

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 408

(Senator Robinson, *et al.*)

Judicial Proceedings

Senior Apartment Facilities - Limitation on Occupancy by Person Convicted of
Crime of Violence

This bill prohibits a landlord from renting to, or allowing an individual to reside in, a unit in a “senior apartment facility” (an apartment building or complex that has at least four individual dwelling units and meets the federal definition of housing for older persons) on the same floor as a “vulnerable adult” if (1) the individual has been convicted of a “crime of violence” within the previous five years and (2) the landlord fails to provide a designated person on duty at all times on the premises whom the vulnerable adult may contact for assistance. The bill also makes a landlord liable for any damages incurred by a vulnerable adult as a result of a violation of the bill’s prohibitions and requirements. A violation is subject to the scope of the enforcement duties and powers of the Office of the Attorney General (OAG), as described under the Maryland Consumer Protection Act (MCPA).

Fiscal Summary

State Effect: Any increase in District Court caseloads can likely be handled with existing resources. Imposition of existing penalty provisions, to the extent that they apply, does not have a material impact on State finances or operations. OAG’s Consumer Protection Division can handle the bill’s requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill.

Local Effect: Imposition of existing penalty provisions, to the extent that they apply, does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The term “vulnerable adult,” under the Criminal Law Article, means an adult who lacks the physical or mental capacity to provide for his or her daily needs.

“Crime of violence,” under the Criminal Law Article, is defined to mean (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Housing for “older persons,” as defined by federal law (42 U.S.C. § 3607), is (1) provided under any state or federal program designed and operated to assist elderly persons; (2) intended for, and solely occupied by, persons age 62 or older; or (3) intended for persons age 55 or older (demonstrated by specified policies and procedures) and complies with federal rules for occupant age verification.

Housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, or disability is prohibited. There is no provision prohibiting housing discrimination based on reentry-into-society status, regardless of the type of crime committed. Provisions prohibiting housing discrimination do not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of another individual, nor do they prohibit rental to a person if the person has been convicted of the illegal manufacture or distribution of “controlled dangerous substances” as defined in State and federal law.

The Consumer Protection Division 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 \$1,000 for the first violation and up to \$5,000 for each subsequent 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.

Background: A federal, State, or administrative entity may impose collateral consequences on an individual convicted of a crime that are beyond the terms of the criminal sentence. Some collateral consequences are discretionary, and others occur as a matter of law. The consequences are varied and are not officially maintained in any centralized area. Criminal convictions affect individuals in areas such as voting rights, jury service, public housing, firearms ownership, licensing and employment, and family law.

With regard to accessing an individual's criminal history for the purpose of determining whether he or she has committed a crime of violence, the Department of Public Safety and Correctional Services (DPSCS) advises that a process exists to provide private parties, such as landlords, with criminal history record information (CHRI) for current or prospective occupants. The private party must convincingly demonstrate that the subject of the requested CHRI could, as an occupant of the property, (1) jeopardize the life or safety of an individual; (2) cause significant loss or damage; or (3) otherwise engage or participate in criminal conduct in violation of State, local, and federal law.

Small Business Effect: Small businesses that do not have staff on duty at all times on the premises of a senior apartment facility may incur significant costs to hire additional personnel. Small businesses may also incur minimal costs to apply to DPSCS to receive CHRIs. Finally, the exposure to civil liability if an injury occurs as a result of a violation may significantly alter how small business landlords conduct tenant searches and may require additional expenditures to implement additional security measures.

Additional Information

Prior Introductions: HB 284 of 2016, a similar bill, received an unfavorable report from the House Environment and Transportation Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Aging; Department of Public Safety and Correctional Services; Department of Legislative Services

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