

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 Agency of Digital Services shall
9 commence a privacy audit and submit to the House Committees on Commerce
10 and 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 how the State of Vermont
13 acquires and uses citizen data, including:

14 (1) which State government actors collect citizen data;

15 (2) what data they collect and whether it is publicly available;

16 (3) how they use the data;

17 (4) to whom they convey the data;

18 (5) the purposes for which the recipients use the data;

19 (6) revenue impacts; and

20 (7) a survey of federal and State statutes and rules that require data
21 collection.

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

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

7 (i) Social Security number;

8 (ii) motor vehicle operator’s license number or nondriver
9 identification card number;

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

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

15 (v) biometric information, which includes physiological,
16 biological, or behavioral characteristics that can be used, singly or in
17 combination with each other or with other identifying data, to establish
18 individual identity, including:

19 (I) imagery of the iris, retina, fingerprint, face, hand, palm, or
20 vein patterns, and voice recordings, from which an identifier template can be
21 extracted; and

1 (II) keystroke patterns or rhythms and gait patterns or rhythms;

2 and

3 (III) sleep, health, or exercise data that contain identifying

4 information;

5 (vi) genetic information;

6 (vii) health information;

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

8 (ix) a passport number.

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

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

13 Subchapter 3A: Student Privacy

14 § 2443A. DEFINITIONS

15 As used in this subchapter:

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

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

20 (ii) made publicly available pursuant to the federal Family

21 Educational and Rights and Privacy Act; and

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

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

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

18 (2) “K-12 school purposes” means purposes that are directed by or that
19 customarily take place at the direction of a school, teacher, or school district;
20 aid in the administration of school activities, including instruction in the
21 classroom or at home, administrative activities, and collaboration between

1 students, school personnel, or parents; or are otherwise for the use and benefit
2 of the school.

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

8 (4) “School” means:

9 (A) a public or private preschool, public kindergarten, elementary or
10 secondary educational institution, vocational school, special educational
11 agency or institution; and

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

15 (5) “Targeted advertising” means presenting advertisements to a student
16 where the advertisement is selected based on information obtained or inferred
17 over time from that student’s online behavior, usage of applications, or covered
18 information. The term does not include advertising to a student at an online
19 location based upon that student’s current visit to that location or in response to
20 that student’s request for information or feedback, without the retention of that

1 student’s online activities or requests over time for the purpose in whole or in
2 part of targeting subsequent ads.

3 § 2443B. OPERATOR PROHIBITIONS

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

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

12 (2) Use information, including a persistent unique identifier, that is
13 created or gathered by the operator’s site, service, or application to amass a
14 profile about a student, except in furtherance of K-12 school purposes. “Amass
15 a profile” does not include the collection and retention of account information
16 that remains under the control of the student, the student’s parent or legal
17 guardian, or the school.

18 (3) Sell, barter, or rent a student’s information, including covered
19 information. This subdivision (3) does not apply to the purchase, merger, or
20 other type of acquisition of an operator by another entity if the operator or

1 successor entity complies with this subchapter regarding previously acquired
2 student information.

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

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

9 (i) the recipient of the covered information does not further
10 disclose the information except to allow or improve operability and
11 functionality of the operator's site, service, or application; and

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

14 (B) to ensure legal and regulatory compliance or take precautions
15 against liability;

16 (C) to respond to judicial process;

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

19 (E) for a school, educational, or employment purpose requested by
20 the student or the student's parent or legal guardian, provided that the
21 information is not used or further disclosed for any other purpose; or

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

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

10 § 2443C. OPERATOR DUTIES

11 An operator shall:

12 (1) implement and maintain reasonable security procedures and
13 practices appropriate to the nature of the covered information and designed to
14 protect that covered information from unauthorized access, destruction, use,
15 modification, or disclosure;

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

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

4 § 2443D. PERMISSIVE USE OR DISCLOSURE

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

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

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

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

19 § 2443E. OPERATOR ACTIONS THAT ARE NOT PROHIBITED.

20 This subchapter does not prohibit an operator from doing any of the
21 following:

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

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

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

11 (4) using recommendation engines to recommend to a student either of
12 the following:

13 (A) additional content relating to an educational, other learning, or
14 employment opportunity purpose within an online site, service, or application
15 if the recommendation is not determined in whole or in part by payment or
16 other consideration from a third party; or

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

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

4 § 2443F. APPLICABILITY

5 This subchapter does not:

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

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

10 (3) apply to general audience Internet websites, general audience online
11 services, general audience online applications, or general audience mobile
12 applications, even if login credentials created for an operator’s site, service, or
13 application may be used to access those general audience sites, services, or
14 applications;

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

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

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

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

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

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

12 § 2443G. ENFORCEMENT

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

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

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

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

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

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

1 (I) the data collector’s primary method of communication with
2 the consumer is by electronic means, the electronic notice does not request or
3 contain a hypertext link to a request that the consumer provide personal
4 information, and the electronic notice conspicuously warns consumers not to
5 provide personal information in response to electronic communications
6 regarding security breaches; or

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

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

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

12 (I) the data collector demonstrates that the cost of providing
13 written, email, or telephonic notice to affected consumers would exceed
14 \$5,000.00 \$10,000.00; or

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

17 ~~(III) the data collector does not have sufficient contact~~
18 ~~information.~~

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

20 (I) conspicuously posting the notice on the data collector’s
21 website if the data collector maintains one; and

1 (II) notifying major statewide and regional media.

2 Sec. 5. EFFECTIVE DATE

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

4

5

6

7

8

9

10

11 (Committee vote: _____)

12

13

Senator _____

14

FOR THE COMMITTEE