

HOUSE BILL 327

N2

(0lr2313)

ENROLLED BILL

— *Judiciary/Judicial Proceedings* —

Introduced by **Delegates Carter, Conaway, McConkey, and Vallario**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

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

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

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.

Italics indicate opposite chamber/conference committee amendments.



1 BY repealing and reenacting, with amendments,
2 Article – Criminal Law
3 Section 8–801
4 Annotated Code of Maryland
5 (2002 Volume and 2009 Supplement)

6 BY adding to
7 Article – Estates and Trusts
8 Section ~~9–113~~ 11–110
9 Annotated Code of Maryland
10 (2001 Replacement Volume and 2009 Supplement)

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

13 **Article – Criminal Law**

14 8–801.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (f) This section may not be construed to impose criminal liability on a person
34 who, at the request of the victim of the offense, the victim's family, or the court

1 appointed guardian of the victim, has made a good faith effort to assist the victim in
2 the management of or transfer of the victim's property.

3 **Article – Estates and Trusts**

4 ~~9-113~~ 11-110.

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

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

16 **(C) IN THE EVENT A DISTRIBUTION IS ERRONEOUSLY MADE TO A**
17 **PERSON DISQUALIFIED FROM INHERITING, TAKING, ENJOYING, RECEIVING, OR**
18 **OTHERWISE BENEFITTING FROM THE ESTATE, INSURANCE PROCEEDS, OR**
19 **PROPERTY OF THE VICTIM IN VIOLATION OF SUBSECTION (A) OF THIS SECTION,**
20 **THE DISQUALIFIED PERSON SHALL MAKE FULL RESTITUTION TO THE HEIR,**
21 **LEGATEE, OR BENEFICIARY WHO SHOULD HAVE RECEIVED THE DISTRIBUTION**
22 **IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.**

23 **(D) A FIDUCIARY OR OTHER PERSON WHO DISTRIBUTES PROPERTY IN**
24 **GOOD FAITH AND WITHOUT ACTUAL KNOWLEDGE OF A CONVICTION UNDER §**
25 **8-801 OF THE CRIMINAL LAW ARTICLE IS NOT PERSONALLY LIABLE FOR THE**
26 **DISTRIBUTION.**

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

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