

1 SB220  
2 173880-1  
3 By Senators Orr and Melson  
4 RFD: Governmental Affairs  
5 First Read: 11-FEB-16

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8 SYNOPSIS: This bill would require reports to the  
9 Alabama Securities Commission and the Department of  
10 Senior Services by certain brokers, agents, and  
11 others when the individual has a reasonable belief  
12 that financial exploitation of a vulnerable adult  
13 has been attempted or has occurred. The bill would  
14 authorize limited disclosure to third parties who  
15 are reasonably affiliated with the vulnerable  
16 adult. The bill would provide that disclosures may  
17 not be made to the third party if the qualified  
18 individual suspects the third party of the  
19 financial exploitation.

20  
21 A BILL  
22 TO BE ENTITLED  
23 AN ACT

24  
25 Relating to the protection of vulnerable adults; to  
26 require that qualified individuals who reasonably believe that  
27 financial exploitation of a vulnerable adult may have

1 occurred, been attempted, or is being attempted, to notify  
2 promptly the Department of Senior Services and the Alabama  
3 Securities Commission; to authorize the disclosure to third  
4 parties in certain instances where a vulnerable adult has some  
5 relationship; to prohibit disclosure to the third party if the  
6 qualified individual suspects the third party of the financial  
7 exploitation; to provide that broker-dealers and investment  
8 advisers may delay disbursing funds from a vulnerable adult's  
9 account; to provide immunity for administrative and civil  
10 actions based on certain actions of disclosure or delayed  
11 disbursements; and to require that broker-dealers and  
12 investment advisors to comply with certain requests for  
13 information.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. This act shall be known and may be cited  
16 as the Protection of Vulnerable Adults from Financial  
17 Exploitation Act.

18 Section 2. In this act, unless the context otherwise  
19 requires, the following words and terms shall have the  
20 following meanings:

21 (1) AGENT. The same meaning as in subdivision (2) of  
22 Section 8-6-2 of the Code of Alabama 1975.

23 (2) BROKER-DEALER. The same meaning as in  
24 subdivision (3) of Section 8-6-2 of the Code of Alabama 1975.

25 (3) COMMISSION. The Alabama Securities Commission.

26 (4) DEPARTMENT. The Department of Senior Services.

27 (5) FINANCIAL EXPLOITATION. Any of the following:

1           a. The wrongful or unauthorized taking, withholding,  
2 appropriation, or use of money, assets, or property of a  
3 vulnerable adult.

4           b. Any act or omission taken by a person, including  
5 through the use of a power of attorney, guardianship, or  
6 conservatorship of a vulnerable adult, to either of the  
7 following:

8           1. Obtain control through deception, intimidation,  
9 or undue influence over the vulnerable adult's money, assets,  
10 or property to deprive the vulnerable adult of the ownership,  
11 use, benefit, or possession of his or her money, assets, or  
12 property.

13           2. Convert money, assets, or property of the  
14 vulnerable adult to deprive the vulnerable adult of the  
15 ownership, use, benefit, or possession of his or her money,  
16 assets, or property.

17           (6) INVESTMENT ADVISER. The same meaning as in  
18 subdivision (18) of Section 8-6-2 of the Code of Alabama 1975.

19           (7) INVESTMENT ADVISER REPRESENTATIVE. The same  
20 meaning as in subdivision (19) of Section 8-6-2 of the Code of  
21 Alabama 1975.

22           (8) QUALIFIED INDIVIDUAL. Any agent, investment  
23 adviser representative, or person who serves in a supervisory,  
24 compliance, legal, or associated member capacity of a  
25 broker-dealer or investment adviser.

26           (9) REASONABLY ASSOCIATED INDIVIDUAL or ASSOCIATED  
27 MEMBER. An individual known to the investment adviser

1 representative, broker-dealer, or firm who is reasonably  
2 associated with the account.

3 (10) VULNERABLE ADULT. Any of the following:

4 a. A person 65 years of age or older.

5 b. A protected person included and defined in  
6 Chapter 9, Title 38 of the Code of Alabama 1975.

7 Section 3. If a qualified individual reasonably  
8 believes that financial exploitation of a vulnerable adult may  
9 have occurred, may have been attempted, or is being attempted,  
10 the qualified individual shall promptly notify the department  
11 and the commission.

12 Section 4. A qualified individual that in good faith  
13 and exercising reasonable care makes a disclosure of  
14 information pursuant to Section 3 shall be immune from  
15 administrative or civil liability that might otherwise arise  
16 from such disclosure or for any failure to notify.

17 Section 5. If a qualified individual reasonably  
18 believes that financial exploitation of a vulnerable adult may  
19 have occurred, may have been attempted, or is being attempted,  
20 the qualified individual may notify a reasonably associated  
21 individual, legal guardian, any third party previously  
22 designated by the vulnerable adult, conservator, co-trustee,  
23 successor trustee, or agent under a power of attorney of the  
24 vulnerable adult of such belief. Disclosure may not be made to  
25 a designated third party that is suspected of financial  
26 exploitation or other abuse of the vulnerable adult.

1           Section 6. A qualified individual that, in good  
2 faith and exercising reasonable care, complies with Section 5  
3 shall be immune from any administrative or civil liability  
4 that might otherwise arise from such disclosure.

5           Section 7. (a) A broker-dealer or investment adviser  
6 may delay a disbursement from an account of a vulnerable adult  
7 or an account on which a vulnerable adult is a beneficiary if:

8           (1) The broker-dealer, investment adviser, or  
9 qualified individual reasonably believes, after initiating an  
10 internal review of the requested disbursement and the  
11 suspected financial exploitation, that the requested  
12 disbursement may result in financial exploitation of a  
13 vulnerable adult; and

14           (2) The broker-dealer or investment adviser:

15           a. Immediately, but in no event more than two  
16 business days after the requested disbursement, provides  
17 written notification of the delay and the reason for the delay  
18 to all parties authorized to transact business on the account,  
19 unless any such party is reasonably believed to have engaged  
20 in suspected or attempted financial exploitation of the  
21 vulnerable adult;

22           b. Immediately, but in no event more than two  
23 business days after the requested disbursement, notifies the  
24 department and commission; and

25           c. Continues its internal review of the suspected or  
26 attempted financial exploitation of the vulnerable adult, as  
27 necessary, and reports any additional results of the

1 investigation to the department and commission within seven  
2 business days after the requested disbursement.

3 (b) Any delay of a disbursement as authorized by  
4 this section expires upon the sooner of:

5 (1) A determination by the broker-dealer or  
6 investment adviser that the disbursement will not result in  
7 financial exploitation of the vulnerable adult.

8 (2) Fifteen business days after the date on which  
9 the broker-dealer or investment adviser first delayed  
10 disbursement of the funds, unless either the department or the  
11 commission requests that the broker-dealer or investment  
12 adviser extend the delay, in which case the delay shall expire  
13 no more than 25 business days after the date on which the  
14 broker-dealer or investment adviser first delayed disbursement  
15 of the funds unless sooner terminated by either the department  
16 or commission or an order of a court of competent  
17 jurisdiction.

18 (c) A court of competent jurisdiction may enter an  
19 order extending the delay of the disbursement of funds or may  
20 order other protective relief based on the petition of the  
21 commission, department, broker-dealer, or investment adviser  
22 that initiated the delay under this section, or other  
23 interested party.

24 Section 8. A broker-dealer or investment adviser  
25 that, in good faith and exercising reasonable care, complies  
26 with Section 7 shall be immune from any administrative or

1 civil liability that might otherwise arise from such delay in  
2 a disbursement in accordance with this section.

3 Section 9. A broker-dealer or investment adviser  
4 shall provide access to or copies of records that are relevant  
5 to the suspected or attempted financial exploitation of a  
6 vulnerable adult to agencies charged with administering state  
7 adult protective services laws and to law enforcement, either  
8 as part of a referral to the agency or to law enforcement, or  
9 upon request of the agency or law enforcement pursuant to an  
10 investigation. The records may include historical records as  
11 well as records relating to the most recent transaction or  
12 transactions that may comprise financial exploitation of a  
13 vulnerable adult. All records made available to agencies under  
14 this section are not a public record as defined in any state  
15 public records law. Nothing in this section shall limit or  
16 otherwise impede the authority of the commission to access or  
17 examine the books and records of broker-dealers and investment  
18 advisers as otherwise provided by law.

19 Section 10. This act shall become effective on the  
20 first day of the third month following its passage and  
21 approval by the Governor, or its otherwise becoming law.