E1, D3, N2 HB 347/21 – JUD

(PRE-FILED)

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

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



2lr0681

1	Section $8-801(a)(6)$			
2	Annotated Code of Maryland			
3	(2021 Replacement Volume and 2021 Supplement)			
4	BV adding to			
$\frac{4}{5}$	BY adding to			
5 6	Article – Criminal Law			
$\frac{1}{7}$	Section 8–801(h) Annotated Code of Maryland			
8	(2021 Replacement Volume and 2021 Supplement)			
0	(2021 Replacement Volume and 2021 Supplement)			
9	BY repealing and reenacting, without amendments,			
10	Article – Estates and Trusts			
11				
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:			
10	That the Laws of Marylana road 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			
$\frac{20}{21}$	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,			
$\frac{25}{26}$	(iii) If the Division prevails in an action brought under this item, recover the costs of the action for the use of the Office of the Attorney General; and			
20	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			
00				
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.			

# Article - Criminal Law

34

 $\mathbf{2}$ 

8-801. 1  $\mathbf{2}$ (a) (1)In this section the following words have the meanings indicated. 3 (i) "Undue influence" means domination (6)and, influence 4 [amounting to force and coercion]. OR EXCESSIVE PERSUASION exercised by another  $\mathbf{5}$ 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) A person may not knowingly and willfully obtain by deception, (1)10intimidation, 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 12of the vulnerable adult's property. 13(2)A person may not knowingly and willfully obtain by deception, 14intimidation, or undue influence the property of an individual that the person knows or 15reasonably should know is at least 68 years old, with intent to deprive the individual of the 16individual's property. 17(c) (1)(i) A person convicted of a violation of this section when the value of the property is at least \$1,500 but less than \$25,000 is guilty of a felony and: 1819 1. is subject to imprisonment not exceeding 5 years or a fine 20not exceeding \$10,000 or both; and 21shall restore the property taken or its value to the owner, 2. 22or, if the owner is deceased, restore the property or its value to the owner's estate. 23A person convicted of a violation of this section when the value of (ii) the property is at least \$25,000 but less than \$100,000 is guilty of a felony and: 2425is subject to imprisonment not exceeding 10 years or a fine 1. 26not exceeding \$15,000 or both; and 272. shall restore the property taken or its value to the owner, 28or, if the owner is deceased, restore the property or its value to the owner's estate. 29A person convicted of a violation of this section when the value of (iii) the property is \$100,000 or more is guilty of a felony and: 30 31 is subject to imprisonment not exceeding 20 years or a fine 1. 32not exceeding \$25,000 or both; and

4

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 (2)A person convicted of a violation of this section when the value of the property is less than \$1,500 is guilty of a misdemeanor and: 4  $\mathbf{5}$ is subject to imprisonment not exceeding 1 year or a fine not (i) 6 exceeding \$500 or both; and 7 shall 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. 8 9 A sentence imposed under this section may be separate from and consecutive (d)10 to or concurrent with a sentence for any crime based on the act or acts establishing the violation of this section. 11 12(e) (1)If a defendant fails to restore fully the property taken or its value as 13ordered under subsection (c) of this section, the defendant is disgualified, to the extent of 14the defendant's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the 15victim of the offense, whether by operation of law or pursuant to a legal document executed 1617or entered into by the victim before the defendant shall have been convicted under this 18 section. 19The defendant has the burden of proof with respect to establishing (2)20under paragraph (1) of this subsection that the defendant has fully restored the property taken or its value. 2122This section may not be construed to impose criminal liability on a person who, (f) 23at the request of the victim of the offense, the victim's family, or the court appointed 24guardian of the victim, has made a good faith effort to assist the victim in the management 25of or transfer of the victim's property. 26(g) In addition to any penalties set forth in this section, a violation of this section: 27(1)is an unfair, abusive, or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article; and 2829(2)is subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article. 30 31 **(H)** IN DETERMINING WHETHER PROPERTY WAS OBTAINED BY UNDUE 32INFLUENCE, THE COURT SHALL CONSIDER: 33 (1) THE VULNERABILITY OF THE VICTIM, INCLUDING: **(I)** 34**INCAPACITY;** 

1		<b>(</b> II <b>)</b>	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		<b>(</b> X <b>)</b>	DEPENDENCY;
10 11	(2) THE ALLEGED VI		THER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN OF VULNERABILITY;
12 13	(3) AS:	THE	DEFENDANT'S APPARENT AUTHORITY, INCLUDING STATUS
14		<b>(</b> I <b>)</b>	A FIDUCIARY;
15		<b>(</b> II <b>)</b>	A FAMILY MEMBER;
16		<b>(</b> III <b>)</b>	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 A	ACTIONS OR TACTICS USED BY THE DEFENDANT, INCLUDING:
$\frac{22}{23}$	MEDICATION, INT	(I) FERAC	CONTROLLING THE ALLEGED VICTIM'S DAILY NEEDS, TIONS WITH OTHERS, ACCESS TO INFORMATION, OR SLEEP;
24		<b>(</b> II <b>)</b>	USING AFFECTION, INTIMIDATION, OR COERCION; AND

1 (III) INITIATING CHANGES IN PERSONAL OR PROPERTY RIGHTS,  $\mathbf{2}$ USING HASTE OR SECRECY IN EFFECTING THOSE CHANGES, EFFECTING CHANGES AT 3 INAPPROPRIATE TIMES AND PLACES, AND CLAIMING EXPERTISE IN EFFECTING 4 **CHANGES: AND**  $\mathbf{5}$ (5) THE EQUITY OF THE RESULT, INCLUDING: 6 **(I)** THE ECONOMIC CONSEQUENCES TO THE ALLEGED VICTIM; 7 ANY DIVERGENCE FROM THE VICTIM'S PRIOR INTENT OR **(II)** 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 THE APPROPRIATENESS OF THE CHANGE IN LIGHT OF THE (IV) 12LENGTH AND NATURE OF THE RELATIONSHIP. **Article – Estates and Trusts** 1314 11–111. 15A person convicted of unlawfully obtaining property from a victim in violation (a) of § 8–801(b) of the Criminal Law Article shall be disgualified from inheriting, taking, 16 enjoying, receiving, or otherwise benefitting from the estate, insurance proceeds, or 1718 property of the victim, to the extent provided in § 8–801(e) of the Criminal Law Article. 19(b) A person disgualified from inheriting, taking, enjoying, receiving, or otherwise 20benefitting from the estate, insurance proceeds, or property of the victim in accordance with 21subsection (a) of this section shall be treated as if the person predeceased the victim. 22In the event a distribution is erroneously made to a person disgualified from (c) 23inheriting, taking, enjoying, receiving, or otherwise benefitting from the estate, insurance 24proceeds, or property of the victim in violation of subsection (a) of this section, the 25disqualified person shall make full restitution to the heir, legatee, or beneficiary who should 26have received the distribution in accordance with subsection (b) of this section. 27A fiduciary or other person who distributes property in good faith and without (d) 28actual knowledge of a conviction under § 8-801 of the Criminal Law Article is not personally liable for the distribution. 2930 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,

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

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