

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 723

(Delegates Kramer and Simmons)

Economic Matters

Finance

**Money Transmission - Protection From Financial Abuse, Financial Exploitation,
and Fraud - Requirements**

This bill requires a licensee that engages in the business of money transmission to provide training materials to agents on how to recognize financial abuse and financial exploitation of elder adults and how to respond appropriately if the agent suspects that he or she 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. The bill requires a licensee to provide the training material to newly appointed agents within one month after appointment. In addition to information a licensee is already required to retain, the bill requires a licensee to retain records concerning training for a specified period of time.

Fiscal Summary

State Effect: Any additional compliance checks required to be performed during examinations by the Commissioner of Financial Regulation as a result of the bill's requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: The bill's requirements do not directly affect local government operations or finances. Any impact on local area agencies on aging and adult protective services depends on the number of referrals that occur as a result of the bill.

Small Business Effect: Minimal.

Analysis

Bill Summary: An “elder adult” is an individual who is believed to be at least age 65 and residing in the State. “Financial abuse” is defined as taking, appropriating, obtaining, or retaining (or assisting 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. “Financial exploitation” means any action which involves the misuse of a customer’s funds or property. An “agent” under the bill includes a person who is authorized 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 (an authorized delegate, a subdelegate, and a subagent).

The bill requires each licensee transmittal form used by an individual to send money to include a clear, concise, and conspicuous fraud warning. The fraud warning must include a toll-free telephone number for individuals to call to report fraud or suspected fraud. The bill also requires a licensee to allow an individual to voluntarily be disqualified from sending or receiving money transmissions in the State for a specified period of time. The disqualification may be extended or terminated if specified requirements are satisfied.

The bill does not apply to a licensee or an agent that engages (1) in selling or issuing stored value devices, traveler’s checks, or money orders, or providing bill payer services, as long as the licensee or agent does not engage in any other business regulated under the money transmission law or (2) in the business of money transmission solely through the Internet.

Current Law: “Money transmission” is 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. “Money transmission” includes (1) a bill payer service; (2) an accelerated mortgage payment service; and (3) 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.

The Maryland Money Transmission Act, Chapter 539 of 2002, prohibits a person from engaging in the money transmission business in the State unless the person has a license or is an authorized delegate of a licensee under whose name the money transmission business occurs. Fiduciary institutions are exempt from these licensing requirements.

Fiduciary Institutions

Chapter 325 of 2012 created an affirmative duty for a fiduciary institution to make an abuse report if an employee, while acting within the scope of employment, (1) has direct contact with an elder adult or reviews or approves an elder adult’s financial documents,

records, or transactions in connection with financial services provided to or for the elder adult and (2) observes or obtains knowledge of unusual circumstances that lead the employee to know or have reasonable cause to suspect that the elder adult is the victim of financial abuse. The Act does not require a fiduciary institution to either investigate an allegation of financial abuse or make an abuse report if an abuse report has already been submitted.

Among other things, the fiduciary institution is required to establish and implement a training program to assist employees in recognizing the signs of elder financial abuse and inform employees about the Act's mandatory disclosure requirements.

Background: According to the National Center on Elder Abuse (NCEA), the actual number of elder abuse cases is difficult to quantify. One possible reason for the lack of reliable quantifiable information is because signs are missed by professionals working with older Americans because of a lack of training. Another possible reason is that the elderly may be reluctant to report abuse themselves for various reasons.

In a literature survey, NCEA notes that two recent studies, published in 2010 and 2011, found that 7.6% to 10% of study participants experienced some type of abuse in the past year. According to a 2011 study on elder abuse in New York, financial exploitation was self-reported at a rate of 41 per 1,000 surveyed, higher than self-reported rates of emotional, physical, and sexual abuse or neglect. A 1998 NCEA national study found that 90% of abusers of the elderly were family members.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard, Montgomery, and Prince George's counties; Department of Labor, Licensing, and Regulation; Maryland Department of Aging; Department of Human Resources; State's Attorneys' Association; National Center on Elder Abuse; Department of Legislative Services

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