

HOUSE BILL 1489

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CF SB 381

By: **Delegate Hucker**

Introduced and read first time: March 2, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Exploitation Prevention Act of 2009**

3 FOR the purpose of altering the definition of “vulnerable adult” to include a person
4 who lacks a certain capacity to consent for purposes of certain prohibitions
5 against causing certain abuse or neglect or sexual abuse of a certain vulnerable
6 adult; prohibiting a person from knowingly and willfully obtaining by a certain
7 illusory consent the property of an individual that the person knows or
8 reasonably should know is a vulnerable adult with intent to deprive the
9 vulnerable adult of the vulnerable adult’s property; defining certain terms; and
10 generally relating to vulnerable adults.

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Law
13 Section 3–604 and 8–801
14 Annotated Code of Maryland
15 (2002 Volume and 2008 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article – Criminal Law
18 Section 3–605 and 3–606
19 Annotated Code of Maryland
20 (2002 Volume and 2008 Supplement)

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

23 **Article – Criminal Law**

24 3–604.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) In this section and §§ 3–605 and 3–606 of this subtitle the
2 following words have the meanings indicated.

3 (2) (i) “Abuse” means the sustaining of physical pain or injury by a
4 vulnerable adult as a result of cruel or inhumane treatment or as a result of a
5 malicious act under circumstances that indicate that the vulnerable adult’s health or
6 welfare is harmed or threatened.

7 (ii) “Abuse” includes the sexual abuse of a vulnerable adult.

8 (iii) “Abuse” does not include an accepted medical or behavioral
9 procedure ordered by a health care provider authorized to practice under the Health
10 Occupations Article or § 13–516 of the Education Article acting within the scope of the
11 health care provider’s practice.

12 (3) “Caregiver” means a person under a duty to care for a vulnerable
13 adult because of a contractual undertaking to provide care.

14 (4) “Family member” means a relative of a vulnerable adult by blood,
15 marriage, adoption, or the marriage of a child.

16 (5) “Household” means the location:

17 (i) in which the vulnerable adult resides;

18 (ii) where the abuse or neglect of a vulnerable adult is alleged to
19 have taken place; or

20 (iii) where the person suspected of abusing or neglecting a
21 vulnerable adult resides.

22 (6) “Household member” means an individual who lives with or is a
23 regular presence in a home of a vulnerable adult at the time of the alleged abuse or
24 neglect.

25 (7) **“LACKS THE CAPACITY TO CONSENT” MEANS TO LACK**
26 **SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE**
27 **REASONABLE DECISIONS CONCERNING ONE’S OWN ECONOMIC AFFAIRS OR**
28 **PROPERTY CAUSED BY A PHYSICAL OR MENTAL IMPAIRMENT.**

29 [(7)] (8) (i) “Neglect” means the intentional failure to provide
30 necessary assistance and resources for the physical needs of a vulnerable adult,
31 including:

32 1. food;

33 2. clothing;

- 1 3. toileting;
- 2 4. essential medical treatment;
- 3 5. shelter; or
- 4 6. supervision.

5 (ii) "Neglect" does not include the provision of nonmedical
6 remedial care and treatment for the healing of injury or disease that is:

- 7 1. given with the consent of the vulnerable adult; and
- 8 2. recognized by State law in place of medical treatment.

9 **[(8) (9)** "Serious physical injury" means physical injury that:

- 10 (i) creates a substantial risk of death; or
- 11 (ii) causes permanent or protracted serious:
 - 12 1. disfigurement;
 - 13 2. loss of the function of any bodily member or organ; or
 - 14 3. impairment of the function of any bodily member or
15 organ.

16 **[(9) (10)** (i) "Sexual abuse" means an act that involves sexual
17 molestation or exploitation of a vulnerable adult.

18 (ii) "Sexual abuse" includes:

- 19 1. incest;
- 20 2. rape;
- 21 3. sexual offense in any degree;
- 22 4. sodomy; and
- 23 5. unnatural or perverted sexual practices.

24 **[(10) (11)** "Vulnerable adult" means an adult who lacks the physical or
25 mental capacity to provide for the adult's daily needs **OR WHO LACKS THE CAPACITY**
26 **TO CONSENT.**

1 (b) (1) A caregiver, a parent, or other person who has permanent or
2 temporary care or responsibility for the supervision of a vulnerable adult may not
3 cause abuse or neglect of the vulnerable adult that:

4 (i) results in the death of the vulnerable adult;

5 (ii) causes serious physical injury to the vulnerable adult; or

6 (iii) involves sexual abuse of the vulnerable adult.

7 (2) A household member or family member may not cause abuse or
8 neglect of a vulnerable adult that:

9 (i) results in the death of the vulnerable adult;

10 (ii) causes serious physical injury to the vulnerable adult; or

11 (iii) involves sexual abuse of the vulnerable adult.

12 (c) A person who violates this section is guilty of the felony of abuse or
13 neglect of a vulnerable adult in the first degree and on conviction is subject to
14 imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

15 (d) A sentence imposed under this section shall be in addition to any other
16 sentence imposed for a conviction arising from the same facts and circumstances
17 unless the evidence required to prove each crime is substantially identical.

18 3-605.

19 (a) This section does not apply to abuse that involves sexual abuse of a
20 vulnerable adult.

21 (b) (1) A caregiver, a parent, or other person who has permanent or
22 temporary care or responsibility for the supervision of a vulnerable adult may not
23 cause abuse or neglect of the vulnerable adult.

24 (2) A household member or family member may not cause abuse or
25 neglect of a vulnerable adult.

26 (c) A person who violates this section is guilty of the misdemeanor of abuse
27 or neglect of a vulnerable adult in the second degree and on conviction is subject to
28 imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

29 (d) A sentence imposed under this section shall be in addition to any other
30 sentence imposed for a conviction arising from the same facts and circumstances
31 unless the evidence required to prove each crime is substantially identical.

1 3-606.

2 If a State or local unit receives a report of present or past abuse or neglect of a
3 vulnerable adult, an investigation shall be conducted in accordance with:

4 (1) § 7-1005 of the Health – General Article if the adult has a
5 developmental disability as defined in § 7-101 of the Health – General Article;

6 (2) § 10-705 of the Health – General Article if the adult is in a facility
7 as defined in § 10-101 of the Health – General Article;

8 (3) § 19-346 or § 19-347 of the Health – General Article if the adult is
9 a resident of a related institution as defined in § 19-301 of the Health – General
10 Article; and

11 (4) §§ 14-301 through 14-309 of the Family Law Article if the adult
12 does not meet the criteria of item (1), (2), or (3) of this section.

13 8-801.

14 (a) (1) In this section the following words have the meanings indicated.

15 (2) “Deception” has the meaning stated in § 7-101 of this article.

16 (3) “Deprive” has the meaning stated in § 7-101 of this article.

17 (4) (I) **“ILLUSORY CONSENT” MEANS THE APPARENT, ACTUAL,**
18 **OR CONSTRUCTIVE CONSENT OF A PERSON WITH A PHYSICAL OR MENTAL**
19 **IMPAIRMENT THAT CAUSES THE PERSON TO LACK SUFFICIENT UNDERSTANDING**
20 **OR CAPACITY TO MAKE OR COMMUNICATE REASONABLE DECISIONS**
21 **CONCERNING THE PERSON’S ECONOMIC AFFAIRS OR PROPERTY.**

22 (II) **“ILLUSORY CONSENT” DOES NOT INCLUDE THE NORMAL**
23 **CONSENT THAT A PERSON WOULD GIVE TO ACTIONS TAKEN IN THE PERSON’S**
24 **BEST INTERESTS BY A MEMBER OF THE PERSON’S FAMILY.**

25 [(4)] (5) “Obtain” has the meaning stated in § 7-101 of this article.

26 [(5)] (6) “Property” has the meaning stated in § 7-101 of this article.

27 [(6)] (7) “Value” has the meaning stated in § 7-103 of this article.

28 [(7)] (8) (i) “Undue influence” means domination and influence
29 amounting to force and coercion exercised by another person to such an extent that a
30 vulnerable adult was prevented from exercising free judgment and choice.

1 (ii) "Undue influence" does not include the normal influence
2 that one member of a family has over another member of the family.

3 [(8)] (9) "Vulnerable adult" has the meaning stated in § 3-604 of this
4 article.

5 (b) A person may not knowingly and willfully obtain by deception,
6 intimidation, [or] undue influence, **OR ILLUSORY CONSENT** the property of an
7 individual that the person knows or reasonably should know is a vulnerable adult with
8 intent to deprive the vulnerable adult of the vulnerable adult's property.

9 (c) (1) A person convicted of a violation of this section when the value of
10 the property is \$500 or more is guilty of a felony and:

11 (i) is subject to imprisonment not exceeding 15 years or a fine
12 not exceeding \$10,000 or both; and

13 (ii) shall restore the property taken or its value to the owner, or,
14 if the owner is deceased, restore the property or its value to the owner's estate.

15 (2) A person convicted of a violation of this section when the value of
16 the property is less than \$500 is guilty of a misdemeanor and:

17 (i) is subject to imprisonment not exceeding 18 months or a fine
18 not exceeding \$500 or both; and

19 (ii) shall restore the property taken or its value to the owner, or,
20 if the owner is deceased, restore the property or its value to the owner's estate.

21 (d) A sentence imposed under this section may be separate from and
22 consecutive to or concurrent with a sentence for any crime based on the act or acts
23 establishing the violation of this section.

24 (e) A conviction under this section shall disqualify the defendant from
25 inheriting, taking, enjoying, receiving, or otherwise benefitting from the estate,
26 insurance proceeds, or property of the vulnerable adult, whether by operation of law or
27 pursuant to a legal document executed or entered into by the vulnerable adult before
28 the defendant shall have been convicted under this section and shall have made full
29 restoration of the property taken or of its value to the vulnerable adult.

30 (f) This section may not be construed to impose criminal liability on a person
31 who, at the request of the vulnerable adult, the vulnerable adult's family, or the court
32 appointed guardian of the vulnerable adult, has made a good faith effort to assist the
33 vulnerable adult in the management of or transfer of the vulnerable adult's property.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2009.