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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) MANDATORY REPORTING.—

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



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- 11 1. Physician, osteopathic physician, medical examiner,
12 chiropractic physician, nurse, paramedic, emergency medical
13 technician, or hospital personnel engaged in the admission,
14 examination, care, or treatment of vulnerable adults;
- 15 2. Health professional or mental health professional other
16 than one listed in subparagraph 1.;
- 17 3. Practitioner who relies solely on spiritual means for
18 healing;
- 19 4. Nursing home staff; assisted living facility staff;
20 adult day care center staff; adult family-care home staff;
21 social worker; or other professional adult care, residential, or
22 institutional staff;
- 23 5. State, county, or municipal criminal justice employee or
24 law enforcement officer;
- 25 6. Employee of the Department of Business and Professional
26 Regulation conducting inspections of public lodging
27 establishments under s. 509.032;
- 28 7. Florida advocacy council or Disability Rights Florida
29 member or a representative of the State Long-Term Care Ombudsman
30 Program; ~~or~~
- 31 8. Bank, savings and loan, or credit union officer,
32 trustee, or employee; or
- 33 9. Dealer, investment adviser, or associated person under
34 chapter 517,
- 35
36 who knows, or has reasonable cause to suspect, that a vulnerable
37 adult has been or is being abused, neglected, or exploited shall
38 immediately report such knowledge or suspicion to the central
39 abuse hotline.



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40 Section 2. Section 517.34, Florida Statutes, is created to
41 read:

42 517.34 Protection of specified adults.—

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

44 (a)1. "Exploitation" means:

45 a. With respect to a person who stands in a position of
46 trust and confidence with a specified adult, who knowingly, by
47 deception or intimidation, obtains or uses, or endeavors to
48 obtain or use, the specified adult's funds, assets, or property
49 with the intent to temporarily or permanently deprive the
50 specified adult of the use, benefit, or possession of the funds,
51 assets, or property for the benefit of someone other than the
52 specified adult; or

53 b. With respect to a person who knows or should know that a
54 specified adult lacks the capacity to consent, who obtains or
55 uses, or endeavors to obtain or use, the specified adult's
56 funds, assets, or property with the intent to temporarily or
57 permanently deprive the specified adult of the use, benefit, or
58 possession of the funds, assets, or property for the benefit of
59 someone other than the specified adult.

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

61 a. A breach of a fiduciary relationship, such as the misuse
62 of a power of attorney or the abuse of guardianship duties
63 resulting in the unauthorized appropriation, sale, or transfer
64 of property;

65 b. An unauthorized taking of personal assets;

66 c. Misappropriation, misuse, or transfer of moneys
67 belonging to a specified adult from a personal or joint account;
68 or



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69 d. Intentional or negligent failure to effectively use a
70 specified adult's income and assets for the necessities required
71 for that person's support and maintenance.

72 (b) "Law enforcement agency" means an agency or political
73 subdivision of this state or of the United States whose primary
74 responsibility is the prevention and detection of crime or the
75 enforcement of the penal laws of this state or the United States
76 and whose agents and officers are empowered by law to conduct
77 criminal investigations or to make arrests.

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

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

83 (2) A dealer, investment adviser, or associated person may
84 delay a transaction on, or a disbursement of funds or securities
85 from, an account of a specified adult or an account for which a
86 specified adult is a beneficiary or beneficial owner if the
87 dealer, investment adviser, or associated person reasonably
88 believes that exploitation of the specified adult has occurred,
89 is occurring, has been attempted, or will be attempted in
90 connection with the transaction or disbursement.

91 (a) The dealer's, investment adviser's, or associated
92 person's reasonable belief may be based on the facts and
93 circumstances observed in such dealer's, investment adviser's,
94 or associated person's business relationship with the specified
95 adult.

96 (b)1. A dealer or investment adviser must notify the
97 office, on a quarterly basis and on a form adopted by commission



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98 rule, of every delay he or she places and the outcome of such
99 delay. The notice may not directly or indirectly identify the
100 specified adult or the parties to the transaction or
101 disbursement. The notice must include:

102 a. The name of the firm and dealer, investment adviser, or
103 associated person placing the delay on the transaction or
104 disbursement.

105 b. A general description of the reason why the dealer,
106 investment adviser, or associated person placed the delay on the
107 transaction or disbursement.

108 c. The length of the delay on the transaction or
109 disbursement and whether or not the transaction or disbursement
110 ultimately took place.

111 2. On or before October 1 of each year, the office must
112 submit a report to the Governor, the President of the Senate,
113 and the Speaker of the House of Representatives summarizing the
114 information provided to the office by dealers, investment
115 advisers, and associated persons under subparagraph 1. during
116 the prior fiscal year. This subparagraph expires October 1,
117 2023.

118 (c)1. Within 3 business days after the date on which the
119 delay was first placed, the dealer, investment adviser, or
120 associated person must notify in writing, which may be provided
121 electronically, all parties authorized to transact business on
122 the account and any trusted contact on the account, using the
123 contact information provided for the account, unless the dealer,
124 investment adviser, or associated person reasonably believes
125 that any such party engaged or is engaging in the suspected
126 exploitation of the specified adult.



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127 2. The notice provided pursuant to this paragraph must
128 include, at a minimum, a description of the transaction or
129 disbursement, a statement that a delay was placed on such
130 transaction or disbursement pursuant to this section, the basis
131 for the reasonable belief regarding exploitation of the
132 specified adult, and an explanation of the delay process.

133 (3) A delay on a transaction or disbursement under
134 subsection (2) expires 15 business days after the date on which
135 the delay was first placed. However, a dealer, investment
136 adviser, or associated person may extend the delay for up to 10
137 additional business days if its review of the available facts
138 and circumstances continues to support its reasonable belief
139 that exploitation of the specified adult has occurred, is
140 occurring, has been attempted, or will be attempted. The length
141 of the delay may be shortened or extended at any time by an
142 agency or court of competent jurisdiction. This subsection does
143 not prevent a dealer, investment adviser, or associated person
144 from terminating a delay after communication with the specified
145 adult or trusted contact.

146 (4) A dealer, investment adviser, or associated person may
147 provide access to or copies of any records that are relevant to
148 the suspected exploitation of a specified adult to the
149 Department of Children and Families or a law enforcement agency
150 at their request. The records may include records of prior
151 transactions or disbursements, in addition to the transactions
152 or disbursements comprising the suspected exploitation. A
153 dealer, investment adviser, or associated person subject to the
154 jurisdiction of the office must make available to the office,
155 upon request, all records relating to a delay or report made by



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156 the dealer, investment adviser, or associated person pursuant to
157 this section.

158 (5) Notwithstanding any law to the contrary, the Department
159 of Children and Families may inform the reporting party on the
160 status of an investigation initiated under this section and any
161 final disposition.

162 (6) A dealer, investment adviser, or associated person who
163 delays a transaction or disbursement pursuant to this section,
164 who provides records to an agency of competent jurisdiction
165 pursuant to this section, or who participates in a judicial or
166 arbitration proceeding resulting therefrom is presumed to be
167 acting based upon a reasonable belief and is immune from any
168 civil or administrative liability that otherwise might be
169 incurred or imposed, unless lack of such reasonable belief is
170 shown by clear and convincing evidence. This subsection does not
171 supersede or diminish any immunity in chapter 415.

172 (7) A dealer or investment adviser relying on this section
173 must develop training policies or programs designed to educate
174 associated persons on issues pertaining to exploitation and must
175 conduct training of all associated persons accordingly. The
176 dealer or investment adviser must initially train all of its
177 associated persons by July 1, 2019, must train any newly hired
178 associated persons within 3 months after beginning employment,
179 and must subsequently train all associated persons every 2 years
180 thereafter. The training policies and programs must provide for
181 the associated person to receive a minimum of 1 hour of such
182 training, which must include recognition of indicators of
183 exploitation, the manner in which suspected exploitation must be
184 reported to supervisory personnel and to the appropriate



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185 regulatory and law enforcement agencies, and steps that may be
186 taken to prevent exploitation. The dealer or investment adviser
187 must maintain a written record of compliance with this
188 subsection.

189 (8) This section does not create new rights or obligations
190 of a dealer, investment adviser, or associated person under
191 other applicable laws or rules. In addition, this section does
192 not limit the right of a dealer, investment adviser, or
193 associated person to otherwise refuse or place a delay on a
194 transaction or disbursement under other applicable laws or rules
195 or under an applicable customer agreement.

196 (9) This section does not alter a dealer's, investment
197 adviser's, or associated person's obligation to comply with
198 instructions from a client to close an account or transfer an
199 account to another dealer, investment adviser, or associated
200 person absent a reasonable belief of exploitation as provided in
201 this section.

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

203

204 ===== T I T L E A M E N D M E N T =====

205 And the title is amended as follows:

206 Delete everything before the enacting clause
207 and insert:

208 A bill to be entitled
209 An act relating to protection for vulnerable
210 investors; amending s. 415.1034, F.S.; requiring
211 securities dealers, investment advisers, and
212 associated persons to immediately report knowledge or
213 suspicion of abuse, neglect, or exploitation of



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214 vulnerable adults to the Department of Children and
215 Families' central abuse hotline; creating s. 517.34,
216 F.S.; defining terms; authorizing dealers, investment
217 advisers, and associated persons to delay certain
218 transactions or disbursements if such persons
219 reasonably believe certain exploitation of a specified
220 adult has occurred, is occurring, has been attempted,
221 or will be attempted; providing the basis for such
222 reasonable belief; requiring a dealer or investment
223 adviser to provide the Office of Financial Regulation
224 a specified notice at certain timeframes; requiring
225 the Financial Services Commission to adopt a form by
226 rule; requiring the office to submit an annual report
227 to the Governor and Legislature; providing for
228 expiration; specifying notification requirements for
229 dealers, investment advisers, and associated persons
230 placing delays on transactions or disbursements;
231 specifying the expiration of such delays; providing
232 that such delays may be extended for a certain
233 timeframe under certain circumstances; providing that
234 such delays may be shortened or extended by an agency
235 or court of competent jurisdiction; providing that
236 delays may be terminated by dealers, investment
237 advisers, or associated persons under certain
238 circumstances; specifying when certain records may or
239 must be shared with certain agencies; authorizing the
240 Department of Children and Families to inform
241 reporting parties on the status of an investigation;
242 providing immunity from civil and administrative



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243 liability to dealers, investment advisers, and
244 associated persons for certain actions based on a
245 reasonable belief; specifying requirements for dealers
246 and investment advisers in training their associated
247 persons; providing construction; providing an
248 effective date.