

# HOUSE BILL 327

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HB 1458/09 – JUD

0lr2313

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By: **Delegates Carter, Conaway, McConkey, and Vallario**

Introduced and read first time: January 27, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

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 defendant has a certain burden of proof; making a clarifying change;  
9 providing for the application of this Act; and generally relating to a certain  
10 disqualification concerning the estate, insurance proceeds, or property of a  
11 certain victim under certain circumstances.

12 BY repealing and reenacting, with amendments,  
13 Article – Criminal Law  
14 Section 8–801  
15 Annotated Code of Maryland  
16 (2002 Volume and 2009 Supplement)

17 BY adding to  
18 Article – Estates and Trusts  
19 Section 9–113  
20 Annotated Code of Maryland  
21 (2001 Replacement Volume and 2009 Supplement)

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

24 **Article – Criminal Law**

25 8–801.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

13 (8) “Vulnerable adult” has the meaning stated in § 3–604 of this  
14 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  
17 or reasonably should know is a vulnerable adult with intent to deprive the vulnerable  
18 adult 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  
21 or reasonably should know is at least 68 years old, with intent to deprive the  
22 individual of the individual’s property.

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

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

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

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

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

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

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

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

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

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

## 23 Article – Estates and Trusts

### 24 9–113.

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

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

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