



AN ACT CREATING LAWS RELATED TO COVERED FINANCIAL INSTITUTIONS AND FINANCIAL EXPLOITATION; PROVIDING DEFINITIONS; ALLOWING A FINANCIAL INSTITUTION TO REPORT SUSPECTED FINANCIAL EXPLOITATION; ALLOWING A FINANCIAL INSTITUTION TO DELAY TRANSACTIONS IN CERTAIN CIRCUMSTANCES; AND PROVIDING IMMUNITY FOR CERTAIN PRIVATE ENTITIES.

WHEREAS, it is the intent of the Legislature to provide legal protection to covered financial institutions so that they have the discretion to take actions to assist in detecting and preventing financial exploitation; and

WHEREAS, the Legislature recognizes that covered financial institutions are in a unique position to potentially discover financial exploitation when conducting transactions on behalf of and at the request of their customers; and

WHEREAS, covered financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions; and

WHEREAS, covered financial institutions do not have a duty to contravene the valid instructions of their customers, nor to prevent criminal activity directed at their customers, and nothing in this act creates such a duty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. For the purposes of [sections 1 through 4] the following definitions apply:

(1) "Covered agency" means any of the following:

- (a) a federal, state, or local law enforcement agency; or
- (b) the department of public health and human services as provided in 2-15-2201 or its local affiliate.

(2) "Covered financial institution" means any bank, credit union, savings bank, savings and loan association, or trust company operating in Montana.

(3) "Financial exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property;

(b) an act taken by a person who has the trust and confidence of an older person or of a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property; or

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, rights, credit accounts, or property.

(4) "Older person" means a person who is at least 60 years of age.

(5) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(6) "Transaction" means any of the following as applicable to services provided by a covered financial institution:

(a) a transfer or request to transfer or disburse funds or assets in an account;

(b) a request to initiate a wire transfer, initiate an automated clearinghouse transfer, or issue a money order, cashier's check, or official check;

- (c) a request to negotiate a check or other negotiable instrument;
- (d) a request to change the ownership of, or access to, an account;
- (e) a request to sell or transfer securities or other assets, or a request to affix a medallion stamp or provide any form of guarantee or endorsement in connection with an attempt to sell or transfer securities or other assets, if the person selling or transferring the securities or assets is not required to register under 30-10-201;
- (f) a request for a loan, extension of credit, or draw on a line of credit;
- (g) a request to encumber any movable or immovable property; and
- (h) a request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right for an older person or a person with a developmental disability at death.

Section 2. Notices. (1) A covered financial institution may notify any covered agency if the covered financial institution believes that the financial exploitation of an older person or a person with a developmental disability is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(2) A covered financial institution may notify any third party reasonably associated with an older person or a person with a developmental disability if the covered financial institution believes that the financial exploitation of an older person or a person with a developmental disability is occurring, has or may have occurred, is being attempted, or has been or may have been attempted. A third party reasonably associated with an older person or a person with a developmental disability includes but is not limited to the following:

- (a) a parent, spouse, adult child, sibling, or other known family member or close associate of an older person or a person with a developmental disability;
- (b) an authorized contact provided by an older person or a person with a developmental disability to the covered financial institution;
- (c) a co-owner, additional authorized signatory, or beneficiary on an older person or a person with a developmental disability's account; and
- (d) an attorney in fact, trustee, conservator, guardian, or other fiduciary who has been selected by the older person, a person with a developmental disability, a court, a governmental agency, or a third party to manage some or all of the financial affairs of the older person or person with a developmental disability.

(3) A covered financial institution may choose not to notify any third party reasonably associated with an older person or a person with a developmental disability of suspected financial exploitation of the older person

or person with a developmental disability if the covered financial institution believes the third party is, may be, or may have been engaged in the financial exploitation of the older person or person with a developmental disability.

(4) A covered financial institution shall make a reasonable effort, at least annually, to notify the appropriate employees of the covered financial institution of their ability to report potential financial exploitation of an older person or a person with a developmental disability to personnel within the covered financial institution.

Section 3. Delaying transactions. (1) A covered financial institution may, but is not required to, delay completion or execution of a transaction involving an account of an older person or a person with a developmental disability, an account on which an older person or a person with a developmental disability is a beneficiary, an account in which the older person or a person with a developmental disability has a financial interest, or an account of a person suspected of perpetrating financial exploitation if either of the following conditions apply:

(a) the covered financial institution reasonably believes that the requested transaction may result in financial exploitation of an older person or a person with a developmental disability; or

(b) a covered agency provides information demonstrating to the financial institution that it is reasonable to believe that financial exploitation is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(2) If a covered financial institution delays a transaction pursuant to subsection (1), the covered financial institution shall, no later than two business days after the transaction is delayed, send written notification of the delay and the reason for the delay to all parties authorized to transact business on the account for which the covered financial institution has contact information, unless any party is reasonably believed to have engaged in attempted financial exploitation of the older person or a person with a developmental disability. The notification described in this subsection may be provided by electronic means.

(3) If a covered financial institution delays a transaction pursuant to subsection (1), the covered financial institution may provide notification of the delay, the reason for the delay, and any additional information about the transaction to any covered agency.

(4) Except as ordered by a court, a covered financial institution is not required to delay a transaction when provided with information by a covered agency alleging that financial exploitation is occurring, has or may have occurred, is being attempted, or has been or may have been attempted, but may use its discretion to determine whether to delay a transaction based on the information available to the covered financial institution.

(5) Except as provided in subsection (6), any delay of a transaction as authorized pursuant to this section expires or is terminated when the earliest of either of the following circumstances occur:

(a) the covered financial institution reasonably determines that the transaction will not result in financial exploitation of an older person or a person with a developmental disability; or

(b) 15 business days pass from the date on which the covered financial institution first initiated the delay of the transaction.

(6) (a) A covered financial institution may extend the delay provided for in subsection (5) upon receiving a request to extend the delay from any covered agency, in which case the delay expires or is terminated no later than 25 business days from the date on which the covered financial institution first initiated the delay of the transaction.

(b) A court of competent jurisdiction may enter an order extending or shortening a delay, or providing other relief, based on the petition of the covered financial institution, any covered agency, or other interested party.

Section 4. Immunity. (1) (a) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, and other representatives have no duty to act pursuant to [sections 1 through 4] or otherwise to protect an older person or a person with a developmental disability from financial exploitation by a third person.

(b) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, and other representatives are immune from all criminal, civil, and administrative liability for not taking action pursuant to [sections 1 through 4].

(c) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, or other representatives who choose to act pursuant to the authority granted in [sections 1 through 4] are immune from all criminal, civil, and administrative liability for any act taken pursuant to [sections 1 through 4], unless such act of the financial institution or its representatives was done in bad faith and caused pecuniary loss to an older person or a person with a developmental disability who was suspected of being a victim of financial exploitation.

(2) The immunity provided for in this section may not extend to any individual in a case when such individual is a principal, conspirator, or an accessory after the fact to a criminal offense involving the financial exploitation of an older person or a person with a developmental disability.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 1 through 4].

- END -

I hereby certify that the within bill,
SB 0311, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 311

INTRODUCED BY S. FITZPATRICK

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