

No. 29. An act relating to Public Records Act exemptions.

(H.18)

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

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

Sec. 1. 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.

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

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

(d) On or before December 1, 2015, 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.

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

* * * Education; University and State College

Research Records * * *

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

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

* * *

(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 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 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 exempt 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.

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

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

§ 2827. CONFIDENTIALITY OF PERSONALLY IDENTIFYING
INFORMATION

Except as otherwise provided by law, or by consent of the individual identified in the record, 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, is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

Sec. 5. 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; Dispute-Resolution * * *

Sec. 6. 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.

* * *

* * * Financial Regulation; Insurance Agents of Fraternal

Benefit Societies * * *

Sec. 7. 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 privileged communication and shall be kept confidential to the
same extent as provided under subsection 4813m(f) of this title.

* * * Financial Regulation; Statements of Life

Settlement Providers * * *

Sec. 8. 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~~ State. Upon proper request by the filer, the ~~commissioner~~ Commissioner
shall ~~maintain the confidentiality of~~ keep confidential 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.

* * *

* * * Health Care; Nursing Home Data Filed

with Division of Rate Setting * * *

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

(a) Each nursing home or other provider shall file with the Division, on request, such data, statistics, schedules, or information as the 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).

* * * Health Care; Prescription Drug Price Information

Submitted to DVHA * * *

Sec. 10. 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)~~ is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

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)~~ may be publicly released, provided they do not reveal trade information protected by State or federal law.

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

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

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

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

(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.~~

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

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

Sec. 12. 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 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, 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.~~

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

Sec. 13. 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 that is exempt
from public inspection and copying under 1 V.S.A. § 317(c)(7) shall be kept
confidential. Every driver's training school licensee shall maintain all vehicles
used in driver training in safe mechanical condition at all times.

* * * Municipal Bond Registries * * *

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

§ 1884. ~~CONFIDENTIAL REGISTRY~~

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

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

§ 4643. FORM OF ISSUANCE

(a) Bonds or notes of the bank shall be authorized by resolution of the bank
and may be issued in one or more series and shall bear such date or dates,
mature at such time or times, bear interest at such rate or rates of interest per
annum or within such maximum rate, be in such denomination or
denominations, be issued in coupon form payable to bearer, in registered form
or in book entry form, carry such conversion or registration privileges, have
such rank or priority, be executed in such manner, be payable from such
sources in such medium of payment at such place or places within or without

the ~~state~~ State, and be subject to such terms of redemption, with or without premium, as the resolution provides.

(b) The ~~state treasurer~~ State Treasurer may, at the direction of the bank, act as transfer agent or registrar for the exchange or transfer of registered bonds and notes or maintain records so that bonds and notes in book entry form may be effected and the bank may contract with or otherwise designate a bank, trust company, or other person to maintain records so that bonds and notes in book entry form may be effected. Such bank, trust company, or other person, which may include the federal government or any of its agencies or instrumentalities or any officer, agency, or instrumentality of the ~~state~~ State, may be located or have its principal office inside or outside the ~~state~~ State. Bonds and notes in book entry form shall be effected by means of entries on the records of the ~~state treasurer~~ State Treasurer or other designated person which shall reflect the description of the issue, the principal amount, the interest rate, the maturity date, and the owner of the bonds or notes and such other information as is deemed appropriate. The ~~state treasurer~~ State Treasurer or other designated person may effect conversion between book entry bonds and notes and registered bonds and notes for owners of bonds or notes who request such a change. The ~~state treasurer~~ State Treasurer or other designated transfer agent or registrar shall issue a confirmation of the transaction in the form of a written advice.

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

* * * Natural Resources; Discharge Permits * * *

Sec. 16. 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 constitutes trade secrets, the Secretary shall treat and protect those records, reports or information as~~

~~confidential. Any~~ under 1 V.S.A. § 317(c)(9) shall be kept confidential, except that such records, reports or information accorded confidential treatment will may be disclosed to authorized representatives of the State and the United States when relevant to any proceedings under this chapter.

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

Sec. 17. 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.

* * * Natural Resources; Toxics Use Reduction and
Hazardous Waste Reduction Plans * * *

Sec. 18. 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~~ is exempt from public inspection and copying under 1 V.S.A. § 317 the Public Records Act and shall be kept confidential. A plan summary submitted pursuant to section 6629 of this title shall be submitted to the Secretary and shall be a public record.

* * *

Sec. 19. 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)~~ otherwise shall be kept confidential.

* * * Human Rights Commission Exemption * * *

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

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

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

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

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

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

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

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

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

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF
RECORDS

* * *

(d) Any presentence report, ~~pre-parole~~ preparole report, or supervision history prepared by any employee of the Department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is ~~privileged~~ confidential and shall not be disclosed to anyone outside the Department other than the judge or the Parole Board, except that the court or Board may in its discretion permit the inspection of the report or parts thereof by the State's Attorney, the defendant or inmate, or his or her attorney, or other persons having a proper interest therein, whenever the

best interest or welfare of the defendant or inmate makes that action desirable or helpful. Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

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* * * Public Service Department; Records of
Supervised Entities * * *

Sec. 22. 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 reasonable 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 Secret Exemption (General) * * *

Sec. 23. 1 V.S.A. § 317(c) is amended to read:

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

* * *

(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.

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* * * Effective Date * * *

Sec. 24. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Date Governor signed bill: May 26, 2015