

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 304 (Delegate Shetty, *et al.*)  
Economic Matters and Judiciary

Finance

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Consumer Protection - Unfair, Abusive, or Deceptive Trade Practices -  
Exploitation of Vulnerable Adults

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This bill establishes that a violation of § 8-801 of the Criminal Law Article (exploitation of a vulnerable adult) is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

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Fiscal Summary

**State Effect:** The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General (OAG), Consumer Protection Division, can handle the bill's requirements with existing resources.

**Local Effect:** The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** None.

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Analysis

**Current Law:** Chapter 114 of 2016 generally authorizes the Division of Consumer Protection in OAG to bring a civil action for damages against a person who violates the State's prohibition against exploitation of a vulnerable adult on behalf of a victim of the offense or, if the victim is deceased, the victim's estate. Chapter 794 of 2018 extends this authority to the Securities Commissioner of the Division of Securities in OAG. The division and commissioner may recover damages for property loss or damage. If the division or commissioner prevails in an action, the costs of the action may be recovered for

the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

*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.

<b><u>Property Value</u></b>	<b><u>Maximum Penalty</u></b>
Less than \$1,500	Misdemeanor – 1 year and/or \$500
\$1,500 to less than \$25,000	Felony – 5 years and/or \$10,000
\$25,000 to less than \$100,000	Felony – 10 years and/or \$15,000
\$100,000 or more	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.

## *Maryland Consumer Protection Act*

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

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 \$10,000 for each violation and up to \$25,000 for each repetition of the same 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:** According to the Judiciary, there were 47 violations in the District Court (which resulted in 2 guilty dispositions) and 55 violations in the circuit courts (which resulted in 8 guilty dispositions) for exploitation of a vulnerable adult under § 8-801 of the Criminal Law Article during fiscal 2019.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

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

**Fiscal Note History:** First Reader - February 10, 2020  
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