

Senate proposal of amendment

H. 112

An act relating to access to financial records in adult protective services investigations

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

(a)(1) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:

(1)(A) The investigative report shall be disclosed only to: the Commissioner or person designated to receive such records; persons assigned by the Commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the Office of Professional Regulation when deemed appropriate by the Commissioner; the Secretary of Education when deemed appropriate by the Commissioner; the Commissioner for Children and Families or designee; for purposes of review of expungement petitions filed pursuant to section 4916c of this title; the Commissioner of Financial Regulation when deemed appropriate by the Commissioner for an investigation related to financial exploitation; a law enforcement agency; the State's Attorney, or the Office of the Attorney General, when the Department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

(2)(B) Relevant information may be disclosed to the Secretary of Human Services, or the Secretary's designee, for the purpose of remediating or preventing abuse, neglect, or exploitation; to assist the Agency in its monitoring and oversight responsibilities; and in the course of a relief from abuse proceeding, guardianship proceeding, or any other court proceeding when the Commissioner deems it necessary to protect the victim, and the victim or his or her representative consents to the disclosure. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

(2) Notwithstanding subdivision (1)(A) of this subsection, financial information made available to an adult protective services investigator pursuant to section 6915 of this title may be used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this chapter. Relevant information may be disclosed to the Secretary of Human Services pursuant to subdivision (1)(B) of this subsection, and may also be disclosed to the Commissioner of Financial Regulation when the investigation relates to financial exploitation of a vulnerable adult.

* * *

Sec. 2. 33 V.S.A. § 6915 is added to read:

§ 6915. ACCESS TO FINANCIAL INFORMATION

(a) As used in this chapter:

(1) “A person having custody or control of the financial information” means:

(A) a bank as defined in 8 V.S.A. § 11101;

(B) a credit union as defined in 8 V.S.A. § 30101;

(C) a broker-dealer or investment advisor, as those terms are defined in 9 V.S.A. § 5102; or

(D) a mutual fund as defined in 8 V.S.A. § 3461.

(2) “Capacity” means an individual’s ability to make and communicate a decision regarding the issue that needs to be decided.

(3) “Financial information” means an original or copy of, or information derived from:

(A) a document that grants signature authority over an account held at a financial institution;

(B) a statement, ledger card, or other record of an account held at a financial institution that shows transactions in or with respect to that account;

(C) a check, clear draft, or money order that is drawn on a financial institution or issued and payable by or through a financial institution;

(D) any item, other than an institutional or periodic charge, that is made under an agreement between a financial institution and another person’s account held at a financial institution;

(E) any information that relates to a loan account or an application for a loan;

(F) information pertaining to an insurance or endowment policy, annuity contract, contributory or noncontributory pension fund, mutual fund, or security, as defined in 9 V.S.A. § 5102; or

(G) evidence of a transaction conducted by electronic or telephonic means.

(4) “Financial institution” means any financial services provider licensed, registered, or otherwise authorized to do business in Vermont, including a bank, credit union, broker-dealer, investment advisor, mutual fund, or investment company.

(b) A person having custody or control of the financial information of a vulnerable adult shall make the information or a copy of the information available to an adult protective services investigator upon receipt of a court order or receipt of the investigator’s written request.

(1) The request shall include a statement signed by the account holder, if he or she has capacity, or the account holder’s guardian with financial powers or agent under a power of attorney consenting to the release of the information to the investigator.

(2) If the vulnerable adult lacks capacity and does not have a guardian or agent, or if the vulnerable adult lacks capacity and his or her guardian or agent is the alleged perpetrator, the request shall include a statement signed by the investigator asserting that all of the following conditions exist:

(A) The account holder is an alleged victim of abuse, neglect, or financial exploitation.

(B) The alleged victim lacks the capacity to consent to the release of the financial information.

(C) Law enforcement is not involved in the investigation or has not requested a subpoena for the information.

(D) The alleged victim will suffer imminent harm if the investigation is delayed while the investigator obtains a court order authorizing the release of the information.

(E) Immediate enforcement activity that depends on the information would be materially and adversely affected by waiting until the alleged victim regains capacity.

(F) The Commissioner of Disabilities, Aging, and Independent Living has personally reviewed the request and confirmed that the conditions set forth in subdivisions (A) through (E) of this subdivision (2) have been met and that disclosure of the information is necessary to protect the alleged victim from abuse, neglect, or financial exploitation.

(c) If a guardian refuses to consent to the release of the alleged victim's financial information, the investigator may seek review of the guardian's refusal by filing a motion with the Probate Division of the Superior Court pursuant to 14 V.S.A. § 3062(c).

(d) If an agent under a power of attorney refuses to consent to the release of the alleged victim's financial information, the investigator may file a petition in Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent to consent to the release of the alleged victim's financial information.

(e) The investigator shall include a copy of the written request in the alleged victim's case file.

(f) The person having custody or control of the financial information shall not require the investigator to provide details of the investigation to support the request for production of the information.

(g) The information requested and released shall be used only to investigate the allegation of abuse, neglect, or financial exploitation or for the purposes set forth in subdivision 6911(a) (1)(B) of this title and shall not be used against the alleged victim.

(h) The person having custody or control of the financial information shall provide the information to the investigator as soon as possible but, absent extraordinary circumstances, no later than 10 business days following receipt of the investigator's written request or receipt of a court order or subpoena requiring disclosure of the information.

(i) A person who in good faith makes an alleged victim's financial information or a copy of the information available to an investigator in accordance with this section shall be immune from civil or criminal liability for disclosure of the information unless the person's actions constitute gross negligence, recklessness, or intentional misconduct. Nothing in this section shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

(j) The person having custody or control of the financial information of an alleged victim may charge the Department of Disabilities, Aging, and Independent Living no more than the actual cost of providing the information to the investigator and shall not refuse to provide the information until payment is received. A financial institution shall not charge the Department for the information if the financial institution would not charge if the request for the information had been made directly by the account holder.

Sec. 3. 8 V.S.A. § 10204 is amended to read:

§ 10204. EXCEPTIONS

This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make

any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.

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(25) Reports or disclosure of financial or other information to the Department of Disabilities, Aging, and Independent Living, pursuant to 33 V.S.A. §§ 6903(b) ~~and~~, 6904, and 6915.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to access to financial information in adult protective services investigations.