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H.112

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

4 It is hereby enacted by the General Assembly of the State of Vermont:

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

6 § 6915. ACCESS TO FINANCIAL RECORDS

7 (a) Definitions.

8 1. “A person having custody or control of the financial records” means
9 financial institutions, as defined in 8 V.S.A. §11101(32) and credit
10 unions, as defined in 8 V.S.A. §30101.

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

13 (b) A person having custody or control of the financial records shall make such
14 records or a copy of such records available to an adult protective services
15 investigator upon receipt of a court order or receipt of the investigator’s
16 written request that includes a:

17 (1) Statement signed by the account holder with capacity or the account
18 holder’s guardian with financial powers or agent under a power of attorney,
19 consenting to the release of the records to the investigator; or

1 (2) Statement signed by the investigator asserting that:

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

4 (B) The alleged victim lacks the capacity to consent to the release of
5 the financial record;

6 (C) Law enforcement is not involved in the investigation or has not
7 requested a subpoena for the records;

8 (D) The alleged victim will suffer imminent harm if the investigation is
9 delayed while the investigator obtains a court order authorizing the release of
10 the records;

11 (E) Immediate enforcement activity that depends on the records would
12 be materially and adversely affected by waiting until the alleged victim regains
13 capacity; and

14 (F) The Commissioner or designee has reviewed the request and
15 confirmed that conditions (A)-(E) have been met and that disclosure of the
16 records is necessary to protect the alleged victim from abuse, neglect, or
17 financial exploitation.

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

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

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

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

10 (g) The information requested and released shall be used only to investigate the
11 allegation of abuse, neglect, or financial exploitation or for purposes set forth
12 in 33 V.S.A. §6911(a)(2) and shall not be used against the alleged victim.

13 (h) The person having custody or control of the records shall provide the
14 records to the investigator as soon as possible, but, absent extraordinary
15 circumstances, not later than within 10 business days of receipt of the
16 investigator's written request or receipt of a court order or subpoena requiring
17 disclosure of the records.

18 (i) A person who in good faith makes an alleged victim's financial records or a
19 copy of such records available to an investigator in accordance with this
20 section shall be immune from civil or criminal liability for disclosure of the
21 records unless the person's actions constitute gross negligence, recklessness, or

1 intentional misconduct. Nothing in this subsection shall be construed to
2 provide civil or criminal immunity to a person suspected of having abused,
3 neglected, or exploited a vulnerable adult.

4 (j) The person having custody or control of the alleged victim's financial
5 records may charge the Department of Disabilities, Aging and Independent
6 Living no more than the actual cost of providing the records to the investigator
7 and shall not refuse to provide the records until the receipt of the payment. The
8 financial institution shall not charge the Department of Disabilities, Aging and
9 Independent Living if the financial institution would not charge had the request
10 for the records been made directly by the account holder.

11 (k) Records disclosed pursuant to this section are confidential and exempt
12 from public inspection and copying under the Public Records Act and may be
13 used only in a judicial or administrative proceeding or investigation directly
14 related to a report required or authorized under this section.

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

16 § 10204. Exceptions

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

20 Sec. 3. EFFECTIVE DATE

21 This act shall take effect on July 1, 2016.

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