

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1506
Economic Matters

(Delegate Kramer)

Judicial Proceedings

Office of the Attorney General - Securities Commissioner - Asset Recovery for
Exploited Seniors

This bill authorizes the Securities Commissioner of the Division of Securities of 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 (§ 8-801 of the Criminal Law Article) on behalf of a victim of the offense or, if the victim is deceased, the victim's estate. The commissioner may recover damages for property loss or damage. If the commissioner prevails in an action brought under the bill's provisions, the commissioner may recover the costs of the action for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action under the bill. The bill applies prospectively to causes of action arising on or after the bill's October 1, 2018 effective date.

Fiscal Summary

State Effect: The bill can be implemented with existing budgeted resources and is unlikely to meaningfully increase general fund revenues, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 114 of 2016 authorizes the Division of Consumer Protection in 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 Act's provisions, the division may recover the costs of the action for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action under the bill.

Standing and Exploitation of a Vulnerable Adult

“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 individual of the individual'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

Less than \$1,500
\$1,500 to less than \$25,000
\$25,000 to less than \$100,000
\$100,000 or more

Maximum Penalty

Misdemeanor – 1 year and/or \$500
Felony – 5 years and/or \$10,000
Felony – 10 years and/or \$15,000
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.

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: According to the Judiciary, there were 0 violations in the District Court and 121 violations (which resulted in 24 guilty dispositions) in the circuit courts for exploitation of a vulnerable adult under § 8-801 of the Criminal Law Article during fiscal 2017.

State Fiscal Effect: OAG did not respond to a request for information on the fiscal and operational impact of this bill. However, the Department of Legislative Services (DLS) advises that while the bill expands the number of divisions within OAG that can bring the civil actions that OAG is currently authorized to bring, it is unlikely to meaningfully increase the number of civil suits brought. Accordingly, any civil recoveries achieved under the bill are unlikely to have a meaningful impact on general fund revenues.

OAG has historically responded that if the number of complaints generated by a bill is 50 or less, then the bill can be implemented with existing resources. The Judiciary advises that in fiscal 2017, 121 violations for exploitation of a vulnerable adult were heard in the circuit courts and of those, 24 resulted in a guilty verdict. DLS notes that the bill *authorizes* the Securities Commissioner to bring a civil action, which means that the Securities Commissioner has discretion about which cases to pursue and may decide not to pursue certain civil actions for a variety of reasons, including family dynamics, the amount of damages involved, and the likelihood of the defendant to pay any awarded damages. Of the 121 cases with violations in fiscal 2017 that confer standing for either the Division of Consumer Protection (under Chapter 114 of 2016) or for the Securities Commissioner (under this bill), this analysis assumes that perhaps 25% of those violations, or 30 cases, may be subject to civil action under the bill. Thus, it is assumed that OAG can implement the bill with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 26, 2018
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