
To: Members of the House Judiciary Committee

From: Vulnerable Adult Exploitation Joint Task Force

Date: March 31, 2021

Subject: **SB 327:** Civil Actions – Financial Exploitation of Susceptible Adults and Older Adults

Position: **Support**

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

INTRODUCTION

This bill was initially drafted by a coalition of attorneys from diverse Sections of the Maryland State Bar Association who advise clients and their families on a regular basis regarding the financial exploitation of susceptible adults. After this bill was filed in the Senate, there were numerous letters of support that were provided by interest groups, and amendments were suggested by several of these groups that were accepted as friendly amendments. These amendments are described below. The result is a consensus bill that picked up four bipartisan co-sponsors, and was passed by the Senate with a unanimous vote of 45-0.

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 AND OLDER ADULT FINANCIAL EXPLOITATION – THE CRIME OF THE 21ST 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.¹ This was an extensive study conducted about elder physical and emotional

¹ 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*

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 SUSCEPTIBLE ADULT AND OLDER ADULT FINANCIAL EXPLOITATION

Under current Maryland law, remedies for financial exploitation are mostly limited to criminal actions, which have been largely ineffective² 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 case 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 Association³, 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.

Finances.

² 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

³ *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.

The SAFE Act contains broad definitions of “financial exploitation” and “susceptible 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.

SENATE AMENDMENTS TO SB327

When this bill was before the Senate Judicial Proceedings Committee, it received several amendments, all of which were submitted with the support of the Joint Task Force. A brief summary of these Amendments is as follows:

1. ***Punitive damages.*** This was removed at the request of counsel for the Department of Aging because it wasn’t needed with treble damages already included.
2. ***Financial Institutions.*** Counsel for the Maryland Bankers Association requested that financial institutions be exempted from the provisions of this Act. Since it was never the intent of this legislation to target financial institutions, and since all current laws that address the issue of liability of financial institutions for wrongful acts are unaffected by this exemption, it was agreed that financial institutional institutions can and should be exempted.
3. The Consumer Protection Division of the Attorney General’s Office (“CPD”), while supporting this legislation, had two concerns they asked us to address:
 - a. ***Vulnerable Adults vs. Susceptible Adults.*** The term “vulnerable adult” is used in a variety of ways throughout Maryland law and Maryland statutes. The definition in the bill made several enhancements to this definition. In order to avoid confusion, the CPD requested that we use a different term and suggested “susceptible adults.” It was agreed that this change would not adversely impact the SAFE Act, and so we agreed with this amendment.
 - b. ***Age 68.*** The Maryland SAFE Act, as originally written, was focused on protecting those adults (all persons over the age of 18) who were susceptible to financial abuse due to some physical, emotional or psychological disability. This definition included those persons who became susceptible due to the stresses of growing older. The CPD felt it important that the bill apply to susceptible adults AND anyone over the age of 68. Since this age was used in other parts of the law dealing with financial exploitation, we agreed to incorporate that age.

THE VULNERABLE ADULT EXPLOITATION TASK FORCE
SUPPORTS SB347

We urge you to SUPPORT this bill, as it was previously amended, and to vote favorably to have it submitted to the full House of Delegates for approval.

FOR MORE INFORMATION

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

Michael W. Davis
Davis, Agnor, Rapaport & Skalny, LLC
10211 Wincopin Circle, Suite 600
Columbia, MD 21044
(w) 410-995-5800, ext. 1262
(c) 443-472-2965
mdavis@darslaw.com
www.darslaw.com

MEMBERS OF THE VULNERABLE ADULT EXPLOITATION TASK FORCE

ESTATE & TRUST
SECTION COUNCIL

ELDER LAW AND
DISABILITY RIGHTS
SECTION COUNCIL

OTHER

Mary Beth Beattie
Todd Bornstein
Danielle Cruttenden
Michael W. Davis
Jeffrey Glaser
Kelly Preteroti

Morris Klein
May-Lis Manley
Elena Sallitto
Ryan Wilson

Angela Grau,
Litigation Section Council
Doyle Niemann,
Criminal Law Section
Council
Adam M. Spence