

By: Parker

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) "Adult protective services division" means the adult protective services division of 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:

1 (i) obtain control, through deception,
2 intimidation, fraud, or undue influence, over the other person's
3 money, assets, or other property to deprive the other person of the
4 ownership, use, benefit, or possession of the property; or

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

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

10 (5) "Vulnerable adult" means:

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

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

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

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

26 (b) If a financial institution is notified of suspected
27 financial exploitation under Subsection (a) or otherwise has cause

1 to believe that financial exploitation of a vulnerable adult who is
2 an account holder with the financial institution has occurred, is
3 occurring, or has been attempted, the financial institution shall
4 investigate the suspected financial exploitation and submit a
5 report to the adult protective services division in accordance with
6 Subchapter B-1, Chapter 48, Human Resources Code. The financial
7 institution shall submit the report required by this subsection not
8 later than the earlier of:

9 (1) the date the financial institution completes the
10 investigation; or

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

16 (c) Each financial institution shall adopt internal
17 policies, programs, plans, or procedures for:

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

20 (2) the financial institution to conduct the
21 investigation and submit the report required under Subsection (b).

22 (d) The policies, programs, plans, or procedures adopted
23 under Subsection (c) may authorize the financial institution to
24 report the suspected financial exploitation to other appropriate
25 agencies and entities in addition to the adult protective services
26 division, including the attorney general, the Federal Trade
27 Commission, and the appropriate law enforcement agency.

1 Sec. 280.003. NOTIFYING THIRD PARTIES OF SUSPECTED
2 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a financial
3 institution submits a report of suspected financial exploitation of
4 a vulnerable adult to the adult protective services division under
5 Section 280.002(b), the financial institution may at the time the
6 financial institution submits the report also notify a third party
7 reasonably associated with the vulnerable adult of the suspected
8 financial exploitation, unless the financial institution suspects
9 the third party of financial exploitation of the vulnerable adult.

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

12 (a) Notwithstanding any other law, if a financial institution
13 submits a report of suspected financial exploitation of a
14 vulnerable adult to the adult protective services division under
15 Section 280.002(b), the financial institution:

16 (1) may place a hold on a transaction involving an
17 account of the vulnerable adult; and

18 (2) must place a hold on a transaction involving an
19 account of the vulnerable adult if the hold is requested by the
20 adult protective services division or a law enforcement agency.

21 (b) Subject to Subsection (c), a hold placed on a
22 transaction under Subsection (a) expires on the 10th business day
23 after the date the financial institution submits the report under
24 Section 280.002(b).

25 (c) The financial institution may extend a hold placed on a
26 transaction under Subsection (a) for a period not to exceed 30
27 business days after the expiration of the period prescribed by

1 Subsection (b) if requested by a state or federal agency or a law
2 enforcement agency investigating the suspected financial
3 exploitation. The financial institution may also petition a court
4 to extend a hold placed on a transaction under Subsection (a) beyond
5 the period prescribed by Subsection (b). A court may enter an
6 order extending or shortening a hold or providing other relief.

7 Sec. 280.005. IMMUNITY. (a) An employee of a financial
8 institution who makes a notification under Section 280.002(a), a
9 financial institution that submits a report under Section
10 280.002(b) or makes a notification under Section 280.003, or an
11 employee who or financial institution that testifies or otherwise
12 participates in a judicial proceeding arising from a notification
13 or report is immune from any civil or criminal liability arising
14 from the notification, report, testimony, or participation in the
15 judicial proceeding, unless the employee or financial institution
16 acted in bad faith or with a malicious purpose.

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

22 Sec. 280.006. RECORDS. To the extent permitted by state or
23 federal law, a financial institution shall provide, on request,
24 access to or copies of records relevant to the suspected financial
25 exploitation of a vulnerable adult to the adult protective services
26 division, a law enforcement agency, or a prosecuting attorney's
27 office, either as part of a report to the adult protective services

1 division, law enforcement agency, or prosecuting attorney's office
2 or at the request of the adult protective services division, law
3 enforcement agency, or prosecuting attorney's office in accordance
4 with an investigation.

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

8 Sec. 45. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL
9 EXPLOITATION. A. In this section:

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

13 (2) "Exploitation," "financial exploitation," and
14 "vulnerable adult" have the meanings assigned by Section 280.001,
15 Finance Code.

16 (3) "Securities professional" means an agent, an
17 investment adviser representative, or a person who serves in a
18 supervisory or compliance capacity for a dealer or investment
19 adviser.

20 B. If a securities professional or a person serving in a
21 legal capacity for a dealer or investment adviser has cause to
22 believe that financial exploitation of a vulnerable adult who is an
23 account holder with the dealer or investment adviser has occurred,
24 is occurring, or has been attempted, the securities professional or
25 person serving in a legal capacity for the dealer or investment
26 adviser shall notify the dealer or investment adviser of the
27 suspected financial exploitation.

1 C. If a dealer or investment adviser is notified of
2 suspected financial exploitation under Subsection B of this section
3 or otherwise has cause to believe that financial exploitation of a
4 vulnerable adult who is an account holder with the dealer or
5 investment adviser has occurred, is occurring, or has been
6 attempted, the dealer or investment adviser shall investigate the
7 suspected financial exploitation and submit a report to the
8 Securities Commissioner, in accordance with rules adopted under
9 Subsection L of this section, and the adult protective services
10 division in accordance with Subchapter B-1, Chapter 48, Human
11 Resources Code. The dealer or investment adviser shall submit the
12 reports required by this subsection not later than the earlier of:

13 (1) the date the dealer or investment adviser
14 completes the investigation; or

15 (2) the fifth business day after the date the dealer or
16 investment adviser is notified of the suspected financial
17 exploitation under Subsection B of this section or otherwise has
18 cause to believe that the suspected financial exploitation has
19 occurred, is occurring, or has been attempted.

20 D. Each dealer and investment adviser shall adopt internal
21 policies, programs, plans, or procedures for the securities
22 professionals or persons serving in a legal capacity for the dealer
23 or investment adviser to make the notification required under
24 Subsection B of this section and for the dealer or investment
25 adviser to conduct the investigations and submit the reports
26 required under Subsection C of this section. The policies,
27 programs, plans, or procedures adopted under this subsection may

1 authorize the dealer or investment adviser to report the suspected
2 financial exploitation to other appropriate agencies and entities
3 in addition to the Securities Commissioner and the adult protective
4 services division, including the attorney general, the Federal
5 Trade Commission, and the appropriate law enforcement agency.

6 E. If a dealer or investment adviser submits reports of
7 suspected financial exploitation of a vulnerable adult to the
8 Securities Commissioner and the adult protective services division
9 under Subsection C of this section, the dealer or investment
10 adviser may at the time the dealer or investment adviser submits the
11 reports also notify a third party reasonably associated with the
12 vulnerable adult of the suspected financial exploitation, unless
13 the dealer or investment adviser suspects the third party of
14 financial exploitation of the vulnerable adult.

15 F. Notwithstanding any other law, if a dealer or investment
16 adviser submits reports of suspected financial exploitation of a
17 vulnerable adult to the Securities Commissioner and the adult
18 protective services division under Subsection C of this section,
19 the dealer or investment adviser:

20 (1) may place a hold on a transaction involving an
21 account of the vulnerable adult; and

22 (2) must place a hold on a transaction involving an
23 account of the vulnerable adult if the hold is requested by the
24 Securities Commissioner, the adult protective services division,
25 or a law enforcement agency.

26 G. Subject to Subsection H of this section, a hold placed on
27 a transaction under Subsection F of this section expires on the 10th

1 business day after the date the dealer or investment adviser
2 submits the reports under Subsection C of this section.

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

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

27 J. A dealer or investment adviser that in good faith and

1 with the exercise of reasonable care places or does not place a hold
2 on a transaction under Subsection F(1) of this section is immune
3 from civil or criminal liability or disciplinary action resulting
4 from the action or failure to act.

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

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

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

27 SECTION 4. Chapter 48, Human Resources Code, is amended by

1 adding Subchapter B-1 to read as follows:

2 SUBCHAPTER B-1. FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

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 exploitation," "financial
8 institution," and "vulnerable adult" have the meanings assigned by
9 Section 280.001, Finance Code.

10 (3) "Securities professional" has the meaning
11 assigned by Section 45, The Securities Act (Article 581-45,
12 Vernon's Texas Civil Statutes).

13 Sec. 48.072. CERTAIN REPORTS OF SUSPECTED FINANCIAL
14 EXPLOITATION. (a) The executive commissioner, after consultation
15 with the banking commissioner of Texas, the savings and mortgage
16 lending commissioner, the credit union commissioner, and the
17 securities commissioner, by rule shall prescribe the form and
18 content of the report required to be submitted by a financial
19 institution under Section 280.002(b), Finance Code, and the report
20 required to be submitted by a dealer or investment adviser under
21 Subsection C, Section 45, The Securities Act (Article 581-45,
22 Vernon's Texas Civil Statutes). A report submitted by a financial
23 institution under Section 280.002(b), Finance Code, or a report
24 submitted by a dealer or investment adviser under Subsection C,
25 Section 45, The Securities Act (Article 581-45, Vernon's Texas
26 Civil Statutes), constitutes a report of suspected financial
27 exploitation of a vulnerable adult for purposes of this subchapter.

1 (b) In adopting rules under this section, the executive
2 commissioner shall ensure that a report of suspected financial
3 exploitation of a vulnerable adult described by Subsection (a)
4 includes to the extent possible the same information required to be
5 included in a report under Section 48.051(d).

6 (c) A financial institution that submits a report to the
7 department of suspected financial exploitation of a vulnerable
8 adult under Section 280.002(b), Finance Code, or a dealer or
9 investment adviser that submits a report to the department of
10 suspected financial exploitation of a vulnerable adult under
11 Subsection C, Section 45, The Securities Act (Article 581-45,
12 Vernon's Texas Civil Statutes), in accordance with this section is
13 not required to make an additional report of suspected abuse,
14 neglect, or exploitation under Section 48.051 for the same conduct
15 constituting the financial exploitation reported under this
16 section.

17 Sec. 48.073. ASSESSMENT, INVESTIGATION, AND DISPOSITION OF
18 REPORTS. (a) The executive commissioner by rule shall adopt
19 procedures for the assessment, investigation, and disposition of a
20 report of suspected financial exploitation of a vulnerable adult
21 received under Section 280.002(b), Finance Code, or Subsection C,
22 Section 45, The Securities Act (Article 581-45, Vernon's Texas
23 Civil Statutes), that must be similar to the procedures used for the
24 assessment, investigation, and disposition of a report of abuse,
25 neglect, or exploitation received by the department under this
26 chapter, other than a report received under Subchapter F.

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

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

3 (2) investigations similar to the investigations
4 required under Subchapter D, including requirements that the
5 department:

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

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

10 (C) if appropriate, implement a system to
11 investigate complex cases similar to the system implemented under
12 Section 48.1521;

13 (D) report criminal conduct to appropriate law
14 enforcement agencies similar to the reports under Section 48.1522;
15 and

16 (E) review certain cases involving multiple
17 reports under Section 48.051 and this subchapter similar to the
18 review performed under Section 48.1523; and

19 (3) a determination of services similar to the
20 determination required by Section 48.202.

21 Sec. 48.074. AUTHORITY OF DEPARTMENT OR OTHER AGENCY. The
22 department or another appropriate state agency has the authority to
23 act on or with respect to an allegation of financial exploitation of
24 a vulnerable adult under this subchapter to the same extent the
25 department or other agency has the authority to act on or with
26 respect to an allegation of abuse, neglect, or exploitation under
27 Subchapter B.

1 Sec. 48.075. ACCESS TO INVESTIGATION. (a) To implement an
2 investigation of reported financial exploitation of a vulnerable
3 adult, the probate court, as defined by Section 22.007, Estates
4 Code, may authorize entry into the place of residence of a
5 vulnerable adult.

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

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

12 (1) an investigation by the department or by another
13 protective services agency of suspected financial exploitation of a
14 vulnerable adult; or

15 (2) the provision of protective services to a
16 vulnerable adult.

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

19 (1) an investigation of suspected financial
20 exploitation of a vulnerable adult under this subchapter; or

21 (2) the provision of protective services, such as
22 removing a vulnerable adult to safer surroundings or safeguarding
23 the vulnerable adult's resources from financial exploitation.

24 Sec. 48.077. MEMORANDUM OF UNDERSTANDING. The commission,
25 the banking commissioner of Texas, the savings and mortgage lending
26 commissioner, the credit union commissioner, the securities
27 commissioner, and the department shall enter into a memorandum of

1 understanding regarding the reporting and investigation of
2 suspected financial exploitation of a vulnerable adult under this
3 subchapter.

4 Sec. 48.078. CONFIDENTIALITY. (a) All files, reports,
5 records, communications, and working papers used or developed by
6 the department or other state agency in an investigation made under
7 this subchapter or in providing services as a result of an
8 investigation are confidential and not subject to disclosure under
9 Chapter 552, Government Code.

10 (b) The department or investigating state agency may
11 establish procedures to exchange with another state agency or
12 governmental entity information that is necessary for the
13 department, state agency, or governmental entity to properly
14 execute its respective duties and responsibilities to provide
15 services to vulnerable adults under this chapter or other law. An
16 exchange of information under this subsection does not affect
17 whether the information is subject to disclosure under Chapter 552,
18 Government Code.

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

21 Sec. 48.104. NONAPPLICABILITY. (a) This subchapter does
22 not apply to a report of financial exploitation of a vulnerable
23 adult made under Subchapter B-1.

24 (b) The confidentiality of information received or provided
25 by the department in connection with a report of financial
26 exploitation of a vulnerable adult made under Subchapter B-1 is
27 governed by Section 48.078.

1 SECTION 6. Subchapter D, Chapter 48, Human Resources Code,
2 is amended by adding Section 48.1511 to read as follows:

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

7 SECTION 7. Section 59.006(a), Finance Code, is amended to
8 read as follows:

9 (a) This section provides the exclusive method for
10 compelled discovery of a record of a financial institution relating
11 to one or more customers but does not create a right of privacy in a
12 record. This section does not apply to and does not require or
13 authorize a financial institution to give a customer notice of:

14 (1) a demand or inquiry from a state or federal
15 government agency authorized by law to conduct an examination of
16 the financial institution;

17 (2) a record request from a state or federal
18 government agency or instrumentality under statutory or
19 administrative authority that provides for, or is accompanied by, a
20 specific mechanism for discovery and protection of a customer
21 record of a financial institution, including a record request from
22 a federal agency subject to the Right to Financial Privacy Act of
23 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the
24 Internal Revenue Service under Section 1205, Internal Revenue Code
25 of 1986;

26 (3) a record request from or report to a government
27 agency arising out of:

1 (A) the investigation or prosecution of a
2 criminal offense;

3 (B) the investigation of alleged abuse, neglect,
4 or exploitation of an elderly or disabled person or of alleged
5 financial exploitation of a vulnerable adult in accordance with
6 Chapter 48, Human Resources Code; or

7 (C) the assessment for or provision of
8 guardianship services under Subchapter E, Chapter 161, Human
9 Resources Code;

10 (4) a record request in connection with a garnishment
11 proceeding in which the financial institution is garnishee and the
12 customer is debtor;

13 (5) a record request by a duly appointed receiver for
14 the customer;

15 (6) an investigative demand or inquiry from a state
16 legislative investigating committee;

17 (7) an investigative demand or inquiry from the
18 attorney general of this state as authorized by law other than the
19 procedural law governing discovery in civil cases;

20 (8) the voluntary use or disclosure of a record by a
21 financial institution subject to other applicable state or federal
22 law; or

23 (9) a record request in connection with an
24 investigation conducted under Section 1054.151, 1054.152, or
25 1102.001, Estates Code.

26 SECTION 8. This Act takes effect September 1, 2017.