

By Senator Gibson

6-01134A-19

20191466__

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 exploitation of specified adults
13 has occurred, is occurring, has been attempted, or
14 will be attempted; providing that such reasonable
15 belief may be based on certain facts and
16 circumstances; specifying requirements for dealers,
17 investment advisers, and associated persons in
18 notifying certain parties and the Office of Financial
19 Regulation after placing delays on transactions or
20 disbursements; requiring the office to specify certain
21 means of receiving notice; authorizing the department
22 to share certain information with the reporting
23 dealer, investment adviser, or associated person;
24 specifying the expiration of the delays; authorizing
25 dealers or investment advisers to extend delays, under
26 certain circumstances, for a specified time period;
27 providing that delays may be shortened or extended by
28 a court of competent jurisdiction; requiring dealers,
29 investment advisers, and associated persons to make

6-01134A-19

20191466__

30 certain records available to the office; providing
31 immunity from civil or administrative liability to
32 dealers, investment advisers, or associated persons
33 under certain circumstances; requiring dealers and
34 investment advisers to develop certain training
35 policies and programs, develop and maintain certain
36 procedures, conduct training for associated persons,
37 and maintain certain records; 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 who knows, or who has reasonable cause to
48 suspect, that a vulnerable adult has been or is being abused,
49 neglected, or exploited shall immediately report such knowledge
50 or suspicion to the central abuse hotline. Such person includes,
51 ~~including,~~ but is not limited to, any:

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

56 2. Health professional or mental health professional other
57 than one listed in subparagraph 1.†

58 3. Practitioner who relies solely on spiritual means for

6-01134A-19

20191466__

59 healing.~~†~~

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

64 5. State, county, or municipal criminal justice employee or
65 law enforcement officer.~~†~~

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

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

72 8. Bank, savings and loan, or credit union officer,
73 trustee, or employee.~~†~~

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

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

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

83 517.34 Protection of specified adults.-

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

85 (a)1. "Exploitation" means:

86 a. With respect to a person who stands in a position of
87 trust and confidence with a specified adult, knowingly, by

6-01134A-19

20191466__

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

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

101 c. The wrongful or unauthorized taking, withholding,
102 appropriation, or use of money, assets, or property of a
103 specified adult, or any act or omission by a person, including
104 through the use of a power of attorney, guardianship, or
105 conservatorship of an eligible adult, to:

106 (I) Obtain control over the specified adult's money,
107 assets, or property through deception, intimidation, or undue
108 influence to deprive him or her of the ownership, use, benefit,
109 or possession of the money, assets, or property; or

110 (II) Convert the specified adult's money, assets, or
111 property to deprive him or her of the ownership, use, benefit,
112 or possession of the money, assets, or property.

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

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

6-01134A-19

20191466__

117 of property.

118 b. An unauthorized taking of personal assets.

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

121 d. The intentional or negligent failure to effectively use
122 a specified adult's income and assets for the necessities
123 required for the specified adult's support and maintenance.

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

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

132 (d) "Trusted contact" means a natural person 18 years of
133 age or older, whom the account owner has expressly identified as
134 a person who may be contacted about the account.

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

143 (a) The dealer's, investment adviser's, or associated
144 person's reasonable belief of exploitation may be based on the
145 facts and circumstances observed in such dealer's, investment

6-01134A-19

20191466__

146 adviser's, or associated person's business relationship with the
147 specified adult.

148 (b)1. Within 3 business days after the date on which the
149 delay was first placed, the dealer, investment adviser, or
150 associated person shall:

151 a. Provide written notice of the temporary hold and the
152 reason for the hold to all parties authorized to transact
153 business on the account and any trusted contact on the account
154 via the contact information provided in the account, unless the
155 dealer, investment adviser, or associated person reasonably
156 believes that any such party engaged or is engaging in the
157 suspected exploitation of the specified adult. Such written
158 notice may be provided electronically.

159 b. Notify the office, either by telephone or in writing, of
160 the temporary hold and the reason for the temporary hold. The
161 office shall specify a telephone number for receiving such
162 notice and the means by which such notice may be electronically
163 submitted.

164 2. Notwithstanding any law to the contrary, the Department
165 of Children and Families may share the status and result of any
166 investigation with the reporting dealer, investment adviser, or
167 associated person.

168 (3) A delay on a transaction or disbursement under
169 subsection (2) expires 15 business days after the date on which
170 the delay was first placed. However, the dealer or investment
171 adviser may extend the delay for up to 10 additional business
172 days if its review of the available facts and circumstances
173 continues to support its good faith belief that exploitation of
174 the specified adult has occurred, is occurring, has been

6-01134A-19

20191466__

175 attempted, or will be attempted. The length of the delay may be
176 shortened or extended at any time by a court of competent
177 jurisdiction. This subsection does not prevent a dealer,
178 investment adviser, or associated person from terminating a
179 delay after communication with the parties authorized to
180 transact business on the account and any trusted contact on the
181 account.

182 (4) A dealer, investment adviser, or associated person
183 subject to the jurisdiction of the office shall make available
184 to the office, upon request, all records relating to a delay or
185 report made by the dealer, investment adviser, or associated
186 person pursuant to this section.

187 (5) A dealer, investment adviser, or associated person who
188 delays a transaction or disbursement pursuant to this section,
189 who provides records to an agency of competent jurisdiction
190 pursuant to this section, or who participates in a judicial or
191 arbitration proceeding resulting therefrom, is presumed to be
192 acting based upon a reasonable belief of exploitation and is
193 immune from any civil or administrative liability that otherwise
194 might be incurred or imposed, unless lack of such reasonable
195 belief is shown by a preponderance of the evidence. This
196 subsection does not supersede or diminish any immunity under
197 chapter 415.

198 (6) (a) Before placing a delay on a transaction or
199 disbursement pursuant to this section, a dealer or investment
200 adviser must develop training policies or programs reasonably
201 designed to educate associated persons on issues pertaining to
202 exploitation, must develop and maintain written procedures
203 regarding the manner in which suspected exploitation must be

6-01134A-19

20191466__

204 reported to supervisory personnel, and must conduct training for
205 all associated persons.

206 (b) The dealer or investment adviser shall maintain a
207 written record of compliance with this subsection.

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

215 (8) Absent a reasonable belief of exploitation as provided
216 in this section, this section does not alter a dealer's,
217 investment adviser's, or associated person's obligation to
218 comply with instructions from a client to close an account or
219 transfer an account to another dealer, investment adviser, or
220 associated person.

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