

SENATE BILL 327

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(PRE-FILED)

By: **Senator Waldstreicher**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of establishing a cause of action for certain financial exploitation of certain
5 vulnerable adults; authorizing a vulnerable adult or certain individuals in certain
6 representative capacities to bring an action under this Act under certain
7 circumstances; providing that an action authorized under this Act is in addition to
8 and cumulative with certain other claims, causes of action, and remedies and shall
9 survive the death of the vulnerable adult; providing that a certain party in an action
10 brought under this Act is entitled to recover certain damages and other relief under
11 certain circumstances; authorizing the court to award reasonable attorney's fees and
12 expenses to a party under certain circumstances; requiring an action under this Act
13 to be brought within a certain period of time; providing for the purposes and
14 construction of this Act; providing that this Act is not intended to alter or amend
15 certain burdens of proof or certain presumptions; defining certain terms; providing
16 for the application of this Act; and generally relating to the financial exploitation of
17 vulnerable adults.

18 BY adding to

19 Article – Estates and Trusts

20 Section 13–601 through 13–608 to be under the new subtitle “Subtitle 6. Financial
21 Exploitation of Vulnerable Adults” and the amended title “Title 13. Protection
22 of Minors, Disabled Persons, and Vulnerable Adults”

23 Annotated Code of Maryland

24 (2017 Replacement Volume and 2020 Supplement)

25 Preamble

26 WHEREAS, Financial exploitation of vulnerable adults over the age of 65, including
27 through theft, fraud, lottery scams, investment fraud, and unauthorized real estate

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 transactions, is an endemic and growing problem in our society today; and

2 WHEREAS, Perpetrators of financial exploitation use a variety of actions and
3 tactics, including deception, intimidation, isolation, and undue influence; and

4 WHEREAS, While most family members, caregivers, fiduciaries, and other trusted
5 individuals provide needed and appropriate assistance to vulnerable adults, the
6 perpetrator is often someone serving in one of these capacities; and

7 WHEREAS, Financial exploitation may cause a victim to lose well-earned financial
8 security and drive the victim into poverty; and

9 WHEREAS, The consequences to the victim are not just limited to the financial
10 impact but often include lasting emotional, mental, and physical harm; and

11 WHEREAS, Studies have shown that millions of vulnerable Americans over the age
12 of 65 may be targets annually, and the financial loss to victims of financial abuse is
13 estimated to be several billion dollars each year; and

14 WHEREAS, These estimated financial losses increase exponentially when additional
15 related costs to the victim, such as health care, social services, investigations, legal fees,
16 and lost income, are taken into account; and

17 WHEREAS, Redress for victims of financial exploitation in Maryland is limited to
18 adult protective services, criminal law enforcement, and costly civil remedies; and

19 WHEREAS, While adult protective services and the criminal justice system may
20 offer victims some protection from further harm, victims' cases are rarely prosecuted and
21 restitution, even when ordered, may never be paid; and

22 WHEREAS, The heightened burden of proving guilt beyond a reasonable doubt in a
23 criminal case, the difficulty of proving exploitation when the victim may be older or infirm,
24 and the limited remedies available to adult protective services and law enforcement further
25 support the need for a solution under civil law to address the financial exploitation of
26 vulnerable adults; now, therefore,

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
28 That the Laws of Maryland read as follows:

29 **Article – Estates and Trusts**

30 Title 13. Protection of Minors [and], Disabled Persons, AND VULNERABLE ADULTS.

31 **SUBTITLE 6. FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.**

32 **13–601.**

1 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
2 **INDICATED.**

3 **(B) “ACTIVITIES OF DAILY LIVING” MEANS BASIC ACTIVITIES OF DAILY**
4 **LIVING AND INSTRUMENTAL ACTIVITIES OF DAILY LIVING.**

5 **(C) “BASIC ACTIVITIES OF DAILY LIVING” MEANS THE ROUTINE ACTIVITIES**
6 **THAT PEOPLE DO EVERY DAY WITHOUT ASSISTANCE THAT INCLUDE:**

7 **(1) EATING;**

8 **(2) BATHING;**

9 **(3) DRESSING;**

10 **(4) TOILETING;**

11 **(5) MOBILITY; AND**

12 **(6) CONTINENCE.**

13 **(D) “DECEPTION” MEANS A MISREPRESENTATION OR CONCEALMENT OF A**
14 **MATERIAL FACT RELATING TO SERVICES RENDERED, DISPOSITION OF PROPERTY,**
15 **OR THE USE OF PROPERTY INTENDED TO BENEFIT A VULNERABLE ADULT.**

16 **(E) (1) “FINANCIAL EXPLOITATION” MEANS AN ACT TAKEN BY A PERSON**
17 **WHO:**

18 **(I) STANDS IN A POSITION OF TRUST AND CONFIDENCE WITH A**
19 **VULNERABLE ADULT AND WHO KNOWINGLY OBTAINS OR USES, OR ENDEAVORS TO**
20 **OBTAIN OR USE, A VULNERABLE ADULT’S FUNDS, ASSETS, OR PROPERTY WITH THE**
21 **INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE VULNERABLE ADULT OF**
22 **THE USE, BENEFIT, OR POSSESSION OF THE FUNDS, ASSETS, OR PROPERTY FOR THE**
23 **BENEFIT OF SOMEONE OTHER THAN THE VULNERABLE ADULT, IN SUCH A MANNER**
24 **THAT IS NOT FAIR AND REASONABLE;**

25 **(II) BY DECEPTION, FALSE PRETENSES, FALSE PROMISES,**
26 **LARCENY, EMBEZZLEMENT, MISAPPLICATION, CONVERSION, INTIMIDATION,**
27 **COERCION, ISOLATION, EXCESSIVE PERSUASION, OR SIMILAR ACTIONS AND**
28 **TACTICS, OBTAINS OR USES, OR ENDEAVORS TO OBTAIN OR USE, A VULNERABLE**
29 **ADULT’S FUNDS, ASSETS, OR PROPERTY WITH THE INTENT TO TEMPORARILY OR**
30 **PERMANENTLY DEPRIVE THE VULNERABLE ADULT OF THE USE, BENEFIT, OR**

1 POSSESSION OF THE FUNDS, ASSETS, OR PROPERTY FOR THE BENEFIT OF SOMEONE
2 OTHER THAN THE VULNERABLE ADULT; OR

3 (III) KNOWS OR SHOULD KNOW THAT A VULNERABLE ADULT
4 LACKS CAPACITY TO CONSENT AND WHO OBTAINS OR USES, OR ENDEAVORS TO
5 OBTAIN OR USE, THE VULNERABLE ADULT'S FUNDS, ASSETS, OR PROPERTY WITH
6 THE INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE VULNERABLE
7 ADULT OF THE USE, BENEFIT, OR POSSESSION OF THE FUNDS, ASSETS, OR PROPERTY
8 FOR THE BENEFIT OF SOMEONE OTHER THAN THE VULNERABLE ADULT.

9 (2) "FINANCIAL EXPLOITATION" INCLUDES:

10 (I) BREACH OF A FIDUCIARY RELATIONSHIP RESULTING IN
11 THE UNAUTHORIZED APPROPRIATION, SALE, OR TRANSFER OF PROPERTY;

12 (II) UNAUTHORIZED TAKING OF PERSONAL ASSETS;

13 (III) MISAPPROPRIATION, MISUSE, OR TRANSFER OF ASSETS
14 BELONGING TO A VULNERABLE ADULT FROM A PERSONAL OR JOINT ACCOUNT; AND

15 (IV) INTENTIONAL FAILURE TO EFFECTIVELY USE A
16 VULNERABLE ADULT'S INCOME AND ASSETS FOR THE NECESSITIES REQUIRED FOR
17 THE VULNERABLE ADULT'S SUPPORT AND MAINTENANCE.

18 (3) "FINANCIAL EXPLOITATION" DOES NOT INCLUDE AN
19 INDIVIDUAL'S GOOD-FAITH USE OF A VULNERABLE ADULT'S ASSETS, INCLUDING
20 FOR THE PURPOSES OF ESTABLISHING AND IMPLEMENTING AN ESTATE PLAN
21 INTENDED TO REDUCE TAXES OR TO MAXIMIZE ELIGIBILITY FOR PUBLIC BENEFITS
22 IN ORDER TO PRESERVE ASSETS FOR AN IDENTIFIED OR IDENTIFIABLE PERSON.

23 (F) "INSTRUMENTAL ACTIVITIES OF DAILY LIVING" MEANS THE SKILLS AND
24 ABILITIES NEEDED TO PERFORM DAY-TO-DAY TASKS ASSOCIATED WITH AN
25 INDEPENDENT LIFESTYLE, INCLUDING:

26 (1) USING THE TELEPHONE;

27 (2) DOING LAUNDRY AND DRESSING;

28 (3) SHOPPING AND RUNNING ERRANDS;

29 (4) SECURING TRANSPORTATION;

30 (5) PREPARING MEALS;

1 **(6) MANAGING MEDICATIONS;**

2 **(7) HOUSEKEEPING; AND**

3 **(8) MANAGING FINANCES.**

4 **(G) “INTIMIDATION” MEANS A COMMUNICATION, BY WORD OR ACT, THAT A**
5 **VULNERABLE ADULT WILL SUFFER PHYSICAL VIOLENCE OR EMOTIONAL INJURY OR**
6 **WILL BE DEPRIVED OF FOOD, NUTRITION, CLOTHING, SHELTER, SUPERVISION,**
7 **MEDICINE, MEDICAL SERVICES, MONEY, SOCIAL INTERACTION, OR EMOTIONAL OR**
8 **FINANCIAL SUPPORT.**

9 **(H) “OBTAINS OR USES” MEANS ANY MANNER OF TAKING OR EXERCISING**
10 **CONTROL OVER PROPERTY OR MAKING ANY USE, DISPOSITION, OR TRANSFER OF**
11 **PROPERTY.**

12 **(I) “POSITION OF TRUST AND CONFIDENCE” MEANS A RELATIONSHIP,**
13 **WHETHER FORMED BY A FORMAL OR INFORMAL AGREEMENT BETWEEN A**
14 **VULNERABLE ADULT AND ANOTHER PERSON OR RECOGNIZED BY A FORMAL**
15 **DECLARATION OR COURT ORDER, IN WHICH:**

16 **(1) A PERSON IS ENTRUSTED WITH THE USE OR MANAGEMENT OF THE**
17 **PROPERTY OR ASSETS OF THE VULNERABLE ADULT OR THE VULNERABLE ADULT’S**
18 **CARE; OR**

19 **(2) THERE IS A SPECIAL CONFIDENCE PLACED IN A PERSON WHO, IN**
20 **EQUITY AND GOOD CONSCIENCE, IS BOUND TO ACT IN GOOD FAITH AND WITH DUE**
21 **REGARD TO THE INTERESTS OF THE VULNERABLE ADULT.**

22 **(J) “VULNERABLE ADULT” MEANS AN ADULT WHO IS UNABLE TO PERFORM,**
23 **WITHOUT PROMPTING OR ASSISTANCE, ONE OR MORE ACTIVITIES OF DAILY LIVING,**
24 **IS UNABLE TO PROTECT THE ADULT’S RIGHTS, OR HAS DIMINISHED EXECUTIVE**
25 **FUNCTIONING, DUE TO:**

26 **(1) ADVANCED AGE;**

27 **(2) MENTAL, EMOTIONAL, SENSORY, OR PHYSICAL DISABILITY OR**
28 **DISEASE;**

29 **(3) IMPAIRED MOBILITY;**

30 **(4) HABITUAL DRUNKENNESS;**

(5) ADDICTION TO DRUGS; OR

(6) HOSPITALIZATION.

13-602.

THE PURPOSES OF THIS SUBTITLE ARE TO:

(1) ESTABLISH A SEPARATE AND DISTINCT CIVIL CAUSE OF ACTION BY A VICTIM, OR A REPRESENTATIVE OF THE VICTIM, OF FINANCIAL EXPLOITATION;

(2) PROVIDE A PATH TO REDRESS FINANCIAL EXPLOITATION THROUGH THE RECOVERY OF PROPERTY AND ASSETS TAKEN FROM VICTIMS WHILE DISCOURAGING PROTRACTED LITIGATION;

(3) PROVIDE ACCESS TO JUSTICE FOR VICTIMS AND THEIR FAMILIES WHO ARE OTHERWISE UNABLE OR UNWILLING TO RETAIN COMPETENT LEGAL ASSISTANCE DUE TO COST; AND

(4) STRONGLY DETER INDIVIDUALS SEEKING TO TAKE ADVANTAGE OF VULNERABLE ADULTS.

13-603.

A VULNERABLE ADULT WHO HAS BEEN SUBJECTED TO FINANCIAL EXPLOITATION IN THE STATE OR, IN ACCORDANCE WITH § 13-604 OF THIS SUBTITLE, A PERSON ACTING ON THE VULNERABLE ADULT'S BEHALF MAY BRING A CAUSE OF ACTION AGAINST A PERSON WHO HAS COMMITTED FINANCIAL EXPLOITATION AGAINST THE VULNERABLE ADULT TO RECOVER DAMAGES AND OBTAIN OTHER APPROPRIATE RELIEF AS SET FORTH UNDER THIS SUBTITLE.

13-604.

(A) AN ACTION MAY BE BROUGHT UNDER THIS SUBTITLE BY A VULNERABLE ADULT OR BY A PERSON SERVING IN ONE OR MORE OF THE FOLLOWING REPRESENTATIVE CAPACITIES FOR A VULNERABLE ADULT:

(1) AN ATTORNEY IN FACT, GUARDIAN, TRUSTEE, OR OTHER FIDUCIARY ACTING ON BEHALF OF THE VULNERABLE ADULT, OR A SUCCESSOR NAMED IN AN INSTRUMENT PROVIDING SUCH AUTHORIZATION;

(2) A PERSON AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR

1 THE VULNERABLE ADULT, OR A SUCCESSOR NAMED IN AN INSTRUMENT PROVIDING
2 THE AUTHORIZATION;

3 (3) A SPOUSE, PARENT, OR DESCENDENT OF THE VULNERABLE
4 ADULT;

5 (4) AN INDIVIDUAL WHO WOULD QUALIFY AS THE VULNERABLE
6 ADULT'S PRESUMPTIVE HEIR;

7 (5) A PERSON NAMED AS A BENEFICIARY TO RECEIVE ANY PROPERTY,
8 BENEFIT, OR CONTRACTUAL RIGHT ON THE VULNERABLE ADULT'S DEATH,
9 INCLUDING A PERSON WHO WOULD BE A BENEFICIARY BUT FOR THE FINANCIAL
10 EXPLOITATION;

11 (6) THE PERSONAL REPRESENTATIVE OR SPECIAL ADMINISTRATOR
12 OF AN ESTATE OF A DECEASED VULNERABLE ADULT; OR

13 (7) A GOVERNMENT AGENCY THAT OTHERWISE HAS AUTHORITY AND
14 JURISDICTION.

15 (B) A CAUSE OF ACTION AUTHORIZED UNDER THIS SUBTITLE:

16 (1) IS IN ADDITION TO AND CUMULATIVE WITH ANY OTHER CRIMINAL
17 OR ADMINISTRATIVE CLAIMS, CAUSES OF ACTION AT LAW OR IN EQUITY, OR
18 REMEDIES OTHERWISE AVAILABLE TO THE VULNERABLE ADULT; AND

19 (2) SHALL SURVIVE THE DEATH OF THE VULNERABLE ADULT.

20 13-605.

21 (A) (1) A PLAINTIFF IN AN ACTION BROUGHT UNDER THIS SUBTITLE IS
22 ENTITLED TO RECOVER COMPENSATORY DAMAGES AND, AS APPROPRIATE AND
23 SUBJECT TO SUBSECTION (B) OF THIS SECTION, PUNITIVE DAMAGES.

24 (2) THE DAMAGES AWARDED UNDER THIS SECTION ARE IN ADDITION
25 TO AND CUMULATIVE WITH OTHER LAWFUL AND ADMINISTRATIVE DAMAGES
26 AVAILABLE TO A PARTY.

27 (B) A PARTY WHO BRINGS AN ACTION UNDER THIS SUBTITLE TO RECOVER
28 FOR INJURY OR LOSS AND IS AWARDED COMPENSATORY DAMAGES MAY ALSO SEEK
29 AND THE COURT MAY AWARD AN AMOUNT NOT EXCEEDING THREE TIMES THE
30 COMPENSATORY DAMAGES AND PREJUDGMENT INTEREST.

(C) (1) IN ADDITION TO MONETARY DAMAGES, A PARTY WHO BRINGS AN ACTION UNDER THIS SUBTITLE IS ALSO ENTITLED TO:

(I) ANY OTHER APPROPRIATE RELIEF, INCLUDING EMERGENCY, PRELIMINARY OR PERMANENT INJUNCTION, RESCISSION, RESTITUTION, ACCOUNTING, UNJUST ENRICHMENT, DECLARATORY RELIEF, AND CONSTRUCTIVE TRUST; AND

(II) EMERGENCY OR INTERIM INJUNCTIVE RELIEF TO PRESERVE THE ASSETS OF THE VULNERABLE ADULT, WITHOUT THE REQUIREMENT OF A BOND IN THE DISCRETION OF THE COURT.

(2) THE REMEDIES PROVIDED IN THIS SUBSECTION ARE IN ADDITION TO AND CUMULATIVE WITH OTHER LEGAL, EQUITABLE, AND ADMINISTRATIVE REMEDIES AVAILABLE TO A PARTY.

(D) THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND EXPENSES TO ANY PERSON WHO BRINGS AN ACTION UNDER THIS SUBTITLE FOR INJURY OR LOSS AND IS AWARDED DAMAGES OR ANY OTHER REMEDY.

(E) IF IT APPEARS TO THE SATISFACTION OF THE COURT, AT ANY TIME, THAT AN ACTION IS BROUGHT IN BAD FAITH OR IS OF A FRIVOLOUS NATURE, THE COURT MAY ORDER THE OFFENDING PARTY TO PAY TO THE OTHER PARTY REASONABLE ATTORNEY'S FEES AND EXPENSES.

13-606.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN ACTION UNDER THIS SUBTITLE SHALL BE COMMENCED WITHIN 5 YEARS AFTER THE VULNERABLE ADULT OR THE VULNERABLE ADULT'S REPRESENTATIVE DISCOVERS OR, THROUGH THE EXERCISE OF REASONABLE DILIGENCE, SHOULD HAVE DISCOVERED THE FACTS CONSTITUTING FINANCIAL EXPLOITATION.

(B) (1) IF A CRIMINAL PROSECUTION IS COMMENCED THAT ARISES OUT OF THE SAME FACTS AS AN ACTION UNDER THIS SUBTITLE, THE TIME DURING WHICH THE PROSECUTION IS PENDING SHALL NOT BE COMPUTED AS PART OF THE PERIOD WITHIN WHICH THE ACTION UNDER THIS SUBTITLE MAY BE BROUGHT.

(2) AFTER THE CONCLUSION OF THE CRIMINAL PROSECUTION DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ACTION UNDER THIS SUBTITLE MAY BE BROUGHT WITHIN THE LATER OF:

(I) THE REMAINDER OF THE PERIOD SPECIFIED UNDER

1 SUBSECTION (A) OF THIS SECTION; OR

2 (II) 1 YEAR.

3 13-607.

4 (A) THIS SUBTITLE SHALL BE CONSTRUED AND APPLIED LIBERALLY TO
5 PROMOTE ITS PURPOSE OF DETERRING AND REMEDYING THE FINANCIAL
6 EXPLOITATION OF VULNERABLE ADULTS.

7 (B) THIS SUBTITLE IS NOT INTENDED TO ALTER OR AMEND THE BURDENS
8 OF PROOF OR PRESUMPTIONS REQUIRED BY LAW.

9 13-608.

10 THIS SUBTITLE MAY BE CITED AS THE MARYLAND STATUTE AGAINST
11 FINANCIAL EXPLOITATION (SAFE) ACT.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
13 apply only prospectively and may not be applied or interpreted to have any effect on or
14 application to any cause of action arising before the effective date of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2021.