

SUBJECT: Reporting, addressing financial exploitation of certain vulnerable adults

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 5 ayes — Parker, Burrows, Dean, Holland, Longoria

0 nays

2 absent — Stephenson, E. Johnson

WITNESSES: For — Rodney Mogen, National Association of Insurance and Financial Advisors - Texas; Ann Baddour, Texas Appleseed; Celeste Embrey, Texas Bankers Association; Kelly Rodgers, Wells Fargo Bank; (*Registered, but did not testify*: Tim Morstad, AARP; Laura Rosen, Center for Public Policy Priorities; Dan Donohoe, Comerica Bank; Myra Leo, Financial Services Institute; Stephen Scurlock, Independent Bankers Association of Texas; Brian Yarbrough, JPMorgan Chase; David Farabee and Tim Vonkennel, National Association of Insurance and Financial Advisors; Billy Phenix, Securities Industry and Financial Markets Association (SIFMA); Lee Manross, Texas Association of Health Underwriters; Jennifer Cawley, Texas Association of Life and Health Insurers; Jeff Huffman, Texas Credit Union Association; Joshua Houston, Texas Impact; John Fleming, Texas Mortgage Bankers Association; James Thurston, United Ways of Texas)

On — Kez Wold, Department of Family and Protective Services; (*Registered, but did not testify*: Gloria Salinas, Attorney General; Lisa Kanne and Lauren Villa, Department of Family and Protective Services; John Morgan, State Securities Board)

BACKGROUND: Concerns have been raised that seniors lose a significant amount of money each year to financial exploitation, believed to be the most common type of abuse elderly adults face, and that certain individuals who are well situated to identify and prevent the financial exploitation of vulnerable adults may not have the appropriate statutory authority to do so.

DIGEST: CSHB 3921 would establish ways for financial institutions and securities professionals to report and address suspected financial exploitation of their clients who were 65 or older or had certain disabilities. If financial exploitation of a vulnerable adult was suspected, the bill would require financial institutions and securities professionals to report it to the Department of Family and Protective Services (DFPS) and the securities commissioner, as applicable, allow them to notify certain third parties familiar with the adult, and place a hold on financial transactions for a specified period.

Under the bill, financial exploitation would mean the wrongful or unauthorized taking or use of a person's money or other property or identifying information. It also could include an act or omission by a person, including through the use of a power of attorney, conservatorship, or guardianship, to obtain control through deception or undue influence over the person's property to deprive that person of ownership or benefit of it.

Reporting. The bill would require employees of financial institutions to report to the financial institution suspected financial exploitation of a vulnerable adult who was an account holder. Securities professionals who suspected such financial exploitation would have to notify the dealer or investment advisor for whom they served.

Financial institutions would assess any suspected financial exploitation and submit a report to DFPS. Securities dealers or investment advisors would have to report to both DFPS and the securities commissioner, according to rules prescribed by the State Securities Board. Reports would have to be submitted by the earlier of the date the financial institution, securities dealer, or investment advisor completed an assessment of the suspected financial exploitation or within five days of learning of it.

Third-party notification. CSHB 3921 would allow financial institutions, securities dealers, or investment advisors who reported suspected financial exploitation to DFPS and, if applicable, the securities commissioner to notify a third party who was reasonably associated with the vulnerable

adult and who was not suspected of financial exploitation.

Holds on transactions. The bill would allow financial institutions, securities dealers, and investment advisors who reported the suspected financial exploitation to DFPS and the securities commissioner, if applicable, to place a hold on transactions that involved the account of a vulnerable adult and was believed to be related to the suspected financial exploitation. A hold would be required to be placed if it was requested by DFPS, law enforcement, or the securities commissioner.

A hold would expire 10 business days after the report was made. If it was requested by law enforcement or a government agency investigating the potential exploitation, a financial institution, securities dealer, or investment adviser could extend the hold for a period of up to 30 days. The financial institution, dealer, or investment advisor also could petition a court to extend a hold, and a court could enter an order shortening or extending the hold or providing other relief.

Immunity. Under the bill, those who reported the suspected financial exploitation of a vulnerable adult, notified relevant third parties, or participated in a judicial proceeding arising from a report or notification would be immune from civil or criminal liability. Immunity would not be granted if they acted in bad faith or with a malicious purpose.

The bill also would establish immunity from civil or criminal liability or disciplinary action resulting from an action or failure to act for those who placed or did not place a hold on a transaction, if they did so in good faith.

Records. CSHB 3921 would require financial institutions, dealers, and investment advisors, to the extent permitted by federal law, to provide records related to the suspected financial exploitation of a vulnerable adult to DFPS, law enforcement, a prosecuting attorney's office, or the securities commissioner, if applicable, when reporting suspected incidents or upon request in accordance with an investigation.

Internal policies. CSHB 3921 would require financial institutions,

securities dealers, and investment advisors to adopt internal policies and procedures on the reporting and assessment requirements and on holding transactions involving the account of a vulnerable adult who was believed to be subject to financial exploitation. The policies and procedures could authorize the entity to report suspected financial exploitation to other appropriate agencies, including the attorney general, the Federal Trade Commission, and law enforcement.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, SB 2067 by Hancock, was considered in a public hearing of the Senate Committee on Business and Commerce on April 25 and left pending.