

BILL ANALYSIS

Senate Research Center

H.B. 3921
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that certain vulnerable adults lose a significant amount of money each year to fraud and financial exploitation. H.B. 3921 seeks to protect the financial well-being of these individuals by authorizing financial institutions, securities dealers, and investment advisers to place a hold on suspicious transactions involving these vulnerable adults and by requiring the reporting of suspected financial exploitation.

H.B. 3921 amends current law relating to the financial exploitation of certain vulnerable adults.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Securities Board in SECTION 2 (Article 581-1 et seq., Vernon's Texas Civil Statutes) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle Z, Title 3, Finance Code, by adding Chapter 280, as follows:

CHAPTER 280. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Sec. 280.001. DEFINITIONS. Defines "department," "exploitation," "financial exploitation," "financial institution," and "vulnerable adult."

Sec. 280.002. REPORTING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) Requires the employee, if an employee of a financial institution has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, to notify the financial institution of the suspected financial exploitation.

(b) Requires the financial institution, if a financial institution is notified of suspected financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, to assess the suspected financial exploitation and submit a report to the Department of Family and Protective Services (DFPS) in the same manner as and containing the same information required to be included in a report under Section 48.051 (Report), Human Resources Code. Requires the financial institution to submit the report required by this subsection not later than the earlier of certain dates.

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

(d) Requires each financial institution to adopt internal policies, program, plans, or procedures for the employees of the financial institution to make the

notification required under Subsection (a) and the financial institution to conduct the assessment and submit the report required under Subsection (b).

(e) Authorizes the policies, program, plans, or procedures adopted under Subsection (d) to authorize the financial institution to report the suspected financial exploitation to other appropriate agencies and entities in addition to DFPS, including the Texas attorney general (attorney general), the Federal Trade Commission, and the appropriate law enforcement agency.

Sec. 280.003. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. Authorizes the financial institution, if a financial institution submits a report of suspected financial exploitation of a vulnerable adult to DFPS under Section 280.002(b), to at the time the financial institution submits the report also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the financial institution suspects the third party of financial exploitation of the vulnerable adult.

Sec. 280.004. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) Provides that, notwithstanding any other law, if a financial institution submits a report of suspected financial exploitation of a vulnerable adult to DFPS under Section 280.002(b), the financial institution:

(1) is authorized to place a hold on certain transactions; and

(2) is required to place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by DFPS or a law enforcement agency.

(b) Provides that subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10th business day after the date the financial institution submits the report under Section 280.002(b).

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

(d) Requires each financial institution to adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under this section.

Sec. 280.005. IMMUNITY. (a) Provides that an employee of a financial institution who makes a notification under Section 280.002(a), a financial institution that submits a report under Section 280.002(b) or makes a notification to a third party under Section 280.003, or an employee who or financial institution that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the employee or financial institution acted in bad faith or with a malicious purpose.

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

Sec. 280.006. RECORDS. Requires a financial institution, to the extent permitted by state or federal law, to provide, on request, access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to DFPS, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to DFPS, law enforcement agency, or prosecuting attorney's office or at the request of DFPS, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

SECTION 2. Amends the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) by adding Section 45, as follows:

Sec. 45. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION. A. Defines "department," "exploitation," "financial exploitation," "vulnerable adult," and "securities professional."

B. Requires the securities professional or person serving in a legal capacity for the dealer or investment adviser, if a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, to notify the dealer or investment adviser of the suspected financial exploitation.

C. Requires the dealer or investment adviser, if a dealer or investment adviser is notified of suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, to assess the suspected financial exploitation and submit a report to the Securities Commissioner, in accordance with rules adopted under Subsection N of this section, and DFPS in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. Requires the dealer or investment adviser to submit the reports required by this subsection not later than the earlier of the date the dealer or investment adviser completes the dealer's or investment adviser's assessment of the suspected financial exploitation or the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

D. Provides that a dealer or investment adviser who submits a report to DFPS of suspected financial exploitation of a vulnerable adult under Subsection C of this section is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

E. Requires each dealer and investment adviser to adopt internal policies, programs, plans, or procedures for the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection B of this section and for the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection C of this section. Authorizes the policies, programs, plans, or procedures adopted under this subsection to authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Securities Commissioner and DFPS, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

F. Authorizes the dealer or investment adviser, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and DFPS under Subsection C of this section, to at the time the dealer or investment adviser submits the reports also notify a third party

reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult.

G. Provides that, notwithstanding any other law, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and DFPS under Subsection C of this section, the dealer or investment adviser:

(1) is authorized to place a hold on certain transactions; and

(2) is required to place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the Securities Commissioner, DFPS, or a law enforcement agency.

H. Provides that, subject to Subsection I of this section, a hold placed on any transaction under Subsection G of this section expires on the 10th business day after the date the dealer or investment adviser submits the report under Subsection C of this section.

I. Authorizes a dealer or investment adviser to extend a hold placed on any transaction under Subsection G of this section for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection H of this section if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. Authorizes the dealer or investment adviser to also petition a court to extend a hold placed on any transaction under Subsection G of this section beyond the period prescribed by Subsection H of this section. Authorizes a court to enter an order extending or shortening a hold or providing other relief.

J. Requires each dealer and investment adviser to adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under Subsection G of this section.

K. Provides that a securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Subsection B of this section, a dealer or investment adviser that submits a report under Subsection C of this section or makes a notification to a third party under Subsection F of this section, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

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

M. Requires a dealer or investment adviser, to the extent permitted by state or federal law, on request, to provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the Securities Commissioner, DFPS, a law enforcement agency, or a prosecuting attorney's office, either as part of the report to the Securities Commissioner, DFPS, law enforcement agency, or prosecuting attorney's office or at the request of the Securities Commissioner, DFPS, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

N. Requires the State Securities Board by rule to prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the Securities Commissioner under Subsection C of this section.

SECTION 3. Effective date: September 1, 2017.