Journal of the Senate

TUESDAY, MARCH 19, 2024

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Rules Suspended; Bill Not Referred to Committee on Finance

S. 213

Appearing on the Calendar for notice, and, pending referral of the bill to the Committee on Finance pursuant to Senate Rule 31, Senator Cummings moved that the rules be suspended and Senate bill entitled:

An act relating to the regulation of wetlands, river corridor development, and dam safety.

Not be referred to the Committee on Finance pursuant to Senate Rule 31 (and thereby remain on the Calendar for notice),

Which was agreed to.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 259. An act relating to climate change cost recovery.

S. 304. An act relating to Vermont's career and technical education programs.

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

S. 96. An act relating to privatization contracts.

S. 98. An act relating to Green Mountain Care Board authority over prescription drug costs.

S. 114. An act relating to removal of criminal penalties for possessing, dispensing, or selling psilocybin and establishment of the Psychedelic Therapy Advisory Working Group.

S. 167. An act relating to miscellaneous amendments to education law.

S. 181. An act relating to the Community Media Public Benefit Fund.

S. 195. An act relating to how a defendant's criminal record is considered in imposing conditions of release.

S. 215. An act relating to 3SquaresVT.

S. 231. An act relating to establishing a pilot for community nurse programs serving aging Vermonters.

S. 247. An act relating to repealing the Vermont Employment Growth Incentive (VEGI) Program sunset.

S. 253. An act relating to building energy codes.

S. 312. An act relating to the Salisbury fish hatchery.

Joint Senate Resolution Adopted on the Part of the Senate

J.R.S. 49.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Baruth,

J.R.S. 49. Joint resolution relating to weekend adjournment on March 22, 2024.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 22, 2024, it be to meet again no later than Tuesday, March 26, 2024.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 534.

An act relating to retail theft.

To the Committee on Judiciary.

H. 645.

An act relating to the expansion of approaches to restorative justice.

To the Committee on Judiciary.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 196. An act relating to the types of evidence permitted in weight of the evidence hearings.

S. 206. An act relating to designating Juneteenth as a legal holiday.

Bill Passed in Concurrence with Proposal of Amendment

H. 659.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to captive insurance.

Bill Amended; Third Reading Ordered

S. 55.

Senator Hardy, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to authorizing public bodies to meet electronically under Vermont's Open Meeting Law.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that regardless of the form and format of a meeting, whether in-person, remote, or a hybrid fashion, that:

(1) meetings of public bodies be fully accessible to members of the public who would like to attend and participate, as well as to members of those public bodies who have been appointed or elected to serve their communities;

(2) subject to any exceptions in the Open Meeting Law, the deliberations and decisions of public bodies be transparent to members of the public; and

(3) the meetings of public bodies be conducted using standard rules and best practices for both meeting format and method of delivery.

Sec. 2. 1 V.S.A. § 310 is amended to read:

§ 310. DEFINITIONS

As used in this subchapter:

(1) "Advisory body" means a public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.

(2) "Business of the public body" means the public body's governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.

~~(2)~~(3) "Deliberations" means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

~~(3)~~(4)(A) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.

* * *

~~(4)~~(5) "Public body" means any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee or subcommittee of any of the foregoing boards, councils, or commissions, except that "public body" does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy.

~~(5)~~(6) "Publicly announced" means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, and to any person who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

~~(6)~~(7) "Quasi-judicial proceeding" means a proceeding ~~which~~ that is:

* * *

Sec. 3. 1 V.S.A. § 312 is amended to read:

§ 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision

313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

* * *

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location. The requirements of this subdivision (D) shall not apply to advisory bodies.

(3) Hybrid meeting requirement. Any public body of the State, except advisory bodies and the Human Services Board, shall:

(A) hold all regular and special meetings in a hybrid fashion, which shall include both a designated physical meeting location and a designated electronic meeting platform;

(B) electronically record all meetings; and

(C) for a minimum of 30 days following the approval and posting of the official minutes for a meeting, retain the audiovisual recording and post the recording in a designated electronic location.

(4) Electronic meetings without a physical meeting location. A quorum or more of the members of an advisory body may attend any meeting of the advisory body by electronic or other means without being physically present at or staffing a designated meeting location. A quorum or more of the members of any public body may attend an emergency meeting of the body by electronic or other means without being physically present at or staffing a designated meeting location.

(5) Hybrid and electronic meeting requirements. A public body meeting under subdivision (3) or (4) of this subsection shall use a designated electronic platform that allows the direct access, attendance, and participation of the public, including access by telephone. The public body shall post information that enables the public to directly access the designated electronic platform and

include this information in the published agenda or public notice for the meeting.

(6) Meetings of local public bodies; recordings. To the extent feasible, any public body of a municipality or political subdivision, except advisory bodies, shall:

(A) record, in audio or video form, any meeting of the public body; and

(B) post and retain a copy of the recording according to subdivision (3)(C) of this subsection (a).

* * *

(j) Request for access. A resident of the geographic area in which the public body has jurisdiction, a member of a public body, or a member of the press may request that a public body designate a physical meeting location or provide electronic or telephonic access to a regular meeting or series of regular meetings. The request shall be made in writing not less than three business days before the date of the meeting. The public body shall not require the requestor to provide a basis for the request. The public body shall grant the request unless providing the requested form of access is infeasible due to a declared state of emergency or a local incident pursuant to section 312a of this subchapter. This subsection (j) shall not apply to special meetings, emergency meetings, or field visits.

(k) Annually, the following officers shall participate in a professional training that addresses the procedures and requirements of this subchapter:

(1) for municipalities and political subdivisions, the chair of the legislative body, town manager, and mayor; and

(2) for the State, the chair of any public body that is not an advisory body.

Sec. 4. 1 V.S.A. § 312a is amended to read:

§ 312a. MEETINGS OF PUBLIC BODIES; STATE OF EMERGENCY

(a) As used in this section:

(1) "Affected public body" means a public body:

(A) whose regular meeting location is located in an area affected by a hazard or local incident; and

(B) that cannot meet in a designated physical meeting location due to a declared state of emergency pursuant to 20 V.S.A. chapter 1 or local incident.

(2) "Directly impedes" means interferes or obstructs in a manner that makes it infeasible for a public body to meet either at a designated physical location or through electronic means.

(3) "Hazard" means an "all-hazards" as defined in 20 V.S.A. § 2(1).

(4) "Local incident" means a weather event, public health emergency, public safety threat, loss of power or telecommunication services, or similar event that directly impedes the ability of a public body to hold a meeting electronically or in a designated physical location.

(b) Notwithstanding subdivisions 312(a)(2)(D), (a)(3), and (c)(2) of this title, during a local incident or declared state of emergency under 20 V.S.A. chapter 1:

(1) A quorum or more of an affected public body may attend a regular, special, or emergency meeting by electronic or other means without designating a physical meeting location where the public may attend.

(2) The members and staff of an affected public body shall not be required to be physically present at a designated meeting location.

(3) An affected public body of a municipality may post any meeting agenda or notice of a special meeting in two publicly accessible designated electronic locations in lieu of the two designated public places in the municipality, or in a combination of a designated electronic location and a designated public place.

(c) Before a public body may meet under the authority provided in this section for meetings held during a local incident, the highest ranking elected or appointed officer of the public body shall make a formal written finding and announcement of the local incident, including the basis for the finding.

(d) Notwithstanding subdivision 312(a)(3) of this title, during a local incident that impedes an affected public body's ability to hold a meeting by electronic means, the affected public body may hold a meeting exclusively at a designated physical meeting location.

(e) When an affected public body meets electronically under subsection (b) of this section, the affected public body shall:

(1) use technology that permits the attendance and participation of the public through electronic or other means;

(2) allow the public to access the meeting by telephone; ~~and~~

(3) post information that enables the public to directly access and participate in meetings electronically and shall include this information in the published agenda for each meeting; and

(4) if applicable, publicly announce and post a notice that the meeting will not be held in a hybrid fashion and will be held either in a designated physical meeting location or through electronic means.

~~(d)~~(f) Unless unusual circumstances make it impossible for them to do so, the legislative body of each municipality and each school board shall record any meetings held pursuant to this section.

~~(e)~~(g) An affected public body of a municipality shall continue to post notices and agendas in or near the municipal clerk's office pursuant to subdivision 312(c)(2) of this title and shall provide a copy of each notice or agenda to the newspapers of general circulation for the municipality.

Sec. 5. 1 V.S.A. § 314 is amended to read:

§ 314. PENALTY AND ENFORCEMENT

* * *

(e) A municipality shall post on its website, if it maintains one:

(1) an explanation of the procedures for submitting notice of an Open Meeting Law violation to the public body or the Attorney General; and

(2) a copy of the text of this section.

Sec. 6. 17 V.S.A. § 2640 is amended to read:

§ 2640. ANNUAL MEETINGS

* * *

(b)(1) When a town so votes, it may thereafter start its annual meeting on any of the three days immediately preceding the first Tuesday in March at such time as it elects and may transact at that time any business not involving voting by Australian ballot or voting required by law to be by ballot and to be held on the first Tuesday in March. A meeting so started shall be adjourned until the first Tuesday in March.

(2) An informational meeting held in the three days preceding the first Tuesday in March pursuant to this subsection shall be video recorded and a copy of the recording shall be posted in a designated electronic location until the results of the annual meeting have been certified.

* * *

Sec. 7. 17 V.S.A. § 2680 is amended to read:

§ 2680. AUSTRALIAN BALLOT SYSTEM; GENERAL

* * *

(h) Hearing.

* * *

(2)(A) The hearing shall be held within the ~~10~~ 30 days preceding the meeting at which the Australian ballot system is to be used. The legislative body shall be responsible for the administration of this hearing, including the preparation of minutes.

* * *

(3) A hearing held pursuant to this subsection shall be video recorded and a copy of the recording shall be posted in a designated electronic location until the results of the meeting have been certified.

Sec. 8. WORKING GROUP ON PARTICIPATION AND ACCESSIBILITY OF MUNICIPAL PUBLIC MEETINGS AND ELECTIONS; REPORT

(a) Creation. There is created the Working Group on Participation and Accessibility of Municipal Public Meetings and Elections to study and make recommendations to:

(1) improve the accessibility of and participation in meetings of local public bodies, annual municipal meetings, and local elections; and

(2) increase transparency, accountability, and trust in government.

(b) Membership. The Working Group shall be composed of the following members:

(1) two designees of the Vermont League of Cities and Towns;

(2) two designees of the Vermont Municipal Clerks' and Treasurers' Association;

(3) one designee of the Vermont School Boards Association;

(4) one designee of Disability Rights Vermont;

(5) one designee of the Vermont Access Network;

(6) one member with expertise in remote and hybrid voting and meeting technology, appointed by the Secretary of State;

(7) the Chair of the Human Rights Commission or designee; and

(8) the Secretary of State or designee, who shall be Chair.

(c) Powers and duties. The Working Group shall:

(1) recommend best practices for:

(A) running effective and inclusive meetings and maximizing participation and accessibility in electronic, hybrid, and in-person annual meetings and meetings of public bodies;

(B) the use of universal design for annual meetings and meetings of public bodies;

(C) training public bodies for compliance with the Open Meeting Law; and

(D) recording meetings of municipal public bodies and the means and timeline for posting those recordings for public access.

(2) report on the findings of the Civic Health Index study by the Secretary of State and how to reduce barriers to participation in public service;

(3) identify the technical assistance, equipment, and training necessary for municipalities to run effective and inclusive remote or hybrid public meetings;

(4) produce a guide for accessibility for polling and public meeting locations;

(5) study the feasibility of using electronic platforms to support remote attendance and voting at annual meetings;

(6) analyze voter turnout and the voting methods currently used throughout the State;

(7) investigate whether increased use of resources for participants such as child care, hearing devices, translators, transportation, food, and hybrid meetings could increase participation in local public meetings; and

(8) study other topics as determined by the group that could improve participation and access to local public meetings.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Office of the Secretary of State. The Office of the Secretary of State may hire a consultant to provide assistance to the Working Group.

(e) Consultation. The Working Group shall consult with the Vermont Press Association, communications union districts, and other relevant stakeholders.

(f) Report. On or before November 1, 2025, the Working Group shall submit a written report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations with its findings and any recommendations for legislative action.

(g) Meetings.

(1) The Secretary of State shall call the first meeting of the Working Group to occur on or before September 1, 2024.

(2) A majority of the membership shall constitute a quorum.

(3) The Working Group shall cease to exist on the date that it submits the report required by this section.

(h) Compensation and reimbursement. The members of the Working Group shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 10 meetings. These payments shall be made from monies appropriated to the Office of the Secretary of State.

(i) $50,000.00 is appropriated from the General Fund to the Office of the Secretary of State in fiscal year 2025 for the purpose of hiring a consultant and for per diems and reimbursement of expenses for members of the Working Group.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

And that when so amended the bill ought to pass.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto:

In Sec. 8, Working Group on Participation and Accessibility of Municipal Public Meetings and Elections; report, by striking out subsection (i) in its entirety.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, Senators Hardy and Westman moved to amend the recommendation of the Committee on Government Operations, as amended, in Sec. 8, Working Group on Participation and Accessibility of Municipal Public Meetings and Elections; report, as follows:

First: In subdivision (b)(1), following the words "two designees of the Vermont League of Cities and Towns" by inserting ", who shall represent municipalities of differing populations and geographically diverse areas of the State" before the semicolon.

Second: In subdivision (b)(2), following the words "two designees of the Vermont Municipal Clerks' and Treasurers' Association" by inserting ", who shall represent municipalities of differing populations and geographically diverse areas of the State" before the semicolon.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, was agreed to.

Thereupon, third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 186.

Senator Lyons, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to the systemic evaluation of recovery residences and recovery communities.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. RECOMMENDATION; RECOVERY RESIDENCE CERTIFICATION

(a) The Department of Health, in consultation with State agencies and community partners, shall develop and recommend a certification program for recovery residences operating in the State. The certification program shall incorporate those elements of the existing certification program operated by the Vermont Alliance of Recovery Residences. The recommended certification program shall also:

(1) identify an organization to serve as the certifying body for recovery residences in the State;

(2) propose certification fees for recovery residences;

(3) establish a grievance and review process for complaints pertaining to certified recovery residences;

(4) identify certification levels, which may include distinct staffing or administrative requirements, or both, to enable a recovery residence to provide more intensive or extensive services;

(5) identify eligibility requirements for each level of recovery residence certification, including:

(A) staff and administrative requirements for recovery residences, including staff training and supervision;

(B) compliance with industry best practices that support a safe, healthy, and effective recovery requirement; and

(C) data collection requirements related to resident outcomes; and

(6) establish the required policies and procedures regarding the provision of services by recovery residences, including policies and procedures related to:

(A) resident rights;

(B) resident use of legally prescribed medications; and

(C) promoting quality and positive outcomes for residents.

(b) In developing the certification program recommendations required pursuant to this section, the Department shall consider:

(1) available funding streams to sustainably expand recovery residence services throughout the State;

(2) how to eliminate barriers that limit the availability of recovery residences; and

(3) recovery residence models used in other states and their applicability to Vermont.

(c) On or before October 15, 2024, the Department shall submit a written report describing its recommended recovery residence certification program and containing corresponding draft legislation to the House Committee on Human Services and to the Senate Committee on Health and Welfare.

(d) As used in this section, "recovery residence" means a shared living residence supporting persons recovering from a substance use disorder that:

(1) provides tenants with peer support and assistance accessing support services and community resources available to persons recovering from substance use disorders; and

(2) is certified by an organization approved by the Department of Health and that is either a Vermont affiliate of the National Alliance for Recovery Residences or another approved organization or is pending such certification.

Sec. 2. ASSESSMENT; GROWTH AND EVALUATION OF RECOVERY RESIDENCES

(a) The Department of Health shall complete an assessment of recovery residences in the State. In conducting the assessment, it shall obtain technical assistance for the purposes of:

(1) creating a comprehensive inventory of all recovery residences in Vermont, including assessments of proximity to employment, recovery, and other community resources;

(2) assessing the current capacity, knowledge, and ability of recovery residences to inform data collection and improve outcomes for residents;

(3) assessing recovery residences' potential for future data collection capacity;

(4) assessing the types of data systems currently in use in Vermont's recovery residences and defining the minimum core components of a data system;

(5) assisting to develop a framework of critical components and measurable outcomes for recovery residences and other recovery communities;

(6) assisting with capacity building and sustaining alternative payment models for recovery residences; and

(7) building sustainable funding with a focus on developing fee structures.

(b) On or before October 15, 2024, the Department shall submit the results of the assessment required pursuant to this section and any recommendations for legislative action to the House Committee on Human Services and to the Senate Committee on Health and Welfare.

(c) As used in this section, "recovery residence" means a shared living residence supporting persons recovering from a substance use disorder that:

(1) provides tenants with peer support and assistance accessing support services and community resources available to persons recovering from substance use disorders; and

(2) is certified by an organization approved by the Department of Health and that is either a Vermont affiliate of the National Alliance for Recovery Residences or another approved organization or is pending such certification.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 284.

Senator Williams, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to the use of electronic devices and digital and online products in schools.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. CELL PHONE USE IN SCHOOLS; MODEL POLICY

(a) On or before December 31, 2024, the Secretary of Education shall develop a model policy and accompanying guidance regarding student use of cell phones and other personal electronic devices in schools. The guidance shall address, at a minimum, the following:

(1) the specific circumstances or time periods during which students are permitted to use cell phones or personal electronic devices, which shall include use of such devices for approved academic purposes;

(2) the specific circumstances or time periods during which students are prohibited from using cell phones or personal electronic devices;

(3) acceptable locations for cell phone and personal electronic device storage during times when their use by students is prohibited;

(4) consequences for violation of the model policy, including options for educators and staff to collect a cell phone or personal electronic device if a student is found violating the policy; and

(5) a process for parents or guardians to get messages to students during times when cell phone or personal electronic device use is prohibited.

(b) On or before January 15, 2026, the Agency of Education shall submit a written report to the Senate and House Committees on Education regarding the prevalence and substance of cell phone use policies adopted by school districts

after the development of the Agency's model policy pursuant to subsection (a) of this section. The report shall include the following:

(1) information on how many school districts have adopted cell phone or personal electronic device use policies and whether and how those policies differ from the Agency's model policy and guidance;

(2) information on how many school districts do not have a cell phone or personal electronic device use policy and any information as to why such a policy has not been adopted at the time of the report; and

(3) in consultation with the Vermont Department of Health, recommendations for further legislative action regarding cell phone or personal electronic device use in schools.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

And that after passage the title of the bill be amended to read:

An act relating to student use of cell phones and other personal electronic devices in schools

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Rules Suspended; Bill Amended; Third Reading Ordered

S. 289.

Appearing on the Calendar for notice, on motion of Senator Baruth, the rules were suspended and Senate bill entitled:

An act relating to age-appropriate design code.

Was taken up for immediate consideration.

Senator Ram Hinsdale, for the Committee on Economic Development, Housing and General Affairs, to which the bill was referred, reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 62, subchapter 6 is added to read:

Subchapter 6. Age-Appropriate Design Code

§ 2449a. DEFINITIONS

As used in this subchapter:

(1) "Affiliate" means any person that, directly or indirectly, controls, is controlled by, or is under common control with another person. As used in this subdivision, "control" means ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a covered entity; control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a covered entity.

(2) "Age-appropriate" means a recognition of the distinct needs and diversities of children at different age ranges. In order to help support the design of online services, products, and features, covered entities should take into account the unique needs and diversities of different age ranges, including the following developmental stages: zero to five years of age or "preliterate and early literacy"; six to nine years of age or "core primary school years"; 10 to 12 years of age or "transition years"; 13 to 15 years of age or "early teens"; and 16 to 17 years or age or "approaching adulthood."

(3) "Collect" means buying, renting, gathering, obtaining, receiving, or accessing any personal data pertaining to a consumer by any means. This includes receiving data from the consumer, either actively or passively, or by observing the consumer's behavior.

(4) "Consumer" means a individual who is a Vermont resident, and who provides consideration for goods or services either for sale or not for sale.

(5) "Covered entity" means:

(A) A sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners.

(B) An affiliate of a covered entity that shares common branding with the covered entity. As used in this subdivision (5)(B), "common branding" means a shared name, servicemark, or trademark that the average consumer would understand that two or more entities are commonly owned. For purposes of this subchapter, for a joint venture or partnership composed of covered entities in which each covered entity has at least a 40 percent interest, the joint venture or partnership and each covered entity that composes the joint venture or partnership shall separately be considered a single covered entity, except that personal data in the possession of each covered entity and disclosed to the joint venture or partnership shall not be shared with the other covered entity.

(6) "Dark pattern" means a user interface designed or manipulated with the effect of subverting or impairing user autonomy, decision making, or choice, and includes any practice the Federal Trade Commission categorizes as

a "dark pattern."

(7) "Default" means a preselected option adopted by the covered entity for the online service, product, or feature.

(8) "Deidentified" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable consumer, or a device linked to such consumer, provided that the covered entity that possesses the data:

(A) takes reasonable measures to ensure that the data cannot be associated with a consumer;

(B) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to re-identify the data; and

(C) contractually obligates any recipients of the data to comply with all provisions of this subchapter.

(9) "Derived data" means data that is created by the derivation of information, data, assumptions, correlations, inferences, predictions, or conclusions from facts, evidence, or another source of information or data about a minor consumer or a minor consumer's device.

(10)(A) "Low-friction variable reward" means a design feature or virtual item that intermittently rewards consumers for scrolling, tapping, opening, or continuing to engage in an online service, product, or feature.

(B) Examples of low-friction variable reward designs include endless scroll, auto play, and nudges meant to encourage reengagement.

(11) "Minor consumer" means a natural person under 18 years of age, who is a Vermont resident and who provides consideration for goods or services either for sale or not for sale.

(12) "Online service, product, or feature" does not mean any of the following:

(A) telecommunications service, as defined in 47 U.S.C. § 153;

(B) a broadband internet access service as defined in 3 V.S.A. § 348(d); or

(C) the sale, delivery, or use of a physical product.

(13) "Personal data" means any information, including derived data, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable consumer. Personal data does not include deidentified data or publicly available information. As used in this subdivision, "publicly available information" means information that:

(A) is lawfully made available from federal, State, or local government records or widely distributed media; and

(B) a covered entity has a reasonable basis to believe a consumer has lawfully made available to the public.

(14) "Precise geolocation" means any data that is derived from a device and that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet.

(15) "Process" or "processing" means to conduct or direct any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, modification, or otherwise handling of personal data.

(16) "Profile" or "profiling" means any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable consumer's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements. "Profiling" does not include the processing of information that does not result in an assessment or judgment about a consumer.

(17) "Reasonably likely to be accessed" means an online service, product, or feature that is likely to be accessed by minor consumers based on any of the following indicators:

(A) the online service, product, or feature is directed to children, as defined by the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506 and the Federal Trade Commission rules implementing that Act;

(B) the online service, product, or feature is determined, based on competent and reliable evidence regarding audience composition, to be routinely accessed by an audience that is composed of at least two percent of minor consumers two through under 18 years of age;

(C) the online service, product, or feature contains advertisements marketed to minor consumers;

(D) the online service, product, or feature is substantially similar or the same as an online service, product, or feature subject to subdivision (B) of this subdivision (17);

(E) the audience of the online service, product, or feature is determined, based on internal company research, to be composed of at least two percent of minor consumers two through under 18 years of age; or

(F) the covered entity knew or should have known that at least two percent of the audience of the online service, product, or feature includes minor consumers two through under 18 years of age, provided that, in making this assessment, the covered entity shall not collect or process any personal data that is not reasonably necessary to provide an online service, product, or feature with which a minor consumer is actively and knowingly engaged.

(18) "Sale," "sell," or "sold" means the exchange of personal data for monetary or other valuable consideration by a covered entity to a third party. It does not include the following:

(A) the disclosure of personal data to a third party who processes the personal data on behalf of the covered entity;

(B) the disclosure of personal data to a third party with whom the consumer has a direct relationship for purposes of providing a product or service requested by the consumer;

(C) the disclosure or transfer of personal data to an affiliate of the covered entity;

(D) the disclosure of data that the consumer intentionally made available to the general public via a channel of mass media and did not restrict to a specific audience; or

(E) the disclosure or transfer of personal data to a third party as an asset that is part of a completed or proposed merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the covered entity's assets.

(19)(A) "Social media platform" means a public or semi-public internet-based service or application that is primarily intended to connect and allow a user to socially interact within such service or application and enables a user to:

(i) construct a public or semi-public profile for the purposes of signing into and using such service or application;

(ii) populate a public list of other users with whom the user shares a social connection within such service or application; and

(iii) create or post content that is viewable by other users, including content on message boards and in chat rooms, and that presents the user with content generated by other users.

(B) "Social media platform" does not mean a public or semi-public internet-based service or application that:

(i) exclusively provides electronic mail or direct messaging

services;

(ii) primarily consists of news, sports, entertainment, interactive video games, electronic commerce, or content that is preselected by the provider for which any interactive functionality is incidental to, directly related to, or dependent on the provision of such content; or

(iii) is used by and under the direction of an educational entity, including a learning management system or a student engagement program.

(20) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer or the covered entity.

§ 2449b. SCOPE; EXCLUSIONS

(a) A person is considered a covered entity for the purposes of this subchapter if it:

(1) collects consumers' personal data or has consumers' personal data collected on its behalf by a third party;

(2) alone or jointly with others, determines the purposes and means of the processing of consumers' personal data;

(3) operates in Vermont; and

(4) alone or in combination, annually buys, receives for the covered entity's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal data of at least 50 percent of its consumers.

(b) This subchapter does not apply to:

(1) protected health information that is collected by a covered entity or covered entity associate governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164;

(2) a covered entity governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164, to the extent the provider or covered entity maintains patient information in the same manner as medical information or protected health information as described in subdivision (1) of this subsection;

(3) information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects, also known as the Common Rule, pursuant to good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use or pursuant to human subject protection requirements of the U.S.

Food and Drug Administration; and

(4) a business whose primary purpose is journalism as defined in 12 V.S.A. § 1615(a)(2) and that has a majority of its workforce consisting of individuals engaging in journalism.

§ 2449c. MINIMUM DUTY OF CARE

(a) A covered entity that processes a minor consumer's data in any capacity owes a minimum duty of care to the minor consumer.

(b) As used in this subchapter, "a minimum duty of care" means the use of the personal data of a minor consumer and the design of an online service, product, or feature will not benefit the covered entity to the detriment of a minor consumer and will not result in:

(1) reasonably foreseeable and material physical or financial injury to a minor consumer;

(2) reasonably foreseeable emotional distress as defined in 13 V.S.A. § 1061(2) to a minor consumer;

(3) a highly offensive intrusion on the reasonable privacy expectations of a minor consumer;

(4) the encouragement of excessive or compulsive use of the online service, product, or feature by a minor consumer; or

(5) discrimination against the minor consumer based upon race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, or national origin.

§ 2449d. COVERED ENTITY OBLIGATIONS

(a) A covered entity subject to this subchapter shall:

(1) configure all default privacy settings provided to a minor consumer through the online service, product, or feature to a high level of privacy;

(2) provide privacy information, terms of service, policies, and community standards concisely, prominently, and in language suited to the age of a minor consumer reasonably likely to access that online service, product, or feature;

(3) provide prominent, accessible, and responsive tools to help a minor consumer or, if applicable, their parents or guardians to exercise their privacy rights and report concerns to the covered entity;

(4) honor the request of a minor consumer to unpublish the minor consumer's social media platform account not later than 15 business days after a covered entity receives such a request from a minor consumer; and

(5) provide easily accessible and age-appropriate tools for a minor consumer to limit the ability of users or covered entities to send unsolicited communications.

(b) A violation of this section constitutes a violation of the minimum duty of care as provided in section 2449c of this subchapter.

§ 2449e. COVERED ENTITY PROHIBITIONS

(a) A covered entity subject to this subchapter shall not:

(1) use low-friction variable reward design features that encourage excessive and compulsive use by a minor consumer;

(2) permit, by default, an unknown adult to contact a minor consumer on its platform without the minor consumer first initiating that contact;

(3) permit a minor consumer to be exploited by a contract on the online service, product, or feature;

(4) process personal data of a minor consumer unless it is reasonably necessary in providing an online service, product, or feature requested by a minor consumer with which a minor consumer is actively and knowingly engaged;

(5) profile a minor consumer, unless:

(A) the covered entity can demonstrate it has appropriate safeguards in place to ensure that profiling does not violate the minimum duty of care;

(B) profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which a minor consumer is actively and knowingly engaged; or

(C) the covered entity can demonstrate a compelling reason that profiling will benefit a minor consumer;

(6) sell the personal data of a minor consumer;

(7) process any precise geolocation information of a minor consumer by default, unless the collection of that precise geolocation information is strictly necessary for the covered entity to provide the service, product, or feature requested by a minor consumer and is then only collected for the amount of time necessary to provide the service, product, or feature;

(8) process any precise geolocation information of a minor consumer without providing a conspicuous signal to the minor consumer for the duration of that collection that precise geolocation information is being collected;

(9) use dark patterns; or

(10) permit a parent or guardian of a minor consumer, or any other consumer, to monitor the online activity of a minor consumer or to track the location of the minor consumer without providing a conspicuous signal to the minor consumer when the minor consumer is being monitored or tracked.

(b) A violation of this section constitutes a violation of the minimum duty of care as provided in section 2449c of this chapter.

§ 2449f. ATTORNEY GENERAL ENFORCEMENT

(a) A covered entity that violates this subchapter or rules adopted pursuant to this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

(b) The Attorney General may, prior to initiating any action for a violation of any provision of this subchapter, issue a notice of violation to a covered entity if the Attorney General determines that a covered entity is in substantial compliance or that a cure by a covered entity is possible.

(c) The Attorney General may consider the following in determining whether to grant a covered entity the opportunity to cure an alleged violation described in subsection (b) of this section:

(1) the number of violations by the covered entity;

(2) the size and complexity of the covered entity controller;

(3) the nature and extent of the covered entity's activities;

(4) the substantial likelihood of injury to the public;

(5) the safety of persons or property;

(6) whether the alleged violation was likely caused by human or technical error; and

(7) the sensitivity of the data.

§ 2449g. LIMITATIONS

Nothing in this subchapter shall be interpreted or construed to:

(1) impose liability in a manner that is inconsistent with 47 U.S.C. § 230;

(2) prevent or preclude any minor consumer from deliberately or independently searching for, or specifically requesting, content; or

(3) require a covered entity to implement an age verification requirement, such as age gating.

§ 2449h. RIGHTS AND FREEDOMS OF CHILDREN

It is the intent of the General Assembly that nothing in this act may be construed to infringe on the existing rights and freedoms of children or be construed to discriminate against the child based on race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, or national origin.

§ 2449i. RULES

The Attorney General may adopt by rule any standards or procedures the Attorney General deems necessary to implement the purpose and policies of this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when amended as recommended by the Committee on Economic Development, Housing and General Affairs.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Economic Development, Housing and General Affairs was agreed to.

Thereupon, third reading of the bill was ordered, on a roll call, Yeas 27, Nays, 0.

Senator Ram Hinsdale having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Ingalls, Kitchel, Lyons, MacDonald, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Weeks, Westman, White, Williams, Wrenner.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Mazza, McCormack, Norris.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 20, 2024.