By the Committee on Commerce and Tourism; and Senators Stargel and Taddeo

A bill to be entitled
An act relating to protection for vulnerable investors; amending s. 415.1034, F.S.; requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families’ central abuse hotline; creating s. 517.34, F.S.; defining terms; authorizing dealers, investment advisers, and associated persons to delay certain transactions or disbursements if such persons reasonably believe certain exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted; providing the basis for such reasonable belief; requiring a dealer or investment adviser to provide the Office of Financial Regulation a specified notice at certain timeframes; requiring the Financial Services Commission to adopt a form by rule; requiring the office to submit an annual report to the Governor and Legislature; providing for expiration; specifying notification requirements for dealers, investment advisers, and associated persons placing delays on transactions or disbursements; specifying the expiration of such delays; providing that such delays may be extended for a certain timeframe under certain circumstances; providing that such delays may be shortened or extended by an agency or court of competent jurisdiction; providing that delays may be terminated by dealers, investment

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advisers, or associated persons under certain circumstances; specifying when certain records may or must be shared with certain agencies; authorizing the Department of Children and Families to inform reporting parties on the status of an investigation; providing immunity from civil and administrative liability to dealers, investment advisers, and associated persons for certain actions based on a reasonable belief; specifying requirements for dealers and investment advisers in training their associated persons; providing construction; providing an effective date.

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

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:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

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4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program; or

8. Bank, savings and loan, or credit union officer, trustee, or employee; or

9. Dealer, investment adviser, or associated person under chapter 517,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

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

517.34 Protection of specified adults.—
(1) As used in this section, the term:
(a)1. “Exploitation” means:
   a. With respect to a person who stands in a position of trust and confidence with a specified adult, who knowingly, by deception or intimidation, obtains or uses, or endeavors to
obtain or use, the specified adult’s funds, assets, or property with the intent to temporarily or permanently deprive the specified adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the specified adult; or

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

2. “Exploitation” may include, but is not limited to:

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

b. An unauthorized taking of personal assets;

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

or

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

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

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

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

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

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

(b)1. A dealer or investment adviser must notify the office, on a quarterly basis and on a form adopted by commission rule, of every delay he or she places and the outcome of such delay. The notice may not directly or indirectly identify the specified adult or the parties to the transaction or disbursement. The notice must include:

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

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

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

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

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

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

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

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

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

(6) A dealer, investment adviser, or associated person who delays a transaction or disbursement pursuant to this section,

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who provides records to an agency of competent jurisdiction pursuant to this section, or who participates in a judicial or arbitration proceeding resulting therefrom is presumed to be acting based upon a reasonable belief and is immune from any civil or administrative liability that otherwise might be incurred or imposed, unless lack of such reasonable belief is shown by clear and convincing evidence. This subsection does not supersede or diminish any immunity in chapter 415.

(7) A dealer or investment adviser relying on this section must develop training policies or programs designed to educate associated persons on issues pertaining to exploitation and must conduct training of all associated persons accordingly. The dealer or investment adviser must initially train all of its associated persons by July 1, 2019, must train any newly hired associated persons within 3 months after beginning employment, and must subsequently train all associated persons every 2 years thereafter. The training policies and programs must provide for the associated person to receive a minimum of 1 hour of such training, which must include recognition of indicators of exploitation, the manner in which suspected exploitation must be reported to supervisory personnel and to the appropriate regulatory and law enforcement agencies, and steps that may be taken to prevent exploitation. The dealer or investment adviser must maintain a written record of compliance with this subsection.

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

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

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