

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. § 6911 is amended to read:

8 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

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

12 ~~(A)~~ The investigative report shall be disclosed only to: the  
13 Commissioner or person designated to receive such records; persons assigned  
14 by the Commissioner to investigate reports; the person reported to have  
15 abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his  
16 or her representative; the Office of Professional Regulation when deemed  
17 appropriate by the Commissioner; the Secretary of Education when deemed  
18 appropriate by the Commissioner; the Commissioner for Children and Families  
19 or designee; for purposes of review of expungement petitions filed pursuant to  
20 section 4916c of this title; the Commissioner of Financial Regulation when  
21 deemed appropriate by the Commissioner for an investigation related to

1 financial exploitation; a law enforcement agency; the State's Attorney, or the  
2 Office of the Attorney General, when the Department believes there may be  
3 grounds for criminal prosecution or civil enforcement action, or in the course  
4 of a criminal or a civil investigation. When disclosing information pursuant to  
5 this subdivision, reasonable efforts shall be made to limit the information to the  
6 minimum necessary to accomplish the intended purpose of the disclosure, and  
7 no other information, including the identity of the reporter, shall be released  
8 absent a court order.

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

20 (2) Notwithstanding subdivision (1)(A) of this subsection, financial records  
21 made available to an adult protective services investigator pursuant to section

1 6915 of this title may be used only in a judicial or administrative proceeding or  
2 investigation directly related to a report required or authorized under this  
3 chapter. Relevant information may be disclosed to the Secretary of Human  
4 Services pursuant to subdivision (1)(B) of this subsection, and may also be  
5 disclosed to the Commissioner of Financial Regulation when the investigation  
6 relates to financial exploitation of a vulnerable adult.

7 \* \* \*

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

9 § 6915. ACCESS TO FINANCIAL RECORDS

10 (a) As used in this chapter:

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

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

16 (3) **“Financial institution” shall have the same meaning as in 8**  
17 **V.S.A. § 11101 and shall include a credit union as defined in 8 V.S.A.**  
18 **§ 30101.**

19 (4) **“Financial records” means any original written or electronic**  
20 **document, recording, or other material; any copy of a document,**  
21 **recording, or other material; or any information contained in or known to**

1 **be derived from a document, recording, or other materials, held by or in**  
2 **the custody of a financial institution if the document, recording, copy,**  
3 **information, or other material is identifiable as pertaining to one or more**  
4 **customers of the financial institution.**

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

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

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

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

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

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

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

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

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

14          (c) If a guardian refuses to consent to the release of the alleged victim's  
15          financial records, the investigator may seek review of the guardian's refusal by  
16          filing a motion with the Probate Division of the Superior Court pursuant to  
17          14 V.S.A. § 3062(c).

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

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

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

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

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

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



1        This act shall take effect on passage.

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4        (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE