

SENATE BILL NO. 311

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "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:

NEW SECTION. **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:



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

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

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

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

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

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

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

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

30 (c) a request to negotiate a check or other negotiable instrument;

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

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

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

19 (a) a parent, spouse, adult child, sibling, or other known family member or close associate of an older
20 person or a person with a developmental disability;

21 (b) an authorized contact provided by an older person or a person with a developmental disability to the
22 covered financial institution;

23 (c) a co-owner, additional authorized signatory, or beneficiary on an older person or a person with a
24 developmental disability's account; and

25 (d) an attorney in fact, trustee, conservator, guardian, or other fiduciary who has been selected by the
26 older person, a person with a developmental disability, a court, a governmental agency, or a third party to manage
27 some or all of the financial affairs of the older person or person with a developmental disability.

28 (3) A covered financial institution may choose not to notify any third party reasonably associated with
29 an older person or a person with a developmental disability of suspected financial exploitation of the older person
30 or person with a developmental disability if the covered financial institution believes the third party is, may be, or

1 may have been engaged in the financial exploitation of the older person or person with a developmental disability.

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

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

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

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

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

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

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

30 (5) Except as provided in subsection (6), any delay of a transaction as authorized pursuant to this section

1 expires or is terminated when the earliest of either of the following circumstances occur:

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

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

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

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

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14 NEW SECTION. Section 4. Immunity. (1) (a) A covered financial institution and its directors, officers,
15 employees, attorneys, accountants, agents, and other representatives have no duty to act pursuant to [sections
16 1 through 4] or otherwise to protect an older person or a person with a developmental disability from financial
17 exploitation by a third person.

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

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

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

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30 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified

1 as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 1 through 4].

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