

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 and
10 investment advisers to delay certain transactions or
11 disbursements based on a reasonable belief of
12 exploitation of a specified adult; providing the basis
13 for such reasonable belief; requiring a dealer or
14 investment adviser to notify certain persons and the
15 Office of Financial Regulation of such delays within a
16 specified timeframe; authorizing the Department of
17 Children and Families to provide information regarding
18 certain investigations; specifying the expiration of
19 such delays; authorizing a dealer or investment
20 adviser to extend a delay under certain circumstances;
21 providing that the length of such delays may be
22 shortened or extended by a court of competent
23 jurisdiction; providing that delays may be terminated
24 by dealers or investment advisers under certain
25 circumstances; requiring that certain records be made

26 available to the office; providing immunity from civil
 27 and administrative liability for dealers, investment
 28 advisers, and associated persons for certain actions
 29 based on a reasonable belief of exploitation;
 30 requiring dealers and investment advisers to develop
 31 and conduct periodic training for associated persons
 32 and maintain written records of compliance with such
 33 requirement; providing construction; providing an
 34 effective date.

35

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

37

38 Section 1. Paragraph (a) of subsection (1) of section
 39 415.1034, Florida Statutes, is amended to read:

40 415.1034 Mandatory reporting of abuse, neglect, or
 41 exploitation of vulnerable adults; mandatory reports of death.—

42 (1) MANDATORY REPORTING.—

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

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

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

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

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

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

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

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

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

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

68
 69 who knows, or has reasonable cause to suspect, that a vulnerable
 70 adult has been or is being abused, neglected, or exploited must
 71 ~~shall~~ immediately report such knowledge or suspicion to the
 72 central abuse hotline.

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

75 | 517.34 Protection of specified adults.—
 76 | (1) As used in this section, the term:
 77 | (a)1. "Exploitation" means:
 78 | a. With respect to a person who stands in a position of
 79 | trust and confidence with a specified adult, knowingly, by
 80 | deception or intimidation, obtaining or using, or endeavoring to
 81 | obtain or use, the specified adult's funds, assets, or property
 82 | with the intent to temporarily or permanently deprive the
 83 | specified adult of the use, benefit, or possession of the funds,
 84 | assets, or property for the benefit of someone other than the
 85 | specified adult; or
 86 | b. With respect to a person who knows or should know that
 87 | a specified adult lacks the capacity to consent, obtaining or
 88 | using, or endeavoring to obtain or use, the specified adult's
 89 | funds, assets, or property with the intent to temporarily or
 90 | permanently deprive the specified adult of the use, benefit, or
 91 | possession of the funds, assets, or property for the benefit of
 92 | someone other than the specified adult.
 93 | 2. "Exploitation" may include, but is not limited to:
 94 | a. A breach of a fiduciary relationship, such as the
 95 | misuse of a power of attorney or the abuse of guardianship
 96 | duties, resulting in the unauthorized appropriation, sale, or
 97 | transfer of property;
 98 | b. An unauthorized taking of personal assets;

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

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

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

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

113 (d) "Trusted contact" means a natural person 18 years of
114 age or older whom the account owner has expressly identified and
115 is recorded in a dealer's or investment adviser's books and
116 records as the person who may be contacted about the account.

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

124 (a) The dealer's or investment adviser's reasonable belief
125 of exploitation may be based on the facts and circumstances
126 observed in such dealer's, investment adviser's, or associated
127 person's business relationship with the specified adult.

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

137 2. Within 3 business days after the date on which the
138 delay was first placed, the dealer or investment advisor must
139 notify the office by telephone using a number designated by the
140 office for such purpose, or in writing, which may be provided
141 electronically, of the delay and the reason for the delay.

142 3. Notwithstanding any law to the contrary, the Department
143 of Children and Families may provide the status or result of any
144 investigation with the reporting dealer or investment adviser.

145 (3) A delay on a transaction or disbursement under
146 subsection (2) expires 15 business days after the date on which
147 the delay was first placed. However, the dealer or investment
148 adviser may extend the delay for up to 10 additional business

149 days if the dealer's or investment adviser's review of the
150 available facts and circumstances continues to support such
151 dealer's or investment adviser's reasonable belief that
152 exploitation of the specified adult has occurred, is occurring,
153 has been attempted, or will be attempted. The length of the
154 delay may be shortened or extended at any time by a court of
155 competent jurisdiction. This subsection does not prevent a
156 dealer or investment adviser from terminating a delay after
157 communication with the parties authorized to transact business
158 on the account and any trusted contact on the account.

159 (4) A dealer or investment adviser subject to the
160 jurisdiction of the office must make available to the office,
161 upon request, all records relating to a delay or notification
162 made by the dealer or investment adviser pursuant to this
163 section.

164 (5) A dealer, investment adviser, or associated person who
165 delays or participates in the delay of a transaction or
166 disbursement pursuant to this section, who provides records to
167 an agency of competent jurisdiction pursuant to this section, or
168 who participates in a judicial or arbitration proceeding
169 resulting therefrom is presumed to be acting based upon a
170 reasonable belief of exploitation and is immune from any civil
171 or administrative liability that otherwise might be incurred or
172 imposed, unless lack of such reasonable belief is shown by a

173 preponderance of the evidence. This subsection does not
174 supersede or diminish any immunity under chapter 415.

175 (6) (a) Before placing a delay on a transaction or
176 disbursement pursuant to this section, a dealer or investment
177 adviser must develop training policies or programs reasonably
178 designed to educate associated persons on issues pertaining to
179 exploitation, must develop and maintain written procedures
180 regarding the manner in which suspected exploitation is required
181 to be reported to supervisory personnel, when applicable, and
182 must conduct periodic training for all associated persons.

183 (b) The dealer or investment adviser must maintain a
184 written record of compliance with this subsection.

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

192 (8) Absent a reasonable belief of exploitation as provided
193 in this section, this section does not alter a dealer's,
194 investment adviser's, or associated person's obligation to
195 comply with instructions from a client to close an account or
196 transfer an account to another dealer, investment adviser, or
197 associated person.

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