

1 H.364

2 Introduced by Representative Rachelson of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; federal collection of electronic data and

6 metadata; prohibition on State participation or use without warrant

7 Statement of purpose of bill as introduced: This bill proposes to prohibit the  
8 State from assisting or participating in the collection of electronic data or  
9 metadata by the federal government or from using any of the data collected  
10 unless the data are obtained pursuant to a warrant issued by a court, and to  
11 require a warning label on products capable of digitally recording data.

12 An act relating to State collection of electronic data and metadata

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

14 Sec. 1. POLICY

15 It shall be the public policy of this State to refuse to provide material  
16 support for or to assist or to in any way participate in the collection of a  
17 person's electronic data or metadata by any federal agency or pursuant to any  
18 federal law, rule, or order, unless the data are collected pursuant to a judicially  
19 issued warrant that particularly describes the persons, places, and things to be  
20 searched or seized.

1 Sec. 2. 13 V.S.A. § 15 is added to read:

2 § 15. FEDERAL COLLECTION OF ELECTRONIC DATA AND  
3 METADATA; PROHIBITION ON STATE PARTICIPATION OR USE  
4 WITHOUT WARRANT

5 (a) As used in this section:

6 (1) “Data” shall have the same meaning as in section 4101 of this title.

7 (2) “Metadata” shall mean elements of information regarding data that  
8 provide administrative, descriptive, and technical information that describes  
9 the structure and content of data. Metadata elements also provide contextual  
10 information that explains how data were created, used, managed, and  
11 maintained, and how they are related to other data.

12 (b) Notwithstanding any law to the contrary, an agency or political  
13 subdivision of this State, an employee of an agency or political subdivision of  
14 this State acting in his or her official capacity, or a person providing services  
15 on behalf of this State or a political subdivision of this State shall not:

16 (1) provide material support for or assist or in any way participate in the  
17 collection of a person’s electronic data or metadata by any federal agency or  
18 pursuant to any federal law, rule, or order unless the data are collected pursuant  
19 to a judicially issued warrant that particularly describes the persons, places,  
20 and things to be searched or seized;

1           (2) use State funds or funds received from the State to engage in any  
2           activity that aids a federal agency, federal agent, person, or corporation  
3           providing services to the federal government in the collection of a person's  
4           electronic data or metadata by any federal agency or pursuant to any federal  
5           law, rule, or order unless the data are collected pursuant to a judicially issued  
6           warrant that particularly describes the persons, places, and things to be  
7           searched or seized; or

8           (3) use in a criminal investigation or prosecution any information that  
9           was obtained through the collection of a person's electronic data or metadata  
10          by any federal agency or pursuant to any federal law, rule, or order unless the  
11          data are collected pursuant to a judicially issued warrant that particularly  
12          describes the persons, places, and things to be searched or seized.

13          (c)(1) A political subdivision of this State shall not receive any State grant  
14          funds during the fiscal year following a judicial determination that the  
15          subdivision knowingly and intentionally violated subsection (b) of this section.

16          (2) A person providing services to or on behalf of this State who violates  
17          subsection (b) of this section shall thereafter be permanently prohibited from  
18          acting on behalf of or providing services to this State or any of its political  
19          subdivisions.

20          (d) A person whose electronic data or metadata are collected in violation of  
21          subsection (b) of this section shall have a cause of action against the person

1 who collected the data to recover compensatory damages, punitive damages,  
2 and reasonable attorney's fees. The liability of the State under this subsection  
3 shall not exceed the amounts specified in 12 V.S.A. § 5601(b).

4 Sec. 3. SEVERABILITY

5 The provisions of this act are severable. If any part of this act is declared  
6 invalid or unconstitutional, that declaration shall not affect the part which  
7 remains.

8 Sec. 4. 9 V.S.A. chapter 62, subchapter 5 is added to read:

9 Subchapter 5. Labeling of Products Capable

10 of Collecting Personal Information

11 § 2447. PURPOSE

12 It is the purpose of this subchapter to alert consumers who are concerned  
13 about the unregulated collection of personal data so that those consumers may  
14 make informed decisions about the manner in which they use products capable  
15 of collecting and storing personal information.

16 § 2448. LABELING OF PRODUCTS THAT COLLECT PERSONAL

17 INFORMATION

18 (a) A product offered for sale by a retailer after July 1, 2018 shall be  
19 labeled with a warning that the product is capable of recording personal data if  
20 it is a product:

21 (1) offered for retail sale in Vermont; and

1           (2) capable of recording digital data.

2           (b) If a product is required to be labeled under subsection (a) of this  
3           section, it shall be labeled with the words “capable of collecting personal  
4           information.”

5           Sec. 5. EFFECTIVE DATE

6           This act shall take effect on July 1, 2017.