

1 H.18

2 Introduced by Representatives Sweaney of Windsor, Hubert of Milton, and

3 Martin of Wolcott

4 Referred to Committee on

5 Date:

6 Subject: Public Records Act; short title; exemptions

7 Statement of purpose of bill as introduced: This bill proposes to:

8 (1) give the Public Records Act a short title;

9 (2) require the Office of Legislative Council to compile and update
10 periodically a list of statutory Public Records Act exemptions, arranged by
11 subject area and by topic, and require that the list be posted to various State
12 websites; and

13 (3) amend miscellaneous exemptions to the Public Records Act.

14 An act relating to Public Records Act exemptions

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

16 * * * Public Records Act; Short Title * * *

17 Sec. 1. 1 V.S.A. § 315 is amended to read:

18 § 315. STATEMENT OF POLICY; SHORT TITLE

19 (a) It is the policy of this subchapter to provide for free and open
20 examination of records consistent with Chapter I, Article 6 of the Vermont

1 Constitution. Officers of government are trustees and servants of the people
2 and it is in the public interest to enable any person to review and criticize their
3 decisions even though such examination may cause inconvenience or
4 embarrassment. All people, however, have a right to privacy in their personal
5 and economic pursuits, which ought to be protected unless specific information
6 is needed to review the action of a governmental officer. Consistent with these
7 principles, the General Assembly hereby declares that certain public records
8 shall be made available to any person as hereinafter provided. To that end, the
9 provisions of this subchapter shall be liberally construed to implement this
10 policy, and the burden of proof shall be on the public agency to sustain its
11 action.

12 (b) This subchapter may be known and cited as the Public Records Act or
13 the PRA.

14 * * * Public Records Act; List of Statutory Exemptions * * *

15 Sec. 2. 1 V.S.A. § 317(d) is added to read:

16 (d) On or before December 1, 2015, the Office of Legislative Council shall
17 compile a list of all Public Records Act exemptions found in the Vermont
18 Statutes Annotated. In compiling the list, the Office of Legislative Council
19 shall consult with the Attorney General's office. The list shall be updated no
20 less often than every two years, and shall be arranged by subject area, and in
21 order by title and section number. The list, and any updates thereto, shall be

1 posted on the websites of the General Assembly, the Secretary of State's
2 Office, the Attorney General's Office, and the State Library, and shall be sent
3 to the Vermont League of Cities and Towns.

4 * * * Exemptions to the Public Records Act * * *

5 * * * Education; University and State College

6 Research Records * * *

7 Sec. 3. 1 V.S.A. § 317(c) is amended to read:

8 (c) The following public records are exempt from public inspection and
9 copying:

10 * * *

11 (23) Any data, records, or information ~~developed, discovered, collected,~~
12 ~~or received~~ produced or acquired by or on behalf of faculty, staff, employees,
13 or students of the University of Vermont or the Vermont State Colleges in the
14 conduct of study, research, or creative efforts on medical, scientific, technical,
15 scholarly, or artistic matters, whether such activities are sponsored alone by the
16 institution or in conjunction with a governmental body or private entity, until
17 such data, records, or information are published, disclosed in an issued patent,
18 or publicly released by the institution or its authorized agents. This
19 subdivision applies to, but is not limited to, research notes and laboratory
20 notebooks, lecture notes, manuscripts, creative works, correspondence,
21 research proposals and agreements, methodologies, protocols, and the

1 identities of or any personally identifiable information about participants in
2 research. This subdivision shall not exempt records, other than research
3 protocols, produced or acquired by an institutional animal care and use
4 committee regarding the committee's compliance with State law or federal law
5 regarding or regulating animal care.

6 * * *

7 * * * Education; Vermont Student Assistance Corporation * * *

8 Sec. 4. 16 V.S.A. § 2827 is added to read:

9 § 2827. CONFIDENTIALITY OF PERSONALLY IDENTIFYING

10 INFORMATION

11 Except as otherwise provided by law, or by consent of the individual
12 identified in the record, information that directly or indirectly identifies
13 applicants, recipients, beneficiaries, or participants in programs administered
14 by the Corporation, including grant, loan, scholarship, outreach, or investment
15 plan programs, is exempt from public inspection and copying under the Public
16 Records Act and shall be kept confidential.

17 Sec. 5. 16 V.S.A. § 2843 is amended to read:

18 § 2843. APPLICATIONS, CERTIFICATES, AND REPORTS

19 (a) The recipient must apply for an incentive grant at least annually. Grants
20 may be for a maximum of five full-time equivalent school years.

1 (b) Each applicant for an incentive grant shall furnish a certificate of
2 income with the application. Attached to the certificate shall be a form of
3 consent, executed by the student and any other required persons, granting
4 permission to the Vermont ~~commissioner of taxes~~ Commissioner of Taxes to
5 disclose the income tax information required by subsection (c) of this section.

6 (c) The Vermont ~~commissioner of taxes~~ Commissioner of Taxes, when
7 requested by the ~~corporation~~ Corporation, shall compare any certificate filed
8 pursuant to this subchapter with the ~~state~~ State income tax returns filed by the
9 persons making such certificate and shall report any instances of discrepancy
10 to the corporation.

11 (d) ~~Except as otherwise provided in this subchapter or other applicable law~~
12 ~~or court order, or by agreement of the applicant, certificates and reports made~~
13 ~~to the corporation under this section shall be confidential, and it shall be~~
14 ~~unlawful for anyone to divulge the amount of income or any particulars set~~
15 ~~forth in a certificate or any report made to an applicant or the corporation.~~
16 ~~Nothing herein shall be construed to prevent the publication of statistical data~~
17 ~~as long as the identification of particular individuals, certificates, and reports is~~
18 ~~prevented.~~ [Repealed.]

1 ~~deemed a~~ is privileged communication ~~and shall be kept confidential to the~~
2 same extent as provided under subsection 4813m(f) of this title.

3 * * * Financial Regulation; Statements of Life

4 Settlement Providers * * *

5 Sec. 8. 8 V.S.A. § 3839 is amended to read:

6 § 3839. REPORTING REQUIREMENTS AND PRIVACY

7 (a) Each life settlement provider shall file with the ~~commissioner~~
8 Commissioner on or before March 1 of each year an annual statement
9 containing such information as the ~~commissioner~~ Commissioner may prescribe
10 by rule or order. Information relating to life settlement transactions shall be
11 limited to only those transactions where the policy owner is a resident of this
12 ~~state~~ State. Upon proper request by the filer, the ~~commissioner~~ Commissioner
13 shall ~~maintain the confidentiality of~~ keep confidential trade secret information
14 exempt from public inspection and copying under 1 V.S.A. § 317(c)(9). The
15 annual statement shall not contain ~~individually identifiable~~ individually
16 identifiable life settlement transaction information, but such information shall
17 be provided to the ~~commissioner~~ Commissioner pursuant to section 3840 of
18 this title. If available to the provider because of the provider's business
19 relationship or affiliation with one or more life settlement purchasers, the
20 annual statement shall also include such information as the ~~commissioner~~
21 Commissioner may prescribe by rule or by order concerning life settlement

1 purchase agreements or similar investment contracts entered into by residents
2 of this ~~state~~ State.

3 * * *

4 * * * Health Care; Nursing Home Data Filed

5 with Division of Rate Setting * * *

6 Sec. 9. 33 V.S.A. § 908(a) is amended to read:

7 (a) Each nursing home or other provider shall file with the Division, on
8 request, such data, statistics, schedules, or information as the Division may
9 require to enable it to carry out its function. Information received from a
10 nursing home under this section shall be available to the public, except that the
11 specific salary and wage rates of employees, other than the salary of an
12 administrator, shall not be disclosed unless disclosure is required under
13 1 V.S.A. § 317(b).

14 * * * Health Care; Prescription Drug Price Information

15 Submitted to DVHA * * *

16 Sec. 10. 33 V.S.A. § 2010(e) is amended to read:

17 (e) Notwithstanding any provision of law to the contrary, information
18 submitted to the Department under this section ~~is confidential and is not a~~
19 ~~public record as defined in 1 V.S.A. § 317(b)~~ is exempt from public inspection
20 and copying under the Public Records Act and shall be kept confidential.

21 Disclosure may be made by the Department to an entity providing services to

1 the Department under this section; however, that disclosure does not change
2 the confidential status of the information. The information may be used by the
3 entity only for the purpose specified by the Department in its contract with the
4 entity. Data compiled in aggregate form by the Department for the purposes of
5 reporting required by this section ~~are public records as defined in 1 V.S.A.~~
6 ~~§ 317(b)~~ may be publicly released, provided they do not reveal trade
7 information protected by State or federal law.

8 * * * Human Services; Records of Department for
9 Children and Families * * *

10 Sec. 11. 33 V.S.A. § 105(b) is amended to read:

11 (b) In addition to other duties imposed by law, the Commissioner shall:

12 (1) ~~Administer~~ administer the laws assigned to the Department;

13 (2) ~~Fix~~ fix standards and issue regulations necessary to administer those
14 laws and for the custody and preservation of records of the Department. ~~Those~~
15 ~~regulations shall contain provisions restricting the use or disclosure of~~
16 ~~information contained in the records to purposes directly connected with the~~
17 ~~administration of the Department. As used in this subdivision, the word~~
18 ~~“records” includes records, papers, files, and communications.;~~

19 (3) ~~Appoint~~ appoint all necessary assistants, prescribe their duties, and
20 issue regulations necessary to ensure that the assistants shall hold merit system

1 status while in the employ of the Department, unless otherwise specifically
2 provided by law.

3 * * * Human Services; Information Related to
4 Assistance Applicants or Recipients * * *

5 Sec. 12. 33 V.S.A. § 111 is amended to read:

6 § 111. RECORDS, RESTRICTIONS, PENALTIES

7 (a) The names of or information pertaining to applicants for or recipients of
8 assistance or benefits, including information obtained under section 112 of this
9 title, shall not be disclosed to anyone, except for the purposes directly
10 connected with the administration of the Department or when required by law.

11 (b) A person shall not:

12 ~~(1) Publish~~ publish, use, disclose, or divulge any of those records for
13 purposes not directly connected with the administration of programs of the
14 Department, or contrary to regulations issued by the Commissioner; ~~or~~

15 ~~(2) Use any records of the department of any kind or description for~~
16 ~~political or commercial purposes, or purposes not authorized by law.~~

17 * * * Motor Vehicles; Driver Training School Records * * *

18 Sec. 13. 23 V.S.A. § 707 is amended to read:

19 § 707. RECORDS REQUIRED; MAINTENANCE OF VEHICLES

20 Every driver's training school licensee shall keep a record on such forms as
21 the ~~commissioner~~ Commissioner may prescribe showing the name and address

1 of each instructor, the instruction license number of such instructor, the
2 particular type of instruction given and how much time was given to each type
3 of instruction, and such other information as the ~~commissioner~~ Commissioner
4 may require. Such record shall be open to the inspection of the ~~department~~
5 Department at all reasonable times ~~but shall be for the confidential use of the~~
6 ~~department.~~ Individually identifying information about students that is exempt
7 from public inspection and copying under 1 V.S.A. § 317(c)(7) shall be kept
8 confidential. Every driver's training school licensee shall maintain all vehicles
9 used in driver training in safe mechanical condition at all times.

10 * * * Municipal Bond Registries * * *

11 Sec. 14. 24 V.S.A. § 1884 is amended to read:

12 § 1884. ~~CONFIDENTIAL REGISTRY~~

13 ~~The books of registry held by the treasurer of the municipal corporation or~~
14 ~~other designated register shall be confidential and the information contained~~
15 ~~therein shall not be available to the public. [Repealed.]~~

16 Sec. 15. 24 V.S.A. § 4643 is amended to read:

17 § 4643. FORM OF ISSUANCE

18 (a) Bonds or notes of the bank shall be authorized by resolution of the bank
19 and may be issued in one or more series and shall bear such date or dates,
20 mature at such time or times, bear interest at such rate or rates of interest per
21 annum or within such maximum rate, be in such denomination or

1 denominations, be issued in coupon form payable to bearer, in registered form
2 or in book entry form, carry such conversion or registration privileges, have
3 such rank or priority, be executed in such manner, be payable from such
4 sources in such medium of payment at such place or places within or without
5 the ~~state~~ State, and be subject to such terms of redemption, with or without
6 premium, as the resolution provides.

7 (b) The ~~state treasurer~~ State Treasurer may, at the direction of the bank, act
8 as transfer agent or registrar for the exchange or transfer of registered bonds
9 and notes or maintain records so that bonds and notes in book entry form may
10 be effected and the bank may contract with or otherwise designate a bank, trust
11 company, or other person to maintain records so that bonds and notes in book
12 entry form may be effected. Such bank, trust company, or other person, which
13 may include the federal government or any of its agencies or instrumentalities
14 or any officer, agency, or instrumentality of the ~~state~~ State, may be located or
15 have its principal office inside or outside the ~~state~~ State. Bonds and notes in
16 book entry form shall be effected by means of entries on the records of the
17 ~~state treasurer~~ State Treasurer or other designated person which shall reflect
18 the description of the issue, the principal amount, the interest rate, the maturity
19 date, and the owner of the bonds or notes and such other information as is
20 deemed appropriate. The ~~state treasurer~~ State Treasurer or other designated
21 person may effect conversion between book entry bonds and notes and

1 registered bonds and notes for owners of bonds or notes who request such a
2 change. The ~~state treasurer~~ State Treasurer or other designated transfer agent
3 or registrar shall issue a confirmation of the transaction in the form of a written
4 advice.

5 (c) ~~The books of registry held by the state treasurer or other designated~~
6 ~~register shall be confidential and the information contained therein shall not be~~
7 ~~available to the public.~~ [Repealed.]

8 * * * Natural Resources; Discharge Permits * * *

9 Sec. 16. 10 V.S.A. § 1259 is amended to read:

10 § 1259. PROHIBITIONS

11 (a) No person shall discharge any waste, substance, or material into waters
12 of the State, nor shall any person discharge any waste, substance, or material
13 into an injection well or discharge into a publicly owned treatment works any
14 waste which interferes with, passes through without treatment, or is otherwise
15 incompatible with those works or would have a substantial adverse effect on
16 those works or on water quality, without first obtaining a permit for that
17 discharge from the Secretary. This subsection shall not prohibit the proper
18 application of fertilizer to fields and crops, nor reduce or affect the authority or
19 policy declared in Joint House Resolution 7 of the 1971 Session of the General
20 Assembly.

1 (b) Any records, ~~reports~~ or information obtained under this permit program
2 ~~shall be available to the public for inspection and copying. However, upon a~~
3 ~~showing satisfactory to the Secretary that any records, reports or information~~
4 ~~or part thereof, other than effluent data, would, if made public, divulge~~
5 ~~methods or processes entitled to protection as that constitutes trade secrets, the~~
6 ~~Secretary shall treat and protect those records, reports or information as~~
7 ~~confidential. Any under 1 V.S.A. § 317(c)(9) shall be kept confidential, except~~
8 ~~that such records, reports or information accorded confidential treatment will~~
9 ~~may be disclosed to authorized representatives of the State and the United~~
10 States when relevant to any proceedings under this chapter.

11 * * *

12 * * * Natural Resources; Division of Geology and
13 Mineral Resources * * *

14 Sec. 17. 10 V.S.A. § 101 is amended to read:

15 § 101. DIVISION OF GEOLOGY AND MINERAL RESOURCES; DUTIES

16 The ~~division of geology and mineral resources~~ Division of Geology and
17 Mineral Resources shall:

18 * * *

19 (6) Maintain records of old and new information relating to the geology,
20 mineral resources, and topography of the state ~~and make public new~~
21 ~~information resulting from research and field studies conducted by or for the~~

1 ~~division. Certain information provided by the mineral industries of the state~~
2 ~~may be held in confidential status at the industries' request and used only for~~
3 ~~purposes and in a manner permitted by the industry State.~~

4 (7) Prepare and publish reports on the geology, mineral resources, and
5 topography of the state State.

6 * * * Natural Resources; Toxics Use Reduction and

7 Hazardous Waste Reduction Plans * * *

8 Sec. 18. 10 V.S.A. § 6628 is amended to read:

9 § 6628. PLAN, PLAN SUMMARY, AND PERFORMANCE REPORT

10 REVIEW

11 (a) Except as provided for in this section, a ~~toxics use reduction and~~
12 ~~hazardous waste reduction plan~~ Toxics Use Reduction and Hazardous Waste
13 Reduction Plan developed under this subchapter shall be retained at the facility
14 and is not a public record under 1 V.S.A. § 317. If a person developing a
15 Toxics Use Reduction and Hazardous Waste Reduction Plan under this chapter
16 chooses to send all or a portion of the plan to the Secretary for review, it ~~still~~
17 ~~shall not be a public record~~ is exempt from public inspection and copying
18 ~~under 1 V.S.A. § 317 the Public Records Act and shall be kept confidential.~~ A
19 plan summary submitted pursuant to section 6629 of this title shall be
20 submitted to the Secretary and shall be a public record.

21 * * *

1 Sec. 19. 10 V.S.A. § 6632 is amended to read:

2 § 6632. TRADE SECRETS

3 The ~~secretary~~ Secretary shall adopt rules to ensure that trade secrets
4 designated by a generator in all or a portion of the review and plans, and the
5 report required by this subchapter, ~~are utilized~~ which are exempt from public
6 inspection and copying under 1 V.S.A. § 317(c)(9), shall be used by the
7 ~~secretary or~~ Secretary, the department Department, and any authorized
8 representative of the Department only in connection with the responsibilities of
9 the ~~department~~ Department pursuant to this subchapter, and ~~that those trade~~
10 ~~secrets are not otherwise disseminated by the secretary, the department, or any~~
11 ~~authorized representative of the department. The rules shall provide that a~~
12 ~~generator may only designate as trade secrets those that satisfy the criteria for~~
13 ~~trade secrets set forth in 18 V.S.A. § 1728(a)~~ otherwise shall be kept
14 confidential.

15 ~~*** Personal Records; General Exemption ***~~

16 Sec. 20. FINDINGS; STATEMENT OF PURPOSE

17 (a) Findings. The General Assembly finds that:

18 (1) Under 1 V.S.A. § 317(c)(7), personal records relating to an
19 individual are exempt from public inspection and copying.

20 (2) The Vermont Supreme Court has interpreted "personal records"
21 under 1 V.S.A. § 317(c)(7) as records the disclosure of which would reveal

1 ~~“intimate details” of an individual’s life. Under Vermont Supreme Court~~
2 caselaw, a record containing intimate details is only exempt if the invasion of
3 privacy occasioned by disclosure of the record outweighs the public interest in
4 its disclosure.

5 (3) What constitutes “intimate” details for purposes of 1 V.S.A.
6 § 317(c)(7) is subject to multiple interpretations, which may be overly narrow
7 and, thus, prevent protection of personal information that should be exempt
8 from public disclosure.

9 (b) Statement of purpose. The purpose of Sec. 21 of this act is to:

10 (1) reorganize and restructure the personal records exemption of
11 1 V.S.A. § 317(c)(7);

12 (2) supersede the threshold requirement created in caselaw that a record
13 relating to an individual must reveal intimate details of that individual’s life in
14 order to qualify as exempt under 1 V.S.A. § 317(c)(7); and

15 (3) provide that a personal record shall be exempt from disclosure under
16 1 V.S.A. § 317(c)(7) if it relates to a particular individual and if the nature,
17 gravity, and potential consequences of the invasion of privacy occasioned by
18 its disclosure outweighs the public interest in its disclosure.

1 ~~Sec. 21. 1 V.S.A. § 317(e) is amended to read:~~

2 (c) The following public records are exempt from public inspection and
3 copying:

4 * * *

5 (7) ~~Personal documents~~ records relating to an individual, ~~including if the~~
6 nature, gravity, and potential consequences of the invasion of privacy
7 occasioned by disclosure outweighs the public interest in favor of disclosure.
8 A record is not required to reveal intimate or embarrassing facts about an
9 individual in order to qualify as exempt under this subdivision. Exempt
10 information may include:

11 (A) ~~information~~ Information in any files maintained to hire, evaluate,
12 promote, or discipline any employee of a public agency; However, such
13 information shall be made available to that individual employee or his or her
14 designated representative unless otherwise exempt from public inspection and
15 copying.

16 (B) ~~information in any files~~ Information relating to personal
17 finances;

18 (C) Individually identifying medical or psychological facts
19 concerning any individual or corporation; provided, however, that all
20 information in personnel files of an individual employee of any public agency

1 ~~shall be made available to that individual employee or his or her designated~~
2 ~~representative.~~

** * * Human Rights Commission Exemption * * **

Sec. 20. 9 V.S.A. § 4555(a) is amended to read:

(a)(1) ~~The~~ Except as provided in this subsection, the Human Rights Commission's complaint files and investigative files shall be confidential except that the,

(2) The Commission shall make the investigative file available to the charging party, the respondent, their attorneys, and any State or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon reasonable request.~~The, except that the Commission may refuse to disclose:~~

(A) the identities of nonparty witnesses to the investigation ~~may be revealed as part of the investigative file, upon request, unless if good cause is shown to protect the witness's confidentiality;~~ and or

(B) records or information the release of which may be prohibited under State or federal law absent court order.

(3) A party or entity denied information or records under subdivision (2)(A) or (B) of this subsection may seek the information or records by subpoena. The Commission and any affected person may contest the subpoena in court.

(4) Any records or information described in subdivision (2)(A) or (B) of this subsection made available to a party or entity pursuant to a confidentiality agreement or court order requiring confidentiality shall be kept confidential in accordance with the agreement or order, unless disclosure is otherwise authorized by law or court order.

**** Personal Records Exemption ****

Sec. 21. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

(7) Personal documents relating to an individual, including:

(A) ~~information~~ Information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency; However, such information shall be made available to that individual employee or his or her designated representative unless otherwise exempt from public inspection and copying.

(B) ~~information~~ Information in any files relating to personal finances;

(C) Individually identifying medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency

~~shall be made available to that individual employee or his or her designated representative information.~~

~~***~~

~~*** Presentence and Preparole Reports; Supervision History ***~~

~~Sec. 21. 28 V.S.A. § 204 is amended to read:~~

~~§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF
RECORDS~~

~~***~~

~~(d) Any presentence report, ~~pre-parole~~ preparole report, or supervision history prepared by any employee of the Department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is ~~privileged~~ confidential and shall not be disclosed to anyone outside the Department other than the judge or the Parole Board, except that the court or Board may in its discretion permit the inspection of the report or parts thereof by the State's Attorney, the defendant or inmate, or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful. Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.~~

~~***~~

