

1 Amendments Proposed by Wells Fargo

2 February 24, 2016

3 H.112

4 **33 V.S.A. § 6902 is amended to read:**

5 **(14) "Vulnerable adult" means**

6 **(A) any person residing in this state and who is 65 years of age or older;**

7 **or**

8 **(B) any person between the ages of 18 and 64 years of age or older who:**

9 **(A)(i) is a resident of a facility required to be licensed under**
10 **chapter 71 of this title;**

11 **(B)(ii) is a resident of a psychiatric hospital or a psychiatric unit of**
12 **a hospital;**

13 **(C)(iii) has been receiving personal care services for more than one**
14 **month from a home health agency certified by the Vermont Department**
15 **of Health or from a person or organization that offers, provides, or**
16 **arranges for personal care; or**

17 **(D)(iv) regardless of residence or whether any type of service is**
18 **received, is impaired due to brain damage, infirmities of aging, mental**
19 **condition, or physical, psychiatric, or developmental disability:**

1 ~~(i)~~**(I)** that results in some impairment of the individual's ability
2 to provide for his or her own care without assistance, including the
3 provision of food, shelter, clothing, health care, supervision, or
4 management of finances; or

5 ~~(ii)~~**(II)** because of the disability or infirmity, the individual has
6 an impaired ability to protect himself or herself from abuse, neglect, or
7 exploitation.

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

9 § 6915. ACCESS TO FINANCIAL RECORDS

10 (a) A person having custody or control of the ~~financial~~ records of a
11 vulnerable adult ~~about for~~ whom a report is ~~made required or authorized~~
12 under section 6903 of this title shall make such records or a copy of such
13 records available to a law enforcement officer or an adult protective services
14 worker investigating whether the vulnerable adult was the victim of abuse,
15 neglect, or exploitation upon receipt of a written request for the records signed
16 by the law enforcement officer or adult protective services worker, as follows:

17 (1) For an alleged victim with capacity, the law enforcement officer or
18 adult protective services worker shall obtain the written consent of the alleged
19 victim prior to requesting the records.

20 (2)(A) For an alleged victim without capacity who has a court-appointed
21 guardian, the law enforcement officer or adult protective services worker shall

1 obtain the written consent of the guardian prior to requesting the records,
2 unless the guardian is the alleged perpetrator of the abuse, neglect, or
3 exploitation, in which case the officer or worker shall proceed pursuant to
4 subdivision (B) of this subdivision (2). A guardian who refuses to provide
5 consent pursuant to this section shall do so only if the guardian believes in
6 good faith that the refusal is in the best interests of the alleged victim. If a
7 guardian withholds consent, the law enforcement officer or adult protective
8 services worker may appeal to the Commissioner for a determination that
9 disclosure of the records is necessary to protect the alleged victim. If the
10 Commissioner determines that disclosure of the records is necessary to protect
11 the alleged victim, the Commissioner may direct the person with custody or
12 control of the records to disclose the records without the guardian's consent.

13 (B)(i) For an alleged victim without capacity who does not have a
14 guardian, the law enforcement officer or adult protective services worker shall
15 submit to the person with custody or control of the records a written statement
16 asserting that both of the following conditions exist:

17 (I) the records are needed to determine whether a violation of
18 law by a person other than the alleged victim has occurred, and the information
19 is not intended to be used against the alleged victim; and

20 (II) immediate enforcement activity that depends on the records
21 would be materially and adversely affected by waiting until the alleged victim
22 regains capacity.

1 (ii) The law enforcement officer or adult protective services
2 worker shall not be required to provide any details regarding the investigation
3 in support of the request for timely production of the records.

4 (b) If a vulnerable adult with capacity refuses to provide consent pursuant
5 to subdivision (a)(1) of this section, the person having custody or control of the
6 vulnerable adult's **financial** records shall not provide the records to the law
7 enforcement officer or adult protective services worker unless necessary to
8 comply with an order or warrant issued by a court, a subpoena or summons
9 issued by a judicial officer, or a grand jury subpoena, or as otherwise required
10 by law.

11 (c)(1) A law enforcement officer or adult protective services worker who
12 receives consent to obtain records from an alleged victim with capacity
13 pursuant to subdivision (a)(1) of this section or from the guardian of an alleged
14 victim without capacity pursuant to subdivision (a)(2)(A) of this section shall
15 include a copy of the written consent in the case file.

16 (2) A law enforcement officer or adult protective services worker who
17 obtains records pursuant to subdivision (a)(2)(B) of this section because the
18 alleged victim lacks capacity shall document in the case file the need for the
19 records obtained, including a copy of the written materials submitted to the
20 person with custody or control of the records pursuant to that subdivision.

21 (d)(1) For an alleged victim with capacity or an alleged victim without
22 capacity who has a court-appointed guardian, the custodian of the records shall

1 provide them to the requesting law enforcement officer or adult protective
2 services worker within 10 business days of the custodian's receipt of the
3 alleged victim's or guardian's written consent.

4 (2) If an alleged victim's guardian withholds consent but the
5 Commissioner determines that disclosure is necessary to protect the victim
6 pursuant to subdivision (a)(2)(A) of this section, the custodian of the records
7 shall provide them to the requesting law enforcement officer or adult protective
8 services worker within 10 business days of the custodian's receipt of the
9 Commissioner's determination.

10 (3) For an alleged victim without capacity who does not have a
11 guardian, the custodian of the records shall provide them to the requesting law
12 enforcement officer or adult protective services worker within 10 business
13 days of the custodian's receipt of the written statement described in
14 subdivision (a)(2)(B) of this section.

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

1 (f) The person having custody or control of the alleged victim’s **financial**
2 records may charge and collect from the **governmental agency employing the**
3 law enforcement officer or adult protective services worker **who is** requesting a
4 copy of such records the actual cost of providing the copy, provided that a
5 custodian shall not refuse to provide the records until receipt of the payment.

6 (g) Records disclosed pursuant to this section are confidential and exempt
7 from public inspection and copying under the Public Records Act and may be
8 used only in a judicial or administrative proceeding or investigation directly
9 related to a report required or authorized under this section.

10 (h) As used in this section, “capacity” means an individual’s ability to
11 make and communicate a decision regarding the issue that needs to be decided.

12 **(i) As used in this section “records” includes all original written or**
13 **electronic documents, recordings, or other materials; any copy of the**
14 **same; or any information contained in or known to be derived from a**
15 **document, recording, or other material pertaining to a vulnerable adult, a**
16 **business entity solely owned by the vulnerable adult or to a representative**
17 **of the vulnerable adult. A representative of the vulnerable adult means a**
18 **person or entity that is a guardian, conservator, personal representative,**
19 **trustee, custodian, attorney-in-fact, representative payee, nominee, agent**
20 **or other fiduciary who holds the property of and/or obtained credit for a**
21 **vulnerable adult. Records include, but are not limited to:**

1 **(1) Information provided on an application to obtain a loan, credit**
2 **account, deposit account or other financial product or service and/or to**
3 **guaranty a loan for another person; and a copy of any guaranty, account**
4 **and/or loan agreement if such account, financial product or service was**
5 **obtained (whether individually or jointly with another person).**

6 **(2) The identity of any beneficiary listed on a deposit and/or**
7 **brokerage account, the date on which the beneficiary designation was**
8 **added to the account, and information about any removed beneficiary.**

9 **(3) The identity of any person to whom the vulnerable adult has**
10 **provided a power of attorney as well as a copy of said power of attorney.**

11 **(4) Account historical records relating to transactions that may**
12 **constitute exploitation on any account, product or service, not to exceed 30**
13 **calendar days prior to the first act of suspected exploitation that was**
14 **reported or 30 calendar days after the last act of suspected exploitation**
15 **that was reported pursuant to section 6903 of this Title.**

16 **(5) With respect to the transfer of funds from the account of a**
17 **vulnerable adult or representative of a vulnerable adult to the account of a**
18 **third party when such transfer is suspected to involve exploitation, a**
19 **statement as to whether the account of the third party is open or closed,**
20 **the name of the third party (and if a business entity, the name of a person**
21 **associated with the business entity) and their last known address.**