

Chapter 667

(House Bill 327)

AN ACT concerning

Estates – Disqualification – Conviction for Unlawfully Obtaining Property of Vulnerable Adult or Elderly Individual

FOR the purpose of altering the extent to which a person convicted of a certain prohibition against unlawfully obtaining property from a certain victim shall be disqualified from inheriting, taking, enjoying, receiving, or otherwise benefitting from the estate, insurance proceeds, or property of the victim; providing that a certain person be treated as if the person predeceased a certain victim under certain circumstances; requiring a certain person to make full restitution for a certain erroneously made distribution to another certain person; prohibiting certain persons from being held personally liable under certain circumstances; providing that a certain defendant has a certain burden of proof; making a clarifying change; providing for the application of this Act; and generally relating to a certain disqualification concerning the estate, insurance proceeds, or property of a certain victim under certain circumstances.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 8–801
Annotated Code of Maryland
(2002 Volume and 2009 Supplement)

BY adding to
Article – Estates and Trusts
Section ~~9–113~~ 11–110
Annotated Code of Maryland
(2001 Replacement Volume and 2009 Supplement)

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

Article – Criminal Law

8–801.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Deception” has the meaning stated in § 7–101 of this article.

- (3) “Deprive” has the meaning stated in § 7–101 of this article.
- (4) “Obtain” has the meaning stated in § 7–101 of this article.
- (5) “Property” has the meaning stated in § 7–101 of this article.
- (6) “Value” has the meaning stated in § 7–103 of this article.

(7) (i) “Undue influence” means domination and influence amounting to force and coercion exercised by another person to such an extent that a vulnerable adult or an individual at least 68 years old was prevented from exercising free judgment and choice.

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

(8) “Vulnerable adult” has the meaning stated in § 3–604 of this article.

(b) (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.

(c) (1) A person convicted of a violation of this section when the value of the property is \$500 or more is guilty of a felony and:

(i) is subject to imprisonment not exceeding 15 years or a fine not exceeding \$10,000 or both; and

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

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

(i) is subject to imprisonment not exceeding 18 months or a fine not exceeding \$500 or both; and

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

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

(e) **(1)** [A conviction under this section shall disqualify the defendant] **IF A DEFENDANT FAILS TO RESTORE FULLY THE PROPERTY TAKEN OR ITS VALUE AS ORDERED UNDER SUBSECTION (C) OF THIS SECTION, THE DEFENDANT IS DISQUALIFIED, TO THE EXTENT OF THE DEFENDANT'S FAILURE TO RESTORE THE PROPERTY OR ITS VALUE,** from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant shall have been convicted under this section [and shall have made full restoration of the property taken or of its value to the victim].

(2) THE DEFENDANT HAS THE BURDEN OF PROOF WITH RESPECT TO ESTABLISHING UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE DEFENDANT HAS FULLY RESTORED THE PROPERTY TAKEN OR ITS VALUE.

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

Article – Estates and Trusts

~~9-113~~ 11-110.

(A) A PERSON CONVICTED OF UNLAWFULLY OBTAINING PROPERTY FROM A VICTIM IN VIOLATION OF § 8-801(B) OF THE CRIMINAL LAW ARTICLE SHALL BE DISQUALIFIED FROM INHERITING, TAKING, ENJOYING, RECEIVING, OR OTHERWISE BENEFITTING FROM THE ESTATE, INSURANCE PROCEEDS, OR PROPERTY OF THE VICTIM, TO THE EXTENT PROVIDED IN § 8-801(E) OF THE CRIMINAL LAW ARTICLE.

(B) A PERSON DISQUALIFIED FROM INHERITING, TAKING, ENJOYING, RECEIVING, OR OTHERWISE BENEFITTING FROM THE ESTATE, INSURANCE PROCEEDS, OR PROPERTY OF THE VICTIM IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION SHALL BE TREATED AS IF THE PERSON PREDECEASED THE VICTIM.

(C) IN THE EVENT A DISTRIBUTION IS ERRONEOUSLY MADE TO A PERSON DISQUALIFIED FROM INHERITING, TAKING, ENJOYING, RECEIVING, OR

OTHERWISE BENEFITTING FROM THE ESTATE, INSURANCE PROCEEDS, OR PROPERTY OF THE VICTIM IN VIOLATION OF SUBSECTION (A) OF THIS SECTION, THE DISQUALIFIED PERSON SHALL MAKE FULL RESTITUTION TO THE HEIR, LEGATEE, OR BENEFICIARY WHO SHOULD HAVE RECEIVED THE DISTRIBUTION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(D) A FIDUCIARY OR OTHER PERSON WHO DISTRIBUTES PROPERTY IN GOOD FAITH AND WITHOUT ACTUAL KNOWLEDGE OF A CONVICTION UNDER § 8-801 OF THE CRIMINAL LAW ARTICLE IS NOT PERSONALLY LIABLE FOR THE DISTRIBUTION.

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

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 20, 2010.