

S.79 (as introduced), annotated version  
Senate Judiciary Feb. 14, 2017

**Sec. 1. FINDINGS**

The Legislature finds and declares the following:

(1) In Vermont, we celebrate the rich cultural heritage and diversity of our residents.

(2) All Vermonters should be free from discrimination on the basis of their sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, immigration status, age, or disability.

(3) Vermont must uphold the protection of religious freedom enshrined in the U.S. Constitution and the Vermont Constitution for all its people, and the State has a moral obligation to protect its residents from religious persecution.

(4) Article 3 of Chapter I of the Vermont Constitution prohibits any power from assuming any authority that interferes with or controls, in any manner, the rights of conscience in the free exercise of religious worship.

(5) Article 7 of Chapter I of the Vermont Constitution, also known as the Common Benefits Clause, provides that State benefits and protections are “for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community.”

(6) Article 19 of Chapter I of the Vermont Constitution provides that all people have a natural and inherent right to emigrate from one state to any other that will receive them.

(7) Vermont residents therefore have a right to privacy with respect to religious affiliation and an expectation that religious affiliation or identification shall not affect their residency in the State.

(8) Through the Common Benefits Clause, Vermont residents are afforded the benefits and protections of law enforcement and public safety without regard to their sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, immigration status, age, or disability. Consequently, they have a reasonable expectation that government officials will not monitor them or otherwise single them out merely on the basis of these characteristics.

(9) Vermont State and local law enforcement work tirelessly to protect the rights and security of all Vermonters afforded them under the Vermont and U.S. Constitutions. Moreover, Vermont residents benefit from and are safer through the cooperative and mutually beneficial interaction between local, State, and federal law enforcement, including the U.S. Border Patrol.

(10) Vermont residents who are secure in their person, homes, and surroundings are more likely to engage with law enforcement and public safety and other officials and to participate in civic and economic activity and promote public safety by reporting emergencies, crimes, and acting as witnesses. In addition, they are more likely to participate in other forms of civic engagement if they can be assured they will not be singled out solely on the basis of the personal characteristics described in this section.

- *The findings can be modified once the language of section 2 is determined.*

**Sec. 2. 20 V.S.A. chapter 207 is added to read:**

CHAPTER 207. FREEDOM FROM COMPULSORY COLLECTION OF  
PERSONALLY IDENTIFYING INFORMATION

§ 4651. COLLECTION AND DISCLOSURE OF PERSONALLY  
IDENTIFYING INFORMATION

(a) As used in this section, “personally identifying information” means information concerning a person’s sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, immigration status, age, or disability.

- *VT antidiscrimination laws include: “race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity” and disability (which is defined as either a physical or mental disability); 9 V.S.A. § 4502 (public accommodations); and “race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance” 9 V.S.A. § 4503 (unfair housing practices).*
- *This bill includes “immigration status,” which does not seem to be one of the categories in VT antidiscrimination laws. This bill does not include other criteria such as military or veteran’s status.*
- *Note: (a) includes religion (not “private religious belief”). See below.*

*Issue: “registration” is not a defined term in this version of the bill. However, the AG’s prior draft had a definition of “registration” as “means the act of making a list, catalogue, schedule, database, or register based on personally identifying information.” The ACLU suggested on Friday a definition of “making a list, catalogue, schedule, database, or register based on sexual orientation, gender identify, race, color, religion, national origin, immigration status, or disability.”*

- *Prior definition was broad. Almost any governmental or regulatory function will involve reducing information to a list or database of some kind at some point, even if the list or database is for a permissible purpose.*
- *If “registration” is not a defined term, what does it mean?*
- *Unintended consequences?*

(b) Upon the effective date of this legislation, no employee or agent of a State, county, or municipal government agency shall:

- *Includes every employee of every local, county, and State governmental agency in VT.*
- *What is an “agent,” is this a defined term? Does it include contractors and instrumentalities of the State, such as UVM?*

- *Intended to only cover activities when the individual is “on the clock” or also activities outside work?*
- *If intended to cover personal / private behavior when “off the clock” it raises privacy and constitutional issues.*

(1) Collect information regarding the private religious beliefs, practices, or affiliation of any individual for the purpose of registration.

- *Why “private” religious beliefs. What does this mean, and how different from “religion” in general?*
- *Only for purposes of registration? In other words, it is permissible to compile a registry for other purposes?*

(2) Provide or disclose to federal government authorities personally identifiable information for the purpose of the registration of individuals; or

- *(1) seems intended to prohibit collecting certain information (private religious beliefs), and (2) prohibits providing or disclosing (but not collecting) a broader universe of personally identifiable information, including religion. Why this distinction?*
- *Therefore, can collect all other personally identifiable information, including religious affiliation, but cannot provide this information to feds?*
- *Can provide personally identifiable information for other purposes, not just for registration?*
- *What is the difference between “provide” and “disclose”? Does provision or disclosure have to be intentional and targeted (for example, a State employee calls a federal agency to give them this information) or can it be indirect or a matter of routine data sharing?*

(3) Use agency money, facilities, property, equipment, or personnel to assist in creating or enforcing any federal government program for the registration of individuals.

- *The prohibition in (1) is broadly on State, local, and municipal governments, but this prohibition is only on agencies. Is this meant to cover both State and local government?*
- *How would the State assist in “creating” a federal program?*

(c) Any agreements in existence on the effective date of this section that make any agency or department information or database available in conflict with the terms of this chapter are terminated on that date to the extent of the conflict.

- *“Terminates” all existing agreements and contracts for information sharing with feds, including appropriate information sharing?*
- *Bills includes “agents,” therefore might impair contracts with private businesses / parties?*
- *This seems very broad, is there a list of agreements that may be impacted?*
- *Again, use of “agency or department” here, which indicates State level. Is this meant to be at local level too?*

(d) Nothing in this section is intended to prohibit or impede any State or local agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, said policy or practice is, to the extent of such conflict, abolished.

- *Note, as discussed on Friday the first sentence refers to “State or local agency” and the second only to law enforcement.*
- *First sentence says “intended to ... impede,” which seems broader than second sentence “conflicts with.”*
- *One could argue that refusing to obtain information, or declining to ensure full sharing of whatever information you possess, “impedes” the purpose of those federal laws and federal immigration laws in general. Therefore, does this bill arguably state that VT agencies must now both obtain immigration-related information and provide this information to feds?*
- *Even if “impede” is not read so broadly, this bill seems to now require all law enforcement officers to transmit immigration information to feds because a failure to transmit such information would “conflict” with 8 USC 1373.*
- *What is difference between “terminate” in (c) and “abolish” here?*
- *What is meant by the “lawful requirements” of these statutory sections?*

(e) Nothing in this section is intended to prevent any State, county, or municipal agency from exchanging aggregated, deidentified information with other local, state, or federal agencies.

- *Need to define “deidentified”?*

§ 4652. GOVERNOR AUTHORIZED TO ENTER INTO AGREEMENTS  
PURSUANT TO 8 U.S.C. § 1357(g) AND 19 U.S.C. § 1401(i)

(a) Only the Governor may enter into a Memorandum of Agreement or other agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i).

(b) A State, county, or municipal law enforcement agency may enter into a Memorandum of Agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i) where necessary to preserve the public safety or welfare of Vermonters after a declaration of State or national emergency.

- *Does this Legislature want to give the Governor this sole authority? As discussed on Friday, what if a future governor wants to enter into such agreements?*
- *Subsection (b) should be notwithstanding (a) or else there is a conflict.*

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

- *Should the effectiveness be contingent upon the federal government actually creating a Muslim database?*
- *Make effective upon passage.*