

By: Miles

S.B. No. 791

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the financial abuse of elderly persons, including  
3 requiring financial institutions to report suspected financial  
4 abuse of elderly persons; providing a civil penalty; creating  
5 criminal offenses.

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

7 SECTION 1. This Act shall be known as the Financial Elder  
8 Abuse and Exploitation Prevention Act.

9 SECTION 2. Subchapter D, Chapter 32, Penal Code, is amended  
10 by adding Section 32.55 to read as follows:

11 Sec. 32.55. FINANCIAL ABUSE OF ELDERLY INDIVIDUAL. (a) In  
12 this section:

13 (1) "Elderly individual" has the meaning assigned by  
14 Section 22.04.

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

21 (3) "Financial exploitation" means the wrongful or  
22 negligent taking, appropriation, obtaining, retention, or use of  
23 money or other property of another person by a person who has a  
24 relationship of confidence or trust with the other person.

1 Financial exploitation may involve coercion, manipulation,  
2 threats, intimidation, misrepresentation, or the exerting of undue  
3 influence. The term includes:

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

8 (B) the unauthorized taking of personal assets;

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

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

15 (b) For purposes of Subsection (a)(3), a person has a  
16 relationship of confidence or trust with another person if the  
17 person:

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

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

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

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

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

27 (c) A person commits an offense if the person with criminal

1 negligence engages in the financial abuse of an elderly individual.

2 (d) An offense under this section is:

3 (1) a Class A misdemeanor if the value of the property  
4 taken, appropriated, obtained, retained, or used is less than \$500;

5 (2) a felony of the third degree if the value of the  
6 property taken, appropriated, obtained, retained, or used is \$500  
7 or more but less than \$5,000;

8 (3) a felony of the second degree if the value of the  
9 property taken, appropriated, obtained, retained, or used is \$5,000  
10 or more but less than \$50,000; and

11 (4) a felony of the first degree if the value of the  
12 property taken, appropriated, obtained, retained, or used is  
13 \$50,000 or more.

14 (e) A person who is subject to prosecution under both this  
15 section and another section of this code may be prosecuted under  
16 either or both sections.

17 SECTION 3. Section 59.006(a), Finance Code, is amended to  
18 read as follows:

19 (a) This section provides the exclusive method for  
20 compelled discovery of a record of a financial institution relating  
21 to one or more customers but does not create a right of privacy in a  
22 record. This section does not apply to and does not require or  
23 authorize a financial institution to give a customer notice of:

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

27 (2) a record request from a state or federal

1 government agency or instrumentality under statutory or  
2 administrative authority that provides for, or is accompanied by, a  
3 specific mechanism for discovery and protection of a customer  
4 record of a financial institution, including a record request from  
5 a federal agency subject to the Right to Financial Privacy Act of  
6 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the  
7 Internal Revenue Service under Section 1205, Internal Revenue Code  
8 of 1986;

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

11 (A) the investigation or prosecution of a  
12 criminal offense;

13 (B) the investigation of alleged abuse, neglect,  
14 or exploitation of an elderly or disabled person or of alleged  
15 financial abuse of an elderly person in accordance with Chapter 48,  
16 Human Resources Code; or

17 (C) the assessment for or provision of  
18 guardianship services under Subchapter E, Chapter 161, Human  
19 Resources Code;

20 (4) a record request in connection with a garnishment  
21 proceeding in which the financial institution is garnishee and the  
22 customer is debtor;

23 (5) a record request by a duly appointed receiver for  
24 the customer;

25 (6) an investigative demand or inquiry from a state  
26 legislative investigating committee;

27 (7) an investigative demand or inquiry from the

1 attorney general of this state as authorized by law other than the  
2 procedural law governing discovery in civil cases;

3 (8) the voluntary use or disclosure of a record by a  
4 financial institution subject to other applicable state or federal  
5 law; or

6 (9) a record request in connection with an  
7 investigation conducted under Section [1054.151](#), [1054.152](#), or  
8 [1102.001](#), Estates Code.

9 SECTION 4. Subtitle Z, Title 3, Finance Code, is amended by  
10 adding Chapter 280 to read as follows:

11 CHAPTER 280. REPORTING OF FINANCIAL ABUSE OF ELDERLY PERSONS

12 Sec. 280.001. DEFINITIONS. In this chapter:

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

16 (2) "Elderly person" has the meaning assigned by  
17 Section [48.002](#), Human Resources Code.

18 (3) "Finance commission" means the Finance Commission  
19 of Texas.

20 (4) "Financial abuse" has the meaning assigned by  
21 Section [32.55](#), Penal Code.

22 (5) "Financial institution" has the meaning assigned  
23 by Section [277.001](#).

24 (6) "Financial regulatory officials" means the  
25 banking commissioner of Texas, the savings and mortgage lending  
26 commissioner, and the credit union commissioner.

27 Sec. 280.002. REPORTING FINANCIAL ABUSE OF ELDERLY PERSON.

1 (a) Notwithstanding any other law, if an officer or employee of a  
2 financial institution has a good faith belief that financial abuse  
3 of an elderly person has occurred or is occurring, the financial  
4 institution shall:

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

8 (2) notify the appropriate local law enforcement  
9 agency with jurisdiction over the municipality or county in which  
10 the elderly person resides of the suspected financial abuse for  
11 purposes of investigating and determining whether an offense under  
12 Section 32.55, Penal Code, or other law has occurred.

13 (b) The report and notification required by Subsection (a)  
14 must be made:

15 (1) by telephone or electronic means, not later than  
16 24 hours after the financial institution becomes aware of the  
17 suspected financial abuse; and

18 (2) in writing, not later than the third business day  
19 after the date the financial institution becomes aware of the  
20 suspected financial abuse.

21 (c) For purposes of Subsection (a), an officer's or  
22 employee's good faith belief must be acquired in connection with  
23 the provision of financial services by the financial institution to  
24 or on behalf of the elderly person and must be based on:

25 (1) the officer's or employee's observation or  
26 knowledge of an incident of suspected financial abuse, if the  
27 officer or employee has direct contact with the elderly person; or

1           (2) the presence of information indicating potential  
2 financial abuse during a review or approval process performed by  
3 the officer or employee in connection with the provision of  
4 financial services, if the officer or employee does not have direct  
5 contact with the elderly person but reviews or approves the elderly  
6 person's financial documents, records, or transactions.

7           (d) Nothing in this section shall be construed to require a  
8 financial institution to investigate an allegation of financial  
9 abuse made by an elderly person or other person.

10           Sec. 280.003. CONFIDENTIALITY OF INFORMATION. (a) Except  
11 as provided by Subsection (b), the following information is  
12 confidential and is not subject to disclosure to the public, except  
13 under court order:

14           (1) the information contained in a report or  
15 notification made under Section 280.002;

16           (2) the name of the financial institution making the  
17 report or notification or the identity of the officers or employees  
18 described by Section 280.002(a); and

19           (3) information provided by or submitted to a  
20 financial institution in connection with an investigation arising  
21 out of a report or notification made under Section 280.002.

22           (b) Information that is confidential under Subsection (a)  
23 may be disclosed only:

24           (1) to the adult protective services division or  
25 another state agency, a law enforcement agency, or the attorney  
26 general, in connection with the reporting or notification of or an  
27 investigation of suspected financial abuse of the elderly person to

1 whom the information pertains;

2 (2) to, or as authorized by, the elderly person or the  
3 guardian of the elderly person, unless the financial institution  
4 suspects the guardian of financial abuse of the elderly person; or

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

7 (c) A person commits an offense if the person discloses  
8 confidential information in violation of this section. An offense  
9 under this subsection is a Class C misdemeanor.

10 Sec. 280.004. IMMUNITY FROM LIABILITY. A financial  
11 institution that, or an officer or employee of the institution who,  
12 makes a report or notification in good faith under Section 280.002  
13 is immune from any criminal or civil liability arising from:

14 (1) the report or notification; or

15 (2) participation in any judicial proceeding arising  
16 from the report or notification.

17 Sec. 280.005. CIVIL PENALTY. (a) A financial institution  
18 that fails to make a report or notification in violation of this  
19 chapter is liable to this state for a civil penalty in an amount not  
20 to exceed \$25,000, unless a court finds the violation to be wilful,  
21 in which case the amount of the civil penalty may not exceed  
22 \$100,000.

23 (b) The attorney general may bring an action on behalf of  
24 this state to recover a civil penalty under Subsection (a).

25 Sec. 280.006. RULEMAKING. Subject to Section 48.072, Human  
26 Resources Code, the finance commission, the Credit Union  
27 Commission, and the executive commissioner of the Health and Human



1 Services Commission, after consulting with the financial  
2 regulatory officials and the Department of Family and Protective  
3 Services, shall jointly adopt rules necessary to implement this  
4 chapter, including rules that require each financial institution to  
5 implement a training program to:

6 (1) assist the institution's officers and employees in  
7 recognizing signs of potential financial abuse of an elderly  
8 person; and

9 (2) inform the institution's officers and employees  
10 about the reporting and notification requirements of this chapter.

11 SECTION 5. Subchapter A, Chapter 48, Human Resources Code,  
12 is amended by adding Section 48.008 to read as follows:

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

17 SECTION 6. Chapter 48, Human Resources Code, is amended by  
18 adding Subchapter B-1 to read as follows:

19 SUBCHAPTER B-1. FINANCIAL ABUSE OF ELDERLY PERSONS

20 Sec. 48.071. DEFINITIONS. In this subchapter:

21 (1) "Financial abuse" has the meaning assigned by  
22 Section 32.55, Penal Code.

23 (2) "Financial institution" and "financial regulatory  
24 officials" have the meanings assigned by Section 280.001, Finance  
25 Code.

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

27 (a) The executive commissioner, after consultation with the

1 financial regulatory officials, by rule shall prescribe the form  
2 and content of the report required to be made by a financial  
3 institution under Section 280.002, Finance Code. A report made by a  
4 financial institution under Section 280.002, Finance Code,  
5 constitutes a report of suspected financial abuse of an elderly  
6 person for purposes of this subchapter.

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

12 (c) A financial institution that makes a report to the  
13 department of suspected financial abuse of an elderly person under  
14 Section 280.002, Finance Code, in accordance with this section is  
15 not required to make an additional report of suspected abuse,  
16 neglect, or exploitation under Section 48.051 for the same conduct  
17 constituting the financial abuse reported under this section.

18 Sec. 48.073. ASSESSMENT, INVESTIGATION, AND DISPOSITION OF  
19 REPORTS. (a) The executive commissioner by rule shall adopt  
20 procedures for the assessment, investigation, and disposition of a  
21 report of suspected financial abuse of an elderly person received  
22 under Section 280.002, Finance Code, that must be similar to the  
23 procedures used for the assessment, investigation, and disposition  
24 of a report of abuse, neglect, or exploitation received by the  
25 department under this chapter, other than a report received under  
26 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 elderly person  
9 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 abuse of an  
24 elderly person 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 abuse of an elderly person, the  
3 probate court, as defined by Section 22.007, Estates Code, may  
4 authorize entry into the place of residence of an elderly person.

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

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

11           (1) an investigation by the department or by another  
12 protective services agency of suspected financial abuse of an  
13 elderly person; or

14           (2) the provision of protective services to an elderly  
15 person.

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

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

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

23       Sec. 48.077. MEMORANDUM OF UNDERSTANDING. The commission,  
24 the banking commissioner of Texas, the savings and mortgage lending  
25 commissioner, the credit union commissioner, and the department  
26 shall enter into a memorandum of understanding regarding the  
27 reporting and investigation of suspected financial abuse of an

1 elderly person under this subchapter.

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

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

17 SECTION 7. Subchapter C, Chapter 48, Human Resources Code,  
18 is amended by adding Section 48.104 to read as follows:

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

22 (b) The confidentiality of information received or provided  
23 by the department in connection with a report of financial abuse of  
24 an elderly person made under Subchapter B-1 is governed by Section  
25 48.078 and by Section 280.003, Finance Code.

26 SECTION 8. Subchapter D, Chapter 48, Human Resources Code,  
27 is amended by adding Section 48.1511 to read as follows:

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

5        SECTION 9. This Act takes effect September 1, 2017.