

By: Johnson of Dallas

H.B. No. 3972

A BILL TO BE ENTITLED

AN ACT

relating to the financial exploitation of certain elderly persons.

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

SECTION 1. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 45 to read as follows:

Sec. 45. PROTECTION OF ELDERLY PERSONS FROM FINANCIAL EXPLOITATION. A. In this section:

(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) "Financial exploitation" means the wrongful or negligent taking, appropriation, obtaining, retention, or use of money or other property of another person by a person who has a relationship of confidence or trust with the other person. Financial exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or the exerting of undue influence. The term includes:

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

1           (B) the unauthorized taking of personal assets;

2           (C) the misappropriation, misuse, or  
3 unauthorized transfer of another person's money from a personal or  
4 a joint account; and

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

8           (4) "Qualified individual" means an agent, an  
9 investment adviser representative, or a person who serves in a  
10 supervisory, compliance, or legal capacity for a dealer or  
11 investment adviser.

12           B. If a qualified individual rationally believes that  
13 financial exploitation of an elderly person who is an account  
14 holder with the dealer or investment adviser for whom the qualified  
15 individual is providing services has occurred or is occurring, the  
16 qualified individual:

17           (1) shall submit a report of the suspected financial  
18 exploitation to the Board in accordance with rules adopted under  
19 Subsection E of this section and the adult protective services  
20 division in accordance with Subchapter B-1, Chapter 48, Human  
21 Resources Code;

22           (2) may notify a third party that has a legal  
23 relationship with the elderly person of the suspected financial  
24 exploitation, unless the qualified individual suspects the third  
25 party of financial exploitation of the elderly person; and

26           (3) may place a hold on a disbursement from an account  
27 of the elderly person.

1        C. A qualified individual who submits a report, makes a  
2 notification, or places a hold on a disbursement from an account  
3 under Subsection B of this section is immune from any civil  
4 liability or disciplinary action resulting from the report,  
5 notification, or hold.

6        D. To the extent permitted by state or federal law, dealers  
7 and investment advisers shall comply with requests for information  
8 made in accordance with an investigation of suspected financial  
9 exploitation of an elderly person.

10       E. The Board by rule shall prescribe the form and content of  
11 the report required to be submitted by a qualified individual to the  
12 Board under Subsection B of this section.

13       SECTION 2. Subchapter A, Chapter 48, Human Resources Code,  
14 is amended by adding Section 48.008 to read as follows:

15       Sec. 48.008. CONSOLIDATION OF CERTAIN REPORTS. If  
16 cost-effective and feasible and to the extent permitted by law, the  
17 executive commissioner by rule may consolidate the form and  
18 procedures used to submit a report under Sections 48.051 and  
19 48.072.

20       SECTION 3. Chapter 48, Human Resources Code, is amended by  
21 adding Subchapter B-1 to read as follows:

22       SUBCHAPTER B-1. FINANCIAL EXPLOITATION OF ELDERLY PERSONS

23       Sec. 48.071. DEFINITIONS. In this subchapter, "financial  
24 exploitation" and "qualified individual" have the meanings  
25 assigned by Section 45, The Securities Act (Article 581-45,  
26 Vernon's Texas Civil Statutes).

27       Sec. 48.072. CERTAIN REPORTS OF SUSPECTED FINANCIAL

1 EXPLOITATION. (a) The executive commissioner, after consultation  
2 with the securities commissioner, by rule shall prescribe the form  
3 and content of the report required to be submitted by a qualified  
4 individual under Subsection B(1), Section 45, The Securities Act  
5 (Article 581-45, Vernon's Texas Civil Statutes). A report  
6 submitted by a qualified individual under Subsection B(1), Section  
7 45, The Securities Act (Article 581-45, Vernon's Texas Civil  
8 Statutes), constitutes a report of suspected financial  
9 exploitation of an elderly person for purposes of this subchapter.

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

15 (c) A qualified individual who submits a report to the  
16 department of suspected financial exploitation of an elderly person  
17 under Subsection B(1), Section 45, The Securities Act (Article  
18 581-45, Vernon's Texas Civil Statutes), in accordance with this  
19 section is not required to make an additional report of suspected  
20 abuse, neglect, or exploitation under Section 48.051 for the same  
21 conduct constituting the financial exploitation reported under  
22 this section.

23 Sec. 48.073. ASSESSMENT, INVESTIGATION, AND DISPOSITION OF  
24 REPORTS. (a) The executive commissioner by rule shall adopt  
25 procedures for the assessment, investigation, and disposition of a  
26 report of suspected financial exploitation of an elderly person  
27 received under Subsection B(1), Section 45, The Securities Act

1 (Article 581-45, Vernon's Texas Civil Statutes), that must be  
2 similar to the procedures used for the assessment, investigation,  
3 and disposition of a report of abuse, neglect, or exploitation  
4 received by the department under this chapter, other than a report  
5 received under Subchapter F.

6 (b) The procedures adopted under this section must require:

7 (1) a risk assessment similar to the assessment  
8 required under Section 48.004;

9 (2) investigations similar to the investigations  
10 required under Subchapter D, including requirements that the  
11 department:

12 (A) take action on a report within the time frame  
13 and in the manner provided by Section 48.151;

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

16 (C) if appropriate, implement a system to  
17 investigate complex cases similar to the system implemented under  
18 Section 48.1521;

19 (D) report criminal conduct to appropriate law  
20 enforcement agencies similar to the reports under Section 48.1522;  
21 and

22 (E) review certain cases involving multiple  
23 reports under Section 48.051 and this subchapter similar to the  
24 review performed under Section 48.1523; and

25 (3) a determination of services similar to the  
26 determination required by Section 48.202.

27 Sec. 48.074. AUTHORITY OF DEPARTMENT OR OTHER AGENCY. The

1 department or another appropriate state agency has the authority to  
2 act on or with respect to an allegation of financial exploitation of  
3 an elderly person under this subchapter to the same extent the  
4 department or other agency has the authority to act on or with  
5 respect to an allegation of abuse, neglect, or exploitation under  
6 Subchapter B.

7 Sec. 48.075. ACCESS TO INVESTIGATION. (a) To implement an  
8 investigation of reported financial exploitation of an elderly  
9 person, the probate court, as defined by Section 22.007, Estates  
10 Code, may authorize entry into the place of residence of an elderly  
11 person.

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

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

18 (1) an investigation by the department or by another  
19 protective services agency of suspected financial exploitation of  
20 an elderly person; or

21 (2) the provision of protective services to an elderly  
22 person.

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

25 (1) an investigation of suspected financial  
26 exploitation of an elderly person under this subchapter; or

27 (2) the provision of protective services, such as

1 removing an elderly person to safer surroundings or safeguarding  
2 the elderly person's resources from financial exploitation.

3 Sec. 48.077. MEMORANDUM OF UNDERSTANDING. The commission,  
4 the securities commissioner, and the department shall enter into a  
5 memorandum of understanding regarding the reporting and  
6 investigation of suspected financial exploitation of an elderly  
7 person under this subchapter.

8 Sec. 48.078. CONFIDENTIALITY. (a) All files, reports,  
9 records, communications, and working papers used or developed by  
10 the department or other state agency in an investigation made under  
11 this subchapter or in providing services as a result of an  
12 investigation are confidential and not subject to disclosure under  
13 Chapter 552, Government Code.

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

23 SECTION 4. Subchapter C, Chapter 48, Human Resources Code,  
24 is amended by adding Section 48.104 to read as follows:

25 Sec. 48.104. NONAPPLICABILITY. (a) This subchapter does  
26 not apply to a report of financial exploitation of an elderly person  
27 made under Subchapter B-1.

1       (b) The confidentiality of information received or provided  
2 by the department in connection with a report of financial  
3 exploitation of an elderly person made under Subchapter B-1 is  
4 governed by Section 48.078.

5       SECTION 5. Subchapter D, Chapter 48, Human Resources Code,  
6 is amended by adding Section 48.1511 to read as follows:

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

11       SECTION 6. This Act takes effect September 1, 2017.