

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

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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.; defining terms; authorizing dealers, investment
10 advisers, and associated persons to delay certain
11 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; specifying notification requirements for
22 dealers, investment advisers, and associated persons
23 placing delays on transactions or disbursements;
24 specifying the expiration of such delays; providing
25 that such delays may be extended for a certain
26 timeframe under certain circumstances; providing that
27 such delays may be shortened or extended by an agency
28 or court of competent jurisdiction; providing that
29 delays may be terminated by dealers, investment

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

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Paragraph (a) of subsection (1) of section
46 415.1034, Florida Statutes, is amended to read:

47 415.1034 Mandatory reporting of abuse, neglect, or
48 exploitation of vulnerable adults; mandatory reports of death.-

49 (1) MANDATORY REPORTING.-

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

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

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

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

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

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

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

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

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

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

75
76 who knows, or has reasonable cause to suspect, that a vulnerable
77 adult has been or is being abused, neglected, or exploited shall
78 immediately report such knowledge or suspicion to the central
79 abuse hotline.

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

82 517.34 Protection of specified adults.-

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

84 (a)1. "Exploitation" means:

85 a. With respect to a person who stands in a position of
86 trust and confidence with a specified adult, who knowingly, by
87 deception or intimidation, obtains or uses, or endeavors to

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88 obtain or use, the specified adult's funds, assets, or property
89 with the intent to temporarily or permanently deprive the
90 specified adult of the use, benefit, or possession of the funds,
91 assets, or property for the benefit of someone other than the
92 specified adult; or

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

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

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

105 b. An unauthorized taking of personal assets;

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

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

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

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117 criminal investigations or to make arrests.

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

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

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

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

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

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

145 b. A general description of the reason why the dealer,

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146 investment adviser, or associated person placed the delay on the
147 transaction or disbursement.

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

151 2. On or before October 1 of each year, the office must
152 submit a report to the Governor, the President of the Senate,
153 and the Speaker of the House of Representatives summarizing the
154 information provided to the office by dealers, investment
155 advisers, and associated persons under subparagraph 1. during
156 the prior fiscal year. This subparagraph expires October 1,
157 2023.

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

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

173 (3) A delay on a transaction or disbursement under
174 subsection (2) expires 15 business days after the date on which

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175 the delay was first placed. However, a dealer, investment
176 adviser, or associated person may extend the delay for up to 10
177 additional business days if its review of the available facts
178 and circumstances continues to support its reasonable belief
179 that exploitation of the specified adult has occurred, is
180 occurring, has been attempted, or will be attempted. The length
181 of the delay may be shortened or extended at any time by an
182 agency or court of competent jurisdiction. This subsection does
183 not prevent a dealer, investment adviser, or associated person
184 from terminating a delay after communication with the specified
185 adult or trusted contact.

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

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

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

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

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

229 (8) This section does not create new rights or obligations
230 of a dealer, investment adviser, or associated person under
231 other applicable laws or rules. In addition, this section does
232 not limit the right of a dealer, investment adviser, or

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233 associated person to otherwise refuse or place a delay on a
234 transaction or disbursement under other applicable laws or rules
235 or under an applicable customer agreement.

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

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