

Vermont General Assembly

BILL AS INTRODUCED

H. ____

Introduced by Representative _____

Referred to Committee on _____

Date: _____

**AN ACT RELATING TO STRENGTHENING PROTECTIONS AGAINST
ABUSE OF POWER OF ATTORNEY AND PROVIDING FOR
FORFEITURE OF INHERITANCE, AGENT OVERSIGHT,
AND ENHANCED ACCOUNTABILITY**

Prepared March 26, 2026

Incorporating compliance review recommendations

PREAMBLE AND FINDINGS

It is hereby found that:

- (1) Powers of attorney are among the most powerful legal instruments available to individuals, granting agents broad authority over the financial affairs and property of principals who may be elderly, incapacitated, or otherwise vulnerable.
- (2) Existing Vermont law provides remedies for agent misconduct under 14 V.S.A. §§ 4016 and 4017, but does not adequately address the detection of financial exploitation during the principal's lifetime or the disinheritance of agents who abuse their authority.
- (3) The expansion of oversight mechanisms, including the creation of a statutory monitor role and enhanced rights for drafting attorneys, will strengthen protections for Vermont's most vulnerable residents without imposing unnecessary burdens on agents acting in good faith.
- (4) Barring an agent who commits financial exploitation from inheriting from the principal's estate extends the public policy embodied in Vermont's existing forfeiture statute, 14 V.S.A. § 322, which bars individuals who intentionally and unlawfully kill a decedent from inheriting, to the analogous context of financial abuse of fiduciary authority.

Sec. 1. 14 V.S.A. § 4002 is amended to read:

§ 4002. Definitions

As used in this chapter:

* * *

(17) “**Drafting attorney**” means the attorney who prepared the power of attorney executed by the principal.

(18) “**Financial exploitation**” means the wrongful or unauthorized taking, withholding, appropriation, conversion, or use of a principal’s money, assets, or property, or the use of undue influence, coercion, or deception to obtain control over a principal’s money, assets, or property, through the use of authority granted under a power of attorney.

(19) “**Monitor**” means a person designated by the principal pursuant to section 4060 of this title to oversee the conduct of an agent under a power of attorney.

Sec. 2. 14 V.S.A. § 4014 is amended to read:

§ 4014. Agent's duties

* * *

(b)(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal **including sufficient documentation to identify:**

- (A) the date of each transaction;**
- (B) the amount or value of the transaction;**
- (C) the purpose of the transaction; and**
- (D) the person or entity involved in the transaction.**

* * *

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, **a drafting attorney authorized in the power of attorney or acting pursuant to section 4059 of this title, a monitor designated by the principal pursuant to section 4060 of this title,** or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

(i) An agent who, without reasonable cause, fails to comply with a request for records under subsection (h) of this section within the time periods specified therein shall be liable to the requesting party for reasonable attorney's fees and costs incurred in enforcing the request.

Sec. 3. 14 V.S.A. § 4016 is amended to read:

§ 4016. Judicial relief

(a) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

- (1) the principal or the agent;
- (2) a guardian or other fiduciary acting for the principal, including an executor or administrator of the estate of a deceased principal;
- (3) a person authorized to make health-care decisions for the principal;
- (4) the principal's spouse, parent, or descendant;
- (5) an individual who would qualify as an heir of the principal under the laws of intestacy;
- (6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal who has a financial interest in the principal's estate;
- (7) a governmental agency having regulatory authority to protect the welfare of the principal;
- (8) the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare;
- (9) a person asked to accept the power of attorney;
- (10) the drafting attorney who prepared the power of attorney; or**
- (11) a monitor designated by the principal pursuant to section 4060 of this title.**

(b) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

(c) In any proceeding brought under this section by a drafting attorney or a monitor, the court may award reasonable attorney's fees, costs, and expenses to the petitioner from the principal's estate or, if the court finds that the agent engaged in financial exploitation, abuse, or misuse of authority, from assets recovered from the agent.

Sec. 4. 14 V.S.A. chapter 127 is amended by adding § 4059 to read:

§ 4059. Safe harbor for drafting attorney reporting financial exploitation

(a) Notwithstanding any provision of law relating to confidentiality, including the Vermont Rules of Professional Conduct, a drafting attorney who reasonably believes that an agent acting under a power of attorney is engaging in financial exploitation, abuse, or misuse of the authority granted under the power of attorney may disclose confidential information to the extent reasonably necessary to:

- (1) prevent, report, or investigate financial exploitation of the principal;
- (2) notify a financial institution involved in transactions conducted by the agent;
- (3) notify the Adult Protective Services program within the Department of Disabilities, Aging, and Independent Living; or
- (4) petition the Probate Division of the Superior Court for review of the agent's conduct under section 4016 of this title.

(b) A drafting attorney acting pursuant to subsection (a) of this section may request records from the agent under subsection 4014(h) of this title, regardless of whether the power of attorney expressly authorizes such requests, if the drafting attorney has a reasonable belief that financial exploitation is occurring or has occurred.

(c) A drafting attorney who makes a disclosure or requests records under this section in good faith shall be immune from civil liability and from any disciplinary action arising from the disclosure or request.

(d) A disclosure authorized by this section shall be limited to information reasonably necessary to accomplish the purposes described in subsection (a) of this section.

(e) Nothing in this section shall be construed to impose upon a drafting attorney a duty to monitor the conduct of an agent or to investigate the agent's actions under the power of attorney.

(f) A drafting attorney who takes action authorized under this section, including investigation, disclosure, notification to a financial institution or Adult Protective Services, or filing a petition with the Probate Division of the Superior Court, shall be entitled to reasonable compensation and reimbursement of costs and expenses, including reasonable attorney's fees, from the assets of the principal's estate.

(g) If the Probate Division of the Superior Court determines that a drafting attorney's action under this section was taken in good faith and was reasonable under the circumstances, the court shall award the drafting attorney reasonable compensation and reimbursement of costs and expenses from the principal's estate. The court may order that such compensation and reimbursement be paid from assets recovered from the agent if the court finds that the agent engaged in financial exploitation, abuse, or misuse of authority.

(h) A claim for compensation under this section shall not be subordinate to any claim of the agent for compensation or reimbursement.

Drafter's Note: Subsections (e) through (g) are new. They address the practical barrier that without a compensation mechanism, the safe harbor in subsections (b)–(d) is unlikely to be used. The compensation right runs against the principal's estate, consistent with how agent compensation is handled under § 4013 of the UPOA and how guardian compensation is handled under Vermont's guardianship statutes. Subsection (f) gives the Probate Court authority to order payment from recovered assets where the agent is found to have engaged in exploitation—ensuring that the cost of protecting the principal falls on the wrongdoer, not the principal's estate, whenever possible. Subsection (g) ensures the drafting attorney's claim has priority over the agent's compensation claim, preventing a bad-faith agent from depleting the estate and then claiming the attorney's protective efforts cannot be paid.

Sec. 5. 14 V.S.A. chapter 127 is amended by adding § 4060 to read:

§ 4060. Monitor oversight

(a) Designation. A principal may designate one or more persons to serve as a monitor of the agent's conduct under a power of attorney. The designation shall be made in the power of attorney or in a separate writing signed by the principal and acknowledged before a notary public.

(b) Qualifications and disqualifications. A monitor shall be an individual who is at least 18 years of age and who is not:

- (1) the agent or a successor agent designated under the same power of attorney;
- (2) an employee or business associate of the agent, unless the principal expressly authorizes such designation in the power of attorney; or
- (3) a person who has been convicted of a crime involving dishonesty, fraud, or financial exploitation.

(c) Powers of monitor. A monitor may:

- (1) request and receive records relating to the agent's exercise of authority under subsection 4014(h) of this title;
- (2) receive copies of financial statements or account records relating to the principal's property;
- (3) communicate with financial institutions regarding transactions conducted by the agent;
- (4) petition the Probate Division of the Superior Court for review of the agent's conduct under section 4016 of this title; and
- (5) report suspected financial exploitation to the Adult Protective Services program within the Department of Disabilities, Aging, and Independent Living or to a law enforcement agency.

(d) Limitations. A monitor shall have no authority to act as an agent for the principal solely by reason of serving as a monitor. A monitor shall not direct or control the agent's exercise of authority under the power of attorney.

(e) Duty of care. A monitor who has accepted designation shall act in good faith and with reasonable diligence in exercising the monitor's powers under this section. A monitor shall not be liable for the actions of the agent unless the monitor knowingly participated in or concealed a breach of duty by the agent.

(f) Compensation. Unless the power of attorney otherwise provides, a monitor is entitled to reimbursement of reasonable expenses incurred in performing the monitor's duties under this section. The power of attorney may provide for reasonable compensation of the monitor.

(g) Resignation and removal. A monitor may resign by giving written notice to the principal or, if the principal is incapacitated or unavailable, to the agent, any successor monitor, and any guardian appointed for the principal. A court may remove a monitor for cause upon petition by any person listed in subsection 4016(a) of this title.

(h) Immunity for third parties. A person who in good faith provides records or information to a monitor pursuant to this section shall be immune from civil liability arising from such disclosure.

Sec. 6. 14 V.S.A. chapter 127 is amended by adding § 4070 to read:

§ 4070. Forfeiture of inheritance for abuse of power of attorney

(a) Disqualification from inheritance. An agent who is found by a court to have committed financial exploitation of the principal through the use of authority granted under a power of attorney shall be disqualified from inheriting from or receiving any property or benefit from the estate of the principal.

(b) Scope of disqualification. The disqualification under subsection (a) of this section applies to property passing through:

- (1) a will;
- (2) intestate succession;
- (3) nonprobate transfers, including joint accounts and transfer-on-death designations; and
- (4) beneficiary designations in insurance policies, retirement plans, or other contractual arrangements.

(c) Effect of disqualification. Property that would otherwise pass to the disqualified agent shall pass as if the agent had predeceased the principal.

(d) Standard of proof; court determination. A determination that an agent committed financial exploitation under this section may be established by:

- (1) a criminal conviction involving financial exploitation, fraud, theft, or embezzlement of the principal's property, which shall create a conclusive presumption of financial exploitation; or
- (2) a civil determination by the Probate Division of the Superior Court based on clear and convincing evidence.

(e) Petition for determination. The following persons may petition the Probate Division of the Superior Court to determine whether an agent is disqualified under this section:

- (1) the personal representative of the estate;
- (2) an heir or devisee of the principal;
- (3) a creditor or other interested person;
- (4) a governmental agency responsible for protecting vulnerable adults, including the Adult Protective Services program within the Department of Disabilities, Aging, and Independent Living;
- (5) the drafting attorney who prepared the power of attorney; or**
- (6) a monitor designated by the principal pursuant to section 4060 of this title.**

(f) Statute of limitations. A petition under subsection (e) of this section shall be filed no later than two years after the date of the principal's death or two years after the discovery of the financial exploitation, whichever is later, but in no event more than five years after the date of the principal's death.

(g) Remedies. If the court determines that an agent is disqualified under this section, the court may, in addition to ordering the forfeiture described in subsections (a) through (c) of this section:

- (1) order restitution of property wrongfully obtained by the agent;
- (2) impose a constructive trust over property received by the agent from the principal or the principal's estate;
- (3) surcharge the agent for losses to the estate resulting from the financial exploitation; or
- (4) grant other equitable relief necessary to prevent unjust enrichment.

(h) Proportional forfeiture. The court may, in its discretion, limit the forfeiture under subsection (a) of this section to a portion of the agent's inheritance where the court finds that:

- (1) the financial exploitation was limited in scope relative to the overall estate;
- (2) the agent made substantial restitution prior to the principal's death; or
- (3) complete forfeiture would be disproportionate to the harm caused, considering all relevant circumstances.

(i) Relationship to other law. The remedies provided in this section are in addition to any other civil or criminal remedies available under Vermont law, including but not limited to sections 4017, 4059, and 4106 of this title and section 322 of this title. Prosecution or civil proceedings under this section shall not preclude prosecution or proceedings for any other offense or claim arising from the same conduct. The court shall take into account any restitution or damages previously awarded to the estate in determining the relief to be granted under subsection (g) of this section to avoid double recovery.

Sec. 7. 14 V.S.A. § 4017 is amended to read:

§ 4017. Agent's liability

An agent who violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

- (1) restore the value of the principal's property to what it would have been had the violation not occurred;
- (2) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf;
- (3) reimburse the reasonable attorney's fees and costs incurred by the principal or the principal's successor in interest in pursuing rectification of the violation by the agent; and
- (4) pay such other amounts, damages, costs, or expenses that the court may award.

(b) The court may award treble damages where the agent's violation was willful or involved financial exploitation as defined in subdivision 4002(18) of this title.

Sec. 8. 14 V.S.A. § 4051 is amended to read:

§ 4051. Statutory form power of attorney

After the section titled “SPECIAL INSTRUCTIONS (OPTIONAL)”, add the following:

OVERSIGHT OF AGENT (OPTIONAL)

The principal may authorize one or more oversight measures regarding the conduct of the agent. If no boxes are checked below, no oversight measures apply unless ordered by a court.

Drafting Attorney Oversight

- The attorney who prepared this power of attorney may receive account statements or financial records relating to transactions conducted by the agent.
- The attorney who prepared this power of attorney may request an accounting from the agent regarding actions taken on behalf of the principal.
- The attorney who prepared this power of attorney may petition the Probate Division of the Superior Court if the attorney reasonably believes the agent is engaging in financial exploitation or misuse of authority.

Monitor Designation

- I designate the following person as a monitor of the agent’s conduct pursuant to 14 V.S.A. § 4060:

Name of Monitor: _____

Monitor’s Address: _____

Monitor’s Telephone Number: _____

Periodic Reporting

- The agent shall provide periodic written reports of transactions conducted on behalf of the principal to the following person or persons: _____

Frequency of reporting:

- Monthly Quarterly Annually Other: _____

Sec. 9. Applicability

- (a) Sections 1 through 5 and section 8 of this act apply to all powers of attorney created on or after the effective date of this act and, to the extent consistent with 14 V.S.A. § 4063, to powers of attorney created before the effective date of this act.
- (b) Section 6 of this act applies to estates of decedents dying on or after the effective date of this act, regardless of when the power of attorney was executed.
- (c) Section 7 of this act applies to violations occurring on or after the effective date of this act.

Sec. 10. Effective date

This act shall take effect on July 1 following passage.

DRAFTER’S NOTES AND COMMENTARY

The following notes are provided for legislative counsel and committee review and are not part of the statutory text.

1. Structural Placement

All provisions are placed within 14 V.S.A. Chapter 127 (Vermont Uniform Power of Attorney Act). New definitions are added to existing § 4002 rather than creating a standalone definitions section, ensuring consistency with the UPOA’s existing definitional framework. The forfeiture provision is placed at § 4070 to maintain separation from the substantive POA administration provisions (§§ 4001–4063) while remaining within the same chapter for ease of reference. Cross-references to the existing slayer statute at 14 V.S.A. § 322 are included in § 4070(i) to clarify the relationship between the two forfeiture regimes.

2. Key Changes from Prior Drafts

Resolved “shall/may” ambiguity in § 4014(h): The amendment integrates the drafting attorney and monitor into the existing mandatory disclosure framework of § 4014(h), using the existing “shall comply” language already applicable to other authorized requestors. This resolves the ambiguity in the prior draft’s parenthetical “shall (may)” and ensures consistent treatment of all authorized parties.

Elevated evidentiary standard for civil forfeiture: The prior draft used “preponderance of the evidence” for civil determinations under § 4070. This draft uses “clear and convincing evidence,” which better balances the severity of inheritance forfeiture against due process concerns. Criminal convictions remain conclusive.

Added proportional forfeiture: New subsection § 4070(h) gives courts discretion to limit forfeiture proportionally, addressing the concern that an all-or-nothing approach could produce unjust results where exploitation was minor relative to the estate.

Connected oversight roles to forfeiture standing: The drafting attorney and monitor are now listed as persons with standing to petition under § 4070(e), closing the gap in the prior draft where these newly empowered oversight roles lacked the ability to initiate forfeiture proceedings.

Added statute of limitations: New subsection § 4070(f) provides a two-year discovery period with a five-year outside limit from death, balancing the need for timely administration against the reality that exploitation may not be discovered immediately.

Added double recovery safeguard: Section 4070(i) directs courts to account for prior awards to avoid duplicative recovery across the multiple available remedies (§§ 4017, 4070, and 322).

Expanded “financial exploitation” definition: The definition now includes undue influence, coercion, and deception, in addition to wrongful taking, to capture the full range of POA abuse

scenarios. The undefined “misuse of authority” language from the prior draft has been removed as a separate trigger; instead, the defined term “financial exploitation” serves as the sole standard, providing greater clarity.

3. Monitor Provisions

The monitor role (§ 4060) now includes qualification and disqualification criteria (subsection (b)), a duty of care standard (subsection (e)), compensation provisions (subsection (f)), and resignation and removal procedures (subsection (g)). These additions parallel the existing framework for agents under §§ 4011–4018 and address the gap in the prior draft where the monitor role lacked basic governance provisions.

4. Drafting Attorney Independence

Section 4059(b) gives drafting attorneys the ability to request records even when the POA form checkboxes were not checked, provided the attorney has a reasonable belief of exploitation. This addresses the prior draft’s structural weakness where the safe harbor existed but the attorney might lack the information needed to use it. Section 4059(e) explicitly disclaims any affirmative duty to monitor, ensuring that attorneys are empowered but not burdened with a new standard of care.

5. Policy Questions for Committee Consideration

(a) 50-person PII threshold: If the committee integrates this amendment with the computer crimes amendment, coordination may be needed on threshold provisions.

(b) Treble damages (§ 4017(b)): This is a new addition that strengthens deterrence. The committee should consider whether willful violations alone should trigger treble damages, or whether the trigger should be limited to financial exploitation specifically.

(c) Retroactivity: Section 9(b) applies the forfeiture provision only to decedents dying after the effective date. The committee should consider whether this is appropriate or whether the provision should also apply to pending estates.

(d) Oversight opt-in vs. opt-out: The statutory form amendments in Section 8 make oversight optional (opt-in). The committee may wish to consider whether default-on oversight with the ability to opt out would better protect vulnerable principals.

(e) Critical infrastructure definition: If coordinated with the computer crimes amendment, the definition of “protected computer” referencing “critical infrastructure” may benefit from a standalone definition to avoid ambiguity across both statutory schemes.