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H.283

Introduced by Representative Rachelson of Burlington

Referred to Committee on

Date:

Subject: Court procedure; human services; vulnerable adults; financial
exploitation

Statement of purpose of bill as introduced: This bill proposes to create legal
protections to limit the effects of a vulnerable adult’s exposure to financial
exploitation.

An act relating to protecting against financial exploitation of vulnerable
adults

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

Sec. 1. 33 V.S.A. chapter 69, subchapter 3 is redesignated to read:

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

Sec. 2. 33 V.S.A. chapter 69, subchapter 3 is added to read:

Subchapter 3. Protecting Against Financial Exploitation

§ 6951. DEFINITIONS

As used in this subchapter:

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

1 (2) “Guardian” means a person appointed to serve as the guardian for a
2 vulnerable adult pursuant to the process established in 14 V.S.A. chapter 111.

3 (3) “Financial exploitation” means:

4 (A) using, withholding, transferring, or disposing of funds or
5 property of a vulnerable adult, without or in excess of legal authority, for the
6 wrongful profit or advantage of another;

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

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

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

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

18 (A) the individual suffers from a significant limitation of mobility,
19 vision, hearing, or emotional or mental functioning, or in the ability to read or
20 write; or

1 (B) the individual is experiencing or recovering from a major illness
2 or is facing or recovering from major surgery.

3 § 6952. REAL ESTATE TRANSFER; UNDUE INFLUENCE;

4 PRESUMPTION

5 (a) If real property is transferred by a vulnerable adult or a vulnerable
6 adult's agent or guardian, there shall be a presumption that the transfer was the
7 result of undue influence if the court finds by a preponderance of the evidence
8 that:

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

10 (2) the vulnerable adult transferor was not represented in the transfer by
11 independent counsel.

12 (b) If a presumption of undue influence is established under subsection (a)
13 of this section, the transferee may rebut the presumption by showing by a
14 preponderance of the evidence that there was no undue influence. If the
15 transferee fails to rebut the presumption, the vulnerable adult transferor shall
16 be entitled to void the transfer or execution and shall be entitled to the relief set
17 forth in section 6953 of this chapter.

18 § 6953. CIVIL ACTION FOR RELIEF FROM FINANCIAL

19 EXPLOITATION

20 (a) Right of action. A vulnerable adult or his or her agent or guardian may
21 bring an action for relief from financial exploitation in Superior Court pursuant

1 to this section. An action under this section shall be dismissed if the court
2 determines the vulnerable adult is capable of expressing his or her wishes and
3 that he or she does not wish to pursue the action.

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

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

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

15 (d) Statute of limitations. The limitations period imposed by 12 V.S.A.
16 § 511 shall apply to all actions brought pursuant to this chapter. The cause of
17 action shall accrue when the vulnerable adult becomes aware that funds or
18 property are being used in a manner that is clearly adverse to his or her
19 ownership.

1 § 6954. OTHER RELIEF STILL AVAILABLE

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

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect on passage.