

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred House Bill  
3 No. 265 entitled “An act relating to the State Long-Term Care Ombudsman”  
4 respectfully reports that it has considered the same and recommends that the  
5 Senate propose to the House that the bill be amended by striking out Sec. 3,  
6 effective date, and inserting in lieu thereof three new sections to be Secs. 3–5  
7 to read as follows:

8 Sec. 3. 33 V.S.A. chapter 69, subchapter 3 is redesignated to read:

9 Subchapter ~~3~~4. Vermont Vulnerable Adult Fatality Review Team

10 Sec. 4. 33 V.S.A. chapter 69, subchapter 3 is added to read:

11 Subchapter 3. Protecting Against Financial Exploitation

12 § 6951. DEFINITIONS

13 As used in this subchapter:

14 (1) “Agent” shall have the same meaning as in 14 V.S.A. § 3501.

15 (2) “Guardian” means a person appointed to serve as the guardian for a

16 vulnerable adult pursuant to the process established in 14 V.S.A. chapter 111

17 **or in 18 V.S.A. chapter 215.**

18 (3) “Financial exploitation” means:

19 (A) using, withholding, transferring, or disposing of funds or

20 property of a vulnerable adult, without or in excess of legal authority, for the

21 wrongful profit or advantage of another;

1           (B) acquiring possession or control of or an interest in funds or  
2           property of a vulnerable adult through the use of undue influence, harassment,  
3           duress, or fraud; or

4           (C) the act of forcing or compelling a vulnerable adult against his or  
5           her will to perform services for the profit or financial advantage of another.

6           (4) **“Independent counsel” means an attorney who represents only**  
7           **the interests of the vulnerable adult with respect to a transfer of real**  
8           **property.**

9           (5) **“Vulnerable adult” shall have the same meaning as in section 6902**  
10           **of this chapter. For purposes of this subchapter, “vulnerable adult” also**  
11           **includes an individual 18 years of age or older who meets one or more of**  
12           **the following conditions:**

13           **(A) the individual suffers from a significant limitation of**  
14           **mobility, vision, hearing, or emotional or mental functioning, or in the**  
15           **ability to read or write; or**

16           **(B) the individual is experiencing or recovering from a major**  
17           **illness or is facing or recovering from major surgery.**

18           **§ 6952. REAL ESTATE TRANSFER; UNDUE INFLUENCE;**

19           **PRESUMPTION**

20           **(a) If real property is transferred by a vulnerable adult or a vulnerable**  
21           **adult’s agent or guardian, there shall be a presumption that the transfer**

1 ~~was the result of undue influence if the court finds by a preponderance of~~  
2 ~~the evidence that:~~

3 ~~(1) the transfer was for less than fair market value; and~~

4 ~~(2) the vulnerable adult transferor was not represented in the~~  
5 ~~transfer by independent counsel.~~

6 ~~(b) If a presumption of undue influence is established under subsection~~  
7 ~~(a) of this section, the transferee may rebut the presumption by showing~~  
8 ~~by a preponderance of the evidence that there was no undue influence. If~~  
9 ~~the transferee fails to rebut the presumption, the vulnerable adult~~  
10 ~~transferor shall be entitled to void the transfer or execution and shall be~~  
11 ~~entitled to the relief set forth in section 6953 of this chapter.~~

12 § 6952. CIVIL ACTION FOR RELIEF FROM FINANCIAL

13 EXPLOITATION

14 (a) Right of action. A vulnerable adult or his or her agent or guardian may  
15 bring an action for relief from financial exploitation in the Civil Division of  
16 the Superior Court pursuant to this section for relief against a natural person  
17 who, with reckless disregard or with knowledge, has engaged in the  
18 financial exploitation of the vulnerable adult. An action under this section  
19 shall be dismissed if the court determines the vulnerable adult is capable of  
20 expressing his or her wishes and that he or she does not wish to pursue the  
21 action.

1           **(b)(1) Remedies. If the court finds that financial exploitation of a**  
2           **vulnerable adult has occurred, the court shall grant appropriate relief to the**  
3           **vulnerable adult, which may include money damages, injunctive relief,**  
4           **transfer of property,** reasonable costs, attorney’s fees, and equitable relief  
5           **such as deed rescission or reformation and imposition of a constructive**  
6           **trust on property.**

7           **(2) If the financial exploitation was intentional, the court may grant**  
8           **exemplary damages not to exceed three times the value of the funds or real**  
9           **property affected by the financial exploitation economic damages.**

10          **(c) Undue influence. If a court finds that undue influence is a good and**  
11          **valid defense to a transferee’s action to enforce a contract for the transfer**  
12          **of funds or real property, the court shall void the transfer.**

13          **Effects on other parties. No relief granted or otherwise obtained**  
14          **pursuant to this section shall affect or limit in any way the right, title, or**  
15          **interest of a good faith purchaser, mortgagee, holder of a security interest,**  
16          **or other party who obtained an interest in property after its transfer from**  
17          **the vulnerable adult to the natural person who engaged in financial**  
18          **exploitation. No relief granted or otherwise obtained pursuant to this**  
19          **section shall affect any mortgage deed to the extent of the value provided**  
20          **by the mortgagee.**

1           (d) Statute of limitations. The limitations period imposed by 12 V.S.A.  
2           § 511 shall apply to all actions brought pursuant to this subchapter. The cause  
3           of action shall accrue statute of limitations shall begin running when the  
4           vulnerable adult becomes aware that funds or property are being used in a  
5           manner that is clearly adverse to his or her ownership of the conduct  
6           qualifying as financial exploitation.

7           § 6953. OTHER RELIEF STILL AVAILABLE

8           Nothing in this subchapter shall be construed to limit the availability of  
9           other causes of action or relief at law or equity to which a vulnerable adult may  
10          be entitled under other State or federal laws or at common law.

11          Sec. 5. EFFECTIVE DATE

12          (a) Secs. 1 and 2 (State Long-Term Care Ombudsman) shall take effect  
13          on July 1, 2017.

14          (b) Secs. 3 and 4 (protecting against financial exploitation) and this  
15          section shall take effect on passage.

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18          (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE