

S.33

1 Introduced by Committee on Rules under Rule 24

2 (Executive Department)

3 Referred to Committee on

4 Subject: Executive; public agencies; collection and use of personal
5 information

6 Sponsor's statement of purpose: It is the purpose of this bill to
7 regulate the collection, accessibility, confidentiality, dissemination,
8 security and retention by public agencies of personal information about
9 individuals.

| Own Vote | | Legislative Vote | | | | | | | Comments |
|----------|----|--------------------|--------|-------|-----|----|------|--|----------|
| Yes | No | Date | Senate | House | Yes | No | Date | | |
| | | 1st Reading | | | | | | | |
| | | Committee Report | | | | | | | |
| | | 2nd Reading | | | | | | | |
| | | 3rd Reading | | | | | | | |
| | | Amended—Calendar | | | | | | | |
| | | Amended—Journal | | | | | | | |
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| | | Committed | | | | | | | |
| | | Recommitted | | | | | | | |
| | | Ordered to Lie | | | | | | | |
| | | Called up | | | | | | | |
| | | Passed | | | | | | | |
| | | Messaged | | | | | | | |
| | | Com. of Conference | | | | | | | |
| | | Withdrawn | | | | | | | |
| | | Signed by Governor | | | | | | | |

19 AN ACT TO ADD 3 V.S.A. CHAPTER 26 RELATING TO THE COLLECTION AND USE
20 OF PERSONAL INFORMATION BY PUBLIC AGENCIES

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

22
23 Sec. 1. Legislative findings and purpose

24 The general assembly has determined that the need for information
25 collected by public agencies is real and legitimate given the scope
26 and complexity of modern governmental programs and services and the

1 necessity for control and accountability of expenditures for such
2 programs and services. The general assembly has further determined
3 that much of this information must necessarily concern the personal
4 affairs and characteristics of private citizens and is of such con-
5 fidential and sensitive nature that irresponsible use of such infor-
6 mation may cause irreparable harm to the reputation, livelihood,
7 and physical or mental health of the individual involved. Therefore,
8 it is the policy of this state, and the purpose of this act, to insure
9 that personal information is selectively gathered, properly used, and
10 protected against unauthorized, or authorized but unwarranted, dis-
11 closure and dissemination.

12 Sec. 2. 3 V.S.A. chapter 26 is added to read:

13 CHAPTER 26. COLLECTION AND USE OF PERSONAL INFORMATION

14 Subchapter 1. General Provisions

15 § 851. DEFINITIONS

16 (a) As used in this chapter:

17 (1) "Central data element register" means a file of all data ele-
18 ments collected by any agency regulated by this chapter. Such register
19 shall contain no information on individuals.

20 (2) "Collecting agency" or "agency" means each state board, com-
21 mission, department, authority or agency, or any division thereof, or
22 any town, county, municipal corporation, school district or any other
23 political subdivision of the state, the Vermont municipal bond bank,
24 the Vermont state colleges, the university of Vermont and state agri-
25 cultural college, or the Vermont student assistance corporation. The

1 term "agency" shall also include the judicial branch of the government
2 of the state or any part thereof. The term "agency" shall also include
3 so much of the legislative branch as shall be made so by the senate and
4 house of representatives in exercising their power to make their own
5 rules under Chapter II of the Vermont Constitution.

6 (3) "Confidentiality" means the status of certain personal infor-
7 mation as privileged or private, available only to the data subject or
8 certain specified persons.

9 (4) "Data collection" means the gathering of personal information
10 by any means, including surveys, forms required in order to receive
11 public services, and oral testimony.

12 (5) "Data element" means any piece of personal information which
13 is complete in itself (i.e., name, age, income, education level com-
14 pleted, etc.).

15 (6) "Data file" means any aggregation of data gathered for a par-
16 ticular purpose and organized or indexed as a unit.

17 (7) "Data subject" means an individual or legal person about whom
18 personal information is maintained in an information system.

19 (8) "Disseminate" means to release, transfer, or otherwise com-
20 municate information orally, in writing, or by electronic means.

21 (9) "Identifiers," or "unique identifiers" means alphabetic or
22 numeric statements which identify a particular individual or which
23 identify a class which is so small as to constitute identification of
24 an individual.

25 (10) "Information review board" means the panel which receives and
26 reviews agency policies and procedures statements regarding the handling

1 of personal information and which adjudicates disputes arising over
2 the collection, dissemination or use of such information established
3 by section 852 of this title.

4 (11) "Information system" or "data system" means the total com-
5 ponents and operations of a record keeping process, whether automated
6 or manual, containing personal information and the name, personal num-
7 ber or other identifying particulars of the data subject.

8 (12) "Legally authorized representative" means an individual or
9 group of individuals authorized by a data subject to have access to
10 his file. Such authorization must be either:

11 (A) a written power of attorney, or

12 (B) a duly issued court order.

13 (13) "Notice" means the requirement that all individuals who are
14 part of a data system be informed of the initiation of a file on them
15 or of any changes in an existing file.

16 (14) "Personal information" means all information that describes,
17 locates, or indexes anything about an individual, including his edu-
18 cation, financial transactions, medical history, criminal or employ-
19 ment record, or that affords a basis for inferring personal character-
20 istics, such as finger and voice prints, photographs, or things done
21 by or to such individual; and the record of his presence, registration,
22 or membership in an organization or activity, or admission to an insti-
23 tution.

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1 (15) "Purge" means to obliterate information completely from the
2 transient, permanent, or archival records of an organization or collecting
3 agency and, where specified, from any other organizations or files in
4 which the information is recorded.

5 (16) "Reference agency" means any individual or organization to
6 whom personal information is transferred by the collecting agency.

7 (17) "Security" means the physical protection from compromise or
8 personal information deemed to be confidential.

9 § 852. INFORMATION REVIEW BOARD; CREATION

10 (a) An information review board is created in the office of the
11 governor and attached to the agency of administration for administra-
12 tive support. The board shall consist of five members appointed by
13 the governor with the advice and consent of the senate. Members shall
14 serve for a term of two years beginning March 1 of the year of the
15 appointment, except that of the original appointments two shall be for
16 a term of one year. Of the members so appointed, one shall be employed
17 by an operating agency of the government of the state of Vermont; one
18 shall be employed by a municipality or elected to the legislative body
19 of a municipality; and at least two shall represent the public at large
20 and not be employed by or hold office in state, county or local govern-
21 ment.

22 (b) The board shall elect a chairman from among its membership.

23 (c) Members of the board shall be reimbursed for their necessary
24 and actual expenses incurred in the performance of their official
25 duties, and those members not employed by the state of Vermont shall

1 receive \$15.00 per diem for each day spent in the performance of offi-
2 cial duties of the board.

3 § 853. INFORMATION REVIEW BOARD; FUNCTIONS

4 (a) The information review board shall:

5 (1) Receive, compile and categorize policy statements for the
6 collection and use of personal information from all agencies required
7 to submit them under subchapter 2 of this chapter;

8 (2) Review such documents for consistency with statutory require-
9 ments and with agency needs and objectives;

10 (3) Require such changes in agency data collection and use policies
11 as are necessary to comply with current statutory and governmental
12 policies;

13 (4) Establish and maintain a central data element register as re-
14 quired by subchapter 3 of this chapter;

15 (5) Hear and adjudicate specific agency or citizen complaints
16 arising under this chapter regarding personal information policies
17 and issue orders directing agencies to alter policies and issue orders
18 in specific individual cases if such action is deemed desirable; and

19 (6) Report annually to the governor and the general assembly re-
20 garding its activities.

21 (b) Nothing in this chapter shall be construed to deny an aggrieved
22 party any other administrative or judicial remedy.

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Subchapter 2. Agency Policy Statements

2 § 861. POLICY STATEMENTS FOR THE COLLECTION AND USE OF PERSONAL
3 INFORMATION

4 (a) Each collecting agency shall prepare a policy statement for the
5 collection and use of personal information which shall in all respects
6 conform to the provisions of this chapter.

7 (b) Such policy statements for the collection and use of personal
8 information shall be submitted initially to the information review
9 board established under this chapter for its preliminary review, amend-
10 ment, and approval. The board shall conduct such public hearings as it
11 deems necessary on policy statements submitted to it, and shall insure
12 that such statements conform in all respects to the provisions of this
13 chapter.

14 (c) Upon preliminary approval by the information review board, such
15 policy statements shall take effect when adopted pursuant to the proce-
16 dure for adoption of rules provided in chapter 25 of this title, except
17 that any changes made in the policy statement by the agency in the course
18 of the procedure for the adoption of rules under chapter 25 of this title
19 shall not take effect until approved by the information review board.

20 (d) Once adopted, an agency's policy statement shall be the exclusive
21 and comprehensive statement of that agency regarding the collection and
22 use of personal information, and may be altered only with the approval
23 of or upon the order of the information review board.

24 § 862. DATA COLLECTION

25 (a) An agency policy statement on the collection and use of personal
26 information shall provide the exclusive means for the collection of

1 personal information by that agency. Such policy statement shall specify:

2 (1) The data elements to be collected;

3 (2) The class of the data subjects from whom such information is
4 to be collected, without identifying any particular individual;

5 (3) The data file or collection of data to be maintained.

6 (b) Each agency policy statement shall provide justification for
7 the collection of all personal information by a showing that:

8 (1) The collected data serves a legitimate public purpose;

9 (2) Such purpose is best served by the collection of such data;

10 (3) Other means of achieving the same public purpose are infeasible,
11 extremely unfavorable on a cost-benefit basis or equally destructive of
12 personal privacy; and

13 (4) The public purpose significantly outweighs the potentially
14 damaging results to the individual of untimely or unauthorized dis-
15 closure of the data.

16 (c) This section shall not apply to law enforcement agencies with
17 respect to investigative files of a specific crime.

18 § 863. CONFIDENTIALITY; PUBLIC ACCESS TO PERSONAL INFORMATION

19 (a) An agency policy statement on the collection and use of per-
20 sonal information shall provide that such personal information as
21 defined in section 851 of this title shall be confidential and access
22 shall be denied to anyone except:

23 (1) An employee of the collecting agency for the purpose of
24 utilizing the information in the performance of any legitimate public
25 purpose specified in the agency policy statement filed under this
26 chapter;

1 (2) An employee of a reference agency to which dissemination of
2 such information is authorized under section 866 of this title for
3 the purpose of utilizing the information in the performance of any
4 legitimate public purpose specified in the agency policy statement
5 filed under this chapter;

6 (3) In response to a subpoena by a court of this state or of the
7 United States;

8 (4) In response to a subpoena authorized by either house of the
9 general assembly; or

10 (5) The data subject or his authorized representative requesting
11 access under the authority of section 864 of this title.

12 (b) The data subject or his legally authorized representative may
13 require disclosure of any personal information related to the data sub-
14 ject to anyone if requested in writing, with knowledge of the rights of
15 confidentiality conferred by this section.

16 (c) The provisions of this section shall not prohibit public access
17 to and dissemination of data elements from which all individual iden-
18 tities or unique identifiers have been removed.

19 § 864. INDIVIDUAL NOTICE; ACCESS AND INSPECTION OF PERSONAL INFORMATION

20 (a) Each agency policy statement shall identify and make public the
21 class, characteristics, or category of data subjects about whom per-
22 sonal information is collected. The collecting agency may, but shall
23 not be required to, provide individual notice to each data subject of
24 the existence of a data file or a change in a data file on that sub-
25 ject. However, upon request of any individual, a collecting agency

1 shall inform him whether he is a data subject of that agency or whether
2 changes have been made in his data file by the collecting agency.

3 (b) Except as provided in subsection (c) of this section, all data
4 files of the agency containing personal information shall be open to
5 inspection by the data subject, by his legally authorized representa-
6 tive, or, in the case of individuals adjudged incompetent by a court,
7 by persons with a legitimate interest as designated by that court. The
8 agency shall charge no fee for such inspection, but may charge the rea-
9 sonable cost for copies of any material provided the individual by the
10 agency. The agency may also establish reasonable hours for the inspec-
11 tion of personal information, and may require advance notice by a data
12 subject who wishes to inspect his file.

13 (c) An agency may provide that the following be exempted from in-
14 spection under subsection (b) of this section:

15 (1) Medical and psychiatric information judged by the head of the
16 collecting agency to be potentially harmful to the data subject if dis-
17 closed to him; or

18 (2) Investigative files used by law enforcement agencies in con-
19 nection with a specific crime currently under investigation.

20 (d) Any individual aggrieved by a decision of an agency to deny
21 access to information under this section may appeal such decision to
22 the information review board pursuant to the provisions of chapter 25
23 of this title. Upon request of the data subject or his authorized
24 representative, such appeal shall be heard by the board in executive
25 session.

1 § 865. CHALLENGING, CORRECTING AND PURGING PERSONAL INFORMATION

2 (a) An agency policy statement on collection and use of personal
3 information shall contain specific procedures by which a data subject
4 or his legally authorized representative may challenge, correct or purge
5 the personal information and data so collected for the following reasons:

6 (1) Inaccuracy of the data;

7 (2) Irrelevance of the data to the agency's purposes;

8 (3) Lack of timeliness of the data; or

9 (4) Improper or unauthorized method of collection, which shall in-
10 clude but not be limited to, hearsay or unauthorized access to confi-
11 dential files.

12 (b) Procedures for challenging personal information shall include
13 hearings by supervisory personnel within the agency in addition to the
14 agency head. Upon request of the data subject, any hearing by an agency
15 of a challenge under this section, or any hearing by the board of an
16 appeal therefrom, shall be in executive session.

17 (c) If it is determined through the process of challenge provided by
18 this section that inaccurate or incorrect information is included in the
19 data subject's file, such information shall be corrected in the file.
20 During the process of challenge, information other than challenged inform-
21 ation which is found to be inaccurate or incorrect, shall be corrected
22 in the file.

23 (d) If it is determined through the process of challenge provided
24 in this section that irrelevant, outdated or improperly collected per-
25 sonal information is included in a data subject's file, such information

1 shall be purged from the file and all reference to it destroyed. During
2 the process of challenge, information other than challenged information
3 which is found to be irrelevant, outdated or improperly collected shall
4 be purged from the file and all reference to it destroyed.

5 (e) Notification of correcting or purging of information shall be
6 sent to all reference agencies and to any person or agency with special
7 access to the file in the past five years. Such notice shall include
8 the original entry, and whether the entry is to be corrected or purged
9 and all reference to it destroyed.

10 (f) Any individual aggrieved by a decision of an agency to deny
11 correcting or purging of personal information under this section may
12 appeal such decision to the information review board pursuant to the
13 provisions of chapter 25 of this title. Whether or not successful upon
14 challenge or appeal, any individual aggrieved by a decision of an agency
15 to deny correcting or purging of personal information shall have the
16 right to include as a permanent part of his data file and have disseminated
17 to all reference agencies and any person or agency with special access to
18 his file in the past five years his objection to the collection of the
19 contested information and his corrected version of such information.

20 § 866. DISSEMINATION AND SALE

21 (a) An agency policy statement on collection and use of personal
22 information shall:

23 (1) Classify all personal information collected by it into the
24 following information categories:

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1 (A) Summary or statistical data with all elements aggregated at
2 a level greater than the individual;

3 (B) Personal information from which all unique identifiers have
4 been removed;

5 (C) Personal information with unique identifiers which are of
6 a non-sensitive nature (i.e., name, address, motor vehicle ownership,
7 etc.);

8 (D) Personal information with unique identifiers which is of a
9 sensitive nature and could prove harmful or embarrassing to the indi-
10 vidual.

11 (2) Disclose to whom, to what extent, and in which of the above
12 information categories the agency may transfer the personal data col-
13 lected to other agencies or individuals.

14 (3) Disclose which other agencies, if any, are reference agencies
15 or have regular access authority to the data collected.

16 (4) Prohibit the sharing or dissemination of any personal data to
17 other agencies or individuals whose policies of data handling and
18 methods of security required by section 867 of this title are less
19 protective of individual privacy than those of the collecting agency.

20 (b) Personal information classified in subdivisions (1)(A), (B)
21 and (C) of this section may be sold or freely distributed provided such
22 sale or distribution is specifically authorized by statute and by the
23 written consent of the data subject.

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1 § 867. DATA SECURITY

2 (a) An agency policy statement for the collection and use of per-
3 sonal information shall include descriptions of such security methods
4 as are appropriate for the type of data file maintained, whether auto-
5 mated or manual, and the sensitivity of the personal information col-
6 lected.

7 (b) Annually the agency head of the collecting agency shall certify
8 to the information review board that, to the best of his knowledge,
9 the security methods so described have been implemented and that proper
10 procedures are observed by all employees under his supervision.

11 § 868. RECORDS RETENTION

12 (a) An agency policy statement on collection and use of personal
13 information shall provide rules for the retention of records. In
14 preparing such rules the agency shall consider:

15 (1) The welfare of the individual from whom personal information
16 has been collected;

17 (2) The legal and professional needs of the collecting agency for
18 such personal information; and

19 (3) The administrative problems associated with record filing,
20 storage, protection and access.

21 Subchapter 3. Central Data Element Register

22 § 871. CENTRAL DATA ELEMENT REGISTER; CREATION

23 The information review board shall supervise and maintain a central
24 data element register containing a file of categories of information
25 collected by state agencies. No information on specific individuals

1 or data elements containing unique identifiers shall be included in
2 the central data element register.

3 § 872. ----; PURPOSE

4 Pursuant to the authority of the information review board to approve
5 collection of personal information, the board shall utilize the central
6 element data register to:

7 (1) Analyze, approve or reject an agency's request to collect any
8 personal data elements;

9 (2) Assist the agency of administration in the reduction of dupli-
10 cation of data collection efforts among state agencies; and

11 (3) Facilitate sharing of data collected among appropriate agencies
12 under proper safeguards.

13 Subchapter 4. Penalties

14 § 881. CIVIL PENALTIES

15 Any employee of a collecting or reference agency who knowingly and
16 wilfully violates the provisions of this chapter shall be subject to
17 dismissal.

18 § 882. CRIMINAL PENALTIES

19 In addition to civil penalties imposed by section 881 of this title,
20 any employee of a collecting or reference agency guilty of purposeful
21 unauthorized dissemination of damaging personal information shall be
22 fined not more than \$5,000.00.

23 § 883. CIVIL REMEDIES

24 An individual whose reputation or livelihood is damaged by illegal
25 disclosure of personal information held by an agency may bring an

1 action on this statute against the agency for damages in the superior
2 court.

3 Sec. 2. This act shall take effect July 1, 1975, and all agencies
4 subject to this act shall submit an initial policy statement on the
5 collection and use of personal information, as required by subchapter 2
6 of chapter 26 of Title 3, no later than January 1, 1976.

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