

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations to which was referred House
3 Bill No. 757 entitled “An act relating to exemptions to the Public Records Act”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

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

9 § 838. FILING OF PROPOSED RULES

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

12 (1) a cover sheet;

13 (2) an economic impact statement;

14 (3) an incorporation by reference statement, if the proposed rule
15 includes an incorporation by reference;

16 (4) an adopting page;

17 (5) the text of the proposed rule;

18 (6) an annotated text showing changes from existing rules;

19 (7) an explanation of the strategy for maximizing public input on the
20 proposed rule as prescribed by the ~~interagency committee on administrative~~
21 ~~rules~~ Interagency Committee on Administrative Rules; and

1 (8) a brief summary of the scientific information upon which the
2 proposed rule is based to the extent the proposed rule depends on scientific
3 information for its validity.

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

6 (1) the name of the agency;

7 (2) the title or subject of the rule;

8 (3) a concise summary explaining the effect of the rule;

9 (4) the specific statutory authority for the rule, and, if none exists, the
10 general statutory authority for the rule;

11 (5) an explanation of why the rule is necessary;

12 (6) an explanation of the people, enterprises, and government entities
13 affected by the rule;

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

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

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

20 (10) whether the rule adopts an exemption from inspection and copying
21 of public records or designates information as confidential and, if so, the

1 asserted statutory authority for the exemption or confidentiality designation
2 and a brief summary of the need for the exemption or confidentiality; and

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

5 * * *

6 * * * Short Title * * *

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

8 § 315. STATEMENT OF POLICY; SHORT TITLE

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

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

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

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

5 Sec. 3. STATEMENT OF PURPOSE

6 Sec. 4 of this act repeals 1 V.S.A. § 317(c)(22), which exempted from
7 public inspection and copying any documents filed, received, or maintained by
8 the Agency of Commerce and Community Development with regard to
9 administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs
10 tax credit; manufacturer's tax credit), provided that all such documents were
11 no longer exempt when a tax credit certification had been granted by the
12 Secretary of Administration unless the disclosure of such records would
13 otherwise violate any provision of Title 32. Subchapters 11C and 11D of
14 32 V.S.A. chapter 151 were repealed in 2006, and thus the exemption at
15 1 V.S.A. § 317(c)(22) is no longer needed going forward. However, if the
16 Agency of Commerce and Community Development or any other public
17 agency has custody of records described in the former 1 V.S.A. § 317(c)(22),
18 these records shall remain exempt from public inspection and copying as they
19 were under the former 1 V.S.A. § 317(c)(22).

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

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

4 * * *

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

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

10 (B) of professional or occupational licensees; or

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

15 * * *

16 (20) information ~~which~~ that would reveal the location of archeological
17 sites and underwater historic properties, except as provided in 22 V.S.A. § ~~762~~
18 761;

19 ~~(21) lists of names compiled or obtained by Vermont Life magazine for~~
20 ~~the purpose of developing and maintaining a subscription list, which list may~~
21 ~~be sold or rented in the sole discretion of Vermont Life magazine, provided~~

1 ~~that such discretion is exercised in furtherance of that magazine's continued~~
2 ~~financial viability, and is exercised pursuant to specific guidelines adopted by~~
3 ~~the editor of the magazine; [Repealed.]~~

4 (22) ~~any documents filed, received, or maintained by the Agency of~~
5 ~~Commerce and Community Development with regard to administration of~~
6 ~~32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit;~~
7 ~~manufacturer's tax credit), except that all such documents shall become public~~
8 ~~records under this subchapter when a tax credit certification has been granted~~
9 ~~by the Secretary of Administration, and provided that the disclosure of such~~
10 ~~documents does not otherwise violate any provision of Title 32; [Repealed.]~~

11 * * *

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

* * *

(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.

* * *

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

7 * * *

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

9 § 2826. CONFIDENTIALITY OF PERSONALLY IDENTIFYING

10 INFORMATION

11 Except as otherwise provided by law, or by consent of the individual,
12 information that directly or indirectly identifies applicants, recipients,
13 beneficiaries, or participants in programs administered by the Corporation,
14 including grant, loan, scholarship, outreach, or investment plan programs, shall
15 not be released and shall be exempt from public inspection and copying under
16 1 V.S.A. § 317(c)(7).

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

14 * * *

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

16 (5) Notice of termination of appointment of insurance agent. Every
17 society doing business in this State shall, upon the termination of the
18 appointment of any insurance agent licensed to represent it in this ~~state~~ State,
19 forthwith file with the Commissioner of Financial Regulation, a statement, in
20 such form as he or she may prescribe, of the facts relative to the termination
21 and the cause thereof. Every statement made pursuant to this section ~~shall be~~

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

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

4 (e) The notice of hearing held under subsection (a) of this section and any
5 order issued pursuant to subsection (a) shall be served upon the insurer
6 pursuant to the provisions of 3 V.S.A. chapter 25. The notice of hearing shall
7 state the time and place of hearing, and the conduct, condition or ground upon
8 which the Commissioner may base his or her order. Unless mutually agreed
9 between the Commissioner and the insurer, the hearing shall occur not less
10 than ten days nor more than 30 days after notice is served and shall be held at
11 the offices of the Department of Financial Regulation or in some other place
12 convenient to the parties as determined by the Commissioner. ~~Hearings Unless~~
13 the insurer requests a public hearing, hearings under subsection (a) of this
14 section shall be private and ~~shall not be subject to the provisions of 1 V.S.A.~~
15 ~~chapter 5, subchapters 2 and 3 (public information and access to public~~
16 ~~records), unless the insurer requests a public hearing~~ exempt from the
17 requirements of the Open Meeting Law, and records of such hearings shall be
18 exempt from public inspection and copying under the Public Records Act.

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

2 § 7103. DISCLOSURE OF INFORMATION

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

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

10 (A) the individual identified, in the records;

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

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

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

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

1 (b) A person shall not:

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

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

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

10 § 908. POWERS AND DUTIES

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

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

18 (b) The ~~division~~ Division shall have the power to examine books and
19 accounts of any nursing home or other provider caring for ~~state-assisted~~
20 State-assisted persons, to subpoena witnesses and documents, to administer

1 oaths to witnesses and to examine them on all matters of which the ~~division~~
2 Division has jurisdiction.

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

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

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

10 Disclosure may be made by the Department to an entity providing services to
11 the Department under this section; however, that disclosure does not change
12 the confidential status of the information. The information may be used by the
13 entity only for the purpose specified by the Department in its contract with the
14 entity. Data compiled in aggregate form by the Department for the purposes of
15 reporting required by this section are public records as defined in 1 V.S.A.

16 § 317(b), provided they do not reveal trade information protected by State or
17 federal law.

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

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

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

1 policy declared in Joint House Resolution 7 of the 1971 Session of the General
2 Assembly.

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

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

15 § 6628. PLAN, PLAN SUMMARY, AND PERFORMANCE REPORT

16 REVIEW

17 (a) Except as provided for in this section, a ~~toxics use reduction and~~
18 ~~hazardous waste reduction plan~~ Toxics Use Reduction and Hazardous Waste
19 Reduction Plan developed under this subchapter shall be retained at the facility
20 and is not a public record under 1 V.S.A. § 317. If a person developing a
21 Toxics Use Reduction and Hazardous Waste Reduction Plan under this chapter

1 chooses to send all or a portion of the plan to the Secretary for review, it ~~still~~
2 shall ~~not be a public record~~ exempt from public inspection and copying under
3 1 V.S.A. § 317(c)(9) and shall not be released. A plan summary submitted
4 pursuant to section 6629 of this title shall be submitted to the Secretary and
5 shall be a public record.

6 * * *

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

8 § 6632. TRADE SECRETS

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

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

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

3 § 206. INFORMATION TO BE FURNISHED DEPARTMENT

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

16 * * * Trade Secrets * * *

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

18 (9) trade secrets, meaning confidential business records or information,
19 including any formulae, plan, pattern, process, tool, mechanism, compound,
20 procedure, production data, or compilation of information which is not
21 patented, which is ~~known only to certain individuals within a commercial~~

1 ~~concern~~ a commercial concern makes efforts that are reasonable under the
2 circumstances to keep secret, and which gives its user or owner an opportunity
3 to obtain business advantage over competitors who do not know it or use it,
4 except that the disclosures required by 18 V.S.A. § 4632 ~~shall not be included~~
5 ~~in~~ are not exempt under this subdivision;

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

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

8 § 707. RECORDS REQUIRED; MAINTENANCE OF VEHICLES

9 Every driver's training school licensee shall keep a record on such forms as
10 the ~~commissioner~~ Commissioner may prescribe showing the name and address
11 of each instructor, the instruction license number of such instructor, the
12 particular type of instruction given and how much time was given to each type
13 of instruction, and such other information as the ~~commissioner~~ Commissioner
14 may require. Such record shall be open to the inspection of the ~~department~~
15 Department at all reasonable times ~~but shall be for the confidential use of the~~
16 ~~department~~. Individually identifying information about students may be
17 exempt from public inspection and copying under 1 V.S.A. § 317(c)(7). Every
18 driver's training school licensee shall maintain all vehicles used in driver
19 training in safe mechanical condition at all times.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * * 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.

(Committee vote: _____)

Representative _____
FOR THE COMMITTEE