Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
Privacy Audit / Inventory	Sec. 1. PRIVACY AUDIT On or before January 15, 2020, the Chief Data Officer and the Chief Records Officer shall submit to the House Committees on Commerce and Economic Development and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations a report concerning the three branches of State government and the management of personally identifiable information, as defined in 9 V.S.A. § 2430(9), as well as street addresses, e-mail addresses, telephone numbers, and demographic information, specifically: (1) federal and State laws, rules, and regulations that: (A) exempt personally identifiable information from public inspection and copying pursuant to 1 V.S.A. § 317; (B) require personally identifiable information to be produced or acquired in the course of State government business; (C) specify fees for obtaining personally identifiable information produced or acquired in the course of State government business; and (D) require personally identifiable information to be shared between branches of State government or between branches and non-state entities, including municipalities; (2) arrangements or agreements, whether verbal or written, between branches of State government or between branches and non-state entities, including municipalities, to share personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information; and (3) recommendations for proposed legislation concerning the collection and management of personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information by all three branches of State government.	Sec. 1. DATA PRIVACY INVENTORY (a) On or before January 15, 2020, the following persons shall conduct a data privacy inventory and submit a report for their respective branches of State government to the House Committees on Commerce and Economic Development and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations: (1) the State Court Administrator for the Judicial Branch; (2) the Deputy Director for Information Technology within the Office of Legislative Council for the Legislative Branch; and (3) the Chief Data Officer within the Agency of Digital Services and the Chief Records Officer within the Office of the Secretary of State for the Executive Branch. (b) The inventory and report for each branch shall address the collection and management of personally identifiable information, as defined in 9 V.S.A. § 2430, and of street addresses, e-mail addresses, telephone numbers, and demographic information, specifically: (1) federal and State laws, rules, and regulations that: (A) exempt personally identifiable information from public inspection and copying pursuant to 1 V.S.A. § 317; (B) require personally identifiable information to be produced or acquired in the course of State government business; (C) specify fees for obtaining personally identifiable information produced or acquired in the course of State government business; and (D) require personally identifiable information to be shared between branches of State government or between branches and nonstate entities, including municipalities; (2) arrangements or agreements, whether verbal or written, between branches of State government or between branches and nonstate entities, including municipalities, to share personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information; and (3) recommendations for proposed legislation concerning the collection and management of personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information.	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
Security Breach Notice Act Definitions	Sec. 2. 9 V.S.A. § 2430(9) is amended to read:	Sec. 2. 9 V.S.A. § 2430 is amended to read: § 2430. DEFINITIONS As used in this chapter: * * * (6) "Data collector" means a person who, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or otherwise deals with personally identifiable information, and includes the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, and retail operators. (7) "Encryption" means use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key. (8) "License" means a grant of access to, or distribution of, data by one person to another in exchange for consideration. A use of data for the sole benefit of the data provider, where the data provider maintains control over the use of the data, is not a license. (9) "Login credentials" means a consumer's user name or e-mail address, in combination with a password or an answer to a security question, that together permit access to an online account.	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
	(9)(A) "Personally identifiable information" means a consumer's first name or first initial and last name in combination with any one or more of the following digital data elements, when either the name or the data elements are not encrypted or redacted or protected by another method that renders them unreadable or unusable by unauthorized persons: (i) Social Security number; (ii) motor vehicle operator's license number or nondriver identification card number; (iii) financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords; (iv) account passwords or personal identification numbers or other access codes for a financial account; (v) unique biometric data generated from measurements or technical analysis of human body characteristics used by the owner or licensee of the data to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data; (vi) genetic information; (vii) health information; (viii) login credentials, including a username or password; and (ix) a passport number. (B) "Personally identifiable information" does not mean publicly available information that is lawfully made available to the general public from federal, State, or local government records.	~~(9)~~(10)(A) "Personally identifiable information" means a consumer's first name or first initial and last name in combination with ~~any~~ one or more of the following digital data elements, when the data elements are not encrypted~~,~~ ~~or~~ redacted~~,~~ or protected by another method that renders them unreadable or unusable by unauthorized persons: (i) a Social Security number; (ii) ~~motor vehicle operator's license number or nondriver identification card number~~ a driver license or nondriver State identification card number, individual taxpayer identification number, passport number, military identification card number, or other identification number that originates from a government identification document that is commonly used to verify identity for a commercial transaction; (iii) a financial account number or credit or debit card number, if ~~circumstances exist in which~~ the number could be used without additional identifying information, access codes, or passwords; (iv) ~~account passwords~~ a password, ~~or~~ personal identification ~~numbers~~ number, or other access ~~codes~~ code for a financial account; (v) unique biometric data generated from measurements or technical analysis of human body characteristics used by the owner or licensee of the data to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data; (vi) genetic information; and (vii)(I) health records or records of a wellness program or similar program of health promotion or disease prevention; (II) a health care professional's medical diagnosis or treatment of the consumer; or (III) a health insurance policy number. (B) "Personally identifiable information" does not mean publicly available information that is lawfully made available to the general public from federal, State, or local government records. ~~(10)~~(11) "Record" means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. ~~(11)~~(12) "Redaction" means the rendering of data so that the data are unreadable or are truncated so that no more than the last four digits of the identification number are accessible as part of the data.	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		~~(12)~~(13)(A) "Security breach" means unauthorized acquisition of, electronic data or a reasonable belief of an unauthorized acquisition of, electronic data that compromises the security, confidentiality, or integrity of a consumer's personally identifiable information or login credentials maintained by a data collector. (B) "Security breach" does not include good faith but unauthorized acquisition of personally identifiable information or login credentials by an employee or agent of the data collector for a legitimate purpose of the data collector, provided that the personally identifiable information ~~is~~ or login credentials are not used for a purpose unrelated to the data collector's business or subject to further unauthorized disclosure. (C) In determining whether personally identifiable information ~~has~~ or login credentials have been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data collector may consider the following factors, among others: (i) indications that the information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing information; (ii) indications that the information has been downloaded or copied; (iii) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or (iv) that the information has been made public.	
Student Data Privacy	Sec. 3. 9 V.S.A. chapter 62, subchapter 3A is added to read: Subchapter 3A: Student Privacy § 2443. DEFINITIONS As used in this subchapter: (1) "Covered information" means personal information or material, or information that is linked to personal information or material, in any media or format that is: (A)(i) not publicly available; or (ii) made publicly available pursuant to the federal Family Educational and Rights and Privacy Act; and (B)(i) created by or provided to an operator by a student or the student's parent or legal guardian in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for PreK–12 school purposes;	Sec. 4. 9 V.S.A. chapter 62, subchapter 3A is added to read: Subchapter 3A: Student Privacy § 2443. DEFINITIONS As used in this subchapter: (1) "Covered information" means personal information or material, or information that is linked to personal information or material, in any media or format that is: (A)(i) not publicly available; or (ii) made publicly available pursuant to the federal Family Educational and Rights and Privacy Act; and (B)(i) created by or provided to an operator by a student or the student's parent or legal guardian in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for PreK–12 school purposes;	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
	(ii) created by or provided to an operator by an employee or agent of a school or school district for PreK–12 school purposes; or (iii) gathered by an operator through the operation of its site, service, or application for PreK–12 school purposes and personally identifies a student, including information in the student's education record or electronic mail; first and last name; home address; telephone number; electronic mail address or other information that allows physical or online contact; discipline records; test results; special education data; juvenile dependency records; grades; evaluations; criminal records; medical records; health records; social security number; biometric information; disability status; socioeconomic information; food purchases; political affiliations; religious information; text messages; documents; student identifiers; search activity; photos; voice recordings; or geolocation information. (2) "PreK–12 school purposes" means purposes that are directed by or that customarily take place at the direction of a school, teacher, or school district; aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; or are otherwise for the use and benefit of the school. (3) "Operator" means, to the extent that an entity is operating in this capacity, the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for PreK–12 school purposes and was designed and marketed for PreK–12 school purposes. (4) "School" means: (A) a public or private preschool, kindergarten, elementary or secondary educational institution, vocational school, special educational agency or institution; and (B) a person, agency, or institution that maintains school student records from more than one of the entities described in subdivision (6)(A) of this section. (5) "Targeted advertising" means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon that student's current visit to that location or in response to that student's request for information or feedback, without the retention of that student's online activities or requests over time for the purpose in whole or in part of targeting subsequent ads. § 2443a. OPERATOR PROHIBITIONS	(ii) created by or provided to an operator by an employee or agent of a school or school district for PreK–12 school purposes; or (iii) gathered by an operator through the operation of its site, service, or application for PreK–12 school purposes and personally identifies a student, including information in the student's education record or electronic mail; first and last name; home address; telephone number; electronic mail address or other information that allows physical or online contact; discipline records; test results; special education data; juvenile dependency records; grades; evaluations; criminal records; medical records; health records; social security number; biometric information; disability status; socioeconomic information; food purchases; political affiliations; religious information; text messages; documents; student identifiers; search activity; photos; voice recordings; or geolocation information. (2) "Operator" means, to the extent that an entity is operating in this capacity, the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for PreK–12 school purposes and was designed and marketed for PreK–12 school purposes. (3) "PreK–12 school purposes" means purposes that are directed by or that customarily take place at the direction of a school, teacher, or school district; aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; or are otherwise for the use and benefit of the school. (4) "School" means: (A) a public or private preschool, kindergarten, elementary or secondary educational institution, vocational school, special educational agency or institution; and (B) a person, agency, or institution that maintains school student records from more than one of the entities described in subdivision (6)(A) of this section. (5) "Targeted advertising" means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon that student's current visit to that location or in response to that student's request for information or feedback, without the retention of that student's online activities or requests over time for the purpose in whole or in part of targeting subsequent ads. § 2443a. OPERATOR PROHIBITIONS	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
	(a) An operator shall not knowingly do any of the following with respect to its site, service, or application: (1) Engage in targeted advertising on the operator's site, service, or application or target advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for PreK–12 school purposes; (2) Use information, including a persistent unique identifier, that is created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of PreK–12 school purposes. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the school. (3) Sell, barter, or rent a student's information, including covered information. This subdivision (3) does not apply to the purchase, merger, or other type of acquisition of an operator by another entity if the operator or successor entity complies with this subchapter regarding previously acquired student information. (4) Except as otherwise provided in section 2443c of this title, disclose covered information, unless the disclosure is made for one or more of the following purposes and is proportionate to the identifiable information necessary to accomplish the purpose: (A) to further the PreK–12 school purposes of the site, service, or application, provided: (i) the recipient of the covered information does not further disclose the information except to allow or improve operability and functionality of the operator's site, service, or application; and (ii) the covered information is not used for a purpose inconsistent with this subchapter; (B) to ensure legal and regulatory compliance or take precautions against liability; (C) to respond to judicial process; (D) to protect the safety or integrity of users of the site or others or the security of the site, service, or application; (E) for a school, educational, or employment purpose requested by the student or the student's parent or legal guardian, provided that the information is not used or further disclosed for any other purpose; or	(a) An operator shall not knowingly do any of the following with respect to its site, service, or application: (1) Engage in targeted advertising on the operator's site, service, or application or target advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for PreK–12 school purposes. (2) Use information, including a persistent unique identifier, that is created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of PreK–12 school purposes. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the school. (3) Sell, barter, or rent a student's information, including covered information. This subdivision (3) does not apply to the purchase, merger, or other type of acquisition of an operator by another entity if the operator or successor entity complies with this subchapter regarding previously acquired student information. (4) Except as otherwise provided in section 2443c of this title, disclose covered information, unless the disclosure is made for one or more of the following purposes and is proportionate to the identifiable information necessary to accomplish the purpose: (A) to further the PreK–12 school purposes of the site, service, or application, provided: (i) the recipient of the covered information does not further disclose the information except to allow or improve operability and functionality of the operator's site, service, or application; and (ii) the covered information is not used for a purpose inconsistent with this subchapter; (B) to ensure legal and regulatory compliance or take precautions against liability; (C) to respond to judicial process; (D) to protect the safety or integrity of users of the site or others or the security of the site, service, or application; (E) for a school, educational, or employment purpose requested by the student or the student's parent or legal guardian, provided that the information is not used or further disclosed for any other purpose; or	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
	(F) to a third party if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator to subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices. (b) This section does not prohibit an operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application. § 2443b. OPERATOR DUTIES An operator shall: (1) implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information and designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure; (2) delete, within a reasonable time period and to the extent practicable, a student's covered information if the school or school district requests deletion of covered information under the control of the school or school district, unless a student or his or her parent or legal guardian consents to the maintenance of the covered information; and (3) publicly disclose and provide the school with material information about its collection, use, and disclosure of covered information, including publishing a term of service agreement, privacy policy, or similar document. § 2443c. PERMISSIVE USE OR DISCLOSURE An operator may use or disclose covered information of a student under the following circumstances: (1) if other provisions of federal or State law require the operator to disclose the information and the operator complies with the requirements of federal and State law in protecting and disclosing that information; (2) for legitimate research purposes as required by State or federal law and subject to the restrictions under applicable State and federal law or as allowed by State or federal law and under the direction of a school, school district, or the State Board of Education if the covered information is not used for advertising or to amass a profile on the student for purposes other than for PreK–12 school purposes; and (3) disclosure to a State or local educational agency, including schools and school districts, for PreK–12 school purposes as permitted by State or federal law.	(F) to a third party if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator to subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices. (b) This section does not prohibit an operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application. § 2443b. OPERATOR DUTIES An operator shall: (1) implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information and designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure; (2) delete, within a reasonable time period and to the extent practicable, a student's covered information if the school or school district requests deletion of covered information under the control of the school or school district, unless a student or his or her parent or legal guardian consents to the maintenance of the covered information; and (3) publicly disclose and provide the school with material information about its collection, use, and disclosure of covered information, including publishing a term of service agreement, privacy policy, or similar document. § 2443c. PERMISSIVE USE OR DISCLOSURE An operator may use or disclose covered information of a student under the following circumstances: (1) if other provisions of federal or State law require the operator to disclose the information and the operator complies with the requirements of federal and State law in protecting and disclosing that information; (2) for legitimate research purposes as required by State or federal law and subject to the restrictions under applicable State and federal law or as allowed by State or federal law and under the direction of a school, school district, or the State Board of Education if the covered information is not used for advertising or to amass a profile on the student for purposes other than for PreK–12 school purposes; and (3) disclosure to a State or local educational agency, including schools and school districts, for PreK–12 school purposes as permitted by State or federal law.	

	§ 2443d. OPERATOR ACTIONS THAT ARE NOT PROHIBITED This subchapter does not prohibit an operator from doing any of the following: (1) using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator; (2) using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in their marketing; (3) sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications; (4) using recommendation engines to recommend to a student either of the following: (A) additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or (B) additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; and (5) responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party. § 2443e. APPLICABILITY This subchapter does not: (1) limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order; (2) limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes; (3) apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications; (4) limit service providers from providing Internet connectivity to schools or students and their families; (5) impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this subchapter on those applications or software;	§ 2443d. OPERATOR ACTIONS THAT ARE NOT PROHIBITED This subchapter does not prohibit an operator from doing any of the following: (1) using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator; (2) using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in their marketing; (3) sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications; (4) using recommendation engines to recommend to a student either of the following: (A) additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or (B) additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; and (5) responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party. § 2443e. APPLICABILITY This subchapter does not: (1) limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order; (2) limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes; (3) apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications; (4) limit service providers from providing Internet connectivity to schools or students and their families; (5) prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents if the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this subchapter; (6) impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this subchapter on those applications or software;	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
	(6) impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. § 230, to review or enforce compliance with this subchapter by third-party content providers; (7) prohibit students from downloading, exporting, transferring, saving, or maintaining their own student-created data or documents; or (8) supersede the federal Family Educational Rights and Privacy Act or rules adopted pursuant to that Act. § 2443f. ENFORCEMENT A person who violates a provision of this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.	(7) impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. § 230, to review or enforce compliance with this subchapter by third-party content providers; (8) prohibit students from downloading, exporting, transferring, saving, or maintaining their own student-created data or documents; or (9) supersede the federal Family Educational Rights and Privacy Act or rules adopted pursuant to that Act. § 2443f. ENFORCEMENT A person who violates a provision of this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.	
Security Breach Notice	Sec. 4. 9 V.S.A. § 2435(b)(6) is amended to read:	Sec. 3. 9 V.S.A. § 2435 is amended to read: § 2435. NOTICE OF SECURITY BREACHES (a) This section shall be known as the Security Breach Notice Act. (b) Notice of breach. (1) Except as ~~set forth~~ otherwise provided in subsection (d) of this section, any data collector that owns or licenses computerized personally identifiable information or login credentials ~~that includes personal information concerning a consumer~~ shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible and without unreasonable delay, but not later than 45 days after the discovery or notification, consistent with the legitimate needs of the law enforcement agency, as provided in subdivisions (3) and (4) of this subsection (b), or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system. (2) Any data collector that maintains or possesses computerized data containing personally identifiable information ~~of a consumer~~ or login credentials that the data collector does not own or license or any data collector that acts or conducts business in Vermont that maintains or possesses records or data containing personally identifiable information or login credentials that the data collector does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subdivisions (3) and (4) of this subsection (b).	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		(3) A data collector or other entity subject to this subchapter shall provide notice of a breach to the Attorney General or to the Department of Financial Regulation, as applicable, as follows: (A) A data collector or other entity regulated by the Department of Financial Regulation under Title 8 or this title shall provide notice of a breach to the Department. All other data collectors or other entities subject to this subchapter shall provide notice of a breach to the Attorney General. (B)(i) The data collector shall notify the Attorney General or the Department, as applicable, of the date of the security breach and the date of discovery of the breach and shall provide a preliminary description of the breach within 14 business days, consistent with the legitimate needs of the law enforcement agency as provided in this subdivision (3) and subdivision (4) of this subsection (b), of the data collector's discovery of the security breach or when the data collector provides notice to consumers pursuant to this section, whichever is sooner. (ii) Notwithstanding subdivision (B)(i) of this subdivision (b)(3), a data collector who, prior to the date of the breach, on a form and in a manner prescribed by the Attorney General, had sworn in writing to the Attorney General that it maintains written policies and procedures to maintain the security of personally identifiable information or login credentials and respond to a breach in a manner consistent with Vermont law shall notify the Attorney General of the date of the security breach and the date of discovery of the breach and shall provide a description of the breach prior to providing notice of the breach to consumers pursuant to subdivision (1) of this subsection (b). (iii) If the date of the breach is unknown at the time notice is sent to the Attorney General or to the Department, the data collector shall send the Attorney General or the Department the date of the breach as soon as it is known. (iv) Unless otherwise ordered by a court of this State for good cause shown, a notice provided under this subdivision (3)(B) shall not be disclosed to any person other than the Department, the authorized agent or representative of the Attorney General, a State's Attorney, or another law enforcement officer engaged in legitimate law enforcement activities without the consent of the data collector. (C)(i) When the data collector provides notice of the breach pursuant to subdivision (1) of this subsection (b), the data collector shall notify the Attorney General or the Department, as applicable, of the number of Vermont consumers	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		affected, if known to the data collector, and shall provide a copy of the notice provided to consumers under subdivision (1) of this subsection (b). (ii) The data collector may send to the Attorney General or the Department, as applicable, a second copy of the consumer notice, from which is redacted the type of personally identifiable information or login credentials that was subject to the breach, and which the Attorney General or the Department shall use for any public disclosure of the breach. (D) If a security breach is limited to an unauthorized acquisition of login credentials, a data collector is only required to provide notice of the security breach to the Attorney General or Department of Financial Regulation, as applicable, if the login credentials were acquired directly from the data collector or its agent. * * * (5) The notice to a consumer required in subdivision (1) of this subsection (b) shall be clear and conspicuous. ~~The~~ A notice to a consumer of a security breach involving personally identifiable information shall include a description of each of the following, if known to the data collector: (A) the incident in general terms; (B) the type of personally identifiable information that was subject to the security breach; (C) the general acts of the data collector to protect the personally identifiable information from further security breach; (D) a telephone number, toll-free if available, that the consumer may call for further information and assistance; (E) advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports; and (F) the approximate date of the security breach.	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
	(6) A data collector may provide notice of a security breach to a consumer by one or more of the following methods: (A) Direct notice, which may be by one of the following methods: (i) written notice mailed to the consumer's residence; (ii) electronic notice, for those consumers for whom the data collector has a valid e-mail address if: (I) the data collector's primary method of communication with the consumer is by electronic means, the electronic notice does not request or contain a hypertext link to a request that the consumer provide personal information, and the electronic notice conspicuously warns consumers not to provide personal information in response to electronic communications regarding security breaches; or (II) the notice is consistent with the provisions regarding electronic records and signatures for notices in 15 U.S.C. § 7001; or (iii) telephonic notice, provided that telephonic contact is made directly with each affected consumer and not through a prerecorded message. (B)(i) Substitute notice, if: (I) the data collector demonstrates that the lowest cost of providing notice to affected consumers pursuant to subdivision (6)(A) of this subsection among written, e-mail, or telephonic notice ~~to affected consumers~~ would exceed ~~$5,000.00~~ $10,000.00; or (II) ~~the class of affected consumers to be provided written or telephonic notice exceeds 5,000; or~~ ~~(III)~~ the data collector does not have sufficient contact information. (ii) A data collector shall provide substitute notice by: (I) conspicuously posting the notice on the data collector's website if the data collector maintains one; and (II) notifying major statewide and regional media.	(6) A data collector may provide notice of a security breach involving personally identifiable information to a consumer by one or more of the following methods: (A) Direct notice, which may be by one of the following methods: (i) written notice mailed to the consumer's residence; (ii) electronic notice, for those consumers for whom the data collector has a valid e-mail address if: (I) the data collector's primary method of communication with the consumer is by electronic means, the electronic notice does not request or contain a hypertext link to a request that the consumer provide personal information, and the electronic notice conspicuously warns consumers not to provide personal information in response to electronic communications regarding security breaches; or (II) the notice is consistent with the provisions regarding electronic records and signatures for notices in 15 U.S.C. § 7001; or (iii) telephonic notice, provided that telephonic contact is made directly with each affected consumer and not through a prerecorded message. (B)(i) Substitute notice, if: (I) the data collector demonstrates that the lowest cost of providing notice to affected consumers pursuant to subdivision (6)(A) of this subsection among written, e-mail, or telephonic notice ~~to affected consumers~~ would exceed ~~$5,000.00~~ $10,000.00; or (II) ~~the class of affected consumers to be provided written or telephonic notice exceeds 5,000; or~~ ~~(III)~~ the data collector does not have sufficient contact information. (ii) A data collector shall provide substitute notice by: (I) conspicuously posting the notice on the data collector's website if the data collector maintains one; and (II) notifying major statewide and regional media. * * *	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		(d)(1) Notice of a security breach pursuant to subsection (b) of this section is not required if the data collector establishes that misuse of ~~personal information~~ personally identifiable information or login credentials is not reasonably possible and the data collector provides notice of the determination that the misuse of the ~~personal information~~ personally identifiable information or login credentials is not reasonably possible pursuant to the requirements of this subsection (d). If the data collector establishes that misuse of the ~~personal information~~ personally identifiable information or login credentials is not reasonably possible, the data collector shall provide notice of its determination that misuse of the ~~personal information~~ personally identifiable information or login credentials is not reasonably possible and a detailed explanation for said determination to the Vermont Attorney General or to the Department of Financial Regulation in the event that the data collector is a person or entity licensed or registered with the Department under Title 8 or this title. The data collector may designate its notice and detailed explanation to the Vermont Attorney General or the Department of Financial Regulation as "trade secret" if the notice and detailed explanation meet the definition of trade secret contained in 1 V.S.A. § 317(c)(9). (2) If a data collector established that misuse of ~~personal information~~ personally identifiable information or login credentials was not reasonably possible under subdivision (1) of this subsection (d), and subsequently obtains facts indicating that misuse of the ~~personal information~~ personally identifiable information or login credentials has occurred or is occurring, the data collector shall provide notice of the security breach pursuant to subsection (b) of this section. (3) If a security breach is limited to an unauthorized acquisition of login credentials for an online account other than an e-mail account the data collector shall provide notice of the security breach to the consumer electronically or through one or more of the methods specified in subdivision (b)(6) of this section and shall advise the consumer to take steps necessary to protect the online account, including to change his or her login credentials for the account and for any other account for which the consumer uses the same login credentials. (4) If a security breach is limited to an unauthorized acquisition of login credentials for an email account: (A) the data collector shall not provide notice of the security breach through the email account; and (B) the data collector shall provide notice of the security breach-through one or more of the methods specified in subdivision (b)(6) of this section or by clear and	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		conspicuous notice delivered to the consumer online when the consumer is connected to the online account from an Internet protocol address or online location from which the data collector knows the consumer customarily accesses the account. (e) A data collector that is subject to the privacy, security, and breach notification rules adopted in 45 C.F.R. Part 164 pursuant to the federal Health Insurance Portability and Accountability Act, P.L. 104-191 (1996) is deemed to be in compliance with this subchapter if: (1) the data collector experiences a security breach that is limited to personally identifiable information specified in 2430(10)(A)(vii); and (2) the data collector provides notice to affected consumers pursuant to the requirements of the breach notification rule in 45 C.F.R. Part 164, Subpart D. (f) Any waiver of the provisions of this subchapter is contrary to public policy and is void and unenforceable. ~~(f)~~(g) Except as provided in subdivision (3) of this subsection (g), a financial institution that is subject to the following guidances, and any revisions, additions, or substitutions relating to an interagency guidance shall be exempt from this section: (1) The Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. (2) Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration. (3) A financial institution regulated by the Department of Financial Regulation that is subject to subdivision (1) or (2) of this subsection ~~(f)~~(g) shall notify the Department as soon as possible after it becomes aware of an incident involving unauthorized access to or use of personally identifiable information. ~~(g)~~(h) Enforcement. (1) With respect to all data collectors and other entities subject to this subchapter, other than a person or entity licensed or registered with the Department of Financial Regulation under Title 8 or this title, the Attorney General and State's Attorney shall have sole and full authority to investigate potential violations of this subchapter and to enforce, prosecute, obtain, and impose remedies for a violation of this subchapter or any rules or regulations made pursuant to this chapter as the	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		Attorney General and State's Attorney have under chapter 63 of this title. The Attorney General may refer the matter to the State's Attorney in an appropriate case. The Superior Courts shall have jurisdiction over any enforcement matter brought by the Attorney General or a State's Attorney under this subsection. (2) With respect to a data collector that is a person or entity licensed or registered with the Department of Financial Regulation under Title 8 or this title, the Department of Financial Regulation shall have the full authority to investigate potential violations of this subchapter and to prosecute, obtain, and impose remedies for a violation of this subchapter or any rules or regulations adopted pursuant to this subchapter, as the Department has under Title 8 or this title or any other applicable law or regulation.	
Student Privacy Review	–	Sec. 5. STUDENT PRIVACY; REVIEW; RECOMMENDATIONS The Attorney General, in consultation with the Agency of Education, shall examine the issue of student data privacy as it relates to the federal Family Educational Rights and Privacy Act and access to student data by data brokers or other entities, and shall confer with parties of interest to determine any necessary recommendations.	
Automatic Renewal Provisions	–	Sec. 6. 9 V.S.A. § 2454a is amended to read: § 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL (a) A contract between a consumer and a seller or a lessor with an initial term of one year or longer that renews for a subsequent term that is longer than one month shall not renew automatically unless: (1) the contract states clearly and conspicuously the terms of the automatic renewal provision in plain, unambiguous language in bold-face type; and (2) ~~in addition to accepting the contract, the consumer takes an affirmative action to opt in to the automatic renewal provision; and~~ ~~(3) if the consumer opts in to the automatic renewal provision,~~ the seller or lessor provides a written or electronic notice to the consumer: (A) not less than 30 days and not more than 60 days before the earliest of: (i) the automatic renewal date; (ii) the termination date; or (iii) the date by which the consumer must provide notice to cancel the contract; and	

Comparison – S.110
An act relating to data privacy and consumer protection

5/16/19 @ 9 AM

Section/ Subject	As Passed Senate	As Passed House	Notes
		(B) that includes: (i) the date the contract will terminate and a clear statement that the contract will renew automatically unless the consumer cancels the contract on or before the termination date; and (ii) the length and any additional terms of the renewal period~~;~~ ~~(iii) one or more methods by which the consumer can cancel the contract; and~~ ~~(iv) contact information for the seller or lessor~~. (b) A seller or lessor under a contract subject to subsection (a) of this section shall: (1) provide to the consumer a toll-free telephone number, electronic-mail address, a postal address if the seller or lessor directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for canceling the contract; and (2) if the consumer accepted the contract online, permit the consumer to terminate the contract exclusively online, which may include a termination e-mail formatted and provided by the seller or lessor that the consumer can send without additional information. (c) A person who violates a provision ~~of subsection (a)~~ of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title. ~~(c)~~(d) The provisions of this section do not apply to: (1) a contract between a consumer and a financial institution, as defined in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in 8 V.S.A. § 30101; or (2) a contract for insurance, as defined in 8 V.S.A. § 3301a.	
Effective Date	Sec. 5. EFFECTIVE DATE This act shall take effect on July 1, 2019.	Sec. 7. EFFECTIVE DATE (a) This section and Secs. 1–5 of this act shall take effect on July 1, 2019. (b) Sec. 6 of this act shall take effect on July 1, 2019 and supersedes contrary provisions of 2018 Acts and Resolves No. 179, Sec. 1.	