

By the Committee on Judiciary; and Senators Broxson and Baxley

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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.; defining terms; providing legislative findings
10 and intent; authorizing dealers and investment
11 advisers to delay disbursements or transactions of
12 funds or securities from certain accounts associated
13 with specified adults if certain conditions are met;
14 specifying the expiration of a delay; authorizing
15 dealers and investment advisers to extend delays under
16 certain circumstances; providing requirements for
17 notifying the Office of Financial Regulation;
18 specifying required information in the form for such
19 notice; authorizing a court of competent jurisdiction
20 to shorten or extend a delay; requiring dealers and
21 investment advisers to make certain records available
22 to the office upon request; providing for
23 administrative and civil immunity for dealers,
24 investment advisers, and associated persons;
25 specifying training and written procedures
26 requirements for dealers and investment advisers
27 before they may place a delay; providing for
28 rulemaking by the Financial Services Commission;
29 providing construction; providing an effective date.

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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;

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~~

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

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

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

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

70 517.34 Protection of specified adults.—

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

72 (a) "Financial exploitation" means the wrongful or
73 unauthorized taking, withholding, appropriation, or use of
74 money, assets, or property of a specified adult; or any act or
75 omission by a person, including through the use of a power of
76 attorney, guardianship, or conservatorship of a specified adult,
77 to:

78 1. Obtain control over the specified adult's money, assets,
79 or property through deception, intimidation, or undue influence
80 to deprive him or her of the ownership, use, benefit, or
81 possession of the money, assets, or property; or

82 2. Convert the specified adult's money, assets, or property
83 to deprive him or her of the ownership, use, benefit, or
84 possession of the money, assets, or property.

85 (b) "Specified adult" means a natural person 65 years of
86 age or older, or a vulnerable adult as defined in s. 415.102.

87 (c) "Trusted contact" means a natural person 18 years of

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88 age or older who the account owner has expressly identified and
89 who is recorded in a dealer's or investment adviser's books and
90 records as the person who may be contacted about the account.

91 (2) The Legislature finds that many persons in this state,
92 because of age or disability, are at increased risk of financial
93 exploitation and loss of their assets, funds, investments, and
94 investment accounts. The Legislature further finds that senior
95 investors in this state are at a statistically higher risk of
96 being targeted for financial exploitation, regardless of
97 diminished capacity or other disability, because of their
98 accumulation of substantial assets and wealth compared to
99 younger age groups. In enacting this section, the Legislature
100 recognizes the freedom of specified adults to manage their
101 assets, make investment choices, and spend their funds, and
102 intends that such rights may not be infringed absent a
103 reasonable belief of financial exploitation as provided in this
104 section. The Legislature therefore intends to provide for the
105 prevention of financial exploitation of such persons. The
106 Legislature intends to encourage the constructive involvement of
107 securities dealers, investment advisers, and associated persons
108 who take action based upon the reasonable belief that specified
109 adults with investment accounts have been or are the subject of
110 financial exploitation, and to provide securities dealers,
111 investment advisers, and associated persons immunity from
112 liability for taking actions as authorized herein. The
113 Legislature intends to balance the rights of specified adults to
114 direct and control their assets, funds, and investments and
115 exercise their constitutional rights consistent with due process
116 with the need to provide securities dealers, investment

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117 advisers, and associated persons the ability to place narrow,
118 time-limited restrictions on these rights in an effort to
119 decrease specified adults' risk of loss due to abuse, neglect,
120 or financial exploitation.

121 (3) A dealer or investment adviser may delay a disbursement
122 or transaction of funds or securities from an account of a
123 specified adult or an account for which a specified adult is a
124 beneficiary or beneficial owner if all of the following apply:

125 (a) The dealer or investment adviser reasonably believes
126 that financial exploitation of the specified adult has occurred,
127 is occurring, has been attempted, or will be attempted in
128 connection with the disbursement or transaction.

129 (b) Not later than 3 business days after the date on which
130 the delay was first placed, the dealer or investment adviser
131 notifies in writing all parties authorized to transact business
132 on the account and any trusted contact on the account, using the
133 contact information provided for the account, with the exception
134 of any party the dealer or investment adviser reasonably
135 believes has engaged in, is engaging in, has attempted to engage
136 in, or will attempt to engage in the suspected financial
137 exploitation of the specified adult. The notice, which may be
138 provided electronically, must provide the reason for the delay.

139 (c) Not later than 3 business days after the date on which
140 the delay was first placed, the dealer or investment adviser
141 notifies the office of the delay electronically on a form
142 prescribed by commission rule. The form must be consistent with
143 the purposes of this section and may include only the following
144 information:

145 1. The date the notification is submitted to the office.

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146 2. The date on which the delay was first placed.

147 3. The following information about the specified adult:

148 a. Gender.

149 b. Age.

150 c. Zip code of residence address.

151 4. The following information about the dealer or investment
152 adviser who placed the delay:

153 a. Name.

154 b. Title.

155 c. Firm name.

156 d. Business address.

157 5. A section with the following questions for which the
158 only allowable responses are "Yes" or "No":

159 a. Is financial exploitation of a specified adult suspected
160 in connection with a transaction or disbursement?

161 b. Are funds currently at risk of being lost?

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163 The form must contain substantially the following statement in
164 conspicuous type: "The office may take disciplinary action
165 against any person making a knowing and willful
166 misrepresentation on this form."

167 (d) The dealer or investment adviser immediately initiates
168 an internal review of the facts and circumstances that caused
169 the dealer or investment adviser to reasonably believe that the
170 financial exploitation of the specified adult has occurred, is
171 occurring, has been attempted, or will be attempted.

172 (4) A delay on a disbursement or transaction under
173 subsection (3) expires 15 business days after the date on which
174 the delay was first placed. However, the dealer or investment

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175 adviser may extend the delay for up to 10 additional business
176 days if the dealer's or investment adviser's review of the
177 available facts and circumstances continues to support such
178 dealer's or investment adviser's reasonable belief that
179 financial exploitation of the specified adult has occurred, is
180 occurring, has been attempted, or will be attempted. A dealer or
181 investment adviser that extends a delay shall notify the office
182 on a form prescribed by commission rule not later than 3
183 business days after the date on which the extension was applied.
184 The notice must identify the dealer or investment adviser that
185 extended the delay and the date on which the delay was
186 originally made. The length of the delay may be shortened or
187 extended at any time by a court of competent jurisdiction. This
188 subsection does not prevent a dealer or investment adviser from
189 terminating a delay after communication with the parties
190 authorized to transact business on the account and any trusted
191 contact on the account.

192 (5) A dealer or investment adviser must make available to
193 the office, upon request, all records relating to a delay placed
194 by the dealer or investment adviser pursuant to this section, as
195 prescribed by commission rule.

196 (6) A dealer, an investment adviser, or an associated
197 person who in good faith and exercising reasonable care complies
198 with this section is immune from any administrative or civil
199 liability that might otherwise arise from such delay in a
200 disbursement or transaction in accordance with this section.
201 This subsection does not supersede or diminish any immunity
202 granted under chapter 415.

203 (7) Before placing a delay on a disbursement or transaction

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204 pursuant to this section, a dealer or an investment adviser
205 shall do all of the following:

206 (a) Develop training policies or programs reasonably
207 designed to educate associated persons on issues pertaining to
208 financial exploitation.

209 (b) Conduct training for all associated persons at least
210 annually and maintain a written record of all trainings
211 conducted.

212 (c) Develop, maintain, and enforce written procedures
213 regarding the manner in which suspected financial exploitation
214 is reviewed internally, including, if applicable, the manner in
215 which suspected financial exploitation is required to be
216 reported to supervisory personnel.

217 (8) Absent a reasonable belief of financial exploitation as
218 provided in this section, this section does not alter a
219 dealer's, an investment adviser's, or an associated person's
220 obligation to comply with instructions from a client to buy or
221 sell securities, disburse funds or transfer securities from an
222 account, close an account, or transfer an account to another
223 dealer, investment adviser, or associated person.

224 (9) This section does not create new rights for or impose
225 new obligations on a dealer, an investment adviser, or an
226 associated person under other applicable law. This section does
227 not limit the right of a dealer, an investment adviser, or an
228 associated person to otherwise refuse or place a delay on a
229 disbursement or transaction under other applicable law or under
230 an applicable customer agreement.

231 Section 3. This act shall take effect July 1, 2020.