

By: Miles

S.B. No. 792

A BILL TO BE ENTITLED

AN ACT

relating to requiring financial institutions to report the suspected financial abuse of elderly persons; providing a civil and criminal penalty.

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. REPORTING OF FINANCIAL ABUSE OF ELDERLY PERSONS

Sec. 280.001. DEFINITIONS. (a) In this chapter:

(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) "Finance commission" means the Finance Commission of Texas.

(4) "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 the property of an elderly person by any means, including by exerting undue influence. The term includes financial exploitation.

(5) "Financial exploitation" means the wrongful or negligent taking, appropriation, obtaining, retention, or use of

1 the money or other property of an elderly person by a person who has  
2 a relationship of confidence or trust with the elderly person.  
3 Financial exploitation may involve coercion, manipulation,  
4 threats, intimidation, misrepresentation, or the exerting of undue  
5 influence. The term includes:

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

10 (B) the unauthorized taking of personal assets;

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

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

18 (6) "Financial institution" has the meaning assigned  
19 by Section 277.001.

20 (7) "Financial regulatory officials" means the  
21 banking commissioner of Texas, the savings and mortgage lending  
22 commissioner, and the credit union commissioner.

23 (b) For purposes of Subsection (a)(5), a person has a  
24 relationship of confidence or trust with an elderly person if the  
25 person:

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

1           (2) is a joint tenant or tenant-in-common with the  
2 elderly person;

3           (3) has a legal or fiduciary relationship with the  
4 elderly person;

5           (4) is a financial planner or investment professional  
6 who provides services to the elderly person; or

7           (5) is a paid or unpaid caregiver of the elderly  
8 person.

9           Sec. 280.002. REPORTING FINANCIAL ABUSE OF ELDERLY PERSONS.

10 (a) Notwithstanding any other law, if an officer or employee of a  
11 financial institution has a good faith belief that financial abuse  
12 of an elderly person has occurred or is occurring, the financial  
13 institution shall:

14           (1) subject to Subchapter B-1, Chapter 48, Human  
15 Resources Code, submit a report notifying the adult protective  
16 services division of the suspected financial abuse; and

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

22           (b) The report and notification required by Subsection (a)  
23 must be made:

24           (1) by telephone or electronic means, not later than  
25 24 hours after the financial institution becomes aware of the  
26 suspected financial abuse; and

27           (2) in writing, not later than the third business day

1 after the date the financial institution becomes aware of the  
2 suspected financial abuse.

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

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

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

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

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

23 (1) the information contained in a report submitted or  
24 notification made under this chapter;

25 (2) the name of the financial institution making the  
26 report or notification or the identity of the officers or employees  
27 described by Section 280.002(a); and

1           (3) information provided by or submitted to a  
2 financial institution in connection with an investigation arising  
3 out of a report submitted or notification made under Section  
4 280.002.

5           (b) Information that is confidential under Subsection (a)  
6 may be disclosed only:

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

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

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

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

20           Sec. 280.004. IMMUNITY FROM LIABILITY. A financial  
21 institution that is acting in good faith and that submits a report  
22 or makes a notification under this chapter is immune from any  
23 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           Sec. 280.005. CIVIL PENALTY. (a) A financial institution

1 that fails to submit a report or make a notification in violation of  
2 this chapter is liable to this state for a civil penalty in an  
3 amount not to exceed \$1,000, unless a court finds the violation to  
4 be wilful, in which case the amount of the civil penalty may not  
5 exceed \$5,000.

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

8 Sec. 280.006. RULEMAKING. Subject to Section 48.072, Human  
9 Resources Code, the finance commission, the Credit Union  
10 Commission, and the executive commissioner of the Health and Human  
11 Services Commission, after consulting with the financial  
12 regulatory officials and the Department of Family and Protective  
13 Services, shall jointly adopt rules necessary to implement this  
14 chapter, including rules that require each financial institution to  
15 implement a training program to:

16 (1) assist its officers and employees in recognizing  
17 signs of potential financial abuse of an elderly person; and

18 (2) inform its officers and employees about the  
19 reporting and notification requirements of this chapter.

20 SECTION 2. Section 59.006(a), Finance Code, is amended to  
21 read as follows:

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

27 (1) a demand or inquiry from a state or federal

1 government agency authorized by law to conduct an examination of  
2 the financial institution;

3 (2) a record request from a state or federal  
4 government agency or instrumentality under statutory or  
5 administrative authority that provides for, or is accompanied by, a  
6 specific mechanism for discovery and protection of a customer  
7 record of a financial institution, including a record request from  
8 a federal agency subject to the Right to Financial Privacy Act of  
9 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the  
10 Internal Revenue Service under Section 1205, Internal Revenue Code  
11 of 1986;

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

14 (A) the investigation or prosecution of a  
15 criminal offense;

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

20 (C) the assessment for or provision of  
21 guardianship services under Subchapter E, Chapter 161, Human  
22 Resources Code;

23 (4) a record request in connection with a garnishment  
24 proceeding in which the financial institution is garnishee and the  
25 customer is debtor;

26 (5) a record request by a duly appointed receiver for  
27 the customer;

1 (6) an investigative demand or inquiry from a state  
2 legislative investigating committee;

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

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

9 (9) a record request in connection with an  
10 investigation conducted under Section [1054.151](#), [1054.152](#), or  
11 [1102.001](#), Estates Code.

12 SECTION 3. Subchapter A, Chapter [48](#), Human Resources Code,  
13 is amended by adding Section 48.008 to read as follows:

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

18 SECTION 4. Chapter [48](#), Human Resources Code, is amended by  
19 adding Subchapter B-1 to read as follows:

20 SUBCHAPTER B-1. FINANCIAL ABUSE OF ELDERLY PERSONS

21 Sec. 48.071. DEFINITIONS. In this subchapter, "financial  
22 abuse," "financial institution," and "financial regulatory  
23 officials" have the meanings assigned by Section 280.001, Finance  
24 Code.

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

26 (a) The executive commissioner, after consultation with the  
27 financial regulatory officials, by rule shall prescribe the form



1 and content of a report submitted by a financial institution under  
2 Section 280.002, Finance Code. A report submitted by a financial  
3 institution under Section 280.002, Finance Code, constitutes a  
4 report of suspected financial abuse of an elderly person for  
5 purposes of this subchapter.

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

11 (c) A financial institution that submits a report to the  
12 department of suspected financial abuse of an elderly person under  
13 Section 280.002, Finance Code, in accordance with this section  
14 satisfies the requirement of making a report of suspected abuse,  
15 neglect, or exploitation, as applicable, under Section 48.051, if  
16 applicable.

17 Sec. 48.073. ASSESSMENT, INVESTIGATION, AND DISPOSITION OF  
18 REPORTS. The executive commissioner shall adopt rules regarding  
19 the assessment, investigation, and disposition of a report of  
20 suspected financial abuse of an elderly person received under  
21 Section 280.002, Finance Code. The executive commissioner shall  
22 model rules adopted under this section after the assessment,  
23 investigation, and disposition procedures used for reports of  
24 abuse, neglect, or exploitation received by the department under  
25 this chapter, other than a report received under Subchapter F, and  
26 shall include rules requiring:

27 (1) a risk assessment similar to the assessment

1 required under Section 48.004;

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

5 (A) take action on a report within the timeframe  
6 and manner provided by Section 48.151;

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

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

12 (D) report criminal conduct to appropriate law  
13 enforcement agencies similar to Section 48.1522; and

14 (E) review certain cases involving multiple  
15 reports under Section 48.051 and this subchapter similar to Section  
16 48.1523; and

17 (3) a determination of services similar to the  
18 determination required by Section 48.202.

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

26 Sec. 48.075. ACCESS TO INVESTIGATION. (a) To implement an  
27 investigation of reported financial abuse of an elderly person, the

1 probate court, as defined by Section 22.007, Estates Code, may  
2 authorize entry of the place of residence of an elderly person.

3 (b) A peace officer shall accompany and assist the person  
4 making a court-ordered entry under this section, if in the opinion  
5 of the court such action is necessary.

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

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

12 (2) the provision of protective services to an elderly  
13 person.

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

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

18 (2) the provision of protective services such as  
19 removal of an elderly person to safer surroundings or safeguarding  
20 the person's resources from financial abuse.

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

27 Sec. 48.078. CONFIDENTIALITY. (a) All files, reports,

1 records, communications, and working papers used or developed by  
2 the department or other state agency in an investigation made under  
3 this subchapter or in providing services as a result of an  
4 investigation are confidential and not subject to disclosure under  
5 Chapter 552, Government Code.

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

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

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

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

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

26 Sec. 48.1511. APPLICABILITY. This subchapter does not  
27 apply to an investigation conducted under Subchapter B-1 unless the

1 executive commissioner by rule requires the application of a  
2 provision of this subchapter.

3 SECTION 7. This Act takes effect September 1, 2017.