23 Section 14-501 to be under the new subtitle "Subtitle 5. Civil Remedies"
24 Annotated Code of Maryland
25 (1991 Replacement Volume and 1996 Supplement)

26 Preamble

27 WHEREAS, The General Assembly recognizes that the needs and problems of
28 vulnerable elderly adults of this State deserve special attention because vulnerable elderly
29 adults are especially susceptible to abuse, neglect, and exploitation; and

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1 WHEREAS, Vulnerable elderly adults may have developmental disabilities and
2 mental and verbal limitations that often make it impossible for them to ask for help,
3 represent themselves in court, or retain legal counsel; and

4 WHEREAS, Criminal cases of abuse of vulnerable elderly adults are seldom
5 prosecuted and few civil cases are brought because of a lack of incentive to prosecute,
6 problems of proof, or court delays; and

7 WHEREAS, The General Assembly acknowledges that it has a responsibility to
8 protect vulnerable elderly adults, who are a disadvantaged class; and

9 WHEREAS, Vulnerable elderly adults who are victims of abuse, neglect, or
10 exploitation and their families should be afforded easy access to the civil courts to protect
11 their rights; now, therefore,

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Family Law**

15 14-101.

16 (a) In SUBTITLES 1 THROUGH 4 OF this title the following words have the
17 meanings indicated.

18 SUBTITLE 5. CIVIL REMEDIES.

19 14-501.

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (2) "ABUSE" MEANS:

23 (I) INTENTIONAL INFLICTION OF PHYSICAL HARM;

24 (II) INJURY CAUSED BY A NEGLIGENT ACT OR OMISSION;

25 (III) UNREASONABLE CONFINEMENT; OR

26 (IV) RAPE OR A SEXUAL OFFENSE.

27 (3) "NEGLECT" MEANS A PATTERN OF CONDUCT OR INACTION THAT:

28 (I) IS TAKEN WITHOUT THE INFORMED CONSENT OF A
29 VULNERABLE ELDERLY ADULT BY A PERSON WHO HAS A DUTY OF CARE FOR THE
30 VULNERABLE ELDERLY ADULT; AND

31 (II) RESULTS IN THE DEPRIVATION OF FOOD, WATER,
32 MEDICATION, MEDICAL SERVICES, SHELTER, COOLING SERVICES, HEATING
33 SERVICES, OR OTHER SERVICES ESSENTIAL FOR PHYSICAL OR MENTAL HEALTH.

34 (4) "EXPLOITATION" MEANS THE UNLAWFUL OR IMPROPER USE OF A
35 VULNERABLE ELDERLY ADULT OR THE RESOURCES OF A VULNERABLE ELDERLY
36 ADULT FOR THE PROFIT OR ADVANTAGE OF ANOTHER.

1 (5) "VULNERABLE ELDERLY ADULT" MEANS AN INDIVIDUAL 60 YEARS
2 OF AGE OR OLDER WHO HAS THE FUNCTIONAL, MENTAL, OR PHYSICAL INABILITY
3 TO PROVIDE FOR PERSONAL CARE OR TO PROTECT AGAINST ABUSE, NEGLECT, OR
4 EXPLOITATION.

5 (B) (1) IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE LAW,
6 AN ACTION FOR DAMAGES MAY BE BROUGHT ON BEHALF OF A VULNERABLE
7 ELDERLY ADULT WHO HAS BEEN SUBJECTED TO ABUSE, NEGLECT, OR
8 EXPLOITATION WHILE UNDER THE CARE OF A HEALTH CARE FACILITY AS DEFINED
9 UNDER TITLE 19, SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE.

10 (2) PERSONS WHO MAY BE FOUND CIVILLY LIABLE IN AN ACTION
11 BROUGHT UNDER THIS SECTION INCLUDE AN OWNER, AGENT, OFFICER, DIRECTOR,
12 OR PARTNER OF THE HEALTH CARE FACILITY.

13 (C) (1) AN ACTION MAY BE BROUGHT UNDER THIS SECTION BY A
14 GUARDIAN, SPOUSE, ADULT CHILD, PARENT, ADULT SIBLING OR OTHER RELATIVE,
15 CLOSE FRIEND, FINANCIAL INSTITUTION, ATTORNEY, ACCOUNTANT, OR OTHER
16 PERSON WHO HAS THE RESPONSIBILITY OF THE CARE OF THE VULNERABLE
17 ELDERLY ADULT OR THE VULNERABLE ELDERLY ADULT'S FUNDS OR PROPERTY.

18 (2) IF THE VULNERABLE ELDERLY ADULT WHO IS THE PLAINTIFF IN
19 THE ACTION DIES, THE RIGHT TO INITIATE OR MAINTAIN THE ACTION ON PETITION
20 SHALL ACCRUE TO THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
21 VULNERABLE ELDERLY ADULT FOR THE BENEFIT OF THE SURVIVING SPOUSE,
22 CHILD, OR OTHER HEIR.

23 (D) THE STANDARD OF PROOF IN ACTIONS BROUGHT UNDER THIS SECTION IS
24 THE PREPONDERANCE OF THE EVIDENCE.

25 (E) A FINDING OF ABUSE, NEGLECT, OR EXPLOITATION UNDER THIS SECTION
26 CREATES A PRESUMPTION OF ACTUAL MALICE.

27 (F) (1) A PREVAILING PLAINTIFF MAY BE AWARDED ACTUAL,
28 CONSEQUENTIAL, AND PUNITIVE DAMAGES, THE COSTS OF THE SUIT, REASONABLE
29 ATTORNEY'S FEES AS AWARDED BY THE COURT AND NOT NECESSARILY
30 REFLECTIVE OF THE DAMAGES AWARDED, REASONABLE FEES FOR ANY GUARDIAN,
31 GUARDIAN AD LITEM, OR EXPERT THAT IS NEEDED TO BRING AN ACTION UNDER
32 THIS SECTION.

33 (2) IF THE VULNERABLE ELDERLY ADULT WHO IS AWARDED DAMAGES
34 IS A RECIPIENT OF THE MARYLAND MEDICAL ASSISTANCE PROGRAM, THE STATE IS
35 ENTITLED TO BE REIMBURSED FOR ALL NURSING HOME COSTS PAID FOR THE
36 RECIPIENT, SO LONG AS THE REIMBURSEMENT PAID TO THE STATE DOES NOT
37 EXCEED 40% OF THE DAMAGES AWARDED.

38 (G) IF A DISPUTE EXISTS ABOUT THE CARE GIVEN TO A VULNERABLE
39 ELDERLY ADULT BY A HEALTH CARE FACILITY, THE PARTIES ARE ENCOURAGED
40 BUT NOT REQUIRED FIRST TO USE INFORMAL MEANS, SUCH AS MEDIATION OR
41 INTERVENTION BY THE LOCAL BRANCH OF THE OFFICE ON AGING, TO TRY TO
42 RESOLVE THE DISPUTE.

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1 (H) THIS SECTION DOES NOT AFFECT THE MARYLAND TORT CLAIMS ACT.

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
3 only prospectively and may not be applied or interpreted to have any effect on or
4 application to any case filed before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 1997.