

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that today one in five U.S. seniors, aged 65 or older, report being a victim of financial fraud or abuse, costing seniors an estimated \$36.5 billion each year. Unfortunately, current Texas law does not do enough to protect elderly and vulnerable adults.

While Texas is currently a "mandatory reporting" state for exploitation under Section 48.051, Human Resources Code, "financial exploitation" is not defined. Financial institutions and securities firms are seeing more instances of elder financial exploitation; however, current law provides that the Department of Family and Protective Services (DFPS) - Adult Protective Services, can only get involved when there is an ongoing relationship between the victim and the alleged exploiter. As a result, many banks and securities firms find they have no recourse when they have a customer who they believe is the victim of financial exploitation from a stranger.

S.B. 2067 provides legal options to address this situation by: (1) defining financial exploitation; (2) establishing a tiered reporting mechanism to DFPS; (3) allowing temporary holds on suspicious transactions; (4) adding immunity protections; and, (5) granting the ability to notify a third party of suspected financial exploitation. The bill is broken into two sections—commercial banking and securities—due to the banking industry being governed by the Finance Code and the securities industry being governed by Vernon's Texas Civil Statutes. Both sections address the suspected financial exploitation in the same manner.

As proposed, S.B. 2067 amends current law relating to the financial exploitation of certain vulnerable adults.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Securities in SECTION 2 (Article 581-45, Vernon's Texas Civil Statutes) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Texas Health and Human Services Commission in SECTION 3 (Sections 48.008, 48.072, and 48.073, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle Z, Title 3, Finance Code, by adding Chapter 280, as follows:

CHAPTER 280. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Sec. 280.001. DEFINITIONS. Defines "adult protective services division," "exploitation," "financial exploitation," "financial institution," and vulnerable adult."

Sec. 280.002. REPORTING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) Requires an employee of a financial institution (institution), if the employee has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the institution has occurred, is occurring, or has been attempted, to notify the institution of the suspected financial exploitation.

(b) Requires an institution, if the institution is notified of suspected financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the institution has occurred, is occurring, or has been attempted, to investigate the suspected financial exploitation and submit a report to the adult protective services division (APSD) of the Texas Department of Family and Protective Services (DFPS) in accordance with Subchapter B-1, Chapter 48, Human Resources Code. Requires the institution to submit the report required by the subsection not later than the earlier of the date the institution completes the investigation or the fifth business day after the date the financial institution is notified of the suspected financial exploitation under Subsection (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) Requires that each institution adopt internal policies, programs, plans, or procedures for the employees of the institution to make the notification required under Subsection (a) and for the institution to conduct the investigation and submit the report required under Subsection (b).

(d) Authorizes the policies, programs, plans, or procedures adopted under Subsection (c) to authorize the institution to report the suspected financial exploitation to other appropriate agencies and entities in addition to APSD, including the Texas attorney general (attorney general), the Federal Trade Commission (FTC), and the appropriate law enforcement agency.

Sec. 280.003. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. Authorizes an institution, if the institution submits a report of suspected financial exploitation of a vulnerable adult to the APSD under Section 280.002(b), to at the time the institution submits the report also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the institution suspects the third party of financial exploitation of the vulnerable adult.

Sec. 280.004. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) Provides that, notwithstanding any other law, if an institution submits a report of suspected financial exploitation of a vulnerable adult to APSD under Section 280.002(b), the institution is authorized to place a hold on a transaction involving an account of the vulnerable adult and is required to place a hold on a transaction involving an account of the vulnerable adult if the hold is requested by APSD or a law enforcement agency.

(b) Provides that, subject to Subsection (c), a hold placed on a transaction under Subsection (a) expires on the 10th business day after the date the financial institution submits the report under Section 280.002(b).

(c) Authorizes the institution to extend a hold placed on a transaction under Subsection (a) for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection (b) if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. Authorizes the institution to also petition a court to extend a hold placed on a transaction under Subsection (a) beyond the period prescribed by Subsection (b). Authorizes a court to enter an order extending or shortening a hold or providing other relief.

Sec. 280.005. IMMUNITY. (a) Provides that an employee of an institution who makes a notification under Section 280.002(a), an institution that submits a report under Section 280.002(b) or makes a notification under Section 280.003, or an employee who or institution that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the

notification, report, testimony, or participation in the judicial proceeding, unless the employee or institution acted in bad faith or with a malicious purpose.

(b) Provides that an institution that in good faith and with the exercise of reasonable care places or does not place a hold on a transaction under Section 280.004(a)(1) is immune from any civil or criminal liability or disciplinary action resulting from that action or failure to act.

Sec. 280.006. RECORDS. Requires an institution, to the extent permitted by state or federal law, to provide, on request, access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the APSD, either as part of a report to APSD, a law enforcement agency, or prosecuting attorney's office or at the request of APSD, a law enforcement agency, or prosecuting attorney's office in accordance with the investigation.

SECTION 2. Amends the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes (V.T.C.S.)), by adding Section 45, as follows:

Sec. 45. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION. A. Defines "adult protective services division," "exploitation," "financial exploitation," "vulnerable adult," and "securities professional."

B. Requires a securities professional or a person serving in a legal capacity for a dealer or investment adviser, if the securities professional or person has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or invest adviser has occurred, is occurring, or has been attempted, to notify the dealer or investment adviser of the suspected financial exploitation.

C. Requires a dealer or investment adviser, if the dealer or investment adviser is notified of suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, to investigate the suspected financial exploitation and submit a report to the Securities Commissioner, in accordance with rules adopted under Subsection L of this section, and APSD in accordance with Subchapter B-1, Chapter 48, Human Resources Code. Requires the dealer or investment adviser to submit the reports required by this subsection not later than the earlier of the date the dealer or investment adviser completes the investigation or the fifth business day after the date the dealer of investment adviser is notified of the suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

D. Requires each dealer and investment adviser to adopt internal policies, programs, plans, or procedures for the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection B of this section and for the dealer or investment adviser to conduct the investigations and submit the reports required under Subsection C of this section. Authorizes the policies, programs, plans, or procedures adopted under this subsection to authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Securities Commissioner and APSD, including the attorney general, FTC, and the appropriate law enforcement agency.

E. Authorizes a dealer or investment adviser, if the dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and APSD under Subsection C of this section, to at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial

exploitation, unless the dealer of investment adviser suspects the third party of financial exploitation of the vulnerable adult.

F. Provides that, notwithstanding any other law, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and APSD under Subsection C of this section, the dealer or investment adviser:

(1) is authorized to place a hold on a transaction involving an account of the vulnerable adult; and

(2) is required to place a hold on a transaction involving an account of the vulnerable adult if the hold is requested by the Securities Commissioner, APSD, or a law enforcement agency.

G. Provides that, subject to Subsection H of this section, a hold placed on a transaction under Subsection F of this section expires on the 10th business day after the date the dealer or investment adviser submits the reports under Subsection C of this section.

H. Authorizes a dealer or investment adviser to extend a hold placed on a transaction under Subsection F of this section for a period not to exceed 30 business days after the expiration of the period prescribed by subsection G of this section if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. Authorizes the dealer or investment adviser to also petition a court to extend a hold placed on a transaction under Subsection F of this section beyond the period prescribed by Subsection G of this section. Authorizes a court to enter an order extending or shortening a hold or providing other relief.

I. Provides that a securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Subsection B of this section, a dealer or investment adviser that submits a report under Subsection C of this section or makes a notification under Subsection E of this section, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

J. Provides that a dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on a transaction under Subsection F(1) of this section is immune from civil or criminal liability or disciplinary action resulting from the action or failure to act.

K. Requires a dealer or investment adviser, to the extent permitted by state or federal law, on request, to provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the Securities Commissioner, APSD, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the Securities Commissioner, APSD, law enforcement agency, or prosecuting attorney's office or at the request of the Securities Commissioner, APSD, law enforcement agency, or prosecuting attorney's office in accordance with the investigation.

L. Requires the State Securities Board by rule to prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the Securities Commissioner under Subsection C of this section.

SECTION 3. Amends Subchapter A, Chapter 48, Human Resources Code, by adding Section 48.008, as follows:

Sec. 48.008. CONSOLIDATION OF CERTAIN REPORTS. Authorizes the executive commissioner of the Texas Health and Human Services Commission (executive commissioner) by rule, if cost-effective and feasible to the extent permitted by law, to consolidate the form and procedures used to submit a report under Sections 48.051 (Report) and 48.072.

SECTION 4. Amends Chapter 48, Human Resources Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

Sec. 48.071. DEFINITIONS. Defines "dealer," "investment adviser," "financial exploitation," "financial institution," "vulnerable adult," and "securities professional."

Sec. 48.072. CERTAIN REPORTS OF SUSPECTED FINANCIAL EXPLOITATION. (a) Requires the executive commissioner, after consultation with the banking commissioner of Texas, the savings and mortgage lending commissioner, the credit union commissioner, and the securities commissioner, by rule to prescribe the form and content of the report required to be submitted by a financial institution under Section 280.002(b), Finance Code, and the report required to be submitted by a dealer or investment adviser under Subsection C, Section 45, The Securities Act (Article 581-45, V.T.C.S.). Provides that a report submitted by an institution under Section 280.002(b), Finance Code, or a report submitted by a dealer or investment adviser under Subsection C, Section 45, the Securities Act (Article 581-45, V.T.C.S.), constitutes a report of suspected financial exploitation of a vulnerable adult for purposes of this subchapter.

(b) Requires the executive commissioner, in adopting rules under this section, to ensure that a report of suspected financial exploitation of a vulnerable adult described by Subsection (a) includes to the extent possible the same information required to be included in a report under Section 48.051(d) (relating to certain required content of a report).

(c) Provides that an institution that submits a report to DFPS of suspected financial exploitation of a vulnerable adult under Section 280.002(b), Finance Code, or a dealer or investment adviser that submits a report to DFPS of suspected financial exploitation of a vulnerable adult under Subsection C, Section 45, The Securities Act (Article 581-45, V.T.C.S.), in accordance with this section is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051 for the same conduct constituting the financial exploitation reported under this section.

Sec. 48.073. ASSESSMENT, INVESTIGATION, AND DISPOSITION OF REPORTS. (a) Requires the executive commissioner by rule to adopt procedures for the assessment, investigation, and disposition of a report of suspected financial exploitation of a vulnerable adult received under Section 280.002(b), Finance Code, or Subsection C, Section 45, The Securities Act (Article 581-45, Vernon's Texas Civil Statutes), that are required to be similar to the procedures used for the assessment, investigation, and disposition of a report of abuse, neglect, or exploitation received by DFPS under this chapter (Investigations and Protective Services for Elderly Persons and Persons with Disabilities), other than a report received under Subchapter F (Investigations of Abuse, Neglect, or Exploitation of Individuals Receiving Services from Certain Providers).

(b) Requires that the procedures adopted under this section require:

(1) a risk assessment similar to the assessment required under Section 48.004 (Risk Assessment);

(2) investigations similar to the investigations required under Subchapter D (Investigations by All Agencies), including requirements that DFPS:

(A) take action on a report within the time frame and in the manner provided by Section 48.151 (Action on Report);

(B) perform an interview with the vulnerable adult similar to the interview required by Section 48.152 (Investigation);

(C) if appropriate, implement a system to investigate complex cases similar to the system implemented under Section 48.1521 (Investigation of Complex Cases);

(D) report criminal conduct to appropriate law enforcement agencies similar to the reports under Section 48.1522 (Reports of Criminal Conduct to Law Enforcement Agency);

(E) review certain cases involving multiple reports under Section 48.051 (Report) and this subchapter similar to the review performed under Section 48.1523 (Management Review Following Certain Investigations);

(3) a determination of services similar to the determination required by Section 48.202 (Service Determination by Department or Agency).

Sec. 48.074. **AUTHORITY OF DEPARTMENT OR OTHER AGENCY.** Provides that DFPS or another appropriate state agency has the authority to act on or with respect to an allegation of financial exploitation of a vulnerable adult under this subchapter to the same extent DFPS or another agency has the authority to act on or with respect to an allegation of abuse, neglect, or exploitation under Subchapter B (Reports of Abuse, Neglect, or Exploitation: Immunities).

Sec. 48.075. **ACCESS TO INVESTIGATION.** (a) Authorizes the probate court, as defined by Section 22.007 (Court; County Court, Probate Court, and Statutory Probate Court), Estates Code, to implement an investigation of reported financial exploitation of a vulnerable adult, to authorize entry into the place of residence of a vulnerable adult.

(b) Requires a peace officer to accompany and assist the person making a court-ordered entry under this section if the court determines that action is necessary.

Sec. 48.076. **INTERFERENCE WITH INVESTIGATION OR SERVICES PROHIBITED.** (a) Prohibits a person, including a guardian, notwithstanding Section 1151.001 (Rights and Powers Retained by Ward), Estates Code, from interfering with an investigation by DFPS or by another protective services agency of suspected financial exploitation of a vulnerable adult or with the provision of protective services to a vulnerable adult.

(b) Authorizes DFPS or another protective services agency to petition the appropriate court to enjoin any interference with an investigation of suspected financial exploitation of a vulnerable adult under this subchapter or the provision of protective services, such as removing a vulnerable adult to safer surroundings or safeguarding the vulnerable adult's resources from financial exploitation.

Sec. 48.077. **MEMORANDUM OF UNDERSTANDING.** Requires the Texas Health and Human Services Commission (HHSC), the banking commissioner of Texas, the savings and mortgage lending commissioner, the credit union

commissioner, the securities commissioner, and DFPS to enter into a memorandum of understanding regarding the reporting and investigation of suspected financial exploitation of a vulnerable adult under this subchapter.

Sec. 48.078. CONFIDENTIALITY. (a) Provides that all files, reports, records, communications, and working papers used or developed by DFPS or other state agency in an investigation made under this subchapter or in providing services as a result of an investigation are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(b) Authorizes DFPS or the investigating state agency to establish procedures to exchange with another state agency or governmental entity information that is necessary for DFPS, the state agency, or governmental entity to properly execute its respective duties and responsibilities to provide services to vulnerable adults under this chapter or other law. Provides that an exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

SECTION 5. Amends Subchapter C, Chapter 48, Human Resources Code, by adding Section 48.104, as follows:

Sec. 48.104. NONAPPLICABILITY. (a) Provides that this subchapter (Confidentiality) does not apply to a report of financial exploitation of a vulnerable adult made under Subchapter B-1.

(b) Provides that the confidentiality of information received or provided by DFPS in connection with a report of financial exploitation of a vulnerable adult made under Subchapter b-1 is governed by Section 48.078.

SECTION 6. Amends Subchapter D, Chapter 48, Human Resources Code, by adding Section 48.1511, as follows:

Sec. 48.1511. NONAPPLICABILITY. Provides that this subchapter does not apply to an investigation conducted under Subchapter B-1 unless the executive commissioner by rule requires the application of a provision of this subchapter.

SECTION 7. Amends Section 59.006(a), Finance Code, to include a record request from or report to a government agency arising out of the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person or of alleged financial exploitation of a vulnerable adult in accordance with Chapter 48, Human Resources Code, in the list of certain demands or requests to which this section does not apply and of which it does not require or authorize an institution to give notice.

SECTION 8. Effective date: September 1, 2017.