

1 H.413

2 Introduced by Representative Grad of Moretown

3 Referred to Committee on

4 Date:

5 Subject: Crimes; abuse, neglect, exploitation of vulnerable adult

6 Statement of purpose: This bill proposes to allow the attorney general to file a  
7 civil action against a person or caregiver who abuses, neglects, or exploits a  
8 vulnerable adult or against a person or caregiver who negligently allows  
9 another person or caregiver to abuse, neglect, or exploit a vulnerable adult.

10 An act relating to creating a civil action against those who abuse, neglect, or  
11 exploit a vulnerable adult

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

13 ~~Sec. 1. 13 V.S.A. § 1384 is added to read:~~

14 ~~§ 1384. CIVIL ACTION; RECOVERY BY ATTORNEY GENERAL~~

15 ~~(a) The attorney general may bring an action for damages against a person~~  
16 ~~or caregiver who, with reckless disregard or knowledge, violates section 1376~~  
17 ~~(abuse of a vulnerable adult), 1377 (abuse by unlawful restraint or~~  
18 ~~confinement), 1378 (neglect of a vulnerable adult), 1380 (financial~~  
19 ~~exploitation), or 1381 (exploitation of services) of this title, in addition to any~~  
20 ~~other remedies provided by law, not to exceed the following:~~

1 ~~(1) \$5,000.00 if no bodily injury results;~~

2 ~~(2) \$10,000.00 if bodily injury results;~~

3 ~~(3) \$20,000.00 if serious bodily injury results; and~~

4 ~~(4) \$50,000.00 if death results.~~

5 ~~(b) In a civil action brought under this section, the defendant shall have a~~  
6 ~~right to a jury trial.~~

7 Sec. 2. 13 V.S.A. § 1385 is added to read:

8 § 1385. CIVIL INVESTIGATION

9 (a)(1) If the attorney general has reason to believe a person or caregiver has  
10 violated section 1376, 1377, 1378, 1380, or 1381 of this title, or an  
11 administrative rule adopted pursuant to those sections, he or she may:

12 (A) examine or cause to be examined any books, records, papers,  
13 memoranda, and physical objects of whatever nature bearing upon each alleged  
14 violation.

15 (B) demand written responses under oath to questions bearing upon  
16 each alleged violation.

17 (C) require the attendance of such person or of any other person  
18 having knowledge in the premises in the county where such person resides or  
19 has a place of business, or in Washington County if such person is a  
20 nonresident or has no place of business within the state.

1 ~~(D) take testimony and require proof material for his or her~~  
2 information, and administer oaths or take acknowledgment in respect of any  
3 book, record, paper, or memorandum.

4 (2) The attorney general shall serve notice of the time, place, and cause  
5 of such examination or attendance, or notice of the cause of the demand for  
6 written responses, at least ten days prior to the date of such examination,  
7 personally or by certified mail, upon such person at his or her principal place  
8 of business, or, if such place is not known, to his or her last known address.

9 Any book, record, paper, memorandum, or other information produced by any  
10 person pursuant to this section shall not, unless otherwise ordered by a court of  
11 this state for good cause shown, be disclosed to any person other than the  
12 authorized agent or representative of the attorney general or another law  
13 enforcement officer engaged in legitimate law enforcement activities, unless  
14 with the consent of the person producing the same. This subsection shall not  
15 apply to any criminal investigation or prosecution.

16 (b) A person upon whom a notice is served pursuant to this section shall  
17 comply with the terms thereof unless otherwise provided by the court order.  
18 Any person who, with intent to avoid, evade, or prevent compliance, in whole  
19 or in part, with any civil investigation under this section, removes from any  
20 place, conceals, withholds, or destroys, mutilates, alters, or by any other means  
21 falsifies any documentary material in the possession, custody, or control of any

1 ~~person subject of any such notice or mistakes or conceals any information,~~  
2 ~~shall be subject to a civil fine of not more than \$5,000.00.~~

3 (c) If a person fails to comply with a notice served pursuant to  
4 subsection (b) of this section, or if satisfactory copying or reproduction of  
5 any such material cannot be done and such person refuses to surrender  
6 such material, the attorney general may file a petition with the superior court  
7 for enforcement of this section. Whenever any petition is filed under this  
8 section, the court shall have jurisdiction to hear and determine the matter  
9 presented, and to enter such orders as may be required to effectuate the  
10 provisions of this section. Failure to comply with an order issued pursuant to  
11 this section shall be punished as contempt.

12 Sec. 3. EFFECTIVE DATE

13 ~~This act shall take effect on July 1, 2011.~~

~~Sec. 1. 13 V.S.A. § 1384 is added to read:~~

~~§ 1384. CIVIL ACTION; RECOVERY BY ATTORNEY GENERAL~~

~~(a) The attorney general may bring an action for damages on behalf of the~~  
~~state against a person or caregiver who, with reckless disregard or with~~  
~~knowledge, violates section 1376 (abuse of a vulnerable adult), 1377 (abuse by~~  
~~unlawful restraint or confinement), 1378 (neglect of a vulnerable adult), 1380~~  
~~(financial exploitation), or 1381 (exploitation of services) of this title, in~~  
~~addition to any other remedies provided by law, not to exceed the following.~~

(1) \$5,000.00 if no bodily injury results;

(2) \$10,000.00 if bodily injury results;

(3) \$20,000.00 if serious bodily injury results; and

(4) \$50,000.00 if death results.

(b) In a civil action brought under this section, the defendant shall have a right to a jury trial.

(c) A good faith report of abuse, neglect, exploitation, or suspicion thereof pursuant to 33 V.S.A. § 6202 or federal law shall not alone be sufficient evidence that a person acted in reckless disregard for purposes of subsection (a) of this section.

Sec. 2. 13 V.S.A. § 1385 is added to read:

§ 1385. CIVIL INVESTIGATION

(a)(1) If the attorney general has reason to believe a person or caregiver has violated section 1376, 1377, 1378, 1380, or 1381 of this title or an administrative rule adopted pursuant to those sections, he or she may:

(A) examine or cause to be examined any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation.

(B) demand written responses under oath to questions bearing upon each alleged violation.

~~(C) require the attendance of such person or of any other person having knowledge on the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state.~~

~~(D) take testimony and require proof material for his or her information and administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.~~

~~(2) The attorney general shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses at least ten days prior to the date of such examination, personally or by certified mail, upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same. This subsection shall not apply to any criminal investigation or prosecution.~~

~~(b) A person upon whom a notice is served pursuant to this section shall comply with the terms thereof unless otherwise provided by the court order.~~

~~Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice or mistakes or conceals any information shall be subject to a civil fine of not more than \$5,000.00.~~

~~(c) If a person fails to comply with a notice served pursuant to subsection (b) of this section or if satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file a petition with the superior court for enforcement of this section. Whenever any petition is filed under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter such orders as may be required to effectuate the provisions of this section. Failure to comply with an order issued pursuant to this section shall be punished as contempt.~~

~~Sec. 3. 33 V.S.A. § 6911(a)(1) is amended to read:~~

~~(1) The investigative report shall be disclosed only to: the commissioner or person designated to receive such records; persons assigned by the commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the office of professional regulation when deemed appropriate~~

~~by the commissioner; a law enforcement agency, the state's attorney, or the office of the attorney general, when the department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.~~

*Sec. 4. EFFECTIVE DATE*

~~*This act shall take effect on July 1, 2012.*~~

*Sec. 1. 13 V.S.A. § 1384 is added to read:*

*§ 1384. CIVIL ACTION; RECOVERY BY ATTORNEY GENERAL*

*(a) The attorney general may bring an action for damages on behalf of the state against a person or caregiver who, with reckless disregard or with knowledge, violates section 1376 (abuse of a vulnerable adult), 1377 (abuse by unlawful restraint or confinement), 1378 (neglect of a vulnerable adult), 1380 (financial exploitation), or 1381 (exploitation of services) of this title, in addition to any other remedies provided by law, not to exceed the following:*

*(1) \$5,000.00 if no bodily injury results;*

*(2) \$10,000.00 if bodily injury results;*

*(3) \$20,000.00 if serious bodily injury results; and*



(4) \$50,000.00 if death results.

(b) In a civil action brought under this section, the defendant shall have a right to a jury trial.

(c) A good faith report of abuse, neglect, exploitation, or suspicion thereof pursuant to 33 V.S.A. § 6902 or federal law shall not alone be sufficient evidence that a person acted in reckless disregard for purposes of subsection (a) of this section.

Sec. 2. 13 V.S.A. § 1385 is added to read:

§ 1385. CIVIL INVESTIGATION

(a)(1) If the attorney general has reason to believe a person or caregiver has violated section 1376, 1377, 1378, 1380, or 1381 of this title or an administrative rule adopted pursuant to those sections, he or she may:

(A) examine or cause to be examined any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation.

(B) demand written responses under oath to questions bearing upon each alleged violation.

(C) require the attendance of such person or of any other person having knowledge on the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state.

(D) take testimony and require proof material for his or her information and administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(2) The attorney general shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses at least ten days prior to the date of such examination, personally or by certified mail, upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same. This subsection shall not apply to any criminal investigation or prosecution.

(b) A person upon whom a notice is served pursuant to this section shall comply with the terms thereof unless otherwise provided by the court order. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or

control of any person subject of any such notice or mistakes or conceals any information shall be subject to a civil fine of not more than \$5,000.00.

(c) If a person fails to comply with a notice served pursuant to subsection (b) of this section or if satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file a petition with the superior court for enforcement of this section. Whenever any petition is filed under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter such orders as may be required to effectuate the provisions of this section. Failure to comply with an order issued pursuant to this section shall be punished as contempt.

Sec. 3. 33 V.S.A. § 6911(a)(1) is amended to read:

(1) The investigative report shall be disclosed only to: the commissioner or person designated to receive such records; persons assigned by the commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the office of professional regulation when deemed appropriate by the commissioner; a law enforcement agency, the state's attorney, or the office of the attorney general, when the department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to

*this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.*

*Sec. 4. EFFECTIVE DATE*

*This act shall take effect on July 1, 2012.*