

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 718
Economic Matters

(Delegate Kramer, *et al.*)

Finance

Consumer Protection - Asset Recovery for Exploited Seniors Act

This bill authorizes the Division of Consumer Protection in the Office of the Attorney General (OAG) to bring a civil action for damages against a person who violates the State's prohibitions on exploitation of a vulnerable adult on behalf of a victim of the offense or, if the victim is deceased, the victim's estate. The division may recover damages for property loss or damage. If the division prevails in an action brought under the bill's provisions, the division may recover the costs of the action for the use of OAG. This authorization is in addition to any other action authorized under law. A conviction for the criminal offense is not a prerequisite for maintenance of an action under the bill.

The bill takes effect July 1, 2016, and applies prospectively to causes of action arising on or after that date.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from the collection of costs awarded to OAG's Consumer Protection Division by the courts in cases brought under the bill. Any increase in general fund revenues resulting from successful actions brought by OAG must be used for OAG. OAG can likely handle the bill's requirements with existing resources, assuming 50 or fewer complaints annually. Future year expenditures may increase to the extent that the civil standing conferred on OAG by the bill generates a sufficient caseload to warrant additional personnel.

Local Effect: Any increase in circuit court caseloads resulting from the bill can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: “Standing” typically refers to an individual’s capacity to participate in a lawsuit. In order to demonstrate standing, an individual usually has to demonstrate that he or she experienced an adverse effect from the law or action in question, which will continue unless the court grants relief.

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 vulnerable adult of the vulnerable adult’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.

Property Value

Maximum Penalty

Less than \$1,000

Misdemeanor – 18 months and/or \$500

\$1,000 to less than \$10,000

Felony – 10 years and/or \$10,000

\$10,000 to less than \$100,000

Felony – 15 years and/or \$15,000

\$100,000 or more

Felony – 25 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.

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.

Background: **Exhibit 1** contains statistics on court caseloads filed for financial exploitation of a vulnerable adult.

Exhibit 1
Financial Exploitation of a Vulnerable Adult
Circuit Court and District Court Charges and Convictions
Fiscal 2015

<u>Circuit Court</u>	
Charges	50
<i>Convictions</i>	<i>11</i>
<u>District Court</u>	
Charges	102
<i>Convictions</i>	<i>3</i>

Source: Maryland Judiciary

State Revenues: General fund revenues increase minimally to the extent that damages are collected from civil defendants sued by OAG as a result of the bill. Any increase in revenues resulting from recovered costs are for the use of OAG. To the extent that individuals subject to civil actions under the bill do not have the financial resources or ability to pay awarded costs, the bill is not likely to materially impact general fund revenues.

State Expenditures: OAG advises that implementation of the bill requires two additional assistant Attorneys General. However, OAG did not provide any explanation or justification for this estimate. The Department of Legislative Services (DLS) advises that in light of the potential case volume indicated from the judicial statistics listed above, OAG can likely handle the bill's requirements with existing resources, assuming 50 or fewer complaints annually.

Based on fiscal 2015 data, in Exhibit 1, it appears that about 150 cases could provide the standing for OAG to pursue civil damages under the bill. Assuming that OAG initiates civil action in 25% of these cases, an additional 38 cases annually could be pursued.

DLS bases this assessment on the following information and assumptions:

- The bill *authorizes* OAG to bring civil suits against specified individuals; it does not *require* OAG to bring these cases and allows the office the discretion to choose which cases to pursue. OAG may decide not to pursue civil damages in a significant portion of these cases for a variety of reasons, including reluctance by the victim to

pursue damages due to any family dynamics involved, the amount of damages involved (with respect to financial exploitation cases), and the likelihood of the defendant to pay any awarded damages.

- While the bill does not require a criminal conviction, the bill confers standing to OAG against a person who “violates” specified criminal statutes. This appears to imply that OAG’s civil standing to pursue damages on behalf of a private citizen victim or the victim’s beneficiary is triggered by the commencement of the criminal justice process (arrest, charge, etc.) or possibly the agency investigation process, not requests by private citizens for civil litigation representation to recover damages resulting from alleged injury absent some involvement of the State at the agency or criminal justice level.
- The bill does not apply to cases of vulnerable adult abuse or neglect that are investigated by the Department of Human Resources.

To the extent that violations significantly increase and OAG decides to pursue a substantial additional number of civil actions, OAG may require additional personnel – particularly attorneys and investigators. If so, general fund expenditures increase correspondingly, a portion of the cost of which may be covered by revenues from successful actions brought by OAG.

Additional Information

Prior Introductions: HB 581 of 2015, a similar bill, received an unfavorable report from the House Judiciary Committee. Another similar bill, HB 724 of 2014, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 435, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History:
min/kdm

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Analysis by: Eric Pierce

Direct Inquiries to:

(410) 946-5510

(301) 970-5510