

Chapter 114

(House Bill 718)

AN ACT concerning

Consumer Protection – Asset Recovery for Exploited Seniors Act

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

BY repealing and reenacting, without amendments,

Article – Criminal Law

Section 8–801

Annotated Code of Maryland

(2012 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 13–204

Annotated Code of Maryland

(2013 Replacement Volume and 2015 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) (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.

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

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

1. is subject to imprisonment not exceeding 10 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 \$10,000 but less than \$100,000 is guilty of a felony and:

1. is subject to imprisonment not exceeding 15 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 25 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 \$1,000 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) 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.

Article – Commercial Law

13–204.

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

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

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

- (3) In accordance with § 13–402 of this title, conciliate all matters covered by this title;
- (4) In accordance with § 13–403 of this title, issue a cease and desist order with respect to any practice found by the Division to be an unfair or deceptive trade practice;
- (5) In cooperation with the Department of Labor, Licensing, and Regulation, suspend or revoke the license of any merchant who refuses to cease and desist from engaging in an unfair or deceptive trade practice;
- (6) Report to the appropriate law enforcement officer any information concerning violations of any consumer protection law;
- (7) Assist, advise, and cooperate with local and federal agencies and officials to protect and promote the interests of consumers in the State;
- (8) Assist, develop, and conduct programs of consumer education and information through publications and other materials prepared for distribution to consumers;
- (9) Undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale or lease or rental of consumer goods, consumer realty, and consumer services and in the extension of consumer credit;
- (10) Assess against any violator of this title the costs of investigation by the Division and damages which flow from the improper, incomplete or untimely restitution by the violator to the consumer of money, property, or other thing received from the consumer in connection with a violation of this title;
- (11) Exercise and perform any other function, power, and duty appropriate to protect and promote the welfare of consumers;
- (12) In accordance with § 13–205 of this subtitle, adopt rules, regulations, and standards which:
 - (i) Are necessary to assure the orderly operation of the Division; and
 - (ii) Further define unfair or deceptive trade practices for purposes of this title;
- (13) Enter into reciprocal agreements with consumer protection agencies of other states, in which each state mutually agrees to receive and investigate complaints from the foreign state's consumer protection agency on behalf of their consumers against businesses in the receiving and investigating state; and

(14) Maintain a list of nonprofit organizations that:

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

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

(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 ~~STATE~~ 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.

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 cause of action arising before the effective date of this Act.

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

Approved by the Governor, April 12, 2016.