

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to  
3 which was referred Senate Bill No. 289 entitled “An act relating to age-  
4 appropriate design code” respectfully reports that it has considered the same  
5 and recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

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

8 Subchapter 6. Age-Appropriate Design Code

9 § 2449a. DEFINITIONS

10 As used in this subchapter:

11 (1) “Affiliate” means any person that, directly or indirectly, controls, is  
12 controlled by, or is under common control with another person. As used in this  
13 subdivision, “control” means ownership of, or the power to vote, more than  
14 50 percent of the outstanding shares of any class of voting security of a  
15 covered entity; control in any manner over the election of a majority of the  
16 directors or of individuals exercising similar functions; or the power to  
17 exercise a controlling influence over the management of a covered entity.

18 (2) “Age-appropriate” means a recognition of the distinct needs and  
19 diversities of children at different age ranges. In order to help support the  
20 design of online services, products, and features, covered entities should take  
21 into account the unique needs and diversities of different age ranges, including

1 the following developmental stages: 0 to 5 years of age or “preliterate and  
2 early literacy”; 6 to 9 years of age or “core primary school years”; 10 to 12  
3 years of age or “transition years”; 13 to 15 years of age or “early teens”; and  
4 16 to 17 years or age or “approaching adulthood.”

5 (3) “Child” means an individual who is under 18 years of age.

6 (4) “Collect” means buying, renting, gathering, obtaining, receiving, or  
7 accessing any personal data pertaining to a consumer by any means. This  
8 includes receiving data from the consumer, either actively or passively, or by  
9 observing the consumer’s behavior.

10 (5) “Consumer” means a natural person who is a Vermont resident,  
11 however identified, including by any unique identifier.

12 (6) “Covered entity” means:

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

16 (B) An affiliate of a covered entity that shares common branding  
17 with the covered entity. As used in this subdivision (6)(B), “common  
18 branding” means a shared name, servicemark, or trademark that the average  
19 consumer would understand that two or more entities are commonly owned.  
20 For purposes of this subchapter, for a joint venture or partnership composed of  
21 covered entities in which each covered entity has at least a 40 percent interest,

1 the joint venture or partnership and each covered entity that composes the joint  
2 venture or partnership shall separately be considered a single covered entity,  
3 except that personal data in the possession of each covered entity and disclosed  
4 to the joint venture or partnership must not be shared with the other covered  
5 entity.

6 (7) “Dark pattern” means a user interface designed or manipulated with  
7 the purpose of subverting or impairing user autonomy, decision making, or  
8 choice.

9 (8) “Default” means a preselected option adopted by the covered entity  
10 for the online service, product, or feature.

11 (9) “Deidentified” means data that cannot reasonably be used to infer  
12 information about, or otherwise be linked to, an identified or identifiable  
13 consumer, or a device linked to such consumer, provided that the covered  
14 entity that possesses the data:

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

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

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

1           (10) “Derived data” means data that is created by the derivation of  
2 information, data, assumptions, correlations, inferences, predictions, or  
3 conclusions from facts, evidence, or another source of information or data  
4 about a child or a child’s device.

5           (11) “Legacy” means any online service, product, or feature that is  
6 likely to be accessed by children and that is offered to the public before July 1,  
7 2024.

8           (12) “Nonlegacy” means any online service, product, or feature that is  
9 likely to be accessed by children and that is first offered to the public on or  
10 after July 1, 2024.

11           (13) “Online service, product, or feature” does not mean any of the  
12 following:

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

14           (B) a broadband internet access service as defined in 3 V.S.A.  
15 § 348(d); or

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

17           (14) “Personal data” means any information, including derived data, that  
18 is linked or reasonably linkable, alone or in combination with other  
19 information, to an identified or identifiable consumer. Personal data does not  
20 include deidentified data or publicly available information. As used in this  
21 subdivision, “publicly available information” means information that:

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

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

5           (15) “Precise geolocation” means any data that is derived from a device  
6           and that is used or intended to be used to locate a consumer within a  
7           geographic area that is equal to or less than the area of a circle with a radius of  
8           1,850 feet.

9           (16) “Process” or “processing” means to conduct or direct any operation  
10          or set of operations performed, whether by manual or automated means, on  
11          personal data or on sets of personal data, such as the collection, use, storage,  
12          disclosure, analysis, deletion, modification, or otherwise handling of personal  
13          data.

14          (17) “Product experimentation results” means the data that companies  
15          collect to understand the experimental impact of their products.

16          (18) “Profile” or “profiling” means any form of automated processing of  
17          personal data to evaluate, analyze, or predict personal aspects concerning an  
18          identified or identifiable consumer’s economic situation, health, personal  
19          preferences, interests, reliability, behavior, location, or movements.

20          “Profiling” does not include the processing of information that does not result  
21          in an assessment or judgment about a consumer.

1           (19) “Reasonably likely to be accessed” means an online service,  
2           product, or feature that is likely to be accessed by children based on any of the  
3           following indicators:

4           (A) the online service, product, or feature is directed to children, as  
5           defined by the Children’s Online Privacy Protection Act, 15 U.S.C., §§ 6501–  
6           6506 and the Federal Trade Commission rules implementing that Act;

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

11          (C) the online service, product, or feature contains advertisements  
12          marketed to children;

13          (D) the online service, product, or feature is substantially similar or  
14          the same as an online service, product, or feature subject to subdivision (B) of  
15          this subdivision (19);

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

19          (F) the covered entity knew or should have known that at least two  
20          percent of the audience of the online service, product, or feature includes  
21          children two through under 18 years of age, provided that, in making this

1 assessment, the covered entity shall not collect or process any personal data  
2 that is not reasonably necessary to provide an online service, product, or  
3 feature with which a child is actively and knowingly engaged.

4 (20) “Sale,” “sell,” or “sold” means the exchange of personal data for  
5 monetary or other valuable consideration by a covered entity to a third party.

6 It does not include the following:

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

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

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

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

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

1           (21) “Share” means sharing, renting, releasing, disclosing,  
2           disseminating, making available, transferring, or otherwise communicating  
3           orally, in writing, or by electronic or other means a consumer’s personal data  
4           by the covered entity to a third party for cross-context behavioral advertising,  
5           whether or not for monetary or other valuable consideration, including  
6           transactions between a covered entity and a third party for cross-context  
7           behavioral advertising for the benefit of a covered entity in which no money is  
8           exchanged.

9           (22) “Third party” means a natural or legal person, public authority,  
10          agency, or body other than the consumer or the covered entity.

11          § 2449b. SCOPE; EXCLUSIONS

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

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

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

18               (3) operates in Vermont; and

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



1        (b) This subchapter does not apply to:

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

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

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

18           (4) a business whose primary purpose is journalism as defined in  
19       12 V.S.A. § 1615(a)(2) and which has a majority of its workforce consisting of  
20       individuals engaging in journalism.

1     § 2449c. BEST INTERESTS OF CHILDREN

2           (a) All covered entities that process children’s data in any capacity shall do  
3     so in a manner consistent with the best interests of children.

4           (b) As used in this section, “a manner consistent with the best interests of  
5     children” means the use of the personal data of a child or the design of an  
6     online service, product, or feature that:

7           (1) will not benefit the covered entity to the detriment of the child; and

8           (2) will not result in:

9           (A) reasonably foreseeable and material physical or financial harm to  
10     the child;

11           (B) reasonably foreseeable and severe psychological or emotional  
12     harm to the child;

13           (C) a highly offensive intrusion on the reasonable privacy  
14     expectations of the child; or

15           (D) discrimination against the child based upon race, ethnicity, sex,  
16     disability, sexual orientation, gender identity, gender expression, or national  
17     origin.

18     § 2449d. COVERED ENTITY OBLIGATIONS

19           (a) A covered entity subject to this subchapter must:

20           (1) Complete a data protection impact assessment for an online service,  
21     product, or feature that is reasonably likely to be accessed by children and

1 maintain documentation of the data protection impact assessment for as long as  
2 the online service, product, or feature is reasonably likely to be accessed by  
3 children. A data protection impact assessment is a systematic survey to assess  
4 compliance with the duty to act in the best interests of children and shall  
5 include a plan to ensure that all online products, services, or features provided  
6 by the covered entity are designed and offered in a manner consistent with the  
7 best interests of children reasonably likely to access the online product,  
8 service, or feature. Such a plan shall include a description of steps the covered  
9 entity has taken and will take to comply with the duty to act in the best  
10 interests of children.

11 (2) Review and modify all data protection impact assessments as  
12 necessary to account for material changes to processing pertaining to the online  
13 service, product, or feature within 90 days after such material changes.

14 (3) Within five days after receipt of a written request by the Attorney  
15 General, provide to the Attorney General a list of all data protection impact  
16 assessments the covered entity has completed.

17 (4) Within seven days after receipt of a written request by the Attorney  
18 General, provide the Attorney General with a copy of a data protection impact  
19 assessment, provided that the Attorney General may, in the Attorney General's  
20 discretion, extend beyond seven days the amount of time allowed for a covered  
21 entity to produce a data protection impact assessment.

1           (5) Configure all default privacy settings provided to children by the  
2           online service, product, or feature to settings that offer a high level of privacy,  
3           unless the covered entity can demonstrate a compelling reason that a different  
4           setting is in the best interests of children.

5           (6) Provide any privacy information, terms of service, policies, and  
6           community standards concisely, prominently, and using clear language suited  
7           to the age of children reasonably likely to access that online service, product,  
8           or feature.

9           (7) Provide prominent, accessible, and responsive tools to help children  
10          in a form or manner required by the Attorney General, or, if applicable, their  
11          parents or guardians, exercise their privacy rights and report concerns.

12          (b) A data protection impact assessment required by this subchapter must:

13           (1) identify the purpose of the online service, product, or feature;

14           (2) disclose how it uses children’s personal data; and

15           (3) determine whether the online service, product, or feature is designed  
16          and offered in an age-appropriate manner consistent with the best interests of  
17          children who are reasonably likely to access the online product by examining:

18           (A) whether the design of the online service, product, or feature  
19          could lead to children experiencing or being targeted by contacts on the online  
20          service, product, or feature that would result in reasonably foreseeable and  
21          material physical or financial harm to the child; reasonably foreseeable and

1 severe psychological or emotional harm to the child; a highly offensive  
2 intrusion on the reasonable privacy expectations of the child; or discrimination  
3 against the child based upon race, ethnicity, sex, disability, sexual orientation,  
4 gender identity, gender expression, or national origin;

5 (B) whether the design of the online service, product, or feature could  
6 permit children to witness, participate in, or be subject to conduct on the online  
7 service, product, or feature that would result in reasonably foreseeable and  
8 material physical or financial harm to the child; reasonably foreseeable and  
9 severe psychological or emotional harm to the child; a highly offensive  
10 intrusion on the reasonable privacy expectations of the child; or discrimination  
11 against the child based upon race, ethnicity, sex, disability, sexual orientation,  
12 gender identity, gender expression, or national origin;

13 (C) whether the design of the online service, product, or feature is  
14 reasonably expected to allow children to be party to or exploited by a contract  
15 on the online service, product, or feature that would result in reasonably  
16 foreseeable and material physical or financial harm to the child; reasonably  
17 foreseeable and severe psychological or emotional harm to the child; a highly  
18 offensive intrusion on the reasonable privacy expectations of the child; or  
19 discrimination against the child based upon race, ethnicity, sex, disability,  
20 sexual orientation, gender identity, gender expression, or national origin;

1           (D) whether algorithms used by the product, service, or feature could  
2           harm children would result in reasonably foreseeable and material physical or  
3           financial harm to the child; reasonably foreseeable and severe psychological or  
4           emotional harm to the child; a highly offensive intrusion on the reasonable  
5           privacy expectations of the child; or discrimination against the child based  
6           upon race, ethnicity, sex, disability, sexual orientation, gender identity, gender  
7           expression, or national origin;

8           (E) whether targeted advertising systems used by the online service,  
9           product, or feature would result in reasonably foreseeable and material  
10           physical or financial harm to the child; reasonably foreseeable and severe  
11           psychological or emotional harm to the child; a highly offensive intrusion on  
12           the reasonable privacy expectations of the child; or discrimination against the  
13           child based upon race, ethnicity, sex, disability, sexual orientation, gender  
14           identity, gender expression, or national origin;

15           (F) whether the online service, product, or feature uses system design  
16           features to increase, sustain, or extend use of the online service, product, or  
17           feature by children, including the automatic playing of media, rewards for time  
18           spent, and notifications, that would result in reasonably foreseeable and  
19           material physical or financial harm to the child; reasonably foreseeable and  
20           severe psychological or emotional harm to the child; a highly offensive  
21           intrusion on the reasonable privacy expectations of the child; or discrimination

1 against the child based upon race, ethnicity, sex, disability, sexual orientation,  
2 gender identity, gender expression, or national origin;

3 (G) whether, how, and for what purpose the online product, service,  
4 or feature collects or processes personal data of children and whether those  
5 practices would result in reasonably foreseeable and material physical or  
6 financial harm to the child; reasonably foreseeable and severe psychological or  
7 emotional harm to the child; a highly offensive intrusion on the reasonable  
8 privacy expectations of the child; or discrimination against the child based  
9 upon race, ethnicity, sex, disability, sexual orientation, gender identity, gender  
10 expression, or national origin; and

11 (H) whether and how product experimentation results for the online  
12 product, service, or feature reveal data management or design practices that  
13 would result in reasonably foreseeable and material physical or financial harm  
14 to the child; reasonably foreseeable and extreme psychological or emotional  
15 harm to the child; a highly offensive intrusion on the reasonable privacy  
16 expectations of the child; or discrimination against the child based upon race,  
17 ethnicity, sex, disability, sexual orientation, gender identity, gender expression,  
18 or national origin.

19 (c) A data protection impact assessment conducted by a covered entity for  
20 the purpose of compliance with any other law complies with this section if the  
21 data protection impact assessment meets the requirements of this subchapter.

1        (d) A single data protection impact assessment may contain multiple  
2        similar processing operations that present similar risk only if each relevant  
3        online service, product, or feature is addressed separately.

4        (e) A covered entity may process only the personal data reasonably  
5        necessary to provide an online service, product, or feature with which a child is  
6        actively and knowingly engaged to estimate age.

7        (f) A data protection impact assessment created pursuant to this section is  
8        exempt from public disclosure pursuant to the Public Records Act as set forth  
9        in 1 V.S.A. § 318.

10        § 2449e. COVERED ENTITY PROHIBITIONS

11        (a) A covered entity that provides an online service, product, or feature  
12        reasonably likely to be accessed by children shall not:

13                (1) process the personal data of any child in a way that is inconsistent  
14        with the best interests of children reasonably likely to access the online service,  
15        product, or feature;

16                (2) profile a child by default unless both of the following criteria are  
17        met:

18                        (A) the covered entity can demonstrate it has appropriate safeguards  
19        in place to ensure that profiling is consistent with the best interests of children  
20        reasonably likely to access the online service, product, or feature; and

21                        (B) either of the following is true:



1           (i) profiling is necessary to provide the online service, product, or  
2           feature requested and only with respect to the aspects of the online service,  
3           product, or feature with which a child is actively and knowingly engaged; or

4           (ii) the covered entity can demonstrate a compelling reason that  
5           profiling is in the best interests of children;

6           (3) process any personal data that is not reasonably necessary to provide  
7           an online service, product, or feature with which a child is actively and  
8           knowingly engaged;

9           (4) if the end user is a child, process personal data for any reason other  
10          than a reason for which that personal data was collected;

11          (5) process any precise geolocation information of children by default,  
12          unless the collection of that precise geolocation information is strictly  
13          necessary for the covered entity to provide the service, product, or feature  
14          requested and then only for the limited time that the collection of precise  
15          geolocation information is necessary to provide the service, product, or feature;

16          (6) process any precise geolocation information of a child without  
17          providing a conspicuous sign to the child for the duration of that collection that  
18          precise geolocation information is being collected; or

19          (7) use dark patterns to cause children to provide personal data beyond  
20          what is reasonably expected to provide that online service, product, or feature;  
21          to forego privacy protections; or to take any action that the covered entity

1 knows, or has reason to know, is not in the best interests of children reasonably  
2 likely to access the online service, product, or feature.

3 (b) Notwithstanding any language in this section to the contrary, a covered  
4 entity that provides an online service, product, or feature reasonably likely to  
5 be accessed by children shall not allow a child’s parent or guardian to monitor  
6 the child’s online activity or to track the child’s location, without providing a  
7 conspicuous signal to the child when the child is being monitored or tracked.

8 § 2449f. DATA PRACTICES

9 (a) A data protection impact assessment collected or maintained by the  
10 Attorney General pursuant to this subchapter is classified as nonpublic data or  
11 private data on consumers.

12 (b) To the extent any information contained in a data protection impact  
13 assessment disclosed to the Attorney General includes information subject to  
14 attorney-client privilege or work product protection, disclosure pursuant to this  
15 subchapter does not constitute a waiver of that privilege or protection.

16 § 2449g. ATTORNEY GENERAL ENFORCEMENT

17 (a) The Attorney General may seek the imposition of an injunction and a  
18 civil penalty of not more than \$2,500.00 per affected child for each negligent  
19 violation of this subchapter or not more than \$7,500.00 per affected child for  
20 each intentional violation of this subchapter, plus costs and reasonable  
21 attorney’s fees for each violation.

1        (b) Any penalties, fees, and expenses recovered in an action brought under  
2        this subchapter must be deposited in an account in the special revenue fund and  
3        are appropriated to the Attorney General to offset costs incurred by the  
4        Attorney General in connection with enforcement of this subchapter.

5        (c) If a covered entity is in substantial compliance with the requirements of  
6        this subchapter, the Attorney General must, before initiating a civil action  
7        under this section, provide written notice to the covered entity identifying the  
8        specific provisions of this subchapter that the Attorney General alleges have  
9        been or are being violated.

10        (1) Nonlegacy products. If, for a covered entity that satisfied the terms  
11        pursuant to section 2449d of this chapter before offering a nonlegacy online  
12        product, service, or feature reasonably likely to be accessed by children to the  
13        public, within 90 days following the notice required by this section, the  
14        covered entity cures any noticed violation and provides the Attorney General a  
15        written statement that the alleged violations have been cured, and sufficient  
16        measures have been taken to prevent future violations, the covered entity is not  
17        liable for a civil penalty for any violation cured pursuant to this section.

18        (2) Legacy products. If, for a covered entity offering a legacy online  
19        product, service, or feature reasonably likely to be accessed by children to the  
20        public that satisfied the terms pursuant to section 2449d of this chapter before  
21        receiving written notice of alleged violations of this act from the Attorney

1 General, within 90 days following the notice, the covered entity cures any  
2 noticed violation and provides the Attorney General a written statement that  
3 the alleged violations have been cured, and sufficient measures have been  
4 taken to prevent future violations, the covered entity is not liable for a civil  
5 penalty for any violation cured pursuant to this section.

6 (d) No individual entitlement or private right of action is created by this  
7 subchapter.

8 § 2449h. LIMITATIONS

9 Nothing in this subchapter shall be interpreted or construed to:

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

11 § 230;

12 (2) prevent or preclude any child from deliberately or independently  
13 searching for, or specifically requesting, content; or

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

16 § 2449i. APPLICATION

17 (a) A covered entity must complete a data protection impact assessment for  
18 any new online service, product, or feature reasonably likely to be accessed by  
19 children offered to the public after July 1, 2024 unless that online service,  
20 product, or feature is exempt pursuant to subsection (b) of this section.

1        (b) This act does not apply to an online service, product, or feature that is  
2        not offered to the public on or after July 1, 2024.

3        § 2449j. RIGHTS AND FREEDOMS OF CHILDREN

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

9        § 2449k. RULES

10       (a) The Attorney General may adopt by rule any standards or procedures  
11       the Attorney General deems necessary to implement the purpose and policies  
12       of this subchapter.

13       (b) The rules, as well as any finding of unlawful conduct under this  
14       subchapter, shall be consistent with the rules, regulations, and decisions of the  
15       Federal Trade Commission and the Federal Communications Commission and  
16       with federal court interpretations of the Federal Trade Commission Act, as  
17       amended, and the Communications Act of 1934, as amended.

18       Sec. 2. EFFECTIVE DATE

19       This act shall take effect on July 1, 2024.

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21

1

2 (Committee vote: \_\_\_\_\_)

3

\_\_\_\_\_

4

Senator \_\_\_\_\_

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FOR THE COMMITTEE