

HOUSE BILL 161

E1, D3, N2
HB 347/21 – JUD

(PRE-FILED)

2lr0681

By: **Delegate Shetty**

Requested: October 7, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 15, 2022

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue**
3 **Influence**

4 FOR the purpose of altering the definition of “undue influence” for purposes of provisions
5 of law prohibiting the exploitation of certain vulnerable adults or elderly individuals;
6 requiring a court, in determining whether a transfer of property was induced by
7 undue influence, to consider certain factors; and generally relating to the
8 exploitation of vulnerable adults or elderly individuals.

9 BY repealing and reenacting, without amendments,
10 Article – Commercial Law
11 Section 13–204(a)(15)
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2021 Supplement)
14 (As enacted by Chapter 160 of the Acts of the General Assembly of 2020)

15 BY repealing and reenacting, without amendments,
16 Article – Commercial Law
17 Section 13–204(a)(16) and (b)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2021 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 8–801(a)(1) and (b) through (g)
2 Annotated Code of Maryland
3 (2021 Replacement Volume and 2021 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Criminal Law
6 Section 8–801(a)(6)
7 Annotated Code of Maryland
8 (2021 Replacement Volume and 2021 Supplement)

9 BY adding to
10 Article – Criminal Law
11 Section 8–801(h)
12 Annotated Code of Maryland
13 (2021 Replacement Volume and 2021 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Estates and Trusts
16 Section 11–111
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2021 Supplement)

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

21 **Article – Commercial Law**

22 13–204.

23 (a) In addition to any other of its powers and duties, the Division has the powers
24 and duties to:

25 (15) (i) Bring a civil action for damages or an action under this title
26 against a person who violates § 8–801 of the Criminal Law Article on behalf of a victim of
27 the offense or, if the victim is deceased, the victim’s estate;

28 (ii) Recover damages under this item for property loss or damage;
29 and

30 (iii) If the Division prevails in an action brought under this item,
31 recover the costs of the action for the use of the Office of the Attorney General; and

32 (16) (i) Bring a civil action for damages or an action under this title on
33 behalf of a susceptible adult or older adult who is authorized to bring a cause of action
34 under § 13–603 of the Estates and Trusts Article; and

1 (ii) If the Division prevails in an action brought under this item,
2 recover the costs of the action for the use of the Office of the Attorney General.

3 (b) A conviction for an offense under § 8–801 of the Criminal Law Article is not a
4 prerequisite for maintenance of an action under subsection (a)(15) of this section.

5 Article – Criminal Law

6 8–801.

7 (a) (1) In this section the following words have the meanings indicated.

8 (6) (i) “Undue influence” means domination [and], influence
9 [amounting to force and coercion], **OR EXCESSIVE PERSUASION** exercised by another
10 person to such an extent that a vulnerable adult or an individual at least 68 years old was
11 prevented from exercising free judgment and choice **AND THAT RESULTS IN INEQUITY**.

12 (ii) “Undue influence” does not include the normal influence that one
13 member of a family has over another member of the family.

14 (b) (1) A person may not knowingly and willfully obtain by deception,
15 intimidation, or undue influence the property of an individual that the person knows or
16 reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult
17 of the vulnerable adult’s property.

18 (2) A person may not knowingly and willfully obtain by deception,
19 intimidation, or undue influence the property of an individual that the person knows or
20 reasonably should know is at least 68 years old, with intent to deprive the individual of the
21 individual’s property.

22 (c) (1) (i) A person convicted of a violation of this section when the value of
23 the property is at least \$1,500 but less than \$25,000 is guilty of a felony and:

24 1. is subject to imprisonment not exceeding 5 years or a fine
25 not exceeding \$10,000 or both; and

26 2. shall restore the property taken or its value to the owner,
27 or, if the owner is deceased, restore the property or its value to the owner’s estate.

28 (ii) A person convicted of a violation of this section when the value of
29 the property is at least \$25,000 but less than \$100,000 is guilty of a felony and:

30 1. is subject to imprisonment not exceeding 10 years or a fine
31 not exceeding \$15,000 or both; and

32 2. shall restore the property taken or its value to the owner,
33 or, if the owner is deceased, restore the property or its value to the owner’s estate.

1 (iii) A person convicted of a violation of this section when the value of
2 the property is \$100,000 or more is guilty of a felony and:

3 1. is subject to imprisonment not exceeding 20 years or a fine
4 not exceeding \$25,000 or both; and

5 2. shall restore the property taken or its value to the owner,
6 or, if the owner is deceased, restore the property or its value to the owner's estate.

7 (2) A person convicted of a violation of this section when the value of the
8 property is less than \$1,500 is guilty of a misdemeanor and:

9 (i) is subject to imprisonment not exceeding 1 year or a fine not
10 exceeding \$500 or both; and

11 (ii) shall restore the property taken or its value to the owner, or, if
12 the owner is deceased, restore the property or its value to the owner's estate.

13 (d) A sentence imposed under this section may be separate from and consecutive
14 to or concurrent with a sentence for any crime based on the act or acts establishing the
15 violation of this section.

16 (e) (1) If a defendant fails to restore fully the property taken or its value as
17 ordered under subsection (c) of this section, the defendant is disqualified, to the extent of
18 the defendant's failure to restore the property or its value, from inheriting, taking, enjoying,
19 receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the
20 victim of the offense, whether by operation of law or pursuant to a legal document executed
21 or entered into by the victim before the defendant shall have been convicted under this
22 section.

23 (2) The defendant has the burden of proof with respect to establishing
24 under paragraph (1) of this subsection that the defendant has fully restored the property
25 taken or its value.

26 (f) This section may not be construed to impose criminal liability on a person who,
27 at the request of the victim of the offense, the victim's family, or the court appointed
28 guardian of the victim, has made a good faith effort to assist the victim in the management
29 of or transfer of the victim's property.

30 (g) In addition to any penalties set forth in this section, a violation of this section:

31 (1) is an unfair, abusive, or deceptive trade practice within the meaning of
32 Title 13 of the Commercial Law Article; and

33 (2) is subject to the enforcement and penalty provisions contained in Title
34 13 of the Commercial Law Article.

1 **(H) IN DETERMINING WHETHER PROPERTY WAS OBTAINED BY UNDUE**
2 **INFLUENCE, THE COURT SHALL CONSIDER:**

3 **(1) THE VULNERABILITY OF THE VICTIM, INCLUDING:**

4 **(I) INCAPACITY;**

5 **(II) ILLNESS;**

6 **(III) DISABILITY;**

7 **(IV) INJURY;**

8 **(V) AGE;**

9 **(VI) EDUCATION;**

10 **(VII) IMPAIRED COGNITIVE FUNCTION;**

11 **(VIII) EMOTIONAL DISTRESS;**

12 **(IX) ISOLATION; AND**

13 **(X) DEPENDENCY;**

14 **(2) WHETHER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN OF**
15 **THE ALLEGED VICTIM'S VULNERABILITY;**

16 **(3) THE DEFENDANT'S APPARENT AUTHORITY, INCLUDING STATUS**
17 **AS:**

18 **(I) A FIDUCIARY;**

19 **(II) A FAMILY MEMBER;**

20 **(III) A CARE PROVIDER;**

21 **(IV) A HEALTH CARE PROFESSIONAL;**

22 **(V) A LEGAL PROFESSIONAL;**

23 **(VI) A SPIRITUAL ADVISER; OR**

24 **(VII) AN EXPERT;**

1 **(4) THE ACTIONS OR TACTICS USED BY THE DEFENDANT, INCLUDING:**

2 **(I) CONTROLLING THE ALLEGED VICTIM'S DAILY NEEDS,**
3 **MEDICATION, INTERACTIONS WITH OTHERS, ACCESS TO INFORMATION, OR SLEEP;**

4 **(II) USING AFFECTION, INTIMIDATION, OR COERCION; AND**

5 **(III) INITIATING CHANGES IN PERSONAL OR PROPERTY RIGHTS,**
6 **USING HASTE OR SECRECY IN EFFECTING THOSE CHANGES, EFFECTING CHANGES AT**
7 **INAPPROPRIATE TIMES AND PLACES, AND CLAIMING EXPERTISE IN EFFECTING**
8 **CHANGES; AND**

9 **(5) THE EQUITY OF THE RESULT, INCLUDING:**

10 **(I) THE ECONOMIC CONSEQUENCES TO THE ALLEGED VICTIM;**

11 **(II) ANY DIVERGENCE FROM THE VICTIM'S PRIOR INTENT OR**
12 **COURSE OF CONDUCT OR DEALING;**

13 **(III) THE RELATIONSHIP OF THE VALUE CONVEYED TO THE**
14 **VALUE OF ANY SERVICES OR CONSIDERATION RECEIVED; AND**

15 **(IV) THE APPROPRIATENESS OF THE CHANGE IN LIGHT OF THE**
16 **LENGTH AND NATURE OF THE RELATIONSHIP.**

17 **Article – Estates and Trusts**

18 11–111.

19 (a) A person convicted of unlawfully obtaining property from a victim in violation
20 of § 8–801(b) of the Criminal Law Article shall be disqualified from inheriting, taking,
21 enjoying, receiving, or otherwise benefitting from the estate, insurance proceeds, or
22 property of the victim, to the extent provided in § 8–801(e) of the Criminal Law Article.

23 (b) A person disqualified from inheriting, taking, enjoying, receiving, or otherwise
24 benefitting from the estate, insurance proceeds, or property of the victim in accordance with
25 subsection (a) of this section shall be treated as if the person predeceased the victim.

26 (c) In the event a distribution is erroneously made to a person disqualified from
27 inheriting, taking, enjoying, receiving, or otherwise benefitting from the estate, insurance
28 proceeds, or property of the victim in violation of subsection (a) of this section, the
29 disqualified person shall make full restitution to the heir, legatee, or beneficiary who should
30 have received the distribution in accordance with subsection (b) of this section.

1 (d) A fiduciary or other person who distributes property in good faith and without
2 actual knowledge of a conviction under § 8–801 of the Criminal Law Article is not
3 personally liable for the distribution.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
5 apply only prospectively and may not be applied or interpreted to have any effect on or
6 application to any civil action or proceeding to determine a benefit from the estate,
7 insurance proceeds, or property of a victim that is pending before the effective date of this
8 Act.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2022.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.