

HOUSE BILL 723

I1, I3, O2

4lr1271

By: **Delegates Kramer and Simmons**

Introduced and read first time: January 31, 2014

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

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

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 retain certain records concerning certain training for a certain period of time;
16 defining certain terms; providing for the application of certain provisions of this
17 Act; making a stylistic change; and generally relating to elder adults and money
18 transmission.

19 BY repealing and reenacting, without amendments,
20 Article – Financial Institutions
21 Section 1–306(a)(1), (3), (4), and (5), 12–401(a), (c), and (m), and 12–426
22 Annotated Code of Maryland
23 (2011 Replacement Volume and 2013 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Financial Institutions
26 Section 12–413, 12–416(a), and 12–425(a)
27 Annotated Code of Maryland
28 (2011 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Financial Institutions
3 Section 12–413.1
4 Annotated Code of Maryland
5 (2011 Replacement Volume and 2013 Supplement)

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

8 **Article – Financial Institutions**

9 1–306.

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

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

12 (i) At least 65 years old; and

13 (ii) Residing in the State.

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

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

20 12–401.

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

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

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

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

31 (2) “Money transmission” includes:

- 1 (i) A bill payer service;
- 2 (ii) An accelerated mortgage payment service; and
- 3 (iii) Any informal money transfer system engaged in as a
4 business for, or network of persons who engage as a business in, facilitating the
5 transfer of money outside the conventional financial institutions system to a location
6 within or outside the United States.

7 12-413.

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

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

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

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

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

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

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

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

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

30 **12-413.1.**

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

1 **(2) “AGENT” INCLUDES AN AUTHORIZED DELEGATE, A**
2 **SUBAGENT, AND A SUBDELEGATE OF A LICENSEE.**

3 **(3) “ELDER ADULT” HAS THE MEANING STATED IN § 1-306 OF**
4 **THIS ARTICLE.**

5 **(4) “FINANCIAL ABUSE” HAS THE MEANING STATED IN § 1-306 OF**
6 **THIS ARTICLE.**

7 **(5) “FINANCIAL EXPLOITATION” HAS THE MEANING STATED IN §**
8 **1-306 OF THIS ARTICLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

16 12-416.

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

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

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

25 (3) A statement of outstanding payment instruments;

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

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

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

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

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

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

12 **[(5)] (6)** A statement under oath by an executive officer of the
13 licensee certifying the information to be true based on the executive officer's
14 knowledge of the matters in the report.

15 12-425.

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

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

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

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

22 (4) Bank statements and bank reconciliation records;

23 (5) Records of outstanding payment instruments;

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

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

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

31 12-426.

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

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

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

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

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

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

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

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

16 1. Commits a fraud;

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

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

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

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

26 (2) The licensee:

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

30 (ii) Becomes insolvent;

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

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

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

9 (1) The nature of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) The seriousness of the violation;

31 (2) The good faith of the violator;

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

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

1 (5) The assets of the violator; and

2 (6) Any other factors relevant to the determination of the financial
3 penalty.

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