

# **2021 JCRC SB 327 Financial Exploitation Vulnerable**

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Position: FAV



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**Testimony in SUPPORT of Senate Bill 327 –  
*Civil Actions – Financial Exploitation of Vulnerable Adults*  
(*Maryland SAFE Act*)  
Judicial Proceedings Committee  
February 2, 2021**

The Jewish Community Relations Council of Greater Washington (JCRC) serves as the public affairs and community relations arm of the Jewish community. We represent over 100 Jewish organizations and synagogues throughout Maryland, Virginia, and the District of Columbia. The JCRC is strongly committed to cultivating a society based on freedom, justice, and pluralism. We work tirelessly throughout the entire Greater Washington area to advocate for our agencies that serve the most vulnerable residents, support our Jewish day schools and community centers, and to campaign for important policy interests on behalf of the entire Jewish community.

The JCRC has a long history of serving and supporting abused and neglected older adults from all aspects of financial exploitation. Senate bill 327 is committed to strengthening the civil protections and remedies of vulnerable adults. The bill establishes a cause of action for certain financial exploitation of vulnerable adults; authorizing a vulnerable adult or certain individuals to bring an action under this Act under certain circumstances. SB 327 also provides that an action authorized under this Act is in addition to and cumulative with certain other claims, causes of action, and remedies and shall survive the death of the vulnerable adult.

While we need to better understand the issue of cognitive capacity, we know this bill will have a positive impact on securing elder justice. For these reasons, we urge a favorable vote on SB 327.

# **SB 327 CJ Testimony.pdf**

Uploaded by: Bertinelli, Alexa

Position: FAV



January 29, 2021

**Senate Bill 327**

Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

**Position: Support**

I am writing to express the support of Civil Justice, Inc. (CJ) for Senate Bill 327, which will provide a much-needed mechanism for financially exploited vulnerable adults to obtain redress. CJ is a Maryland non-profit committed to increasing the delivery of legal services to low- and modest-income Marylanders through a unique combination of in-house staff and a statewide network of attorneys. CJ has consistently maintained a robust practice focusing on matters that undermine the economic security of Maryland families, including unlawful debt collection practices and violations of consumer protection laws.

Financial abuse of older adults is pervasive issue. One study found that up to 1,000,000 older Americans may be targeted for financial abuse.<sup>1</sup> The related costs of this exploitation, including health care, social services, investigations, legal fees, prosecution, and lost income and assets, can reach tens of millions of dollars annually. However, due to the lack of access to affordable representation, studies have shown that low-income families are forced to tackle eighty-six percent of their civil legal problems with inadequate or no legal help.<sup>2</sup> Under Maryland's current laws, vulnerable adults who have experienced financial exploitation will struggle to find attorneys willing and able to champion their cause.

By providing a civil cause of action with enhanced remedies, the Maryland SAFE Act will give older adults a means to obtain restitution for their harms. According to the Maryland Access to Justice Commission:

Fee-shifting...connects the individuals who may have been harmed with counsel who can aid them in seeking to enforce their rights under the law. The action of these private individuals provides a significant public benefit by enforcing the law, deterring future misconduct and promoting compliance with the law. Fee-shifting

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<sup>1</sup> MetLife and VPI Mature Market Institute, the National Committee for the Prevention of Elder Abuse (NCPEA) and Virginia Polytechnic Institute and State University entitled *Broken Trust: Elders, Family and Finances*.

<sup>2</sup> Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* 29 (2017); National Center for Access to Justice, *The Justice Index* (2016), available at <https://justiceindex.org/> (find that there are only 1.49 civil legal aid attorneys for every 10,000 people living in poverty).

also reduces the need for government resources for enforcement of critical remedial laws.<sup>3</sup>

Including enhanced penalties and an attorneys' fee shifting provision in the Maryland SAFE Act will expand access to legal representation for those who may be least able to represent themselves. For these reasons, CJ urges the Judicial Proceedings Committee to give Senate Bill 327 a favorable report. If you have any questions, you can reach me at 410-706-5650 or [abertinelli@civiljusticenetwork.org](mailto:abertinelli@civiljusticenetwork.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "A B".

Alexa Bertinelli  
Senior Staff Attorney

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<sup>3</sup> The Maryland Access to Justice Commission, *Fee-Shifting to Promote the Public Interest in Maryland*, 42 U. BALT. L.F. 38, 38 (2011).

## **SB 327 MD SAFE Act - Joint Task Force Testimony 2.**

Uploaded by: Davis, Michael

Position: FAV

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**To:** Members of Senate Judicial Proceedings Committee

**From:** Vulnerable Adult Exploitation Joint Task Force

**Date:** February 2, 2021

**Subject:** **SB 327:** Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

**Position:** **Support**

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The Vulnerable Adult Exploitation Task Force SUPPORTS SB 327: Civil Actions – Financial Exploitation of Vulnerable Adults (The Maryland SAFE Act)

### **VULNERABLE ADULT EXPLOITATION TASK FORCE**

In 2019, the Section Councils of the Estate & Trust Law Section and the Elder Law and Disability Rights Section of the Maryland State Bar Association organized the Vulnerable Adult Financial Exploitation Task Force in order to provide an interdisciplinary approach to tackling the vexing concerns around financial exploitation of vulnerable adults. As part of its purpose, the Task Force seeks to provide input and insight supportive of criminal and civil legislation to redress the abuse of vulnerable adults. A full listing of the Task Force's members and their MSBA Section affiliations is provided at the end of this testimony.

### **VULNERABLE ADULT FINANCIAL EXPLOITATION – THE CRIME OF THE 21<sup>ST</sup> CENTURY**

We believe that financial exploitation of vulnerable adults is endemic in our society today. As attorneys and family counselors, we too often hear allegations of deception, intimidation, and undue influence to defraud vulnerable adults of their property. Our experiences were reflected in the 2009 report that is commonly referred to as the MetLife Study.<sup>1</sup> This was an extensive study conducted about elder physical and emotional abuse and financial exploitation. With its authors characterizing financial elder abuse as ***the crime of the 21st Century***, the MetLife Study states that up to 1,000,000 older Americans may be targeted, and that related costs like health care, social services, investigations, legal fees, prosecution, lost income and assets can reach tens of millions of dollars annually.

The current pandemic caused by the COVID 19 virus has highlighted the financial fragility of vulnerable adults. Our legal system must be able to provide access to justice in a variety of ways so that the financial security of vulnerable adults can be protected. We believe that The Maryland SAFE Act will help us achieve this goal.

### **SB327 PROVIDES ACCESS TO JUSTICE TO REDRESS CASES OF VULNERABLE ADULT FINANCIAL EXPLOITATION**

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<sup>1</sup> MetLife and VPI Mature Market Institute, the National Committee for the Prevention of Elder Abuse (NCPEA) and Virginia Polytechnic Institute and State University entitled *Broken Trust: Elders, Family and Finances*.

Under current Maryland law, remedies for financial exploitation are mostly limited to criminal actions, which have been largely ineffective<sup>2</sup> for the following reasons:

- (1) There is a strong reluctance of victims to involve the police in family matters;
- (2) There is a very high burden of proof necessary to obtain a conviction (beyond reasonable doubt) and
- (3) There are only limited resources available to handle these cases by state-funded agencies charged with doing so, such as the Offices of the States Attorney, the Attorney General's Office and Adult Protective Services. .

The Task Force, after reviewing what other states were doing to address this crisis, determined that a different approach would be needed – a civil cause of action. The Task Force reviewed the statutes of many states, but focused on the laws of Delaware, California and Florida, as well as guidelines that were provided by the American Bar Association<sup>3</sup>, and after more than six months of diligent work, developed the Maryland SAFE Act.

The Maryland SAFE Act creates a new civil cause of action for financial exploitation that provides remedies similar to those provided in wage payment and collection statutes, including allowing the victim to be awarded treble damages, attorney's fees, and equitable relief, in addition to recovering the value of the loss. Maryland law currently provides no such civil remedy; rather, a victim of financial abuse must rely on the criminal statutes, with its heavy burden of proof, or on actions taken by government agencies on their behalf to get back only the property that was stolen, if that is even possible. As a civil cause of action with enhanced remedies, the Maryland SAFE Act will provide a path for victims to recover their property with an easier burden of proof.

The SAFE Act contains broad definitions of “financial exploitation” and “vulnerable adults” and expands the list of parties who may bring suit to recover assets lost by the vulnerable adult. With the law more clearly defined and applied, and with a reasonable burden of proof, litigation against a perpetrator of financial abuse should be easier to pursue with better results. The broad scope of this Act will also serve as a deterrent to would-be perpetrators of financial abuse.

**THE VULNERABLE ADULT EXPLOITATION TASK FORCE**  
**SUPPORTS SB347**

We urge you to SUPPORT this bill and to vote favorably to have it submitted to the full Senate for approval.

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<sup>2</sup> Maryland's Legislative Services stated in its Fiscal & Policy Analysis for HB320 in 2020 that during 2019, Maryland's Judiciary reported 47 violations of Section 8-801 of the Criminal Law Article in the District Court regarding financial exploitation, which resulted in two guilty dispositions, and 55 violations in the Circuit Court, which resulted in 8 guilty dispositions

<sup>3</sup> *The Model Civil Provisions of Elder Financial Exploitation* (April 2017) by ABA Commission on Law and Aging and the National Center for Victims of Crime.

## **FOR MORE INFORMATION**

Please contact Michael W. Davis, Chair, Vulnerable Adult Exploitation Task Force, if you have any questions.

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## **MEMBERS OF THE VULNERABLE ADULT EXPLOITATION TASK FORCE**

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### ESTATE & TRUST SECTION COUNCIL

Mary Beth Beattie  
Todd Bornstein  
Danielle Cruttenden  
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### ELDER LAW AND DISABILITY RIGHTS SECTION COUNCIL

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Adam M. Spence

# **2021 NASW SB 327 Senate Side.pdf**

Uploaded by: Faulkner, Rachael

Position: FAV



## Support for SB 327

### Senate Judicial Proceedings Committee

#### Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

**February 2, 2021**

On behalf of the National Association of Social Workers, Maryland Chapter (NASW-MD), we would like to express our support for Senate Bill 327, Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act.)

Financial abuse of older and vulnerable adults is an epidemic in our state and our country. According to the U.S. Securities and Exchange Commission, up to 6.6% of older adults are victims of financial exploitation. It is also the fastest-growing form of abuse. In Montgomery County, for example, financial exploitation is the second most frequent form of abuse investigated; in 2019 Adult Protective Services investigated 408 cases of financial exploitation, 35% of all investigations in FY 19. Given that most cases go unreported, the numbers are probably much higher. Studies indicate that for every documented case of elder financial exploitation, 44 went unreported.

Financial abuse costs older Americans over \$2.6 billion dollars annually. The harm to older and vulnerable adults goes far beyond money, however. Those who have been financially abused increased morbidity and mortality, depression, and social isolation. Elders who are abused, even modestly, have a 300% greater chance of death each year than those who were not abused.

As social workers in geriatric settings, we have seen heartbreakingly cases of elders who lose everything they have, usually at the hands of relatives and others close to them who take advantage of the elder's trust to steal their money and their property. We have seen adult children trick seniors into signing over the deed to their homes, then evict their aged parents. We have seen adult grandchildren convince their grandparents to co-sign loans that the younger people have no intention of repaying, thus saddling the seniors with ruinous debt. We have seen nieces and nephews abuse powers of attorney to clean out their elders' bank accounts, leaving them unable to afford their rent or their medications. We have seen elders stripped of all resources by relatives so that they had to leave their beloved continuing care communities and move to inadequate care homes where they face further abuse and neglect.

Most victims of financial exploitation never recover their losses. They don't have the funds or the knowledge to pursue civil actions against their abusers; often there are no civil or criminal consequences for these crimes. It is critical that other trusted people in their lives be empowered to help them seek justice.

This bill would allow a trusted person, acting on behalf of an elderly or vulnerable adult, to bring a cause of action against the person who committed the exploitation, thus greatly increasing the chances that the victim would recover at least a portion of their losses.

This bill will help elder and vulnerable victims of financial exploitation to regain their assets, their dignity, their lives.

**We urge you to vote YES on SB 327.**

Thank you,

NASW-MD Committee on Aging

# **SB 327 Exploitation of Vul Adult\_\_DD Coalition Tes**

Uploaded by: London, Rachel

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## Senate Judicial Proceedings Committee

### Senate Bill 327: Civil Actions—Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

#### Position: Support

February 2, 2021

The Maryland Developmental Disabilities (DD) Coalition is comprised of five statewide organizations that are committed to improving the opportunities and outcomes for Marylanders with intellectual and developmental disabilities (I/DD).

Health and safety is critical to our mission of ensuring that people with intellectual and developmental disabilities (I/DD) live meaningful and inclusive lives in their communities. This mandate includes protecting the financial safety of the people that the Coalition represents and supports. From this perspective, the DD Coalition supports SB 327, which creates a civil cause of action for certain people with disabilities who are financially exploited.

#### **WHY is this legislation important?**

- It is our unfortunate reality that some adults with disabilities are vulnerable and at risk of a range of exploitative or coercive behaviors including financial abuse.
- While COMAR regulations require that DDA licensed providers ensure that there is “adequate protection for the finances and property of each individual” for whom they provide supports (COMAR 10.22.02.10) and while DDA licensed providers are also subject to extensive investigatory and reporting requirements of incidents that threaten the financial welfare of people receiving community supports, these regulations only apply to those receiving services. Greater protections are needed for people with I/DD who do not receive DDA services.
- Providers have recounted stories of people with I/DD who have inherited a home or other resources, and who are suddenly approached by family members or acquaintances, who were largely or wholly absent from the person’s life until the inheritance, and who attempt to transfer the property into their own names.
- Too often, the response to financial exploitation of people with disabilities entails the restriction of their civil rights through guardianship. We support tools that can hold those responsible for exploitation accountable instead.
- The Attorney General’s office notes that abuses against vulnerable adults are escalating in our communities. Even more troubling is that for every case of abuse that is reported to authorities, experts estimate that as many as five cases go unreported.

#### **WHAT does this legislation do?**

- It creates a cause of action for financial exploitation of certain vulnerable adults, including people with I/DD. Current redress only includes investigation by adult protective services, criminal law enforcement, and costly civil remedies.

We believe this bill will provide the courts with an additional tool in protecting people with I/DD from such exploitative conduct. For additional information, contact Megan Rusciano, [meganr@disabilityrightsmd.org](mailto:meganr@disabilityrightsmd.org).



# **MSBA SB 327-CivActionFinancial Expl\_SAFE Act\_Suppo**

Uploaded by: Montgomery, Richard

Position: FAV



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**To:** Members of The Senate Judicial Proceedings Committee  
**From:** Richard A. Montgomery III, MSBA Director of Legislative Relations

**Date:** February 2, 2021

**Subject: SB 327, Civil Action- Financial Exploitation of Vulnerable Adults (Maryland Safe Act)**

**Position: Support**

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The Maryland State Bar Association (MSBA) Supports **SB 327, Civil Action- Financial Exploitation of Vulnerable Adults (Maryland Safe Act)**.

Senate Bill 327 would create a new civil cause of action in Title 13 of the Estates and Trusts Article of the Maryland Code. Under the bill, a victim or representative of a vulnerable adult may pursue a claim based on financial exploitation in addition to any other available claims that are cumulative with other lawful and administrative damages. Further, this new cause of action can also be filed after the death of the vulnerable adult.

The MSBA has observed that as our population ages, the opportunity to exploit older people who struggle with the activities of daily living will increase. As articulated in SB 327, one of the purposes of this legislation is to provide a path to redress financial exploitation through the recovery of property and assets taken from victims while discouraging protracted litigation. We believe that the provisions of SB 327 offer a new deterrent to exploitation of vulnerable adults, as well as an avenue to make-whole relief when such abuse does occur.

For the reasons stated above, the MSBA **supports SB 327 and urges a favorable committee report**. Should you have any questions, please contact Richard Montgomery, MSBA Legislative Director at (410)-269-6464.

# **MSBA Estate and Trust Law Section - Written Suppor**

Uploaded by: Muff, Michaela

Position: FAV



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**To:** Members of the Senate Judicial Proceedings Committee

**From:** MSBA Estate & Trust Law Section

**Date:** January 29, 2021

**Subject:** **SB0327 – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)**

**Position:** **Support**

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The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 327 entitled Financial Exploitation of Vulnerable Adults (Maryland SAFE Act).**

SB 327 represents a collaborative effort of several sections of the MSBA and creates a civil cause of action for financial exploitation.

The incidents of financial exploitation have been on the rise over the past couple decades. Unfortunately, many members of our section see these issues from clients and family members on a regular basis.

Until now, we have been limited in the claims we could advance on behalf of our clients. Those claims typically have been limited to criminal cases, costly civil litigation or post-death claims. Often times, criminal cases are not pursued. Victims of financial exploitation are unwilling to bring the police into their personal financial matters – perhaps out of embarrassment for falling victim to the exploitation in the first place, or perhaps out of fear of retribution from the perpetrator in the event the higher beyond a reasonable doubt standard is not met and the perpetrator is found not guilty. Civil cases pose their own issues and are notoriously expensive to litigate, particularly when the victim has no funds from which to pay skilled counsel to recover assets. Post-death claims provide no relief to the actual victim of the financial exploitation and are equally difficult to litigate since the victim is no longer able to provide valuable testimony and evidence. As a result of these barriers, many victims of financial exploitation have little access to justice.

SB 327 provides a well-reasoned and efficient method of redress for vulnerable adults who are the victims of financial exploitation.

We support SB 327 because it creates a statutory cause of action for victims of financial exploitation. The SAFE Act provides an alternative method of redress for vulnerable adults and certain representatives to bring an action for financial exploitation. Unlike criminal cases, the SAFE Act does not require police involvement in what often involves a family affair, and the standard of proof is more achievable since it is lower than beyond a reasonable doubt. The SAFE Act also provides a mechanism for vulnerable adults or their representatives to treble damages and



recover attorney's fees and expenses incurred in litigating the action. The removal of the financial burden to recover one's own assets improperly obtained by another will create a much broader access to justice for victims of financial exploitation.

SB 327 protects the rights of vulnerable adults in Maryland and gives them access to the civil justice system.

For the reasons stated above, the MSBA **supports SB 327 and urges a favorable committee report.**

**For further information or questions regarding this written testimony, please contact:**

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# **000 Report by Task Force on Studies and Federal Re**

Uploaded by: Spence, Adam

Position: FAV

## **REVIEW OF ELDER FINANCIAL EXPLOITATION STUDIES AND FEDERAL LEGISLATIVE AND ADMINISTRATIVE ACTION**

**Prepared by the Maryland State Bar Association's  
Vulnerable Adult Exploitation Task Force**

**Michael Davis, Esq., Chair  
Adam M. Spence, Esq., Author**

**August 2020**

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Passed in 2010, the Elder Justice Act is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults at the federal level. The law authorized a variety of programs and initiatives to better coordinate federal responses to elder abuse, promote elder justice research and innovation, support Adult Protective Services systems, and provide additional protections for residents of long-term care facilities. ....	24
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## **REVIEW OF STUDIES ON ELDER FINANCIAL EXPLOITATION**

- Elderly Abuse is an Epidemic
- Elder abuse and neglect continue to be one of society's great embarrassments. It is encouraging to note that all 50 states now have passed legislation relating to elder abuse.
- Older adults represent a distinct demographic group differentiated by a unique set of age-associated fraud–scam vulnerabilities
- 1 out of 10 older adults experiences some form of elder abuse
- More than 50% of all victims needed assistance with **ADLs** and nearly all required help with one or more **IADL**.
- Aging adults most vulnerable to fraud during the gradual period of cognitive and physical decline when deficits are hardest to recognize (and not usually documented in the medical records)
- Younger old (< 70) consistently associated with increased risk for financial exploitation which is more severe than the older old.
- Only a fraction of cases are actually reported to social services agencies
- Elder abuse is associated with significant morbidity and premature mortality
- Elders disproportionately targeted by fraudsters
- Elder financial exploitation takes two forms: fraud by third parties (scams) and theft by ‘trusted individuals’
- Fraud more likely with cognitively intact, mobile elders
- Abuse of cognitively intact Elders is like domestic abuse
- Abuse of cognitively impaired elders is like child abuse
- Theft by trusted individuals more likely with cognitively impaired, isolated elders
- Low social support was associated with more than triple the likelihood of abuse

- Cognitive and physical function impairment have been associated with increased risk for elder abuse
- Lack of community connections, social needs fulfillment and isolation increases risk of abuse considerably
- numerical reasoning during decision-making is often lower among older adults resulting in older adults' lower comprehension and worse decision making when unfamiliar numerical information is present
- Isolation, financial stress, and concerns about health can lead to depression and anxiety, all of which leads to exploitation
- Past trauma an indicator of susceptibility to exploitation
- Depression and anxiety lead to higher risks of elder abuse
- Structural issues in society continue to allow the predictable and common financial exploitation of older adults to occur

1. Financial Capacity and Financial Exploitation of Older Adults: Research Findings, Policy Recommendations and Clinical Implications, Stacey Wood, Ph.D. and Peter A. Lichtenberg, Ph.D., ABPP, Clin Gerontol. 2017 Jan-Feb; 40(1): 3–13.

- Elder abuse is a problem

Elder abuse is gaining attention as a public policy issue in the United States. Although the extent of such abuse is largely unknown, some studies indicate that it is prevalent and that many incidents of abuse are never reported.<sup>1</sup> A 2010 study of the extent of elder abuse in the United States found that 11% of individuals aged 60 and older residing in the community reported some type of abuse in the past year. A 2008 study found that 9% of community-residing older adults aged 57 to 85 reported verbal mistreatment, 3.5% reported financial mistreatment, and 0.2% reported physical mistreatment by a family member in the past year. Studies such as these likely underestimate the full extent of elder abuse because they do not include all categories of abuse, exclude individuals who reside in institutional settings such as nursing facilities, and generally exclude individuals with significant cognitive impairment.

2. Elder Fraud and Financial Exploitation: Application of Routine Activity Theory, Marguerite DeLiema, PhD, Gerontologist. 2018 Jul

- Elderly disproportionately targeted by fraudsters

Older adults may be disproportionately solicited by fraudsters ([Kieffer & Mottola, 2016](#)) because they are at or near the peak of asset accumulation or because perpetrators assume that cognitive impairment and isolating life events such as retirement, widowhood, and disability make them more susceptible ([Lee & Soberon-Ferrer, 1997](#)).

3. Advancing the Field Elder Abuse: Future Directions and Policy Implications, XinQi Don, MD, MPH, J Am Geriatr Soc. 2012 Nov; 60(11): 2151–2156.

- Elder Abuse associated with significant morbidity and premature mortality

Elder abuse, sometime called elder mistreatment or elder maltreatment, includes psychological, physical, and sexual abuse, neglect (caregiver neglect and self-neglect), and financial exploitation. Evidence suggests that 1 out of 10 older adult experiences some form of elder abuse, and only 1 of out 25 cases are actually reported to social services agencies. At the same time, elder abuse is associated with significant morbidity and premature mortality

4. National Elder Mistreatment Study, (March 2009) Ron Acierno Ph.D.; Melba Hernandez-Tejada M.S.; Wendy Muzzy B.S.; Kenneth Steve M.S.

- Younger old (those under 70) at 3 times the risk for emotional abuse than the older old.
- Younger old were more at increased risk for financial exploitation than older old. Older old with trauma in past also at increased risk
- Lack of community connections and isolation increases risk of abuse considerably

Approximately 4.6% of adults over age 60 reported experiencing some form of emotional mistreatment in the past year, and only 8% of these individuals reported the event to the police. This contrasts with a prevalence of 9% reported by Laumann, Leitsch, and Waite (2008) in their recently completed nationally representative sample of older adults for what they called 'verbal mistreatment.'

\*\*\*

The 'younger old', here defined as below age 70, were at 3 times the risk of emotional abuse than those over age 70. This is consistent with recent findings of Laumann et al. (2008) and in contrast to earlier findings that our 'oldest old' are at increased risk of mistreatment (Tatara, 1997)

\*\*\*

Also at a three-fold elevated risk were those older adults reporting very low social support. The risk of negative outcomes associated with low social support is a theme echoed across mistreatment types, and speaks to the importance of considering an older adult's connection and utilization of community and interpersonal resources to prevent mistreatment. Risk was doubled for individuals who needed assistance in daily life activities and in those with prior traumatic event experiences. The greater need for help and assistance of some older adults in accomplishing everyday activities appears to elicit verbal abusiveness from caregivers.

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Current financial exploitation by family members in one form or another was present in over 5% of respondents, making this form of mistreatment by trusted others unexpectedly common. Not surprisingly, older adults who were somewhat functionally impaired, as evidenced by their need for assistance with activities of daily living, were most at risk. Disconcertingly, older adults who used social

services were more likely to be financially mistreated, perhaps indicating that interaction with service providers somehow failed to act as a barrier against financial exploitation by family members, despite the increased potential for detection.

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Not surprisingly, older adults with functional impairment, defined either as needing assistance with activities of daily life and poor health, were more likely to be targets of stranger-perpetrated financial exploitation. **More difficult to explain is the finding that younger older adults, and older adults with prior traumatic experiences, were also at increased risk for financial exploitation.**

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Emotional mistreatment of older adults in the workplace may be more common than we predicted, as employed older adults reported more of this for abusiveness. This, together with the first point seems to indicate a general societal acceptance of this behavior.

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Particularly striking was the older adult report that perpetrators of mistreatment were socially isolated, having fewer than three friends in about half of all the cases in which perpetrators were known. These perpetrator deficits may present targets for intervention which have the direct corollary benefit of reducing elder mistreatment.

5. Elder Abuse in the Time of COVID-19—Increased Risks for Older Adults and Their Caregivers, Makaroun, Bachrach, Rosaland, Am J Geriatr Psychiatry. 2020 Aug; 28(8): 876–880

- Isolation, financial stress, and concerns about health can lead to depression and anxiety, which can result in more abuse

For older adults themselves, social isolation is a known risk factor for experiencing elder abuse. The social distancing measures enacted to combat SARS-CoV-2 transmission, and recommendations by the Centers for Disease Control and Prevention for adults over the age of 65 to not leave their homes, are undoubtedly creating new degrees of social isolation even among those previously well connected. These limits on in-person contact can greatly limit ability for caregivers to provide care in person, and in general limit opportunities for ongoing elder abuse to be detected by others. In addition, **with unprecedented drops in the stock market, older adults may see any investments or retirement savings plummet, leading to financial instability, which is known to make them more vulnerable to financial scams and other types of abuse.** Older adults, who often have chronic health conditions, may now find it more difficult to access healthcare and supplies needed to manage their conditions and stay healthy. All of these issues—**isolation, financial stress, and concerns about health—can in turn lead to increased depression and anxiety, which is also known to make older adults more susceptible to suffering abuse**

6. Elder Abuse Severity: A Critical but Understudied Dimension of Victimization for Clinicians and Researchers, Burnes, Pillemer and Lachs, Gerontologist. 2017 Aug; 57(4): 745–756.

- Elder mistreatment leads to shortened survival rates
- 7.6 – 9.5 % of cognitively intact elders subject to mistreatment
- younger old associated with more severe levels of EM across all mistreatment sub-types than older old

Elder mistreatment (EM) is a pervasive public health concern with major individual consequences, such as shortened survival as well as societal costs (Dong, 2014; Pillemer et al., 2015). One-year EM incidence among community-dwelling, cognitively intact older adults in the United States is 7.6–9.5% (Pillemer, Burnes, Riffin, & Lachs, 2015). EM refers to an intentional act or omission of care occurring in a relationship of trust, which cause harm or serious risk of harm to an older adult or deprives an older adult of basic needs. EM encompasses physical, sexual, emotional, and financial abuse or neglect. (National Research Council [NRC], 2003).

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Older adults enduring more frequent and varied mistreatment behaviors are more likely to experience poor mental and physical health, chronic pain, hospitalization, and all-cause mortality (Dong et al., 2009; Dong, Simon, & Evans, 2012; Fisher and Regan, 2011).

\*\*\*\*

**Counter to expectations, younger age was associated with more severe levels of EM across all mistreatment sub-types... Using these theories, old-old adults may be more avoidant of potentially abusive relationships than young-old adults. Similarly, perpetrators may also be less likely to engage in escalating mistreatment dynamics as they grow older themselves (e.g., older adult children, older spouses).** Consistent with expectations, older adults with greater functional impairment endured more severe neglect. The opportunity of experiencing severe neglect escalates with the number of care needs.

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Our hypothesis suggested that higher levels of socio-cultural disadvantage would be associated with greater levels of EM severity. As expected, older adults living in households with lower incomes experienced more severe levels of neglect.

7. Elder Abuse: Research, Practice, and Health Policy. The 2012 GSA Maxwell Pollack Award Lecture, Xinqi Dong, MD, MPH, Gerontologist. 2014 Apr; 54(2): 153–162.

- 1 out of 10 older adults experiences some form of elder abuse
- only a fraction of cases are actually reported to social services agencies
- elder abuse is independently associated with significant morbidity and premature mortality
- cognitive and physical function impairment have been associated with increased risk for elder abuse
- Older adults with depression and signs of anxiety had higher risks of elder abuse

Elder abuse, also called elder mistreatment or elder maltreatment, includes psychological, physical, and sexual abuse, neglect (caregiver neglect and self-neglect), and financial exploitation. Evidence suggests that 1 out of 10 older adults experiences some form of elder abuse, and only a fraction of cases are actually reported to social services agencies. **At the same time, elder abuse is independently associated with significant morbidity and premature mortality**

\*\*\*\*

At the individual level, cognitive and physical function impairment have been associated with increased risk for elder abuse. In a population-based study of 238 community-dwelling older adults with elder abuse experience, Dong, Simon, Rajan, and Evans (2011) found that lower global cognitive function level, Mini-Mental State Examination (MMSE), episodic memory, and perceptual speeds are associated with increased risks of elder abuse.

\*\*\*

Older adults with depression and signs of anxiety had higher risks of elder abuse (Cooper et al., 2006; Dong, Simon, Odwazny, & Gorbien, 2008; Fulmer et al., 2005). In a community-based cohort, depression was significantly associated with elder abuse cases reported to APS (Lachs, Williams, O'Brien, Hurst, & Horwitz, 1997). Loneliness was associated with increased risk of elder abuse (Dong, Simon, Gorbien, Percak, & Golden, 2007). In addition, the association between psychosocial distress and elder abuse was affected by sociodemographic characteristics.

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Despite major gaps in our current knowledge, available evidence suggests that elder abuse is associated with significant adverse health outcomes.

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Previous studies have shown that elder abuse is associated with psychosocial distress. Abused older adults were more likely to report higher level of depression, anxiety, and posttraumatic stress disorder

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Evidence suggests that elder abuse is associated with emergency room visits, hospitalization, and nursing home placement and premature mortality

8. Elder Mistreatment in the United States, Laumann, Leitsch and Waite, J Gerontol B Psychol Sci Soc Sci. 2008 Jul; 63(4): S248–S254.

- Abuse of Cognitively Intact Elders is like Domestic Abuse
- Abuse of Congnitively Impaired Elders is like Child Abuse
- Frailest of Older Adults are not most vulnerable to Mistreatment

[A]mong older adults who are cognitively intact, mistreatment or abuse is conceptually much like domestic abuse in its etiology, appropriate prevention strategies, and consequences, whereas among cognitively impaired older adults mistreatment is conceptually similar to child abuse.

\*\*\*

The finding that adults in their late 50s and 60s are more likely to report verbal mistreatment or financial mistreatment than older adults is counterintuitive but suggests to us that respondents are including fairly routine arguments (perhaps about money) with their spouse, sibling, or child in their reports. Alternatively, older adults could be more reticent to report this type of negative behavior. Nonetheless, these results cast doubt on the assumption that the frailest of older adults are the most vulnerable to mistreatment

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Older adults with physical and cognitive impairments may be more vulnerable to mistreatment because of their inability to seek help or protect themselves from the abuse. Also, impairments can increase the stress experienced by the caregiver and may increase the likelihood of these negative interactions

9. Financial Capacity and Financial Exploitation of Older Adults: Research Findings, Policy Recommendations and Clinical Implications, Wood, Lichtenberg, Clin Gerontol. 2017 ; 40(1): 3–13.

- 20 % of older adults reported being taken advantage of financially in terms of an inappropriate investment, unreasonably high fees for financial services, or outright fraud.
- Financial exploitation has been increasing with losses of approximately \$ 2.9 billion dollars / year
- Older adults are targeted disproportionately, and are less likely to report financial exploitation
- Older adults who experienced having low social needs fulfillment and depression were significantly more likely to experience fraud.
- Older adults who have been victimized have been reported to demonstrate lower levels of confidence and increased rates of depression, placing them at greatly increased risk for future victimization
- Use of numerical reasoning during decision-making is often lower among older adults resulting in older adults' lower comprehension and worse decision making when unfamiliar numerical information is present
- Structural issues in society continue to allow the predictable and common financial exploitation of older adults to occur

Data sources tracking financial exploitation report that financial exploitation has been increasing with losses of approximately \$ 2.9 billion dollars / year.

\*\*\*

Financial exploitation can occur at any stage of the lifespan and the literature regarding prevalence amongst older adults has been mixed in terms of supporting a theory that older adults are more “susceptible” to fraud. However, there has been literature that documents that older adults are targeted disproportionately, and are less likely to report financial exploitation

\*\*\*

While it is certainly the case that older adults who retain capacity may become victims of exploitation, even subtle cognitive changes can increase risk of financial exploitation.

\*\*\*

The Elder Investment Fraud and Financial Exploitation Survey (The Investor Protection Trust, 2010) surveyed 2,022 individuals in the United States including 590 adults age 65 and older and 706 adult children with at least one parent aged

65 or older. Some key findings from this study included that 20 % of older adults reported being taken advantage of financially in terms of an inappropriate investment, unreasonably high fees for financial services, or outright fraud.

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Older adults who experienced having low social needs fulfillment and depression were significantly more likely to experience fraud.

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Older adults who have been victimized have been reported to demonstrate lower levels of confidence and increased rates of depression, placing them at greatly increased risk for future victimization

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The use of numerical reasoning during decision-making is often lower among older adults resulting in older adults' lower comprehension and worse decision making when unfamiliar numerical information is present (e.g., Hibbard, Peters, Slovic, Finucane, & Tusler, 2001). In some older adults low numeracy reflects a decline from earlier numeric skills, in others low numeracy may reflect lower lifelong abilities (S. A. Wood, Liu, Hanoch, & Estevez-Cores, 2015).

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Structural issues in society continue to allow the predictable and common financial exploitation of older adults to occur

10. Financial Exploitation of Older Adults: A Population-Based Prevalence Study,  
Peterson, et al, J Gen Intern Med. 2014 Dec; 29(12): 1615–1623

- Stealing and misappropriation most common exploitation
- Family members (less than  $\frac{1}{2}$  of whom were children) were most common exploiters followed by friends and neighbors then paid home health care aids.
- Disproportionately affects black older adults and those who lived below the poverty line.
- Factors increasing exploitation
  - Number of non-spousal household members
  - $\geq 1$  IADL or ADL disabilities

Older adults are more likely to have financial resources than their younger counterparts, and this, in combination with the higher prevalence of social isolation, cognitive impairment, and other factors, renders them uniquely susceptible to financial exploitation

\*\*\*

Stealing or misappropriation of money or property was, by far, the most common

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Family members were the most common perpetrators of FEOA events (57.9 %), and were most often adult children (24.6 %). The next most common perpetrators were friends and neighbors (16.9 %), followed by paid home care aides (14.9 %).

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Financial exploitation disproportionately affected black older adults and those who lived below the poverty line.

the presence of  $\geq 1$  IADL or ADL disabilities was significantly associated with FEOA, as was increasing numbers of non-spousal household members.

The most common perpetrator was not an outsider, but most often a family member (57.9 %), followed by friends and neighbors (16.9 %), or a paid home aid (14.9 %)

\*\*\*

If a new disease entity were discovered that afflicted nearly one in 20 adults over their older lifetimes and differentially struck our most vulnerable subpopulations, a public health crisis would likely be declared. Our data suggest that financial exploitation of older adults is such a phenomenon.

11. Elder Fraud and Financial Exploitation: Application of Routine Activity Theory,  
Marguerite DeLiema, Phd, Gerontologist, 2018, Vol. 58, No. 4, 706–718

- Older adults may be disproportionately solicited by fraudsters because they are at or near the peak of asset accumulation or because perpetrators assume that cognitive impairment and isolating life events such as retirement, widowhood, and disability make them more susceptible
- Aging adults most vulnerable to fraud during the gradual period of cognitive and physical decline when deficits are hardest to recognize
- At the later stages of impairment, the model predicts that elders are more vulnerable to financial exploitation by “trusted others.”
- More than 50% of all victims needed assistance with ADLs and nearly all required help with one or more IADLs.
- Those more mobile more likely to be victims of fraud (as opposed to exploitation) because of contact with community.

Older adults may be disproportionately solicited by fraudsters (Kieffer & Mottola, 2016) because they are at or near the peak of asset accumulation or because perpetrators assume that cognitive impairment and isolating life events such as retirement, widowhood, and disability make them more susceptible

\*\*\*

Whereas fraud perpetrators must convince their targets to willingly cooperate with the proposed exchange (Holtfreter, Reisig, & Pratt, 2008), many financial exploiters already have access to the elders’ accounts or the legal authority to act on their behalf (Payne, 2002). Thus, they can pilfer assets without the elders’ awareness or explicit agreement

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**Unlike fraud, financial exploitation does not require that the perpetrator have an intent to deceive the elder**, although exploiters sometimes make false promises, such as when a grandchild vows to care for his aging grandparents in exchange for inheriting their home.

\*\*\*

Older adults who engage in remote purchasing activities face greater risk of being targeted by fraud. Having low self-control also increased the risk of fraud victimization once targets were solicited in remote purchasing environments

\*\*\*

Aging adults may be most vulnerable to fraud during the gradual period of cognitive and physical decline when deficits are hardest to recognize by capable guardians, such as family members, friends, or medical professionals. Although

not all people develop dementia as they age, those who do often exhibit subtle signs of diminished problem solving and difficulties with complex transactions in the early stages of the disease despite normal functioning in other areas, such as language and semantic knowledge, and need no assistance with personal care (Triebel & Marson, 2012). These adults may even downplay their cognitive deficits in order to protect their financial independence. By the time capable guardians recognize the elders impairments, financial predators (motivated offenders) may have already succeeded in committing fraud. The resulting financial loss may be the event that causes others to step in.

\*\*\*

The majority of financial exploitation and fraud victims presented with deficits in some or all areas of cognitive functioning when they were evaluated following the allegations. Fraud victims performed significantly better on the MMSE compared with financial exploitation victims

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Sixty-four percent of victims in both groups had a history of cognitive impairment that was documented in their medical records or was described by collateral sources ... Among the fraud victims who tested as cognitively impaired by the neuropsychologist (85%) and had data on prior cognitive functioning, the average length of impairment was 3 years, whereas for financial exploitation victims (88% impaired), it was slightly longer—4.4 years.

\*\*\*

Routine activity theory predicts that engagement in activities away from the household increases opportunities for crime because it brings suitable targets in contact with motivated offenders (Cohen & Felson, 1979). Older adults have more opportunities to engage with community members if they are ambulatory/

\*\*\*

The majority of victims needed assistance with instrumental activities of daily living (IADLs)—driving, shopping, and money management, but needed help with only some basic activities of daily living (ADL) such as bathing, toileting, transferring, and getting dressed.

12. Elder Abuse "Society's Dilemma" Eugene Hardin, MD, FACEP, FAAEM and Alia Khan-Hudson, MD, Journal Of The National Medical Association Vol97, no 1 (2005)

Elder abuse and neglect continue to be one of society's great embarrassments. It is encouraging to note that all 50 states now have passed legislation relating to elder abuse. Most states also have specific reporting requirements, and it is now a misdemeanor in some states for not reporting suspected elder abuse or neglect.

13. Elder Abuse, Mark S. Lachs, M.D., M.P.H., and Karl A. Pillemer, Ph.D., N Engl J Med 2015;373:1947-56.

- Financial Exploitation of older adults is an epidemic
- Functional impairment and poor physical health put at greater risk
- Younger Older adults consistently associated with a greater risk of abuse, including emotional, physical, and financial abuse and neglect

Financial exploitation of older adults, which was explored only minimally in the initial studies, has recently been identified as a virtual epidemic and as a problem that may be detected or suspected by an alert physician.

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When the available evidence is taken into consideration, an estimated overall prevalence of elder abuse of approximately 10% appears reasonable.

\*\*\*

Among older adults, a younger age has been consistently associated with a greater risk of abuse, including emotional, physical, and financial abuse and neglect

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With the exception of dementia, which is a documented risk factor for financial exploitation, specific diseases have not been identified as conferring a greater risk of abuse.

\*\*\*

In general, however, functional impairment and poor physical health have consistently been shown to be associated with a greater risk of abuse among older persons, irrespective of the cause of such limitations

14. Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study, Ron Acieno, PhD, et al, Am J Public Health. 2010 February; 100(2): 292–297.

- Low social support was associated with more than triple the likelihood that mistreatment
- Non-use of social services and required assistance with daily activities associated with increased likelihood of financial exploitation
- Previous traumatic events increased the risk for emotional, sexual, and financial mistreatment.
- Young-old respondents (aged < 70 years) were more likely than respondents in the old-old group to fall victim to emotional, physical, and financial mistreatment by strangers

Our data showed that abuse of the elderly is prevalent. Addressing low social support with preventive interventions could have significant public health implications.

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The multivariate model showed that only nonuse of social services and required assistance with daily activities remained uniquely associated with increased likelihood of mistreatment.

\*\*\*

Slightly more than 1 in 10 of our community-residing, cognitively intact elderly respondents reported experiencing some type of abuse or potential neglect (excluding financial exploitation) in the past year; low social support significantly increased the risk of virtually all forms of mistreatment. Relatively little of this mistreatment was reported to authorities.

\*\*\*\*

Low social support was associated with more than triple the likelihood that mistreatment of any form would be reported. These findings are disconcertingly consonant with those of mental health epidemiological reports about this age group. Older adults who reported low social support and experienced extremely stressful events such as natural disasters had increased risk of suffering posttraumatic stress disorder, depression, and generalized anxiety disorder

\*\*\*

consonant with the literature on mental health functioning in older adults was the finding that experience of previous traumatic events—including interpersonal and domestic violence—increased the risk for emotional, sexual, and financial mistreatment.

\*\*\*

our young-old respondents (aged < 70 years) were more likely than respondents in the old-old group to fall victim to emotional, physical, and financial mistreatment by strangers.

15. Prevalence of Financial Fraud and Scams Among Older Adults in the United States: A Systematic Review and Meta-Analysis, David Burnes, et al, Am J Public Health. 2017 August; 107(8): e13–e21

- Age-associated vulnerability to financial exploitation is rooted in exposure to neurological, cognitive, functional, and psychosocial risks and is conceptualized as a potential clinical syndrome for screening.
- Older adults represent a distinct demographic group differentiated by a unique set of age-associated fraud–scam vulnerabilities

Although it is unclear whether older adults experience higher rates of fraud–scam victimization than other age groups, older adults represent a distinct demographic group differentiated by a unique set of age-associated fraud–scam vulnerabilities. The decision-making process necessary to actively avoid and resist fraud–scam activities requires complex, higher-order cognitive functions that decline disproportionately among older adults. For example, mild cognitive impairment is associated with poor financial decision-making, reduced financial literacy, and greater susceptibility to scams. Even among older adults without mild cognitive impairment or dementia, age-related changes in cognition are associated with poor decision-making and greater susceptibility to scams. Older adults are more likely to have financial resources than are their younger counterparts, and this, in combination with the higher prevalence of cognitive, functional, and health impairments, renders them uniquely susceptible to fraud and scams. Indeed, older adults are disproportionately targeted by fraud–scam attempts and encounter fraud–scam schemes that are specifically designed to exploit age-associated vulnerabilities.

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Elder financial fraud and scams is a common problem, affecting approximately 1 of every 18 cognitively intact, community-dwelling older adults each year

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Elder financial fraud–scam prevalence findings in this study likely underestimate the true population prevalence

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Elder financial exploitation victimization is associated with mortality, hospitalization, and poor physical and mental health

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The Centers for Disease Control and Prevention recently recognized and defined elder mistreatment as a serious public health problem requiring formal surveillance. The 2015 decennial White House Conference on Aging designated elder mistreatment as one of 4 top-priority issues affecting older adults. As a

derivative of elder mistreatment, the financial exploitation of older adults is associated with increased risks of mortality and hospitalization, poor physical and mental health, and diminished quality of life. Age-associated vulnerability to financial exploitation is rooted in exposure to neurological, cognitive, functional, and psychosocial risks and is conceptualized as a potential clinical syndrome for screening.

## KEY FEDERAL LEGISLATION

### **ELDER JUSTICE ACT**

Passed in 2010, the Elder Justice Act is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults at the federal level. The law authorized a variety of programs and initiatives to better coordinate federal responses to elder abuse, promote elder justice research and innovation, support Adult Protective Services systems, and provide additional protections for residents of long-term care facilities.

<https://acl.gov/about-acl/elder-justice-act>

1   **SEC. 2. FINDINGS.**

2       Congress finds the following:

3           (1) The proportion of the United States popu-  
4       lation age 65 years or older will drastically increase  
5       in the next 30 years as 77,000,000 baby boomers|  
6       approach retirement and old age.

7           (2) Each year, anywhere between 500,000 and  
8       5,000,000 elders in the United States are abused,  
9       neglected, or exploited.

10          (3) Elder abuse, neglect, and exploitation have  
11       no boundaries, and cross all racial, social class, gen-  
12       der, and geographic lines.

1                   (4) Victims of elder abuse, neglect, and exploitation  
2                   are not only subject to injury from mistreatment  
3                   and neglect, they are also 3.1 times more likely  
4                   to die than elders who were not victims of elder  
5                   abuse, neglect, and exploitation.

6                   (5) There is a general dearth of data as to the  
7                   nature and scope of elder abuse, neglect, and exploitation.  
8

9                   (6) Despite the dearth of data in the field, experts  
10                  agree that most cases of elder abuse, neglect,  
11                  and exploitation are never reported and that abuse  
12                  and neglect shorten a victim's life, often triggering  
13                  a downward spiral of an otherwise productive, self-  
14                  sufficient elder's life. Programs addressing other difficult  
15                  issues such as domestic violence and child  
16                  abuse and neglect have demonstrated the need for a  
17                  multi-faceted law, including public health, social  
18                  service, and law enforcement approaches.

18 **SEC. 3. PURPOSES.**

19                  The purposes of this Act are as follows:

1                   (2) To raise the issue of elder abuse, neglect,  
2                   and exploitation to national attention, and to create  
3                   the infrastructure to assure that individuals and organizations  
4                   on the front lines, who are fighting elder abuse, neglect, and exploitation with scarce resources  
5                   and fragmented systems, have the resources  
6                   and information needed to carry out their fight.  
7

§ 2, Findings, Elder Justice Act, Senate Bill 2933, 107<sup>th</sup> Congress, 2d Session.

**(5) Elder.—The term “elder” means an individual age 60 or older.**

NOTE: The final statute reduced the age in this Bill from “65 or older,” to “60 or older”

**(6) Elder Justice.** The term “elder justice” means—

- (A) from a societal perspective, efforts to—
  - (i) **prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and**
  - (ii) protect elders with diminished capacity while maximizing their autonomy;

SEC. 2011. [42 U.S.C. 1397j], the Federal “Elder Justice Act”

IN GENERAL.—The Council shall make recommendations to the Secretary for the coordination of activities of the Department of Health and Human Services, the Department of Justice, and other relevant Federal, State, local, and private agencies and entities, **relating to elder abuse, neglect, and exploitation and other crimes against elders.**

Sec. 2021. [42 U.S.C. 1397k]Part I—NATIONAL COORDINATION OF ELDER JUSTICE ACTIVITIES AND RESEARCH, Subpart A—Elder Justice Coordinating Council And Advisory Board On Elder Abuse, Neglect, And Exploitation, part of the Federal “Elder Justice Act”

**The signing of the Elder Justice Act into law as part of the Affordable Care Act (P.L. 111-148) occurred on March 23, 2010 (Patient Protection and Affordable Care Act, P.L. 111-148). It represented a partial culmination of a legislative crusade that spanned most of the previous decade, yet it really reflected a larger accomplishment; it brought the issue of elder abuse to the national consciousness and elder justice to the nation’s conscience after six decades of work.**

The first EJA also contained some powerful findings which provided the basis for why the legislation was deemed necessary. The findings focused on the estimated range of the problem (i.e., between 500,000 and 5 million elders abused each year), the dearth of data on the scope of elder abuse, the lack of reporting of elder abuse and the absence of a coordinated federal effort to combat the problem. ***Yet, its most often repeated and chilling finding was “victims of elder abuse, neglect, and exploitation... are also 3.1 times more likely to die at an earlier age than expected than elders who were not victims of elder abuse, neglect and exploitation”*** (Elder Justice Act, 2002, p. 3)

History of the Elder Justice Act, Robert B. Blancato, Volume 22, No. 1 Oxford Public Policy & Aging Report.

## THE OLDER AMERICANS ACT

The OAA was in response to concern by policymakers about a lack of community social services for older persons. New language in Title II and Title VII emphasize multi-disciplinary and collaborative approaches to addressing elder maltreatment when developing programs and long-term strategic plans for elder justice activities. AoA has funded the [National Center on Elder Abuse \(NCEA\)](#) to examine issues, current practices, and future directions for the enhanced coordination between elder rights and ADRC systems. In FY 2008, the NCEA will study successful collaboration between home and community-based service providers, Adult Protective Services, and Long-Term Care Ombudsman to ensure the safety and well-being of vulnerable seniors as they are diverted or transitioned from institutional settings to community based care.

<https://acl.gov/about-acl/authorizing-statutes/older-americans-act>

....., .....

(15) The term “elder abuse” means abuse of an older individual.

(16) The term “elder abuse, neglect, and exploitation” means abuse, neglect, and exploitation, of an older individual.

(17) The term “elder justice” means—

(A) from a societal perspective, efforts to—

(i) prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and

(ii) protect older individuals with diminished capacity while maximizing their autonomy; and

(B) from an individual perspective, the recognition of an older individual’s rights, including the right to be free of abuse, neglect, and exploitation.

(18)(A) The terms “exploitation” and “financial exploitation” mean the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.

(40) The term “older individual” means an individual who is 60 years of age or older.

§ 102 of the Older Americans Act.

## **SAMPLE FEDERAL AGENCY ACTION TO STOP ELDER ABUSE (FCC)**

Statement from the FCC to Congress:

Protecting older consumers in the marketplace has been a top FTC priority for decades. Unfortunately, in numerous FTC cases, older adults have been targeted or disproportionately affected by fraud. For example, the FTC has seen schemes targeting Medicare recipients; a robocall interest rate reduction scheme touting a purported special government program for senior citizens; and advertising claims for brain training programs that allegedly combat cognitive impairment associated with aging. Further, as described in Section II.A, older adults report some of the highest dollar losses to certain types of fraud.

\*\*\*\*

... the Consumer Sentinel Network data shows significant individual financial losses reported by older consumers, particularly those age 80 and older. In 2017, the largest individual losses to fraud were reported by older consumers. Figure 3 shows that when they reported a monetary loss, people ages 60 and older reported much higher median losses than the younger age groups. In fact, consumers ages 80 and older report the largest median losses of \$1,100, over twice the median loss amount reported by each of the age groups under age 60.

\*\*\*\*

the median reported loss to prizes/sweepstakes/lottery scams is \$1,300 for seniors ages 60 and over, but only \$431 for younger people.

\*\*\*\*

In 2017, people ages 60 and older paid \$104 million via wire transfer to fraudulent schemes, far surpassing the amounts they reported paying through any other payment method

PROTECTING OLDER CONSUMERS, Federal Trade Commission (F.T.C.)(Remarks October 18, 2018) 2018 WL 5267211.,

# **210127 Testimony ADAM SPENCE SB327 Support.pdf**

Uploaded by: Spence, Adam

Position: FAV

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**To:** Members of Senate Judicial Proceedings

**From:** Vulnerable Adult Exploitation Joint Task

**Date:** January 27, 2021

**Subject:** SB 327: Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

**Position:** Support

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As a member of the Maryland State Bar Association's Vulnerable Adult Exploitation Task Force, I SUPPORT SB 327: Civil Actions – Financial Exploitation of Vulnerable Adults (The Maryland SAFE Act).

### **THE HEART-BREAKING REALITY**

I am providing this testimony from personal experience as a trial attorney involved in cases involving financial exploitation. The common theme in these cases is families' heart break, emotional and physical distress and monetary loss as their lives are upended by such exploitation.

Clients come to me regularly where a vulnerable adult has been financially exploited at the hands of the client's family, "friends" or caretakers. Such exploitation ranges from (i) liberally taking monies during an elder's life through manipulation or deception, (ii) having them execute Powers of Attorney so as to access the "keys to the [financial] castle" and (iii) even "wheel-chairing" an elder to the bank so as to change the beneficiaries on bank accounts (and life insurance policies) to favor the perpetrator.

The cases of financial exploitation that I encounter are predictable in both pattern and methodology of exploitation. When reviewing a new matter with a client, I can generally sense what has already happened before even being told all the facts. A vulnerable adult has been manipulated or defrauded into trusting someone who then exploits that trust to causing considerable financial loss to the exploited or others in their family. In my career I have seen millions of dollars shifted to perpetrators through exploitation of those who, because of age or infirmity, are no longer able to protect themselves.

## **REAL PEOPLE EXPLOITED**

Victims of exploitation can be well-educated and affluent or illiterate and impoverished, living solely on social security. Regardless of economic circumstance, cognitive and physical decline coupled with money and greed can easily result in exploitation.

Here are but a few instances of exploitation, without exaggeration, for which I sued on behalf of victims, siblings, children, and others:

- A daughter bullied an elderly mother, into agreeing to invest all of an even older grand-mother's savings into home renovation schemes, resulting in considerable liquidity difficulties in being able to afford long-term medical care and only partial repayment after nearly a year of litigation. When the mother raised her concerns about the use of funds, the daughter threatened to move the grandmother out of long-term care and into the mother's house. This was an abhorrent threat, as the mother was both physically and emotionally unable to care for the substantial needs of the grandmother, who would likely die under her care.
- A daughter used a power-of-attorney to divert over \$800,000 from her father's bank accounts while he suffered from severe dementia. The daughter used those monies to make considerable profits off of house renovations, without giving those profits to her father, as required by law and the Power of Attorney she used.
- Two former co-workers (who previously did not even know each other) conspired to divert over \$1,000,000 of monies from an adult in a hospital having long-term medical issues. They did so by using a power-of-attorney and changing beneficiaries to various accounts. A person who was best friends with the adult for over 30 years, -- regularly playing poker and fishing with him, -- had never heard of nor met these two co-workers who became collective millionaires.
- Two caregivers diverted over \$500,000 of monies of an individual on her deathbed through change of beneficiaries on accounts. Notably, these caregivers destroyed all morphine administration records which would have shown how much morphine the vulnerable adult was on at the time the changes were effectuated.
- A mother used undue influence to effectuate the execution of a Power-of-Attorney by her daughter to deprive, that vulnerable and disabled daughter in her twenties of \$150,000 in life insurance monies from her father's passing. The mother used those monies to buy a beach house. The loss of these monies resulted in the daughter's need for soup kitchen assistance and a stay in a homeless shelter.

- A daughter with financial problems who kidnapped an elite socialite's husband of 50 years after a stroke, solely to take advantage of his substantial pension.

### **A POWDER KEG READY TO EXPLODE**

Regrettably, these stories are legion, both from personal experience and society at large. The National Adult Protective Services Association states that "APS programs report that the number and complexity of reports involving financial abuse of vulnerable and older adults has grown significantly over the past decade. Recent research has found that elder financial exploitation is widespread..." The MetLife seminal study described elder exploitation as the "*Crime of the 21st Century.*" A recent Huffington Post article even described it as "*a powder keg ready to explode as older adults become a proportionately larger share of the total population.*"

As part of the Task Force, in addition to numerous other materials I researched, I compiled the attached summary of fifteen published academic studies on financial exploitation related just to the elderly. Findings from those studies state that:

- Elderly Abuse is an Epidemic
- More than 50% of all victims needed assistance with activities of daily living
- Abuse is associated with significant morbidity and premature mortality
- Structural issues in society continue to allow the predictable and common financial exploitation of older adults to occur
- Encouragingly, all 50 states have now passed legislation relating to elder abuse

### **THE SAFE ACT GIVES ACCESS TO JUSTICE**

The Safe Act has been carefully drafted to encompass existing Maryland law governing financial exploitation, while providing the additional remedies of fee-shifting and trebling of damages. By doing so, the SAFE Act provides a mechanism for victims, families, and attorneys to work together to obtain justice for victims of exploitation.

Please **SUPPORT SB 327.**

*Adam M. Spence*

Adam Spence, Esq.  
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# **HFAM Testimony SB 327 Final.pdf**

Uploaded by: DeMattos, Joseph

Position: FWA



Health Facilities Association of Maryland  
*Partners in Quality Care*

**TESTIMONY BEFORE THE  
SENATE JUDICIAL PROCEEDINGS COMMITTEE**

February 2, 2021

Senate Bill 327: Civil Actions - Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)  
*Written Testimony Only*

**POSITION: SUPPORT WITH AMENDMENT**

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support with amendment Senate Bill 327: Civil Actions - Financial Exploitation of Vulnerable Adults (Maryland SAFE Act). The amendments offered:

**Section 13-601(E)(3):** The legislation includes a carve-out for “Medicaid planning.” The following should be deleted: MAXIMIZE ELIGIBILITY FOR PUBLIC BENEFITS IN ORDER TO PRESERVE ASSETS FOR AN IDENTIFIED OR IDENTIFIABLE PERSON. There should be no such blanket exception since some actions may represent Financial Exploitation, even if this for this intended purpose. Such activities should be for the benefit of the Vulnerable Adult. Removing the exception does not make Medicaid planning illegal. It should be subject to the same oversight as all other financial actions.

**Section 13-603(A)(3) and (4):** The reference to “A SPOUSE, PARENT, OR DESCENDENT OF THE VULNERABLE ADULT” should be removed. It may appear logical that such persons should be included, but there this is a potential for conflict. “Descendants” is an overly broad term and can include individuals who have only a tenuous connection to a Vulnerable Adult. Also, the Health Care Decisions Act reference is already included, and it sets forth a legislatively determined priority for identifying who can act for an individual, including among family members. Such priority ranking should not be supplanted by this additional reference under (3) where a spouse, parent or descendant could conflict with the designated surrogate. The same concern is present with respect to a “presumptive heir” under (4).

We must band together to fight and help prevent financial exploitation across all settings, whether in the community or a health care setting. Financial exploitation is abuse, in whatever setting it occurs. And sadly, the National Council on Aging reports that:

- One in ten people in the United States age 60+ are victims of some form of abuse, including financial exploitation.
- That in almost 60 percent of elder abuse, including financial exploitation, the perpetrator is a family member.
- Two-thirds of perpetrators are adult children or spouses.

(more)

- While likely under-reported, estimates of elder financial abuse and fraud costs to older Americans range from \$2.9 billion to \$36.5 billion annually.

For these reasons and to help stamp out the financial exploitation of older Marylanders wherever they may live, we urge a favorable report of Senate Bill 327 with our offered amendments.

*Submitted by:*

Joseph DeMattos, Jr.  
President and CEO  
(410) 290-5132

## **SB 327- FSI - Letter of information.pdf**

Uploaded by: Popham, Bryson

Position: INFO



VOICE OF INDEPENDENT  
FINANCIAL SERVICES  
 FIRMS AND INDEPENDENT  
 FINANCIAL ADVISORS

January 29, 2021

The Honorable William C. Smith, Jr., Chairman  
Senate Judicial Proceedings Committee  
2 East  
Miller Senate Office Building

Annapolis, Maryland 21401

RE: Senate Bill 327 - Civil Actions - Financial Exploitation of Vulnerable Adults – Information Only

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

On behalf of the Financial Services Institute (FSI), I respectfully request an unfavorable report on Senate Bill 327 – Civil Actions - Financial Exploitation of Vulnerable Adults (Maryland SAFE Act).

The Financial Services Institute (FSI)<sup>1</sup> and its membership welcome the opportunity to comment on S.B. 327, which calls for establishing a cause of action for certain financial exploitation of certain vulnerable adults. FSI appreciates Senator Waldstreicher's initiative to protect vulnerable adults. We recognize that, as the population of Maryland and the United States continues to advance in age, the opportunities to deceive and otherwise take advantage of this elder population are growing. Senator Waldstreicher's legislation provides new remedies against those persons who harm our vulnerable adults, as defined in the bill.

We respectfully ask for modifications to S.B. 327. As explained below, we are concerned about the possible unintended consequences that could result from S.B. 327, including exposing financial advisors to liability when they are acting to protect vulnerable adults from exploitation.

### **BACKGROUND ON FSI**

FSI represents the independent financial services community. More specifically, FSI advocates on behalf of independent financial services firms and their affiliated independent financial advisors. In the U.S., there are more than 160,000 independent financial advisors, which account for over 60% of all producing registered representatives.<sup>2</sup> These financial advisors are self-employed independent contractors, rather than employees, of the independent financial services firms, or independent broker-dealers.

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<sup>1</sup> The **Financial Services Institute (FSI)** is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education, and public awareness, FSI has successfully promoted a more responsible regulatory environment for more than 100 independent financial services firm members and their 160,000+ affiliated financial advisors – which comprise over 60% of all producing registered representatives. We effect change through involvement in FINRA governance as well as constructive engagement in the regulatory and legislative processes, working to create a healthier regulatory environment for our members so they can provide affordable, objective advice to hard-working Main Street Americans. For more information, please click [here](#).

<sup>2</sup> Cerulli Associates, Advisor Headcount 2016, on file with author.

FSI members in Maryland support \$563 million of economic activity in the state. This activity, in turn, supports 5,948 jobs including direct employees, those employed in the FSI supply chain (indirect), and those supported in the broader economy (induced). In addition, FSI members contribute nearly \$43 million annually to state and local government tax collections.<sup>3</sup>

## **DISCUSSION**

FSI strongly supports legislation that protects investors, especially those most vulnerable, from unscrupulous actors. We have supported legislation that empowers financial advisors and financial services firms to identify and report suspected financial exploitation of seniors and vulnerable investors, and to place a temporary hold on account disbursements when they reasonably suspect financial exploitation. The Maryland General Assembly joined many other states and adopted such financial exploitation legislation in 2017.<sup>4</sup> Our concern is focused on possible unintended consequences if Senate Bill 327 should be enacted as currently drafted.

Financial advisors and financial services firms operate under an array of state and federal laws, and the rules of self-regulatory bodies. They are subject to oversight and enforcement by state, federal and self-regulatory authorities. Separately and collectively, the laws, regulations and authorities provide robust investor protection proscribing the conduct of financial advisers and financial services firms, including establishing enforceable standards that govern the customer relationship. Additionally, investors may seek recourse for wrongdoing through courts or in arbitration. In sum, the conduct that S.B. 327 seeks to address and combat is already prohibited activity of financial advisors and financial services firms under financial services law, regulation and authority, and remedies are available under a well-established system that has evolved over decades to ensure investor protection. For this reason, the conduct of financial advisors and financial services firms should continue to be governed under current state and federal law, and they can be excluded from the remedies provided by S.B. 327 without undermining the intent or effect of the bill.

Two elements of S.B. 327 lead FSI to be concerned about how private litigants could exploit the protections provided by the bill in a way that is unintended. First, as referenced above, Maryland has empowered financial advisors and financial services firms to place a temporary hold on disbursements if they have a reasonable suspicion of financial exploitation of a senior or vulnerable investor. We are concerned that under proposed section 13-601(E)(I) and (III), such a hold could be considered obtaining or using funds to “temporarily...deprive the vulnerable adult of the use” of the funds. It would certainly be unintended and unwanted for financial advisors and financial services firms to be put at risk of litigation for protecting seniors and vulnerable investors, in compliance with Maryland law.

Second, proposed section 13-601(E)(2)(iv) establishes that "Financial Exploitation" includes: "Intentional failure to effectively use a vulnerable adult's income and assets for the necessities required for the vulnerable adult's support and maintenance." We are concerned that this provision could be misapplied to financial advisors and financial services firms. Because of their position as trusted advisors, financial professionals are often well-positioned to identify potential exploitation. Financial firms' rigorous compliance oversight can flag unusual activity that may be indicative of fraud or exploitation. For these reasons, Maryland's vulnerable investor law

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<sup>3</sup> The Economic Impact of FSI Members, on file with author.

<sup>4</sup> Codified at Md. Code Ann., Corp. & Assn. § 11-307.

allowing financial services firms to place a temporary hold on disbursements and notify authorities is an important and effective tool in combatting exploitation. However, financial advisors and financial services firms are not typically in a position to know about a client's day-to-day tasks as delineated in S.B. 327, nor do they have legal authority to unilaterally use a client's assets to provide for the necessities. In sum, we are concerned that financial advisors and financial services firms could be held liable for harms for which they have no knowledge, nor any ability to address.

FSI appreciates and shares Senator Waldstreicher's desire to protect seniors and vulnerable investors. We are fully committed to protecting those, and indeed all, investors. We are confident that the changes we seek will in no way diminish those protections. FSI members work with state regulators and other state authorities to combat financial exploitation of seniors. The victims of financial exploitation are their clients, and they can feel victimized, too, when the client is exploited. We believe the long-standing laws that govern the conduct of financial advisors and financial services firms provide strong protections against exploitation while empowering them to identify, report and mitigate fraud and abuse.

### **CONCLUSION**

FSI appreciates and supports legislation that help protect seniors and vulnerable investors. We believe some aspects of S.B. 327 could lead to unintended, and counterproductive, consequences, especially as it concerns financial advisors and financial services firms. We believe our concerns could be addressed without undermining the intent or effectiveness of the bill.

We would be happy to work with Senator Waldstreicher and your Committee on amendments that will achieve this goal.

Please feel free to contact my colleague, Dan Barry, Director of State Legislative Affairs, at (202) 517-6464 or [dan.barry@financialservices.org](mailto:dan.barry@financialservices.org) if you have questions or concerns about this or other matters.

Respectfully submitted,



David T. Bellaire, Esq.  
Executive Vice President & General Counsel

cc: The Honorable Jeff Waldstreicher

Bryson F. Popham, Esq.

## **SB 327 Informational Letter\_IAB.pdf**

Uploaded by: Popham, Bryson

Position: INFO



Insurance Agents  
& Brokers

January 29, 2021

The Honorable William C. Smith, Jr., Chairman  
Senate Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

RE: Senate Bill 327 - Civil Actions - Financial Exploitation of Vulnerable Adults – Informational Letter

We are providing this informational letter to assist the Committee in its consideration of this bill. First, the Insurance Agents & Brokers of Maryland (IA&B) applauds the intent of the bill, and commends Senator Waldstreicher for its introduction. IA&B is a trade association of independent insurance agencies whose members do business in Maryland. Some of our members provide financial services and products to Maryland citizens every day, and we fully appreciate that some of those citizens, particularly our elderly citizens, may be subject to the wrongful acts of insurance and financial services providers. Our Association has long required adherence to a code of ethics by our members.

Our comments are focused on possible unintended consequences if this legislation should be enacted. Insurance producers are required to be licensed under Maryland law, and their conduct is regulated by the Maryland Insurance Commissioner. They may also have other licenses for other services, with other regulators. Included in this statutory and regulatory framework is a subset of compliance requirements, together with ample (and serious) remedies when violations by these regulated individuals and entities occur. We note that the primary purpose of this new subtitle, set forth on page 6, at lines 5 and 6 of the bill, is to create a new cause of action for harm caused to vulnerable adults. Furthermore, on page 7, at lines 16-18, this new cause of action is “in addition to and cumulative with” other claims, causes of action or remedies that may be available.

While we do not object to the cumulative nature of available remedies, we respectfully suggest that the bill should observe longstanding precedent in the law, and the Committee should consider requiring the exhaustion of administrative remedies, or at least coordination of those remedies with any legal action that may be filed, before this new cause of action is authorized. It is worth noting that the Commissioner’s office receives thousands of consumer complaints each year, and that the Insurance Article alone addresses a broad range of insurance producer activities. The Commissioner has authority to impose serious penalties on insurance producers who violate the law.

The doctrine of exhaustion of remedies is one that is found in many different areas of the law where private conduct is subject to standards established by law and regulation. IA&B is not suggesting that the effect of SB 327 be diminished by the application of this doctrine; however, we hope the Committee agrees that a sensible



Insurance Agents  
& Brokers

approach to this important subject should include, as a necessary first step, the opportunity for compliance and enforcement actions by the appropriate public agencies charged with that responsibility.

Sincerely,

A handwritten signature in black ink that reads "Craig S. Mader".

Craig Mader  
President, Craig S. Mader Insurance Agency, Inc.  
Chair, IA&B of Maryland Government Relations Committee

cc: The Honorable Jeff Waldstreicher  
Bryson F. Popham, Esq.

# **SB 327 - CPD - Financial Exploitation - Concern.pd**

Uploaded by: Sakamoto-Wengel, Steven M.

Position: INFO

**BRIAN E. FROSH**  
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**ELIZABETH F. HARRIS**  
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**WILLIAM D. GRUHN**  
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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

February 2, 2021

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Steven M. Sakamoto-Wengel  
Consumer Protection Counsel for Regulation, Legislation and Policy

Re: Senate Bill 327 – Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland  
SAFE Act) (CONCERNS)

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The Consumer Protection Division of the Office of the Attorney General is concerned that some of the provisions of Senate Bill 327, sponsored by Senator Waldstreicher, which would establish a private right of action for victims of financial exploitation of vulnerable adults, could create confusion that would make actions to help vulnerable adults more difficult. The Division supports efforts to encourage private attorneys to assist senior citizens and vulnerable adults who have been victims of financial exploitation to recover the assets taken from them. However, the Division is concerned that Senate Bill 327 could harm the Division's ability to assist those same victims.

The General Assembly first gave the Consumer Protection Division authorization to bring cases on behalf of victims of financial exploitation by Chapter 114 (2016). Chapter 794 (2018) gave similar authority to the Securities Commissioner. Chapter 160 enacted last session expanded the Division's authority by making financial exploitation of the elderly or vulnerable adults a violation of the Consumer Protection Act. And the General Assembly passed Senate Bill 407 last session, which would have required the Governor to appropriate money each year for a Senior and Vulnerable Adult Asset Recovery Unit in the Attorney General's Office, but that measure was vetoed by the Governor.

Since the attorney overseeing the program was first hired in January 2017 through the end of calendar year 2020, the Office has been able to open more than 190 investigations and has settled or obtained judgments totaling more than \$1.6 million in 21 cases. Chapter 160, which became effective October 1, 2020, allows victims of financial exploitation as defined in § 8-801 of the Criminal Law Article to bring a private right of action under § 13-408 of the Consumer Protection Act and collect reasonable attorneys' fees. The Division believes that the treble damages remedy proposed in Senate Bill 327 would enhance the ability of victims to recover funds taken from them

through financial exploitation by encouraging even more private attorneys to bring actions on their behalf.

However, rather than enhance the penalties currently available to victims of financial exploitation, Senate Bill 327 would create an entirely new cause of action, which could result in different court interpretations as to what constitutes financial exploitation of senior citizens and vulnerable adults. Section 8-801(b) of the Criminal Law Article, which is the operative section for actions by the Division as well as for criminal prosecutions of financial exploitation, sets forth the following prohibition:

- (1) 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 a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property.
- (2) 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 68 years old, with intent to deprive the individual of the individual's property.

Senate Bill 327 includes an expansive definition of "Financial Exploitation" beginning on page 3, line 16 down through page 4, line 22. Without expressing an opinion as to whether one definition of what constitutes financial exploitation is better, having two different definitions of what constitutes financial exploitation would only serve to create conflicting court interpretations of whether an alleged perpetrator's actions meet the definition and could lead a court to conclude that, by providing different definitions, the General Assembly intended one of the causes of action to be read more narrowly than the other.

Similarly, § 8-801 defines "Deception" by referencing § 7-101 of the Criminal Law Article, meaning knowingly to:

- (i) create or confirm in another a false impression that the offender does not believe to be true;
  - (ii) fail to correct a false impression that the offender previously has created or confirmed;
  - (iii) prevent another from acquiring information pertinent to the disposition of the property involved; or
  - (iv) promise performance that the offender does not intend to perform or knows will not be performed;
- (2) "Deception" does not include puffing or false statements of immaterial facts and exaggerated representations that are unlikely to deceive an ordinary individual.

By contrast, SB 327 defines "Deception" as "a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable adult."

The Honorable William C. Smith, Jr  
Senate Bill 327  
February 2, 2021  
Page 3

Additionally, SB 327 defines “Intimidation”, which § 8-801 does not, and the two laws have differing definitions of what constitutes a “Vulnerable Adult”. There are other terms in SB 327 and existing law that are also have different definitions. Again, without determining which approach is better, the Division is concerned that having two different Maryland laws defining prohibited conduct inconsistently will only create confusion and result in courts applying the standards differently to the same conduct.

The Division has reached out to the Estates and Trusts Section of the Maryland State Bar Association and would be willing to work with that Section and this Committee to address our concerns. Since § 8-801 is a criminal statute as well, the Division believes that the views of prosecutors should be made part of the conversation to ensure that any changes do not impact criminal prosecutions of those who would engage in financial exploitation of senior citizens and vulnerable adults.

Consequently, the Consumer Protection Division requests that the Judicial Proceedings Committee take our concerns into account when considering Senate Bill 327.

cc:     The Honorable Jeff Waldstreicher  
          Members, Judicial Proceedings Committee

## **SB 327 informational letter NAIFA MD.pdf**

Uploaded by: Smith, Sarah Joan

Position: INFO



191 Main Street, Suite 310 Annapolis, MD 21401

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January 29, 2021

The Honorable William C. Smith, Jr., Chairman  
Senate Judicial Proceedings Committee  
Miller Senate Office Building  
Annapolis, Maryland 21401

RE: Senate Bill 327 - Civil Actions - Financial Exploitation of Vulnerable Adults – Informational Letter

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

The National Association of Insurance and Financial Advisors of Maryland (NAIFA Maryland) is a trade association of businesses and individuals who serve the insurance and financial services needs of Maryland citizens throughout the state.

We are pleased to provide this informational letter to assist the Committee in its consideration of this bill. In doing so, we also endorse the comments you have received from our colleagues, the Insurance Agents and Brokers (IA&B).

NAIFA Maryland applauds the intent of the bill, and commends Senator Waldstreicher for its introduction. Our members provide financial services and products to Maryland citizens every day, and we fully appreciate that some of those citizens, particularly our elderly citizens, may be subject to the wrongful acts of insurance and financial services providers. Our Association has members who specialize in serving the needs of elderly adults, utilizing products such as long-term care insurance and other financial products appropriate for that stage of life. We also have always required adherence to a code of ethics by our members.

Like IA&B, our comments are focused on possible unintended consequences if this legislation should be enacted. Insurance producers are required to be licensed under Maryland law, and their conduct is regulated by the Maryland Insurance Commissioner. Many of our members also have other licenses for other services, with other regulators, both state and federal. Included in this statutory and regulatory framework is a subset of compliance requirements, together with ample (and serious) remedies when violations by these regulated individuals and entities occur. We note that the primary purpose of this new subtitle, set forth on page 6, at lines 5 and 6 of the bill, is to create a new cause of action for harm caused to vulnerable adults. Furthermore, on page 7, at lines 16-18, this new cause of action is “in addition to and cumulative with” other claims, causes of action or remedies that may be available.

While we do not object to the cumulative nature of available remedies, we respectfully suggest that the bill should observe longstanding precedent in the law and the Committee should consider requiring the exhaustion of administrative remedies before this new cause of action is pursued. It is worth noting that the Commissioner’s office receives thousands of consumer complaints each year, and that the Insurance Article alone addresses a broad range of insurance producer activities. The Commissioner has ample authority to impose serious penalties on insurance producers who violate the law.

The doctrine of exhaustion of remedies is one that is found in many different areas of the law where private conduct is subject to standards established by law and regulation. NAIFA Maryland is not suggesting that the effect of SB 327 be diminished by the application of this doctrine; however, we hope the Committee agrees that a sensible approach to this important subject should include, as a necessary first step, the opportunity for compliance enforcement actions by the appropriate public agencies charged with that responsibility.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Willie D. Franklin".

Willie D. Franklin  
Legislative Chair – NAIFA Maryland