

# HOUSE BILL 1506

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8lr3231

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By: **Delegate Kramer**

Introduced and read first time: February 9, 2018

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Attorney General – Securities Commissioner – Asset Recovery for**  
3 **Exploited Seniors**

4 FOR the purpose of authorizing the Securities Commissioner of the Division of Securities  
5 of the Office of the Attorney General to bring a civil action for damages against a  
6 certain person that violates certain provisions of law on behalf of a certain person;  
7 authorizing the Commissioner to recover certain damages; authorizing the  
8 Commissioner to recover certain costs under certain circumstances; providing that a  
9 certain criminal conviction is not a prerequisite for maintenance of an action under  
10 this Act; providing for the application of this Act; and generally relating to the  
11 authority of the Securities Commissioner of the Division of Securities of the Office of  
12 the Attorney General to bring civil actions.

13 BY adding to

14 Article – Corporations and Associations  
15 Section 11–209  
16 Annotated Code of Maryland  
17 (2014 Replacement Volume and 2017 Supplement)

18 BY repealing and reenacting, without amendments,

19 Article – Criminal Law  
20 Section 8–801  
21 Annotated Code of Maryland  
22 (2012 Replacement Volume and 2017 Supplement)

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

25 **Article – Corporations and Associations**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **11-209.**

2 **(A) THE COMMISSIONER MAY:**

3 **(1) BRING A CIVIL ACTION FOR DAMAGES AGAINST A PERSON THAT**  
4 **VIOLATES § 8-801 OF THE CRIMINAL LAW ARTICLE ON BEHALF OF A VICTIM OF THE**  
5 **VIOLATION OR, IF THE VICTIM IS DECEASED, THE VICTIM'S ESTATE;**

6 **(2) RECOVER DAMAGES UNDER THIS SUBSECTION FOR PROPERTY**  
7 **LOSS OR DAMAGE; AND**

8 **(3) IF THE COMMISSIONER PREVAILS IN AN ACTION BROUGHT UNDER**  
9 **THIS SUBSECTION, RECOVER THE COSTS OF THE ACTION FOR THE USE OF THE**  
10 **OFFICE OF THE ATTORNEY GENERAL.**

11 **(B) A CONVICTION FOR A VIOLATION OF § 8-801 OF THE CRIMINAL LAW**  
12 **ARTICLE IS NOT A PREREQUISITE FOR MAINTENANCE OF AN ACTION UNDER**  
13 **SUBSECTION (A) OF THIS SECTION.**

14 **Article - Criminal Law**

15 8-801.

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

17 (2) "Deception" has the meaning stated in § 7-101 of this article.

18 (3) "Deprive" has the meaning stated in § 7-101 of this article.

19 (4) "Obtain" has the meaning stated in § 7-101 of this article.

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

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

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

27 (7) "Value" has the meaning stated in § 7-103 of this article.

28 (8) "Vulnerable adult" has the meaning stated in § 3-604 of this article.

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

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

9 (c) (1) (i) A person convicted of a violation of this section when the value of  
10 the property is at least \$1,500 but less than \$25,000 is guilty of a felony and:

11 1. is subject to imprisonment not exceeding 5 years or a fine  
12 not exceeding \$10,000 or both; and

13 2. shall restore the property taken or its value to the owner,  
14 or, if the owner is deceased, restore the property or its value to the owner's estate.

15 (ii) A person convicted of a violation of this section when the value of  
16 the property is at least \$25,000 but less than \$100,000 is guilty of a felony and:

17 1. is subject to imprisonment not exceeding 10 years or a fine  
18 not exceeding \$15,000 or both; and

19 2. shall restore the property taken or its value to the owner,  
20 or, if the owner is deceased, restore the property or its value to the owner's estate.

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

23 1. is subject to imprisonment not exceeding 20 years or a fine  
24 not exceeding \$25,000 or both; and

25 2. shall restore the property taken or its value to the owner,  
26 or, if the owner is deceased, restore the property or its value to the owner's estate.

27 (2) A person convicted of a violation of this section when the value of the  
28 property is less than \$1,500 is guilty of a misdemeanor and:

29 (i) is subject to imprisonment not exceeding 1 year or a fine not  
30 exceeding \$500 or both; and

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

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

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

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

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

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

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2018.