HOUSE BILL 495

6lr1282

By: Delegates Stein, Brooks, Frick, Frush, Glenn, Hayes, Hixson, C. Howard, Jalisi, Lafferty, Lam, Lisanti, McComas, McCray, McMillan, Miele, Morhaim, Pena-Melnyk, Valderrama, West, and K. Young Introduced and read first time: February 1, 2016 Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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Civil Action – Offense Against Vulnerable or Elderly Adult

FOR the purpose of authorizing a victim of a certain offense to bring a civil action for treble
damages against a certain person; establishing that a certain criminal conviction is
not a prerequisite for maintenance of an action under this Act; providing for the
recovery of certain attorney's fees and court costs in an action brought under this
Act; providing for the application of this Act; and generally relating to establishing
a civil action brought by a victim of a certain offense.

- 9 BY repealing and reenacting, without amendments,
- 10 Article Criminal Law
- 11 Section 8–801
- 12 Annotated Code of Maryland
- 13 (2012 Replacement Volume and 2015 Supplement)
- 14 BY adding to
- 15 Article Courts and Judicial Proceedings
- Section 3–2101 to be under the new subtitle "Subtitle 21. Civil Action Offense
 Against Vulnerable or Elderly Adult"
- 18 Annotated Code of Maryland
- 19 (2013 Replacement Volume and 2015 Supplement)
- 20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, 21 That the Laws of Maryland read as follows:

Article – Criminal Law

23 8-801.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.



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2 HOUSE BILL 495		
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 7 8 9		(6) (i) "Undue influence" means domination and influence amounting coercion exercised by another person to such an extent that a vulnerable adult dual at least 68 years old was prevented from exercising free judgment and
10 11	member of a	(ii) "Undue influence" does not include the normal influence that one a family has over another member of the family.
12		(7) "Value" has the meaning stated in § 7–103 of this article.
13		(8) "Vulnerable adult" has the meaning stated in § 3–604 of this article.
$14 \\ 15 \\ 16 \\ 17$	reasonably	(1) A person may not knowingly and willfully obtain by deception, n, or undue influence the property of an individual that the person knows or should know is a vulnerable adult with intent to deprive the vulnerable adult rable adult's property.
18 19 20 21		(2) A person may not knowingly and willfully obtain by deception, n, or undue influence the property of an individual that the person knows or should know is at least 68 years old, with intent to deprive the individual of the property.
$\frac{22}{23}$	(c) the property	(1) (i) A person convicted of a violation of this section when the value of v is at least \$1,000 but less than \$10,000 is guilty of a felony and:
$\begin{array}{c} 24 \\ 25 \end{array}$	not exceedin	1. is subject to imprisonment not exceeding 10 years or a fine ng \$10,000 or both; and
$\frac{26}{27}$	or, if the ow	2. shall restore the property taken or its value to the owner, ner is deceased, restore the property or its value to the owner's estate.
$\begin{array}{c} 28 \\ 29 \end{array}$	the property	(ii) A person convicted of a violation of this section when the value of <i>v</i> is at least \$10,000 but less than \$100,000 is guilty of a felony and:
30 31	not exceedin	1. is subject to imprisonment not exceeding 15 years or a fine ng \$15,000 or both; and

HOUSE BILL 495

1 2. shall restore the property taken or its value to the owner, $\mathbf{2}$ or, if the owner is deceased, restore the property or its value to the owner's estate. 3 (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: 4 $\mathbf{5}$ 1. is subject to imprisonment not exceeding 25 years or a fine 6 not exceeding \$25,000 or both; and 7 shall restore the property taken or its value to the owner, 2. or, if the owner is deceased, restore the property or its value to the owner's estate. 8 9 A person convicted of a violation of this section when the value of the (2)property is less than \$1,000 is guilty of a misdemeanor and: 10 11 is subject to imprisonment not exceeding 18 months or a fine not (i) 12exceeding \$500 or both; and 13shall restore the property taken or its value to the owner, or, if (ii) the owner is deceased, restore the property or its value to the owner's estate. 1415(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 16 17 violation of this section. 18 If a defendant fails to restore fully the property taken or its value as (e) (1)19 ordered under subsection (c) of this section, the defendant is disgualified, to the extent of 20the defendant's failure to restore the property or its value, from inheriting, taking, enjoying, 21receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the 22victim 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 2324section. 25The defendant has the burden of proof with respect to establishing (2)26under paragraph (1) of this subsection that the defendant has fully restored the property 27taken or its value. 28This section may not be construed to impose criminal liability on a person who, (f) 29at the request of the victim of the offense, the victim's family, or the court appointed 30 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. 3132**Article – Courts and Judicial Proceedings**

33 SUBTITLE 21. CIVIL ACTION - OFFENSE AGAINST VULNERABLE OR ELDERLY 34 ADULT.

1 **3–2101.**

2 (A) (1) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY LAW, A 3 VICTIM OF AN OFFENSE DESCRIBED IN § 8–801 OF THE CRIMINAL LAW ARTICLE MAY 4 BRING A CIVIL ACTION FOR DAMAGES AGAINST A PERSON WHO COMMITTED THE 5 OFFENSE.

6 (2) A CONVICTION FOR AN OFFENSE UNDER § 8–801 OF THE 7 CRIMINAL LAW ARTICLE IS NOT A PREREQUISITE FOR MAINTENANCE OF AN ACTION 8 UNDER THIS SECTION.

9 (B) A VICTIM MAY RECOVER UP TO THREE TIMES THE AMOUNT OF ACTUAL 10 DAMAGES, REASONABLE ATTORNEY'S FEES, AND COURT COSTS UNDER THIS 11 SECTION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to 13 apply only prospectively and may not be applied or interpreted to have any effect on or 14 application to any cause of action arising before the effective date of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 16 October 1, 2016.