

1 TO THE HONORABLE SENATE:

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

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

9 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

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

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

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

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

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

10 * * *

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

12 § 6915. ACCESS TO FINANCIAL **RECORDS INFORMATION**

13 (a) As used in this chapter:

14 (1) “A person having custody or control of the financial **records**
15 **information**” means **a financial institution:**

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

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

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

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

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

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

5 **(A) a document that grants signature authority over a deposit or**
6 **share account;**

7 **(B) a statement, ledger card, or other record of a deposit or share**
8 **account that shows transactions in or with respect to that deposit or**
9 **account;**

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

12 **(D) any item, other than an institutional or periodic charge, that is**
13 **made under an agreement between a financial institution and another**
14 **person's deposit or share account;**

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

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

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

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

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

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

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

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

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

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

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 information**.

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

9 (F) The Commissioner of Disabilities, Aging, and Independent
10 Living has personally reviewed the request and confirmed that the conditions
11 set forth in subdivisions (A) through (E) of this subdivision (2) have been met
12 and that disclosure of the **records information** is necessary to protect the
13 alleged 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 information**, the investigator may seek review of the
16 guardian’s refusal by filing a motion with the Probate Division of the Superior
17 Court pursuant to 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 information**, the investigator may file a
20 petition in Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent
21 to consent to the release of the alleged victim’s financial **records information**.

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**
4 **information** shall not require the investigator to provide details of the
5 investigation to support the request for production of the **records information**.

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**
11 **information** shall provide the **records information** to the investigator as soon
12 as possible but, absent extraordinary circumstances, no later than 10 business
13 days following receipt of the investigator’s written request or receipt of a court
14 order or subpoena requiring disclosure of the **records information**.

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

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on passage.

3 and that after passage the title of the bill be amended to read: “An act
4 relating to access to financial information in adult protective services
5 investigations”

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12 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE