



**State of Vermont
Office of the Secretary of State**

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**Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary**

To: Senate Committee on Economic Development, Housing, and General Affairs
From: David P. Hall Esq., Director of Business Services Division; Secretary of State
Date: April 17, 2024
Re: H.121 - An act relating to enhancing consumer privacy (Draft 1.1 4/10/2024)

This memorandum addresses proposed changes to the registration of data brokers under 9 V.S.A. chapter 62, subchapter 5, as provided in the draft committee proposal of amendment to H.121 (dr. 1.1 – 4/10/24) on pages 76-82.

Given the unknown risks associated with the cost, time, administrative requirements, and security implications, the Secretary of State recommends that the provisions concerning registration of data brokers be removed from H.121 or be studied further by the Office of the Secretary of State, the Agency of Digital Services, and the Office of the Attorney General, in consultation with interested parties.

Current Regulation of Data Brokers in Vermont (Effective January 1, 2019)

- Annual registration requirement with Secretary of State – 9 V.S.A. § 2446
 - Name, address, contact information
 - ***If*** data broker permits an opt out - the method, scope, and third party authority
 - Statement of activities without an opt out
 - Whether data broker has a credentialing process
 - Number of data broker security breaches and consumers affected
 - Minors – ***if*** actual knowledge, separate statement re: practices, opt out, etc.
 - \$100 registration fee
 - Penalty for failure to register = \$50/day; max \$10,000/year, plus any other fees/penalties
 - Civil enforcement – Attorney General (fees and injunctive relief)
- ➔ Current total of active business registrations (all types) = 118,665
- ➔ Current total of active data broker registrations = 417
- ➔ Extremely low frequency of inquiries =
- 2-3 inquiries per year from data brokers concerning their registration
 - **No known inquiries from Vermont consumers concerning data brokers**

Proposed Regulation of Data Brokers in H.121 (Effective July 1, 2025)

Annual registration requirement with Secretary of State – 9 V.S.A. § 2446

- Data broker must specify the method to opt out (no longer optional per §2448)
- [credentialing process required, so removed from registration]
- Data of minors - no longer requires actual knowledge
- Penalty increases to \$125/day; no maximum
- Omitted information - five business days to amend; penalty \$1,000/day after
- Materially incorrect information – penalty \$25,000; five business days to correct; \$1,000/day after

- **Additional Duties – 9 V.S.A. § 2448**

- Individual Opt Out - Data broker must provide an individual opt out from collection, possession, and sales of data; through a simple procedure; within 10 days; and describe the procedure in its annual registration and on its website
- General Opt Out
 - Enables a consumer to request all registered data brokers to honor a general opt out request
 - January 1, 2026 – Secretary of State must create: (1) an online form for general opt out; and (2) a Data Broker Opt-Out List of consumers who elect general opt out
 - Opt-Out List must contain “the minimum amount of information necessary for a data broker to identify the specific consumer making the opt-out”
 - Registered data brokers must review the List every 31 days to comply with opt out requests
 - Secretary of State must implement and maintain reasonable security procedures and practices to protect data
 - Secretary of State may not charge a consumer to opt out
 - Opt Out List must provide for an authorized agent to act on behalf of consumer
- Data broker must adopt credentialing process

Regulation of Data Brokers in Other States

- California (1/1/24)
 - Registration required with California Privacy Protection Agency
 - \$400 registration fee
 - 1/1/26 – CCPA must establish an “accessible deletion mechanism” to enable consumers to request an opt out from data broker practices
 - 8/1/26 – data brokers must access the mechanism at least every 45 days
 - 1/1/28 – data brokers begin three-year audit cycle for compliance

- Nevada (10/1/21)
 - Data broker must establish a “designated request address” to which a consumer has the right to submit a “verified request” to a data broker not to sell “covered information
 - After opportunity to cure, AG enforcement and penalty; \$5,000

- Oregon (1/1/24)
 - Registration required with Department of Consumer and Business Services before collecting, licensing, selling data (with exceptions)
 - \$600 registration fee
 - Generally follows current Vermont law for opt out, disclosure, etc.
 - Penalty \$500/day; max \$10,000 year

- Texas (9/1/23)
 - Registration with Secretary of State required (50% revenue/50,000 individuals)
 - Registration fee \$300
 - Generally follows current Vermont law re: disclosures of information
 - Penalty \$100/day; max \$10,000/year

Secretary of State - Legal, Policy, and Financial Impacts of Proposed Changes

The proposed expansion of the Data Broker registration requirements in H.121 substantially increases the type and complexity of data retained within the Business Services Division and raises concerns due to the unknown risks associated with the cost, time, administrative requirements, and security implications:

- **Cost**
 - ***Preliminary*** cost estimates based on discussion with current IT vendor are:
 - Minimum \$2 million design and implementation cost
 - Minimum \$600,000/year for hosting and maintenance (estimated 8-10 year useful life)
 - Total minimum life-cycle cost = \$8 million

- **Time**
 - Currently in process of building new Business Services filing system – estimated completion is 12/31, with operational testing through March 2025
 - ***Preliminary*** time estimate for data broker module or new system is a minimum of 12 months (contracting process, design, implementation, testing) – following completion of current system
 - Earliest possible timeframe for data broker implementation = March 2026

- **Administrative Requirements**
 - Creation of general Opt Out List and associated procedures would be a new function of the Division
 - Unknowns – what is the best operational construct for this process
 - What is required for IT interface with data brokers, consumers, third party agents, Agency of Digital Services?
 - Is there opportunity for federal, regional, other collaboration?
 - Does this fit within proposed Business Services filing system, or is it stand-alone? Is SoS appropriate location, or other government location?

- **Security Implications**
 - Verifying consumer identity and authority
 - Verifying third-party authority to act on behalf of consumer
 - Verifying and ensuring safety of public and private systems to which List connects
 - Risk that Division records become repository of PPI and other sensitive data more likely to experience cybersecurity threats

