

SENATE BILL 702

E1, D3, N2

0lr3117
CF HB 320

By: **Senator Waldstreicher**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

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; providing for the application of this Act;
8 and generally relating to the exploitation of vulnerable adults or elderly individuals.

9 BY repealing and reenacting, without amendments,
10 Article – Commercial Law
11 Section 13–204(a)(15) and (b)
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2019 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 8–801(a)(1), (b), (c), (d), (e), and (f)
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 8–801(a)(6)
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2019 Supplement)

24 BY adding to
25 Article – Criminal Law
26 Section 8–801(g)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2012 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Estates and Trusts
Section 11–111
Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

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

Article – Commercial Law

13–204.

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

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

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

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

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

Article – Criminal Law

8–801.

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

(6) (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] **EXCESSIVE PERSUASION THAT CAUSES A VULNERABLE ADULT OR AN INDIVIDUAL AT LEAST 68 YEARS OLD TO ACT OR REFRAIN FROM ACTING BY OVERCOMING THAT PERSON’S FREE WILL AND THAT RESULTS IN INEQUITY.**

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

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

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

2. 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.

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

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

2. 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.

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

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

2. 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 \$1,500 is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 1 year 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) 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.

(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.

(G) IN DETERMINING WHETHER PROPERTY WAS OBTAINED BY UNDUE INFLUENCE, THE COURT SHALL CONSIDER:

(1) THE VULNERABILITY OF THE VICTIM, INCLUDING:

(I) INCAPACITY;

(II) ILLNESS;

(III) DISABILITY;

(IV) INJURY;

(V) AGE;

(VI) EDUCATION;

(VII) IMPAIRED COGNITIVE FUNCTION;

(VIII) EMOTIONAL DISTRESS;

(IX) ISOLATION; AND

(X) DEPENDENCY;

1 **(2) WHETHER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN OF**
2 **THE ALLEGED VICTIM’S VULNERABILITY;**

3 **(3) THE DEFENDANT’S APPARENT AUTHORITY, INCLUDING STATUS**
4 **AS:**

5 **(I) A FIDUCIARY;**

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

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

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

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

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

11 **(VII) AN EXPERT;**

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

13 **(I) CONTROLLING NECESSARIES OF LIFE, MEDICATION, THE**
14 **ALLEGED VICTIM’S INTERACTIONS WITH OTHERS, ACCESS TO INFORMATION, OR**
15 **SLEEP;**

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

17 **(III) INITIATING OF CHANGES IN PERSONAL OR PROPERTY**
18 **RIGHTS, USING OF HASTE OR SECRECY IN EFFECTING THOSE CHANGES, EFFECTING**
19 **CHANGES AT INAPPROPRIATE TIMES AND PLACES, AND CLAIMING EXPERTISE IN**
20 **EFFECTING CHANGES; AND**

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

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

23 **(II) ANY DIVERGENCE FROM THE VICTIM’S PRIOR INTENT OR**
24 **COURSE OF CONDUCT OR DEALING;**

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

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

Article – Estates and Trusts

11–111.

(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, 2020.