

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 112 entitled “An act relating to access to financial records in adult protective
4 services investigations” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 33 V.S.A. § 6915 is added to read:

8 § 6915. ACCESS TO FINANCIAL RECORDS

9 (a) As used in this chapter:

10 (1) “A person having custody or control of the financial records” means
11 a financial institution as defined in 8 V.S.A. § 11101 or a credit union as
12 defined in 8 V.S.A. § 30101.

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

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

19 (1) The request shall include a statement signed by the account holder, if
20 he or she has capacity, or the account holder’s guardian with financial powers

1 or agent under a power of attorney consenting to the release of the records to
2 the investigator.

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

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

9 (B) The alleged victim lacks the capacity to consent to the release of
10 the financial record.

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

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

16 (E) Immediate enforcement activity that depends on the records
17 would be materially and adversely affected by waiting until the alleged victim
18 remains capacity.

19 (F) The Commissioner of Disabilities, Aging, and Independent
20 Living or designee has reviewed the request and confirmed that the conditions
21 set forth in subdivisions (A) through (E) of this subdivision (2) have been met

1 and that disclosure of the records is necessary to protect the alleged victim
2 from abuse, neglect, or financial exploitation.

3 (c) If a guardian refuses to consent to the release of the alleged victim's
4 financial records, the investigator may seek review of the guardian's refusal by
5 filing a motion with the Probate Division of the Superior Court pursuant to
6 14 V.S.A. § 3062(c).

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

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

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

16 (g) The information requested and released shall be used only to investigate
17 the allegation of abuse, neglect, or financial exploitation or for the purposes set
18 forth in subdivision 6911(a)(2) of this title and shall not be used against the
19 alleged victim.

20 (h) The person having custody or control of the financial records shall
21 provide the records to the investigator as soon as possible but, absent

1 extraordinary circumstances, no later than 10 business days following receipt
2 of the investigator's written request or receipt of a court order or subpoena
3 requiring disclosure of the records.

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

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

18 (k) Records disclosed pursuant to this section are exempt from public
19 inspection and copying under the Public Records Act and shall be kept
20 confidential, and they may be used only in a judicial or administrative

1 proceeding or investigation directly related to a report required or authorized
2 under this chapter.

3 Sec. 2. 8 V.S.A. § 10204 is amended to read:

4 § 10204. EXCEPTIONS

5 This subchapter does not prohibit any of the activities listed in this section.
6 This section shall not be construed to require any financial institution to make
7 any disclosure not otherwise required by law. This section shall not be
8 construed to require or encourage any financial institution to alter any
9 procedures or practices not inconsistent with this subchapter. This section
10 shall not be construed to expand or create any authority in any person or entity
11 other than a financial institution.

12 * * *

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

16 Sec. 3. EFFECTIVE DATE

17 This act shall take effect on passage.

18 (Committee vote: _____)

19 _____

20 Representative _____

21 FOR THE COMMITTEE