

## MEMORANDUM

To: House Committee on Commerce and Economic Development  
Senate Committee on Economic Development, Housing and General Affairs  
From: David P. Hall, Esq., Legislative Counsel  
Date: November 2, 2017  
RE: State and Federal Law Governing Consumer Personal Information and Data Security

This memorandum addresses federal and State laws that govern the of protection nonpublic personal information of Vermont consumers, including laws that relate to data security, consumer credit information, and credit reporting.

Section I provides an overview of the regulatory framework created by these laws. Section II provides specific citations and a general summary of the federal and State statutes and regulations that govern various aspects of data security and protection of nonpublic personal information. Section III addresses data security laws that impose an affirmative duty to protect consumer information. Section IV provides a thorough summary and analysis of the federal and Vermont laws governing the collection and use of consumer financial data by credit reporting agencies.

### **I. Overview of Regulatory Framework**

The legal framework that regulates the collection, use, disclosure, disposal, and security of personal and financial consumer information is complicated. There is no single law addressing these diverse aspects of protecting consumer information. Rather, multiple layers of federal and state statutes, and of federal and state administrative rules, regulate consumer protection and data security in different manners and contexts. Enforcement of the various federal laws falls under the jurisdiction of many different federal and state departments and agencies, depending on the law, rule, and violation involved, and includes: the Consumer Financial Protection Bureau, the Federal Trade Commission, the functional federal regulators for various financial institutions, e.g., FDIC, NCUA, Federal Reserve Board, etc., and state insurance regulators. To the extent permitted under federal law, states may also have additional regulatory and consumer protection provisions that are enforced by Attorneys General, state financial regulators, or other public agencies and departments.

Overarching the host of federal laws is the Federal Trade Commission Act. This broadly-reaching law prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Whereas other federal laws apply to specific types of businesses or in particular legal contexts, the FTC Act and enforcement action by the Federal Trade Commission more broadly applies to business practices across industries that cause harm to consumers. In the past several years, and often in conjunction with other laws, the FTC has brought enforcement proceedings under the Act against companies involved in most of the highly-publicized data breaches. The FTC typically charges these companies with unfair and deceptive trade

practices—whether because the company misrepresented the scope or effectiveness of its data security program or consumer protection practices, or because the company failed to comply with its own policies.

In addition to the FTC Act, two major suites of federal statutes and regulations address the use and protection of consumer financial information:

The first suite, the Fair Credit Reporting Act and associated rules, applies to consumer reporting agencies, consumer reports, and persons who use or furnish consumer credit information. In general, the act requires that: (1) consumer reporting agencies provide access to consumer credit information, take steps to ensure the accuracy of that information, and observe requirements designed to mitigate identity theft; (2) consumer reports include correct information and are available only for specific permitted purposes; (3) users observe statutory requirements for permissible, legitimate use of a report and certify to the use; and (4) furnishers of consumer credit information supply correct information and observe requirements to facilitate disputes and correction of inaccurate information and mitigate identity theft.

The second suite, the Financial Services Modernization Act, also referred to as Gramm-Leach-Bliley, and its associated rules, applies broadly to financial institutions, which includes both banking institutions and also other businesses that are significantly engaged in providing financial products or services—a category that includes, for example, check-cashing businesses; payday lenders; mortgage brokers; nonbank lenders; personal property or real estate appraisers; professional tax preparers courier services; retailers that extend credit; automobile dealers that lease vehicles for more than 90 days; and any other business that is significantly engaged in a financial activity described in section 4(k) of the Bank Holding Company Act of 1956. A financial institution subject to GLB must provide notice of its privacy policies and is limited in its ability to disclose nonpublic personal information. Additionally, the “Safeguards Rules” adopted under authority of GLB require financial institutions to implement an information security program that includes administrative, technical, and physical safeguards to ensure the security and confidentiality of, and prevent unauthorized access to, customer records and information. Of particular significance, the GLB requirements also apply to persons with whom a financial institution shares nonpublic personal information, including consumer reporting agencies.

Another regulatory layer of federal statutes and rules impose requirements on the collection, use, and disclosure of consumer information in specific legal contexts. For example, the Children’s Online Privacy Protection Act relates specifically to websites that collect information from children under age 13. The Driver’s Privacy Protection Act limits disclosures of personal information by State departments of motor vehicles. The Family Educational Rights and Privacy Act restricts the disclosure of educational records. The Federal Privacy Act imposes extensive requirements on the collection and use of personal information by agencies of the federal

government. Finally, the Health Insurance Portability and Accountability Act imposes duties and limits relating to personal health information.

The final layer of federal law creates crimes for the collection or misuse of personal information. For instance, the Computer Fraud and Abuse act prohibits unauthorized access to computers and trafficking in passwords. The Electronic Communications Privacy Act prohibits the unauthorized interception, use, or disclosure of wire, oral, or electronic communications, and unauthorized access to stored electronic records. The Federal Identity Theft and Assumption Deterrence Act makes it a federal crime to produce or possess false identity documents and to use another person's identity to commit a crime. The Video Privacy Protection Act prohibits the unauthorized disclosure of consumer information relating to video rentals, sales, and viewing history, such as on internet sites like Facebook and Netflix.

In addition to these federal laws, states generally have authority to impose additional requirements, which in many cases are more stringent than federal law. For example, 13 states have laws that apply to any business that has access to consumer personal information and require the business to implement a data security program similar to the GLB Act. Almost every state, including Vermont, has a data breach notification law, which requires notice to consumers (and often to the state Attorney General) when a data breach occurs.

Like many other states, Vermont has scores of state laws across most legal subject areas that seek to limit the disclosure of personal or confidential information by government-related activities. Specific Vermont laws mandate the protection of, and limit the use and disclosure of, social security numbers; require businesses to take reasonable steps to destroy records with personal information; limit a consumer's liability for unauthorized use of a credit card; and create a State law crime of identity theft.

Vermont law goes beyond the requirements of federal law in many areas. For example, with respect to financial institutions, insurance companies, and securities professionals, Vermont not only requires regular notices of privacy policies, but also requires Vermont consumers to "opt in" to allow those companies to disclose personal information to nonaffiliated third parties. Vermont also imposes on these entities the duty to have an information security program similar to the GLB Act.

Finally, with respect to credit reports and credit reporting agencies, Vermont limits the use of credit information for employment purposes, and with limited exceptions, requires written consent from the consumer before a person can obtain his or her credit report. Like many states, Vermont allows a consumer to place a "security freeze" on his or her credit file, imposes certain state-specific notice requirements for consumers, caps the amount and applicability of certain fees, and mandates one free annual credit report from each consumer reporting agency.

## **II. Summary of Laws Governing Various Aspects of Data Security and Protection of Nonpublic Personal Information**

### **A. Federal Statutes and Regulations**

The following federal statutes and associated regulations apply to the protection of consumer data and nonpublic personal information:

#### Children's Online Privacy Protection Act (COPPA) - 15 U.S.C. §§ 6501-6506

The goal of COPPA is to place parents in control over what information is collected online from children under 13. The act directs the FTC to adopt rules that: (1) require operators of commercial web sites and online services to provide notice of, and obtain parental consent for, the collection, use, and disclosure of personal information from children; (2) require an operator to provide information collected from a child and the opportunity to refuse further collection or use; (3) prohibit conditioning a child's participation on disclosing personal information than is reasonably necessary; and (4) require the operator to maintain procedures to protect the confidentiality, security, and integrity of personal information.

*See* Children's Online Privacy Protection Rule, 16 C.F.R. Part 312

#### Computer Fraud and Abuse Act of 1984 - 18 U.S.C. § 1030

This law makes unauthorized access to "protected computers" illegal. Protected computers include U.S. government computers, computers used in interstate or foreign commerce or communication, and computers used by financial institutions. It also prohibits trafficking in computer passwords and damaging a protected computer.

#### Driver's Privacy Protection Act of 1994 - 18 U.S.C. § 2721

This law limits disclosures of personal information in records maintained by State departments of motor vehicles.

#### Electronic Communications Privacy Act of 1986 - 18 U.S. Code sections 2510-2522, 2701-2711, 3121,1367.

This law protects wire, oral, and electronic communications while those communications are being made, are in transit, and when they are stored on computers. The Act applies to email, telephone conversations, and data stored electronically. The act has three titles. Title I, with exceptions for service operators and authorized law enforcement personnel, the "Wiretap Act," prohibits the intentional and actual or attempted interception, use or disclosure of any wire, oral, or electronic communication, and prohibits the use of illegally obtained communications as evidence. Title II, the "Stored Communications Act," protects the privacy of the contents of files stored by service providers and of records held about the subscriber by services providers, such as subscriber name, billing records, or IP addresses. Title III requires a court order to use a pen register or tap and trace device.

#### Family Educational Rights and Privacy Act of 1974 (FERPA) - 20 U.S.C. § 1232g

This law restricts the disclosure of educational records maintained by educational agencies and institutions that receive federal funding.

Family Educational Rights and Privacy Regulations, 34 C.F.R. Part 99

Fair Credit Reporting Act (FCRA) - 15 U.S. Code sections 1681-1681x. This law is designed to promote accuracy, fairness, and privacy of information in the files of the credit bureaus that gather and sell information about consumers to creditors, employers, landlords and other businesses.

Fair Credit Reporting, 12 C.F.R. Part 1022 (Regulation V)  
 Duties of Creditors Regarding Risk-Based Pricing, 16 C.F.R. Part 640  
 Duties of Users of Consumer Reports Regarding Address Discrepancies, 16 C.F.R. Part 641  
 Prescreen Opt-Out Notice, 16 C.F.R. Part 642  
 Duties of Furnishers of Information to Consumer Reporting Agencies, 16 C.F.R. Part 660  
 Affiliate Marketing, 16 C.F.R. Part 680  
 Identity Theft Rules, 16 C.F.R. Part 681 (Red Flags Rules)  
 Disposal of Consumer Report Information and Records, 16 C.F.R. Part 682  
 Model Forms and Disclosures, 16 C.F.R. Part 698

Federal Identity Theft and Assumption Deterrence Act of 1998 - 18 U.S.C. § 1028

This law makes it a federal crime to produce or possess false or unauthorized identification documents, or to use another's identity to commit an activity that violates Federal law or that is a felony under state or local law.

Federal Privacy Act of 1974 - 5 U.S. Code section 552a

This law applies to the access to, and disclosure of, records of individuals held by federal executive and regulatory agencies. It requires such agencies, with some exemptions, to limit disclosure, provide access to the individual, and to apply basic Fair Information Practice Principles to such records containing the personal information of individual U.S. citizens and legal alien residents. As amended by the Computer Matching & Privacy Protection Act of 1988 & Amendments of 1990, the Privacy Act also sets requirements that federal agencies must follow when performing certain automated comparisons of federal benefit program information of individuals with information held by other federal, state or local agencies.

Federal Trade Commission Act, 15 U.S.C. §§ 41-58

The Federal Trade Commission Act is the primary statute of the Commission. Under this Act, as amended, the Commission is empowered, among other things, to (a) prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce; (b) seek monetary redress and other relief for conduct injurious to consumers; (c) prescribe rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (d) gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress and the public. A number of other statutes listed here are enforced under the FTC Act.

Financial Services Modernization Act of 1999, Gramm-Leach-Bliley (GLB) - 15 U.S. Code sections 6801-6809; 15 U.S.C. § 6821-6827

The first part of this law: (1) directs federal regulatory agencies to adopt rules governing the protection of nonpublic personal information by financial institutions; (2) prohibits financial institutions from disclosing such information unless they issue a privacy notice that explain their information sharing practices and give customers the opportunity to opt-out of some sharing of

personally identifiable financial information with outside companies; and (3) requires financial institutions to provide their customers with notice of their institutional privacy policies, at the time of establishing a customer relationship and not less than annually thereafter. The second part of the law creates a federal crime for the fraudulent access to financial information.

Privacy of Consumer Financial Information, 12 C.F.R. Part 1016 (Regulation P)

Financial Privacy Rules, 16 C.F.R. Part 313

Safeguards Rule, 16 C.F.R. part 314

Health Insurance Portability and Accountability Act of 1996 (HIPAA) – 42 U.S.C. §§ 1320d-1320d-9; 45 CFR Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information  
HIPAA includes provisions designed to save money for health care businesses by encouraging electronic transactions and also regulations to protect the security and confidentiality of patient information.

*See also* Health Breach Notification Rule, 16 C.F.R. Part 318, which imposes a duty on a vendor of personal health records, not otherwise covered by HIPAA, to notify consumers and the F.T.C. of any security breach involving individually identifiable health information in personal health records.

Video Privacy Protection Act of 1988 - 18 U.S.C. § 2710

This law was originally intended to limit the conditions under which a video rental or sales outlet may disclose personally identifiable information about consumers, including viewing history. Even though video tapes have been practically replaced by other technology, such as DVDs and streaming video, this law still applies to such “similar audio visual materials.” Consumers have the right to opt-out from disclosure of their name and address (e.g., in a mailing list), and can sue for actual and punitive damages, and attorneys’ fees and costs, if they are harmed by a violation of this law. This law was recently amended to enable sharing of viewing history, still with consumers’ written consent, on Internet sites such as Facebook and Netflix.

## **B. Vermont Statutes and Regulations**

### **(i) Statutes Specifically Regulating Personal, Financial, and Credit Information**

The following Vermont statutes and associated regulations apply to the protection of consumer data and nonpublic personal information:

1. 8 V.S.A. chapter 200, subchapter 2 – Financial Privacy – 8 V.S.A. § 10203 forbids a financial institution to disclose financial information relating to a consumer; § 10204 includes a list of 25 exceptions to this prohibition<sup>1</sup>.

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<sup>1</sup> (1) Disclosure of information to the customer after proper identification. (2) Disclosure authorized by the customer, provided the disclosure is limited to the scope and purpose that the customer authorizes. (3) Disclosure of information sought by the Office of Child Support Services pursuant to its authority and obligations under 33 V.S.A. § 115 and 33 V.S.A. chapter 41, or by an agency of similar function of another state, pursuant to similar authority. (4) Disclosure of information sought by the Department for Children and Families pursuant to its authority and obligations under 33 V.S.A. § 112. (5) Disclosure sought by the Vermont Student Assistance Corporation pursuant to its authority and obligations under 16 V.S.A. chapter 87. (6) The preparation, examination, handling, or

2. 8 V.S.A. § 4750 - Insurer Anti-Fraud Plans - requires an insurer with direct written premiums to maintain an insurance anti-fraud plan, which in part must “ensure that applicable State and federal privacy laws are complied with and that the confidential personal and financial information of consumers and insureds is protected.”
3. 9 V.S.A. chapter 62 – Protection of Personal Information

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maintenance of financial records by any officer, employee, or agent of a financial institution that has custody of the records. (7) The examination of financial records by a certified public accountant while engaged by the financial institution to perform an independent audit. (8) The disclosure of information to a collection agency, its employees or agents, or to any person engaged by the financial institution to assist in recovering an amount owed to the financial institution, if such disclosure is made in the furtherance of recovering such amount. (9) The examination of financial records by, or the disclosure of financial records to, any officer, employee, or agent of a regulatory agency for use only in the exercise of that person’s duties as an officer, employee, or agent. (10) The publication of information derived from financial records if the information cannot be identified to any particular customer, deposit, or account. (11) The making of reports, disclosures, or returns required by federal or state law. (12) The disclosure of any information permitted to be disclosed under the laws governing dishonor of negotiable instruments. (13) The exchange, in the regular course of business, of credit information between a financial institution and a credit reporting agency, provided such exchange is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (14) The exchange, in the regular course of business, of information between a financial institution and an account verification service, provided such exchange is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (15) The exchange, in the regular course of business, of information between a financial institution and a mercantile agency, provided such exchange is solely for the purpose of reporting to third parties on the credit rating or creditworthiness of any business, and is in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (16) The exchange of loan information that specifically affects a sale, foreclosure, or loan closing, provided such exchange is for the purpose of accomplishing such sale, foreclosure, or loan closing. (17) The disclosure to civil or criminal law enforcement authorities for use in the exercise of such authority’s duties, or the sharing of information, within an industry network, of suspected criminal activities. (18) Disclosures requested pursuant to a summons for trustee process under Rule 4.2 of the Vermont Rules of Civil Procedure. (19) Disclosure requested pursuant to subpoena, provided that no disclosure shall be made until 14 days after the financial institution has notified the customer that financial information has been requested by subpoena. Such notice shall be served by first class mail to the customer at the most recent address known to the financial institution. The provisions of this subdivision shall not apply where the subpoena is issued by or on behalf of a regulatory, criminal, or civil law enforcement agency. (20) Disclosure required by order of court. (21) Disclosure of customer financial information among directors, officers, employees, or agents of affiliated financial institutions, provided that such disclosure is limited to information necessary or appropriate to the fulfillment of any such persons’ duties and responsibilities to the financial institution or institutions, and provided further that such disclosure is made in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (22) Disclosure of customer financial information of one financial institution to another financial institution in connection with a proposed merger, consolidation, acquisition, or other reorganization transaction involving such institution, provided that no further disclosure is made except in compliance with this subchapter, and provided further that such disclosure is made in compliance with the Vermont Fair Credit Reporting Act, 9 V.S.A. chapter 63, subchapter 3, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (23) Disclosure in accordance with rules adopted by the Commissioner, provided that the Commissioner may permit disclosure by temporary order, until such time as rules under this subdivision are adopted. (24) Disclosure sought by the Department of Taxes of this State pursuant to its authority and obligations under Title 32. (25) Reports or disclosure of financial or other information to the Department of Disabilities, Aging, and Independent Living, pursuant to 33 V.S.A. §§ 6903(b), 6904, and 6915.

- a. § 2435 – Security Breach Notice Act – requires a data collector to notify a Vermont consumer and the Vermont Attorney General (or DFR) of a data breach that involves personally identifying information.
  - b. § 2440 – Social Security Number Protection Act – with certain statutory exceptions, forbids a business to communicate, print, imbed or make available to the public a consumer’s SSN; to require a person to communicate an SSN over the Internet unless encrypted; to use the SSN to access a website without some other unique authentication; or to sell or lease an SSN without consent when the recipient lacks a legitimate purpose; limits State government ability to collect, use, or disseminate SSN; authorizes consumer to request a town clerk or court to remove personal information from the government website.
  - c. § 2445 – Document Safe Destruction Act – requires a business to take reasonable steps to destroy or render unreadable records that contain personal information.
- 4. 9 V.S.A. chapter 63 – Consumer Protection
    - a. § 2453 – Consumer Protection Act – authorizes Vermont Attorney General and consumers to bring enforcement action against a person who commits an unfair or deceptive act in trade or commerce.
    - b. Subchapter 3 – Vermont Fair Credit Reporting Act – regulates consumer reporting agencies; requires certain notices and disclosures to Vermont consumers; authorizes a consumer to place or remove a security freeze on a credit report; requires government actors to redact SSN before posting documents publicly.
  - 5. 9 V.S.A. chapter 105 – Credit Cards – limits consumer’s liability for unauthorized use of a credit card and creates penalty for unauthorized possession or use.
  - 6. 13 V.S.A. § 2030 – Identity Theft – creates the crime of identity theft; forbids a person to obtain, use, or transfer personal identifying information to commit a crime.
  - 7. 21 V.S.A. § 495i – Employment based on credit information - regulates and limits the circumstances in which an employer can use credit information in employment decisions.

**(ii) Vermont Statutes Prohibiting Disclosure of Individual Personal or Confidential Information**

Vermont law also imposes a duty to protect personal and financial information and prohibits the unauthorized disclosure of that information across subject matter jurisdictions:

*Public Records* – 1 V.S.A. chapter 5 – Public Records Act; exempts certain public records from disclosure or inspection that contain confidential or personally identifiable information (see appendix)



*State Ethics Commission* – 3 V.S.A. §§ 1223; 1226 (complaints confidential; Commission shall not include personal identifying information in its annual report to the General Assembly)

*Judicial Nominating Board* – 4 V.S.A. § 601 – application and other forms used by the Board are public, provided they do not contain personal information about a candidate or confidential proceedings.

*Insurance* – 8 V.S.A. §§ 22-23; 3577 (confidentiality and information sharing agreements; examination reports; § 3791q (life insurance policies and annuity contracts); § 3843 (confidential medical information; life settlement contracts); §§ 5058; 5060 (authorizing Surplus Lines Insurance Multi-State Compliance Compact Commission to close a meeting to prevent disclosure of personal information, and directing Commission to protect proprietary information and personal data); §8508 (Interstate Insurance Product Regulation Commission shall adopt rules on public disclosure of product filing information and shall consider the interests of protecting personal medical and financial information);

*Financial Institutions, Securities* – 8 V.S.A. §§ 22-23; 11502 (confidentiality and information sharing agreements; examination reports); § 2243 (confidential information; licensed lenders); § 2257 (confidential information; consumer litigation funding companies); § 2561 (confidential information; money servicers); § 2768 (confidential information; debt adjusters); § 2923 (confidential information; loan servicers); (cf. circumstances where a credit report and credit information of applicant may be required: licensed lenders, 8 V.S.A. § 2022; money transmitters, §2506; check cashing and currency exchange, § 2516; debt adjusters, §2753; loan servicers, §2902); 9 V.S.A. § 5607 (confidential and personal information; securities records with DFR);

*Public Safety; Courts* – 4 V.S.A. § 741 (judicial bureau; credit card information); 9 V.S.A. § 3889 (Department of Public Safety shall redact personally identifiable information from stolen property notification); 13 V.S.A. §§ 5231; 5236 (right to representation; hearing to protect information; determination of financial need); 13 V.S.A. § 5362 (crime victim restitution unit shall not obtain credit report before notifying offender); 13 V.S.A. §6607 (evidence; disclosure of records); 15 V.S.A. chapter 21, subchapter 3 (address confidentiality program for victims); 20 V.S.A. §§ 1937; 1939 (removal of PII in samples in State DNA Database and State Data Bank); 28 V.S.A. § 107 (officer and inmate records); 28 V.S.A. § 1357 (authority of interstate commission on corrections to close meeting to avoid disclosure of personal information); 33 V.S.A. § 5723 (same – interstate commission for juveniles); Vermont Rules for Public Access to Court Records (§6 - case records); Vermont Rules Governing Dissemination of Electronic Case Records (Rule 5 – Access to electronic case record reports); Vermont Rules of Selection and Summoning Jurors (Rule 10 – Confidentiality of Jurors' Personal Information).

*Education* – 10 V.S.A. § 531 (PII in workforce training); 16 V.S.A. § 806h (Interstate commission on educational opportunity for military children may close meeting if open meeting would disclose personal information); §1708 (disclosure in formal charge against licensed teacher may not provide personally identifying information about a student); §2827 (PRA exemption for VSAC recipients)

*Health* – 12 V.S.A. § 1612 (patient’s privilege); 18 V.S.A. §§ 154-156 (cancer registry); 18 V.S.A. §§ 1001;1099;1129 (non-disclosure of public health records concerning HIV/AIDS; venereal disease; immunization); §1141 (communicable disease testing; exclusion of PII of source patient); § 1852 (patients’ bill of rights; right to confidentiality); §§ 4211; 4284 (prescription records); § 5014 (vital records); § 5088 (birth records); § 7103 (general confidentiality and nondisclosure of mental health records); § 9332 (nondisclosure of genetic testing); § 9351 (privacy protections as part of state Health Information Technology Plan); § 9391 (GMCB nominating committee); 21 V.S.A. §§ 516; 518 (non-disclosure of drug testing); § 5087 (removal of child PII from birth information network); § 5250t (nondisclosure of PII in anatomical gift donor registry); § 9410 (nondisclosure of direct personal identifiers in comprehensive health care information system); 33 V.S.A. §§ 1902a; 1908 (confidentiality of Medicaid records); § 4105 (Office of child support); 33 V.S.A. ch. 63 (home care agencies)

*Labor and Employment* – 3 V.S.A. §§ 973-974 (whistleblower protection; non-disclosure of confidential information by State employee); 21 V.S.A. § 495k (social media account privacy); § 655a (restrictions on use and release of medical information for workers’ compensation injuries); § 1314 (confidentiality of reports, records and unemployment compensation information); Title 26 (duty of confidentiality for various professions);

*Libraries, History, and Information Technology* – 22 V.S.A. §§ 171-172 (confidentiality of library “patron transaction records,” including names or other PII);

*Motor Vehicles; Transportation* – 5 V.S.A. § 3452 (confidential information submitted by railroad); 9 V.S.A. § 4097 (motor vehicle manufacturer shall not release business, financial, or personal information provided by dealer without consent); 23 V.S.A. § 7 (General Assembly or LCAR approval for additional PII on enhanced driver’s license); § 104 (motor vehicle public records; DMV duty to notify Speaker, Pro Tem, and AG of request by any governmental agency for database of documents containing personal information); § 707 (driver education);

*Agriculture*– 6 V.S.A. § 61; 2766 (confidentiality of information collected by AAFM); § 1815 (confidential information acquired by Vermont Milk Commission);

*Utilities; Natural Resources; Energy*- 24 V.S.A. § 3262 (nondisclosure of financial information in PACE agreement); 30 V.S.A. §§ 7055; 7059 (telecom; E-911)

*Tax; Finance* – 31 V.S.A. § 674 (tri-state lottery; winnings and financial information); 32 V.S.A. § 983 (Treasurer; bond registry); 32 V.S.A. § 3102 (confidentiality of tax records); § 4007 (grand list; inventories); § 5939 (setoff debt collection).

**(iii) Vermont rules specifically regulating privacy of consumer financial information**

1. Department of Taxes; Streamlined Sales Tax Agreement Confidentiality; 1-3-107:1.9797-3

This rule limits collection of personally identifiable information by certified tax services providers; directs the Commissioner of Taxes to provide access to PII that is retained and to provide notice if someone other than the consumer seeks to access PII.

2. Attorney General; Fair Credit Reporting, 3-2-110: CP 112
  - a. CP 112.01 – requires a credit reporting agency to list in certain telephone directories a telephone number that consumers may use to contact the agency and obtain credit file information pursuant to 9 V.S.A. § 2480b(a).
  - b. CP 112.02 – provides that a disclosure and credit report pursuant to 15 U.S.C. § 1681j after an adverse action does not satisfy an agency’s duty to provide an annual free credit report to a consumer under 9 V.S.A. § 2480c(a).
  - c. CP 112.03 – requires that consumer consent to access a credit report be obtained in writing if an application was in writing, or otherwise in writing or in the same form as the consumer’s request.

3. Department of Financial Regulation; Banking Division; Privacy of Consumer Financial and Health Information, Rule 10 – Regulation B-2015-02

This rule governs the treatment of nonpublic personal information about consumers by financial institutions and similar persons regulated in Vermont, including certain licensees; lenders, mortgage brokers, sales finance companies, and mortgage loan originators; independent trust companies; money services providers; debt adjusters; loan servicers; branches and agencies of foreign banks; and their subsidiaries. Similar to the GLB Act, the rule requires a financial institution to provide its customers with notice of its privacy and information sharing policies upon establishing a customer relationship and at least annually thereafter. However, Vermont is an “opt-in” state, meaning that by default, subject to certain exceptions, a financial institution cannot disclose nonpublic personal information without express consumer consent. The rule generally forbids sharing an account number or similar access number or code, except to a consumer reporting agency, with a non-affiliated third party for marketing purposes.

4. Department of Financial Regulation; Insurance Division; Privacy of Consumer Financial and Health Information, Rule 42 – Regulation IH-2001-01; Department of Financial Regulation; Insurance Division; Standards for Safeguarding Customer Information, Rule 46 – Regulation IH-2002-03

Rule 42 imposes requirements for the treatment of nonpublic personal information regarding privacy notices and opt in consent for information sharing, similar to Rule 10 above, for licensees regulated in Vermont under 8 V.S.A. parts 3 and 4, including insurance companies and certain mutual, cooperative, and investor-owned financial institutions.

Rule 46 requires licensees to implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of customer information.

5. Department of Financial Regulation; Securities Division; Privacy of Consumer Financial and Health Information [Predecessor Act], Rule 4 – Regulation S-2001-01

This rule imposes requirements for the treatment of nonpublic personal information regarding privacy notices and opt in consent for information sharing, similar to Rules 10 and 42 above, for broker-dealers and investment advisers registered with the Department.

Rule 4 also requires broker-dealers and investment advisers to implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of customer information.

6. Department of Financial Regulation; Securities Division; Investment Advisers, Rule 8 – Regulation S-2016-01; 4-4-8:7-3

This rule requires investment advisers to maintain policies to prevent misuse of personal information and provide annual privacy notice.

7. Department of Financial Regulation; Securities Division; Securities Professionals, Rule 8 – Regulation S-2016-01; 4-4-8:8-4

This rule requires a securities professional to maintain written procedures reasonably designed to ensure cybersecurity; requires the professional to provide identity restoration services at no cost to consumers in cybersecurity breach of nonpublic personal information.

8. *Health Care* – numerous Vermont rules adopted by the Department of Financial Regulation, the Agency of Human Services, and the Green Mountain Care Board address the confidentiality of health and personal consumer information. Listing each of them is beyond the scope of this memorandum. However, one rule of particular note is a provision of Rule 224, § 4.08, 12-3-224:4.08, adopted by the Agency of Human Services and relating to eligibility and enrollment in State-offered health benefits program such as Medicaid, CHIP, and QHP. Section 4.08 of this rule requires the Agency to implement privacy and security standards for participants’ personal information, including “operational, technical, administrative, and physical safeguards” to protect information against threats and misuse.

### **III. Affirmative Duty to Protect Personal Information**

#### **A. Duties under Federal Law**

COPPA – 15 U.S.C. § 6502(b)(1)(D) – FTC regulations adopted under act shall “require the operator...to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.”

Federal Privacy Act – 5 U.S.C. § 552a(e)(10) and (o)(1)(G) – requires government agencies that maintain a system of records to “establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is

maintained;” and in a matching program, requires a matching program agreement to include “procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs.”

Identity Theft Rules ~ “Red Flags and Address Discrepancies Rules” – 16 C.F.R. Part 681 – requires a financial institution or creditor to adopt with approval of its senior management an identity theft prevention program, appropriate to the size and complexity of the business, that includes reasonable policies and procedures to (1) identify relevant red flags and incorporate them into the program; (2) detect red flags; (3) respond appropriately to red flags to prevent and mitigate identity theft; and (4) ensure the program is updated periodically to reflect changes in risks. Also requires card issuers to confirm address changes in certain circumstances.

Gramm-Leach-Bliley – 15 U.S.C. § 6801(b) and Safeguards Rules, 16 C.F.R. Part 314 – requires a broad array of businesses that meet the definition of “financial institution,” as defined under the act and regulations, and that are significantly engaged in financial activities—and entities to which a financial institution provides nonpublic information—to adopt an “information security program” that includes administrative, technical, and physical safeguards to ensure the security and confidentiality of, and prevent unauthorized access to, customer records and information.

HIPPA – 42 U.S.C. 1320d-2(d)(2) – requires a person who maintains or transmits health information to “maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of information, to protect against threats and hazards to the information and prevent unauthorized use or disclosure.

Securities Exchange Act – 15 U.S.C. §§ 78o; 80b-4a – requires broker dealers and investment advisers to maintain policies and procedures to prevent the misuse of material, nonpublic information.

## B. Data Security Laws in Other States

State	Statutory Citation / Link	Applies to:	Security Measures Required
Arkansas	<a href="#">Ark. Code §§ 4-110-104(b)</a>	A person or business that acquires, owns or licenses personal information	Implement and maintain reasonable security procedures and practices appropriate to the nature of the information.
California	<a href="#">Cal Civ. Code §§ 1798.81, 1798.81.5</a>	A business that owns, licenses, or maintains personal information.  Third party contractors	Implement and maintain reasonable security procedures and practices appropriate to the nature of the information.

<b>Connecticut</b>	<u>Conn. Gen. Stat. § 42-471</u>  <u>Substitute Senate Bill No. 949</u> <u>Public Act No. 15-142</u>	Any person in possession of personal information.	Safeguard data, computer files and documents.
<b>Connecticut</b>	<u>Substitute Senate Bill No. 949</u> <u>Public Act No. 15-142</u>	Contractors: an individual, business or other entity that is receiving confidential information from a state contracting agency or agent of the state pursuant to a written agreement to provide goods or services to the state.	Implement and maintain a comprehensive data-security program ( <b>as specified/detailed in statute</b> ) including encryption of all sensitive personal data transmitted wirelessly or via a public Internet connection, or contained on portable electronic devices has to be encrypted as well.
<b>Florida</b>	<u>Fla. Stat. § 501.171(2)</u>	Covered entities (sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity) and  Third-party agent (entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity or governmental entity).	Reasonable measures to protect and secure data in electronic form containing personal information.
<b>Indiana</b>	<u>Ind. Code § 24-4.9-3-3.5</u>	A data base owner: a person that owns or licenses computerized data that includes personal information.	Implement and maintain reasonable procedures, including taking any appropriate corrective action.
<b>Kansas</b>	<u>K.S. § 50-6,139b</u>	A holder of personal information: a person who, in the ordinary course of business, collects, maintains or possesses, or causes to be collected, maintained or possessed,	Implement and maintain reasonable procedures and practices appropriate to the nature of the information, and exercise reasonable care to protect the personal information from unauthorized

		the personal information of any other person.	access, use, modification or disclosure.
<b>Maryland</b>	<u>Md. Code Com Law §§ 14-3501 to -3503</u>	A business: a sole proprietorship, partnership, corporation, association, or any other business entity, whether or not organized to operate at a profit. Business includes a financial institution...  Nonaffiliated third party/service provider	Implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information owned or licensed and the nature and size of the business and its operations.
<b>Massachusetts</b>	<u>Mass. Gen. Laws Ch. 93H § 2(a)</u>	Any person that owns or licenses personal information.	Authorizes regulations to ensure the security and confidentiality of customer information in a manner fully consistent with industry standards. The regulations shall take into account the person's size, scope and type of business, resources available, amount of stored data, and the need for security and confidentiality of both consumer and employee information.
<b>Massachusetts</b>	<u>201 Mass. Code of Regs. 17.00-17.04</u>		Develop, implement, and maintain a comprehensive written information security program appropriate to (a) the size, scope and type of business; (b) the amount of resources available; (c) the amount of stored data; and (d) the need for security and confidentiality of both consumer and employee information, <b>(as specified/detailed in regulation,</b>

			<b>including encryption</b> of all transmitted records and files containing personal information that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly, and encryption of all personal information stored on laptops or other portable devices).
<b>Minnesota</b>	<u>Minn. Stat. § 325M.05</u>	Internet service providers.	Take reasonable steps to maintain the security and privacy of a consumer's personally identifiable information.
<b>Nevada</b>	<u>Nev. Rev. Stat. §§ 603A.210, 603A.215(2)</u>	A data collector that maintains records which contain personal information.  A person to whom a data collector discloses personal information.	Implement and maintain reasonable security measures ( <b>as specified /detailed in statute</b> ).
<b>New Mexico</b>	2017 H.B. 15, Chap. 36	A person that owns or licenses personal identifying information of a New Mexico resident.	Implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal identifying information from unauthorized access, destruction, use, modification or disclosure.
<b>Oregon</b>	<u>Or. Rev. Stat § 646A.622</u>	Any person that owns, maintains or otherwise possesses data that includes a consumer's personal information that is used in the course of	Develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal



		the person's business, vocation, occupation or volunteer activities.	of the data (as specified /detailed in statute).
<b>Rhode Island</b>	<u>R.I. Gen. Laws § 11-49.3-2</u> <i>effective July 2, 2016.</i>	A business that owns or licenses computerized unencrypted personal information.  A nonaffiliated third-party contractor.	Implement and maintain reasonable security procedures and practices appropriate to the nature of the information.
<b>Texas</b>	<u>Tex. Bus. &amp; Com. Code § 521.052</u>	A business or nonprofit athletic or sports association that collects or maintains sensitive personal information. (Does not apply to financial institutions)	Reasonable procedures, including taking any appropriate corrective action.
<b>Utah</b>	Utah Code §§ <u>13-44-101, -201, 301</u>	Any person who conducts business in the state and maintains personal information.	Implement and maintain reasonable procedures

### C. State Privacy Legislation Related to Internet Service Providers

Several states have introduced measures in response to the repeal of federal Internet privacy protections that were approved by the Federal Communications Commission, 47 C.F.R. part 64, subpart U, in the final days of the Obama administration.

The rules, which had not yet gone into effect, would have put tough restrictions on what internet service providers could do with consumer data collected. For example, under the FCC's rules, providers would have needed permission from customers before collecting and sharing data, including user's health and financial details, web browsing history, app usage and geo-location.

Currently, two states, Nevada and Minnesota, require internet service providers (ISPs) to keep private certain information concerning their customers, unless the customer gives permission to disclose the information. Both states prohibit disclosure of personally identifying information, but Minnesota also requires ISPs to get permission from subscribers before disclosing information about the subscribers' online surfing habits and Internet sites visited.

In 2017, Nevada also enacted S.B. 538, which requires operators of Internet websites or online services that collect personally identifiable information from residents of the state to notify consumers about how that information is used. (Similar to laws in California and Delaware.)

At least 21 states and the District of Columbia have filed measures responding to the federal repeal, including Vermont bills H.535 and S.147, which would require the Attorney General to adopt rules implementing data security and privacy provisions comparable to the proposed FCC regulations.

#### **IV. Laws Governing the Collection and Use of Consumer Financial Data by Credit Reporting Agencies and Financial institutions, Data furnishers, and Data users.**

##### **A. The Fair Credit Reporting Act: 15 U.S.C. §§ 1681-1681x**

##### **1. Consumer Reporting Agency; Consumer Report; Credit File**

###### *Consumer Reporting Agencies*

The FCRA, and regulations adopted under the Act, govern the collection and reporting of consumer credit information by a “consumer reporting agency”:

any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. §1681a(f).

In some cases, the Act imposes additional requirements on agencies that “compile and maintain information on consumers on a nationwide basis,” e.g., the “big three” nationwide agencies: Equifax, Experian, and Transunion. §1681a(p). Most typically, the Act requires these agencies to maintain automatic systems to communicate information among them, e.g., to opt out of pre-screened offers, to dispute inaccurate information in a credit file, etc.

The Act also regulates another type of agency, the “nationwide specialty consumer reporting agency,” which is an agency that “compiles and maintains files on consumers on a nationwide basis relating to: (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history; or (5) insurance claims.” §1681a(x).

### ***Credit Files***

A consumer reporting agency collects consumer credit information for the purpose of creating and maintaining a credit “file,” defined as “all of the information on [a] consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.” § 1681a(g). Information in the file is compiled from private records provided to consumer reporting agencies, public records, and sometimes through personal investigations. This information serves as the basis for credit reports, specialty credit reports, credit scores, and other types of consumer reporting.

### ***Credit Score***

For purposes of the Act where the term is defined, “credit score”:

(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”); and

(ii) does not include—

(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

(II) any other elements of the underwriting process or underwriting decision.

§1681g(f)(2)

### ***Consumer Report***

Upon request from a prospective creditor, employer, insurer, landlord, or other user, a consumer reporting agency uses the information its file to prepare a “consumer report.” For many consumers, the most common conception of a “consumer report” is likely to be the credit report that a bank or other lender uses when the consumer applies for a mortgage, auto loan, etc.:

- a compilation of information that details a consumer’s credit history based on the information a consumer reporting agency has collected in its credit file on a consumer;
- that usually includes a credit score generated by FICO or the agency itself;
- that the agency produces and delivers to the prospective creditor upon request for the purpose of determining the consumer’s eligibility for a mortgage, loan, credit card, etc.

However, the uses of consumer credit information and the scope of regulation under the FCRA are much broader than this. Subject to certain exclusions<sup>2</sup>, under the FCRA a “consumer report” means:

(i) a written, oral, or other communication of information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

(ii) that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b:

- in response to a court order
- pursuant to the consumer’s instructions
- to determine eligibility for a license or other government benefit
- as a potential investor assessing risk on existing credit
- a person who otherwise has a legitimate business need for the information
- permissible purposes concerning child support obligations
- to the FDIC or NCUA acting as successor to a failed financial institution

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<sup>2</sup> (2) *Exclusions.* The FCRA excludes certain types of reports and communications from the definition of “consumer report”:

(A) *Certain communications between affiliated entities* - subject to the provisions of § 1681s-3, which governs information-sharing between affiliated entities for marketing purposes, and consumers’ right to opt-out of that type of marketing:

(i) a report that contains only information about transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

(B) *Credit card approvals* - any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) *3rd party credit decisions* - any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) *Excluded communications by employment procurement firms concerning prospective employees, or concerning investigations of employee misconduct* - a communication described in subsection 1681a(o) or [y].

(3) *Restriction on sharing of medical information.* Unless the information may be disclosed under § 1681b(g)(3) because it relates to the business of insurance or annuities; it is authorized by HIPPA; or authorized by regulation or order of the CFPB, the following information shared between affiliates is considered a “consumer report,” notwithstanding the exclusions for affiliate-sharing set forth above:

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

## **2. Duties of Consumer Reporting Agency and Users – Permissible Furnishing, Purpose, and Use of Consumer Reports - 15 U.S.C. §§ 1681b; 1681f; 1681s-3; 1681u; 1681v**

The FCRA provides certain limitations on a consumer reporting agency’s ability to provide a credit report, and on the purposes for which a requestor may use that credit information.

*(f) Prohibition* – §1681b(f) explicitly provides that “a person shall not use or obtain a consumer report for any purpose unless:

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.”

### *Permissible Uses*

(a) *In General* - A consumer reporting agency may furnish a consumer report to a user:

1. in response to a court order or subpoena
2. pursuant to the consumer’s instructions
3. to a person which it has reason to believe intends to use the report:
  - A. in connection with a credit transaction (\*see subsection (c) below)
  - B. for employment purposes
  - C. for underwriting of insurance (\*see subsection (c) below)
  - D. to determine eligibility for a license or other government benefit
  - E. as a potential investor assessing risk on existing credit
  - F. for another legitimate business need:
    - i. for a business transaction initiated by the consumer; or
    - ii. to review an account to determine if consumer still meets the account terms
  - G. regarding government-sponsored, individually-billed travel charge cards
4. permissible purposes concerning child support obligations
5. to the FDIC or NCUA acting as successor to a failed financial institution

(b) *Employment Purposes*

1. *Certification* – a user must certify to the agency that it has made required disclosures to the consumer, including a summary of consumer rights, and has complied with federal and state laws.

2. *Consumer Consent* – a user must disclose to a consumer that a report may be obtained for employment purposes, and the consumer must authorize access to the report in writing (commercial driver exception).

3. *Adverse action* – before taking any adverse action, a user must provide a copy of the report and a description of the consumer’s rights to obtain and dispute file information.

(c) *Pre-Screened Offers of Credit and Insurance*

1. In General - An agency cannot furnish a report for a credit or insurance transaction that is not initiated by the consumer, except:

- A. with the consumer’s consent to furnish a report; or
  - B. the user makes a “firm offer of credit or insurance<sup>3</sup>,” the consumer has not opted out of pre-screened offers of credit; and the consumer is at least 21 or consents to pre-screened offers.
2. Limits – a report used for pre-screening may only include a consumer’s name and address, an identifier used solely for verifying the consumer’s identity but is not unique to the consumer (e.g., cannot use SSN), and other consumer information that does not identify the relationship or experience of the consumer with a particular creditor or other entity.

(e) *Election of Consumer to Opt Out of Pre-Screened Offers of Credit and Insurance*

- 1. Opt-out – A consumer can opt-out of pre-screened offers of credit or insurance through either of two methods: (1) “*Short form*” - through the notification system that the FCRA requires agencies to maintain; this election is good for five years or until cancellation; or (2) “*Long Form*” - through a “notice of election form,” which is permanent or until cancellation.
- 2. Notification System – the FCRA requires each consumer reporting agency to maintain a notification system for opting out of pre-screened offers, and also requires each agency operating on a nationwide basis to jointly maintain a single notification system for opting out of pre-screened offers from all of the agencies and their affiliates.

(g) *Protection of Medical Information in a Credit Report*

Unless permitted by other law, or CFPB regulation or order, a creditor shall not obtain or use medical information in connection with any determination of a consumer’s eligibility for credit. §1681b(2)-(3). An agency may not furnish a consumer report for employment purposes, or in connection with a credit or insurance transaction, if the report contains medical information<sup>4</sup> unless:

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<sup>3</sup> “**Firm offer of credit or insurance**” means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

- (1) The consumer being determined, based on information in the consumer’s application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—
  - (A) before selection of the consumer for the offer; and
  - (B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.
- (2) Verification
  - (A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or\
  - (B) of the information in the consumer’s application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.
- (3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—
  - (A) established before selection of the consumer for the offer of credit or insurance; and
  - (B) disclosed to the consumer in the offer of credit or insurance.

<sup>4</sup> “**Medical information**”:

- (A) for insurance - with the consumer's consent;
- (B) for employment or credit purposes - (i) the information is relevant to process or effect the transaction and (ii) the consumer provides specific written consent for furnishing the report that describes the use of the information furnished; or
- (C) the information relates to medical debts arising from receipt of medical services, products, or devices, and the information is reported using codes that do not identify a specific provider or the nature of the medical services, products, or devices. §1681b(1).

A person who receives medical information shall not re-disclose it to any other person, except to carry out the purpose for which it was originally disclosed or as permitted by other law. §1681b(4).

***Disclosures to Governmental Agencies; 15 U.S.A. § 1681f***

Notwithstanding the limitations in section 1681b discussed above, a consumer reporting agency may furnish to "a governmental agency" the identifying information of a consumer, limited to his or her name, address, former addresses, places of employment, or former places of employment. §1681f.

***Duties of Consumer Reporting Agency – Investigative Consumer Reports; 15 U.S.C. § 1681d***

The FCRA regulates and imposes additional requirements on a particular type of consumer report, the "investigative consumer report":

a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information...." §1681a(e).

(a) *Disclosure* - A person may not procure an investigative consumer report on any consumer unless he or she: (1) discloses to the consumer, within three days of request: (A) that an investigative consumer report may be made, and (B) the right to request additional disclosures and a written summary of the rights under the Act; and (2) certifies making the required disclosures, and compliance with subsection (b), which requires the agency to disclose to the consumer in writing, upon request, the nature and scope of the investigation.

(d) *Prohibitions*:

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(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

- (A) the past, present, or future physical, mental, or behavioral health or condition of an individual;
- (B) the provision of health care to an individual; or
- (C) the payment for the provision of health care to an individual.

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(1) Certification.-- an agency shall not prepare or furnish an investigative consumer report without the required certification by the requestor.

(2) Inquiries.-- an agency shall not make an inquiry for an investigative consumer report for employment purposes if it would violate any applicable Federal or State equal employment opportunity law or regulation.

(3) Certain public record information.—except as provided in § 1681k, an agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(4) Certain adverse information.—an agency shall not prepare or furnish an investigative consumer report that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless: (A) the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information; or (B) the person interviewed is the best possible source of the information.

### ***Rules Governing Information Sharing by Affiliates; §1681s-3***

#### *(a) Special rule for solicitation for purposes of marketing*

(1) *Notice* - A person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 1681a(d)(2)(A) of this title, may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless—

(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and

(B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.

#### *(2) Consumer choice*

(A) In general - The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all solicitations referred to in such paragraph, and may allow the consumer to choose from different options when electing to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

(B) Format - Notwithstanding subparagraph (A), the notice required under paragraph (1) shall be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) shall be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

#### *(3) Duration*



(A) In general - The election of a consumer pursuant to paragraph (1)(B) to prohibit the making of solicitations shall be effective for at least 5 years, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

(B) Notice upon expiration of effective period - At such time as the election of a consumer pursuant to paragraph (1)(B) is no longer effective, a person may not use information that the person receives in the manner described in paragraph (1) to make any solicitation for marketing purposes to the consumer, unless the consumer receives a notice and an opportunity, using a simple method, to extend the opt-out for another period of at least 5 years, pursuant to the procedures described in paragraph (1).

(4) *Scope* - This section shall not apply to a person--

(A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

(B) using information to facilitate communications to an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(C) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not be construed as permitting a person to send solicitations on behalf of another person, if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);

(D) using information in response to a communication initiated by the consumer

(E) using information in response to solicitations authorized or requested by the consumer; or

(F) if compliance with this section by that person would prevent compliance by that person with any provision of State insurance laws pertaining to unfair discrimination in any State in which the person is lawfully doing business.

(5) *No retroactivity* - This subsection shall not prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with regulations implementing this subsection.

(b) *Notice for other purposes permissible*

A notice or other disclosure under this section may be coordinated and consolidated with any other notice required to be issued under any other provision of law by a person that is subject to this section, and a notice or other disclosure that is equivalent to the notice required by subsection (a), and that is provided by a person described in subsection (a) to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of subsection (a).

(c) *User requirements*

Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of

this section, constitute requirements with respect to the exchange of information among persons affiliated by common ownership or common corporate control, within the meaning of section 1681t(b)(2) of this title.

(d) *Definitions*

(1) Pre-existing business relationship - means a relationship between a person, or a person's licensed agent, and a consumer, based on--

(A) a financial contract between a person and a consumer which is in force;

(B) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;

(C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or

(D) any other pre-existing customer relationship defined in the regulations implementing this section.

(2) Solicitation - means the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a), and is intended to encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.

***Disclosure to FBI and governmental agencies for counterintelligence; §§1681u-1681v***

**3. Duties of Consumer Reporting Agency – Information in Reports; 15 U.S.C. §§ 1681c; 1681l; 1681s-1**

The FCRA imposes requirements on what information a consumer reporting agency must exclude from a consumer report, and what information it must provide.

(a) *Information that must be excluded from consumer reports:*

1. Bankruptcy older than 10 years
2. Civil suits, judgments, and records of arrests older than 7 years or until the governing statute of limitations, whichever is longer
3. Paid tax liens older than 7 years
4. Accounts placed for collection or charged to profit and loss, older than 7 years
5. Any other adverse item of information, other than records of conviction of crimes, older than 7 years.

6. Certain medical information: the name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless:
  - (A) the name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or
  - (B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(b) *Exempted cases* – the exclusions above do not apply to a consumer report relating to:

1. a credit transaction worth \$150,000 or more;
2. a life insurance policy worth \$150,000 or more; or
3. an employment arrangement at a salary of \$75,000 or more

(d)-(f) *Information that must be disclosed in a consumer report:*

1. Type of bankruptcy – the report must include the chapter of Title 11 under which a bankruptcy action was filed, if reported; and, that a filing was withdrawn by the consumer before final judgment, if that is the case. §1681c(d)(1).
2. Key factor in credit score information – if a report includes a credit score, the agency must state if the number of credit enquiries was key factor in adversely affecting the score. §1681c(d)(2).
3. Indications of closed accounts and disputed information; §1681c(e)-(f). – if a report includes information about an account that voluntarily closed by the consumer, or information that is disputed by the consumer, the agency must indicate the fact of the voluntary closure or dispute.
4. Discrepancy in address – an agency shall notify the requester of a user of a report if the address included in the request differs substantially from the address in the consumer’s credit file.

***Information on Overdue Child Support Obligations; §1681s-1***

A consumer reporting agency shall include in a consumer report information on the failure of the consumer to pay overdue support which—

- (1) is provided—
  - (A) to the consumer reporting agency by a State or local child support enforcement agency; or
  - (B) to the consumer reporting agency and verified by any local, State, or Federal Government agency; and
- (2) antedates the report by 7 years or less.

***Updating Adverse Information from Investigative Report; § 1681l***

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the report (other than information which is a matter of public record) may be included in a subsequent consumer report unless it has been verified in the process of making the subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished. §1681l.

#### **4. Duties of Consumer Reporting Agency – Compliance Procedures to Verify Identity and Purpose of Users; 15 U.S.C. § 1681e**

(a) *Verifying identity and purpose of credit users* - the FCRA requires an agency to maintain reasonable procedures to avoid violations of the information requirements in §1681c and limit the furnishing of reports to the allowable purposes provided in §1681b:

(1) The agency must require prospective users to identify themselves; to certify the purposes for which they request consumer credit information; and to certify that the information will not be used for any other purpose.

(2) The agency must verify the identity of a new prospective user, and the uses certified by the user, prior to furnishing a report.

(3) An agency may not furnish a report if it has reasonable grounds for believing the report will not be used for a permissible purpose under §1681b.

(b) *Accuracy of Report* – “Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”

(c) *Disclosure of consumer reports by users allowed* – if a user takes adverse action based on a report, an agency cannot prevent the user from providing the report to the consumer.

(d) *Notice to users and furnishers of information* – an agency must provide a notice to each person who furnishes credit information to the agency, or to whom the agency provides a report, that specifies the furnisher’s or user’s the duties under the Act.

(e) *Procurement of report for resale* – a person who procures a report for the purpose of reselling the report, or any information in the report, must disclose to the agency the identity of the end user and the permissible purpose for its intended use, and has comparable requirements for verifying the identity and permissible use of end users (exception for classified government use).

#### **5. Duties of Consumer Reporting Agency – Duty to Disclose Information in Credit File to Consumer; Charges for Certain Disclosures 15 U.S.C. §§ 1681g; 1681h; 1681j; 1681k**

(a) *Information on file; sources; report recipients* – upon request of a consumer, upon furnishing proper identification, an agency shall disclose to the consumer in writing or other method specified by the consumer the following information:

1. All information in the consumer’s file at the time of the request.<sup>5</sup>
2. The sources of the information (excluding sources for investigative credit reports).
3. Identification of each person that procured a consumer report (in prior 2 years for employment purposes; in prior 1 year for all others).

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<sup>5</sup> Subject to the consumer’s request to truncate SSN, and not including access to any credit score or other risk score or predictor, access to which is governed by subsection (f).

4. The dates, original payees, and amounts of any checks, upon which is based any adverse characterization of the consumer.
5. A record of all inquiries received by the agency in the prior year for credit or insurance not initiated by the consumer.
6. If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(c) *Summary of rights* – the CFPB is charged with adopting and publicizing a summary of consumer rights to obtain credit information, and a consumer reporting agency is required with each disclosure the summary of rights; a toll-free number; a list of all federal agencies that enforce the Act; a statement that the consumer may have additional rights under state law; and a statement that an agency is not required to remove accurate derogatory information from a file unless outdated or it cannot be verified.

(f) *Disclosure of Credit Scores*

(1) *In general* - Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

(B) the range of possible credit scores under the model used;

(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

(D) the date on which the credit score was created; and

(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(4) *Not all agencies required to report scores* - An agency is not required to develop or disclose a score if the agency does not (A) distribute scores that are used in connection with real property loans; or (B) development scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.

(5) *Credit Scores Developed by Another Person* – An agency is not required to provide further explanation of credit scores developed by another person, or to process a dispute concerning the accuracy of factors that affect such a score, except where the agency modifies scores developed by another person. An agency is required to provide contact information for the person who develops scores that the agency distributes.

(6) *Scores not required* - An agency is not required to maintain credit scores in its files.

(7) *Compliance in certain cases* – An agency shall:

(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding

the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

(8) *Fair and reasonable fee* - A consumer reporting agency may charge a fair and reasonable fee, as determined by the Bureau, for providing the information required under this subsection.

(9) *Use of enquiries as a key factor* - If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.

(g) *Disclosure of credit scores by certain mortgage lenders* – the Act requires a residential mortgage lender to provide a copy of the credit score information required under subsection (f) that was obtained from an agency in connection with the mortgage transaction and a statutory notice to the applicant that explains the use of credit information.

#### ***Disclosure or Procedures – Public Record Information for Employment Purposes; §1681k***

A consumer reporting agency that furnishes a consumer report for employment purposes, and compiles and reports one or more items of information on a consumer that are public records and are likely to have an adverse effect upon a consumer’s ability to obtain employment, shall:

(1) at the time of the report, notify the consumer that public record information is being reported by the agency, with the name and address of the user; or

(2) “maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer’s ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.”

#### ***Charges for Certain Disclosures - § 1681j***

(a) *Free Annual Disclosure* – Nationwide consumer reporting agencies must annually provide the disclosures required in §1681g at no charge, pursuant to a consumer request through the centralized source the agencies are required to maintain under FACTA. CFPB regulations govern the issuance of free annual reports by nationwide specialty agencies.

(b) *Free Disclosure After Adverse Notice* – a consumer may request a free disclosure under §1681g within 60 days of receiving a notice of adverse action by a user or debt collector under §1681m.

(c)-(d) *Free Disclosure; Other* – (c) a consumer may annually request a free disclosure under §1681g if he or she certifies in writing that he or she: (1) is unemployed and intend to apply for employment in the next 60 days; (2) is a recipient of public welfare; (3) has reason to believe that

his or her file contains inaccurate information due to fraud; and (d) a consumer may request the §1681g disclosures in connection with an initial fraud alert or extended fraud alert. §1681c-1.

(e)-(f) *Reasonable Charges; Allowed* – (e) an agency may not charge a fee for any notice or disclosure required in the Act, except, under (f)(1), after notice of the fee to the consumer:

(A) Credit report/disclosures under § 1681g – not more than \$8.00 (as adjusted by CFPB);

(B) Upon request of consumer, notification to a recent user of a report that information in the report has been deleted or disputed; charge cannot exceed cost agency charges for credit report/disclosures under § 1681g.

(g) *Prevention of Deceptive Marketing of Credit Reports* – subject to rules, any advertisement for a free credit report shall disclose that free credit reports are available under federal law at “AnnualCreditReport.com”

## **6. Duties of Consumer Reporting Agency – Duty to “Reinvestigate” Disputed Information in Consumer File; 15 U.S.C. § 1681i**

(a)(1) *Reinvestigations Required* - If a consumer disputes the accuracy of information in his or her file, an agency must conduct a “reasonable” reinvestigation or delete the item within 30 days of notice, which may be extended up to 15 days if the consumer provides additional information during the reinvestigation (and – 45 days if following free annual report; §1681j(a)(3)).

(2) *Prompt Notice to Furnisher* – an agency shall notify the furnisher of disputed information within 5 business days, including any relevant information provided by the consumer.

(3) *Dispute is “Frivolous or Irrelevant”* – an agency may terminate a reinvestigation and provide notice to the consumer within 5 business days, with supporting information, if the agency determines the dispute is frivolous or irrelevant.

(4) *Consideration of Consumer Information* – an agency shall consider all relevant information provided by the consumer.

(5) *Resolution* –

(A) following the reinvestigation, an agency shall promptly delete or modify information that is inaccurate, incomplete, or unverifiable and notify the furnisher;

(B) deleted information cannot be reinserted into the file unless the furnisher certifies it is complete and accurate, and the agency provides notice of reinsertion to the consumer within 5 business days, including the right to add a statement of dispute to the file;

(C) an agency must maintain “reasonable procedures” to prevent the reappearance of deleted information;

(D) nationwide agencies must have an automated system to communicate to each other the results of a reinvestigation that finds incomplete or inaccurate information in a consumer file.

(6) *Notice of Results* – upon completing a reinvestigation, within 5 business days an agency shall provide notice of the results to the consumer, including the outcome; a revised consumer report; and notices that: that consumer can request a description of the procedure used, to add a statement of dispute, and notices of deletion to recent users of the report per subsection (d).

(7) *Procedure* - 15 days to provide description of procedure used, if requested

(8) *Expedited resolution* – agency can avoid notice requirements in (2), (6), and (7) if it deletes disputed information within 3 business days.

(b)-(c) *Statement of Dispute* – if reinvestigation does not resolve dispute, a consumer may file a brief statement describing the nature of the dispute; in subsequent reports, the agency shall note that the information is disputed and provide a summary of the dispute.

(d) *Notification of Deletion or Dispute* – if information is deleted or disputed, upon request agency shall notify a specified user of the change – users within prior two years for employment purposes; within prior six months for other uses.

(e) *Complaints to CFPB; Report to Congress* – CFPB duties to collect complaints on inaccuracies and direct to agencies, annual report to Congress; agency duties to review each complaint, compliance, and provide regular reports to CFPB on compliance

(f) *Reinvestigation by Resellers* – reseller must assess whether reseller is responsible for erroneous information and correct, or forward to agency, which must complete process; agency conveys information to reseller; reseller reconveys to consumer.

## **7. Requirements on Users of Consumer Reports; Regulations and Requirements Relating to Identity Theft; 15 U.S.C. § 1681m**

(a) *Duties of User Who Takes Adverse Action Based on Consumer Report* – user must provide to the consumer:

- (1) notice of the adverse action;
- (2) disclosure of the credit score used and §1681g(f)(1)(B)-(E) information<sup>6</sup>
- (3)(A) the agency the furnished the report and (B) a statement that agency did not take the adverse action and cannot provide specific reasons therefor;
- (4) notice of (A) right to obtain free credit report and (B) to dispute information.

(b) *Adverse Action Based on Information Not from Consumer Reporting Agency* – user must disclose to consumer adverse action and right to request information on which action was taken; upon request within 60 days of adverse action, user shall disclose the nature of information.

(h)(1)-(6) *Duties of User Who Offers Credit on Less Favorable Terms* – similar to duties for adverse action per subsection (a) – notify consumer that offers is less favorable based on credit information; provide report, notices, contact information, right to dispute.

(d) *Duties of Users - Notices Required With Prescreened Offers of Credit or Insurance*

- (1) a user must provide with each solicitation a clear and conspicuous statement that:
  - (A) information in the consumer’s report was used in connection with the transaction;

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<sup>6</sup> (B) the range of possible credit scores under the model used;

(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

(D) the date on which the credit score was created; and

(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.



(B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;

(C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;

(D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

(E) the consumer may exercise this right by notifying the notification system established under §1681b(e);

(2) the statement must include the number and address of the notification system;

(3) user must maintain on file for 3 years: the criteria used to select the consumer; all eligibility criteria; and any collateral requirements.

(4) This section does not affect federal or state authority to enforce prohibitions against unfair or deceptive acts or practices.

(c);(h)(7)-(8) *Compliance; Enforcement* - a person is not liable for a violation of this section if he shows he maintained reasonable procedures to assurance compliance; there is no civil liability under this section per §§ 1681n and 1681o – only administrative enforcement per §1681s.

(e) *Red Flag Guidelines* – CFPB and other agencies' duty and authority to adopt regulations to protect consumer information

(f) *Prohibition on Sale or Transfer of Debt Caused by Identity Theft* – with limited exceptions, a person may not sell, transfer for consideration, or place for collection a debt that the person has been notified has resulted from identity theft.

(g) *Debt Collector Communications Concerning Identity Theft* – if a debt collector is notified that any information relating to the debt is fraudulent or result of identity theft, he shall:

(1) notify the client that information may be fraudulent or the result of identity theft; and

(2) upon request, provide the consumer with information to which he or she is entitled to dispute the debt under other law.

## **8. Responsibilities of Furnishers of Information to Consumer Reporting Agency; 15 U.S.C. § 1681s-2**

(a) *Duty to provide accurate information* –

(1) Prohibitions on reporting inaccurate information - a person must not (A) furnish information to an agency that he knows or has reasonable cause to believe is inaccurate, or (B) after a consumer notifies him that information is inaccurate and the information is, in fact, inaccurate.

(2) Duty to correct and update information – a person who “regularly and in the ordinary course of business furnishes information” to an agency must promptly notify the agency if information was incomplete or inaccurate and provide necessary corrections.

(3) Duty to provide notice of dispute – person furnishing information must also provide notice of dispute if a consumer disputes the accuracy or completeness of the information.

(4) Duty to provide notice of closed accounts - a person who “regularly and in the ordinary course of business furnishes information” to an agency regarding a credit account must notify the agency that the consumer voluntarily closed the account.

(5) Duty to provide notice of delinquency of accounts – a person who furnishes information about a delinquent account being placed for collection, charged to profit or loss, or similar action, must report within 90 days the date of the delinquency.

(6) Duties of furnishers upon notice of identity theft-related information – (A) A furnisher shall adopt procedures to prevent that person from refurnishing blocked information after notice under §1681c-2; and (B) if a consumer submits an identity theft report to a furnisher at the address specified for notices, the person may not furnish such information unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) Negative information – financial institution must notify consumer within 30 days if it provides negative information to an agency;

(8) Ability of consumer to dispute information with furnisher – upon notice from consumer, furnisher duty to reinvestigate

(9) Duty to provide notice of status as medical information furnisher

(b) *Duties of Furnishers Upon Notice of Dispute* –

After receiving notice per §1681i(a)(2) of a dispute of the completeness or accuracy of information provided by a person to a consumer reporting agency, the person shall--

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(c) *Limitation on Liability* – with certain exceptions, this section imposing duties on furnishers shall be enforced exclusively by federal and state officials under §1681s (no civil liability)

## **9. Violations; Enforcement; 15 U.S.C. §§ 1681n; 1681o; 1681p; 1681q; 1681r; 1681s; 1681x**

With certain exceptions, violations of the Act are subject to enforcement by: (1) Federal and State officials; and (2) through civil action by a consumer.

*§1681n – Civil liability for willful noncompliance* – actual or minimum damages, punitive damages, and costs and fees

*§1681o – Civil liability for negligent noncompliance – actual damages and costs and fees*

*§1681p – Jurisdiction; limitation of action – U.S. District court or other court of competent jurisdiction, before the earlier of: (1) 2 years after P discovers violation; or (2) 5 years after the date of violation*

*§1681q – Obtaining information on consumer under false pretenses – fine; 2 years prison; both*

*§1681r – Unauthorized disclosure by agency officer/employee – fine; 2 years prison; both*

*§1681s – Administrative enforcement –*

(a) FTC under FTC Act; \$2,500 civil penalty per knowing violation;

(b) Other agencies – functional federal regulators; others; CFPB

(c) State actions – in addition to state law remedies, AG or designated officer can bring U.S. or state court action to enjoin violations, action on behalf of residents for civil remedies; penalties; costs and fees; must file notice of action with federal regulator; state action limited while prior federal action pending (see limitations on certain actions against furnishers under 1681s-2)

(d) Federal regulators have same authority to enforce the Act as they have under other federal law

(e) CFPB has regulatory authority and authority to adopt regulations to implement Act

(f) Nationwide agencies must develop procedures for sharing and responding to consumer complaints and requests to block information

## **10. Pre-Emption Issues; Relation to State Laws – 15 U.S.C. § 1681t**

(a) *In general* - Except as provided in subsections (b) and (c), this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions - No requirement or prohibition may be imposed under the laws of any State--

(1) with respect to any subject matter regulated under-

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply--

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(G) section 1681g(e) of this title, relating to information available to victims under section 1681g(e) of this title;

(H) section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes; or

(I) section 1681m(h) of this title, relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996);

(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, except that this paragraph--

(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on December 4, 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);

(B) shall not apply with respect to sections 5-3-106(2) and 212-14.3-104.3 of the Colorado Revised Statutes (as in effect on December 4, 2003); and

(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

(4) with respect to the frequency of any disclosure under section 1681j(a) of this title, except that this paragraph shall not apply--

(A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on December 4, 2003);

(B) with respect to section 10-1-393(29)(C) of the Georgia Code (as in effect on December 4, 2003);

(C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on December 4, 2003);

(D) with respect to sections 14-1209(a)(1) and 14-1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on December 4, 2003);

(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on December 4, 2003);

(F) with respect to section 56:11-37.10(a)(1) of the New Jersey Revised Statutes (as in effect on December 4, 2003); or

(G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on December 4, 2003); or

(5) with respect to the conduct required by the specific provisions of--

(A) section 1681c(g) of this title (truncation of credit card and debit card numbers);

(B) section 1681c-1 of this title (identity theft alerts);

(C) section 1681c-2 of this title (information reporting block);

(D) section 1681g(a)(1)(A) of this title (exclude SSN in report to consumer);

(E) section 1681j(a) of this title (free annual credit report);

(F) subsections (e), (f), and (g) of section 1681m of this title (likely reference should be to (f) – prohibition on sale or transfer of debt caused by identity theft; (g) – debt collector communications concerning identity theft; and (h) – duties of users in certain credit transactions)

(G) section 1681s(f) of this title (coordination of consumer complaints);

(H) section 1681s-2(a)(6) (duty of furnisher upon notice of identity theft); or

(I) section 1681w (duty to safely dispose of records).

**11. Identity Theft; Fraud Prevention; Credit Blocks - 15 U.S.C. §§ 1681c-1; 1681c-2; Rights and Information Available to Victims of Identity Theft - §1681g(d)-(e); Duties of Users and Identity Theft - §1681m(e)-(g); Duties of Furnishers and Identity Theft - §1681s-2; Disposal of Records – §1681w**

The FCRA provides for several ways a consumer may protect credit information in the event of fraud or identity theft, including the right to request short-term “one-call” fraud alerts; extended alerts; active duty alerts; and the ability to block reporting of credit information. Nationwide reporting agencies are required to adopt policies and procedures to ensure communication of these alerts among agencies, and to provide consumers with contact information for the CFPB and other agencies. §1681c-1(d)-(g).

***Fraud Alerts - §1681c-1***

(a) *One-Call Fraud Alert* - upon request of a consumer who asserts a good faith suspicion of fraud, and appropriate proof of identity, an agency shall:

(A) include a fraud alert in the consumer’s credit file for 90 days and provide that alert along with any credit score;

(B) refer information regarding the fraud alert to each of the other nationwide agencies;

(C) disclose that the consumer that may receive a free copy of his or her credit file; and

(D) provide upon request, at no cost, all disclosures under section 1681g.

(b) *Extended Alert* - upon request of a consumer who submits an identity theft report, and appropriate proof of identity, an agency shall:

(A) include a fraud alert in the consumer’s credit file for 7 years provide that alert along with any credit score;

(B) exclude the consumer from pre-screened offers for 5 years;

(C) refer information regarding the fraud alert to the other nationwide agencies;

- (D) disclose that the consumer that may receive two free copies of his or her credit file in any 12-month period; and
- (E) provide upon request, at no cost, all disclosures under section 1681g.

- (c) *Active Duty Alert* - upon request of an active duty military consumer, an agency shall:
  - (A) include an active duty alert in the consumer's credit file for 12 months and provide that alert along with any credit score (unless for longer per CFPB regulation);
  - (B) exclude the consumer from pre-screened offers for 2 years; and
  - (C) refer information regarding the fraud alert to each of the other nationwide agencies.

Note → A consumer may also annually request a free copy of the disclosures under §1681g after certifying in writing he or she has reason to believe that the file contains inaccurate information due to fraud. §1681j(c)(3).

- (h) *Consequences of Alerts - Limitations on use of information*

*(1) Notification and verification for Initial and Active Duty Alerts*

When an initial or active duty fraud alert is in place, an agency notifies all prospective users of a consumer report that the consumer does not authorize without verification of identity:

- any new credit plan or extension of credit, other than under an open-end credit plan;
- issuance of an additional card on an existing credit account; or
- any increase in credit limit on an existing credit account.

A prospective user cannot open a new credit plan or extension of credit, other than under an open-end credit plan; issue an additional card; or increase a credit limit, unless the user "utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request." §1681c-1(h)(1)(B)(i). If the consumer provided a phone number for identity verification, the user must contact the consumer using that number "or take reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft." §1681c-1(h)(1)(B)(ii).

*(2) Notification and Verification for Extended Alerts*

When an extended fraud alert is in place, an agency notifies all prospective users of a consumer report:

- (i) that the consumer does not authorize without verification of identity:
  - any new credit plan or extension of credit, other than under an open-end credit plan;
  - issuance of an additional card on an existing credit account; or
  - any increase in credit limit on an existing credit account.
- (ii) a telephone number or other reasonable contact method designated by the consumer.

A prospective user cannot open a new credit plan or extension of credit, other than under an open-end credit plan; issue an additional card; or increase a credit limit, unless the user contacts the consumer in person or using the designated contact method to confirm that the application is not the result of identity theft.

***Blocking Information Resulting from Identity Theft; § 1681c-2***

(a) *Block* – an agency must block the reporting of any information that a consumer identifies as information that resulted from an alleged identity theft within four days of receiving proof of identity, a copy of an identity theft report, identification of the information, and a statement by the consumer that the information is not information relating to any transaction by the consumer.

(b) *Notification* – an must promptly notify the furnisher of the information that: it may be the result of identity theft, an identity theft report has been filed, a block has been requested, and the effective dates of the block.

(c) *Authority to decline or rescind* – an agency may decline or rescind a block, and notify the consumer, if it reasonably determines that: the information was blocked or requested in error or on the basis of a material misrepresentation of fact by the consumer, or the consumer obtained goods, services, or money as a result of the blocked transaction.

(d)-(f) *Exceptions* – subject these provisions, this section does not apply to a reseller, or check services companies processing transfers, or access to blocked information by law enforcement.

***Summary of Rights and Information Available to Victims of Identity Theft; §1681g(d)-(e)***

(d) *Summary of rights* – the CFPB and other regulators have adopted a summary of rights for victims of identity theft, which an agency must provide if contacted by a consumer concerning potential identity theft.

(e) *Information available to victims – Duties of Business Involved in Fraudulent Transaction*

A victim of identity theft, upon proof of identity and other require information, may make a written request from a business with which a fraudulent transaction has occurred using the consumer's identity for copies of any application or transaction records in the business's possession or control. Unless it has a good faith basis to deny the request, the business shall provide the records within 30 days, and without charge, to the consumer and any law enforcement agency specified.

***Duties of Users of Credit Information and Identity Theft; §1681m(e)-(g)***

(e) *Red Flag Guidelines* – CFPB and other agencies' duty and authority to adopt regulations to protect consumer information

(f) *Prohibition on Sale or Transfer of Debt Caused by Identity Theft* – with limited exceptions, a person may not sell, transfer for consideration, or place for collection a debt that the person has been notified has resulted from identity theft.

(g) *Debt Collector Communications Concerning Identity Theft* – if a debt collector is notified that any information relating to the debt is fraudulent or result of identity theft, he shall:

- (1) notify the client that information may be fraudulent or the result of identity theft; and
- (2) upon request, provide the consumer with information to which he or she is entitled to dispute the debt under other law.

***Duties of Furnishers and Identity Theft; §1681s-2(a)(6)***

(A) A furnisher shall adopt procedures to prevent that person from refurnishing blocked information after notice under §1681c-2; and

(B) if a consumer submits an identity theft report to a furnisher at the address specified for notices, the person may not furnish such information unless the person subsequently knows or is informed by the consumer that the information is correct.

***Disposal of Records; §1681w***

Federal regulators directed to adopt regulations that require the safe disposal of records that contain consumer information.

**B. Vermont Fair Credit Reporting Act; 9 V.S.A. §§ 2480a-2480n**

Like most States, Vermont has its own slate of statutory provisions governing regulation of the consumer reporting agencies that are layered over the federal Fair Credit Reporting Act.

**§ 2480a. Definitions** - Vermont uses slightly different terminology than the FCRA, using “credit report” and “credit reporting agency” rather than “consumer report” and “consumer reporting agency.” Otherwise, the scope of the defined terms in Vermont law is essentially the same.

**§ 2480b. Disclosures to consumers** – this section requires an agency to disclose to a consumer upon request all the information about the consumer that is available to a user, including a credit score<sup>7</sup>, the name of requestors in the prior year, and an explanation of the information. It also requires an agency to provide a “Notice to Vermont Consumers,” explaining consumer rights to access credit information and to place a security freeze, each time the agency makes a disclosure under 15 U.S.C. § 1681g.

**§ 2480c. Charges for disclosures** – this section (a) prohibits a charge for (1) an annual free credit report; (2) to provide notice of reinvestigation under 2480d(g); and (3) to notify a person of the deletion of information under 15 U.S.C. § 1681i; and (b) otherwise allows an agency to impose a charge of \$7.50 for other disclosures (e.g., additional credit reports, credit scores, etc.).

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<sup>7</sup> Although the text of this statute requires the information to include a credit score, the provision is likely pre-empted by 15 U.S.C. § 1681t(b)(3).



**§ 2480d. Procedure in case of disputed accuracy**<sup>8</sup> - agency has 30 business days to reinvestigate disputed information; 5 business days notify furnishers of dispute; must review and consider information from the consumer; must delete information that is inaccurate or cannot be verified; prohibits reinsertion of the information unless furnisher reinvestigates; and must report written results within 5 business days.

**§ 2480e. Consumer consent** – subject to the exceptions in § 2480g, this section provides that a person cannot obtain the credit report of a consumer unless (1) pursuant to a court order or (2) the consumer consents and the report is used for the purpose consented. This section does not affect a person’s ability to request permission to obtain credit reports for ongoing monitoring of an account, nor the use of credit information for prescreening.

Because of amendments to the FCRA in 2003, there is a question under whether and to what extent § 2480e continues to limit the exchange of information among persons affiliated by common ownership or control. From 1996 to 2003, the FCRA provided an express carve out for § 2480e from the pre-emption provisions of the Act, under 15 U.S.C. § 1681t(b)(2):

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State –

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(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996);

Under this carve out, Vermont law was able to continue requiring that an affiliate obtain consumer consent to obtain his or her credit report. However, the scope of pre-emption may have changed in 2003 when Congress amended the Act to add 15 U.S.C. § 1681s-3, which governs the sharing of consumer information by affiliates under common ownership or corporate control. Section 1681s-3 provides that, with some exceptions, if a person receives consumer information from an affiliate, it cannot use that information to make a solicitation for marketing purposes about its products or services unless: (1) it discloses to the consumer that affiliates may communicate such information and (2) gives the consumer the opportunity to opt out of such solicitations for a five-year period.

When it added § 1681s-3, Congress also amended § 1681t to add subdivision (b)(1)(H), which provides:

(b) General exceptions

No requirement or prohibition may imposed under the laws of any State--

(1) with respect to any subject matter regulated under--

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<sup>8</sup> 15 U.S.C. § 1681t(b)(1)(B) would pre-empt the timing requirements in this section, but for the fact that this section was in effect on September 30, 1996, and therefore benefits from the carve out in federal law. How the two provisions apply in the case of disputed information would require a fact-specific determination.

(H) section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes;

A consumer reporting agency or affiliate could argue that this new pre-emption provision, which does not have an express carve out for 9 V.S.A. § 2480e, pre-empts the Vermont requirement for an affiliate to get consumer consent to obtain his or her credit report. However, to confuse matters, under § 1681s-3(c), it appears that state laws that conflict with § 1681s-3 are also pre-empted by § 1681t(b)(2):

(c) Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of this section, constitute requirements with respect to the exchange of information among persons affiliated by common ownership or common corporate control, within the meaning of section 1681t(b)(2) of this title.

Why did Congress add both §§ 1681s-3(c) and 1681t(b)(1)(H)? If these two provisions pre-empt the same class of state laws, why have both—is this a conflict, or a redundancy? The addition of both pre-emption provisions creates an interpretive ambiguity that applies uniquely to Vermont: is an affiliate still required to get a consumer’s consent to obtain his or her credit report under 9 V.S.A. § 2480e because § 2480e is expressly excluded from pre-emption by 1681t(b)(2), or, as of 2003, is an affiliate able to obtain a consumer’s credit report from an affiliate without consent because § 1681t(b)(1)(H) pre-empts 9 V.S.A. § 2480e?

**§ 2480f. *Violations*** – this section makes a violation of the subchapter a violation of the consumer protection act; a consumer has a private right of action to enforce a violation, which may include damages, injunctive relief, punitive damages for a willful violation, and costs and fees; also provides for \$100 or actual damages in the case of a violation by a credit reporting agency or willful violation by any other person.

**§ 2480g. *Exemptions*** – this section provides (a) a blanket exception from the subchapter for education loans through VSAC; and (b) exceptions from § 2480e for the Office of Child Support; credit transactions prior to January 1, 1993; and the Department of Taxes regarding delinquent taxes or collection of a tax debt.

**§ 2480h. *Security freeze*** – this section allows a Vermont consumer to place a security freeze on his or her credit report, which limits the release of consumer information without consumer approval and use of an agency-issued PIN, as follows:

- (a) consumer makes a request in writing by certified mail to an agency (with a police or investigative report or complaint if case of identity theft); for a fee of \$10 to place and \$5 to remove, unless in case of identity theft
- (b) agency places freeze within five business days
- (c) agency sends written confirmation and PIN to consumer within 10 business days
- (d) consumer can remove freeze for a period of time or certain party by request
- (e) agency can develop procedures for temporary lift by phone, fax, internet
- (f) agency lift freeze within three business days

- (g) lift only upon request, or if frozen through material misrepresentation of fact
- (h) party may treat application for credit as incomplete if credit is frozen
- (i) agency must disclose thawing process upon freeze request
- (j) freeze remains in place until consumer requests removal; lift within 3 business days
- (k) agency must require proper identification to place or remove a freeze
- (l) 10 exceptions for who can access credit information during freeze

**§ 2480i. Agency duties during freeze** – agency shall not change name, SSN, DOB, or address without sending written confirmation to consumer within 30 days

**§ 2480j. Persons not required to place security freeze** – check services or fraud prevention services company; deposit account information services company; agency that only resells aggregated credit information from other agency databases and does not maintain a permanent database to produce new credit reports

**§ 2480k. Complaints to law enforcement agencies** – person may make complaint of identity theft to law enforcement, which shall produce a report including complaint, agency name, and case number.

**§ 2480l. Verification of address for preapproved credit offer** – credit card issuer that mails solicitation and receives application with different address shall take commercially reasonable attempt to verify the address change

**§ 2480m. Limitations on use of social security numbers** – prior to posting in public, government shall redact SSN from documents

**§ 2480n. Credit report files of deceased persons** – executor, administrator, or authorized person may request agency indicate in file that person is deceased; indicate within 5 business days of receiving documentation of death and request.

**Vermont Attorney General Fair Credit Reporting Rules - 3-2-110: CP 112**

- a. CP 112.01 – requires a credit reporting agency to list in certain telephone directories a telephone number that consumers may use to contact the agency and obtain credit file information pursuant to 9 V.S.A. § 2480b(a).
- b. CP 112.02 – provides that a disclosure and credit report pursuant to 15 U.S.C. § 1681j after an adverse action does not satisfy an agency’s duty to provide an annual free credit report to a consumer under 9 V.S.A. § 2480c(a).
- c. CP 112.03 – requires that consumer consent to access a credit report be obtained in writing if an application was in writing, or otherwise in writing or in the same form as the consumer’s request.

## Appendix A

### LIST OF PRA EXEMPTIONS BY SUBJECT AREA

**Note:** For exemptions listed under more than one category, see endnote.<sup>i</sup>

**Disclaimer:** Listed below are sections of the Vermont Statutes Annotated that could be asserted as an exemption to inspection or copying of a public record. Following each cited section is a short annotation summarizing the records to which the exemption applies. The annotations are not legally binding and are provided for reader convenience. The text of the statute should be reviewed prior to asserting a section listed below as an exemption. This list may not include all public records act exemptions set forth in the Vermont Statutes Annotated.

#### **I. Complaints, Investigations, Examinations, Regulatory Information Sharing, and Special Reporting Requirements**

##### **A. Children or Vulnerable Adults**

33 V.S.A. § 105(g): Information about a case of child abuse or neglect that results in the fatality or near fatality of a child, when the Attorney General or State's Attorney investigating the matter requests that disclosure be withheld

33 V.S.A. § 4913: Case information disclosed to mandated reporters; name of person filing a child abuse report; name of person mentioned in report, unless disclosure authorized by statute

33 V.S.A. § 4919: Child Abuse Registry records; limitations on authorized disclosure

33 V.S.A. § 4921: DCF records of child abuse investigations, assessments, reviews, and responses, unless disclosure authorized by law

33 V.S.A. § 6903(c): Identity of person reporting suspected abuse of a vulnerable adult, unless disclosure authorized by statute

33 V.S.A. § 6906(e): Records related to unsubstantiated reports of abuse, neglect, and exploitation of a vulnerable adult

33 V.S.A. § 6911: Information obtained through reports and investigations of allegation of abuse to vulnerable adults, unless disclosure authorized by statute; Vulnerable Adult Abuse Registry, unless disclosure authorized by statute

33 V.S.A. § 7112: Commissioner of Disabilities, Aging, and Independent Living is authorized to develop guidelines to ensure confidentiality and privacy of persons who file complaints of abuse to person receiving care from nursing facilities

##### **B. Financial Regulation**

8 V.S.A. § 22: Information acquired by DFR pursuant to a confidentiality sharing agreement when the information is designated as confidential by the furnisher of the information

8 V.S.A. § 23: All records of investigations of banks and financial institutions licensed by DFR and all records and reports of examinations by the Commissioner of DFR

8 V.S.A. §§ 2561, 2768, and 2923: Information or material provided to the Nationwide Mortgage Licensing System and Registry in connection with regulation of money services, debt adjusters, and loan servicers

8 V.S.A. § 3571: All financial analysis ratios and examination synopses concerning insurance companies that are submitted to DFR by the National Association of Insurance Commissioners' Insurance Regulatory Information System

8 V.S.A. § 3687: Records obtained in the course of an examination or investigation of an insurance holding company system

8 V.S.A. § 3840: Investigation and examination reports related to financial condition or market conduct of life settlement provider

8 V.S.A. § 4813m(f): Any document or other information acquired by DFR that is furnished by an insurer, producer, or employee when obtained by DFR in an investigation of an insurer's termination of the appointment, employment, contract, or other business relationship with a person licensed as an insurance producer

8 V.S.A. § 6008(c): Any reports, information, or documents acquired by DFR in the course of an examination of captive insurance company

8 V.S.A. § 6048o: Records of special purpose financial captive insurance company obtained in the course of an examination

8 V.S.A. § 6074: Reports, work papers, recorded information, and documents produced or acquired by DFR in the course of the examination of a risk retention managing general agent

9 V.S.A. § 5607: Securities documents acquired by DFR, including records related to audits, inspections, and trade secrets

### **C. Regulated Professions**

3 V.S.A. § 131: Complaints and other records produced or acquired in connection with the regulation of professions

16 V.S.A. § 1708: Confidentiality of educator licensing matters

26 V.S.A. §§ 1317(c) and 1368(a)(6)(C): Disciplinary information reported by health care institutions, and judgments or settlements involving a claim of professional negligence reported by insurers; information about pending malpractice claims or actual amounts paid

26 V.S.A. § 1318: Disciplinary complaints, proceedings, or records of the Board of Medical Practice when not required to be released by statute; investigatory files of the Board which have not resulted in a charge of unprofessional conduct; and work product of Board attorney

### **D. Other Criminal, Civil, or Administrative Complaint or Investigation Records**

1 V.S.A. § 317(c)(5): Records of detection and investigation of crime that satisfy certain criteria

1 V.S.A. § 317(c)(18): Department of Public Safety internal investigations; see also 20 V.S.A. § 1923

1 V.S.A. § 317(c)(42): Identity of whistleblowers

3 V.S.A. § 1223(c): Complaints regarding governmental ethics and related documents in the custody of the State Ethics Commission [Added in Sec. 7 of by S.8 of 2017, eff. 1/1/18]

9 V.S.A. § 2440(g): Records of investigation of violations of provisions related to Social Security number protection

9 V.S.A. § 2460: Attorney General or State's Attorney civil investigation records

9 V.S.A. § 4555: Complaint and investigation files of the Human Rights Commission

13 V.S.A. § 3504(g): Information required to be reported, and collected in support of investigations, of illness, disease, or death likely to have been caused by a weapon of mass destruction

13 V.S.A. § 5259(d): Defender General investigations of issues related to the health, safety, and welfare of inmates in correctional facilities; investigation sources, inmate communications

15 V.S.A. § 1140: Records of the Domestic Violence Fatality Review Commission

17 V.S.A. § 2904(a): Attorney General or State's Attorney records of investigations of campaign finance violations

18 V.S.A. § 7257a: Records of the Mental Health Crisis Response Commission [Added in Sec. 1 of H.145, eff. 7/1/17]

21 V.S.A. § 710(c): Name or contact information of an individual who has alleged to the Department of Labor (DOL) that an employer has made a false statement or misclassified an employee

33 V.S.A. § 5117(a) & (e): Law enforcement reports and files concerning a person subject to juvenile judicial proceedings, unless the statute allows disclosure; prohibition on dissemination by receiving persons unless authorized by law

## **II. Records Related to Certain Judicial or Administrative Proceedings**

### **A. Adoption Related Records**

15A V.S.A. § 2-105(d): Adoption Act; name of persons who provide information for or are the subject of a background report provided to prospective adoptive parent

15A V.S.A. § 6-102: Adoption Act; records on file with court or in the possession of an agency or provider in connection with an adoption; exceptions

15A V.S.A. § 6-104: Adoption Act; release of nonidentifying information from confidential adoption records

15A V.S.A. § 6-106: Adoption Act; identifying information of former parent of an adopted child who files a request for nondisclosure with adoption registry

### **B. Court Diversion**

3 V.S.A. § 163: Information gathered in the course of the juvenile diversion process and sealed records related to a juvenile court diversion proceeding

3 V.S.A. § 164: Information gathered in the course of the adult diversion process and sealed records related to an adult court diversion proceeding

### **C. Guardianship**

14 V.S.A. § 3067(e): Records of evaluation in proceedings for guardianship of mentally disabled person

14 V.S.A. § 3068(e): Records of hearing in response to a petition for guardianship of mentally disabled person when the court dismisses the petition

18 V.S.A. § 9306(c): Developmental disabilities evaluation is confidential unless disclosed with party consent

18 V.S.A. § 9309(b): Records of proceedings of guardianship hearing for developmentally disabled unless disclosed with party consent

### **D. Juvenile Proceedings**

33 V.S.A. § 5117(a), (c), (e): Court files concerning a person subject to juvenile judicial proceedings, unless the statute allows disclosure; files of juvenile proceedings released in divorce proceedings; prohibition on redissemination by receiving persons unless authorized by law

33 V.S.A. § 5118(e): Written notice that a child has conducted a "delinquent act requiring notice" that is provided by a court to superintendent or head of school in which the child is a student

33 V.S.A. § 5119: Sealing of juvenile delinquency and care or supervision records, unless statute authorizes disclosure; special index of files or records that have been sealed, unless statute authorizes disclosure; motion by law enforcement or DCF to unseal juvenile judicial records; and victim's information retained by state's attorney unless disclosure authorized by statute

33 V.S.A. § 5201: All files related to withdrawn delinquency petition shall be sealed

33 V.S.A. § 5204(h) and (i): Court records and files of a person under the age of 16 who is tried as an adult but acquitted; records of hearing regarding transfer of a person from juvenile court unless disclosure authorized by statute

33 V.S.A. § 5205: Fingerprint files of children under the jurisdiction of the Family Division

33 V.S.A. § 5234: Notice to victim in delinquency proceeding prior to juvenile release; name of facility from which juvenile shall be discharged shall not be released

33 V.S.A. § 5282: Report from DCF as to whether a defendant under the age of 18 should be treated as a youthful offender, unless disclosure authorized by statute

33 V.S.A. § 5287: All court records of a youthful offender shall be expunged or sealed when the youth successfully completes probation and offender status is terminated

33 V.S.A. § 5309: All files related to a withdrawn petition that a child is in need of care or supervision shall be sealed

### **E. Other**

8 V.S.A. § 7041(e): Records of a DFR delinquency hearing of domestic insurer

8 V.S.A. § 7043: Records produced in the course of insurance delinquency proceedings

13 V.S.A. § 7554c(e): Information obtaining during a pretrial risk assessment and pretrial needs screening

18 V.S.A. § 1094: Petition for a restraining order, and order, to prevent venereal disease testing

18 V.S.A. § 4473(b)(5)(A): Records of appeal before the Medical Marijuana Review Board

18 V.S.A. § 8713: Records related to proceedings regarding sterilization of adults with an intellectual disability

28 V.S.A. § 204(d): Presentence investigation report or parole summary prepared by DOC; exceptions [Amended by Sec. 3 of Act 137 of 2016]

## **III. Criminal History Records**

3 V.S.A. § 241(h): Criminal history records and information received by certain State agencies in their initial background investigations of prospective personnel of who would be given access to federal tax information

13 V.S.A. §§ 5402, 5411, and 5411a: Sex Offender Registry information may only be disclosed in accordance with law

13 V.S.A. § 7041: Records or files related to an expunged deferred sentence; special index of deferred sentences for sex offenses that require registration  
 13 V.S.A. § 7606(d): Index of cases that have been expunged and expungement orders and certificates  
 13 V.S.A. § 7607: Criminal records subject to a sealing order  
 16 V.S.A. § 253: Criminal records or criminal record information received in background check of a person seeking educator license; a person offered a school superintendent or headmaster position; or prospective employees, certain persons under contract or employees of contractors, or student teachers  
 20 V.S.A. §§ 2056–2056h, 2060: Records of the Vermont Criminal Information Center (VCIC)  
 20 V.S.A. § 2064(h): Criminal information received by authorized persons as part of a subscription service with VCIC unless statute authorizes disclosure  
 24 V.S.A. § 1974a(e): Sealed criminal conviction in District Court for a municipal parking violation committed before January 1, 2005  
 26 V.S.A. § 1353(8): Criminal history records of the Board of Medical Practice licensee

#### **IV. Dispute-Resolution or Independent Review Related**

1 V.S.A. § 317(c)(26): Information submitted to the Department of Financial Regulation (DFR) regarding a dispute with a regulated entity  
 1 V.S.A. § 317(c)(27): Information submitted to the Department of Public Service regarding a dispute with a regulated utility  
 1 V.S.A. § 317(c)(28): Records of external review of health care and mental health service decisions  
 3 V.S.A. § 1225(a): Guidance issued by the Executive Director of the State Ethics Commission, unless the receiving entity has publicly disclosed it [Added in Sec. 7 of by S.8 of 2017, eff. 1/1/18]  
 9 V.S.A. § 4100b: Pre-hearing settlement communications of parties before the Transportation Board  
 12 V.S.A. § 4634: Report filed in connection with mandatory mediation program in mortgage foreclosure actions  
 12 V.S.A. § 7012: Written and oral communications related to medical malpractice pre-suit mediation

#### **V. Tax Related**

1 V.S.A. § 317(c)(6): Tax returns or tax records in possession of public agency  
 32 V.S.A. § 3102: Tax return, tax return information, and other tax records, unless disclosure authorized by statute  
 32 V.S.A. § 3341: Vermont Employment Growth Incentive Program; information and materials submitted by a business concerning its income taxes and other confidential financial information; exceptions [Added in Sec. H.1 of Act 157 of 2016]  
 32 V.S.A. § 3411(4): Information obtained by Division of Property Valuation and Review from local officials are subject to same confidentiality rules that apply to local officials under 32 V.S.A. § 4009  
 32 V.S.A. § 4009: Taxpayer inventories of taxable property, unless disclosure authorized by statute  
 32 V.S.A. § 5939(b): Taxpayer records or information released to a state claimant agency under the Vermont Setoff Debt Collection Act

#### **VI. Other Records Concerning Specific Individuals**

##### **A. Addresses and Personal Identifiers**

1 V.S.A. § 317(c)(10): Lists of names, disclosure of which violates a right to privacy or produces public or private gain  
 1 V.S.A. § 317(c)(29): Records of participant in Address Confidentiality Program; see also 15 V.S.A. § 1155  
 1 V.S.A. § 317(c)(31): Voter information: DOB, license number, nondriver ID number, e-mail address, and last four digits of SSN; see also 17 V.S.A. § 2154 [amended in Sec. 5 of H.512 of 2017, eff. 7/1/17]  
 9 V.S.A. § 2440(d),(f): General prohibition on disclosing Social Security numbers to the public; request for redacted record  
 9 V.S.A. § 5607: Securities documents acquired by DFR, including records related to audits, inspections, and trade secrets  
 10 V.S.A. § 123: Vermont Geographic Information Service; individual identifiers of persons supplying data  
 15 V.S.A. § 307: Records on file with the court in parentage action that contain Social Security numbers

15 V.S.A. § 788: Address of parent, or name and address of employer of parent, subject to child support or parental rights and responsibilities order  
 15B V.S.A. § 1312: Family Support Act; address or identifying information, when disclosure would create an unreasonable risk to the health, safety, or liberty of a party or child  
 18 V.S.A. § 5083: Birth certificates; address and town of residence of participants in the Address Confidentiality Program  
 18 V.S.A. § 5132: Marriage certificates; address and town of residence of participant in Address Confidentiality Program  
 18 V.S.A. § 9333(c): Genetic testing information  
 18 V.S.A. § 9457: Patient and health care practitioner identifying information in hospital financial and services reporting requirements  
 20 V.S.A. § 1941: All DNA samples submitted to the Department of Public Safety laboratory; DNA records  
 23 V.S.A. § 1213(m): Images and other individually identifiable information in the custody of a public agency related to the use of an ignition interlock device; exceptions [added by Sec. 10 of Act 169 of 2016]

### **B. Drug and Prescription Related**

1 V.S.A. § 317(c)(38): Records that include prescription information containing prescriber-identifiable data  
 1 V.S.A. § 317(c)(39): Records held by AHS or DFR that include prescription information containing patient-identifiable data  
 18 V.S.A. § 4211: Prescriptions of regulated drugs and orders and records required by state law regarding regulated drugs  
 18 V.S.A. § 4284: Data collected under the Vermont Prescription Monitoring Program and all related information and records  
 18 V.S.A. § 4474d: Records of persons registered as medical marijuana patients or dispensaries or persons registered as a caregiver of a medical marijuana patient  
 18 V.S.A. § 4474i: Records of all registered medical marijuana patients and registered caregivers within a medical marijuana dispensary's records in the Department of Public Safety

### **C. Other Health or Treatment Related Records; Records Collected for Public Health Purposes**

1 V.S.A. § 317(c)(37) and 18 V.S.A. § 1917(a): records provided to the Department of Health pursuant to the Patient Safety Surveillance and Improvement System  
 12 V.S.A. § 1612: Health professional may not disclose a patient's privileged information in court procedure or court documents  
 12 V.S.A. § 1614: Confidential communications made by a victim of sexual or domestic assault to a crisis worker  
 12 V.S.A. § 1705: Court records and court proceedings that involve personally identifiable HIV-related information  
 13 V.S.A. § 3504(g): Information required to be reported, and collected in support of investigations, of illness, disease, or death likely to have been caused by a weapon of mass destruction  
 18 V.S.A. § 154: All information reported to the State Cancer Registry and all identifying information  
 18 V.S.A. § 157: Data and identifying information received by the Vermont Mammography Registry is confidential and privileged  
 18 V.S.A. § 1001: All communicable disease reports and information collected in support of investigations and studies to determine the nature or cause of any disease outbreak; records relating to HIV or AIDS that may identify a person  
 18 V.S.A. § 1099: All information received in infectious venereal disease reports  
 18 V.S.A. § 1129: Immunization Registry information  
 18 V.S.A. § 1141: Results of communicable disease testing  
 18 V.S.A. § 1552(c): Maternal mortality information collected and analyzed by the Northern New England Perinatal Quality Improvement Network  
 18 V.S.A. § 1554: Maternal Mortality Review Panel records and opinions  
 18 V.S.A. § 1852(a)(7): A person admitted to a hospital on an inpatient basis has right to expect all communications and records pertaining to his or her care shall be treated as confidential  
 18 V.S.A. § 5088: Birth Information Network information  
 18 V.S.A. § 5112(c): Records related to the issuance of a new birth certificate in connection with a change of sex



18 V.S.A. § 5205(g): Autopsy reports for a person committed to the supervision of the Department of Corrections (DOC)  
 18 V.S.A. § 5222(d): Fetal death reports  
 18 V.S.A. § 5293: Information collected regarding compliance with law governing Patient Choice at End of Life  
 18 V.S.A. § 7103: Mental health records, other than records ordered or authorized to be disclosed  
 18 V.S.A. § 9414(f)(3): Information made available in quality review of managed care organizations  
 26 V.S.A. § 1353(6): The results of a mental, physical, or medical knowledge and skill evaluation that the Board of Medical Practice requires a licensee to complete  
 28 V.S.A. § 205(b): Confidential information of an offender convicted of a crime listed in 13 V.S.A. § 5310(7), when the information is revealed by the offender in connection with participation in a treatment program  
 28 V.S.A. § 903: DOC shall adopt rules regarding confidentiality of communications by an inmate made for the purposes of treatment, assessment, evaluations, screening, or programming while an appeal is pending  
 33 V.S.A. § 6705: Medical treatment records obtained by the Department of Vermont Health Access or designee when subrogated to the rights of an individual to which the Department provided medical assistance

#### **D. Employment or Appointment Related Records**

4 V.S.A. § 601(g), (h): Proceedings of the Judicial Nominating Board, including candidate information; exceptions  
 4 V.S.A. § 603: Names of candidates submitted by the Judicial Nominating Board to the Governor for judicial appointment when a candidate is not selected  
 4 V.S.A. § 608(c): Comments regarding judicial performance received by the Joint Committee on Judicial Retention  
 10 V.S.A. § 531(i): Employee-specific personal identifying information collected in connection with evaluating the Employment Training Program and the Workforce Education and Training Fund  
 18 V.S.A. § 9391: Records of proceedings of Green Mountain Care Board Nominating Committee, information submitted by board candidates, and names of candidates submitted and not selected  
 21 V.S.A. § 516: Drug test results of employees or applicants for employment  
 26 V.S.A. § 1353(6): The results of a mental, physical, or medical knowledge and skill evaluation that the Board of Medical Practice requires a licensee to complete

#### **E. Personal Finance and Financial Assistance Related**

1 V.S.A. § 317(c)(34): Family court income affidavits  
 4 V.S.A. § 741: Credit card information while such information is in the possession of a court or the Judicial Bureau  
 16 V.S.A. § 2827: Information that identifies applicants, recipients, beneficiaries, and participants in programs administered by the Vermont Student Assistance Corporation  
 21 V.S.A. § 1314: Information obtained by the DOL regarding the unemployment benefit rights of an individual  
 31 V.S.A. § 674(L11): Financial, tax, trust, or personal records filed, received, maintained, or produced by the Tri-state Lottery Commission in connection with payment of a prize  
 32 V.S.A. § 983: The books of registry held by the State Treasurer or other designated registrar  
 33 V.S.A. § 111: Information pertaining to applicants for or recipients of assistance from DCF, except for administration by the Department or when required by law  
 33 V.S.A. § 1902a: Medicaid applications and records concerning any applicant for or recipient of Medicaid; exceptions [Added in Sec. E.306.9 of Act 172 of 2016]  
 33 V.S.A. § 4105: Information obtained by the Office of Child Support to establish, modify, or enforce a child support or parental rights order, unless disclosure is authorized by statute

#### **F. Peer Review Related**

18 V.S.A. § 9414(f)(3): Information made available in quality review of managed care organizations  
 26 V.S.A. § 75(d): Information submitted for peer reviews of licensed public accountants  
 26 V.S.A. § 1443: Proceedings, reports, and records of health services peer review committees  
 26 V.S.A. § 4190(b): Written comments related to peer reviews required by rules governing licensed midwives

### **G. Victims of Crimes**

- 1 V.S.A. § 317(c)(41) and 13 V.S.A. § 5358a: Documents reviewed by the Victim's Compensation Board for purposes of approving an application for compensation, and certain personal information of a victim
- 13 V.S.A. § 5305(a): Address or telephone number of crime victim who requests notification of release or escape of a defendant
- 13 V.S.A. § 5322: Name or identifying information of an applicant to the Victim's Compensation Program, or a victim named in a restitution judgment order, or a recipient of the Domestic and Sexual Violence Survivor's Transitional Employment Program
- 13 V.S.A. §§ 5402(b), 5411(b)(1), and 5411a(d): The identity of a victim of an offense that requires registration on the Sex Offender Registry

### **H. Other (May Encompass One or More of the Above Topics)**

- 1 V.S.A. § 317(c)(5): Records of detection and investigation of crime that satisfy certain criteria
- 1 V.S.A. § 317(c)(7): Personal documents relating to an individual
- 1 V.S.A. § 317(c)(11): Student records
- 1 V.S.A. § 317(c)(19): Identity of library patrons (see also 22 V.S.A. § 172)
- 1 V.S.A. § 317(c)(40): Records of genealogy provided in an application or in support of an application for tribal recognition
- 6 V.S.A. § 61: Identity of persons, households, or businesses providing agricultural information to the Agency of Agriculture, Food and Markets
- 13 V.S.A. § 4824: Report to National Instant Criminal Background Check System following a finding that an individual is a person in need of treatment
- 13 V.S.A. § 5411(d): Information about requesters of Sex Offender Registry records
- 14 V.S.A. § 2: Wrapped wills until delivered to a person entitled to receive it or until disposed of according to law; index of wills
- 15 V.S.A. § 307: Voluntary acknowledgement of parentage forms
- 17 V.S.A. § 2150(d)(7): Board of Civil Authority records relating to person's decision not to register to vote or to the identity of the voter registration agency through which any particular voter registered
- 18 V.S.A. § 7617a: Report to National Instant Criminal Background Check System following issuance of hospitalization order or nonhospitalization order
- 18 V.S.A. § 9719(b): Information in Advance Directives Registry
- 23 V.S.A. § 104: Motor vehicle records; photo images of person
- 23 V.S.A. § 707: Individually identifying information about students obtained by DMV from the records of driver training schools
- 23 V.S.A. § 1607(c): Access to data collected with automated license plate recognition systems
- 27 V.S.A. § 1253(c): Information concerning owner of abandoned property or specific abandoned property [previously not identified]
- 28 V.S.A. § 107: Offender and inmate records maintained by the Department of Corrections; exceptions [Added by Sec. 5 of Act 137 of 2016]
- 28 V.S.A. § 403(4): Register of people who ask to be informed of the parole interview or review of an inmate
- 30 V.S.A. § 7055(b): Confidential information provided by local exchange telecommunications providers to the enhanced 911 Board or the Administrator of the 911 Database
- 30 V.S.A. § 7059: Individually identifiable information of a person in the 911 database; 911 customer information held by the 911 Board, the entity administering the enhanced 911 database, or emergency service providers; requests to municipalities to de-link name and street address
- 33 V.S.A. § 4305: State Board of Education and Departments of Mental Health and for Children and Families shall jointly adopt rules regarding confidentiality of children and adolescents with severe emotional disturbance
- 33 V.S.A. § 6321(c): Information received or compiled by Department of Disabilities, Aging, and Independent Living with respect to individuals using attendant care services

## **VII. Other Records Concerning Specific Entities**

### **A. Required Submissions by Regulated Entities**

#### **1) Agriculture**

- 6 V.S.A. § 366: Information concerning tonnage sales furnished by fertilizer distributors
- 6 V.S.A. § 484: Records acquired by the Agency of Agriculture, Food and Markets regarding the purchase and sale of maple products
- 6 V.S.A. § 1039: Information acquired by the Agency of Agriculture, Food and Markets regarding pesticide trade secrets or financial information
- 6 V.S.A. § 1152(f): Records produced or acquired by the Secretary of Agriculture in administering and enforcing a livestock disease control program, if the records would directly or indirectly disclose the identity of individual persons, households, or businesses
- 6 V.S.A. § 1815: Information acquired by the Northeast Dairy Compact Commission and its staff
- 6 V.S.A. § 2766: Any identifying information acquired by the Agency of Agriculture, Food and Markets or Attorney General regarding rbST inspection and reporting
- 6 V.S.A. § 2936(b): Reports from milk handlers acquired by the Vermont Milk Commission

#### **2) Financial Regulation**

- 1 V.S.A. § 317(c)(36): Anti-fraud plans
- 8 V.S.A. § 3316(h): Records related to corporate governance annual disclosure reports provided by insurers to the Department of Financial Regulation
- 8 V.S.A. § 3561: All market conduct annual statements and other information filed by insurance companies with DFR
- 8 V.S.A. § 3574(d): DFR examination reports of domestic insurance companies and foreign and alien insurance companies applying for admission or already admitted to do business in Vermont, and related records.
- 8 V.S.A. § 3577(1): Actuarial reports, actuarial opinion summaries, work papers, and any other information provided to DFR in connection with the actuarial report, work papers, or actuarial opinion summary
- 8 V.S.A. § 3588: Insurer's Own Risk and Solvency Assessment (ORSA) summary report filed with DFR
- 8 V.S.A. § 3683(a)(2): Notices of divestitures, acquisitions, and mergers related to domestic insurers
- 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.
- 8 V.S.A. § 3687: 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 holding company system; see also 8 V.S.A. § 3696(f)(4).
- 8 V.S.A. § 3791q: Confidential information submitted under the insurance Standard Valuation Law
- 8 V.S.A. § 3839: Trade secret information included in a life settlement provider's annual statement to DFR
- 8 V.S.A. § 4164(b): Records of negotiations or meetings of the Vermont Life and Health Insurance Guaranty Ass'n in carrying out its powers
- 8 V.S.A. § 4488(5): Notice to DFR from a fraternal benefits society of termination of appointment of an insurance agent
- 8 V.S.A. § 6002(c): Information submitted to DFR in captive insurance company applications for licenses
- 8 V.S.A. § 6052: Proprietary information submitted to DFR by risk retention groups
- 8 V.S.A. § 7112(c): Information in a legacy insurance transfer plan identifying policyholders and reinsurance counterparties.
- 8 V.S.A. § 8308: Risk-based capital reports and risk-based capital plans of insurers filed with DFR
- 9 V.S.A. § 5607: Securities documents acquired by DFR, including records related to audits, inspections, and trade secrets

### 3) Health Care

18 V.S.A. § 1910: Identifying information in hospital license applications  
 18 V.S.A. § 9382(b)(3), (d): Confidential or proprietary information provided to the Office of the Health Care Advocate in connection with Accountable Care Organization (ACO) budget review; patient- or provider-identifiable information in ACO filings with Green Mountain Care Board [Added in Sec. 5 of H.812 of 2016]  
 18 V.S.A. § 9418f(d)(5): Information provided to health care providers in connection with health care provider network contracts  
 33 V.S.A. § 2002(c): Company identifiable trade secrets obtained by the Department of Health from pharmaceutical companies when negotiating, including rebate and supplemental rebate amounts, and manufacturer's pricing for Medicaid and other public assistance health benefit plans  
 33 V.S.A. § 2010(e): Pharmaceutical pricing data

### 4) Labor

1 V.S.A. § 317(c)(36): Anti-fraud plans  
 21 V.S.A. § 1035(c): Financial information submitted to DOL by employee leasing companies

### 5) Natural Resources

10 V.S.A. § 563: Records or other information concerning an air contaminant source, other than emissions data and emission monitoring data, that qualifies as a trade secret [Amended in Sec. 3 of Act 75 of 2016]  
 10 V.S.A. § 1259(b): Reports submitted to ANR as part of a water pollution control permit when disclosure would divulge a trade secret  
 10 V.S.A. § 6628(a): Toxic use reduction and hazardous waste reduction plans  
 10 V.S.A. § 6632: Trade secrets included in hazardous waste generator reports submitted to ANR  
 10 V.S.A. § 7153: Sales data and other confidential business information submitted to ANR by manufacturers of mercury-containing lamps  
 29 V.S.A. § 505(b)(2): Oil and gas well logs, directional surveys, and reports for two years after filing with Natural Gas and Oil Resources Board  
 29 V.S.A. § 542: Oil or natural gas well operator geologic well report submitted to Natural Gas and Oil Resources Board  
 29 V.S.A. § 543(c): Operator identifying information in oil or natural gas well reports submitted to the Natural Gas and Oil Resources Board

### 6) Public Service and Transportation

5 V.S.A. § 1805: Records designated proprietary and furnished to the Agency of Transportation by certain companies under the Agency's supervision [previously not identified]  
 5 V.S.A. § 3452: Information provided by railroads to the Agency of Transportation (AOT) or the Transportation Board  
 9 V.S.A. § 4113(b): Petroleum storage facility reports filed with the Department of Public Service  
 30 V.S.A. § 202f(k): Information submitted by a telecommunications service provider concerning confidential financial or proprietary information  
 30 V.S.A. § 518(d): Commercial broadcasting station reports of fees charged for program content retransmitted on cable networks under a retransmission consent agreement

### B. Other Confidential Business Information

1 V.S.A. § 317(c)(9): Trade secrets  
 1 V.S.A. § 317(c)(16): Voluntary information submitted by corporations to public agencies prior to enactment of Public Records Act  
 6 V.S.A. § 61: Identity of persons, households, or businesses providing agricultural information to the Agency of Agriculture, Food and Markets  
 9 V.S.A. § 5607: Securities documents acquired by DFR, including records related to audits, inspections, and trade secrets

- 10 V.S.A. § 7(b): 90-day confidentiality of benchmark reports submitted to the ACCD by recipients of economic development assistance
- 11 V.S.A. § 3058(g): LLCs; member right to information limited in the case of trade secrets or other information the disclosure of which the managers in good faith believe is not in the best interest of the company
- 19 V.S.A. § 2603: Financial information, trade secrets, or other business information customarily regarded as confidential when submitted to AOT as part of an application for qualification for design-build contracts
- 19 V.S.A. § 2604: Conceptual submissions and responses in application for design-build contracts
- 19 V.S.A. § 2606(a): Technical and price proposals during evaluation of design-build contract applications
- 30 V.S.A. § 202e(c): Information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded and is disclosed by telecommunications service providers voluntarily under nondisclosure agreement
- 31 V.S.A. § 1205(c): Records and reports filed by licensed distributors and manufacturers relating to the distribution and sale of break-open tickets
- 32 V.S.A. § 5930a(h): Information submitted by a business to the Economic Progress Council regarding tax information or confidential business information

## **VIII. Government/General Public Confidentiality Interests**

### **A. Archeological Sites and Endangered Species**

- 1 V.S.A. § 317(c)(20): Information regarding location of archaeological sites; see also 22 V.S.A. § 761
- 10 V.S.A. § 5410: Information regarding the specific location of threatened or endangered species sites; exceptions

### **B. Deliberative Process; Legislative Process**

- 1 V.S.A. § 317(c)(12): Records concerning formulation of policy, where disclosure would violate a right to privacy
- 1 V.S.A. § 317(c)(17): Municipal inter- and intra-departmental communications preliminary to a policy determination
- 1 V.S.A. § 317(c)(24): Deliberations of agencies acting in judicial or quasi-judicial capacity
- 2 V.S.A. § 404(c): Requests by a member of the General Assembly to the Office of Legislative Council for legal assistance and information received in connection with research or drafting
- 2 V.S.A. § 502(b)(2): Requests by a member of the General Assembly to the Joint Fiscal Office for fiscal research and information
- 32 V.S.A. § 163: Draft audit reports until the audit is completed

### **C. Public Finances and Proprietary Interests**

- 1 V.S.A. § 317(c)(13): Real estate information prior to state development
- 1 V.S.A. § 317(c)(15): Records relating to contract negotiations
- 1 V.S.A. § 317(c)(21): Lists of names compiled by Vermont Life
- 1 V.S.A. § 317(c)(23): UVM and State Colleges research records
- 1 V.S.A. § 317(c)(30): State-controlled database structures and application code known only to certain State departments and that give the State a potential marketing advantage
- 24 V.S.A. § 2786(a)(1): Regional development corporation contracts or agreements prior to final execution when such contract or agreement is in furtherance of the corporation's public purposes

### **D. Security**

- 1 V.S.A. § 317(c)(25): Passwords, access codes, security procedures, and similar information, if disclosure would threaten safety or security
- 1 V.S.A. § 317(c)(32): State building plans and layouts
- 1 V.S.A. § 317(c)(33): Account numbers for bank, credit, or debit cards held by a public agency

## E. Other

1 V.S.A. § 317(c)(8): Test questions and exams for licensees, employment, or academic examination

1 V.S.A. § 317(c)(14): Records relevant to litigation to which the public agency is a party of record

## IX. Miscellaneous/General

1 V.S.A. § 313(a): Minutes of executive sessions

1 V.S.A. § 317(c)(1): Records otherwise confidential by law

1 V.S.A. § 317(c)(2): Records which by law may only be disclosed to specifically designated persons

1 V.S.A. § 317(c)(3): Records the disclosure of which would violate professional ethics or conduct

1 V.S.A. § 317(c)(4): Records the disclosure of which would violate statutory/common law privilege

3 V.S.A. § 316: Records of the Department of Human Resources where public policy properly requires them to be confidential

4 V.S.A. § 740: Supreme Court records; subject to confidentiality requirements

8 V.S.A. § 15(b): The Commissioner of DFR can make public a portion of advisory interpretation and retain as confidential other portions

12 V.S.A. § 1613: Attorney-client communications when client is a corporation

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<sup>i</sup> The following exemptions are listed under more than one category:

- i. 1 V.S.A. § 317(c)(5): Records of detection and investigation of crime that satisfy certain criteria
- ii. 1 V.S.A. § 317(c)(36): Anti-fraud plans
- iii. 6 V.S.A. § 61: Identity of persons, households, or businesses providing agricultural information to the Agency of Agriculture, Food and Markets
- iv. 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 holding company system. See also 8 V.S.A. § 3696(f)(4).
- v. 9 V.S.A. § 5607: Securities documents acquired by DFR, including records related to audits, inspections, and trade secrets
- vi. 13 V.S.A. § 3504(g): Information required to be reported, and information that is collected in support of investigations, of illness, disease, or death likely to have been caused by a weapon of mass destruction
- vii. 15 V.S.A. § 307: Voluntary acknowledgement of parentage forms; records on file with the court in parentage action that contain Social Security numbers
- viii. 18 V.S.A. § 9414(f)(3): Information made available in quality review of managed care organizations
- ix. 26 V.S.A. § 1353(6) and (8): The results of a mental, physical, or medical knowledge and skill evaluation that the Board of Medical Practice requires a licensee to complete; criminal history records
- x. 32 V.S.A. § 5930a(h): Information submitted by a business to the Economic Progress Council regarding tax information or confidential business information
- xi. 33 V.S.A. § 5117(a), (c), (e): Court and law enforcement reports and files concerning a person subject to juvenile judicial proceedings, unless the statute allows disclosure; files of juvenile proceedings released in divorce proceedings; prohibition on dissemination by receiving persons unless authorized by law