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H.712

Introduced by Representatives Priestley of Bradford, Anthony of Barre City,
Arsenault of Williston, Austin of Colchester, Berbeco of
Winooski, Buss of Woodstock, Carpenter of Hyde Park, Casey
of Montpelier, Chase of Chester, Christie of Hartford, Cole of
Hartford, Dodge of Essex, Elder of Starksboro, Farlice-Rubio of
Barnet, Graning of Jericho, Hango of Berkshire, Headrick of
Burlington, Howard of Rutland City, Hyman of South
Burlington, Jerome of Brandon, Mrowicki of Putney,
Mulvaney-Stanak of Burlington, Nugent of South Burlington,
Ode of Burlington, Sabilia of Dover, Sims of Craftsbury,
Stebbins of Burlington, and Templeman of Brownington

Referred to Committee on

Date:

Subject: Commerce and trade; protection of personal information; data privacy

Statement of purpose of bill as introduced: This bill proposes to require that
any covered entity that develops and provides online services, products, or
features that children are reasonably likely to access must consider the best
interests of children when designing, developing, and providing that online
service, product, or feature.

1 An act relating to age-appropriate design code

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

3 Sec. 1. 9 V.S.A. chapter 62, subchapter 6 is added to read:

4 Subchapter 6. Age-Appropriate Design Code

5 § 2449a. DEFINITIONS

6 As used in this subchapter:

7 (1) “Affiliate” means any person that, directly or indirectly, controls, is
8 controlled by, or is under common control with another person. As used in this
9 subdivision, “Control” means ownership of, or the power to vote, more than 50
10 percent of the outstanding shares of any class of voting security of a covered
11 entity; control in any manner over the election of a majority of the directors or
12 of individuals exercising similar functions; or the power to exercise a
13 controlling influence over the management of a covered entity.

14 (2) “Age-appropriate” means a recognition of the distinct needs and
15 diversities of children at different age ranges. In order to help support the
16 design of online services, products, and features, covered entities should take
17 into account the unique needs and diversities of different age ranges, including
18 the following developmental stages: 0 to 5 years of age or “preliterate and
19 early literacy”; 6 to 9 years of age or “core primary school years”; 10 to 12
20 years of age or “transition years”; 13 to 15 years of age or “early teens”; and
21 16 to 17 years or age or “approaching adulthood.”

1 (3) “Child” means an individual who is under 18 years of age.

2 (4) “Collect” means buying, renting, gathering, obtaining, receiving, or
3 accessing any personal data pertaining to a consumer by any means. This
4 includes receiving data from the consumer, either actively or passively, or by
5 observing the consumer’s behavior.

6 (5) “Consumer” means a natural person who is a Vermont resident,
7 however identified, including by any unique identifier.

8 (6) “Covered entity” means:

9 (A) A sole proprietorship, partnership, limited liability company,
10 corporation, association, or other legal entity that is organized or operated for
11 the profit or financial benefit of its shareholders or other owners.

12 (B) An affiliate of a covered entity that shares common branding
13 with the covered entity. As used in this subdivision (6)(B), “common
14 branding” means a shared name, servicemark, or trademark that the average
15 consumer would understand that two or more entities are commonly owned.
16 For purposes of this subchapter, for a joint venture or partnership composed of
17 covered entities in which each covered entity has at least a 40 percent interest,
18 the joint venture or partnership and each covered entity that composes the joint
19 venture or partnership shall separately be considered a single covered entity,
20 except that personal data in the possession of each covered entity and disclosed

1 to the joint venture or partnership must not be shared with the other covered
2 entity.

3 (7) “Dark pattern” means a user interface designed or manipulated with
4 the purpose of subverting or impairing user autonomy, decision making, or
5 choice.

6 (8) “Default” means a preselected option adopted by the covered entity
7 for the online service, product, or feature.

8 (9) “Deidentified” means data that cannot reasonably be used to infer
9 information about, or otherwise be linked to, an identified or identifiable
10 consumer, or a device linked to such consumer, provided that the covered
11 entity that possesses the data:

12 (A) takes reasonable measures to ensure that the data cannot be
13 associated with a consumer;

14 (B) publicly commits to maintain and use the data only in a
15 deidentified fashion and not attempt to re-identify the data; and

16 (C) contractually obligates any recipients of the data to comply with
17 all provisions of this subchapter.

18 (10) “Derived data” means data that is created by the derivation of
19 information, data, assumptions, correlations, inferences, predictions, or
20 conclusions from facts, evidence, or another source of information or data
21 about a child or a child’s device.

1 (11) “Online service, product, or feature” does not mean any of the
2 following:

3 (A) telecommunications service, as defined in 47 U.S.C. § 153;

4 (B) a broadband internet access service as defined in 3 V.S.A.
5 § 348(d); or

6 (C) the sale, delivery, or use of a physical product.

7 (12) “Personal data” means any information, including derived data, that
8 is linked or reasonably linkable, alone or in combination with other
9 information, to an identified or identifiable consumer. Personal data does not
10 include deidentified data or publicly available information. As used in this
11 subdivision, “publicly available information” means information that:

12 (A) is lawfully made available from federal, state, or local
13 government records or widely distributed media; and

14 (B) a covered entity has a reasonable basis to believe a consumer has
15 lawfully made available to the public.

16 (13) “Precise geolocation” means any data that is derived from a device
17 and that is used or intended to be used to locate a consumer within a
18 geographic area that is equal to or less than the area of a circle with a radius of
19 1,850 feet.

20 (14) “Process” or “processing” means to conduct or direct any operation
21 or set of operations performed, whether by manual or automated means, on

1 personal data or on sets of personal data, such as the collection, use, storage,
2 disclosure, analysis, deletion, modification, or otherwise handling of personal
3 data.

4 (15) “Product experimentation results” means the data that companies
5 collect to understand the experimental impact of their products.

6 (16) “Profile” or “profiling” means any form of automated processing of
7 personal data to evaluate, analyze, or predict personal aspects concerning an
8 identified or identifiable consumer’s economic situation, health, personal
9 preferences, interests, reliability, behavior, location, or movements.

10 “Profiling” does not include the processing of information that does not result
11 in an assessment or judgment about a consumer.

12 (17) “Reasonably likely to be accessed” means an online service,
13 product, or feature that is likely to be accessed by children based on any of the
14 following indicators:

15 (A) the online service, product, or feature is directed to children, as
16 defined by the Children’s Online Privacy Protection Act, 15 U.S.C., §§ 6501–
17 6506 and the Federal Trade Commission rules implementing that Act;

18 (B) the online service, product, or feature is determined, based on
19 competent and reliable evidence regarding audience composition, to be
20 routinely accessed by a significant number of children;

1 (C) the online service, product, or feature contains advertisements
2 marketed to children;

3 (D) the online service, product, or feature is substantially similar or
4 the same as an online service, product, or feature subject to subdivision (B) of
5 this subdivision (17);

6 (E) a significant number of the audience of the online service,
7 product, or feature is determined, based on internal company research, to be
8 children; or

9 (F) the covered entity knew or should have known that a significant
10 number of users are children, provided that, in making this assessment, the
11 covered entity shall not collect or process any personal data that is not
12 reasonably necessary to provide an online service, product, or feature with
13 which a child is actively and knowingly engaged.

14 (18) “Sale,” “sell,” or “sold” means the exchange of personal data for
15 monetary or other valuable consideration by a covered entity to a third party.

16 It does not include the following:

17 (A) the disclosure of personal data to a third party who processes the
18 personal data on behalf of the covered entity;

19 (B) the disclosure of personal data to a third party with whom the
20 consumer has a direct relationship for purposes of providing a product or
21 service requested by the consumer;

1 (C) the disclosure or transfer of personal data to an affiliate of the
2 covered entity;

3 (D) the disclosure of data that the consumer intentionally made
4 available to the general public via a channel of mass media and did not restrict
5 to a specific audience; or

6 (E) the disclosure or transfer of personal data to a third party as an
7 asset that is part of a completed or proposed merger, acquisition, bankruptcy,
8 or other transaction in which the third party assumes control of all or part of
9 the covered entity's assets.

10 (19) "Share" means sharing, renting, releasing, disclosing,
11 disseminating, making available, transferring, or otherwise communicating
12 orally, in writing, or by electronic or other means a consumer's personal data
13 by the covered entity to a third party for cross-context behavioral advertising,
14 whether or not for monetary or other valuable consideration, including
15 transactions between a covered entity and a third party for cross-context
16 behavioral advertising for the benefit of a covered entity in which no money is
17 exchanged.

18 (20) "Third party" means a natural or legal person, public authority,
19 agency, or body other than the consumer or the covered entity.

1 § 2449b. SCOPE; EXCLUSIONS

2 (a) A person is considered a covered entity for the purposes of this
3 subchapter if it:

4 (1) collects consumers' personal data or has individuals' personal data
5 collected on its behalf by a third party;

6 (2) alone or jointly with others, determines the purposes and means of
7 the processing of individuals' personal data;

8 (3) operates in Vermont; and

9 (4) satisfies one or more of the following thresholds:

10 (A) has annual gross revenues in excess of \$25,000,000.00, as
11 adjusted every odd-numbered year to reflect the Consumer Price Index;

12 (B) alone or in combination, annually buys, receives for the covered
13 entity's commercial purposes, sells, or shares for commercial purposes, alone
14 or in combination, the personal data of 50,000 or more individuals, households,
15 or devices; or

16 (C) derives 50 percent or more of its annual revenues from selling
17 individuals' personal data.

18 (b) This subchapter does not apply to:

19 (1) protected health information that is collected by a covered entity or
20 covered entity associate governed by the privacy, security, and breach

1 notification rules issued by the U.S. Department of Health and Human
2 Services, 45 C.F.R. Parts 160 and 164;

3 (2) a covered entity governed by the privacy, security, and breach
4 notification rules issued by the U.S. Department of Health and Human
5 Services, 45 C.F.R. Parts 160 and 164, to the extent the provider or covered
6 entity maintains patient information in the same manner as medical
7 information or protected health information as described in subdivision (1) of
8 this subsection; and

9 (3) information collected as part of a clinical trial subject to the Federal
10 Policy for the Protection of Human Subjects, also known as the Common Rule,
11 pursuant to good clinical practice guidelines issued by the International
12 Council for Harmonisation of Technical Requirements for Pharmaceuticals for
13 Human Use or pursuant to human subject protection requirements of the U.S.
14 Food and Drug Administration.

15 § 2449c. BEST INTERESTS OF CHILDREN

16 (a) All covered entities that process children’s data in any capacity shall do
17 so in a manner consistent with the best interests of children.

18 (b) As used in this section, “a manner consistent with the best interests of
19 children” means the use of the personal data of a child or the design of an
20 online service, product, or feature that:

21 (1) will not benefit the covered entity to the detriment of the child; and

1 (2) will not result in:

2 (A) reasonably foreseeable and material physical or financial harm to
3 the child;

4 (B) reasonably foreseeable and severe psychological or emotional
5 harm to the child;

6 (C) a highly offensive intrusion on the reasonable privacy
7 expectations of the child; or

8 (D) discrimination against the child based upon race, color, religion,
9 national origin, disability, sex, or sexual orientation.

10 § 2449d. COVERED ENTITY OBLIGATIONS

11 (a) A covered entity subject to this subchapter must:

12 (1) Complete a data protection impact assessment for an online service,
13 product, or feature that is reasonably likely to be accessed by children and
14 maintain documentation of the data protection impact assessment for as long as
15 the online service, product, or feature is reasonably likely to be accessed by
16 children. A data protection impact assessment is a systematic survey to assess
17 compliance with the duty to act in the best interests of children and shall
18 include a plan to ensure that all online products, services, or features provided
19 by the covered entity are designed and offered in a manner consistent with the
20 best interests of children reasonably likely to access the online product,
21 service, or feature. Such a plan shall include a description of steps the covered

1 entity has taken and will take to comply with the duty to act in the best
2 interests of children.

3 (2) Review and modify all data protection impact assessments as
4 necessary to account for material changes to processing pertaining to the online
5 service, product, or feature within 90 days after such material changes.

6 (3) Within five days after receipt of a written request by the Attorney
7 General, provide to the Attorney General a list of all data protection impact
8 assessments the covered entity has completed.

9 (4) Within seven days after receipt of a written request by the Attorney
10 General, provide the Attorney General with a copy of a data protection impact
11 assessment, provided that the Attorney General may, in the Attorney General's
12 discretion, extend beyond seven days the amount of time allowed for a covered
13 entity to produce a data protection impact assessment.

14 (5) Configure all default privacy settings provided to children by the
15 online service, product, or feature to settings that offer a high level of privacy,
16 unless the covered entity can demonstrate a compelling reason that a different
17 setting is in the best interests of children.

18 (6) Provide any privacy information, terms of service, policies, and
19 community standards concisely, prominently, and using clear language suited
20 to the age of children reasonably likely to access that online service, product,
21 or feature.

1 (7) Provide prominent, accessible, and responsive tools to help children
2 in a form or manner required by the General Attorney, or, if applicable, their
3 parents or guardians, exercise their privacy rights and report concerns.

4 (b) A data protection impact assessment required by this subchapter must:

5 (1) identify the purpose of the online service, product, or feature;

6 (2) disclose how it uses children’s personal data; and

7 (3) determine whether the online service, product, or feature is designed
8 and offered in an age-appropriate manner consistent with the best interests of
9 children that are reasonably likely to access the online product by examining:

10 (A) whether the design of the online service, product, or feature
11 could lead to children experiencing or being targeted by contacts on the online
12 service, product, or feature that would result in reasonably foreseeable and
13 material physical or financial harm to the child; reasonably foreseeable and
14 severe psychological or emotional harm to the child; a highly offensive
15 intrusion on the reasonable privacy expectations of the child; or discrimination
16 against the child based upon race, color, religion, national origin, disability,
17 sex, or sexual orientation;

18 (B) whether the design of the online service, product, or feature could
19 permit children to witness, participate in, or be subject to conduct on the online
20 service, product, or feature that would result in reasonably foreseeable and
21 material physical or financial harm to the child; reasonably foreseeable and

1 severe psychological or emotional harm to the child; a highly offensive
2 intrusion on the reasonable privacy expectations of the child; or discrimination
3 against the child based upon race, color, religion, national origin, disability,
4 sex, or sexual orientation;

5 (C) whether the design of the online service, product, or feature are
6 reasonably expected to allow children to be party to or exploited by a contract
7 on the online service, product, or feature that would result in reasonably
8 foreseeable and material physical or financial harm to the child; reasonably
9 foreseeable and severe psychological or emotional harm to the child; a highly
10 offensive intrusion on the reasonable privacy expectations of the child; or
11 discrimination against the child based upon race, color, religion, national
12 origin, disability, sex, or sexual orientation;

13 (D) whether algorithms used by the product, service, or feature could
14 harm children would result in reasonably foreseeable and material physical or
15 financial harm to the child; reasonably foreseeable and severe psychological or
16 emotional harm to the child; a highly offensive intrusion on the reasonable
17 privacy expectations of the child; or discrimination against the child based
18 upon race, color, religion, national origin, disability, sex, or sexual orientation;

19 (E) whether targeted advertising systems used by the online service,
20 product, or feature would result in reasonably foreseeable and material
21 physical or financial harm to the child; reasonably foreseeable and severe

1 psychological or emotional harm to the child; a highly offensive intrusion on
2 the reasonable privacy expectations of the child; or discrimination against the
3 child based upon race, color, religion, national origin, disability, sex, or sexual
4 orientation;

5 (F) whether the online service, product, or feature uses system design
6 features to increase, sustain, or extend use of the online service, product, or
7 feature by children, including the automatic playing of media, rewards for time
8 spent, and notifications, that would result in reasonably foreseeable and
9 material physical or financial harm to the child; reasonably foreseeable and
10 severe psychological or emotional harm to the child; a highly offensive
11 intrusion on the reasonable privacy expectations of the child; or discrimination
12 against the child based upon race, color, religion, national origin, disability,
13 sex, or sexual orientation;

14 (G) whether, how, and for what purpose the online product, service,
15 or feature collects or processes personal data of children and whether those
16 practices would result in reasonably foreseeable and material physical or
17 financial harm to the child; reasonably foreseeable and severe psychological or
18 emotional harm to the child; a highly offensive intrusion on the reasonable
19 privacy expectations of the child; or discrimination against the child based
20 upon race, color, religion, national origin, disability, sex, or sexual orientation;
21 and

1 (H) whether and how product experimentation results for the online
2 product, service, or feature reveal data management or design practices that
3 would result in reasonably foreseeable and material physical or financial harm
4 to the child; reasonably foreseeable and extreme psychological or emotional
5 harm to the child; a highly offensive intrusion on the reasonable privacy
6 expectations of the child; or discrimination against the child based upon race,
7 color, religion, national origin, disability, sex, or sexual orientation.

8 (c) A data protection impact assessment conducted by a covered entity for
9 the purpose of compliance with any other law complies with this section if the
10 data protection impact assessment meets the requirements of this subchapter.

11 (d) A single data protection impact assessment may contain multiple
12 similar processing operations that present similar risk only if each relevant
13 online service, product, or feature is addressed separately.

14 (e) A covered entity may process only the personal data reasonably
15 necessary to provide an online service, product, or feature with which a child is
16 actively and knowingly engaged to estimate age.

17 (f) A data protection impact assessment created pursuant to this section is
18 exempt from public disclosure pursuant to the Public Records Act as set forth
19 in 1 V.S.A. § 318.

1 § 2449e. COVERED ENTITY PROHIBITIONS

2 A covered entity that provides an online service, product, or feature
3 reasonably likely to be accessed by children shall not:

4 (1) process the personal data of any child in a way that is inconsistent
5 with the best interests of children reasonably likely to access the online service,
6 product, or feature;

7 (2) profile a child by default unless both of the following criteria are
8 met:

9 (A) the covered entity can demonstrate it has appropriate safeguards
10 in place to ensure that profiling is consistent with the best interests of children
11 reasonably likely to access the online service, product, or feature; and

12 (B) either of the following is true:

13 (i) profiling is necessary to provide the online service, product, or
14 feature requested and only with respect to the aspects of the online service,
15 product, or feature with which a child is actively and knowingly engaged; or

16 (ii) the covered entity can demonstrate a compelling reason that
17 profiling is in the best interests of children;

18 (3) process any personal data that is not reasonably necessary to provide
19 an online service, product, or feature with which a child is actively and
20 knowingly engaged;

1 (4) if the end user is a child, process personal data for any reason other
2 than a reason for which that personal data was collected;

3 (5) process any precise geolocation information of children by default,
4 unless the collection of that precise geolocation information is strictly
5 necessary for the covered entity to provide the service, product, or feature
6 requested and then only for the limited time that the collection of precise
7 geolocation information is necessary to provide the service, product, or feature;

8 (6) process any precise geolocation information of a child without
9 providing a conspicuous sign to the child for the duration of that collection that
10 precise geolocation information is being collected;

11 (7) use dark patterns to cause children to provide personal data beyond
12 what is reasonably expected to provide that online service, product, or feature
13 to forego privacy protections, or to take any action that the covered entity
14 knows, or has reason to know, is not in the best interests of children reasonably
15 likely to access the online service, product, or feature; or

16 (8) allow a child's parent or any other consumer to monitor the child's
17 online activity or track the child's location, without providing a conspicuous
18 signal to the child when the child is being monitored or tracked.

1 § 2449f. DATA PRACTICES

2 (a) A data protection impact assessment collected or maintained by the
3 Attorney General pursuant to this subchapter is classified as nonpublic data or
4 private data on consumers.

5 (b) To the extent any information contained in a data protection impact
6 assessment disclosed to the Attorney General includes information subject to
7 attorney-client privilege or work product protection, disclosure pursuant to this
8 subchapter does not constitute a waiver of that privilege or protection.

9 § 2449g. ATTORNEY GENERAL ENFORCEMENT

10 (a) The Attorney General may seek the imposition of an injunction and a
11 civil penalty of not more than \$2,500.00 per affected child for each negligent
12 violation of this subchapter, or not more than \$7,500.00 per affected child for
13 each intentional violation of this subchapter, plus costs and reasonable
14 attorney's fees for each violation.

15 (b) Any penalties, fees, and expenses recovered in an action brought under
16 this subchapter must be deposited in an account in the special revenue fund and
17 are appropriated to the Attorney General to offset costs incurred by the
18 Attorney General in connection with enforcement of this subchapter.

19 (c) If a covered entity is in substantial compliance with the requirements of
20 this subchapter, the Attorney General must, before initiating a civil action
21 under this section, provide written notice to the covered entity identifying the

1 specific provisions of this subchapter that the Attorney General alleges have
2 been or are being violated. If, for a covered entity that satisfied the terms
3 pursuant to section 2449d of this chapter before offering any new online
4 product, service, or feature reasonably likely to be accessed by children to the
5 public, within 90 days following the notice required by this section, the
6 covered entity cures any noticed violation and provides the Attorney General a
7 written statement that the alleged violations have been cured, and sufficient
8 measures have been taken to prevent future violations, the covered entity is not
9 liable for a civil penalty for any violation cured pursuant to this section.

10 (d) No individual entitlement or private right of action is created by this
11 subchapter.

12 § 2449h. LIMITATIONS

13 Nothing in this subchapter shall be interpreted or construed to:

14 (1) impose liability in a manner that is inconsistent with 47 U.S.C.

15 § 230;

16 (2) prevent or preclude any child from deliberately or independently
17 searching for, or specifically requesting, content; or

18 (3) require a covered entity to implement an age verification
19 requirement, such as age gating.

1 § 2449i. APPLICATION

2 (a) On or before September 1, 2024, a covered entity must complete a data
3 protection impact assessment for any online service, product, or feature
4 reasonably likely to be accessed by children offered to the public after July 1,
5 2024 unless that online service, product, or feature is exempt pursuant to
6 subsection (b) of this section.

7 (b) This act does not apply to an online service, product, or feature that is
8 not offered to the public on or after July 1, 2024.

9 § 2449j. RIGHTS AND FREEDOMS OF CHILDREN

10 It is the intent of the General Assembly that nothing in this act may be
11 construed to infringe on the existing rights and freedoms of children.

12 § 2449k. RULES

13 (a) The Attorney General may adopt by rule any standards or procedures
14 the Attorney General deems necessary to implement the purpose and policies
15 of this subchapter.

16 (b) The rules, as well as any finding of unlawful conduct under this
17 subchapter, shall be consistent with the rules, regulations, and decisions of the
18 Federal Trade Commission and the Federal Communications Commission and
19 with federal court interpretations of the Federal Trade Commission Act, as
20 amended, and the Communications Act of 1934, as amended.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2024.