

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 813 Protection of Vulnerable Investors

**SPONSOR(S):** Insurance & Banking Subcommittee, McClure

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Hinshelwood	Cooper
2) Children, Families & Seniors Subcommittee	11 Y, 0 N	Morris	Brazzell
3) Commerce Committee			

### SUMMARY ANALYSIS

Although investment fraud is not a new occurrence in the financial marketplace, recent economic forces such as the rise of technology and the information age have created an environment conducive to swindlers practicing their craft. In an effort to address financial exploitation of seniors, the Financial Industry Regulatory Authority (FINRA), of which most securities broker-dealers are members, implemented rules to provide its members with the ability to place a hold on a disbursement of funds or securities from a customer's account if they have a reasonable basis to believe that financial exploitation of a "specified adult" has occurred, is occurring, has been attempted, or will be attempted. The term "specified adult" refers to a natural person age 65 and older; or a natural person age 18 and older who the FINRA member reasonably believes has a mental or physical impairment that renders the individual unable to protect her or his own interests. These rules took effect February 5, 2018. However, they do not apply to broker-dealers and investment advisers who are not FINRA members.

Similar to the FINRA rules, the bill allows a dealer or investment adviser to delay a disbursement or transaction of funds or securities from the account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. A specified adult is an individual who is age 65 or older or who meets the definition of "vulnerable adult" under Florida's Adult Protective Services Act.

The suspected financial exploitation must be immediately reported to the Florida Abuse Hotline if so required by the Adult Protective Services Act. Not later than three business days after placing a delay, the dealer or investment adviser must notify all parties authorized to transact business on the account as well as any designated trusted contact, unless such person is believed to be engaged in the suspected financial exploitation. Not later than three business days after placing or extending a delay, the dealer or investment adviser must notify the Office of Financial Regulation of the delay or extension.

A delay expires in 15 business days but may be terminated sooner. The dealer or investment adviser may extend the delay for up to an additional 10 business days. The length of the hold may be shortened or extended by a court of competent jurisdiction. The bill requires a dealer or investment adviser to annually conduct training that is reasonably designed to educate associated persons on issues pertaining to financial exploitation. A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with the bill is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction.

The bill has no fiscal impact on local governments, an indeterminate fiscal impact on state government, and an indeterminate positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

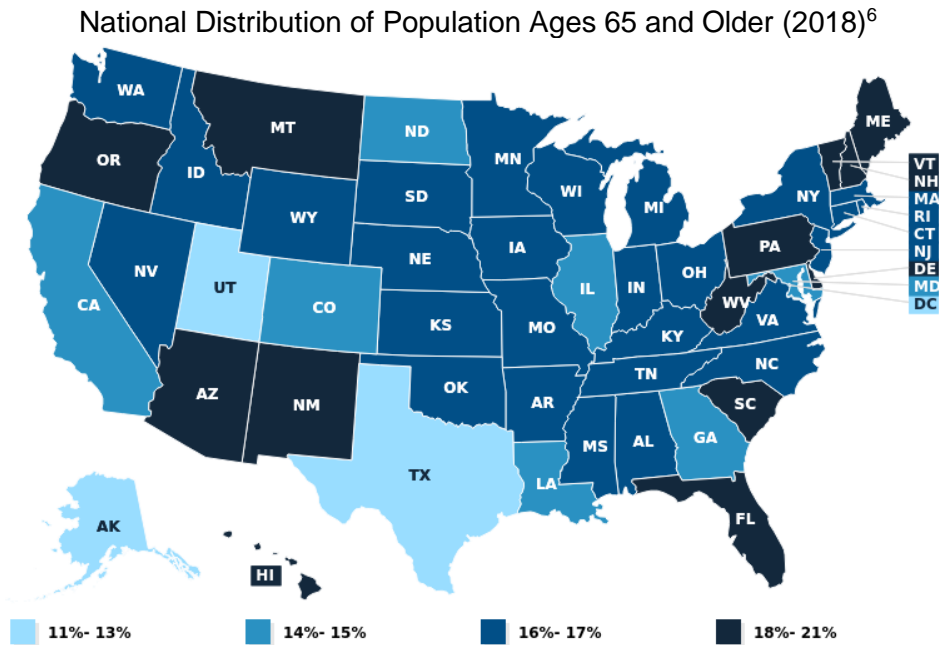
## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### *Vulnerable Adults in Florida*

As the country's "baby-boomer" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016<sup>1</sup> to 77 million by 2034.<sup>2</sup> Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.<sup>3</sup> In 2018, Florida had an estimated 4.3 million people age 65 and older, approximately 20 percent of the state's population.<sup>4</sup> By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.<sup>5</sup>



The term "disability" as enacted in the Americans with Disabilities Act<sup>7</sup> means a physical or mental impairment that substantially limits one or more major life activities such as caring for oneself,

<sup>1</sup> Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing*, *Census Bureau Reports* (June 22, 2017), Release Number: CB17-100, available at: <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> (last visited Jan. 24, 2020).

<sup>2</sup> Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised Oct. 8, 2019), available at: <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (last visited Jan. 24, 2020).

<sup>3</sup> *Where Do the Oldest Americans Live?*, Pew Research Center, July 9, 2015, available at: <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (last visited Jan. 24, 2020).

<sup>4</sup> U.S. Census Bureau, *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States*, available at: <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Jan. 24, 2020).

<sup>5</sup> Florida Office of Economic & Demographic Research, *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, pp. 89-90 and 269-70, available at: [http://edr.state.fl.us/Content/population-demographics/data/Medium\\_Projections\\_ARSH.pdf](http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf) (last visited Jan. 24, 2020); Florida Office of Economic & Demographic Research, *Econographic News: Economic and Demographic News for Decision Makers, 2019, Vol. 1*, available at: <http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited Jan. 24, 2020).

<sup>6</sup> Kaiser Family Foundation, *State Health Facts, Population Distribution by Age*, <https://www.kff.org/other/state-indicator/distribution-by-age/> (last visited Jan. 24, 2020).

<sup>7</sup> 42 U.S.C. §. 12101.

performing manual tasks, seeing, walking, hearing, standing, learning, thinking, and communicating. The definition also includes individuals with a previous record of such an impairment and, under certain circumstances, who are generally regarded as having such an impairment. Types of disabilities include ambulatory, hearing, cognitive, vision, independent living, and self-care.<sup>8</sup> Disabilities can be related to conditions present at birth, associated with developmental conditions, related to an injury, or associated with a longstanding condition.<sup>9</sup>

Approximately 12.7% (over 40 million people) of the U.S. population has a disability.<sup>10</sup> Florida's disability population is estimated at 13.6% (over 2.8 million people).

### *Federal Securities Regulation*

The federal Securities Exchange Act of 1934 ('34 Act) requires registration of securities market participants like broker-dealers and exchanges.<sup>11</sup> Generally, any person acting as “broker” or “dealer” as defined in the '34 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The '34 Act broadly defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.<sup>12</sup> A “dealer” is “any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise.”<sup>13</sup> Certain entities in the securities industry are often referred to as “broker-dealers” because the institution is a “broker” when executing trades on behalf of a customer, but is a “dealer” when executing trades for its own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

### *State Securities Regulation*

In addition to federal securities laws, “Blue Sky Laws” are state laws designed to protect investors against fraudulent sales practices and activities by requiring companies making offerings of securities to register their offerings before they can be sold in that state and by requiring licensure for brokerage firms, their brokers, and investment adviser representatives.<sup>14</sup>

In Florida, the Office of Financial Regulation's (OFR's) Division of Securities oversees the Securities and Investor Protection Act, ch. 517, F.S., which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

The Securities and Investor Protection Act requires the following individuals or businesses to be registered with OFR under s. 517.12, F.S., in order for such persons to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:<sup>15</sup>

- “Dealers,” which include:<sup>16</sup>
  - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal

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<sup>8</sup> United States Census Bureau, *Types of Disabilities*, <https://www.census.gov/library/visualizations/2019/comm/types-of-disabilities.html> (last visited Dec. 4, 2019).

<sup>9</sup> Centers for Disease Control and Prevention, *Disability Health Overview*, <https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html> (last visited Dec. 4, 2019).

<sup>10</sup> United States Census Bureau 2018 American Community Survey, *Disability Characteristics*, <https://data.census.gov/> (last visited Dec. 4, 2019).

<sup>11</sup> 15 U.S.C. §§ 78c(a)(4) and 78o; U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm#II> (last visited Jan. 23, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. §§ 78c(a)(5).

<sup>14</sup> U.S. Securities and Exchange Commission, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm> (last visited Jan. 23, 2020).

<sup>15</sup> S. 517.12(1), F.S.

<sup>16</sup> S. 517.021(6)(a), F.S. The term “dealer”, as defined under Florida law, encompasses the definitions of “broker” and “dealer” under federal law.

- in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.
- “Investment advisers,” which:<sup>17</sup>
  - Include any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.
  - Does not include a “federal covered adviser.”<sup>18</sup>
- “Associated persons,” which include:<sup>19</sup>
  - With respect to a dealer or investment adviser, any of the following:
    - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
    - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
    - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.
  - With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

### *Vulnerability of Seniors to Investment Fraud*

Although investment fraud is not a new occurrence in the financial marketplace, recent economic forces have created an environment conducive to swindlers practicing their craft.<sup>20</sup> Such economic forces include:<sup>21</sup>

- The decline of traditional pensions, which has resulted in fewer Americans relying on expert money managers to invest their retirement funds in a fast-moving and complex investment market.
- The rise of technology, which has made it significantly easier for scammers to reach a broad set of investors with sophisticated robotic and predictive telephone dialing, email, television, and social media.
- The rise of the information age, which has given scammers unlimited access to personal information about investors, making it easier for them to customize their messages and harder for investors to discern who is truly on their side.

Older Americans have accumulated an estimated \$18 trillion in assets.<sup>22</sup> In recent years, financial research has focused on understanding the vulnerability of seniors to investment fraud. In a 2012 study prepared for the FINRA Investor Education Foundation, adults 65 and older were found to be more likely than those who are younger to receive solicitations in the mail and over the telephone.<sup>23</sup> Survey

<sup>17</sup> S. 517.021(14)(a), F.S.

<sup>18</sup> S. 517.021(9), (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice-filing to OFR. Ss. 517.021 and 517.1201, F.S.

<sup>19</sup> S. 517.021(2), F.S.

<sup>20</sup> Doug Shadel and Karla Pak, *AARP Investment Fraud Vulnerability Study*, AARP (2017), [https://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/econ/2017/investment-fraud-vulnerability.doi.10.26419%252Fres.00150.001.pdf](https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2017/investment-fraud-vulnerability.doi.10.26419%252Fres.00150.001.pdf) (last visited Jan. 23, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> National Conference of State Legislatures, *Combatting Elder Financial Exploitation*, <https://www.ncsl.org/research/financial-services-and-commerce/combating-elder-financial-exploitation.aspx> (last visited Jan. 23, 2020).

<sup>23</sup> FINRA Investor Education Foundation, *Financial Fraud and Fraud Susceptibility in the United States: Research Report from a 2012 National Survey*, 11 (Sept. 2013), [https://www.finrafoundation.org/sites/finrafoundation/files/Financial-Fraud-And-Fraud-Susceptibility-In-The-United-States\\_0\\_0\\_0.pdf](https://www.finrafoundation.org/sites/finrafoundation/files/Financial-Fraud-And-Fraud-Susceptibility-In-The-United-States_0_0_0.pdf) (last visited Jan. 23, 2020).

respondents age 65 and older were also more likely to be solicited for fraud, more likely to engage with potentially fraudulent financial opportunities, and more likely to have lost money.<sup>24</sup>

A more recent study sponsored by AARP sought to identify psychological, behavioral, and demographic risk factors that might make investors more vulnerable to investment fraud.<sup>25</sup> The study identified the following psychological risk factors:<sup>26</sup>

- Belief that accumulation of wealth is an important measure of success in life.
- Openness to new opportunities presented by salespersons.
- Belief that the most profitable investments are those not regulated by the government.
- Belief in taking chances with one's money if those chances are likely to pay off.

Many behavioral factors that put victims at risk flow directly from the psychological risk factors above.<sup>27</sup> The mindset of openness to sales pitches may result in signaling a desire to be pitched with investment opportunities.<sup>28</sup> Compared to the general investor population, more fraud victims engaged in active trading of five or more trades in a year, and the victims were more likely to make remote investments.<sup>29</sup> As for demographic risk factors, the study found that many more of the victims were older (age 70+), male, married, and veterans.<sup>30</sup>

In 2013, the Financial Crimes Enforcement Network (FinCEN), which receives and maintains the database of suspicious activity reports (SARs),<sup>31</sup> introduced electronic SAR filing with a designated category for "elder financial exploitation".<sup>32</sup> Recent analysis of SARs related to elder financial exploitation has revealed the following:

- Among the SARs that reported a loss to an older adult, the average amount lost was \$34,200; in 7 percent of these SARs, the loss exceeded \$100,000.<sup>33</sup>
- One-third of the individuals who lost money were ages 80 and older, and adults ages 70 to 79 had the highest average monetary loss (\$45,300).<sup>34</sup>
- Where an individual has incurred an actual loss, the amount of loss reflects substantial financial hardship for elders: The median suspicious activity amount from one sample of scam-related SARs was \$6,105, and for theft-related SARs it was \$15,964. These amounts represent 16 and 41 percent, respectively, of the median income of \$38,515 for households maintained by individuals 65 and over in 2015 (as reported by the U.S. Census Bureau).<sup>35</sup>
- The total number of SAR filings and total suspicious activity amounts increased 20 percent and 30 percent, respectively, each year during the period studied (October 2013 – August 2019).<sup>36</sup>

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<sup>24</sup> *Id.* at 17-18.

<sup>25</sup> Doug Shadel and Karla Pak, *supra* note 20, at 14.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 15.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 6 and 15.

<sup>31</sup> A SAR "is a document that financial institutions, and those associated with their business, must file with the Financial Crimes Enforcement Network (FinCEN) whenever there is a suspected case of money laundering or fraud. These reports are tools to help monitor any activity within finance-related industries that is deemed out of the ordinary, a precursor of illegal activity, or might threaten public safety." Thomson Reuters, *What is a suspicious activity report?*, <https://legal.thomsonreuters.com/en/insights/articles/what-is-a-suspicious-activity-report> (last visited Jan. 10, 2020).

<sup>32</sup> Consumer Financial Protection Bureau, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends*, 3 (Feb. 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_suspicious-activity-reports-elder-financial-exploitation\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf) (last visited Jan. 23, 2020).

<sup>33</sup> *Id.* at 4.

<sup>34</sup> *Id.*

<sup>35</sup> FinCen, *Financial Trend Analysis: Elders Face Increased Financial Threat from Domestic and Foreign Actors*, 7 (Dec. 2019), [https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders\\_FINAL%20508.pdf](https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf) (last visited Jan. 23, 2020).

<sup>36</sup> *Id.* at 1.

In 2018, twenty-four states enacted legislation or adopted resolutions addressing financial exploitation of the elderly and vulnerable adults.<sup>37</sup>

### *FINRA Rules Relating to Financial Exploitation of Seniors*

FINRA is an SRO regulated by the United States Security Exchange Commission. Most broker-dealers in the United States are members of FINRA. As members, such broker-dealers are subject to FINRA rules and examination by FINRA. In an effort to address financial exploitation of seniors, FINRA implemented rules to provide its members with a way to respond to situations in which they have a reasonable basis to believe that financial exploitation of a “specified adult” has occurred, is occurring, has been attempted, or will be attempted.<sup>38</sup>

FINRA defines “specified adult” and “financial exploitation” as follows:

- “Specified adult” is a natural person age 65 and older; or . . . a natural person age 18 and older who the [FINRA] member reasonably believes has a mental or physical impairment that renders the individual unable to protect her or his own interests.<sup>39</sup>
- “Financial exploitation” means:
  - The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult’s funds or securities; or
  - Any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a specified adult, to:
    - Obtain control, through deception, intimidation or undue influence, over the specified adult’s money, assets, or property; or
    - Convert the specified adult’s money, assets, or property.<sup>40</sup>

Under the new rules, FINRA members have the ability to contact a customer’s designated trusted contact person and, when appropriate, place a temporary hold on a disbursement of funds or securities from a customer’s account.<sup>41</sup> The temporary hold expires after 15 business days, but the FINRA member may extend the hold by up to an additional 10 business days if the member’s internal review of facts and circumstances supports its reasonable belief that the financial exploitation has occurred, is occurring, has been attempted, or will be attempted.<sup>42</sup>

These rules took effect February 5, 2018.<sup>43</sup> However, they do not apply to broker-dealers and investment advisers who are not FINRA members.

### *Mandatory Reporting for Abuse or Exploitation of Vulnerable Adults*

The Florida Department of Children and Families (DCF) houses the Adult Protective Services Program (APS). APS is responsible for preventing further harm to vulnerable adults who are victims of abuse, neglect, exploitation, or self-neglect.<sup>44</sup> Florida law currently contains a mandatory reporting requirement in ch. 415, F.S., the Adult Protective Services Act (APS Act), which states that any person “who knows,

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<sup>37</sup> National Conference of State Legislatures, *Financial Crimes Against the Elderly 2018 Legislation*, <https://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2018-legislation.aspx> (last visited Jan. 23, 2020).

<sup>38</sup> FINRA, *Regulatory Notice 17-11 (Financial Exploitation of Seniors)* (Mar. 2017), <https://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf> (last visited Jan. 23, 2020).

<sup>39</sup> FINRA, *Rule 2165. Financial Exploitation of Specified Adults*, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165> (last visited Jan. 23, 2020).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Florida Department of Children and Families, *Adult Protective Services: Protecting Vulnerable Adults*, <https://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults.shtml> (last visited Jan. 23, 2020).

or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline.”<sup>45</sup>

The APS Act defines “vulnerable adult” and “exploitation” as follows:

- “Vulnerable adult” is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for her or his own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.<sup>46</sup>
- “Exploitation” means a person who:<sup>47</sup>
  - Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
  - Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.
- “Exploitation” may include, but is not limited to:<sup>48</sup>
  - Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
  - Unauthorized taking of personal assets;
  - Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
  - Intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.

The Florida Abuse Hotline screens allegations of child and adult abuse and neglect to determine whether the information meets the criteria of an abuse report.<sup>49</sup> If the criteria is met, a protective investigation is initiated to confirm whether or not there is evidence that abuse, neglect, or exploitation occurred; whether there is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard her or his well-being.<sup>50</sup> APS services include:<sup>51</sup>

- On-site investigation of reports of alleged abuse, neglect, exploitation or self-neglect;
- Determination of immediate risk to the victim and provision of necessary emergency services;
- Evaluation of the need for and provision of protective supervision; and,
- Provision of on-going protective services.

A person who participates in making a report to the Florida Abuse Hotline or who participates in a judicial proceeding resulting therefrom “is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed.”<sup>52</sup>

## Effect of the Bill

The bill aligns with FINRA rule to allow a dealer or investment adviser to delay a disbursement or transaction of funds or securities from an account of a specified adult or an account for which a specified

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<sup>45</sup> S. 415.1034(1)(a), F.S.; Florida Department of Children and Families, *Abuse Hotline: Report Abuse Online*, <https://www.myflfamilies.com/service-programs/abuse-hotline/report-online.shtml> (last visited Jan. 23, 2020).

<sup>46</sup> S. 415.102(28), F.S.

<sup>47</sup> S. 415.102(8), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> S. 415.1036(1), F.S.

adult is a beneficiary or beneficial owner if the dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. A “specified adult” is an individual who is age 65 or older or who meets the definition of “vulnerable adult” under the APS Act.

The bill defines “financial exploitation” to mean:

- The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets; or property of a specified adult, or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:
  - Obtain control over the specified adult’s money, assets, or property through deception, intimidation, or undue influence to deprive her or him of the ownership, use, benefit, or possession of the money, assets, or property; or
  - Convert the specified adult’s money, assets, or property to deprive her or him of the ownership, use, benefit, or possession of the money, assets, or property.

The bill adds dealers, investment advisers, and associated persons to the list of specified mandatory reporters under the APS Act. If the financial exploitation involves a specified adult who meets the definition of a “vulnerable adult” under the APS Act, the dealer, investment adviser, or associated person must immediately notify DCF, via the Central Abuse Hotline.<sup>53</sup>

Additionally, not later than three business days after placing a delay, the dealer or investment adviser must:

- Notify in writing all parties authorized to transact business on the account as well as any designated trusted contact,<sup>54</sup> using the contact information provided for the account, with the exception of any party the dealer or investment adviser reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.
- Notify OFR of the delay by telephone, using a number designated by the OFR, or electronically on a form prescribed by rule. The notice must identify the dealer or investment adviser who requested the delay.

The dealer or investment adviser must immediately initiate an internal review of the facts and circumstances that formed the basis of the reasonable belief of financial exploitation.

A delay expires 15 business days after the date on which the delay was placed. The dealer or investment adviser may extend the delay for up to 10 business days if its review of available facts and circumstances continues to support its reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. Not later than three business days after an extension, the dealer or investment adviser must notify OFR of the extension. The notice must identify the dealer or investment adviser that extended the delay and the date on which the delay was originally made. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. The bill does not prevent a dealer or investment adviser from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

A dealer or investment adviser must make available to OFR, upon request, all records relating to a delay made by the dealer or investment adviser, as prescribed by rule.

Before placing a delay on a disbursement or transaction, a dealer or investment adviser must develop training policies or programs reasonably designed to educate associated persons on issues pertaining to financial exploitation; must conduct training for all associated persons at least annually and maintain a

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<sup>53</sup> Chapter 415, F.S., does not require a person to report suspected exploitation of an adult age 65 or older who does not meet the definition of “vulnerable adult”.

<sup>54</sup> The bill defines “trusted contact” to mean “a natural person 18 years of age or older who the account owner has expressly identified and who is recorded in a dealer’s or investment adviser’s books and records as a person who may be contacted about the account.”



written record of all trainings conducted; and develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel. The dealer or investment adviser must maintain a written record of compliance with these training requirements.

A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with the bill is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction. The bill does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable law. In addition, the bill does not limit the right of a dealer, an investment adviser, or an associated person to otherwise refuse or place a delay on a disbursement or transaction under other applicable law or under an applicable customer agreement. Absent a reasonable belief of financial exploitation, the bill does not alter a dealer's, an investment adviser's, or an associated person's obligation to comply with instructions from a client to buy or sell securities, disburse funds or transfer securities from an account, close an account, or transfer an account to another dealer, investment adviser, or associated person.

The bill provides the following statement of legislative findings and intent:

The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that senior investors in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of securities dealers, investment advisers, and associated persons who take action based upon the reasonable belief that specified adults with investment accounts have been or are the subject of financial exploitation, and to provide securities dealers, investment advisers, and associated persons immunity from liability for taking actions as authorized herein. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and exercise their constitutional rights consistent with due process with the need to provide securities dealers, investment advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 415.1034, F.S., relating to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.

**Section 2.** Creates s. 517.34, F.S., relating to protection of specified adults.

**Section 3.** Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The fiscal impact to OFR is indeterminate and depends on the number of reports of delays or extensions received from OFR licensees.<sup>55</sup> In the event that OFR receives a large number of reports, OFR may need an additional FTE employee in the future to accommodate the new workload.<sup>56</sup> OFR would also incur insignificant costs associated with rulemaking, which can be absorbed within its current budget.<sup>57</sup> There is no fiscal impact to DCF because current law already mandates that any person, including dealers, investment advisers, and associated persons, report suspected abuse, neglect, or exploitation of vulnerable adults to the Central Abuse Hotline; and investigation of such allegation is a mandated function for the agency.<sup>58</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

As permitted by the bill, the placement of a delay on a disbursement or transaction, may decrease losses to investors who are financially preyed upon because such a delay may prevent the money from ever getting into the hands of the bad actor. Once the bad actor receives the money, it is difficult, or in some cases impossible, to ever recover the money. Given the inability to quantify avoidance of future losses to investors, the impact on the private sector is indeterminate.

**D. FISCAL COMMENTS:**

None.

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<sup>55</sup> Email from Alex Anderson, Director of Governmental Relations for OFR, Fiscal impact HB 813 (Jan. 10, 2020).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Florida Department of Children and Families, Agency Analysis of 2020 House Bill 813 (Jan 6, 2020).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires rulemaking to create a form for the dealer or investment adviser to report a delay to OFR, and a process by which a dealer or investment advisor must make available all records relating to a delay to OFR upon request. Additionally, ch. 517, F.S., confers upon the Financial Services Commission<sup>59</sup> authority to “adopt rules . . . to implement the provisions of [the chapter] conferring powers or duties upon [OFR], including, without limitation, adopting rules and forms governing reports.” S. 517.03(1), F.S., so no additional authority is required.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Adds legislative findings and intent.
- Removes language that expressly states what facts and circumstances may form the basis of the dealer’s or investment adviser’s reasonable belief of financial exploitation.
- Requires the creation of a form by rule for the dealer or investment adviser to report a delay to OFR.
- Amends the required content of the report to OFR to require the name of the investment adviser and the date on which the delay was made, rather than the reason for the delay.
- Removes language that would have allowed the Department of Children and Families to provide the status or result of any investigation to the reporting dealer or investment adviser.
- Requires the dealer or investment adviser to immediately initiate an internal review of the facts and circumstances that formed the basis of the reasonable belief of financial exploitation.
- Specifies that the notification to OFR of any extension of the delay must contain the date on which the delay was originally made.
- Requires rulemaking related to records that the dealer or investment adviser must make available to OFR upon request.
- Amends the provision that grants civil and administrative immunity to the dealer, investment adviser, or associated person for placing a delay on a disbursement or transaction.
- Requires dealers and investment advisers, before placing a hold, to:
  - Develop and conduct annual training for associated persons and maintain written records of compliance with such requirement; and
  - Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally.
- Makes other technical changes.

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<sup>59</sup> The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are OFR’s agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.