

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 ~~34~~. 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;

Commented [A1]: Suggested by DAIL, to include all types of guardianships

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 Superior Court
16 pursuant to this section ~~for relief against a natural person who, with~~
17 ~~reckless disregard or with knowledge, has engaged in the financial~~
18 ~~exploitation of the vulnerable adult.~~ An action under this section shall be
19 ~~dismissed if the court determines the vulnerable adult is capable of expressing~~
20 ~~his or her wishes and that he or she does not wish to pursue the action.~~

Commented [A2]: Change to "natural person" suggested by Vermont Bar Association and Vermont Banking Association

Commented [A3]: Addition of "with reckless disregard or with knowledge" suggested by DAIL to mirror civil action of Attorney General at 13 VSA § 1384

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.~~

Commented [A4]: Deletion of “transfer of property” suggested by VLA in response to Vermont Bar Association and Vermont Banking Association concerns

Commented [A5]: Deletion of “such as deed rescission ...” suggested by Vermont Bar Association and Vermont Banking Association

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

Commented [A6]: Suggested by VLA in response to Vermont Bar Association and Vermont Banking Association concerns

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 the transferred property for**
17 **value after its transfer from the vulnerable adult to the natural person**
18 **who engaged in financial exploitation. after its transfer from the**
19 **vulnerable adult. No relief granted or otherwise obtained under this**
20 **section shall affect any mortgage deed to the extent of the value provided**
21 **by the mortgagee.**

Commented [A7]: Deletion suggested by Vermont Bar Association and Vermont Banking Association

Commented [A8]: Suggested by VLA in response to Vermont Bar Association and Vermont Banking Association

Commented [A9]: Deletion suggested by Vermont Bar Association and Vermont Banking Association

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**
3 **statute of limitations shall begin running when the vulnerable adult**
4 **becomes aware ~~that funds or property are being used in a manner that is~~**
5 **clearly adverse to his or her ownership of the conduct qualifying as**
6 **financial exploitation.**

Commented [A10]: Suggested by Attorney General's Office

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.**

16
17 (Committee vote: _____)

18 _____

19 Senator _____

20 FOR THE COMMITTEE