

HOUSE BILL 1257

11, I3, O2

2lr0981
CF 2lr2425

By: Delegates Kramer, Arora, Barkley, Bates, Bobo, Carr, Clagett, Conway, Cullison, DeBoy, Dumais, Frick, Frush, Glass, Howard, Hucker, A. Kelly, K. Kelly, McDonough, Morhaim, Reznik, B. Robinson, S. Robinson, Rudolph, Simmons, Stein, Summers, Valderrama, and Waldstreicher

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Fiduciary Institutions – Protection of Elder Adults from Financial Abuse –**
3 **Reporting Requirements**

4 FOR the purpose of requiring certain fiduciary institutions to report suspected
5 financial abuse of an elder adult under certain circumstances; requiring the
6 report to be made to certain individuals and entities, at certain times, and by
7 certain means; providing that a fiduciary institution is not required to
8 investigate certain allegations by an elder adult or make an abuse report if the
9 same matter already has been reported; providing that an abuse report is
10 confidential and that the information contained in the report may be disclosed
11 only under certain circumstances; providing that certain provisions of this Act
12 may not be construed to allow the disclosure of certain reports or records or
13 prohibit the disclosure of certain reports or records under certain circumstances;
14 providing that certain provisions of this Act do not prohibit or limit the
15 disclosure of certain financial records; requiring a fiduciary institution to
16 establish and implement a certain training program for employees; prohibiting
17 a fiduciary institution or an officer, employee, agent, or director of a fiduciary
18 institution from declining to provide certain information in connection with an
19 investigation of suspected financial abuse; establishing certain civil penalties
20 for violations of certain provisions of this Act; providing that the penalties may
21 be recovered only in a certain civil action brought against a fiduciary institution
22 and shall be paid by the fiduciary institution; defining certain terms; altering a
23 certain definition; making certain stylistic and conforming changes; and
24 generally relating to fiduciary institutions and requirements for reporting
25 suspected financial abuse of elder adults.

26 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Financial Institutions
2 Section 1–101(a) and (g) and 1–301(a) and (b)
3 Annotated Code of Maryland
4 (2011 Replacement Volume and 2011 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Financial Institutions
7 Section 1–305 and 1–306
8 Annotated Code of Maryland
9 (2011 Replacement Volume and 2011 Supplement)

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

12 **Article – Financial Institutions**

13 1–101.

14 (a) In this article, unless the context clearly requires otherwise, the following
15 words have the meanings indicated.

16 (g) “Commissioner” means the Commissioner of Financial Regulation in the
17 Department of Labor, Licensing, and Regulation.

18 1–301.

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

20 (b) (1) “Fiduciary institution” means:

21 (i) A national banking association;

22 (ii) A State banking institution;

23 (iii) An other–state bank that maintains a branch in this State;

24 (iv) A credit union that is organized under the laws of this State
25 or of the United States;

26 (v) Any other organization that is organized under the banking
27 laws of this State and subject to the supervision of the Commissioner; or

28 (vi) A savings and loan association that is organized under the
29 laws of this State or of the United States.

30 (2) “Fiduciary institution” does not include any person licensed by the
31 Commissioner under Title 11 of this article.

1 1-305.

2 (a) Any officer, employee, agent, or director of a fiduciary institution who
3 knowingly and willfully discloses financial records in violation of this subtitle is guilty
4 of a misdemeanor and on conviction is subject to a fine of not more than \$1,000.

5 (b) Any person who knowingly and willfully induces or attempts to induce an
6 officer, employee, agent, or director of a fiduciary institution to disclose financial
7 records in violation of this subtitle is guilty of a misdemeanor and on conviction is
8 subject to a fine of not more than \$1,000.

9 (c) (1) SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT APPLY IN
10 CONNECTION WITH AN ABUSE REPORT REQUIRED UNDER § 1-306(D) OF THIS
11 SUBTITLE.

12 (2) A FIDUCIARY INSTITUTION THAT FAILS TO FILE AN ABUSE
13 REPORT CONCERNING AN ELDER ADULT AS REQUIRED UNDER § 1-306(D) OF
14 THIS SUBTITLE IS SUBJECT TO:

15 (i) A CIVIL PENALTY NOT EXCEEDING \$1,000; OR

16 (ii) IF THE FAILURE TO REPORT IS WILLFUL, A CIVIL
17 PENALTY NOT EXCEEDING \$5,000.

18 (3) THE CIVIL PENALTIES PROVIDED UNDER PARAGRAPH (2) OF
19 THIS SUBSECTION:

20 (i) MAY BE RECOVERED ONLY IN A CIVIL ACTION BROUGHT
21 BY THE ATTORNEY GENERAL OR A STATE'S ATTORNEY AGAINST THE
22 FIDUCIARY INSTITUTION; AND

23 (ii) SHALL BE PAID BY THE FIDUCIARY INSTITUTION.

24 (4) A PERSON WHO DISCLOSES INFORMATION CONTAINED IN AN
25 ABUSE REPORT IN VIOLATION OF § 1-306(D)(4) OF THIS SUBTITLE IS GUILTY OF
26 A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
27 \$500.

28 1-306.

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

30 (2) "ABUSE REPORT" MEANS THE REPORT REQUIRED UNDER
31 SUBSECTION (D) OF THIS SECTION.

1 **(3) “ELDER ADULT” MEANS AN INDIVIDUAL WHO IS BELIEVED TO**
2 **BE:**

3 **(I) AT LEAST 65 YEARS OLD; AND**

4 **(II) RESIDING IN THE STATE.**

5 **(4) “FINANCIAL ABUSE” MEANS TO TAKE, APPROPRIATE, OBTAIN,**
6 **OR RETAIN, OR ASSIST IN TAKING, APPROPRIATING, OBTAINING, OR RETAINING,**
7 **REAL OR PERSONAL PROPERTY OF AN ELDER ADULT BY ANY MEANS, INCLUDING**
8 **UNDUE INFLUENCE, FOR A WRONGFUL PURPOSE OR WITH INTENT TO DEFRAUD**
9 **THE ELDER ADULT.**

10 **[(2)] (5) “Financial exploitation” means any action which involves the**
11 **misuse of a customer’s funds or property.**

12 **[(3)] (6) “Report OF FINANCIAL EXPLOITATION” means an oral or**
13 **written report concerning financial exploitation which may include all or part of the**
14 **information described in § 14–302(d) of the Family Law Article.**

15 (b) Notwithstanding any other provision of law, a fiduciary institution or an
16 officer, employee, agent, or director of a fiduciary institution may disclose financial
17 records and any other information relating to a customer of the fiduciary institution if
18 the fiduciary institution or its officer, employee, agent, or director:

19 (1) Believes that the customer has been subjected to financial
20 exploitation; and

21 (2) Makes the disclosure in a report **OF FINANCIAL EXPLOITATION**
22 to the adult protective services program in a local department of social services.

23 (c) A report **OF FINANCIAL EXPLOITATION** filed under this section by a
24 fiduciary institution or an officer, employee, agent, or director of a fiduciary institution
25 shall be deemed to protect against or prevent actual or potential fraud, unauthorized
26 transactions, or other liability.

27 **(D) (1) NOTWITHSTANDING ANY OTHER LAW LIMITING OR**
28 **PROHIBITING DISCLOSURE, A FIDUCIARY INSTITUTION SHALL MAKE AN ABUSE**
29 **REPORT AS PROVIDED IN THIS SUBSECTION IF AN EMPLOYEE OF THE FIDUCIARY**
30 **INSTITUTION, WHILE ACTING WITHIN THE SCOPE OF THE EMPLOYEE’S**
31 **EMPLOYMENT:**

32 **(I) HAS DIRECT CONTACT WITH AN ELDER ADULT OR**
33 **REVIEWS OR APPROVES AN ELDER ADULT’S FINANCIAL DOCUMENTS, RECORDS,**

1 OR TRANSACTIONS IN CONNECTION WITH FINANCIAL SERVICES PROVIDED BY
2 THE FIDUCIARY INSTITUTION TO OR FOR THE ELDER ADULT; AND

3 (II) OBSERVES OR OBTAINS KNOWLEDGE OF BEHAVIOR OR
4 UNUSUAL CIRCUMSTANCES OR TRANSACTIONS THAT LEADS THE EMPLOYEE TO
5 KNOW OR HAVE REASONABLE CAUSE TO SUSPECT THAT THE ELDER ADULT IS
6 THE VICTIM OF FINANCIAL ABUSE.

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

9 (I) 1. TO THE ADULT PROTECTIVE SERVICES AGENCY IN
10 A LOCAL DEPARTMENT OF SOCIAL SERVICES, THE LOCAL LAW ENFORCEMENT
11 AGENCY, OR A STATE'S ATTORNEY; OR

12 2. IF THE EMPLOYEE KNOWS THAT THE ELDER
13 ADULT RESIDES IN A LONG-TERM CARE FACILITY LOCATED IN THE STATE, TO
14 AN OMBUDSMAN FOR THE LONG-TERM CARE FACILITY, THE LOCAL LAW
15 ENFORCEMENT AGENCY, OR A STATE'S ATTORNEY; AND

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

19 2. IN WRITING SENT WITHIN 3 BUSINESS DAYS
20 AFTER THE EMPLOYEE KNOWS OR HAS REASONABLE CAUSE TO SUSPECT THAT
21 THE ELDER ADULT IS THE VICTIM OF FINANCIAL ABUSE.

22 (3) A FIDUCIARY INSTITUTION IS NOT REQUIRED TO:

23 (I) INVESTIGATE AN ALLEGATION BY AN ELDER ADULT
24 THAT FINANCIAL ABUSE OF THE ELDER ADULT HAS OCCURRED; OR

25 (II) MAKE AN ABUSE REPORT UNDER THIS SUBSECTION IF
26 THE SAME MATTER ALREADY HAS BEEN REPORTED AS REQUIRED UNDER THIS
27 SUBSECTION.

28 (4) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, AN ABUSE
29 REPORT MADE UNDER THIS SUBSECTION IS CONFIDENTIAL AND THE
30 INFORMATION CONTAINED IN THE ABUSE REPORT MAY BE DISCLOSED ONLY:

31 (I) IN CONNECTION WITH AN INVESTIGATION OF THE
32 SUSPECTED FINANCIAL ABUSE, TO:

- 1 1. AN ADULT PROTECTIVE SERVICES AGENCY;
- 2 2. A LONG-TERM CARE OMBUDSMAN;
- 3 3. A LAW ENFORCEMENT AGENCY; AND
- 4 4. THE OFFICE OF THE ATTORNEY GENERAL OR OF
- 5 A STATE'S ATTORNEY; OR

6 (II) AS AUTHORIZED BY THE ELDER ADULT OR THE LEGAL
7 GUARDIAN OF THE ELDER ADULT.

8 (5) PARAGRAPH (4) OF THIS SUBSECTION MAY NOT BE
9 CONSTRUED TO:

10 (I) ALLOW THE DISCLOSURE OF AN ABUSE REPORT MADE
11 UNDER THIS SUBSECTION OR A RECORD RELEVANT TO THE ABUSE REPORT IF
12 THE DISCLOSURE WOULD BE PROHIBITED BY ANY OTHER PROVISION OF STATE
13 OR FEDERAL LAW; OR

14 (II) PROHIBIT THE DISCLOSURE BY A FIDUCIARY
15 INSTITUTION OR AN OFFICER, EMPLOYEE, AGENT, OR DIRECTOR OF A
16 FIDUCIARY INSTITUTION OF AN ABUSE REPORT MADE UNDER THIS SUBSECTION
17 OR A RECORD RELEVANT TO THE ABUSE REPORT IF THE DISCLOSURE WOULD BE
18 REQUIRED BY ANOTHER STATE LAW, FEDERAL LAW, OR COURT ORDER.

19 (6) THIS SUBSECTION DOES NOT PROHIBIT OR LIMIT THE
20 DISCLOSURE OF FINANCIAL RECORDS OTHERWISE PERMITTED UNDER THIS
21 SUBTITLE.

22 (7) A FIDUCIARY INSTITUTION SHALL ESTABLISH AND
23 IMPLEMENT A TRAINING PROGRAM TO:

24 (I) ASSIST EMPLOYEES IN RECOGNIZING SIGNS OF
25 POTENTIAL FINANCIAL ABUSE OF AN ELDER ADULT, SUCH AS UNUSUAL
26 ACTIVITY IN AN ELDER ADULT'S DEPOSIT ACCOUNTS, AUTOMATED TELLER
27 MACHINE (ATM) WITHDRAWALS BY AN ELDER ADULT WHO PREVIOUSLY NEVER
28 USED AN ATM OR DEBIT CARD, AND SUSPICIOUS SIGNATURES ON CHECKS; AND

29 (II) INFORM EMPLOYEES ABOUT THE REQUIREMENT TO
30 FILE ABUSE REPORTS AS PROVIDED UNDER THIS SUBSECTION.

1 **[(d)] (E) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
2 **SUBSECTION, A** fiduciary institution or an officer, employee, agent, or director of a
3 fiduciary institution may decline to provide to any person information that would
4 disclose or indicate whether a report **OF FINANCIAL EXPLOITATION OR AN ABUSE**
5 **REPORT** has or has not been filed under this section.

6 **(2) A FIDUCIARY INSTITUTION OR AN OFFICER, EMPLOYEE,**
7 **AGENT, OR DIRECTOR OF A FIDUCIARY INSTITUTION MAY NOT DECLINE TO**
8 **PROVIDE INFORMATION REQUESTED BY A PERSON IDENTIFIED IN SUBSECTION**
9 **(D)(4)(I) OF THIS SECTION IN CONNECTION WITH AN INVESTIGATION OF**
10 **SUSPECTED FINANCIAL ABUSE.**

11 **[(e)] (F) [There] EXCEPT AS PROVIDED IN § 1-305(C) OF THIS**
12 **SUBTITLE, THERE** shall be no liability on the part of and no cause of action of any
13 nature shall arise against, and there shall be immunity from any civil and criminal
14 liability that would otherwise result for, a fiduciary institution or an officer, employee,
15 agent, or director of a fiduciary institution for an action or omission involved with:

16 (1) Making or participating in making a disclosure or report under
17 this section;

18 (2) Participating in an investigation or a judicial proceeding resulting
19 from a report filed under this section; or

20 (3) Declining to provide information as described in subsection **[(d)]**
21 **(E)** of this section.

22 **[(f)] (G) [This] EXCEPT AS REQUIRED UNDER SUBSECTION (D) OF THIS**
23 **SECTION, THIS** section does not create and may not be construed as creating, on the
24 part of a fiduciary institution or an officer, employee, agent, or director of a fiduciary
25 institution, a duty to make a disclosure to an adult protective services program or file
26 a report **OF FINANCIAL EXPLOITATION** under this section.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2012.