

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) unique biometric data generated from measurements or
16 technical analysis of human body characteristics used by the owner or licensee
17 of the data to identify or authenticate the consumer, such as a fingerprint, retina
18 or iris image, or other unique physical representation or digital representation
19 of biometric data;

20 (vi) genetic information;

21 (vii) health information;

- 1 (viii) login credentials, including a username or password; and
2 (ix) a passport number.

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

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

7 Subchapter 3A: Student Privacy

8 § 2443A. DEFINITIONS

9 As used in this subchapter:

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

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

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

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

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

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

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

18 (3) “Operator” means, to the extent that an entity is operating in this
19 capacity, the operator of an Internet website, online service, online application,
20 or mobile application with actual knowledge that the site, service, or

1 application is used primarily for K-12 school purposes and was designed and
2 marketed for K-12 school purposes.

3 (4) “School” means:

4 (A) a public or private preschool, public kindergarten, elementary or
5 secondary educational institution, vocational school, special educational
6 agency or institution; and

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

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

18 § 2443B. OPERATOR PROHIBITIONS

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

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

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

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

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

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

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

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

8 (B) to ensure legal and regulatory compliance or take precautions
9 against liability;

10 (C) to respond to judicial process;

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

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

16 (F) to a third party if the operator contractually prohibits the third
17 party from using any covered information for any purpose other than providing
18 the contracted service to or on behalf of the operator, prohibits the third party
19 from disclosing any covered information provided by the operator to
20 subsequent third parties, and requires the third party to implement and
21 maintain reasonable security procedures and practices.

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

4 § 2443C. OPERATOR DUTIES

5 An operator shall:

6 (1) implement and maintain reasonable security procedures and
7 practices appropriate to the nature of the covered information and designed to
8 protect that covered information from unauthorized access, destruction, use,
9 modification, or disclosure;

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

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

18 § 2443D. PERMISSIVE USE OR DISCLOSURE

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

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

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

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

13 § 2443E. OPERATOR ACTIONS THAT ARE NOT PROHIBITED.

14 This subchapter does not prohibit an operator from doing any of the
15 following:

16 (1) using covered information to improve educational products if that
17 information is not associated with an identified student within the operator's
18 site, service, or application or other sites, services, or applications owned by
19 the operator;

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

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

7 (4) using recommendation engines to recommend to a student either of
8 the following:

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

13 (B) additional services 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; and

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

20 § 2443F. APPLICABILITY

21 This subchapter does not:

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

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

5 (3) apply to general audience Internet websites, general audience online
6 services, general audience online applications, or general audience mobile
7 applications, even if login credentials created for an operator’s site, service, or
8 application may be used to access those general audience sites, services, or
9 applications;

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

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

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

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

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

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

8 § 2443G. ENFORCEMENT

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

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

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

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

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

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

18 (I) the data collector's primary method of communication with
19 the consumer is by electronic means, the electronic notice does not request or
20 contain a hypertext link to a request that the consumer provide personal
21 information, and the electronic notice conspicuously warns consumers not to

1 provide personal information in response to electronic communications
2 regarding security breaches; or

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

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

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

8 (I) the data collector demonstrates that the lowest cost of
9 providing notice to affected consumers pursuant to subdivision (6)(A) of this
10 subsection among written, email, or telephonic notice to affected consumers
11 would exceed \$5,000.00 \$10,000.00; or

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

14 ~~(III) the data collector does not have sufficient contact~~
15 ~~information.~~

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

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

19 (II) notifying major statewide and regional media.

20 Sec. 5. EFFECTIVE DATE

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

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE