

HOUSE BILL NO. 421

INTRODUCED BY J. KARLEN, B. MITCHELL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN FINANCIAL REPRESENTATIVES AND INSTITUTIONS TO REPORT SUSPECTED FINANCIAL EXPLOITATION OF OLDER PERSONS AND PERSONS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTIONS 30-10-340, 32-1-1502, 32-1-1504, AND 52-3-811, MCA."

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

Section 1. Section 30-10-340, MCA, is amended to read:

"30-10-340. Governmental disclosure -- immunity. (1) If a qualified individual, investment adviser, investment adviser representative, or salesperson reasonably believes that financial exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the qualified individual, investment adviser, investment adviser representative, or salesperson ~~may~~:

(a) shall promptly report the suspected exploitation to the department of public health and human services if the person is 60 years of age or older or a person with a developmental disability; and

(b) may report the suspected exploitation to the commissioner in the manner outlined in the broker-dealer's or investment adviser's policies and procedures for reporting suspected exploitation. If the policies and procedures do not have a manner outlined, the qualified individual, investment adviser, investment adviser representative, or salesperson may report the suspected exploitation directly to the commissioner.

(2) ~~(a)~~—A qualified individual, investment adviser, investment adviser representative, or salesperson who, in good faith and exercising reasonable care, makes a disclosure of information under this section is immune from administrative or civil liability that might otherwise arise from the disclosure or from any failure to notify the vulnerable person or the person's agent of the disclosure.

(b) A qualified individual, investment adviser, investment adviser representative, or salesperson who is unaware that financial exploitation is occurring is immune from administrative or civil liability for failing to report the exploitation as required in subsection (1)(a)."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 2. Section 32-1-1502, MCA, is amended to read:

"32-1-1502. Notices. (1) A covered financial institution shall notify the department of public health and human services as provided in 52-3-811 and may notify any other 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

1 institution."

2

3 **Section 3.** Section 32-1-1504, MCA, is amended to read:

4 **"32-1-1504. Immunity.** (1) ~~(a) A covered financial institution and its directors, officers, employees,~~
5 ~~attorneys, accountants, agents, and other representatives have no duty to act pursuant to this part or otherwise~~
6 ~~to protect an older person or a person with a developmental disability from financial exploitation by a third~~
7 ~~person.~~

8 (b)(a) A ~~if~~ unaware that financial exploitation is occurring, a covered financial institution and its
9 directors, officers, employees, attorneys, accountants, agents, and other representatives are immune from all
10 criminal, civil, and administrative liability for not taking action pursuant to this part.

11 (c)(b) A covered financial institution and its directors, officers, employees, attorneys, accountants,
12 agents, or other representatives who ~~choose to~~ act pursuant to the requirements of and authority granted in this
13 part are immune from all criminal, civil, and administrative liability for any act taken pursuant to this part unless
14 the act of the financial institution or its representatives was done in bad faith and caused pecuniary loss to an
15 older person or a person with a developmental disability who was suspected of being a victim of financial
16 exploitation.

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

20

21 **Section 4.** Section 52-3-811, MCA, is amended to read:

22 **"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or
23 have reasonable cause to suspect that an older person or a person with a developmental disability known to
24 them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or
25 exploitation, they shall:

26 (a) if the person is not a resident of a long-term care facility, report the matter to:

27 (i) the department or its local affiliate; or

28 (ii) the county attorney of the county in which the person resides or in which the acts that are the

1 subject of the report occurred;

2 (b) if the person is a resident of a long-term care facility, report the matter to the long-term care
3 ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department
4 shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual
5 abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the
6 county attorney as provided in subsection (1)(a)(ii).

7 (2) If the report required in subsection (1) involves an act or omission of the department that may
8 be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the
9 department but must be sent instead to the county attorney of the county in which the older person or the
10 person with a developmental disability resides or in which the acts that are the subject of the report occurred.

11 (3) Professionals and other persons required to report are:

12 (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of
13 a hospital staff engaged in the admission, examination, care, or treatment of persons;

14 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner,
15 coroner, or any other health or mental health professional;

16 (c) an ambulance attendant;

17 (d) a social worker or other employee of the state, a county, or a municipality assisting an older
18 person or a person with a developmental disability in the application for or receipt of public assistance
19 payments or services;

20 (e) a person who maintains or is employed by a roominghouse, retirement home or complex,
21 nursing home, group home, adult foster care home, adult day-care center, or assisted living facility or an
22 agency or individual that provides home health services or personal care in the home;

23 (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a
24 client and the attorney-client privilege applies;

25 (g) a peace officer or other law enforcement official;

26 (h) a person providing services to an older person or a person with a developmental disability
27 pursuant to a contract with a state or federal agency; ~~and~~

28 (i) an employee of the department while in the conduct of the employee's duties; and

