

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to  
3 which was referred Senate Bill No. 110 entitled “An act relating to privacy”  
4 respectfully reports that it has considered the same and recommends that the  
5 bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

7 Sec. 1. PRIVACY AUDIT

8 On or before January 15, 2020, the Chief Data Officer and the Chief  
9 Records Officer shall submit to the House Committees on Commerce and  
10 Economic Development and on Government Operations and to the Senate  
11 Committees on Economic Development, Housing and General Affairs and on  
12 Government Operations a report concerning the three branches of State  
13 government and the management of personally identifiable information, as  
14 defined in 9 V.S.A. § 2430(9), as well as street addresses, email addresses,  
15 telephone numbers, and demographic information, specifically:

16 (1) federal and State laws, rules, and regulations that:

17 (A) exempt personally identifiable information from public  
18 inspection and copying pursuant to 1 V.S.A. § 317;

19 (B) require personally identifiable information to be produced or  
20 acquired in the course of State government business;

1           (C) specify fees for obtaining personally identifiable information  
2           produced or acquired in the course of State government business; and

3           (D) require personally identifiable information to be shared between  
4           branches of State government or between branches and non-State entities,  
5           including municipalities;

6           (2) arrangements or agreements, whether verbal or written, between  
7           branches of State government or between branches and non-State entities,  
8           including municipalities, to share personally identifiable information; and

9           (3) recommendations for proposed legislation concerning personally  
10           identifiable information, the management of personally identifiable  
11           information, or both, by all three branches of State government.

12       Sec. 2. 9 V.S.A. § 2430(9) is amended to read:

13           (9)(A) “Personally identifiable information” means a consumer’s first  
14           name or first initial and last name in combination with any one or more of the  
15           following digital data elements, when either the name or the data elements are  
16           not encrypted or redacted or protected by another method that renders them  
17           unreadable or unusable by unauthorized persons:

18                   (i) Social Security number;

19                   (ii) motor vehicle operator’s license number or nondriver

20           identification card number;

1 (iii) financial account number or credit or debit card number, if  
2 circumstances exist in which the number could be used without additional  
3 identifying information, access codes, or passwords;

4 (iv) account passwords or personal identification numbers or other  
5 access codes for a financial account;

6 (v) unique biometric data generated from measurements or  
7 technical analysis of human body characteristics used by the owner or licensee  
8 of the data to identify or authenticate the consumer, such as a fingerprint, retina  
9 or iris image, or other unique physical representation or digital representation  
10 of biometric data;

11 (vi) genetic information;

12 (vii) health information;

13 (viii) login credentials, including a username or password; and

14 (ix) a passport number.

15 (B) “Personally identifiable information” does not mean publicly  
16 available information that is lawfully made available to the general public from  
17 federal, State, or local government records.

18 Sec. 3. 9 V.S.A. chapter 62, subchapter 3a is added to read:

19 Subchapter 3A: Student Privacy

20 § 2443A. DEFINITIONS

21 As used in this subchapter:

1           (1) “Covered information” means personal information or material, or  
2           information that is linked to personal information or material, in any media or  
3           format that is:

4                   (A)(i) not publicly available; or

5                           (ii) made publicly available pursuant to the federal Family  
6           Educational and Rights and Privacy Act; and

7                   (B)(i) created by or provided to an operator by a student or the  
8           student’s parent or legal guardian in the course of the student’s, parent’s, or  
9           legal guardian’s use of the operator’s site, service, or application for K-12  
10           school purposes;

11                   (ii) created by or provided to an operator by an employee or agent  
12           of a school or school district for K-12 school purposes; or

13                   (iii) gathered by an operator through the operation of its site,  
14           service, or application for K-12 school purposes and personally identifies a  
15           student, including information in the student’s education record or electronic  
16           mail; first and last name; home address; telephone number; electronic mail  
17           address or other information that allows physical or online contact; discipline  
18           records; test results; special education data; juvenile dependency records;  
19           grades; evaluations; criminal records; medical records; health records; social  
20           security number; biometric information; disability status; socioeconomic  
21           information; food purchases; political affiliations; religious information; text

1 messages; documents; student identifiers; search activity; photos; voice  
2 recordings; or, geolocation information.

3 (2) “K-12 school purposes” means purposes that are directed by or that  
4 customarily take place at the direction of a school, teacher, or school district;  
5 aid in the administration of school activities, including instruction in the  
6 classroom or at home, administrative activities, and collaboration between  
7 students, school personnel, or parents; or are otherwise for the use and benefit  
8 of the school.

9 (3) “Operator” means, to the extent that an entity is operating in this  
10 capacity, the operator of an Internet website, online service, online application,  
11 or mobile application with actual knowledge that the site, service, or  
12 application is used primarily for K-12 school purposes and was designed and  
13 marketed for K-12 school purposes.

14 (4) “School” means:

15 (A) a public or private preschool, public kindergarten, elementary or  
16 secondary educational institution, vocational school, special educational  
17 agency or institution; and

18 (B) a person, agency, or institution that maintains school student  
19 records from more than one of the entities described in subdivision (6)(A) of  
20 this section.

1           (5) “Targeted advertising” means presenting advertisements to a student  
2           where the advertisement is selected based on information obtained or inferred  
3           over time from that student’s online behavior, usage of applications, or covered  
4           information. The term does not include advertising to a student at an online  
5           location based upon that student’s current visit to that location or in response to  
6           that student’s request for information or feedback, without the retention of that  
7           student’s online activities or requests over time for the purpose in whole or in  
8           part of targeting subsequent ads.

9           § 2443B. OPERATOR PROHIBITIONS

10           (a) An operator shall not knowingly do any of the following with respect to  
11           its site, service, or application:

12           (1) Engage in targeted advertising on the operator’s site, service, or  
13           application or target advertising on any other site, service, or application if the  
14           targeting of the advertising is based on any information, including covered  
15           information and persistent unique identifiers, that the operator has acquired  
16           because of the use of that operator’s site, service, or application for K-12  
17           school purposes;

18           (2) Use information, including a persistent unique identifier, that is  
19           created or gathered by the operator’s site, service, or application to amass a  
20           profile about a student, except in furtherance of K-12 school purposes. “Amass  
21           a profile” does not include the collection and retention of account information

1 that remains under the control of the student, the student’s parent or legal  
2 guardian, or the school.

3 (3) Sell, barter, or rent a student’s information, including covered  
4 information. This subdivision (3) does not apply to the purchase, merger, or  
5 other type of acquisition of an operator by another entity if the operator or  
6 successor entity complies with this subchapter regarding previously acquired  
7 student information.

8 (4) Except as otherwise provided in section 2443d of this title, disclose  
9 covered information, unless the disclosure is made for one or more of the  
10 following purposes and is proportionate to the identifiable information  
11 necessary to accomplish the purpose:

12 (A) to further the K-12 purposes of the site, service, or application,  
13 provided:

14 (i) the recipient of the covered information does not further  
15 disclose the information except to allow or improve operability and  
16 functionality of the operator’s site, service, or application; and

17 (ii) the covered information is not used for a purpose inconsistent  
18 with this subchapter;

19 (B) to ensure legal and regulatory compliance or take precautions  
20 against liability;

21 (C) to respond to judicial process;

1           (D) to protect the safety or integrity of users of the site or others or  
2           the security of the site, service, or application;

3           (E) for a school, educational, or employment purpose requested by  
4           the student or the student’s parent or legal guardian, provided that the  
5           information is not used or further disclosed for any other purpose; or

6           (F) to a third party if the operator contractually prohibits the third  
7           party from using any covered information for any purpose other than providing  
8           the contracted service to or on behalf of the operator, prohibits the third party  
9           from disclosing any covered information provided by the operator to  
10           subsequent third parties, and requires the third party to implement and  
11           maintain reasonable security procedures and practices.

12           (b) This section does not prohibit an operator’s use of information for  
13           maintaining, developing, supporting, improving, or diagnosing the operator’s  
14           site, service, or application.

15           § 2443C. OPERATOR DUTIES

16           An operator shall:

17           (1) implement and maintain reasonable security procedures and  
18           practices appropriate to the nature of the covered information and designed to  
19           protect that covered information from unauthorized access, destruction, use,  
20           modification, or disclosure;



1           (2) delete, within a reasonable time period and to the extent practicable,  
2           a student’s covered information if the school or school district requests  
3           deletion of covered information under the control of the school or school  
4           district, unless a student or his or her parent or legal guardian consents to the  
5           maintenance of the covered information; and

6           (3) publicly disclose and provide the school with material information  
7           about its collection, use, and disclosure of covered information, including  
8           publishing a term of service agreement, privacy policy, or similar document.

9           § 2443D. PERMISSIVE USE OR DISCLOSURE

10           An operator may use or disclose covered information of a student under the  
11           following circumstances:

12           (1) if other provisions of federal or State law require the operator to  
13           disclose the information and the operator complies with the requirements of  
14           federal and State law in protecting and disclosing that information;

15           (2) for legitimate research purposes as required by State or federal law  
16           and subject to the restrictions under applicable State and federal law or as  
17           allowed by State or federal law and under the direction of a school, school  
18           district, or the State Board of Education if the covered information is not used  
19           for advertising or to amass a profile on the student for purposes other than for  
20           K-12 school purposes; and

1           (3) disclosure to a State or local educational agency, including schools  
2           and school districts, for K-12 school purposes as permitted by State or federal  
3           law.

4           § 2443E. OPERATOR ACTIONS THAT ARE NOT PROHIBITED.

5           This subchapter does not prohibit an operator from doing any of the  
6           following:

7           (1) using covered information to improve educational products if that  
8           information is not associated with an identified student within the operator’s  
9           site, service, or application or other sites, services, or applications owned by  
10          the operator;

11          (2) using covered information that is not associated with an identified  
12          student to demonstrate the effectiveness of the operator’s products or services,  
13          including in their marketing;

14          (3) sharing covered information that is not associated with an identified  
15          student for the development and improvement of educational sites, services, or  
16          applications;

17          (4) using recommendation engines to recommend to a student either of  
18          the following:

19                (A) additional content relating to an educational, other learning, or  
20                employment opportunity purpose within an online site, service, or application

1 if the recommendation is not determined in whole or in part by payment or  
2 other consideration from a third party; or

3 (B) additional services relating to an educational, other learning, or  
4 employment opportunity purpose within an online site, service, or application  
5 if the recommendation is not determined in whole or in part by payment or  
6 other consideration from a third party; and

7 (5) responding to a student’s request for information or for feedback  
8 without the information or response being determined in whole or in part by  
9 payment or other consideration from a third party.

10 § 2443F. APPLICABILITY

11 This subchapter does not:

12 (1) limit the authority of a law enforcement agency to obtain any content  
13 or information from an operator as authorized by law or under a court order;

14 (2) limit the ability of an operator to use student data, including covered  
15 information, for adaptive learning or customized student learning purposes;

16 (3) apply to general audience Internet websites, general audience online  
17 services, general audience online applications, or general audience mobile  
18 applications, even if login credentials created for an operator’s site, service, or  
19 application may be used to access those general audience sites, services, or  
20 applications;

1           (4) limit service providers from providing Internet connectivity to  
2           schools or students and their families;

3           (5) prohibit an operator of an Internet website, online service, online  
4           application, or mobile application from marketing educational products  
5           directly to parents if the marketing did not result from the use of covered  
6           information obtained by the operator through the provision of services covered  
7           under this subchapter;

8           (6) impose a duty upon a provider of an electronic store, gateway,  
9           marketplace, or other means of purchasing or downloading software or  
10           applications to review or enforce compliance with this subchapter on those  
11           applications or software;

12           (7) impose a duty upon a provider of an interactive computer service, as  
13           defined in 47 U.S.C. § 230, to review or enforce compliance with this  
14           subchapter by third-party content providers;

15           (8) prohibit students from downloading, exporting, transferring, saving,  
16           or maintaining their own student-created data or documents; or

17           (9) supersede the federal Family Educational Rights and Privacy Act or  
18           rules adopted pursuant to that Act.

19           § 2443G. ENFORCEMENT

20           A person who violates a provision of this subchapter commits an unfair and  
21           deceptive act in commerce in violation of section 2453 of this title.

1 Sec. 4. 9 V.S.A. § 2435(b)(6) is amended to read:

2 (6) A data collector may provide notice of a security breach to a  
3 consumer by one or more of the following methods:

4 (A) Direct notice, which may be by one of the following methods:

5 (i) written notice mailed to the consumer's residence;

6 (ii) electronic notice, for those consumers for whom the data  
7 collector has a valid e-mail address if:

8 (I) the data collector's primary method of communication with  
9 the consumer is by electronic means, the electronic notice does not request or  
10 contain a hypertext link to a request that the consumer provide personal  
11 information, and the electronic notice conspicuously warns consumers not to  
12 provide personal information in response to electronic communications  
13 regarding security breaches; or

14 (II) the notice is consistent with the provisions regarding  
15 electronic records and signatures for notices in 15 U.S.C. § 7001; or

16 (iii) telephonic notice, provided that telephonic contact is made  
17 directly with each affected consumer and not through a prerecorded message.

18 (B)(i) Substitute notice, if:

19 (I) the data collector demonstrates that the lowest cost of  
20 providing notice to affected consumers pursuant to subdivision (6)(A) of this

1 ~~subsection among written, email, or telephonic notice to affected consumers~~  
2 would exceed ~~\$5,000.00~~ \$10,000.00; or

3 ~~(II) the class of affected consumers to be provided written or~~  
4 ~~telephonic notice exceeds 5,000; or~~

5 ~~(III) the data collector does not have sufficient contact~~  
6 information.

7 (ii) A data collector shall provide substitute notice by:

8 (I) conspicuously posting the notice on the data collector's  
9 website if the data collector maintains one; and

10 (II) notifying major statewide and regional media.

11 Sec. 5. EFFECTIVE DATE

12 This act shall take effect on July 1, 2019.

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20 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE