

To: The Chair and Members of the House Judiciary Committee
Fr: The Maryland/DC Chapter of the National Academy of Elder Law Attorneys
Date: February 11, 2025
Re: HB 604 - Vulnerable and Senior Adults - Theft of Property by Caregiver, Family Member, or Household Member – Prohibition

Position: Support with Amendment

The Maryland/DC Chapter of the National Academy of Elder Law Attorneys is an organization of attorneys whose members serve our senior population.

We support this measure to protect seniors and vulnerable adults against misappropriation of their property by creating a new section of the criminal code, namely Section 7-104.1.

Some persons who become disabled and require long-term services and supports in a nursing home or other care arrangement need to preserve assets to support their spouses and other family members from impoverishment, or set aside funds for disabled family members in a special needs trust. We are pleased that Section F of this legislation recognizes that these types of asset transfers are legitimate and not a crime.

We are concerned that the current language in Section F is not as clear as it could be to clarify that these asset transfers likewise carry legitimate purposes and are not criminal. A similar situation arose during the drafting of the Maryland SAFE Act of 2021 (Chapter 311 of Maryland Laws in 2021). The drafters included the following language which ought to be considered for inclusion in HB-604:

“Financial exploitation” does not include an individual’s good-faith use of a susceptible adult’s or older adult’s assets, including for the purposes of establishing and implementing an estate plan intended to reduce taxes or to maximize eligibility for public benefits in order to preserve assets for an identified or identifiable person. Md. Estate & Trusts Code, §13-601(e)(3).

To modify this language for HB604, we suggest striking Section (F) on page 4, lines 4 through 8 and replacing it with the following:

(F) This Section may not be construed to impose criminal liability on a person who has made a good faith effort to assist the victim in the management of or transfer of the victim’s property, including for the purposes of establishing and implementing an estate plan intended to reduce taxes or to maximize eligibility for public benefits in order to preserve assets for an identified or identifiable person.

Harmonizing the language would protect legitimate efforts to preserve existing estate plans, while furthering efforts to protect vulnerable Marylanders.

Thank you for the opportunity to comment on this important piece of legislation. Please feel free to contact us if you have any questions or wish additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Morris Klein". The signature is fluid and cursive, with the first name being the most prominent.

Morris Klein, CELA, Esq.

Elena Sallitto, CELA, Esq.

On behalf of the MD/DC Chapter of the National Academy of Elder Law Attorneys

124 South Street, #1

Annapolis, Maryland 21401

410-268-9246

morrisklein@morrisklein.com

elena@stavelaw.com