

1 H.757

2 Introduced by Representatives Sweaney of Windsor, Evans of Essex, Hubert
3 of Milton, and Martin of Wolcott

4 Referred to Committee on

5 Date:

6 Subject: Government Operations; Public Records Act; exemptions

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

- 8 (1) amend the Administrative Procedure Act to specify that the cover
9 sheet required to be filed with a proposed rule identify whether the rule adopts
10 an exemption to the Public Records Act;
- 11 (2) amend various exemptions to the Public Records Act; and
- 12 (3) require the compiling, distribution, and posting of a complete list of
13 statutory exemptions to the Public Records Act.

14 An act relating to exemptions to the Public Records Act

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

16 ~~*** Rulemaking; Identification of PRA Exemptions ***~~

17 Sec. 1. 3 V.S.A. § 838 is amended to read:

18 § 838. FILING OF PROPOSED RULES

19 (a) Proposed rules shall be filed with the ~~secretary of state~~ Secretary of
20 State. The filing shall include the following:

- 1 ~~(1) a cover sheet;~~
- 2 (2) an economic impact statement;
- 3 (3) an incorporation by reference statement, if the proposed rule
- 4 includes an incorporation by reference;
- 5 (4) an adopting page;
- 6 (5) the text of the proposed rule;
- 7 (6) an annotated text showing changes from existing rules;
- 8 (7) an explanation of the strategy for maximizing public input on the
- 9 proposed rule as prescribed by the ~~interagency committee on administrative~~
- 10 ~~rules~~ Interagency Committee on Administrative Rules; and
- 11 (8) a brief summary of the scientific information upon which the
- 12 proposed rule is based to the extent the proposed rule depends on scientific
- 13 information for its validity.
- 14 (b) The cover sheet shall be on a form prepared by the ~~secretary of state~~
- 15 Secretary of State containing at least the following information:
- 16 (1) the name of the agency;
- 17 (2) the title or subject of the rule;
- 18 (3) a concise summary explaining the effect of the rule;
- 19 (4) the specific statutory authority for the rule, and, if none exists, the
- 20 general statutory authority for the rule;
- 21 (5) an explanation of why the rule is necessary;

1 ~~(6) an explanation of the people, enterprises, and government entities~~
2 affected by the rule;

3 (7) a brief summary of the economic impact of the rule;

4 (8) the name, address, and telephone number of an individual in the
5 agency able to answer questions and receive comments on the proposal;

6 (9) a proposed schedule for completing the requirements of this chapter,
7 including, if there is a hearing scheduled, the date, time, and place of that
8 hearing; and a deadline for receiving comments; and

9 (10) whether the rule adopts an exemption from inspection and copying
10 of public records or designates information as confidential and, if so, the
11 asserted statutory authority for the exemption or confidentiality designation
12 and a brief summary of the need for the exemption or confidentiality; and

13 (11) a signed and dated statement by the adopting authority approving
14 the contents of the filing.

15 * * *

16 * * * Short Title * * *

17 Sec. 2. 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
21 Constitution. Officers of government are trustees and servants of the people

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

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

13 * * * Exemptions to the Public Records Act * * *

14 * * * Commerce and Historic Preservation-Related Exemptions * * *

15 Sec. 3. STATEMENT OF PURPOSE

16 Sec. 4 of this act repeals 1 V.S.A. § 317(c)(22), which exempted from
17 public inspection and copying any documents filed, received, or maintained by
18 the Agency of Commerce and Community Development with regard to
19 administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs
20 tax credit; manufacturer's tax credit), provided that all such documents were
21 no longer exempt when a tax credit certification had been granted by the

1 ~~Secretary of Administration unless the disclosure of such records would~~
2 ~~otherwise violate any provision of Title 32. Subchapters 11C and 11D of~~
3 ~~32 V.S.A. chapter 151 were repealed in 2006, and thus the exemption at~~
4 ~~1 V.S.A. § 317(c)(22) is no longer needed going forward. However, if the~~
5 ~~Agency of Commerce and Community Development or any other public~~
6 ~~agency has custody of records described in the former 1 V.S.A. § 317(c)(22),~~
7 ~~these records shall remain exempt from public inspection and copying as they~~
8 ~~were under the former 1 V.S.A. § 317(c)(22).~~

9 Sec. 4. 1 V.S.A. § 317(c) is amended to read:

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

12 * * *

13 (10) lists of names compiled or obtained by a public agency when
14 disclosure would violate a person's right to privacy or produce public or
15 private gain; ~~provided, however, that this section does not apply to, except~~
16 lists;

17 (A) which are by law made available to the public; ~~or to lists;~~

18 (B) of professional or occupational licensees; ~~or~~

19 (C) sold or rented in the sole discretion of Vermont Life magazine,
20 provided that such discretion is exercised in furtherance of that magazine's

1 ~~continued financial viability and pursuant to specific guidelines adopted by the~~
2 ~~editor of the magazine;~~

3 * * *

4 (20) information which would reveal the location of archeological sites
5 and underwater historic properties, except as provided in 22 V.S.A. § ~~762~~ 761;

6 (21) ~~lists of names compiled or obtained by Vermont Life magazine for~~
7 ~~the purpose of developing and maintaining a subscription list, which list may~~
8 ~~be sold or rented in the sole discretion of Vermont Life magazine, provided~~
9 ~~that such discretion is exercised in furtherance of that magazine's continued~~
10 ~~financial viability, and is exercised pursuant to specific guidelines adopted by~~
11 ~~the editor of the magazine; [Repealed.]~~

12 (22) any documents filed, received or maintained by the Agency of
13 Commerce and Community Development with regard to administration of 32
14 V.S.A. chapter 151, subchapters 11C and 11D (~~new jobs tax credit;~~
15 ~~manufacturer's tax credit~~), except that all such documents shall become public
16 records under this subchapter when a tax credit certification has been granted
17 by the Secretary of Administration, and provided that the disclosure of such
18 documents does not otherwise violate any provision of Title 32; ~~[Repealed.]~~

19 * * *

20 (30) all ~~code and machine readable structures of state funded and~~
21 ~~controlled~~ State-controlled database applications structures and application

1 ~~code, including the vermontvacation.com website and Travel Planner~~
2 application, which are known only to certain ~~state~~ State departments engaging
3 in marketing activities and which give the ~~state~~ State an opportunity to obtain a
4 marketing advantage over any other state, regional, or local governmental or
5 nonprofit quasi-governmental entity, or private sector entity, unless any such
6 ~~state~~ State department engaging in marketing activities determines that the
7 license or other voluntary disclosure of such materials is in the ~~state's~~ State's
8 best interests;

9 * * *

10 (40) records of genealogy provided in an application or in support of an
11 application for tribal recognition pursuant to chapter 23 of this title;

12 * * *

13 Sec. 5. 9 V.S.A. § 4100b is amended to read:

14 § 4100b. ENFORCEMENT; TRANSPORTATION BOARD

15 * * *

16 (e) The Board shall be empowered to determine the location of hearings,
17 appoint persons to serve at the deposition of out-of-state witnesses, administer
18 oaths, and authorize stenographic or recorded transcripts of proceedings before
19 it. Prior to the hearing on any protest, but no later than 45 days after the filing
20 of the protest, the Board shall require the parties to the proceeding to attend a
21 prehearing conference in which the Chair or designee shall have the parties

1 ~~address the possibility of settlement. If the matter is not resolved through the~~
2 ~~conference, the matter shall be placed on the Board's calendar for hearing.~~
3 ~~Conference discussions~~ Settlement communications shall remain confidential
4 ~~and, shall be exempt from public inspection and copying under the Public~~
5 Records Act, shall not be disclosed or, and shall not be used as an admission in
6 any subsequent hearing.

7 * * *

8 * * * Education-Related Exemptions * * *

9 Sec. 6. 1 V.S.A. § 317(c) is amended to read:

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

12 * * *

13 (11) student records, including records of a home study student, ~~at~~
14 ~~educational institutions or agencies funded wholly or in part by State revenue;~~
15 provided, however, that such records shall be made available upon request
16 under the provisions of the Federal Family Educational Rights and Privacy Act
17 of 1974 (~~P.L. 93-380~~) and as, 20 U.S.C. § 1232g, as may be amended;

18 * * *

19 (23) any data, records, or information ~~developed, discovered, collected,~~
20 ~~or received~~ produced or acquired by or on behalf of faculty, staff, employees,
21 or students of the University of Vermont or the Vermont ~~state colleges~~ State

1 ~~Colleges in the conduct of study, research, or creative efforts on medical,~~
2 scientific, technical, scholarly, or artistic matters, whether such activities are
3 sponsored alone by the institution or in conjunction with a governmental body
4 or private entity, until such data, records, or information ~~are~~ is published,
5 disclosed in an issued patent, or publicly released by the institution or its
6 authorized agents. This subdivision applies to, ~~but is not limited to,~~ research
7 notes and laboratory notebooks, lecture notes, manuscripts, creative works,
8 correspondence, research proposals and agreements, methodologies, protocols,
9 and the identities of or any personally identifiable information about
10 participants in research. This subdivision shall not apply to records, other than
11 research protocols, produced or acquired by an institutional animal care and
12 use committee regarding the committee's compliance with State law or federal
13 law regarding or regulating animal care;

14 * * *

15 Sec. 7. 16 V.S.A. § 2826 is added to read:

16 § 2826. CONFIDENTIALITY OF PERSONALLY IDENTIFYING
17 INFORMATION

18 Except as otherwise provided by law, or by consent of the individual,
19 information that directly or indirectly identifies applicants, recipients,
20 beneficiaries, or participants in programs administered by the Corporation,
21 including grant, loan, scholarship, outreach, or investment plan programs, shall

~~not be released and shall be exempt from public inspection and copying under~~

~~1~~ 1 V.S.A. § 317(c)(7).

~~2~~ Sec. 8. 16 V.S.A. § 2843 is amended to read:

~~3~~ § 2843. APPLICATIONS, CERTIFICATES, AND REPORTS

~~4~~ (a) The recipient must apply for an incentive grant at least annually. Grants
~~5~~ may be for a maximum of five full-time equivalent school years.

~~6~~ (b) Each applicant for an incentive grant shall furnish a certificate of
~~7~~ income with the application. Attached to the certificate shall be a form of
~~8~~ consent, executed by the student and any other required persons, granting
~~9~~ permission to the Vermont ~~commissioner of taxes~~ Commissioner of Taxes to
~~10~~ disclose the income tax information required by subsection (c) of this section.

~~11~~ (c) The Vermont ~~commissioner of taxes~~ Commissioner of Taxes, when
~~12~~ requested by the ~~corporation~~ Corporation, shall compare any certificate filed
~~13~~ pursuant to this subchapter with the ~~state~~ State income tax returns filed by the
~~14~~ persons making such certificate and shall report any instances of discrepancy
~~15~~ to the corporation.

~~16~~ (d) ~~Except as otherwise provided in this subchapter or other applicable law~~
~~17~~ ~~or court order, or by agreement of the applicant, certificates and reports made~~
~~18~~ ~~to the corporation under this section shall be confidential, and it shall be~~
~~19~~ ~~unlawful for anyone to divulge the amount of income or any particulars set~~
~~20~~ ~~forth in a certificate or any report made to an applicant or the corporation.~~
~~21~~

1 ~~Nothing herein shall be construed to prevent the publication of statistical data~~
2 ~~as long as the identification of particular individuals, certificates, and reports is~~
3 ~~prevented. [Repealed.]~~

4 * * * Financial Regulation-Related Exemptions * * *

5 Sec. 9. 1 V.S.A. § 317(c) is amended to read:

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

8 * * *

9 (26) information and records provided to the Department of Financial
10 Regulation by ~~an individual~~ a person for the purposes of having the ~~department~~
11 Department assist that individual in resolving a dispute with any person ~~or~~
12 ~~company~~ regulated by the Department, and any information or records
13 provided by a ~~company or any other~~ person in connection with the individual's
14 dispute;

15 * * *

16 (36) anti-fraud plans and summaries submitted ~~by insurers to the~~
17 ~~Department of Financial Regulation~~ for the purposes of complying with
18 8 V.S.A. § 4750;

19 * * *

1 ~~Sec. 10. 8 V.S.A. § 3839 is amended to read:~~

2 § 3839. REPORTING REQUIREMENTS AND PRIVACY

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

19 * * *

1 ~~Sec. 11. 8 V.S.A. § 4488(5) is amended to read:~~

2 (5) Notice of termination of appointment of insurance agent. Every
3 society doing business in this State shall, upon the termination of the
4 appointment of any insurance agent licensed to represent it in this ~~state~~ State,
5 forthwith file with the Commissioner of Financial Regulation, a statement, in
6 such form as he or she may prescribe, of the facts relative to the termination
7 and the cause thereof. Every statement made pursuant to this section ~~shall be~~
8 ~~deemed a~~ is confidential and privileged communication to the same extent as
9 provided under subsection 4813m(f) of this title.

10 Sec. 12. 8 V.S.A. § 7041(e) is amended to read:

11 (e) The notice of hearing held under subsection (a) of this section and any
12 order issued pursuant to subsection (a) shall be served upon the insurer
13 pursuant to the provisions of 3 V.S.A. chapter 25. The notice of hearing shall
14 state the time and place of hearing, and the conduct, condition or ground upon
15 which the Commissioner may base his or her order. Unless mutually agreed
16 between the Commissioner and the insurer, the hearing shall occur not less
17 than ten days nor more than 30 days after notice is served and shall be held at
18 the offices of the Department of Financial Regulation or in some other place
19 convenient to the parties as determined by the Commissioner. ~~Hearings~~ Unless
20 the insurer requests a public hearing, hearings under subsection (a) of this
21 section shall be private and ~~shall not be subject to the provisions of 1 V.S.A.~~

1 ~~chapter 5, subchapters 2 and 3 (public information and access to public~~
2 ~~records), unless the insurer requests a public hearing exempt from the~~
3 ~~requirements of the Open Meeting Law, and records of such hearings shall be~~
4 ~~exempt from public inspection and copying under the Public Records Act.~~

5 * * * Health Care-Related Exemptions * * *

6 Sec. 13. 1 V.S.A. § 317(c)(38) is amended to read:

7 (38) records held by the agency of human services, which include
8 prescription information containing prescriber identifiable data, that could be
9 used to identify a prescriber, except that the records shall be made available
10 upon request for medical research, consistent with and for purposes expressed
11 in 18 V.S.A. §§ ~~4621, 4631, 4632, 4633, and 4622~~ or 9410 and, 18 V.S.A.
12 chapter 84, ~~or as provided for in 18 V.S.A. chapter 84A,~~ and for other law
13 enforcement activities;

14 Sec. 14. 8 V.S.A. § 4089a is amended to read:

15 § 4089a. MENTAL HEALTH CARE SERVICES REVIEW

16 * * *

17 (i) The confidentiality of any health care information acquired by or
18 provided to ~~the~~ an independent panel of mental health professionals or to an
19 independent review organization pursuant to section 4089f of this title shall be
20 maintained in compliance with any applicable State or federal laws. ~~The~~
21 ~~independent panel shall not constitute a public agency 1 V.S.A. § 317(a), or a~~

1 ~~public body under section 310 of Title 1. Records of, and internal materials~~

2 prepared for, specific reviews under this section shall be exempt from public

3 disclosure under 1 V.S.A. § 316.

4 Sec. 15. 8 V.S.A. § 4089f is amended to read:

5 § 4089f. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE

6 SERVICE DECISIONS

7 (a) ~~For the purposes of~~ As used in this section:

8 (1) "Health benefit plan" means a policy, contract, certificate, or
9 agreement entered into, offered, or issued by a health insurer, as defined in
10 18 V.S.A. § 9402, to provide, deliver, arrange for, pay for, or reimburse any of
11 the costs of health care services, including mental health care services as that
12 phrase is defined in subdivision 4089a(b)(3) of this title.

13 * * *

14 Sec. 16. 18 V.S.A. § 1099 is amended to read:

15 § 1099. REPORTS AND RECORDS CONFIDENTIAL

16 All information and reports in connection with persons suffering from
17 venereal diseases ~~shall be regarded as absolutely confidential and for the sole~~
18 ~~use of the board in the performance of its duties hereunder, and such records~~
19 ~~shall not be accessible to the public nor shall such records be deemed public~~
20 ~~records; and such board shall not disclose the names or addresses of persons so~~
21 ~~reported or treated except~~ are confidential public health records under section

1 ~~1001 of this title and may only be used as provided in that section or disclosed~~
2 to a prosecuting officer or in court in connection with a prosecution under
3 sections 1105 or 1106 of this title. ~~The foregoing shall not constitute a~~
4 ~~restriction on the board in the performance of its duties in controlling the above~~
5 ~~communicable diseases.~~

6 Sec. 17. 18 V.S.A. § 7103 is amended to read:

7 § 7103. DISCLOSURE OF INFORMATION

8 (a) All certificates, applications, records, and reports, other than an order of
9 a court made for the purposes of this part of this title, ~~and which~~ that directly or
10 indirectly ~~identifying~~ identifies a patient or former patient or an individual
11 whose hospitalization or care has been sought or provided under this part,
12 together with clinical information relating to such persons, shall be kept
13 confidential and shall not be disclosed by any person except ~~insofar~~:

14 (1) as the following persons have consented to disclosure in writing:

15 (A) the individual identified; in the records;

16 (B) the individual's health care agent under subsection 5264 an
17 advance directive that has become effective under section 9706 of this title; or

18 (C) the individual's legal guardian, if any ~~(or, or, if the individual is~~
19 ~~an unemancipated minor, his or her parent or legal guardian), shall consent in~~
20 writing guardian; or

1 ~~(2) to a person specifically authorized by the individual to receive health~~
2 ~~care information under an advance directive that has become effective under~~
3 ~~section 9706 of this title;~~

4 (3) as disclosure may be necessary to carry out any of the provisions of
5 this part; or

6 ~~(3)(4)~~ as a court may direct upon its determination that disclosure is
7 necessary for the conduct of proceedings before it and that failure to make
8 disclosure would be contrary to the public interest.

9 (b) Nothing in this section shall preclude disclosure, ~~upon proper inquiry,~~
10 of information concerning an individual's medical condition ~~the individual's~~
11 ~~family, clergy, physician, attorney, the individual's health care agent under~~
12 ~~section 5264 of this title, a person to whom disclosure is authorized by a~~
13 ~~validly executed durable power of attorney for health care, or to an interested~~
14 ~~party~~ to a person authorized by law.

15 * * *

16 * * * Human Services-Related Exemptions * * *

17 Sec. 18. 33 V.S.A. § 105(c) is amended to read:

18 (c) In addition to other duties imposed by law, the ~~commissioner~~
19 Commissioner shall:

20 (1) ~~Administer~~ administer the laws assigned to the ~~department.~~
21 Department; and

1 ~~(2) Fix fix standards and issue regulations necessary to administer those~~
2 ~~laws and for the custody and preservation of records of the department. Those~~
3 ~~regulations shall contain provisions restricting the use or disclosure of~~
4 ~~information contained in the records to purposes directly connected with the~~
5 ~~administration of the department. As used in this subdivision, the word~~
6 ~~“records” includes records, papers, files and communications Department.~~

7 * * *

8 Sec. 19. 33 V.S.A. § 111 is amended to read:

9 § 111. RECORDS, RESTRICTIONS, PENALTIES

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

15 (b) A person shall not:

16 ~~(1) Publish publish, use, disclose, or divulge any of those records for~~
17 ~~purposes not directly connected with the administration of programs of the~~
18 ~~department Department, or contrary to regulations issued by the~~
19 ~~commissioner; or~~

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

4 Sec. 20. 33 V.S.A. § 304(b) is amended to read:

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

6 (1) Administer the laws assigned to the Department.

7 (2) Fix standards and issue regulations necessary to administer those
8 laws and for the custody and preservation of records of the Department. ~~These~~
9 ~~regulations shall contain provisions restricting the use or disclosure of~~
10 ~~information contained in the records to purposes directly connected with the~~
11 ~~administration of the Department. As used in this subdivision, the word~~
12 ~~“records” includes records, papers, files, and communications.~~

13 (3) Appoint all necessary assistants, prescribe their duties, and issue
14 regulations necessary to assure that the assistants shall hold merit system status
15 while in the employ of the ~~department~~ Department, unless otherwise
16 specifically provided by law.

17 Sec. 21. 33 V.S.A. § 908 is amended to read:

18 § 908. POWERS AND DUTIES

19 (a) Each nursing home or other provider shall file with the ~~division~~
20 Division, on request, such data, statistics, schedules, or information as the
21 ~~division~~ Division may require to enable it to carry out its function.

1 ~~Information received from a nursing home under this section shall be available~~
2 to the public, except that unless disclosure is required under 1 V.S.A. § 317(b),
3 the specific salary and wage rates of employees, other than the salary of an
4 administrator, shall not be disclosed.

5 (b) The ~~division~~ Division shall have the power to examine books and
6 accounts of any nursing home or other provider caring for ~~state-assisted~~
7 State-assisted persons, to subpoena witnesses and documents, to administer
8 oaths to witnesses and to examine them on all matters of which the ~~division~~
9 Division has jurisdiction.

10 (c) The ~~secretary~~ Secretary shall adopt all rules and regulations necessary
11 for the implementation of this chapter.

12 Sec. 22. 33 V.S.A. § 2010(e) is amended to read:

13 (e) Notwithstanding any provision of law to the contrary, information
14 submitted to the Department under this section ~~is confidential and is not a~~
15 public record as defined in 1 V.S.A. § 317(b) shall be exempt from public
16 inspection and copying under the Public Records Act and shall not be released.
17 Disclosure may be made by the Department to an entity providing services to
18 the Department under this section; however, that disclosure does not change
19 the confidential status of the information. The information may be used by the
20 entity only for the purpose specified by the Department in its contract with the
21 entity. Data compiled in aggregate form by the Department for the purposes of

1 ~~reporting required by this section are public records as defined in 1 V.S.A.~~

2 § 317(b), provided they do not reveal trade information protected by State or
3 federal law.

4 Sec. 23. 33 V.S.A. § 7112 is amended to read:

5 § 7112. CONFIDENTIAL INFORMATION

6 (a) Information received by the licensing agency through filed reports,
7 inspection, or as otherwise authorized under this chapter, except information
8 that pertains to unsubstantiated complaints or the identity of residents and
9 complainants, shall be made available to the public.

10 (b) Prior to release of information, the Commissioner shall consult with
11 representatives from the nursing home industry and the Office of State
12 Long-Term Care Ombudsman to develop:

13 ~~(1) Guidelines for the release of information to the public that ensure the~~
14 ~~confidentiality and privacy of complainants and individuals who are receiving~~
15 ~~or have received care or services in nursing facilities in conformance with state~~
16 ~~and federal requirements.~~

17 ~~(2) Indicators~~ indicators, derived from information databases maintained
18 by the licensing agency and the Division of Rate Setting, which shall be
19 disseminated to consumers in a readily understandable format designed to
20 facilitate consumers' ability to compare the quality of care provided by nursing

1 ~~facilities. The Commissioner shall continually update quality indicators and~~
2 refine and improve the information disseminated to consumers.

3 * * * Natural Resources-Related Exemptions * * *

4 Sec. 24. 10 V.S.A. § 101 is amended to read:

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

6 ~~The division of geology and mineral resources~~ Division of Geology and
7 Mineral Resources shall:

8 * * *

9 (6) Maintain records of old and new information relating to the geology,
10 mineral resources, and topography of the state ~~and make public new~~
11 ~~information resulting from research and field studies conducted by or for the~~
12 ~~division. Certain information provided by the mineral industries of the state~~
13 ~~may be held in confidential status at the industries' request and used only for~~
14 ~~purposes and in a manner permitted by the industry~~ State.

15 (7) Prepare and publish reports on the geology, mineral resources, and
16 topography of the ~~state~~ State.

17 Sec. 25. 10 V.S.A. § 1259 is amended to read:

18 § 1259. PROHIBITIONS

19 (a) No person shall discharge any waste, substance, or material into waters
20 of the State, nor shall any person discharge any waste, substance, or material
21 into an injection well or discharge into a publicly owned treatment works any

1 ~~waste which interferes with, passes through without treatment, or is otherwise~~
2 incompatible with those works or would have a substantial adverse effect on
3 those works or on water quality, without first obtaining a permit for that
4 discharge from the Secretary. This subsection shall not prohibit the proper
5 application of fertilizer to fields and crops, nor reduce or affect the authority or
6 policy declared in Joint House Resolution 7 of the 1971 Session of the General
7 Assembly.

8 (b) Any records, ~~reports~~ or information obtained under this permit program
9 ~~shall be available to the public for inspection and copying. However, upon a~~
10 ~~showing satisfactory to the Secretary that any records, reports or information~~
11 ~~or part thereof, other than effluent data, would, if made public, divulge~~
12 ~~methods or processes entitled to protection as that constitute trade secrets, the~~
13 ~~Secretary shall treat and protect those records, reports or information as~~
14 ~~confidential. Any shall be exempt from public inspection and copying under~~
15 ~~1 V.S.A. § 317(c)(9) and shall not be released, except that such records, ~~reports~~~~
16 ~~or information accorded confidential treatment will be disclosed to authorized~~
17 ~~representatives of the State and the United States when relevant to any~~
18 ~~proceedings under this chapter.~~

1 ~~Sec. 26. 10 V.S.A. § 6628 is amended to read:~~

2 § 6628. PLAN, PLAN SUMMARY, AND PERFORMANCE REPORT

3 REVIEW

4 (a) Except as provided for in this section, a ~~toxics use reduction and~~
5 ~~hazardous waste reduction plan~~ Toxics Use Reduction and Hazardous Waste
6 Reduction Plan developed under this subchapter shall be retained at the facility
7 and is not a public record under 1 V.S.A. § 317. If a person developing a
8 Toxics Use Reduction and Hazardous Waste Reduction Plan under this chapter
9 chooses to send all or a portion of the plan to the Secretary for review, it ~~still~~
10 ~~shall not be a public record~~ exempt from public inspection and copying under
11 1 V.S.A. § 317(c)(9) and shall not be released. A plan summary submitted
12 pursuant to section 6629 of this title shall be submitted to the Secretary and
13 shall be a public record.

14 * * *

15 Sec. 27. 10 V.S.A. § 6632 is amended to read:

16 § 6632. TRADE SECRETS

17 The ~~secretary~~ Secretary shall adopt rules to ensure that trade secrets
18 designated by a generator in all or a portion of the review and plans, and the
19 report required by this subchapter, ~~are utilized~~ which are exempt from public
20 inspection and copying under 1 V.S.A. § 317(c)(9), shall be used by the
21 ~~secretary or~~ Secretary, the department Department, and any authorized

1 ~~representative of the Department only in connection with the responsibilities of~~
2 ~~the department Department pursuant to this subchapter, and that those trade~~
3 ~~secrets are not otherwise disseminated by the secretary, the department, or any~~
4 ~~authorized representative of the department. The rules shall provide that a~~
5 ~~generator may only designate as trade secrets those that satisfy the criteria for~~
6 ~~trade secrets set forth in 18 V.S.A. § 1728(a) shall not be released.~~

7 * * * Public Service Corporation-Related Exemptions * * *

8 Sec. 28. 30 V.S.A. § 206 is amended to read:

9 § 206. INFORMATION TO BE FURNISHED DEPARTMENT

10 On request by the ~~department of public service~~ Department of Public
11 Service, a company owning or operating a plant, line, or property subject to
12 supervision under this chapter shall furnish the ~~department~~ Department
13 information required by it concerning the condition, operation, management,
14 expense of maintenance and operation, cost of production, rates charged for
15 service or for product, contracts, obligations, and ~~the~~ financial standing of such
16 company. It shall also inform the ~~department~~ Department of the salaries of, the
17 pensions, option, or benefit programs affecting, and the expenses reimbursed
18 to, its officers or directors, or both. ~~Such information shall be open to public~~
19 ~~inspection at reasonable times and any person shall be entitled to copies~~
20 ~~thereof. Information exacted for use by the department in a particular instance~~
21 ~~shall not be made public, except in the discretion of the department.~~

*** Personal Privacy ***

1
2 Sec. 29. FINDINGS; STATEMENT OF PURPOSE

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

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

6 (2) The Vermont Supreme Court has interpreted “personal records”
7 under 1 V.S.A. § 317(c)(7) as records the disclosure of which would reveal
8 “intimate details” of an individual’s life. Under Vermont Supreme Court
9 caselaw, a record containing intimate details is only exempt if the invasion of
10 privacy occasioned by disclosure of the record outweighs the public interest in
11 its disclosure.

12 (3) What constitutes “intimate” details for purposes of 1 V.S.A.
13 § 317(c)(7) is subject to multiple interpretations, which may be overly narrow
14 and, thus, prevent protection of personal information that should be exempt
15 from public disclosure.

16 (b) Statement of purpose. It is the purpose of Sec. 30 of this act to:

17 (1) reorganize and restructure the personal records exemption of
18 1 V.S.A. § 317(c)(7);

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

1 ~~(3) provide that a personal record shall be exempt from disclosure under~~
2 1 V.S.A. § 317(c)(7) if it relates to a particular individual and if the nature,
3 gravity and potential consequences of the invasion of privacy occasioned by
4 disclosure of the record outweighs the public interest in its disclosure.

5 Sec. 30. 1 V.S.A. § 317(c)(7) is amended to read:

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

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

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;~~

3 * * * Trade Secrets * * *

4 Sec. 31. 1 V.S.A. § 317(c)(9) is amended to read:

5 (9) trade secrets, meaning confidential business records or information,
6 including any formulae, plan, pattern, process, tool, mechanism, compound,
7 procedure, production data, or compilation of information which is not
8 patented, which is ~~known only to certain individuals within a commercial~~
9 ~~concern~~ a commercial concern makes efforts that are reasonable under the
10 circumstances to keep secret, and which gives its user or owner an opportunity
11 to obtain business advantage over competitors who do not know it or use it,
12 except that the disclosures required by 18 V.S.A. § 4632 ~~shall not be included~~
13 ~~in~~ are not exempt under this subdivision;

14 * * * Transportation and Motor Vehicle-Related Exemptions * * *

15 Sec. 32. 23 V.S.A. § 707 is amended to read:

16 § 707. RECORDS REQUIRED; MAINTENANCE OF VEHICLES

17 Every driver's training school licensee shall keep a record on such forms as
18 the ~~commissioner~~ Commissioner may prescribe showing the name and address
19 of each instructor, the instruction license number of such instructor, the
20 particular type of instruction given and how much time was given to each type
21 of instruction, and such other information as the ~~commissioner~~ Commissioner

1 ~~may require. Such record shall be open to the inspection of the department~~
2 ~~Department at all reasonable times but shall be for the confidential use of the~~
3 ~~department. Individually identifying information about students may be~~
4 ~~exempt from public inspection and copying under 1 V.S.A. § 317(c)(7). Every~~
5 driver's training school licensee shall maintain all vehicles used in driver
6 training in safe mechanical condition at all times.

7 * * * List of Statutory PRA Exemptions * * *

8 Sec. 33. 1 V.S.A. § 317(d) is added to read:

9 (d) On or before December 1, 2014, the Office of Legislative Council shall
10 compile a list of all Public Records Act exemptions found in the Vermont
11 Statutes Annotated. In compiling the list, the Office of Legislative Council
12 shall consult with the Attorney General's office. The list shall be updated no
13 less often than every two years, and shall be arranged by subject area, and in
14 order by title and section number. The list, and any updates thereto, shall be
15 posted on the websites of the General Assembly, the Secretary of State's
16 Office, the Attorney General's Office, and the State Library, and shall be sent
17 to the Vermont League of Cities and Towns.

18 * * * Effective Date * * *

19 Sec. 34. EFFECTIVE DATE

20 This act shall take effect on July 1, 2014.

** * * Rulemaking; Identification of PRA Exemptions * * **

Sec. 1. 3 V.S.A. § 838 is amended to read:

§ 838. FILING OF PROPOSED RULES

(a) Proposed rules shall be filed with the ~~secretary of state~~ Secretary of State. The filing shall include the following:

- (1) a cover sheet;*
- (2) an economic impact statement;*
- (3) an incorporation by reference statement, if the proposed rule includes an incorporation by reference;*
- (4) an adopting page;*
- (5) the text of the proposed rule;*
- (6) an annotated text showing changes from existing rules;*
- (7) an explanation of the strategy for maximizing public input on the proposed rule as prescribed by the ~~interagency committee on administrative rules~~ Interagency Committee on Administrative Rules; and*
- (8) a brief summary of the scientific information upon which the proposed rule is based to the extent the proposed rule depends on scientific information for its validity.*

(b) The cover sheet shall be on a form prepared by the ~~secretary of state~~ Secretary of State containing at least the following information:

- (1) the name of the agency;*

- (2) *the title or subject of the rule;*
- (3) *a concise summary explaining the effect of the rule;*
- (4) *the specific statutory authority for the rule, and, if none exists, the general statutory authority for the rule;*
- (5) *an explanation of why the rule is necessary;*
- (6) *an explanation of the people, enterprises, and government entities affected by the rule;*
- (7) *a brief summary of the economic impact of the rule;*
- (8) *the name, address, and telephone number of an individual in the agency able to answer questions and receive comments on the proposal;*
- (9) *a proposed schedule for completing the requirements of this chapter, including, if there is a hearing scheduled, the date, time, and place of that hearing; and a deadline for receiving comments; ~~and~~*
- (10) *whether the rule adopts an exemption from inspection and copying of public records or designates information as confidential and, if so, the asserted statutory authority for the exemption or confidentiality designation and a brief summary of the need for the exemption or confidentiality; and*
- (11) *a signed and dated statement by the adopting authority approving the contents of the filing.*

* * *

* * * *Short Title* * * *

Sec. 2. 1 V.S.A. § 315 is amended to read:

§ 315. STATEMENT OF POLICY; SHORT TITLE

(a) It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

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

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

** * * Commerce and Historic Preservation-Related Exemptions * * **

Sec. 3. STATEMENT OF PURPOSE

Sec. 4 of this act repeals 1 V.S.A. § 317(c)(22), which exempted from public inspection and copying any documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), provided that all such documents were no longer exempt when a tax credit certification had been granted by the Secretary of Administration unless the disclosure of such records would otherwise violate any provision of Title 32. Subchapters 11C and 11D of 32 V.S.A. chapter 151 were repealed in 2006, and thus the exemption at 1 V.S.A. § 317(c)(22) is no longer needed going forward. However, if the Agency of Commerce and Community Development or any other public agency has custody of records described in the former 1 V.S.A. § 317(c)(22), these records shall remain exempt from public inspection and copying as they were under the former 1 V.S.A. § 317(c)(22).

Sec. 4. 1 V.S.A. § 317(c) is amended to read:

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

* * *

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or

~~private gain; provided, however, that this section does not apply to, except lists;~~

~~(A) which are by law made available to the public, or to lists;~~

~~(B) of professional or occupational licensees; or~~

~~(C) sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability and pursuant to specific guidelines adopted by the editor of the magazine;~~

* * *

~~(20) information ~~which~~ that would reveal the location of archeological sites and underwater historic properties, except as provided in 22 V.S.A. § ~~762~~ 761;~~

~~(21) lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine; [Repealed.]~~

~~(22) any documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit;~~

~~manufacturer's tax credit), except that all such documents shall become public records under this subchapter when a tax credit certification has been granted by the Secretary of Administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32; [Repealed.]~~

* * *

~~(30) all code and machine readable structures of state funded and controlled State-controlled database applications structures and application code, including the vermontvacation.com website and Travel Planner application, which are known only to certain ~~state~~ State departments engaging in marketing activities and which give the ~~state~~ State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such ~~state~~ State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the ~~state's~~ State's best interests;~~

* * *

~~(40) records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title;~~

* * *

Sec. 5. 9 V.S.A. § 4100b is amended to read:

§ 4100b. ENFORCEMENT; TRANSPORTATION BOARD

* * *

(e) The Board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the Board shall require the parties to the proceeding to attend a prehearing conference in which the Chair or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the Board's calendar for hearing. ~~Conference discussions~~ Settlement communications shall remain confidential ~~and~~, shall be exempt from public inspection and copying under the Public Records Act, shall not be disclosed ~~or~~, and shall not be used as an admission in any subsequent hearing.

* * *

** * * Education-Related Exemptions * * **

Sec. 6. 1 V.S.A. § 317(c) is amended to read:

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

* * *

(11) student records, including records of a home study student, ~~at educational institutions or agencies funded wholly or in part by State revenue;~~

provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (~~P.L. 93-380~~) and as, 20 U.S.C. § 1232g, as may be amended;

* * *

(23) any data, records, or information ~~developed, discovered, collected, or received~~ produced or acquired by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont ~~state colleges~~ State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information ~~are~~ is published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to, ~~but is not limited to,~~ research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research. This subdivision shall not apply to records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with State law or federal law regarding or regulating animal care;

* * *

Sec. 7. 16 V.S.A. § 2826 is added to read:

§ 2826. CONFIDENTIALITY OF PERSONALLY IDENTIFYING
INFORMATION

Except as otherwise provided by law, or by consent of the individual, information that directly or indirectly identifies applicants, recipients, beneficiaries, or participants in programs administered by the Corporation, including grant, loan, scholarship, outreach, or investment plan programs, shall not be released and shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(7).

Sec. 8. 16 V.S.A. § 2843 is amended to read:

§ 2843. APPLICATIONS, CERTIFICATES, AND REPORTS

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

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

(c) The Vermont ~~commissioner of taxes~~ Commissioner of Taxes, when requested by the ~~corporation~~ Corporation, shall compare any certificate filed pursuant to this subchapter with the ~~state~~ State income tax returns filed by the

persons making such certificate and shall report any instances of discrepancy to the corporation.

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

** * * Financial Regulation-Related Exemptions * * **

Sec. 9. 1 V.S.A. § 317(c) is amended to read:

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

** * **

(26) information and records provided to the Department of Financial Regulation by ~~an individual~~ a person for the purposes of having the ~~department~~ Department assist that ~~individual~~ person in resolving a dispute with any person ~~or company~~ regulated by the Department, and any information or records provided by a ~~company or any other~~ person in connection with the ~~individual's~~ dispute;

* * *

(36) anti-fraud plans and summaries submitted by insurers to the ~~Department of Financial Regulation~~ for the purposes of complying with 8 V.S.A. § 4750;

* * *

Sec. 10. 8 V.S.A. § 3839 is amended to read:

§ 3839. REPORTING REQUIREMENTS AND PRIVACY

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

prescribe by rule or by order concerning life settlement purchase agreements or similar investment contracts entered into by residents of this ~~state~~ State.

* * *

Sec. 11. 8 V.S.A. § 4488(5) is amended to read:

(5) Notice of termination of appointment of insurance agent. Every society doing business in this State shall, upon the termination of the appointment of any insurance agent licensed to represent it in this ~~state~~ State, forthwith file with the Commissioner of Financial Regulation, a statement, in such form as he or she may prescribe, of the facts relative to the termination and the cause thereof. Every statement made pursuant to this section ~~shall be deemed a~~ is confidential and privileged communication to the same extent as provided under subsection 4813m(f) of this title.

Sec. 12. 8 V.S.A. § 7041(e) is amended to read:

(e) The notice of hearing held under subsection (a) of this section and any order issued pursuant to subsection (a) shall be served upon the insurer pursuant to the provisions of 3 V.S.A. chapter 25. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Commissioner may base his or her order. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur not less than ten days nor more than 30 days after notice is served and shall be held at the offices of the Department of Financial Regulation or in some other place

*convenient to the parties as determined by the Commissioner. ~~Hearings~~
Unless the insurer requests a public hearing, hearings under subsection (a) of
this section shall be private and shall not be subject to the provisions of 1
V.S.A. chapter 5, subchapters 2 and 3 (public information and access to public
records), unless the insurer requests a public hearing exempt from the
requirements of the Open Meeting Law, and records of such hearings shall be
exempt from public inspection and copying under the Public Records Act.*

** * * Health Care-Related Exemptions * * **

Sec. 13. 1 V.S.A. § 317(c)(38) is amended to read:

*(38) ~~records held by the agency of human services, which include~~
~~prescription information containing prescriber-identifiable data, that could be~~
~~used to identify a prescriber, except that the records shall be made available~~
~~upon request for medical research, consistent with and for purposes expressed~~
~~in 18 V.S.A. §§ 4621, 4631, 4632, 4633, and 4622 or 9410 and, 18 V.S.A.~~
~~chapter 84, or as provided for in 18 V.S.A. chapter or 84A, and for other law~~
~~enforcement activities;~~*

Sec. 14. 8 V.S.A. § 4089a is amended to read:

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

** * **

*(i) ~~The confidentiality of any health care information acquired by or~~
~~provided to the an independent panel of mental health professionals or to an~~*

~~independent review organization pursuant to section 4089f of this title shall be maintained in compliance with any applicable State or federal laws. The independent panel shall not constitute a public agency 1 V.S.A. § 317(a), or a public body under section 310 of Title 1. Records of, and internal materials prepared for, specific reviews under this section shall be exempt from public disclosure under 1 V.S.A. § 316.~~

Sec. 15. 18 V.S.A. § 7103 is amended to read:

§ 7103. DISCLOSURE OF INFORMATION

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title, ~~and which~~ that directly or indirectly ~~identifying~~ identifies a patient or former patient or an individual whose hospitalization or care has been sought or provided under this part, together with clinical information relating to such persons, shall be kept confidential and shall not be disclosed by any person except ~~insofar~~:

(1) as the following persons have consented to disclosure in writing:

(A) the individual identified; in the records;

(B) the individual's ~~health care~~ agent under ~~subsection 5264~~ an advance directive that has become effective under section 9706 of this title; or

(C) the individual's legal guardian, if any (~~or, or, if the individual is an unemancipated minor, his or her parent or legal guardian~~), ~~shall consent in writing~~ guardian; or

(2) to a person specifically authorized by the individual to receive health care information under an advance directive that has become effective under section 9706 of this title;

(3) as disclosure may be necessary to carry out any of the provisions of this part; or

(3)(4) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information concerning an individual's medical condition to ~~the individual's family, clergy, physician, attorney, the individual's health care agent under section 5264 of this title, a person to whom disclosure is authorized by a validly executed durable power of attorney for health care, or to an interested party~~ a person authorized by law.

* * *

Sec. 16. IDENTITY OF VERMONT STATE HOSPITAL PATIENTS

BURIED ON HOSPITAL GROUNDS FROM 1892 TO 1913

Consistent with the intent of Joint Resolution No. R-109 (2013) to preserve the memory of individuals buried in the cemetery and on the grounds of the former Vermont State Hospital in Waterbury, and to enable the identification of individuals buried in unmarked graves so that these individuals will not be

left unknown, the State of Vermont may release records dating from 1892 to 1913 that identify patients of the former Vermont State Hospital in Waterbury, but only to the extent necessary to assist in the identification of patients buried in the Hospital's cemetery or on its grounds in unmarked graves from 1892 to 1913.

** * * Human Services-Related Exemptions * * **

Sec. 17. 33 V.S.A. § 105(c) is amended to read:

(c) In addition to other duties imposed by law, the ~~commissioner~~ Commissioner shall:

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

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

** * **

Sec. 18. 33 V.S.A. § 111 is amended to read:

§ 111. RECORDS, RESTRICTIONS, PENALTIES

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

(b) A person shall not:

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

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

Sec. 19. 33 V.S.A. § 908 is amended to read:

§ 908. POWERS AND DUTIES

(a) Each nursing home or other provider shall file with the ~~division~~ Division, on request, such data, statistics, schedules, or information as the ~~division~~ Division may require to enable it to carry out its function. Information received from a nursing home under this section shall be available

to the public, except that the specific salary and wage rates of employees, other than the salary of an administrator, shall not be disclosed unless disclosure is required under 1 V.S.A. § 317(b).

(b) The ~~division~~ Division shall have the power to examine books and accounts of any nursing home or other provider caring for ~~state-assisted~~ State-assisted persons, to subpoena witnesses and documents, to administer oaths to witnesses and to examine them on all matters of which the ~~division~~ Division has jurisdiction.

(c) The ~~secretary~~ Secretary shall adopt all rules and regulations necessary for the implementation of this chapter.

Sec. 20. 33 V.S.A. § 2010(e) is amended to read:

(e) Notwithstanding any provision of law to the contrary, information submitted to the Department under this section ~~is confidential and is not a public record as defined in 1 V.S.A. § 317(b)~~ shall be exempt from public inspection and copying under the Public Records Act and shall not be released. Disclosure may be made by the Department to an entity providing services to the Department under this section; however, that disclosure does not change the confidential status of the information. The information may be used by the entity only for the purpose specified by the Department in its contract with the entity. Data compiled in aggregate form by the Department for the purposes of reporting required by this section are public records as

defined in 1 V.S.A. § 317(b), provided they do not reveal trade information protected by State or federal law.

** * * Natural Resources-Related Exemptions * * **

Sec. 21. 10 V.S.A. § 101 is amended to read:

§ 101. DIVISION OF GEOLOGY AND MINERAL RESOURCES; DUTIES

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

** * **

(6) Maintain records of old and new information relating to the geology, mineral resources, and topography of the state ~~and make public new information resulting from research and field studies conducted by or for the division. Certain information provided by the mineral industries of the state may be held in confidential status at the industries' request and used only for purposes and in a manner permitted by the industry~~ State.

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

Sec. 22. 10 V.S.A. § 1259 is amended to read:

§ 1259. PROHIBITIONS

(a) No person shall discharge any waste, substance, or material into waters of the State, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment

works any waste which interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the Secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in Joint House Resolution 7 of the 1971 Session of the General Assembly.

(b) Any records, ~~reports~~ or information obtained under this permit program shall be available to the public for inspection and copying. However, upon a showing satisfactory to the Secretary that any records, reports or information or part thereof, other than effluent data, would, if made public, divulge methods or processes entitled to protection as that constitute trade secrets, the Secretary shall treat and protect those records, reports or information as confidential. Any shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9) and shall not be released, except that such records, ~~reports~~ or information ~~accorded confidential treatment~~ will be disclosed to authorized representatives of the State and the United States when relevant to any proceedings under this chapter.

Sec. 23. 10 V.S.A. § 6628 is amended to read:

*§ 6628. PLAN, PLAN SUMMARY, AND PERFORMANCE REPORT
REVIEW*

(a) Except as provided for in this section, a ~~toxics use reduction and hazardous waste reduction plan~~ Toxics Use Reduction and Hazardous Waste Reduction Plan developed under this subchapter shall be retained at the facility and is not a public record under 1 V.S.A. § 317. If a person developing a Toxics Use Reduction and Hazardous Waste Reduction Plan under this chapter chooses to send all or a portion of the plan to the Secretary for review, it ~~still shall not be a public record~~ exempt from public inspection and copying under 1 V.S.A. § 317(c)(9) and shall not be released. A plan summary submitted pursuant to section 6629 of this title shall be submitted to the Secretary and shall be a public record.

** * **

Sec. 24. 10 V.S.A. § 6632 is amended to read:

§ 6632. TRADE SECRETS

The ~~secretary~~ Secretary shall adopt rules to ensure that trade secrets designated by a generator in all or a portion of the review and plans, and the report required by this subchapter, ~~are utilized~~ which are exempt from public inspection and copying under 1 V.S.A. § 317(c)(9), shall be used by the ~~secretary or~~ Secretary, the department Department, and any authorized

~~representative of the Department only in connection with the responsibilities of the department Department pursuant to this subchapter, and that those trade secrets are not otherwise disseminated by the secretary, the department, or any authorized representative of the department. The rules shall provide that a generator may only designate as trade secrets those that satisfy the criteria for trade secrets set forth in 18 V.S.A. § 1728(a) shall not be released.~~

** * * Public Service Corporation-Related Exemptions * * **

Sec. 25. 30 V.S.A. § 206 is amended to read:

§ 206. INFORMATION TO BE FURNISHED DEPARTMENT

~~On request by the department of public service Department of Public Service, a company owning or operating a plant, line, or property subject to supervision under this chapter shall furnish the department Department information required by it concerning the condition, operation, management, expense of maintenance and operation, cost of production, rates charged for service or for product, contracts, obligations, and the financial standing of such company. It shall also inform the department Department of the salaries of, the pensions, option, or benefit programs affecting, and the expenses reimbursed to, its officers or directors, or both. Such information shall be open to public inspection at seasonable times and any person shall be entitled to copies thereof. Information exacted for use by the department in a~~

~~particular instance shall not be made public, except in the discretion of the department.~~

** * * Trade Secrets * * **

Sec. 26. 1 V.S.A. § 317(c)(9) is amended to read:

(9) trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 shall not be included in are not exempt under this subdivision;

** * * Transportation and Motor Vehicle-Related Exemptions * * **

Sec. 27. 23 V.S.A. § 707 is amended to read:

§ 707. RECORDS REQUIRED; MAINTENANCE OF VEHICLES

Every driver's training school licensee shall keep a record on such forms as the ~~commissioner~~ Commissioner may prescribe showing the name and address of each instructor, the instruction license number of such instructor, the particular type of instruction given and how much time was given to each type of instruction, and such other information as the ~~commissioner~~ Commissioner

*may require. Such record shall be open to the inspection of the ~~department~~
Department at all reasonable times but shall be for the confidential use of the
department. Individually identifying information about students may be
exempt from public inspection and copying under 1 V.S.A. § 317(c)(7). Every
driver's training school licensee shall maintain all vehicles used in driver
training in safe mechanical condition at all times.*

** * * List of Statutory PRA Exemptions * * **

Sec. 28. 1 V.S.A. § 317(d) is added to read:

*(d) On or before December 1, 2014, the Office of Legislative Council shall
compile a list of all Public Records Act exemptions found in the Vermont
Statutes Annotated. In compiling the list, the Office of Legislative Council
shall consult with the Attorney General's office. The list shall be updated no
less often than every two years, and shall be arranged by subject area, and in
order by title and section number. The list, and any updates thereto, shall be
posted on the websites of the General Assembly, the Secretary of State's Office,
the Attorney General's Office, and the State Library, and shall be sent to the
Vermont League of Cities and Towns.*

** * * Effective Date * * **

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2014.