

1 A bill to be entitled
2 An act relating to the protection of 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 based on a
12 reasonable belief of exploitation of a specified
13 adult; providing the basis for such reasonable belief;
14 requiring a dealer or investment adviser to notify the
15 Office of Financial Regulation of such delays;
16 requiring the Financial Services Commission to adopt a
17 form by rule; requiring the office to submit an annual
18 report to the Governor and Legislature; providing for
19 expiration of such requirement; specifying
20 notification requirements for dealers, investment
21 advisers, and associated persons placing delays on
22 transactions or disbursements; specifying the
23 expiration of such delays; providing that such delays
24 may be shortened or extended by an agency or court of
25 competent jurisdiction; providing that delays may be

26 | terminated by dealers, investment advisers, or
 27 | associated persons under certain circumstances;
 28 | requiring that certain records be made available to
 29 | the office; providing immunity from civil and
 30 | administrative liability to dealers, investment
 31 | advisers, and associated persons for certain actions
 32 | based on a reasonable belief of exploitation;
 33 | requiring dealers and investment advisers to develop
 34 | and conduct training for associated persons; providing
 35 | requirements for such training; requiring that dealers
 36 | and investment advisers maintain a written record of
 37 | compliance with such training; providing construction;
 38 | providing an effective date.

39 |

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

41 |

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

44 | 415.1034 Mandatory reporting of abuse, neglect, or
 45 | exploitation of vulnerable adults; mandatory reports of death.—

46 | (1) MANDATORY REPORTING.—

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

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

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

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

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

79 517.34 Protection of specified adults.—

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

81 (a)1. "Exploitation" means:

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

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

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

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

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

102 b. An unauthorized taking of personal assets;

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

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

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

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

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

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

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

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

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

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

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

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

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

150 and the Speaker of the House of Representatives summarizing the
151 information provided to the office by dealers and investment
152 advisers under subparagraph 1. during the prior fiscal year.
153 This subparagraph expires October 1, 2024.

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

163 2. The notice provided pursuant to subparagraph 1. must
164 include, at a minimum:

- 165 a. A description of the transaction or disbursement;
166 b. A statement that a delay was placed on such transaction
167 or disbursement pursuant to this section;
168 c. The basis for the reasonable belief of exploitation;
169 and
170 d. 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 of exploitation and is
191 immune from any civil or administrative liability that otherwise
192 might be incurred or imposed, unless lack of such reasonable
193 belief is shown by clear and convincing evidence. This
194 subsection does not supersede or diminish any immunity under
195 chapter 415.

196 (6) (a) Before placing a delay on a transaction or
197 disbursement pursuant to this section, a dealer or investment
198 adviser must develop training policies or programs designed to
199 educate associated persons on issues pertaining to exploitation,

200 must develop and maintain written procedures regarding the
201 manner in which suspected exploitation is required to be
202 reported to supervisory personnel, and must conduct training for
203 all associated persons.

204 (b) The training policies or programs must provide for all
205 associated persons to initially, and every 2 years thereafter,
206 receive a minimum of 1 hour of training.

207 (c) The training must include components relating to:

- 208 1. Recognition of the indicators of exploitation;
209 2. Recognition of the indicators of a vulnerable adult;
210 3. The manner in which suspected exploitation must be
211 reported to supervisory personnel and to the appropriate
212 regulatory and law enforcement agencies; and
213 4. Steps that may be taken to prevent exploitation.

214 (d) The dealer or investment adviser must maintain a
215 written record of compliance with this subsection.

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

223 (8) Absent a reasonable belief of exploitation as provided
224 in this section, this section does not alter a dealer's,

HB 143

2019

225 | investment adviser's, or associated person's obligation to
226 | comply with instructions from a client to close an account or
227 | transfer an account to another dealer, investment adviser, or
228 | associated person.

229 | Section 3. This act shall take effect July 1, 2019.