

CHAPTER 2020-157

Committee Substitute for Committee Substitute for House Bill No. 813

An act relating to the protection of vulnerable investors; amending s. 415.1034, F.S.; requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; creating s. 517.34, F.S.; providing definitions; providing legislative findings and intent; authorizing dealers and investment advisers to delay certain disbursements or transactions based on a reasonable belief of financial exploitation of a specified adult under certain circumstances; requiring a dealer or investment adviser to notify certain persons and the Office of Financial Regulation of such delays within a specified timeframe; requiring a dealer or investment adviser to review the basis for a reasonable belief of financial exploitation of a specified adult; specifying the expiration of such delays; authorizing a dealer or investment adviser to extend a delay under certain circumstances; requiring a dealer or investment adviser to notify the office within a specified timeframe after such extension begins; providing that the length of such delays may be shortened or extended by a court of competent jurisdiction; providing that delays may be terminated by dealers or investment advisers under certain circumstances; requiring that certain records be made available to the office; providing immunity from administrative and civil liability for dealers, investment advisers, and associated persons who in good faith and exercising reasonable care comply with specified provisions; requiring dealers and investment advisers to develop certain training policies or programs; requiring dealers and investment advisers to conduct annual training for associated persons and maintain written records of compliance with such requirement; requiring dealers and investment advisers to develop, maintain, and enforce certain written procedures; providing construction; providing an effective date.

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~~

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

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

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

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

517.34 Protection of specified adults.—

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

(a) “Financial exploitation” means 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:

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

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

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

(c) “Trusted contact” means 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 the person who may be contacted about the account.

(2) 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.

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

(a) 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.

(b) Not later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, 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.

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

1. The date on which the notice is submitted to the office.
2. The date on which the delay was first placed.
3. The following information about the specified adult:
 - a. Gender.
 - b. Age.
 - c. Zip code of residence address.
4. The following information about the dealer or investment adviser who placed the delay:
 - a. Name.
 - b. Title.
 - c. Firm name.
 - d. Business address.
5. A section with the following questions for which the only allowable responses are “Yes” or “No”:
 - a. Is financial exploitation of a specified adult suspected in connection with a disbursement or transaction?
 - b. Are funds currently at risk of being lost?

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

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

(4) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the dealer or investment adviser may extend the delay for up to 10 additional business days if the dealer’s or investment adviser’s review of the available facts and circumstances continues to support such dealer’s or investment adviser’s reasonable belief that financial exploitation of the specified adult

has occurred, is occurring, has been attempted, or will be attempted. A dealer or investment adviser that extends a delay must notify the office on a form prescribed by commission rule not later than 3 business days after the date on which the extension was applied. 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. This subsection 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.

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

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

(7) Before placing a delay on a disbursement or transaction pursuant to this section, a dealer or an investment adviser must do all of the following:

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

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

(c) 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.

(8) Absent a reasonable belief of financial exploitation as provided in this section, this section 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.

(9) This section does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable law. This section 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.

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

Approved by the Governor June 30, 2020.

Filed in Office Secretary of State June 30, 2020.