

# HOUSE BILL 723

I1, I3, O2

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By: **Delegates Kramer and Simmons**

Introduced and read first time: January 31, 2014

Assigned to: Economic Matters

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## A BILL ENTITLED

AN ACT concerning

### **Money Transmission – Protection of Elder Adults From Financial Abuse and Financial Exploitation – Training**

FOR the purpose of requiring a licensee that engages in the business of money transmission to provide, on or before a certain date each year, certain training materials to certain agents on how to recognize financial abuse and financial exploitation of elder adults and how to respond appropriately to certain circumstances; requiring a licensee to provide the training materials to certain newly appointed agents within a certain period of time; requiring certain agents to make a certain abuse report to certain persons in a certain manner under certain circumstances in which an elder adult may be the victim of financial abuse or financial exploitation; authorizing a licensee to make a certain report on behalf of a certain agent; requiring a licensee periodically to report certain information to the Commissioner of Financial Regulation; requiring a licensee to retain certain records concerning certain training for a certain period of time; defining certain terms; providing for the application of certain provisions of this Act; making a stylistic change; and generally relating to elder adults and money transmission.

BY repealing and reenacting, without amendments,

Article – Financial Institutions

Section 1–306(a)(1), (3), (4), and (5), 12–401(a), (c), and (m), and 12–426

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Financial Institutions

Section 12–413, 12–416(a), and 12–425(a)

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY adding to

Article – Financial Institutions

Section 12–413.1

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

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

**Article – Financial Institutions**

1–306.

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

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

(i) At least 65 years old; and

(ii) Residing in the State.

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

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

12–401.

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

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

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

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

(2) “Money transmission” includes:

- (i) A bill payer service;
- (ii) An accelerated mortgage payment service; and

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

12-413.

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

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

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

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

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

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

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

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

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

**12-413.1.**

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

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

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

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

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

(B) THIS SECTION DOES NOT APPLY TO A LICENSEE THAT:

(1) ENGAGES SOLELY IN SELLING OR ISSUING STORED VALUE DEVICES; OR

(2) ENGAGES IN THE BUSINESS OF MONEY TRANSMISSION SOLELY THROUGH THE INTERNET.

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

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

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

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

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

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

**(I) TO THE ADULT PROTECTIVE SERVICES AGENCY IN A LOCAL DEPARTMENT OF SOCIAL SERVICES, THE LOCAL LAW ENFORCEMENT AGENCY, OR A STATE'S ATTORNEY; AND**

**(II) 1. BY TELEPHONE NOTIFICATION WITHIN 24 HOURS AFTER THE AGENT KNOWS OR HAS REASONABLE CAUSE TO SUSPECT THAT THE ELDER ADULT IS THE VICTIM OF FINANCIAL ABUSE OR FINANCIAL EXPLOITATION; AND**

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

**(3) A LICENSEE MAY MAKE THE ABUSE REPORT ON BEHALF OF THE AGENT.**

12-416.

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

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

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

(3) A statement of outstanding payment instruments;

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

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

(ii) An alphabetical list of all authorized delegates appointed by the licensee during the previous 6 months that includes the name, business address,

business phone number, business electronic mail address, if known to the licensee, and date of appointment of each authorized delegate; and

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

**(5) AN ALPHABETICAL LIST OF ALL CURRENTLY AUTHORIZED DELEGATES, AGENTS, AND SUBDELEGATES THAT INCLUDES THE LATEST DATE THAT THE TRAINING MATERIALS REQUIRED UNDER § 12-413.1 OF THIS SUBTITLE WERE PROVIDED TO EACH CURRENTLY AUTHORIZED DELEGATE, AGENT, AND SUBDELEGATE; AND**

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

12-425.

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

- (1) A record of each payment instrument sold or issued;
- (2) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;
- (3) Settlement sheets received from each authorized delegate;
- (4) Bank statements and bank reconciliation records;
- (5) Records of outstanding payment instruments;
- (6) Records of each payment instrument paid within the 3-year period; [and]
- (7) A list of the names and addresses of all the licensee's authorized delegates, past and present; **AND**

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

12-426.

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

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

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

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

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

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

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

(vi) In connection with any money transmission transaction:

1. Commits a fraud;

2. Engages in an illegal or dishonest activity; or

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

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

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

(2) The licensee:

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

(ii) Becomes insolvent;

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

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

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

(1) The nature of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The seriousness of the violation;

(2) The good faith of the violator;

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

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

- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

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