HB211

173543-1

By Representatives Beckman, Greer, Butler, Martin, McMillan, Coleman, Baker, Sessions, Davis, Hill (M), Farley, Rowe, Fridy, Patterson and Polizos

RFD: Children and Senior Advocacy

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

A BILL
TO BE ENTITLED
AN ACT

Relating to the protection of vulnerable adults; to require that qualified individuals who reasonably believe that financial exploitation of a vulnerable adult may have
occurred, been attempted, or is being attempted, to notify promptly the Department of Senior Services and the Alabama Securities Commission; to authorize the disclosure to third parties in certain instances where a vulnerable adult has some relationship; to prohibit disclosure to the third party if the qualified individual suspects the third party of the financial exploitation; to provide that broker-dealers and investment advisers may delay disbursing funds from a vulnerable adult's account; to provide immunity for administrative and civil actions based on certain actions of disclosure or delayed disbursements; and to require that broker-dealers and investment advisors to comply with certain requests for information.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

(3) COMMISSION. The Alabama Securities Commission.

(4) DEPARTMENT. The Department of Senior Services.

(5) FINANCIAL EXPLOITATION. Any of the following:
a. The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a vulnerable adult.

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

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

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

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

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

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

(9) REASONABLY ASSOCIATED INDIVIDUAL or ASSOCIATED MEMBER. An individual known to the investment adviser
representative, broker-dealer, or firm who is reasonably associated with the account.

(10) VULNERABLE ADULT. Any of the following:
  a. A person 65 years of age or older.
  b. A protected person included and defined in Chapter 9, Title 38 of the Code of Alabama 1975.

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

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

Section 5. If a qualified individual reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the qualified individual may notify a reasonably associated individual, legal guardian, any third party previously designated by the vulnerable adult, conservator, co-trustee, successor trustee, or agent under a power of attorney of the vulnerable adult of such belief. Disclosure may not be made to a designated third party that is suspected of financial exploitation or other abuse of the vulnerable adult.
Section 6. A qualified individual that, in good faith and exercising reasonable care, complies with Section 5 shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

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

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

(2) The broker-dealer or investment adviser:

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

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

c. Continues its internal review of the suspected or attempted financial exploitation of the vulnerable adult, as necessary, and reports any additional results of the
investigation to the department and commission within seven 
business days after the requested disbursement.

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

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

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

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

Section 8. A broker-dealer or investment adviser 
that, in good faith and exercising reasonable care, complies 
with Section 7 shall be immune from any administrative or
civil liability that might otherwise arise from such delay in a disbursement in accordance with this section.

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

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