

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1466
INTRODUCER: Senator Gibson
SUBJECT: Protection for Vulnerable Investors
DATE: March 22, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.	_____	_____	BI	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1466 addresses financial exploitation of vulnerable adults and the elderly. The bill adds financial securities dealers and investment advisers to the list of specified persons to report abuse or exploitation to the central abuse hotline. The bill creates a new section of statute in chapter 517 relating to securities transactions to allow securities dealers and investment advisers to place a temporary hold on financial transactions when exploitation of a vulnerable adult or elderly persons is suspected. The dealer or adviser must notify the Office of Financial Regulation of the hold.

The bill is not expected to have a fiscal impact to the state and has an effective date of July 1, 2019.

II. Present Situation:

Adult and Elder Abuse

The Adult Protective Services Act (chapter 415, F.S.) defines abuse as any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to harm a vulnerable adult's physical, mental, or emotional health. Abuse includes acts as well omissions. A vulnerable adult is defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.¹

Section 415.1034, F.S., requires anyone who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to immediately report

¹ Section 415.102, F.S.

suspected abuse to the central abuse hotline. The central abuse hotline is maintained by the Department of Children and Families (department). Once reported, the department must begin a protective investigation within 24 hours.² If a caregiver refuses to allow the department to begin a protective investigation or interferes with the investigation, the department can contact appropriate law enforcement agency for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney must be notified. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report and complete the investigation within 60 days.³

Financial exploitation occurs when a person misuses or takes the assets of a vulnerable adult for his or her own personal benefit. This frequently occurs without the knowledge or consent of a senior or disabled adult, depriving him or her of financial resources for personal needs. Assets are commonly taken by deception, false pretenses, coercion, harassment, duress and threats. These are commonly reported forms of financial exploitation reported to Adult Protective Services:⁴

- Theft - involves taking assets without knowledge, consent or authorization and may include taking of cash, valuables, medications other personal property.
- Fraud - involves acts of dishonestly by persons entrusted to manage assets and may include falsification of records, forgeries, unauthorized check-writing, and Ponzi-type financial schemes.
- Real Estate - involves unauthorized sales, transfers or changes to property, and may include unauthorized or invalid changes to estate documents.
- Contractor - includes building contractors or handymen who receive payment for building repairs, but fail to initiate or complete project and may include invalid liens by contractors.
- Lottery scams - involves payments to collect unclaimed property or “prizes” from lotteries or sweepstakes.
- Electronic - includes “phishing” e-mail messages to trick persons into unwittingly surrendering bank passwords and may include faxes, wire transfers, telephonic communications.
- Mortgage - includes financial products which are unaffordable or out-of-compliance with regulatory requirements and may include loans issued against property by unauthorized parties.
- Investment - includes investments made without knowledge or consent and may include high-fee funds (front or back-loaded) or excessive trading activity to generate commissions for financial advisors.
- Insurance - involves sales of inappropriate products, such as a thirty-year annuity for a very elderly person and may include unauthorized trading of life insurance policies.

² Section 415.104, F.S.

³ *Id.*

⁴ National Adult Protective Services Association website, see <http://www.napsa-now.org/get-informed/what-is-financial-exploitation/> last visited March 19, 2019.

Regulation of Securities and Investments

The Division of Securities within the Office of Financial Regulation, Department of Financial Services, protects the investing public from unlawful securities activities through regulating the sale of securities and investment advice from Florida securities dealers, issuer dealers, and investment advisers, branch offices, and individuals affiliated with these firms.⁵ As of January 31, 2019, there were:

- 2,501 securities dealers,
- 6,342 investment advisers,
- 10,676 branches, and
- 328,217 associated persons.

The North American Securities Administrators Association (NASAA) is an international organization devoted to investor protection. Its membership consists of securities administrators. On January 22, 2016, the NASAA approved model “Legislation to Protect Vulnerable Adults from Financial Exploitation” (the Model Act).⁶ The Model Act focuses on the reporting and prevention of senior financial exploitation. The Model Act has the following features:

- A mandatory reporting requirement applicable to qualified individuals of broker-dealers and investment advisers;
- Notification to third-parties of potential financial exploitation with advance consent of the investor;
- Authority to temporarily delay disbursement of funds;
- Immunity from civil and administrative liability for reporting, notifications, delays; and
- Mandatory sharing of records related to exploitation with law enforcement and state adult protective services agencies.

As of January 1, 2019, twenty-one states have adopted legislation and in the case of one state, a regulation comparable to the Model Act.⁷

In addition, the Financial Industry Regulatory Authority, a private self-regulatory organization that regulates certain aspects of the securities industry, adopted Rule 2165 on February 5, 2018. This rule is aimed at preventing financial exploitation of the elderly. The rule permits a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a customer.

III. Effect of Proposed Changes:

Section 1 amends s. 415.1034, F.S., relating to reporting of abuse, neglect, and exploitation of a vulnerable adult. The bill adds a dealer of securities, investment advisor, or person regulated by chapter 517, F.S., to the list of specified reporters of abuse. Under current law, the list of persons in s. 415.1034, F.S., is not exclusive to reporting abuse. All persons who suspect abuse must report to the central abuse hotline.

⁵ Florida Office of Financial Regulation bill analysis, dated March 7, 2019.

⁶ *Id.*

⁷ *Id.*

Section 2 creates s. 517.34, F.S., for the protection of specified adults. The bill defines exploitation as when a person in position of trust knowingly uses the specified adults property for the benefit of someone other than the owner. Exploitation may include a misuse of power of attorney or guardianship, the taking of personal assets, misusing or transferring assets, or failing to use assets for the person's needs. Other terms, such as law enforcement agency, specified adult, and trusted contact are defined. Specified adult is defined as a person 65 years or older or a vulnerable adult as defined in s. 415.102, F.S. Trusted contact is a person identified as a contact on the account.

The bill authorizes a securities dealer or investment adviser to delay a transaction or disbursement of funds if they reasonably believe that such an action is exploitation of the specified adult. Within 3 days of such a delay, the securities dealer or investment adviser must provide written or electronic notice to all persons associated with the account, including the trusted contact. The dealer or adviser must notify the Office of Financial Regulation of the temporary hold, the reason for the hold, and if requested, provide all records relating the delay. The bill also allows DCF to share the results of any adult protective service investigation of specified adult with the dealer or adviser.

The bill allows the dealer or adviser to hold the transaction for up to 15 days with an extension of 10 days if the dealer or adviser's review finds exploitation. Dealers or advisers must develop training policies on exploitation and have written procedures for making such delays. In addition, the dealer or adviser must maintain written records of the requirements of the newly created statute. The bill does not alter a dealer or adviser's duty to follow client instructions unless there is a reasonable belief of exploitation.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Fewer vulnerable adults and elders would experience financial exploitation under the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of Financial Regulation may need rule making authority to implement the provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends section 415.1034 of the Florida Statutes.

This bill creates the section 517.34 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.