

HOUSE BILL 161

E1, D3, N2
HB 347/21 – JUD

(PRE-FILED)

2lr0681

By: **Delegate Shetty**

Requested: October 7, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue**
3 **Influence**

4 FOR the purpose of altering the definition of “undue influence” for purposes of provisions
5 of law prohibiting the exploitation of certain vulnerable adults or elderly individuals;
6 requiring a court, in determining whether a transfer of property was induced by
7 undue influence, to consider certain factors; and generally relating to the
8 exploitation of vulnerable adults or elderly individuals.

9 BY repealing and reenacting, without amendments,
10 Article – Commercial Law
11 Section 13–204(a)(15)
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2021 Supplement)
14 (As enacted by Chapter 160 of the Acts of the General Assembly of 2020)

15 BY repealing and reenacting, without amendments,
16 Article – Commercial Law
17 Section 13–204(a)(16) and (b)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2021 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Criminal Law
22 Section 8–801(a)(1) and (b) through (g)
23 Annotated Code of Maryland
24 (2021 Replacement Volume and 2021 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 8–801(a)(6)
2 Annotated Code of Maryland
3 (2021 Replacement Volume and 2021 Supplement)

4 BY adding to
5 Article – Criminal Law
6 Section 8–801(h)
7 Annotated Code of Maryland
8 (2021 Replacement Volume and 2021 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article – Estates and Trusts
11 Section 11–111
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2021 Supplement)

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

16 **Article – Commercial Law**

17 13–204.

18 (a) In addition to any other of its powers and duties, the Division has the powers
19 and duties to:

20 (15) (i) Bring a civil action for damages or an action under this title
21 against a person who violates § 8–801 of the Criminal Law Article on behalf of a victim of
22 the offense or, if the victim is deceased, the victim’s estate;

23 (ii) Recover damages under this item for property loss or damage;
24 and

25 (iii) If the Division prevails in an action brought under this item,
26 recover the costs of the action for the use of the Office of the Attorney General; and

27 (16) (i) Bring a civil action for damages or an action under this title on
28 behalf of a susceptible adult or older adult who is authorized to bring a cause of action
29 under § 13–603 of the Estates and Trusts Article; and

30 (ii) If the Division prevails in an action brought under this item,
31 recover the costs of the action for the use of the Office of the Attorney General.

32 (b) A conviction for an offense under § 8–801 of the Criminal Law Article is not a
33 prerequisite for maintenance of an action under subsection (a)(15) of this section.

34 **Article – Criminal Law**

1 8–801.

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

3 (6) (i) “Undue influence” means domination [and], influence
4 [amounting to force and coercion], **OR EXCESSIVE PERSUASION** exercised by another
5 person to such an extent that a vulnerable adult or an individual at least 68 years old was
6 prevented from exercising free judgment and choice **AND THAT RESULTS IN INEQUITY**.

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

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

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

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

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

21 2. shall restore the property taken or its value to the owner,
22 or, if the owner is deceased, restore the property or its value to the owner’s estate.

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

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

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

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

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

- 1 (II) ILLNESS;
- 2 (III) DISABILITY;
- 3 (IV) INJURY;
- 4 (V) AGE;
- 5 (VI) EDUCATION;
- 6 (VII) IMPAIRED COGNITIVE FUNCTION;
- 7 (VIII) EMOTIONAL DISTRESS;
- 8 (IX) ISOLATION; AND
- 9 (X) DEPENDENCY;

10 (2) WHETHER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN OF
11 THE ALLEGED VICTIM'S VULNERABILITY;

12 (3) THE DEFENDANT'S APPARENT AUTHORITY, INCLUDING STATUS
13 AS:

- 14 (I) A FIDUCIARY;
- 15 (II) A FAMILY MEMBER;
- 16 (III) A CARE PROVIDER;
- 17 (IV) A HEALTH CARE PROFESSIONAL;
- 18 (V) A LEGAL PROFESSIONAL;
- 19 (VI) A SPIRITUAL ADVISER; OR
- 20 (VII) AN EXPERT;

21 (4) THE ACTIONS OR TACTICS USED BY THE DEFENDANT, INCLUDING:

22 (I) CONTROLLING THE ALLEGED VICTIM'S DAILY NEEDS,
23 MEDICATION, INTERACTIONS WITH OTHERS, ACCESS TO INFORMATION, OR SLEEP;

24 (II) USING AFFECTION, INTIMIDATION, OR COERCION; AND

1 **(III) INITIATING CHANGES IN PERSONAL OR PROPERTY RIGHTS,**
 2 **USING HASTE OR SECRECY IN EFFECTING THOSE CHANGES, EFFECTING CHANGES AT**
 3 **INAPPROPRIATE TIMES AND PLACES, AND CLAIMING EXPERTISE IN EFFECTING**
 4 **CHANGES; AND**

5 **(5) THE EQUITY OF THE RESULT, INCLUDING:**

6 **(I) THE ECONOMIC CONSEQUENCES TO THE ALLEGED VICTIM;**

7 **(II) ANY DIVERGENCE FROM THE VICTIM'S PRIOR INTENT OR**
 8 **COURSE OF CONDUCT OR DEALING;**

9 **(III) THE RELATIONSHIP OF THE VALUE CONVEYED TO THE**
 10 **VALUE OF ANY SERVICES OR CONSIDERATION RECEIVED; AND**

11 **(IV) THE APPROPRIATENESS OF THE CHANGE IN LIGHT OF THE**
 12 **LENGTH AND NATURE OF THE RELATIONSHIP.**

13 **Article – Estates and Trusts**

14 11–111.

15 (a) A person convicted of unlawfully obtaining property from a victim in violation
 16 of § 8–801(b) of the Criminal Law Article shall be disqualified from inheriting, taking,
 17 enjoying, receiving, or otherwise benefitting from the estate, insurance proceeds, or
 18 property of the victim, to the extent provided in § 8–801(e) of the Criminal Law Article.

19 (b) A person disqualified from inheriting, taking, enjoying, receiving, or otherwise
 20 benefitting from the estate, insurance proceeds, or property of the victim in accordance with
 21 subsection (a) of this section shall be treated as if the person predeceased the victim.

22 (c) In the event a distribution is erroneously made to a person disqualified from
 23 inheriting, taking, enjoying, receiving, or otherwise benefitting from the estate, insurance
 24 proceeds, or property of the victim in violation of subsection (a) of this section, the
 25 disqualified person shall make full restitution to the heir, legatee, or beneficiary who should
 26 have received the distribution in accordance with subsection (b) of this section.

27 (d) A fiduciary or other person who distributes property in good faith and without
 28 actual knowledge of a conviction under § 8–801 of the Criminal Law Article is not
 29 personally liable for the distribution.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
 31 apply only prospectively and may not be applied or interpreted to have any effect on or
 32 application to any civil action or proceeding to determine a benefit from the estate,

1 insurance proceeds, or property of a victim that is pending before the effective date of this
2 Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2022.