

SB 302-FN - VERSION ADOPTED BY BOTH BODIES

02/24/2022 0792s
5May2022... 1443h
05/26/2022 2036CofC
05/26/2022 2124EBA

2022 SESSION

22-3010
07/10

SENATE BILL **302-FN**

AN ACT establishing the personal privacy protection act.

SPONSORS: Sen. Birdsell, Dist 19; Sen. Gannon, Dist 23; Sen. Daniels, Dist 11; Sen. Ward, Dist 8; Sen. French, Dist 7; Sen. Giuda, Dist 2; Rep. Lynn, Rock. 7; Rep. DiLorenzo, Rock. 17; Rep. McLean, Hills. 44

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits public agencies and public bodies from releasing any list, record, register, registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code except in specific circumstances, as well as penalties for the unlawful release of such information.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing the personal privacy protection act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Personal Privacy Protection Act. Amend RSA by inserting after chapter 91-B
2 the following new chapter:

3 CHAPTER 91-C

4 PERSONAL PRIVACY PROTECTION ACT

5 91-C:1 Public Bodies Prohibited Disclosures.

6 I. Public agencies and public bodies shall not disclose or release any list, record, register,
7 registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a
8 person as a member, supporter, volunteer, or donor of financial or nonfinancial support, to any entity
9 exempt from federal income tax under section 501(c) of the Internal Revenue Code.

10 II. Notwithstanding any law and subject to RSA 91-C:2, a public agency or public body shall
11 not:

12 (a) Require any individual or entity exempt from federal income tax under section 501(c)
13 of the Internal Revenue Code to provide the public agency with, or otherwise compel the release of,
14 any list, record, register, registry, roll, roster, or other compilation of data of any kind that directly
15 or indirectly identifies a person as a member, supporter, volunteer, or donor of financial or
16 nonfinancial support, to any entity exempt from federal income tax under section 501(c) of the
17 Internal Revenue Code;

18 (b) Release, publicize, or otherwise publicly disclose any list, record, register, registry,
19 roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a
20 member, supporter, volunteer, or donor of financial or nonfinancial support, to any entity exempt
21 from federal income tax under section 501(c) of the Internal Revenue Code already in possession of
22 the public agency or public body;

23 (c) Request or require a current or prospective contractor or grantee to provide the
24 public agency or public body with a list of entities exempt from federal income tax under section
25 501(c) of the Internal Revenue Code to which it has provided financial or nonfinancial support; or

26 (d) Release, publicize, or otherwise publicly disclose any list, record, register, registry,
27 roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a
28 member, supporter, volunteer, or donor of financial or nonfinancial support to any entity exempt

1 from federal income tax under section 501(c) of the Internal Revenue Code for the purposes of
2 responding to a request under New Hampshire's freedom of information act as outlined in RSA 91-A.

3 91-C:2 Exemptions. This section shall not preclude:

4 I. Any report or disclosure required by the following laws or successor provisions thereto:

5 (a) RSA 14-C relative to gifts for legislators and legislative employees;

6 (b) RSA 15 relative to lobbyists;

7 (c) RSA 15-A relative to financial disclosures; and

8 (d) RSA 664 relative to political expenditures and contributions.

9 II. A public body or agency from releasing a person's status as a member, volunteer, or donor
10 of any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code that
11 was voluntarily released by the person or voluntarily released by the entity to the attorney general
12 or to the public.

13 III. Any lawful warrant for any list, record, register, registry, roll, roster or other
14 compilation of data of any kind that directly or indirectly identifies a person as a member, supporter,
15 volunteer, or donor of financial or nonfinancial support, to any entity exempt from federal income tax
16 under section 501(c) of the Internal Revenue Code issued by a court of competent jurisdiction;

17 IV. A lawful request for discovery of any list, record, register, registry, roll, roster or other
18 compilation of data of any kind that directly or indirectly identifies a person as a member, supporter,
19 volunteer, or donor of financial or nonfinancial support, to any entity exempt from federal income tax
20 under section 501(c) of the Internal Revenue Code in litigation if both of the following conditions are
21 met:

22 (a) The requestor demonstrates a compelling need for any list, record, register, registry,
23 roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a
24 member, supporter, volunteer, or donor of financial or nonfinancial support, to any entity exempt
25 from federal income tax under section 501(c) of the Internal Revenue Code by clear and convincing
26 evidence; and

27 (b) The requestor obtains a protective order barring disclosure of any list, record,
28 register, registry, roll, roster, or other compilation of data of any kind that directly or indirectly
29 identifies a person as a member, supporter, volunteer, or donor of financial or nonfinancial support,
30 to any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code to
31 any person not named in the litigation.

32 V. Admission of any list, record, register, registry, roll, roster, or other compilation of data of
33 any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of
34 any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code as
35 relevant evidence before a court of competent jurisdiction. Any filing in court that is subject to this
36 section shall be filed under seal by the offering party. Any party who intends to display or produce
37 any record that is subject to this section in a courtroom during a hearing or trial shall notify the

1 court to allow for the courtroom to be cleared prior to discussion or display of the record. No court
2 shall publicly reveal such information that has been filed in accordance with this paragraph absent a
3 specific finding of good cause.

4 VI. A public body or state agency with oversight function over public funds or a government
5 grant program from requesting documentation sufficient to ensure public funds are expended in
6 accordance with state or federal contract monitoring and audit requirements, given that the
7 information accessed is limited to information related to public funds or government grant program
8 funds.

9 91-C:3 Limited Applicability.

10 I. Nothing in this chapter shall apply to a national securities association, as defined in
11 section 15A of the Securities Exchange Act of 1934, 15 U.S.C. Section 78o-3, as amended, or
12 regulations adopted thereunder, and any information such national securities association provides to
13 the relevant public agency or body of this state pursuant to the rules and regulations provided by
14 such agency or body.

15 II. Nothing in this chapter shall prohibit a request by the attorney general for information
16 required for an audit, examination, review, or investigation pursuant to RSA 7:24, provided that
17 such information shall only be used in connection with the specific audit, examination, review, or
18 investigation to which the request relates and for any related proceedings, provided further that any
19 information so collected shall otherwise remain subject to the provisions of this chapter.

20 III. Nothing in this chapter shall apply to a request from the lottery commission pursuant to
21 their authority under RSA 287-D or RSA 287-E for the purposes of licensing or regulation of
22 charitable gaming activities.

23 IV. For the purposes of this chapter, the terms “volunteer” and “supporter” shall not include
24 the members of the governing board, officers, directors, registered agents, or incorporators of entities
25 exempt from federal income tax under section 501(c) of the Internal Revenue Code and the term
26 “member” shall not include members of charitable corporations with specific corporate authority as
27 set forth in the articles of agreement or bylaws, and pursuant to RSA 292.

28 V. Nothing in this chapter shall prohibit a government agency from disclosing any list,
29 record, register, registry, roll, roster, or other data that directly or indirectly identifies a person as a
30 member, supporter, volunteer, or donor of any entity exempt from federal income tax under section
31 501(c) of the Internal Revenue Code in court pleadings, submissions of evidence, or public
32 communications related to a criminal or civil enforcement action filed in court, including, but not
33 limited to, an assurance of discontinuance pursuant to RSA 7:28-f.

34 91-C:4 Penalties.

35 I. A person alleging a violation of this chapter may bring a civil action for appropriate
36 injunctive relief, damages, or both. Damages awarded under this section may include one of the
37 following, as appropriate:

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1 (a) A sum of money not less than \$2,500 to compensate for injury or loss caused by each
2 violation of this chapter; or

3 (b) For an intentional violation of this chapter, a sum of money not to exceed \$7,500.

4 II. A court, in rendering a judgment in the action brought under this chapter, may award all
5 or a portion of the costs of litigation, including reasonable attorneys and witness fees, to the
6 complainant in the action if the court determines that the award is appropriate.

7 2 Effective Date. This act shall take effect January 1, 2023.

SB 302-FN- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2022-1443h)

AN ACT establishing the personal privacy protection act.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill prohibits public agencies and public bodies from releasing any list, record, register, registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code except in specific circumstances, as well as penalties for the unlawful release of such information. The Judicial Branch assumes any proceedings that require discussion of records covered by this bill would have to be held as confidential hearings, which requires coordination of scheduling to ensure the courtrooms are not full with attorneys, parties or witnesses for other hearings and can be closed to the public. Filings with the court that contain records covered by the bill would have to be filed separately as confidential records and maintained by the Court separately from the public record. The Branch assumes there would be an increase in motions specific to the confidentiality of such records. There could also be new civil or criminal cases filed as provided by the bill. The Branch’s case management system would also have to be updated to add the new civil and criminal causes of action created by this bill. All of these elements could have a fiscal impact on the Judicial Branch, but the Branch is unable to quantify the fiscal impact resulting from this bill.

AGENCIES CONTACTED:

Judicial Branch