

By: Perez

H.B. No. 3224

A BILL TO BE ENTITLED

AN ACT

relating to requiring dealers and investment advisers to report suspected financial abuse of elderly persons; providing a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 45 to read as follows:

Sec. 45. REPORTING OF FINANCIAL ABUSE OF ELDERLY PERSONS.

A. In this section:

(1) "Adult protective services division" means the adult protective services division of the Department of Family and Protective Services.

(2) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(3) "Financial abuse" means the wrongful or negligent taking, appropriation, obtaining, retention, or use of, or assisting in the wrongful or negligent taking, appropriation, obtaining, retention, or use of, money or other property of another person by any means, including by exerting undue influence. The term includes financial exploitation.

(4) "Financial exploitation" means the wrongful or negligent taking, appropriation, obtaining, retention, or use of money or other property of another person by a person who has a

1 relationship of confidence or trust with the other person.
2 Financial exploitation may involve coercion, manipulation,
3 threats, intimidation, misrepresentation, or the exerting of undue
4 influence. The term includes:

5 (A) the breach of a fiduciary relationship,
6 including the misuse of a durable power of attorney or the abuse of
7 guardianship powers, that results in the unauthorized
8 appropriation, sale, or transfer of another person's property;

9 (B) the unauthorized taking of personal assets;

10 (C) the misappropriation, misuse, or
11 unauthorized transfer of another person's money from a personal or
12 a joint account; and

13 (D) the negligent or intentional failure to
14 effectively use another person's income and assets for the
15 necessities required for the person's support and maintenance.

16 B. For purposes of Subsection A of this section, a person
17 has a relationship of confidence or trust with another person if the
18 person:

19 (1) is a parent, spouse, adult child, or other
20 relative by blood or marriage of the other person;

21 (2) is a joint tenant or tenant-in-common with the
22 other person;

23 (3) has a legal or fiduciary relationship with the
24 other person;

25 (4) is a financial planner or investment professional
26 who provides services to the other person; or

27 (5) is a paid or unpaid caregiver of the other person.

1 C. Notwithstanding any other law, if an agent or investment
2 adviser representative has a good faith belief that financial abuse
3 of an elderly person has occurred or is occurring, the agent or
4 investment adviser representative shall immediately notify the
5 dealer or investment adviser, as appropriate, for whom the agent or
6 investment adviser representative is providing services.

7 D. On receiving the notification made under Subsection C of
8 this section or if a dealer or investment adviser has a good faith
9 belief that financial abuse of an elderly person has occurred or is
10 occurring, the dealer or investment adviser, as appropriate, shall:

11 (1) subject to Subchapter B-1, Chapter 48, Human
12 Resources Code, make a report notifying the adult protective
13 services division of the suspected financial abuse; and

14 (2) notify the appropriate local law enforcement
15 agency with jurisdiction over the municipality or county in which
16 the elderly person resides of the suspected financial abuse for
17 purposes of investigating and determining whether an offense under
18 Section 32.53, Penal Code, or other law has occurred.

19 E. The report and notification required by Subsection D of
20 this section must be made:

21 (1) by telephone or electronic means, not later than
22 24 hours after the dealer or investment adviser receives
23 notification of suspected financial abuse or believes in good faith
24 that suspected financial abuse occurred or is occurring; and

25 (2) in writing, not later than the third business day
26 after the date the dealer or investment adviser receives
27 notification of suspected financial abuse or believes in good faith

1 that suspected financial abuse occurred or is occurring.

2 F. For purposes of Subsection C of this section, a person's
3 good faith belief must be acquired in connection with the provision
4 of services by the person to or on behalf of the elderly person and
5 must be based on:

6 (1) the person's observation or knowledge of an
7 incident of suspected financial abuse, if the person has direct
8 contact with the elderly person; or

9 (2) the presence of information indicating potential
10 financial abuse during a review or approval process performed by
11 the person in connection with the provision of services, if the
12 person does not have direct contact with the elderly person but
13 reviews or approves the elderly person's transactions, documents,
14 or records.

15 G. Nothing in this section shall be construed to require a
16 dealer or investment adviser to investigate an allegation of
17 financial abuse made by an elderly person or other person.

18 H. Except as provided by Subsection I of this section, the
19 following information is confidential and is not subject to
20 disclosure to the public, except under court order:

21 (1) the information contained in a report or
22 notification made under Subsection D of this section;

23 (2) the identity of any informing agent or investment
24 adviser representative under Subsection C of this section or the
25 name of the dealer or investment adviser making the report or
26 notification under Subsection D of this section; and

27 (3) information provided by or submitted to a dealer

1 or investment adviser in connection with an investigation arising
2 out of a report or notification made under Subsection D of this
3 section.

4 I. Information that is confidential under Subsection H of
5 this section may be disclosed only:

6 (1) to the adult protective services division or
7 another state agency, a law enforcement agency, or the attorney
8 general, in connection with the reporting or notification of or an
9 investigation of suspected financial abuse of the elderly person to
10 whom the information pertains;

11 (2) to, or as authorized by, the elderly person or the
12 guardian of the elderly person, unless the dealer or investment
13 adviser suspects the guardian of financial abuse of the elderly
14 person; or

15 (3) as part of a civil or criminal action related to
16 the suspected financial abuse of the elderly person.

17 J. A person commits an offense if the person discloses
18 confidential information in violation of this section. An offense
19 under this subsection is a Class C misdemeanor.

20 K. A dealer or investment adviser that, or an agent or
21 investment adviser representative who, makes a report or
22 notification in good faith under Subsection C or D of this section
23 is immune from any criminal or civil liability arising from:

24 (1) the report or notification; or

25 (2) participation in any judicial proceeding arising
26 from the report or notification.

27 L. A dealer or investment adviser that fails to make a

1 report or notification in violation of this section is liable to
2 this state for a civil penalty in an amount not to exceed \$25,000,
3 unless a court finds the violation to be wilful, in which case the
4 amount of the civil penalty may not exceed \$100,000.

5 M. The attorney general may bring an action on behalf of
6 this state to recover a civil penalty under Subsection L of this
7 section.

8 N. Subject to Section 48.072, Human Resources Code, the
9 Board and the executive commissioner of the Health and Human
10 Services Commission, after consulting with the Securities
11 Commissioner and the Department of Family and Protective Services,
12 shall jointly adopt rules necessary to implement this section,
13 including rules that require each dealer or investment adviser to
14 implement a training program to:

15 (1) assist the agents or investment adviser
16 representatives, as appropriate, in recognizing signs of potential
17 financial abuse of an elderly person; and

18 (2) inform the agents or investment adviser
19 representatives, as appropriate, about the reporting and
20 notification requirements of this section.

21 SECTION 2. Subchapter A, Chapter 48, Human Resources Code,
22 is amended by adding Section 48.008 to read as follows:

23 Sec. 48.008. CONSOLIDATION OF CERTAIN REPORTS. If
24 cost-effective and feasible, the executive commissioner by rule may
25 consolidate the form and procedures used to submit a report under
26 Sections 48.051 and 48.072.

27 SECTION 3. Chapter 48, Human Resources Code, is amended by

1 adding Subchapter B-1 to read as follows:

2 SUBCHAPTER B-1. FINANCIAL ABUSE OF ELDERLY PERSONS

3 Sec. 48.071. DEFINITIONS. In this subchapter:

4 (1) "Dealer" and "investment adviser" have the
5 meanings assigned by Section 4, The Securities Act (Article 581-4,
6 Vernon's Texas Civil Statutes).

7 (2) "Financial abuse" has the meaning assigned by
8 Section 45, The Securities Act (Article 581-45, Vernon's Texas
9 Civil Statutes).

10 (3) "Securities board" means the State Securities
11 Board.

12 Sec. 48.072. CERTAIN REPORTS OF SUSPECTED FINANCIAL ABUSE.

13 (a) The executive commissioner, after consultation with the
14 securities board, by rule shall prescribe the form and content of
15 the report required to be made by a dealer or investment adviser
16 under Section 45, The Securities Act (Article 581-45, Vernon's
17 Texas Civil Statutes). A report made by a dealer or investment
18 adviser under Section 45, The Securities Act (Article 581-45,
19 Vernon's Texas Civil Statutes), constitutes a report of suspected
20 financial abuse of an elderly person for purposes of this
21 subchapter.

22 (b) In adopting rules under this section, the executive
23 commissioner shall ensure that a report of suspected financial
24 abuse of an elderly person described by Subsection (a) includes to
25 the extent possible the same information required to be included in
26 a report under Section 48.051(d).

27 (c) A dealer or investment adviser that makes a report to

1 the department of suspected financial abuse of an elderly person
2 under Section 45, The Securities Act (Article 581-45, Vernon's
3 Texas Civil Statutes), in accordance with this section is not
4 required to make an additional report of suspected abuse, neglect,
5 or exploitation under Section 48.051 for the same conduct
6 constituting the financial abuse reported under this section.

7 Sec. 48.073. ASSESSMENT, INVESTIGATION, AND DISPOSITION OF
8 REPORTS. (a) The executive commissioner by rule shall adopt
9 procedures for the assessment, investigation, and disposition of a
10 report of suspected financial abuse of an elderly person received
11 under Section 45, The Securities Act (Article 581-45, Vernon's
12 Texas Civil Statutes), that must be similar to the procedures used
13 for the assessment, investigation, and disposition of a report of
14 abuse, neglect, or exploitation received by the department under
15 this chapter, other than a report received under Subchapter F.

16 (b) The procedures adopted under this section must require:

17 (1) a risk assessment similar to the assessment
18 required under Section 48.004;

19 (2) investigations similar to the investigations
20 required under Subchapter D, including requirements that the
21 department:

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

24 (B) perform an interview with the elderly person
25 similar to the interview required by Section 48.152;

26 (C) if appropriate, implement a system to
27 investigate complex cases similar to the system implemented under

1 Section 48.1521;

2 (D) report criminal conduct to appropriate law
3 enforcement agencies similar to the reports under Section 48.1522;
4 and

5 (E) review certain cases involving multiple
6 reports under Section 48.051 and this subchapter similar to the
7 review performed under Section 48.1523; and

8 (3) a determination of services similar to the
9 determination required by Section 48.202.

10 Sec. 48.074. AUTHORITY OF DEPARTMENT OR OTHER AGENCY. The
11 department or another appropriate state agency has the authority to
12 act on or with respect to an allegation of financial abuse of an
13 elderly person under this subchapter to the same extent the
14 department or other agency has the authority to act on or with
15 respect to an allegation of abuse, neglect, or exploitation under
16 Subchapter B.

17 Sec. 48.075. ACCESS TO INVESTIGATION. (a) To implement an
18 investigation of reported financial abuse of an elderly person, the
19 probate court, as defined by Section 22.007, Estates Code, may
20 authorize entry into the place of residence of an elderly person.

21 (b) A peace officer shall accompany and assist the person
22 making a court-ordered entry under this section if the court
23 determines that action is necessary.

24 Sec. 48.076. INTERFERENCE WITH INVESTIGATION OR SERVICES
25 PROHIBITED. (a) Notwithstanding Section 1151.001, Estates Code, a
26 person, including a guardian, may not interfere with:

27 (1) an investigation by the department or by another

1 protective services agency of suspected financial abuse of an
2 elderly person; or

3 (2) the provision of protective services to an elderly
4 person.

5 (b) The department or another protective services agency
6 may petition the appropriate court to enjoin any interference with:

7 (1) an investigation of suspected financial abuse of
8 an elderly person under this subchapter; or

9 (2) the provision of protective services, such as
10 removing an elderly person to safer surroundings or safeguarding
11 the elderly person's resources from financial abuse.

12 Sec. 48.077. MEMORANDUM OF UNDERSTANDING. The commission,
13 the Securities Commissioner, and the department shall enter into a
14 memorandum of understanding regarding the reporting and
15 investigation of suspected financial abuse of an elderly person
16 under this subchapter.

17 Sec. 48.078. CONFIDENTIALITY. (a) All files, reports,
18 records, communications, and working papers used or developed by
19 the department or other state agency in an investigation made under
20 this subchapter or in providing services as a result of an
21 investigation are confidential and not subject to disclosure under
22 Chapter 552, Government Code.

23 (b) The department or investigating state agency may
24 establish procedures to exchange with another state agency or
25 governmental entity information that is necessary for the
26 department, state agency, or governmental entity to properly
27 execute its respective duties and responsibilities to provide

1 services to elderly persons under this chapter or other law. An
2 exchange of information under this subsection does not affect
3 whether the information is subject to disclosure under Chapter 552,
4 Government Code.

5 SECTION 4. Subchapter C, Chapter 48, Human Resources Code,
6 is amended by adding Section 48.104 to read as follows:

7 Sec. 48.104. NONAPPLICABILITY. (a) This subchapter does
8 not apply to a report of financial abuse of an elderly person made
9 under Subchapter B-1.

10 (b) The confidentiality of information received or provided
11 by the department in connection with a report of financial abuse of
12 an elderly person made under Subchapter B-1 is governed by Section
13 48.078 and by Section 45, The Securities Act (Article 581-45,
14 Vernon's Texas Civil Statutes).

15 SECTION 5. Subchapter D, Chapter 48, Human Resources Code,
16 is amended by adding Section 48.1511 to read as follows:

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

21 SECTION 6. This Act takes effect September 1, 2017.