

Chapter 324

(Senate Bill 941)

AN ACT concerning

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

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

BY repealing and reenacting, without amendments,
Article – Financial Institutions
Section 1–101(a) and (g) and 1–301(a) and (b)
Annotated Code of Maryland
(2011 Replacement Volume and 2011 Supplement)

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

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

Article – Financial Institutions

1–101.

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

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

1–301.

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

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

(i) A national banking association;

(ii) A State banking institution;

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

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

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

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

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

1–305.

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

(b) Any person who knowingly and willfully induces or attempts to induce an officer, employee, agent, or director of a fiduciary institution to disclose financial

records in violation of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$1,000.

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

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

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

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

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

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

(II) SHALL BE PAID BY THE FIDUCIARY INSTITUTION.

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

1-306.

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

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

(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.

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

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

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

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

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

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

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

(I) 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 BY THE FIDUCIARY INSTITUTION TO OR FOR THE ELDER ADULT; AND

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

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

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

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

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

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

(3) A FIDUCIARY INSTITUTION IS NOT REQUIRED TO:

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

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

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

(i) IN CONNECTION WITH AN INVESTIGATION OF THE SUSPECTED FINANCIAL ABUSE, TO:

- 1. AN ADULT PROTECTIVE SERVICES AGENCY;**
- 2. A LONG-TERM CARE OMBUDSMAN;**
- 3. A LAW ENFORCEMENT AGENCY; AND**

4. THE OFFICE OF THE ATTORNEY GENERAL OR OF A STATE'S ATTORNEY; OR

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

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

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

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

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

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

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

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

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

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

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

- (1) Making or participating in making a disclosure or report under this section;**
- (2) Participating in an investigation or a judicial proceeding resulting from a report filed under this section; or**
- (3) Declining to provide information as described in subsection [(d)] (E) of this section.**

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

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

Approved by the Governor, May 2, 2012.