

# HOUSE BILL 718

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By: **Delegates Kramer, Afzali, Angel, Barkley, B. Barnes, Barve, Beitzel, Branch, Brooks, Buckel, Chang, Cullison, Fraser-Hidalgo, Frick, Frush, Hayes, Healey, Jalisi, Krebs, Krimm, Lafferty, Luedtke, McComas, Morales, Morhaim, Pena-Melnyk, Platt, Reznik, Stein, Valderrama, and Waldstreicher**

Introduced and read first time: February 5, 2016

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Asset Recovery for Exploited Seniors Act**

3 FOR the purpose of authorizing the Division of Consumer Protection of the Office of the  
4 Attorney General to bring a civil action for damages against a certain person who  
5 violates certain provisions of law on behalf of a certain person; authorizing the  
6 Division to recover certain damages; authorizing the Division to recover certain costs  
7 under certain circumstances; providing that a certain criminal conviction is not a  
8 prerequisite for maintenance of an action under this Act; providing for the  
9 application of this Act; and generally relating to the authority of the Division of  
10 Consumer Protection of the Office of the Attorney General to bring civil actions.

11 BY repealing and reenacting, without amendments,  
12 Article – Criminal Law  
13 Section 8–801  
14 Annotated Code of Maryland  
15 (2012 Replacement Volume and 2015 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Commercial Law  
18 Section 13–204  
19 Annotated Code of Maryland  
20 (2013 Replacement Volume and 2015 Supplement)

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

23 **Article – Criminal Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 8–801.

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

3 (2) “Deception” has the meaning stated in § 7–101 of this article.

4 (3) “Deprive” has the meaning stated in § 7–101 of this article.

5 (4) “Obtain” has the meaning stated in § 7–101 of this article.

6 (5) “Property” has the meaning stated in § 7–101 of this article.

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

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

13 (7) “Value” has the meaning stated in § 7–103 of this article.

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

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

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

23 (c) (1) (i) A person convicted of a violation of this section when the value of  
24 the property is at least \$1,000 but less than \$10,000 is guilty of a felony and:

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

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

29 (ii) A person convicted of a violation of this section when the value of  
30 the property is at least \$10,000 but less than \$100,000 is guilty of a felony and:



1 13–204.

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

4 (1) Receive and investigate complaints from any person affected by any  
5 potential or actual violation of this title;

6 (2) Initiate its own investigation of any unfair or deceptive trade practice;

7 (3) In accordance with § 13–402 of this title, conciliate all matters covered  
8 by this title;

9 (4) In accordance with § 13–403 of this title, issue a cease and desist order  
10 with respect to any practice found by the Division to be an unfair or deceptive trade  
11 practice;

12 (5) In cooperation with the Department of Labor, Licensing, and  
13 Regulation, suspend or revoke the license of any merchant who refuses to cease and desist  
14 from engaging in an unfair or deceptive trade practice;

15 (6) Report to the appropriate law enforcement officer any information  
16 concerning violations of any consumer protection law;

17 (7) Assist, advise, and cooperate with local and federal agencies and  
18 officials to protect and promote the interests of consumers in the State;

19 (8) Assist, develop, and conduct programs of consumer education and  
20 information through publications and other materials prepared for distribution to  
21 consumers;

22 (9) Undertake activities to encourage business and industry to maintain  
23 high standards of honesty, fair business practices, and public responsibility in the  
24 production, promotion, and sale or lease or rental of consumer goods, consumer realty, and  
25 consumer services and in the extension of consumer credit;

26 (10) Assess against any violator of this title the costs of investigation by the  
27 Division and damages which flow from the improper, incomplete or untimely restitution by  
28 the violator to the consumer of money, property, or other thing received from the consumer  
29 in connection with a violation of this title;

30 (11) Exercise and perform any other function, power, and duty appropriate  
31 to protect and promote the welfare of consumers;

32 (12) In accordance with § 13–205 of this subtitle, adopt rules, regulations,  
33 and standards which:

1 (i) Are necessary to assure the orderly operation of the Division; and

2 (ii) Further define unfair or deceptive trade practices for purposes of  
3 this title;

4 (13) Enter into reciprocal agreements with consumer protection agencies of  
5 other states, in which each state mutually agrees to receive and investigate complaints  
6 from the foreign state's consumer protection agency on behalf of their consumers against  
7 businesses in the receiving and investigating state; and

8 (14) Maintain a list of nonprofit organizations that:

9 (i) Solely offer counseling or advice to homeowners in foreclosure or  
10 loan default; [and]

11 (ii) Are not directly or indirectly related to and do not contract for  
12 services with for-profit lenders or foreclosure purchasers, as defined in § 7-301 of the Real  
13 Property Article; AND

14 **(15) (I) BRING A CIVIL ACTION FOR DAMAGES AGAINST A PERSON**  
15 **WHO VIOLATES § 8-801 OF THE CRIMINAL LAW ARTICLE ON BEHALF OF A VICTIM**  
16 **OF THE OFFENSE OR, IF THE VICTIM IS DECEASED, THE VICTIM'S ESTATE;**

17 **(II) RECOVER DAMAGES UNDER THIS ITEM FOR PROPERTY LOSS**  
18 **OR DAMAGE; AND**

19 **(III) IF THE DIVISION PREVAILS IN AN ACTION BROUGHT UNDER**  
20 **THIS ITEM, RECOVER THE COSTS OF THE ACTION FOR THE USE OF THE STATE.**

21 **(B) A CONVICTION FOR AN OFFENSE UNDER § 8-801 OF THE CRIMINAL LAW**  
22 **ARTICLE IS NOT A PREREQUISITE FOR MAINTENANCE OF AN ACTION UNDER**  
23 **SUBSECTION (A)(15) OF THIS SECTION.**

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

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
28 1, 2016.