

HOUSE BILL 723

I1, I3, O2

(4lr1271)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by **Delegates Kramer and Simmons**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Money Transmission – Protection of Elder Adults From Financial Abuse and,**
3 **Financial Exploitation – ~~Training, and Fraud – Requirements~~**

4 FOR the purpose of requiring a licensee that engages in the business of money
5 transmission to provide, on or before a certain date each year, certain training
6 materials to certain agents on how to recognize financial abuse and financial
7 exploitation of elder adults and how to respond appropriately to certain
8 circumstances; requiring a licensee to provide the training materials to certain
9 newly appointed agents within a certain period of time; ~~requiring certain agents~~
10 ~~to make a certain abuse report to certain persons in a certain manner under~~
11 ~~certain circumstances in which an elder adult may be the victim of financial~~
12 ~~abuse or financial exploitation; authorizing a licensee to make a certain report~~
13 ~~on behalf of a certain agent; requiring a licensee periodically to report certain~~
14 ~~information to the Commissioner of Financial Regulation; requiring a licensee~~
15 to include a certain fraud warning on certain forms used by individuals to send

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 money to other individuals; requiring the fraud warning to include a certain
 2 telephone number for a certain purpose; requiring a licensee to monitor certain
 3 activities of its agents; requiring a licensee to allow an individual to voluntarily
 4 be disqualified from sending money transmissions from or receiving money
 5 transmissions in the State; providing that a licensee may require an individual
 6 to provide written notice of disqualification to the licensee at a certain address;
 7 specifying the effective period of a disqualification; authorizing an individual to
 8 extend or terminate a disqualification; requiring a licensee to retain certain
 9 records concerning certain training for a certain period of time; defining certain
 10 terms; providing for the application of certain provisions of this Act; making a
 11 stylistic change; and generally relating to ~~elder adults and money transmission~~
 12 money transmission and protection from financial abuse, financial exploitation,
 13 and fraud.

14 BY repealing and reenacting, without amendments,
 15 Article – Financial Institutions
 16 Section 1–306(a)(1), (3), (4), and (5), 12–401(a), (c), and (m), 12–416(a), and
 17 12–426
 18 Annotated Code of Maryland
 19 (2011 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, with amendments,
 21 Article – Financial Institutions
 22 Section ~~12–413, 12–416(a)~~, and 12–425(a)
 23 Annotated Code of Maryland
 24 (2011 Replacement Volume and 2013 Supplement)

25 BY adding to
 26 Article – Financial Institutions
 27 Section 12–413.1
 28 Annotated Code of Maryland
 29 (2011 Replacement Volume and 2013 Supplement)

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

32 **Article – Financial Institutions**

33 1–306.

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

35 (3) “Elder adult” means an individual who is believed to be:

36 (i) At least 65 years old; and

37 (ii) Residing in the State.

1 (4) “Financial abuse” means to take, appropriate, obtain, or retain, or
2 assist in taking, appropriating, obtaining, or retaining, real or personal property of an
3 elder adult by any means, including undue influence, for a wrongful purpose or with
4 intent to defraud the elder adult.

5 (5) “Financial exploitation” means any action which involves the
6 misuse of a customer’s funds or property.

7 12–401.

8 (a) In this subtitle the following words have the meanings indicated.

9 (c) (1) “Authorized delegate” means a person who is authorized by a
10 licensee to engage in the business of money transmission under the name of the
11 licensee at any location other than the place of business specified in the license.

12 (2) “Authorized delegate” does not include a branch location of a
13 licensee.

14 (m) (1) “Money transmission” means the business of selling or issuing
15 payment instruments or stored value devices, or receiving money or monetary value,
16 for transmission to a location within or outside the United States by any means,
17 including electronically or through the Internet.

18 (2) “Money transmission” includes:

19 (i) A bill payer service;

20 (ii) An accelerated mortgage payment service; and

21 (iii) Any informal money transfer system engaged in as a
22 business for, or network of persons who engage as a business in, facilitating the
23 transfer of money outside the conventional financial institutions system to a location
24 within or outside the United States.

25 12–413.

26 (a) **(1)** Each authorized delegate that a licensee appoints under a license
27 is the designated agent of the licensee for all purposes in connection with the licensee’s
28 business under that license.

29 **(2)** Each licensee under this subtitle is liable for the payment of all
30 money transmitted and payment instruments sold by the licensee, in whatever form,
31 directly or through an authorized delegate.

1 (b) Each authorized delegate that a licensee appoints under a license shall be
2 authorized by an express written contract, which shall provide:

3 (1) That the licensee appoints the person as its authorized delegate
4 with authority to engage in the business of money transmission on behalf of the
5 licensee;

6 (2) That neither the licensee nor the authorized delegate may
7 authorize subagents or subdelegates without written consent of the Commissioner;

8 (3) That the authorized delegate is subject to supervision,
9 examination, and regulation by the Commissioner; and

10 (4) That the authorized delegate will operate in full compliance with
11 all applicable laws and regulations.

12 (c) The licensee shall provide to each authorized delegate a written copy of
13 the licensee's operating policies and procedures, which shall be updated on a
14 reasonable periodic basis.

15 (d) Copies of all contracts required under this section shall be made available
16 to the Commissioner, upon request.

17 **12-413.1.**

18 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
19 MEANINGS INDICATED.

20 (2) "AGENT" INCLUDES AN AUTHORIZED DELEGATE, A
21 SUBAGENT, AND A SUBDELEGATE OF A LICENSEE.

22 (3) "ELDER ADULT" HAS THE MEANING STATED IN § 1-306 OF
23 THIS ARTICLE.

24 (4) "FINANCIAL ABUSE" HAS THE MEANING STATED IN § 1-306 OF
25 THIS ARTICLE.

26 (5) "FINANCIAL EXPLOITATION" HAS THE MEANING STATED IN §
27 1-306 OF THIS ARTICLE.

28 (B) THIS SECTION DOES NOT APPLY TO A LICENSEE OR AN AGENT THAT:

29 (1) ~~ENGAGES SOLELY IN SELLING OR ISSUING STORED VALUE~~
30 ~~DEVICES OR TRAVELER'S CHECKS; OR~~

1 ~~(2) ENGAGES~~ IN THE BUSINESS OF MONEY TRANSMISSION
2 SOLELY THROUGH THE INTERNET; OR

3 (2) (I) ENGAGES IN:

4 1. SELLING OR ISSUING STORED VALUE DEVICES,
5 TRAVELER'S CHECKS, OR MONEY ORDERS, OR PROVIDING BILL PAYER SERVICES;
6 OR

7 2. ANY COMBINATION OF SELLING OR ISSUING
8 STORED VALUE DEVICES, TRAVELER'S CHECKS, OR MONEY ORDERS, OR
9 PROVIDING BILL PAYER SERVICES; AND

10 (II) DOES NOT ENGAGE IN ANY OTHER BUSINESS
11 REGULATED UNDER THIS SUBTITLE.

12 (C) ON OR BEFORE APRIL 1 OF EACH YEAR, A LICENSEE SHALL
13 PROVIDE TO EACH AGENT, THROUGH WHICH IT ENGAGES IN THE BUSINESS OF
14 MONEY TRANSMISSION, TRAINING MATERIALS ON HOW TO:

15 (1) RECOGNIZE FINANCIAL ABUSE AND FINANCIAL
16 EXPLOITATION OF AN ELDER ADULT; AND

17 (2) RESPOND APPROPRIATELY IF THE AGENT SUSPECTS THAT
18 THE AGENT IS BEING ASKED TO ENGAGE IN THE BUSINESS OF MONEY
19 TRANSMISSION FOR A FRAUDULENT TRANSACTION IN WHICH AN ELDER ADULT
20 IS THE VICTIM OF FINANCIAL ABUSE OR FINANCIAL EXPLOITATION.

21 (D) A LICENSEE SHALL PROVIDE THE TRAINING MATERIALS REQUIRED
22 UNDER SUBSECTION (C) OF THIS SECTION TO EACH NEWLY APPOINTED AGENT
23 WITHIN 1 MONTH AFTER APPOINTMENT OF THE AGENT.

24 (E) (1) A LICENSEE SHALL INCLUDE A CLEAR, CONCISE, AND
25 CONSPICUOUS FRAUD WARNING ON ALL TRANSMITTAL FORMS USED BY AN
26 INDIVIDUAL TO SEND MONEY TO ANOTHER INDIVIDUAL.

27 (2) THE FRAUD WARNING SHALL INCLUDE A TOLL-FREE
28 TELEPHONE NUMBER FOR INDIVIDUALS TO CALL TO REPORT FRAUD OR
29 SUSPECTED FRAUD.

30 (3) A LICENSEE SHALL MONITOR THE ACTIVITIES OF ITS AGENTS
31 RELATING TO TRANSMITTALS BY INDIVIDUALS.

1 (F) (1) (i) A LICENSEE SHALL ALLOW AN INDIVIDUAL TO
2 VOLUNTARILY BE DISQUALIFIED FROM SENDING MONEY TRANSMISSIONS FROM
3 OR RECEIVING MONEY TRANSMISSIONS IN THE STATE.

4 (ii) A LICENSEE MAY REQUIRE AN INDIVIDUAL TO PROVIDE
5 WRITTEN NOTICE OF THE INDIVIDUAL'S DISQUALIFICATION TO THE LICENSEE
6 AT THE ADDRESS ON THE LICENSEE'S LICENSE.

7 (iii) UNLESS EXTENDED UNDER PARAGRAPH (2) OF THIS
8 SUBSECTION OR TERMINATED UNDER PARAGRAPH (3) OF THIS SUBSECTION, A
9 DISQUALIFICATION IS EFFECTIVE UNTIL JANUARY 1 OF THE YEAR FOLLOWING
10 THE YEAR IN WHICH NOTICE OF THE INDIVIDUAL'S DISQUALIFICATION IS GIVEN
11 TO THE LICENSEE.

12 (2) (i) BEFORE A DISQUALIFICATION BECOMES INEFFECTIVE,
13 AN INDIVIDUAL MAY EXTEND THE DISQUALIFICATION BY GIVING WRITTEN
14 NOTICE OF THE EXTENSION TO THE LICENSEE AT THE ADDRESS ON THE
15 LICENSEE'S LICENSE.

16 (ii) AN EXTENSION OF A DISQUALIFICATION UNDER
17 SUBPARAGRAPH (i) OF THIS PARAGRAPH IS EFFECTIVE UNTIL JANUARY 1 OF
18 THE YEAR FOLLOWING THE YEAR IN WHICH NOTICE OF THE EXTENSION IS
19 GIVEN TO THE LICENSEE.

20 (3) AN INDIVIDUAL MAY TERMINATE A DISQUALIFICATION AT ANY
21 TIME BY GIVING WRITTEN NOTICE OF THE TERMINATION TO THE LICENSEE AT
22 THE ADDRESS ON THE LICENSEE'S LICENSE.

23 ~~(E) (1) AN AGENT SHALL MAKE AN ABUSE REPORT AS PROVIDED IN~~
24 ~~THIS SUBSECTION IF THE AGENT SUSPECTS THAT THE AGENT IS BEING ASKED~~
25 ~~TO ENGAGE IN THE BUSINESS OF MONEY TRANSMISSION FOR A TRANSACTION IN~~
26 ~~WHICH AN ELDER ADULT IS THE VICTIM OF FINANCIAL ABUSE OR FINANCIAL~~
27 ~~EXPLOITATION.~~

28 ~~(2) THE ABUSE REPORT REQUIRED UNDER PARAGRAPH (1) OF~~
29 ~~THIS SUBSECTION SHALL BE MADE:~~

30 ~~(i) TO THE ADULT PROTECTIVE SERVICES AGENCY IN A~~
31 ~~LOCAL DEPARTMENT OF SOCIAL SERVICES, THE LOCAL LAW ENFORCEMENT~~
32 ~~AGENCY, OR A STATE'S ATTORNEY; AND~~

33 ~~(ii) 1. BY TELEPHONE NOTIFICATION WITHIN 24 HOURS~~
34 ~~AFTER THE AGENT KNOWS OR HAS REASONABLE CAUSE TO SUSPECT THAT THE~~

1 ~~ELDER ADULT IS THE VICTIM OF FINANCIAL ABUSE OR FINANCIAL~~
2 ~~EXPLOITATION; AND~~

3 ~~2. IN WRITING SENT WITHIN 3 BUSINESS DAYS~~
4 ~~AFTER THE AGENT KNOWS OR HAS REASONABLE CAUSE TO SUSPECT THAT THE~~
5 ~~ELDER ADULT IS THE VICTIM OF FINANCIAL ABUSE OR FINANCIAL~~
6 ~~EXPLOITATION.~~

7 ~~(3) A LICENSEE MAY MAKE THE ABUSE REPORT ON BEHALF OF~~
8 ~~THE AGENT.~~

9 12-416.

10 (a) Within 45 days of the end of each calendar semiannual period ending
11 June 30 and December 31, the licensee shall file with the Commissioner a report that
12 includes the following information on a form that the Commissioner requires:

13 (1) An unaudited, unconsolidated financial statement, including a
14 balance sheet, income statement, statement of changes in equity, and statement of
15 cash flows;

16 (2) A schedule of the permissible investments that the licensee holds
17 as required under § 12-418 of this subtitle;

18 (3) A statement of outstanding payment instruments;

19 (4) A report of all authorized delegates that includes:

20 (i) An alphabetical list of all currently authorized delegates
21 appointed by the licensee that includes the name, business address, business phone
22 number, and business electronic mail address, if known to the licensee, of each
23 authorized delegate;

24 (ii) An alphabetical list of all authorized delegates appointed by
25 the licensee during the previous 6 months that includes the name, business address,
26 business phone number, business electronic mail address, if known to the licensee, and
27 date of appointment of each authorized delegate; and

28 (iii) An alphabetical list of all authorized delegates terminated
29 by the licensee during the previous 6 months that includes the name, business
30 address, business phone number, business electronic mail address, if known to the
31 licensee, and date of termination of each authorized delegate; ~~and~~

32 ~~(5) AN ALPHABETICAL LIST OF ALL CURRENTLY AUTHORIZED~~
33 ~~DELEGATES, AGENTS, AND SUBDELEGATES THAT INCLUDES THE LATEST DATE~~
34 ~~THAT THE TRAINING MATERIALS REQUIRED UNDER § 12-413.1 OF THIS~~

1 ~~SUBTITLE WERE PROVIDED TO EACH CURRENTLY AUTHORIZED DELEGATE,~~
 2 ~~AGENT, AND SUBDELEGATE; AND~~

3 ~~[(5)] (6)~~ A statement under oath by an executive officer of the
 4 licensee certifying the information to be true based on the executive officer's
 5 knowledge of the matters in the report.

6 12-425.

7 (a) Each licensee shall make and preserve the following books, accounts, and
 8 records for a period of at least 3 years:

9 (1) A record of each payment instrument sold or issued;

10 (2) A general ledger containing all assets, liability, capital, income,
 11 and expense accounts, which general ledger shall be posted at least monthly;

12 (3) Settlement sheets received from each authorized delegate;

13 (4) Bank statements and bank reconciliation records;

14 (5) Records of outstanding payment instruments;

15 (6) Records of each payment instrument paid within the 3-year
 16 period; [and]

17 (7) A list of the names and addresses of all the licensee's authorized
 18 delegates, past and present; AND

19 **(8) A LIST OF THE DATES THAT THE TRAINING MATERIALS**
 20 **REQUIRED UNDER § 12-413.1 OF THIS SUBTITLE WERE PROVIDED TO THE**
 21 **LICENSEE'S AUTHORIZED DELEGATES, AGENTS, AND SUBDELEGATES.**

22 12-426.

23 (a) Subject to the hearing provisions of § 12-428 of this subtitle, the
 24 Commissioner may suspend or revoke the license of any licensee if:

25 (1) The licensee or any owner, director, officer, member, coventurer,
 26 partner, stockholder, employee, or agent of the licensee:

27 (i) Makes any material misstatement in an application for a
 28 license;

29 (ii) Conducts the business of money transmission in an unsafe
 30 or unsound manner;

1 (iii) Refuses to permit the Commissioner to make an
2 examination authorized under this subtitle;

3 (iv) Willfully fails to make a report required under this subtitle;

4 (v) Is convicted under the laws of the United States or any state
5 of a felony or a misdemeanor that is directly related to the fitness and qualification of
6 the person to engage in the business of money transmission;

7 (vi) In connection with any money transmission transaction:

8 1. Commits a fraud;

9 2. Engages in an illegal or dishonest activity; or

10 3. Misrepresents or fails to disclose a material fact to a
11 governmental agency;

12 (vii) Violates any provision of this subtitle or any regulation
13 adopted under this subtitle, or any other law regulating the business of money
14 transmission; or

15 (viii) Otherwise demonstrates unworthiness, bad faith,
16 dishonesty, or any other quality that indicates that the business of the licensee has not
17 been or will not be conducted honestly, fairly, equitably, and efficiently; or

18 (2) The licensee:

19 (i) Has inadequate net worth and the licensee, after 10 days'
20 written notice from the Commissioner, fails to take steps that the Commissioner
21 deems necessary to remedy the deficiency;

22 (ii) Becomes insolvent;

23 (iii) Has suspended payment of its obligations, made an
24 assignment for the benefit of its creditors, or admitted its inability to pay its debts as
25 they become due; or

26 (iv) Has applied for an adjudication of bankruptcy,
27 reorganization, arrangement, or other relief under any bankruptcy proceeding.

28 (b) In determining whether a license should be suspended or revoked for a
29 reason identified in subsection (a)(1)(v) of this section, the Commissioner shall
30 consider:

31 (1) The nature of the crime;

1 (2) The relationship of the crime to the activities authorized by the
2 license;

3 (3) With respect to a felony, the relevance of the conviction to the
4 fitness and qualification of the licensee to engage in the business of money
5 transmission;

6 (4) The length of time since the conviction; and

7 (5) The behavior and activities of the licensee since the conviction.

8 (c) Subject to the hearing provisions of § 12–428 of this subtitle, the
9 Commissioner may issue an order to the licensee to terminate its relationship with an
10 authorized delegate if the Commissioner finds that:

11 (1) The authorized delegate or a director, officer, employee, or person
12 that has control of the authorized delegate:

13 (i) Has violated any provision of this subtitle or any regulation
14 adopted or order issued under this subtitle;

15 (ii) Has engaged or participated in an unsafe or unsound act
16 with respect to the business of money transmission;

17 (iii) Has made or caused to be made in any application or report
18 filed with the Commissioner or in a proceeding before the Commissioner, a statement
19 which was at the time and in the circumstances under which it was made, false or
20 misleading with respect to a material fact, or has omitted to state in an application or
21 report a material fact which is required to be stated; or

22 (iv) Has failed to cooperate with an examination or investigation
23 by the Commissioner authorized by this subtitle; or

24 (2) The competence, experience, integrity, financial condition, or
25 overall moral character of the authorized delegate, or a director, officer, employee, or
26 person that has control of the authorized delegate, indicates that it would not be in the
27 interest of the public to permit the person to engage in the business of money
28 transmission.

29 (d) (1) The authorized delegate about whom an order is issued under this
30 section may apply to the Commissioner to modify or rescind the order.

31 (2) The Commissioner may not grant an application filed under
32 paragraph (1) of this subsection unless the Commissioner finds that:

33 (i) It is in the public interest to modify or rescind the order; and

1 (ii) It is reasonable to believe that the authorized delegate, if
2 and when permitted to resume acting as an authorized delegate of a licensee, will
3 comply with all applicable provisions of this subtitle and any regulation adopted or
4 order issued under this subtitle.

5 (e) (1) The Commissioner may enforce the provisions of this subtitle by
6 issuing an order:

7 (i) To cease and desist and to take affirmative action from the
8 violation and any further similar violations; and

9 (ii) Requiring the violator to take affirmative action to correct
10 the violation including the restitution of money or property to any person aggrieved by
11 the violation.

12 (2) If a violator fails to comply with an order issued under paragraph
13 (1) of this subsection, the Commissioner may impose a civil penalty of up to \$1,000 for
14 the first violation and \$5,000 for each subsequent violation from which the violator
15 failed to cease and desist or for which the violator failed to take affirmative action.

16 (f) The Commissioner may file a petition in the circuit court for any county
17 seeking enforcement of an order issued under this section.

18 (g) In determining the amount of financial penalty to be imposed under
19 subsection (e) of this section, the Commissioner shall consider the following:

20 (1) The seriousness of the violation;

21 (2) The good faith of the violator;

22 (3) The violator's history of previous violations;

23 (4) The deleterious effect of the violation on the public;

24 (5) The assets of the violator; and

25 (6) Any other factors relevant to the determination of the financial
26 penalty.

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