

2013 Acts and Resolves: New, Amended, and Repealed PRA Exemptions

A. List of New Exemptions (see text in Part IV below)

1. 8 V.S.A. § 3588 (an insurer's Own Risk and Solvency Assessment (ORSA) summary report filed with DFR) (Act 29, Sec. 44)
2. 8 V.S.A. § 3683(a)(2) (notices of divestitures, acquisitions, and mergers related to domestic insurers) (Act 29, Sec. 28)
3. 8 V.S.A. § 3683a(c) (preacquisition notification of any acquisition in which there is a change in control of an insurer licensed to do business in this State, but not domiciled in this State) (Act. 29, Sec. 29)
4. 8 V.S.A. § 6048o (records of special purpose financial captive insurance company obtained in the course of an examination) (Act 29, Sec. 66)
5. 12 V.S.A. § 4634(a) (report filed in connection with mandatory mediation program in mortgage foreclosure actions) (Act 8, Sec. 1)
6. 23 V.S.A. § 1607(c)(1)(C)(ii) and (c)(2)(A) (access to data collected with automated license plate recognition systems) (Act 69, S.18, Sec. 1)

B. List of Significantly Amended Exemptions

- I. 1 V.S.A. § 317(c)(5) (crime detection and investigation records) (Act 70, S.148).
Amends the exemption to move from a categorical exemption to one that exempts crime detection and investigation records only when disclosure:
 - (i) *could reasonably be expected to interfere with enforcement proceedings;*
 - (ii) *would deprive a person of a right to a fair trial or an impartial adjudication;*
 - (iii) *could reasonably be expected to constitute an unwarranted invasion of personal privacy;*
 - (iv) *could reasonably be expected to disclose the identity of a confidential source...;*
 - (v) *would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;*
 - (vi) *could reasonably be expected to endanger the life or physical safety of any individual;*
2. 8 V.S.A. § 3687 (records obtained in the course of an examination or investigation of an insurance holding company system; registration statements and enterprise risk report of insurers part of a holding company system; prior notification of certain transactions involving a domestic insurer and a person in a holding company system) (Act 29, Sec. 33). *Amendments expand scope of exemption to cover annual enterprise risk reports of*

insurers provided as part of prior notification of certain transactions involving a domestic insurer as well as prior notification of certain transactions involving a domestic insurer and a person within its holding company system; specifies that records exempt under the section shall not be subject to discovery or admissible in evidence in any private civil action; and clarifies the authority to share exempt information with (and receive such information from) NAIC and its affiliates, other regulatory agencies, and other enforcement authorities.

3. 8 V.S.A. § 8308 (risk-based capital reports and risk based capital plans of insurers filed with DFR) (Act 29, Sec. 40). *Specifies that records exempt under the section shall not be subject to discovery or admissible in evidence in any private civil action; and clarifies the authority to share exempt information with (and receive such information from) NAIC and its affiliates, other regulatory agencies, and other enforcement authorities.*
4. 16 V.S.A. § 253 (Criminal records or criminal information received in background check of a person seeking educator license or a person offered a school superintendent position) (Act 56, Sec. 7c). *Amendment authorizes the Secretary of Education, a superintendent, or headmaster to disclose criminal records and criminal record information to a “qualified entity,” which is defined as a person (including governmental bodies) doing business in Vermont that provides care or services to children, persons who are elders, or persons with disabilities.*
5. 18 V.S.A. § 4284 (data collected pursuant to the Prescription Monitoring System and related information and records) (Act 75, H.522, Sec. 8). *Arguably the new subsec. (i) covers the same subject matter as the expanded subsec. (a).*
6. 32 V.S.A. 3102 (general confidentiality of tax returns and tax return information; exceptions) (Act 73, H.295, Sec. 6). *Directs the Commissioner of Taxes and JFO to enter into an MOU by 8/1/13 to provide JFO with state returns and return information necessary for JFO to conduct its own statistical studies, forecasts, and fiscal analysis.*

C. Repealed Exemption

4 V.S.A. § 652(4) (superior court records until service of process has been completed or if required by law to be kept confidential)

D. Full Text of New Exemptions

1. 8 V.S.A. § 3588 (an insurer’s Own Risk and Solvency Assessment (ORSA) summary report filed with DFR)

§ 3588. CONFIDENTIALITY

(a) Documents, materials, or other information, including the summary report, in the possession of or control of the Department that are obtained by, created by, or disclosed to the

Commissioner or any other person under this subchapter, is recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall be exempt from public inspection and copying under the Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Commissioner, however, is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(b) Neither the Commissioner nor any person who received documents, materials, or other ORSA related information, through examination or otherwise, while acting under the authority of the Commissioner or with whom such documents, materials, or other information are shared pursuant to this subchapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In furtherance of his or her regulatory duties, the Commissioner:

(1) may, upon request, share documents, materials, or other ORSA related information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in section 3695 of this title, with the NAIC and with any third-party consultants designated by the Commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) may receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in section 3695 of this title and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or

privileged under the laws of the jurisdiction that is the source of the document, materials, or information.

(3) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided under this subchapter consistent with this subsection that shall:

(A) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this subchapter, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(B) specify that ownership of information shared with the NAIC or a third-party consultant under this subchapter remains with the Commissioner and that the NAIC's or a third-party consultant's use of the information is subject to the direction of the Commissioner;

(C) prohibit the NAIC or third-party consultant from storing the information shared under this subchapter in a permanent database after the underlying analysis is completed;

(D) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant under this subchapter is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(E) require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant under this subchapter; and

(F) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(d) The sharing of information and documents by the Commissioner under this subchapter shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this subchapter.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the Commissioner under this section or as a result of sharing as authorized under this subchapter.

(f) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant under this subchapter shall be confidential by law and privileged, shall be exempt from public inspection and copying under the Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Also see findings at 8 V.S.A. § 3581(c):

(c) The General Assembly finds and declares that the ORSA Summary Report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the General Assembly that the summary report required under this subchapter shall be a confidential document filed with the Commissioner, that it shall be shared only as stated in this subchapter and to assist the Commissioner in the performance of his or her duties, and that in no event shall the summary report be subject to public inspection and copying under the Public Records Act.

2. 8 V.S.A. § 3683(a)(2) (notices of divestitures, acquisitions, and mergers related to domestic insurers)

**§ 3683. ACQUISITION OF CONTROL OF OR MERGER WITH
DOMESTIC INSURER**

(a) Filing requirements.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement

to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the Commissioner in the manner hereinafter prescribed.

(2) For purposes of this subsection, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner shall file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential and not subject to public inspection and copying under the Public Records Act until the conclusion of the transaction unless the Commissioner, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subdivision (1) of this subsection is otherwise filed, this subdivision shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the Commissioner, which shall contain the information set forth in subdivision 3683a(c)(1). A failure to file the notification may be subject to penalties specified in subdivision 3683a(e) of this chapter.

(4) For purposes of this section, a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the Commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, “person” shall not include any securities broker holding, in the usual and customary broker’s function, less than 20 percent of the voting securities of an insurance company or of any person which controls an insurance company.

3. 8 V.S.A. § 3683a(c) (preacquisition notification of any acquisition in which there is a change in control of an insurer licensed to do business in this State, but not domiciled in this State)

(c) Preacquisition notification; waiting period. An insurer involved in an acquisition covered by subsection (b) of this section shall file a preacquisition notification with the Commissioner so that the Commissioner may determine whether the proposed acquisition, if consummated, would violate the competitive standard established under subsection (d) of this section. The Commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 3687 of this chapter.

4. 8 V.S.A. § 6048o (records of special purpose financial captive insurance company obtained in the course of an examination)

§ 6048o. CONFIDENTIALITY

(a) All documents, materials, or other information, including confidential and privileged documents, examination reports, preliminary examination reports or results, working papers, recorded information, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under this subchapter are confidential and shall not be:

- (1) subject to subpoena;
- (2) subject to public inspection and copying under the Public Records Act; or
- (3) discoverable or admissible in evidence in any private civil action.

(b) In furtherance of his or her regulatory duties, the Commissioner may:

(1) share documents, materials, or other information, including those that are confidential and privileged, with other state, federal, or international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or subsidiaries, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information;

(2) receive documents, materials, or information, including those that are confidential and privileged, from other state, federal, and international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or subsidiaries and

shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

(3) enter into written agreements with other state, federal, and international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or subsidiaries governing sharing and use of information consistent with this section, including agreements providing for cooperation between the Commissioner and other agencies in relation to the activities of a supervisory college; and

(4) participate in a supervisory college for any special purpose financial insurer that is part of an affiliated group with international operations in order to assess the insurer's compliance with Vermont laws and regulations, as well as to assess the business strategy, financial condition, risk exposure, risk management, governance processes, and legal and regulatory position.

(5) Prior to sharing information under this subsection, the Commissioner shall determine that sharing the information will substantially further the performance of the regulatory or law enforcement duties of the recipient and may not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except to the extent provided in this subsection.

5. 12 V.S.A. § 4634(a) (report filed in connection with mandatory mediation program in mortgage foreclosure actions)

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties, and shall provide a copy of the report to the Office of the Attorney General for data collection purposes. The report submitted to the Attorney General's office shall include, in addition to the information identified in subsection (b) of this section, all applicable government loss mitigation program criteria, inputs, and calculations performed prior to or during the mediation and all information related to the requirements in subsection 4633(a) of this title. The report submitted to the Attorney General's office shall be confidential, and shall be exempt from public copying and inspection

under 1 V.S.A. § 317, provided that any public report by the Attorney General may include information in aggregate form.

6. 23 V.S.A. § 1607(c)(1)(C)(ii) and (c)(2)(A) (access to data collected with automated license plate recognition systems)

(ii) In each department operating an ALPR system, access to active data shall be limited to designated personnel who have been provided account access by the department to conduct authorized ALPR stored data queries. Access to active data shall be restricted to data collected within the past seven days.

(2)(A) A VTIAC analyst shall transmit historical data only to a Vermont or out-of-state law enforcement officer who has a legitimate law enforcement purpose for the data. A law enforcement officer to whom historical data are transmitted may use such data only for a legitimate law enforcement purpose. Entry of any data onto the statewide ALPR server other than data collected by an ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.