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H.B. No. 3921

A BILL TO BE ENTITLED

AN ACT

relating to the financial exploitation of certain vulnerable adults.

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

SECTION 1. Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 280 to read as follows:

CHAPTER 280. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Sec. 280.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Exploitation" means the act of forcing, compelling, or exerting undue influence over a person causing the person to act in a way that is inconsistent with the person's relevant past behavior or causing the person to perform services for the benefit of another person.

(3) "Financial exploitation" means:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a person; or

(B) an act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, another person, to:

(i) obtain control, through deception,

1 intimidation, fraud, or undue influence, over the other person's
2 money, assets, or other property to deprive the other person of the
3 ownership, use, benefit, or possession of the property; or

4 (ii) convert the money, assets, or other
5 property of the other person to deprive the other person of the
6 ownership, use, benefit, or possession of the property.

7 (4) "Financial institution" has the meaning assigned
8 by Section 277.001.

9 (5) "Vulnerable adult" means:

10 (A) an elderly person as that term is defined by
11 Section 48.002, Human Resources Code;

12 (B) a person with a disability as that term is
13 defined by Section 48.002, Human Resources Code; or

14 (C) an individual receiving services as that term
15 is defined by rule by the executive commissioner of the Health and
16 Human Services Commission as authorized by Section 48.251(b), Human
17 Resources Code.

18 Sec. 280.002. REPORTING SUSPECTED FINANCIAL EXPLOITATION
19 OF VULNERABLE ADULTS. (a) If an employee of a financial
20 institution has cause to believe that financial exploitation of a
21 vulnerable adult who is an account holder with the financial
22 institution has occurred, is occurring, or has been attempted, the
23 employee shall notify the financial institution of the suspected
24 financial exploitation.

25 (b) If a financial institution is notified of suspected
26 financial exploitation under Subsection (a) or otherwise has cause
27 to believe that financial exploitation of a vulnerable adult who is

1 an account holder with the financial institution has occurred, is
2 occurring, or has been attempted, the financial institution shall
3 assess the suspected financial exploitation and submit a report to
4 the department in the same manner as and containing the same
5 information required to be included in a report under Section
6 48.051, Human Resources Code. The financial institution shall
7 submit the report required by this subsection not later than the
8 earlier of:

9 (1) the date the financial institution completes the
10 financial institution's assessment of the suspected financial
11 exploitation; or

12 (2) the fifth business day after the date the
13 financial institution is notified of the suspected financial
14 exploitation under Subsection (a) or otherwise has cause to believe
15 that the suspected financial exploitation has occurred, is
16 occurring, or has been attempted.

17 (c) A financial institution that submits a report to the
18 department of suspected financial exploitation of a vulnerable
19 adult under Subsection (b) is not required to make an additional
20 report of suspected abuse, neglect, or exploitation under Section
21 48.051, Human Resources Code, for the same conduct constituting the
22 reported suspected financial exploitation.

23 (d) Each financial institution shall adopt internal
24 policies, programs, plans, or procedures for:

25 (1) the employees of the financial institution to make
26 the notification required under Subsection (a); and

27 (2) the financial institution to conduct the

1 assessment and submit the report required under Subsection (b).

2 (e) The policies, programs, plans, or procedures adopted
3 under Subsection (d) may authorize the financial institution to
4 report the suspected financial exploitation to other appropriate
5 agencies and entities in addition to the department, including the
6 attorney general, the Federal Trade Commission, and the appropriate
7 law enforcement agency.

8 Sec. 280.003. NOTIFYING THIRD PARTIES OF SUSPECTED
9 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a financial
10 institution submits a report of suspected financial exploitation of
11 a vulnerable adult to the department under Section 280.002(b), the
12 financial institution may at the time the financial institution
13 submits the report also notify a third party reasonably associated
14 with the vulnerable adult of the suspected financial exploitation,
15 unless the financial institution suspects the third party of
16 financial exploitation of the vulnerable adult.

17 Sec. 280.004. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN
18 CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.

19 (a) Notwithstanding any other law, if a financial institution
20 submits a report of suspected financial exploitation of a
21 vulnerable adult to the department under Section 280.002(b), the
22 financial institution:

23 (1) may place a hold on any transaction that:

24 (A) involves an account of the vulnerable adult;
25 and

26 (B) the financial institution has cause to
27 believe is related to the suspected financial exploitation; and

1 (2) must place a hold on any transaction involving an
2 account of the vulnerable adult if the hold is requested by the
3 department or a law enforcement agency.

4 (b) Subject to Subsection (c), a hold placed on any
5 transaction under Subsection (a) expires on the 10th business day
6 after the date the financial institution submits the report under
7 Section 280.002(b).

8 (c) The financial institution may extend a hold placed on
9 any transaction under Subsection (a) for a period not to exceed 30
10 business days after the expiration of the period prescribed by
11 Subsection (b) if requested by a state or federal agency or a law
12 enforcement agency investigating the suspected financial
13 exploitation. The financial institution may also petition a court
14 to extend a hold placed on any transaction under Subsection (a)
15 beyond the period prescribed by Subsection (b). A court may enter
16 an order extending or shortening a hold or providing other relief.

17 (d) Each financial institution shall adopt internal
18 policies, programs, plans, or procedures for placing a hold on a
19 transaction involving an account of a vulnerable adult under this
20 section.

21 Sec. 280.005. IMMUNITY. (a) An employee of a financial
22 institution who makes a notification under Section 280.002(a), a
23 financial institution that submits a report under Section
24 280.002(b) or makes a notification to a third party under Section
25 280.003, or an employee who or financial institution that testifies
26 or otherwise participates in a judicial proceeding arising from a
27 notification or report is immune from any civil or criminal

1 liability arising from the notification, report, testimony, or
2 participation in the judicial proceeding, unless the employee or
3 financial institution acted in bad faith or with a malicious
4 purpose.

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

10 Sec. 280.006. RECORDS. To the extent permitted by state or
11 federal law, a financial institution shall provide, on request,
12 access to or copies of records relevant to the suspected financial
13 exploitation of a vulnerable adult to the department, a law
14 enforcement agency, or a prosecuting attorney's office, either as
15 part of a report to the department, law enforcement agency, or
16 prosecuting attorney's office or at the request of the department,
17 law enforcement agency, or prosecuting attorney's office in
18 accordance with an investigation.

19 SECTION 2. The Securities Act (Article 581-1 et seq.,
20 Vernon's Texas Civil Statutes) is amended by adding Section 45 to
21 read as follows:

22 Sec. 45. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL
23 EXPLOITATION. A. In this section:

24 (1) "Department" means the Department of Family and
25 Protective Services.

26 (2) "Exploitation," "financial exploitation," and
27 "vulnerable adult" have the meanings assigned by Section 280.001,

1 Finance Code.

2 (3) "Securities professional" means an agent, an
3 investment adviser representative, or a person who serves in a
4 supervisory or compliance capacity for a dealer or investment
5 adviser.

6 B. If a securities professional or a person serving in a
7 legal capacity for a dealer or investment adviser has cause to
8 believe that financial exploitation of a vulnerable adult who is an
9 account holder with the dealer or investment adviser has occurred,
10 is occurring, or has been attempted, the securities professional or
11 person serving in a legal capacity for the dealer or investment
12 adviser shall notify the dealer or investment adviser of the
13 suspected financial exploitation.

14 C. If a dealer or investment adviser is notified of
15 suspected financial exploitation under Subsection B of this section
16 or otherwise has cause to believe that financial exploitation of a
17 vulnerable adult who is an account holder with the dealer or
18 investment adviser has occurred, is occurring, or has been
19 attempted, the dealer or investment adviser shall assess the
20 suspected financial exploitation and submit a report to the
21 Securities Commissioner, in accordance with rules adopted under
22 Subsection N of this section, and the department in the same manner
23 as and containing the same information required to be included in a
24 report under Section 48.051, Human Resources Code. The dealer or
25 investment adviser shall submit the reports required by this
26 subsection not later than the earlier of:

27 (1) the date the dealer or investment adviser

1 completes the dealer's or investment adviser's assessment of the
2 suspected financial exploitation; or

3 (2) the fifth business day after the date the dealer or
4 investment adviser is notified of the suspected financial
5 exploitation under Subsection B of this section or otherwise has
6 cause to believe that the suspected financial exploitation has
7 occurred, is occurring, or has been attempted.

8 D. A dealer or investment adviser who submits a report to
9 the department of suspected financial exploitation of a vulnerable
10 adult under Subsection C of this section is not required to make an
11 additional report of suspected abuse, neglect, or exploitation
12 under Section 48.051, Human Resources Code, for the same conduct
13 constituting the reported suspected financial exploitation.

14 E. Each dealer and investment adviser shall adopt internal
15 policies, programs, plans, or procedures for the securities
16 professionals or persons serving in a legal capacity for the dealer
17 or investment adviser to make the notification required under
18 Subsection B of this section and for the dealer or investment
19 adviser to conduct the assessment and submit the reports required
20 under Subsection C of this section. The policies, programs, plans,
21 or procedures adopted under this subsection may authorize the
22 dealer or investment adviser to report the suspected financial
23 exploitation to other appropriate agencies and entities in addition
24 to the Securities Commissioner and the department, including the
25 attorney general, the Federal Trade Commission, and the appropriate
26 law enforcement agency.

27 F. If a dealer or investment adviser submits reports of

1 suspected financial exploitation of a vulnerable adult to the
2 Securities Commissioner and the department under Subsection C of
3 this section, the dealer or investment adviser may at the time the
4 dealer or investment adviser submits the reports also notify a
5 third party reasonably associated with the vulnerable adult of the
6 suspected financial exploitation, unless the dealer or investment
7 adviser suspects the third party of financial exploitation of the
8 vulnerable adult.

9 G. Notwithstanding any other law, if a dealer or investment
10 adviser submits reports of suspected financial exploitation of a
11 vulnerable adult to the Securities Commissioner and the department
12 under Subsection C of this section, the dealer or investment
13 adviser:

14 (1) may place a hold on any transaction that:

15 (A) involves an account of the vulnerable adult;

16 and

17 (B) the dealer or investment adviser has cause to
18 believe is related to the suspected financial exploitation; and

19 (2) must place a hold on any transaction involving an
20 account of the vulnerable adult if the hold is requested by the
21 Securities Commissioner, the department, or a law enforcement
22 agency.

23 H. Subject to Subsection I of this section, a hold placed on
24 any transaction under Subsection G of this section expires on the
25 10th business day after the date the dealer or investment adviser
26 submits the reports under Subsection C of this section.

27 I. A dealer or investment adviser may extend a hold placed

1 on any transaction under Subsection G of this section for a period
2 not to exceed 30 business days after the expiration of the period
3 prescribed by Subsection H of this section if requested by a state
4 or federal agency or a law enforcement agency investigating the
5 suspected financial exploitation. The dealer or investment adviser
6 may also petition a court to extend a hold placed on any transaction
7 under Subsection G of this section beyond the period prescribed by
8 Subsection H of this section. A court may enter an order extending
9 or shortening a hold or providing other relief.

10 J. Each dealer and investment adviser shall adopt internal
11 policies, programs, plans, or procedures for placing a hold on a
12 transaction involving an account of a vulnerable adult under
13 Subsection G of this section.

14 K. A securities professional or person serving in a legal
15 capacity for a dealer or investment adviser who makes a
16 notification under Subsection B of this section, a dealer or
17 investment adviser that submits a report under Subsection C of this
18 section or makes a notification to a third party under Subsection F
19 of this section, or a securities professional or person serving in a
20 legal capacity who or dealer or investment adviser that testifies
21 or otherwise participates in a judicial proceeding arising from a
22 notification or report is immune from any civil or criminal
23 liability arising from the notification, report, testimony, or
24 participation in the judicial proceeding, unless the securities
25 professional, person serving in a legal capacity for the dealer or
26 investment adviser, or dealer or investment adviser acted in bad
27 faith or with a malicious purpose.

1 L. A dealer or investment adviser that in good faith and
2 with the exercise of reasonable care places or does not place a hold
3 on any transaction under Subsection G(1) of this section is immune
4 from civil or criminal liability or disciplinary action resulting
5 from the action or failure to act.

6 M. To the extent permitted by state or federal law, a dealer
7 or investment adviser, on request, shall provide access to or
8 copies of records relevant to the suspected financial exploitation
9 of a vulnerable adult to the Securities Commissioner, the
10 department, a law enforcement agency, or a prosecuting attorney's
11 office, either as part of a report to the Securities Commissioner,
12 department, law enforcement agency, or prosecuting attorney's
13 office or at the request of the Securities Commissioner,
14 department, law enforcement agency, or prosecuting attorney's
15 office in accordance with an investigation.

16 N. The Board by rule shall prescribe the form and content of
17 the report required to be submitted by a dealer or investment
18 adviser to the Securities Commissioner under Subsection C of this
19 section.

20 SECTION 3. This Act takes effect September 1, 2017.