1   H.863

2   Introduced by Representative Keenan of St. Albans City

3   Referred to Committee on

4   Date:

5   Subject: Telecommunications; Internet service providers; privacy

6   Statement of purpose of bill as introduced: This bill proposes to enact the

7   Vermont Broadband Internet Privacy Act.

8   An act relating to the Vermont Broadband Internet Privacy Act

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

10   Sec. 1. 9 V.S.A. chapter 61A is added to read:

11   CHAPTER 61A. BROADBAND INTERNET PRIVACY

12   § 2412. TITLE

13   This chapter shall be known as the Vermont Broadband Internet

14   Privacy Act.

15   § 2413. LEGISLATIVE INTENT

16   It is the intent of the General Assembly in enacting this chapter to

17   incorporate into statute certain provisions of the Federal Communications

18   Commission Report and Order "Protecting the Privacy of Customers of

19   Broadband and Other Telecommunications Services" (FCC 16-148), which

20   were revoked by Senate Joint Resolution 34 (Public Law 115-22), which

1   became effective on April 3, 2017. In adopting the specified provisions

2   incorporated into this act, it is the intent of the General Assembly to give

3   consumers greater control over their personal information when accessing the

4   Internet through a broadband Internet access service provider and thereby

5   better protect their privacy and autonomy. It is also the intent of the General

6   Assembly that the consumer protections set forth in this chapter be interpreted

7   broadly and any exceptions interpreted narrowly, using the Federal

8   Communications Commission Report and Order as persuasive guidance, in

9   order to maximize individual privacy and autonomy.

10   § 2414. DEFINITIONS

11   As used in this chapter:

12   (1) "Aggregate customer information" means collective data that relates

13   to a group or category of customers, from which individual customer identities

14   and characteristics have been removed, that is not linked or reasonably linkable

15   to any individual person, household, or device. "Aggregate customer

16   information" does not mean one or more individual customer records that have

17   been de-identified.

18   (2) "Broadband Internet access service" or "BIAS" means a mass

19   market retail service by wire or radio in Vermont that provides the capability to

20   transmit data and to receive data from all or substantially all Internet endpoints,

21   including any capabilities that are incidental to, and enable the operation of,

1   the service, but excluding dial-up Internet access service. The term also

2   encompasses any service that provides a functional equivalent of the service

3   described in this subdivision or that is used to evade the protections set forth in

4   this chapter.

5   (3) "Broadband Internet access service provider" means a person

6   engaged in the provision of BIAS to a customer account located in Vermont.

7   "Broadband Internet access service provider" does not include a premises

8   operator, including a coffee shop, bookstore, airline, private end-user network,

9   or other business that acquires BIAS from a BIAS provider to enable patrons to

10   access the Internet from its respective establishment.

11   (4) "Customer" means either of the following:

12   (A) a current or former subscriber to BIAS in Vermont; or

13   (B) an applicant for BIAS in Vermont.

14   (5) "Customer proprietary information" means any of the following that

15   a BIAS provider acquires in connection with its provision of BIAS:

16   (A) individually identifiable customer proprietary network

17   information;

18   (B) personally identifiable information; or

19   (C) content of a communication.

20   (6)(A) "Customer proprietary network information" or "CPNI" means

21   information that relates to the quantity, technical configuration, type,

1   destination, location, and amount of use of a BIAS subscribed to by a customer

2   of a BIAS provider and that is made available to the BIAS provider by the

3   customer solely by virtue of the provider-customer relationship.

4   (B)(i) CPNI includes all of the following: broadband service plans,

5   geolocation data; Media Access Control (MAC) addresses and other device

6   identifiers; source and destination Internet Protocol (IP) addresses and domain

7   name information; other information in the network layer protocol headers;

8   traffic statistics, including both short-term and long-term measurements; port

9   information and other transport layer protocol header information; application

10   headers, including any information a BIAS provider injects into the application

11   header; application usage; application payload; customer premises equipment;

12   and other customer device information.

13   (ii) CPNI includes any information falling within a CPNI category

14   that the BIAS provider collects or accesses in connection with the provision of

15   BIAS.

16   (iii) CPNI includes information that a BIAS provider causes to be

17   collected or stored on a customer's device, including customer premises

18   equipment and mobile stations.

19   (7) "Material change" means any change that a customer, acting

20   reasonably under the circumstances, would consider important to his or her

21   decisions regarding his or her privacy.

1   (8) "Nonsensitive customer proprietary information" means customer

2   proprietary information that is not sensitive customer proprietary information.

3   (9) "Opt-in approval" means a method for obtaining customer consent to

4   use, disclose, or permit access to the customer's proprietary information. This

5   approval method requires that the BIAS provider obtain from the customer

6   affirmative, express consent allowing the requested usage, disclosure, or access

7   to the customer proprietary information after the customer is provided

8   appropriate notification of the BIAS provider's request, consistent with the

9   requirements of this chapter.

10   (10) "Opt-out approval" means a method for obtaining customer consent

11   to use, disclose, or permit access to the customer's proprietary information.

12   Under this approval method, a customer is deemed to have consented to the

13   use or disclosure of, or access to, the customer's proprietary information if the

14   customer has failed to object to that use, disclosure, or access after the

15   customer is provided appropriate notification of the BIAS provider's request

16   for consent, consistent with the requirements of this chapter.

17   (11) "Personally identifiable information" means any information that is

18   linked or reasonably linkable to an individual or device. Information is linked

19   or reasonably linkable to an individual or device if it can reasonably be used on

20   its own, in context, or in combination to identify an individual or device, or to

21   logically associate it with other information about a specific individual or

1   device. Personally identifiable information includes each of the following:

2   name; address; Social Security number; date of birth; mother's maiden name;

3   government-issued identifiers, including a driver's license number; physical

4   address; e-mail address or other online contact information; telephone

5   numbers; MAC addresses or other unique device identifiers; IP addresses; and

6   persistent online or unique advertising identifiers.

7   (12) "Sensitive customer proprietary information" includes all of the

8   following:

9   (A) Financial information.

10   (B) Health information.

11   (C) Information pertaining to children.

12   (D) Social Security numbers.

13   (E) Precise geolocation information.

14   (F) Content of communications.

15   (G) Internet website browsing history, application usage history, and

16   the functional equivalents of either. "Internet website browsing history" and

17   "application usage history" means information from network traffic related to

18   Internet website browsing or other applications, including the application layer

19   of that traffic, and information from network traffic indicating the Internet

20   website or party with which the customer is communicating, including a

21   domain or IP address.

1   § 2415. CUSTOMER APPROVAL

2   (a) Except as described in subsection (b), a BIAS provider shall not use,

3   disclose, or permit access to customer proprietary information except with the

4   opt-out or opt-in approval of a customer as described in this section.

5   (b) A BIAS provider may use, disclose, or permit access to customer

6   proprietary information without customer approval for any of the following

7   purposes:

8   (1) in its provision of the BIAS service from which the information is

9   derived, or in its provision of services necessary to, or used in, the provision of

10   the service;

11   (2) to initiate, render, bill, and collect for BIAS;

12   (3) to protect the rights or property of the BIAS provider or to protect

13   users of the BIAS and other BIAS providers from fraudulent, abusive, or

14   unlawful use of the service;

15   (4) to provide any inbound marketing, referral, or administrative

16   services to the customer for the duration of a real-time interaction;

17   (5) to provide location information or nonsensitive customer proprietary

18   information to any of the following:

19   (A) a public safety answering point; emergency medical service

20   provider or emergency dispatch provider; public safety, fire service, or law

1   enforcement official; or hospital emergency or trauma care facility in order to

2   respond to the user's request for emergency services;

3   (B) the user's legal guardian or members of the user's immediate

4   family in an emergency situation that involves the risk of death or serious

5   physical harm; and

6   (C) providers of information or database management services solely

7   for purposes of assisting in the delivery of emergency services in response to

8   an emergency;

9   (6) to generate an aggregate customer information dataset using

10   customer personal information, or using, disclosing, or permitting access to the

11   aggregate customer information dataset it generated;

12   (7) for any other lawful purpose if the BIAS provider ensures the

13   customer proprietary information is not individually identifiable by doing all of

14   the following:

15   (A) determining that the information is not reasonably linkable to an

16   individual or device;

17   (B) publicly committing to maintain and use the data in a non-

18   individually identifiable fashion and to not attempt to re-identify the data; and

19   (C) contractually prohibiting any entity to which it discloses or

20   permits access to the de-identified data from attempting to re-identify the

21   data; and

1   (8) as otherwise required or authorized by law.

2   (c) Except as otherwise provided in this section, a BIAS provider shall

3   obtain opt-out approval from a customer to use, disclose, or permit access to

4   any of the customer's nonsensitive customer proprietary information. If it so

5   chooses, a BIAS provider may instead obtain opt-in approval from a customer

6   to use, disclose, or permit access to any of the customer's nonsensitive

7   customer proprietary information.

8   (d) Except as otherwise provided in this section, a BIAS provider shall

9   obtain opt-in approval from a customer to do either of the following:

10   (1) use, disclose, or permit access to any of the customer's sensitive

11 customer proprietary information; or

12   (2) make any material retroactive change, including a material change

13 that would result in a use, disclosure, or permission of access to any of the

14 customer's proprietary information previously collected by the BIAS provider

15 for which the customer did not previously grant approval, either through opt-in

16 or opt-out consent, as required by this subsection and subsection (c) of this

17 section.

18   (e)(1) Except as described in subsection (a) of this section, a BIAS provider

19 shall, at a minimum, solicit customer approval pursuant to subsection (c) or (d)

20 of this section, as applicable, at the point of sale and when making one or more

21 material changes to privacy policies.

1   (2) A provider's solicitation of customer approval shall be clear and

2   conspicuous and in language that is comprehensible and not misleading. The

3   solicitation shall disclose all of the following:

4   (A) the types of customer proprietary information that the BIAS

5   provider is seeking customer approval to use, disclose, or permit access to;

6   (B) the purposes for which the customer proprietary information will

7   be used; and

8   (C) the categories of entities to which the BIAS provider intends to

9   disclose or permit access to the customer proprietary information.

10   (3) A BIAS provider's solicitation of customer approval shall be

11   completely translated into a language other than English if the BIAS provider

12   transacts business with the customer in that language.

13   (f) A BIAS provider shall make available a simple, easy-to-use mechanism

14   for a customer to grant, deny, or withdraw opt-in approval and opt-out

15   approval at any time. The mechanism shall be clear and conspicuous, in

16   language that is comprehensible and not misleading, and made available at no

17   additional cost to the customer. The mechanism shall be persistently available

18   on or through the BIAS provider's home page on its Internet website, the BIAS

19   provider's application if it provides one for account management purposes, and

20   any functional equivalent to the BIAS provider's home page or application. If

21   the BIAS provider does not have a home page, it shall provide a persistently

1   available mechanism by another means, such as a toll-free telephone number.

2   The customer's grant, denial, or withdrawal of approval shall be given effect

3   promptly and remain in effect until the customer revokes or limits the grant,

4   denial, or withdrawal of approval.

5   § 2416. BIAS OFFERS CONDITIONED ON WAIVER OF PRIVACY

6   RIGHTS

7   A BIAS provider shall not do either of the following:

8   (1) refuse to provide BIAS or in any way limit that service to a customer

9   who does not waive his or her privacy rights guaranteed by law or regulation,

10   including this chapter; or

11   (2) charge a customer a penalty, penalize a customer in any way, or

12   offer a customer a discount or another benefit, as a direct or indirect

13   consequence of a customer's decision to, or refusal to, waive his or her privacy

14   rights guaranteed by law or regulation, including this chapter.

15   § 2417. EFFECT ON OTHER LAWS

16   This chapter shall not limit the other statutory rights of a customer or the

17   statutory obligations of a BIAS provider under Vermont law.

18   § 2418. APPLICATION

19   The requirements of this chapter shall apply to BIAS providers operating

20   within Vermont when providing BIAS to their customers who are residents of

21   and physically located in Vermont. Any waiver by the customer of the

1   provisions of this chapter shall be deemed contrary to public policy and shall

2   be void and unenforceable.

3   § 2419. STATE AUTHORITY

4   Vermont adopts this chapter pursuant to all inherent state authority under

5   the Tenth Amendment of the U.S. Constitution and all relevant authority

6   granted and reserved to the states by Title 47 of the U.S. Code, including the

7   authority to impose requirements necessary to protect public safety and

8   welfare, safeguard the rights of consumers, manage public rights-of-way, and

9   regulate franchises.

10   Sec. 2. EFFECTIVE DATE

11   This act shall take effect on January 1, 2019.