

1                   A bill to be entitled  
2           An act relating to protection for vulnerable  
3           investors; amending s. 415.1034, F.S.; requiring  
4           securities dealers, investment advisers, and  
5           associated persons to immediately report knowledge or  
6           suspicion of abuse, neglect, or exploitation of  
7           vulnerable adults to the Department of Children and  
8           Families' central abuse hotline; creating s. 517.34,  
9           F.S.; providing definitions; authorizing dealers,  
10          investment advisers, and associated persons to delay  
11          certain transactions or disbursements if such persons  
12          reasonably believe certain exploitation of a specified  
13          adult has occurred, is occurring, has been attempted,  
14          or will be attempted; providing the basis for such  
15          reasonable belief; requiring a dealer or investment  
16          adviser to provide the Office of Financial Regulation  
17          a specified notice at certain timeframes; requiring  
18          the Financial Services Commission to adopt a form by  
19          rule; requiring the office to submit an annual report  
20          to the Governor and Legislature; providing for  
21          expiration of such duty to report; specifying  
22          notification requirements for dealers, investment  
23          advisers, and associated persons placing delays on  
24          transactions or disbursements; specifying the  
25          expiration of such delays; providing that such delays

26 | may be shortened or extended by an agency or court of  
 27 | competent jurisdiction; providing that delays may be  
 28 | terminated by dealers, investment advisers, or  
 29 | associated persons under certain circumstances;  
 30 | specifying when certain records must be shared with  
 31 | the Office of Financial Regulation; providing immunity  
 32 | from civil and administrative liability to dealers,  
 33 | investment advisers, and associated persons for  
 34 | certain actions based on a reasonable belief;  
 35 | providing construction; specifying requirements for  
 36 | dealers and investment advisers in training their  
 37 | associated persons; specifying requirements for  
 38 | recordkeeping; providing construction; providing an  
 39 | effective date.

40 |

41 | Be It Enacted by the Legislature of the State of Florida:

42 |

43 | Section 1. Paragraph (a) of subsection (1) of section  
 44 | 415.1034, Florida Statutes, is amended to read:

45 | 415.1034 Mandatory reporting of abuse, neglect, or  
 46 | exploitation of vulnerable adults; mandatory reports of death.—

47 | (1) MANDATORY REPORTING.—

48 | (a) Any person, including, but not limited to, any:

49 | 1. Physician, osteopathic physician, medical examiner,  
 50 | chiropractic physician, nurse, paramedic, emergency medical

51 technician, or hospital personnel engaged in the admission,  
 52 examination, care, or treatment of vulnerable adults;  
 53 2. Health professional or mental health professional other  
 54 than one listed in subparagraph 1.;  
 55 3. Practitioner who relies solely on spiritual means for  
 56 healing;  
 57 4. Nursing home staff; assisted living facility staff;  
 58 adult day care center staff; adult family-care home staff;  
 59 social worker; or other professional adult care, residential, or  
 60 institutional staff;  
 61 5. State, county, or municipal criminal justice employee  
 62 or law enforcement officer;  
 63 6. Employee of the Department of Business and Professional  
 64 Regulation conducting inspections of public lodging  
 65 establishments under s. 509.032;  
 66 7. Florida advocacy council or Disability Rights Florida  
 67 member or a representative of the State Long-Term Care Ombudsman  
 68 Program; ~~or~~  
 69 8. Bank, savings and loan, or credit union officer,  
 70 trustee, or employee; or  
 71 9. Dealer, investment adviser, or associated person under  
 72 chapter 517,  
 73  
 74 who knows, or has reasonable cause to suspect, that a vulnerable  
 75 adult has been or is being abused, neglected, or exploited must

76 ~~shall~~ immediately report such knowledge or suspicion to the  
 77 central abuse hotline.

78 Section 2. Section 517.34, Florida Statutes, is created to  
 79 read:

80 517.34 Protection of specified adults.-

81 (1) As used in this section, the term:

82 (a)1. "Exploitation" means:

83 a. With respect to a person who stands in a position of  
 84 trust and confidence with a specified adult, knowingly, by  
 85 deception or intimidation, obtaining or using, or endeavoring to  
 86 obtain or use, the specified adult's funds, assets, or property  
 87 with the intent to temporarily or permanently deprive the  
 88 specified adult of the use, benefit, or possession of the funds,  
 89 assets, or property for the benefit of someone other than the  
 90 specified adult; or

91 b. With respect to a person who knows or should know that  
 92 a specified adult lacks the capacity to consent, obtaining or  
 93 using, or endeavoring to obtain or use, the specified adult's  
 94 funds, assets, or property with the intent to temporarily or  
 95 permanently deprive the specified adult of the use, benefit, or  
 96 possession of the funds, assets, or property for the benefit of  
 97 someone other than the specified adult.

98 2. "Exploitation" may include, but is not limited to:

99 a. A breach of a fiduciary relationship, such as the  
 100 misuse of a power of attorney or the abuse of guardianship

101 duties, resulting in the unauthorized appropriation, sale, or  
102 transfer of property;

103 b. An unauthorized taking of personal assets;

104 c. Misappropriation, misuse, or transfer of moneys  
105 belonging to a specified adult from a personal or joint account;  
106 or

107 d. Intentional or negligent failure to effectively use a  
108 specified adult's income and assets for the necessities required  
109 for the person's support and maintenance.

110 (b) "Law enforcement agency" means an agency or political  
111 subdivision of this state or of the United States whose primary  
112 responsibility is the prevention and detection of crime or the  
113 enforcement of the penal laws of this state or the United States  
114 and whose agents and officers are empowered by law to conduct  
115 criminal investigations or to make arrests.

116 (c) "Specified adult" means a natural person 65 years of  
117 age or older or a vulnerable adult as defined in s. 415.102.

118 (d) "Trusted contact" means a natural person 18 years of  
119 age or older whom the account owner has expressly identified in  
120 writing as a person who may be contacted about the account.

121 (2) A dealer, investment adviser, or associated person may  
122 delay a transaction on, or a disbursement of funds or securities  
123 from, an account of a specified adult or an account for which a  
124 specified adult is a beneficiary or beneficial owner if the  
125 dealer, investment adviser, or associated person reasonably

126 believes that exploitation of the specified adult has occurred,  
127 is occurring, has been attempted, or will be attempted in  
128 connection with the transaction or disbursement.

129 (a) The dealer's, investment adviser's, or associated  
130 person's reasonable belief may be based on the facts and  
131 circumstances observed in such dealer's, investment adviser's,  
132 or associated person's business relationship with the specified  
133 adult.

134 (b)1. A dealer or investment adviser must notify the  
135 office, on a quarterly basis and on a form prescribed by  
136 commission rule, of every delay placed by the dealer, investment  
137 adviser, or an associated person. The notice may not directly or  
138 indirectly identify the name or account number of the customer,  
139 parties authorized to transact business on the account, or any  
140 trusted contact on the account. The notice must include:

141 a. The name and the branch office address of the firm  
142 placing the delay on the transaction or disbursement.

143 b. A general description of the reason why the dealer,  
144 investment adviser, or associated person placed the delay on the  
145 transaction or disbursement.

146 c. The length of the delay on the transaction or  
147 disbursement and whether the transaction or disbursement was  
148 ultimately executed.

149 2. On or before October 1 of each year, the office must  
150 submit a report to the Governor, the President of the Senate,

151 and the Speaker of the House of Representatives summarizing the  
152 information provided to the office by dealers, investment  
153 advisers, and associated persons under subparagraph 1. during  
154 the prior fiscal year. This subparagraph expires October 1,  
155 2023.

156 (c)1. Within 3 business days after the date on which the  
157 delay was first placed, the dealer, investment adviser, or  
158 associated person must notify in writing, which may be provided  
159 electronically, all parties authorized to transact business on  
160 the account and any trusted contact on the account, using the  
161 contact information provided for the account, unless the dealer,  
162 investment adviser, or associated person reasonably believes  
163 that any such party engaged or is engaging in the suspected  
164 exploitation of the specified adult.

165 2. The notice provided pursuant to this paragraph must  
166 include, at a minimum, a description of the transaction or  
167 disbursement, a statement that a delay was placed on such  
168 transaction or disbursement pursuant to this section, the basis  
169 for the reasonable belief regarding exploitation of the  
170 specified adult, and an explanation of the delay process.

171 (3) A delay on a transaction or disbursement under  
172 subsection (2) expires 15 business days after the date on which  
173 the delay was first placed. The length of the delay may be  
174 shortened or extended at any time by an agency or court of  
175 competent jurisdiction. This subsection does not prevent a

176 dealer, investment adviser, or associated person from  
177 terminating a delay after communication with the parties  
178 authorized to transact business on the account and any trusted  
179 contact on the account.

180 (4) A dealer, investment adviser, or associated person  
181 subject to the jurisdiction of the office must make available to  
182 the office, upon request, all records relating to a delay or  
183 report made by the dealer, investment adviser, or associated  
184 person pursuant to this section.

185 (5) A dealer, investment adviser, or associated person who  
186 delays a transaction or disbursement pursuant to this section,  
187 who provides records to an agency of competent jurisdiction  
188 pursuant to this section, or who participates in a judicial or  
189 arbitration proceeding resulting therefrom is presumed to be  
190 acting based upon a reasonable belief and is immune from any  
191 civil or administrative liability that otherwise might be  
192 incurred or imposed, unless lack of such reasonable belief is  
193 shown by clear and convincing evidence. This subsection does not  
194 supersede or diminish any immunity in chapter 415.

195 (6) Before placing a delay on a transaction or  
196 disbursement pursuant to this section, a dealer or investment  
197 adviser must develop training policies or programs designed to  
198 educate associated persons on issues pertaining to exploitation  
199 and must conduct training of all associated persons accordingly.  
200 The training policies or programs must provide for all



201 associated persons to initially receive a minimum of 1 hour of  
202 such training and must provide for all associated persons to  
203 receive a minimum of 1 hour of such training every 2 years  
204 thereafter. Such training must include components relating to  
205 recognition of indicators of exploitation; recognition of  
206 indicators of a vulnerable adult; the manner in which suspected  
207 exploitation must be reported to supervisory personnel and to  
208 the appropriate regulatory and law enforcement agencies; and  
209 steps that may be taken to prevent exploitation. The dealer or  
210 investment adviser must maintain a written record of compliance  
211 with this subsection.

212 (7) This section does not create new rights or obligations  
213 of a dealer, investment adviser, or associated person under  
214 other applicable laws or rules. In addition, this section does  
215 not limit the right of a dealer, investment adviser, or  
216 associated person to otherwise refuse or place a delay on a  
217 transaction or disbursement under other applicable laws or rules  
218 or under an applicable customer agreement.

219 (8) Absent a reasonable belief of exploitation as provided  
220 in this section, this section does not alter a dealer's,  
221 investment adviser's, or associated person's obligation to  
222 comply with instructions from a client to close an account or  
223 transfer an account to another dealer, investment adviser, or  
224 associated person.

225 Section 3. This act shall take effect July 1, 2018.