

HOUSE BILL 810

E1

4lr2344

By: **Delegates Lee, Clippinger, Glass, Gutierrez, McComas, McDonough, Mitchell, Niemann, B. Robinson, and F. Turner**

Introduced and read first time: February 3, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Exploitation of Vulnerable Adults – Breach of Fiduciary Duty**

3 FOR the purpose of altering the definition of “undue influence” for purposes of a
4 certain prohibition relating to obtaining property from a vulnerable adult or
5 individual at least a certain age by specifying that the term includes a certain
6 breach of a fiduciary duty; authorizing a court to order the revocation of a
7 professional license under certain circumstances; providing that the State may
8 institute a prosecution for a certain misdemeanor at any time; and generally
9 relating to the exploitation of vulnerable adults.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Law
12 Section 8–801
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2013 Supplement)

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

17 **Article – Criminal Law**

18 8–801.

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

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (5) "Property" has the meaning stated in § 7-101 of this article.

2 (6) (i) "Undue influence" means domination and influence
3 amounting to force and coercion exercised by another person to such an extent that a
4 vulnerable adult or an individual at least 68 years old was prevented from exercising
5 free judgment and choice.

6 (ii) **"UNDUE INFLUENCE" INCLUDES THE BREACHING OF A**
7 **FIDUCIARY DUTY TO A VULNERABLE ADULT OR AN INDIVIDUAL AT LEAST 68**
8 **YEARS OLD BY A GUARDIAN OR AGENT UNDER A POWER OF ATTORNEY THAT**
9 **RESULTS IN AN UNAUTHORIZED APPROPRIATION, SALE, OR TRANSFER OF**
10 **PROPERTY THAT DOES NOT BENEFIT THE VULNERABLE ADULT OR INDIVIDUAL.**

11 (iii) "Undue influence" does not include the normal influence
12 that one 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
15 article.

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

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

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

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

28 2. shall restore the property taken or its value to the
29 owner, or, if the owner is deceased, restore the property or its value to the owner's
30 estate.

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

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

3 2. shall restore the property taken or its value to the
4 owner, or, if the owner is deceased, restore the property or its value to the owner's
5 estate.

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

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

10 2. shall restore the property taken or its value to the
11 owner, or, if the owner is deceased, restore the property or its value to the owner's
12 estate.

13 (2) A person convicted of a violation of this section when the value of
14 the property is less than \$1,000 is guilty of a misdemeanor and:

15 (i) is subject to imprisonment not exceeding 18 months or a fine
16 not exceeding \$500 or both; [and]

17 (ii) shall restore the property taken or its value to the owner, or,
18 if the owner is deceased, restore the property or its value to the owner's estate; AND

19 **(III) IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.**

20 **(3) IN ADDITION TO THE PENALTIES PROVIDED IN THIS**
21 **SUBSECTION, IF A PERSON CONVICTED OF A VIOLATION OF THIS SECTION USED**
22 **THE FACT THAT THE PERSON WAS THE HOLDER OF A PROFESSIONAL LICENSE**
23 **TO ASSIST THE PERSON IN THE COMMISSION OF THE VIOLATION, THE COURT**
24 **MAY ORDER THE ISSUING AUTHORITY TO REVOKE THE PERSON'S LICENSE.**

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

28 (e) (1) If a defendant fails to restore fully the property taken or its value
29 as ordered under subsection (c) of this section, the defendant is disqualified, to the
30 extent of the defendant's failure to restore the property or its value, from inheriting,
31 taking, enjoying, receiving, or otherwise benefiting from the estate, insurance
32 proceeds, or property of the victim of the offense, whether by operation of law or
33 pursuant to a legal document executed or entered into by the victim before the
34 defendant shall have been convicted under this section.

1 (2) The defendant has the burden of proof with respect to establishing
2 under paragraph (1) of this subsection that the defendant has fully restored the
3 property taken or its value.

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

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2014.