

Senate Calendar

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ACTION CALENDAR

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 17, 2024

House Proposal of Amendment

S. 25.

An act relating to regulating cosmetic and menstrual products containing certain chemicals and chemical classes and textiles and athletic turf fields containing perfluoroalkyl and polyfluoroalkyl substances.

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Chemicals in Cosmetic and Menstrual Products * * *

Sec. 1. 9 V.S.A. chapter 63, subchapter 12 is added to read:

Subchapter 12. Chemicals in Cosmetic and Menstrual Products

§ 2494a. DEFINITIONS

As used in this subchapter:

(1) “Bisphenols” means any member of a class of industrial chemicals that contain two hydroxyphenyl groups. Bisphenols are used primarily in the manufacture of polycarbonate plastic and epoxy resins.

(2) “Cosmetic product” means articles or a component of articles intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, promoting attractiveness, or improving or altering appearance, including those intended for use by professionals. “Cosmetic product” does not mean soap, dietary supplements, or food and drugs approved by the U.S. Food and Drug Administration.

(3) “Formaldehyde-releasing agent” means a chemical that releases formaldehyde.

(4) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(5) “Manufacturer” means any person engaged in the business of making or assembling a consumer product directly or indirectly available to consumers. “Manufacturer” excludes a distributor or retailer, except when a consumer product is made or assembled outside the United States, in which case a “manufacturer” includes the importer or first domestic distributor of the consumer product.

(6) “Menstrual product” means a product used to collect menstruation and vaginal discharge, including tampons, pads, sponges, menstruation underwear, disks, applicators, and menstrual cups, whether disposable or reusable.

(7) “Ortho-phthalates” means any member of the class of organic chemicals that are esters of phthalic acid containing two carbon chains located in the ortho position.

(8) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(9) “Professional” means a person granted a license pursuant to 26 V.S.A. chapter 6 to practice in the field of barbering, cosmetology, manicuring, or esthetics.

§ 2494b. PROHIBITED CHEMICALS IN COSMETIC AND MENSTRUAL PRODUCTS

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State any cosmetic or menstrual product to which the following chemicals or chemical classes have been intentionally added in any amount:

- (1) ortho-phthalates;
- (2) PFAS;
- (3) formaldehyde (CAS 50-00-0);
- (4) methylene glycol (CAS 463-57-0);
- (5) mercury and mercury compounds (CAS 7439-97-6);
- (6) 1, 4-dioxane (CAS 123-91-1);
- (7) isopropylparaben (CAS 4191-73-5);
- (8) isobutylparaben (CAS 4247-02-3);
- (9) lead and lead compounds (CAS 7439-92-1);
- (10) asbestos;

(11) triclosan (CAS 3380-34-5);

(12) m-phenylenediamine and its salts (CAS 108-42-5);

(13) o-phenylenediamine and its salts (CAS 95-54-5); and

(14) quaternium-15 (CAS 51229-78-8).

(b) A cosmetic or menstrual product made through manufacturing processes intended to comply with this subchapter and containing a technically unavoidable trace quantity of a chemical or chemical class listed in subsection (a) of this section shall not be in violation of this subchapter on account of the trace quantity where it is caused by impurities of:

(1) natural or synthetic ingredients;

(2) the manufacturing process;

(3) storage; or

(4) migration from packaging.

(c) A manufacturer shall not knowingly manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State any cosmetic or menstrual product that contains 1,4, dioxane at or exceeding 10 parts per million.

(d)(1) Pursuant to 3 V.S.A. chapter 25, the Department of Health may adopt rules prohibiting a manufacturer from selling, offering for sale, distributing for sale, or distributing for use a cosmetic or menstrual product to which formaldehyde releasing agents have been intentionally added and are present in any amount.

(2) The Department may only prohibit a manufacturer from selling, offering for sale, distributing for sale, or distributing for use a cosmetic or menstrual product in accordance with this subsection if the Department or at least one other state has determined that a safer alternative is readily available in sufficient quantity and at comparable cost and that the safer alternative performs as well as or better than formaldehyde releasing agents in a specific application of formaldehyde releasing agents to a cosmetic or menstrual product.

(3) Any rule adopted by the Department pursuant to this subsection may restrict formaldehyde releasing agents as individual chemicals or as a class of chemicals.

Sec. 2. 9 V.S.A. § 2494b is amended to read:

§ 2494b. PROHIBITED CHEMICALS IN COSMETIC AND MENSTRUAL PRODUCTS

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State any cosmetic or menstrual product to which the following chemicals or chemical classes have been intentionally added in any amount:

* * *

(13) o-phenylenediamine and its salts (CAS 95-54-5); ~~and~~

(14) quaternium-15 (CAS 51229-78-8);

(15) styrene (CAS 100-42-5);

(16) octamethylcyclotetrasiloxane (CAS 556-67-2); and

(17) toluene (CAS 108-88-3).

* * *

(e) A manufacturer shall not knowingly manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State any cosmetic or menstrual product that contains lead or lead compounds at or exceeding ten parts per million.

* * * PFAS in Consumer Products * * *

Sec. 3. 9 V.S.A. chapter 63, subchapter 12a is added to read:

Subchapter 12a. PFAS in Consumer Products

§ 2494e. DEFINITIONS

As used in this subchapter:

(1) “Adult mattress” means a mattress other than a crib or toddler mattress.

(2) “Aftermarket stain and water resistant treatments” means treatments for textile and leather consumer products used in residential settings that have been treated during the manufacturing process for stain, oil, and water resistance, but excludes products marketed or sold exclusively for use at industrial facilities during the manufacture of a carpet, rug, clothing, or shoe.

(3) “Apparel” means any of the following:

(A) Clothing items intended for regular wear or formal occasions, including undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, costumes, vests, dancewear, suits, saris, scarves, tops, leggings, school

uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear, formal wear, onesies, bibs, reusable diapers, footwear, and everyday uniforms for workwear. Clothing items intended for regular wear or formal occasions do not include clothing items for exclusive use by the U.S. Armed Forces, outdoor apparel for severe wet conditions, and personal protective equipment.

(B) Outdoor apparel.

(4) “Artificial turf” means a surface of synthetic fibers that is used in place of natural grass in recreational, residential, or commercial applications.

(5) “Cookware” means durable houseware items used to prepare, dispense, or store food, foodstuffs, or beverages and that are intended for direct food contact, including pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils.

(6) “Incontinency protection product” means a disposable, absorbent hygiene product designed to absorb bodily waste for use by individuals 12 years of age and older.

(7) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(8) “Juvenile product” means a product designed or marketed for use by infants and children under 12 years of age:

(A) including a baby or toddler foam pillow; bassinet; bedside sleeper; booster seat; changing pad; infant bouncer; infant carrier; infant seat; infant sleep positioner; infant swing; infant travel bed; infant walker; nap cot; nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam mat, pad, or pillow; portable foam nap mat; portable infant sleeper; portable hook-in chair; soft-sided portable crib; stroller; toddler mattress; and disposable, single-use diaper; and

(B) excluding a children’s electronic product, such as a personal computer, audio and video equipment, calculator, wireless phone, game console, handheld device incorporating a video screen, or any associated peripheral such as a mouse, keyboard, power supply unit, or power cord; a medical device; or an adult mattress.

(9) “Manufacturer” means any person engaged in the business of making or assembling a consumer product directly or indirectly available to consumers. “Manufacturer” excludes a distributor or retailer, except when a consumer product is made or assembled outside the United States, in which case a “manufacturer” includes the importer or first domestic distributor of the consumer product.

(10) “Medical device” has the same meaning given to “device” in 21 U.S.C. § 321.

(11) “Outdoor apparel” means clothing items intended primarily for outdoor activities, including hiking, camping, skiing, climbing, bicycling, and fishing.

(12) “Outdoor apparel for severe wet conditions” means outdoor apparel that are extreme and extended use products designed for outdoor sports experts for applications that provide protection against extended exposure to extreme rain conditions or against extended immersion in water or wet conditions, such as from snow, in order to protect the health and safety of the user and that are not marketed for general consumer use. Examples of extreme and extended use products include outerwear for offshore fishing, offshore sailing, whitewater kayaking, and mountaineering.

(13) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(14) “Personal protective equipment” has the same meaning as in section 2494p of this title.

(15) “Regulated perfluoroalkyl and polyfluoroalkyl substances” or “regulated PFAS” means:

(A) PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product, including PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product; or

(B) the presence of PFAS in a product or product component at or above 100 parts per million, as measured in total organic fluorine.

(16) “Rug or carpet” means a fabric marketed or intended for use as a floor covering.

(17) “Ski wax” means a lubricant applied to the bottom of snow runners, including skis and snowboards, to improve their grip and glide properties.

(18) “Textile” means any item made in whole or part from a natural, manmade, or synthetic fiber, yarn, or fabric, and includes leather, cotton, silk, jute, hemp, wool, viscose, nylon, or polyester. “Textile” does not include single-use paper hygiene products, including toilet paper, paper towels, tissues, or single-use absorbent hygiene products.

(19) “Textile articles” means textile goods of a type customarily and ordinarily used in households and businesses, and includes apparel, accessories, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, bedding, towels, napkins, and table cloths. “Textile articles” does not include:

(A) a vehicle, as defined in 1 U.S.C. § 4, or its component parts;

(B) a vessel, as defined in 1 U.S.C. § 3, or its component parts;

(C) an aircraft, as defined in 49 U.S.C. § 40102(a)(6), or its component parts;

(D) filtration media and filter products used in industrial applications, including chemical or pharmaceutical manufacturing and environmental control technologies;

(E) textile articles used for laboratory analysis and testing; and

(F) rugs or carpets.

§ 2494f. AFTERMARKET STAIN AND WATER-RESISTANT TREATMENTS

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State aftermarket stain and water-resistant treatments for rugs or carpets to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 2494h. COOKWARE

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State cookware to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 2494i. INCONTINENCY PROTECTION PRODUCT

A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State an incontinency protection product to which PFAS have been intentionally added in any amount.

§ 2494j. JUVENILE PRODUCTS

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State juvenile products to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 2494k. RUGS AND CARPETS

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a residential rug or carpet to which PFAS have been added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 2494l. SKI WAX

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State ski wax or related tuning products to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 2494m. TEXTILES

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a textile or textile article to which regulated PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 2494n. CERTIFICATE OF COMPLIANCE

(a) The Attorney General may request a certificate of compliance from a manufacturer of a consumer product regulated under this subchapter. Within 60 days after receipt of the Attorney General's request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this subchapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this subchapter and submit to the Attorney General a list of the names and addresses of those persons notified.

(b) A manufacturer required to submit a certificate of compliance pursuant to this section may rely upon a certificate of compliance provided to the manufacturer by a supplier for the purpose of determining the manufacturer's reporting obligations. A certificate of compliance provided by a supplier in accordance with this subsection shall be used solely for the purpose of determining a manufacturer's compliance with this section.

* * * PFAS in Artificial Turf * * *

Sec. 4. 9 V.S.A. § 2494g is added to read:

§ 2494g. ARTIFICIAL TURF

A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State artificial turf to which:

(1) PFAS have been intentionally added in any amount; or

(2) PFAS have entered the product from the manufacturing or processing of that product, the addition of which is known or reasonably ascertainable by the manufacturer.

* * * Amendments to PFAS in Textiles * * *

Sec. 5. 9 V.S.A. § 2494e(2) is amended to read:

(2) “Apparel” means any of the following:

(A) Clothing items intended for regular wear or formal occasions, including undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, costumes, vests, dancewear, suits, saris, scarves, tops, leggings, school uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear, formal wear, onesies, bibs, reusable diapers, footwear, and everyday uniforms for workwear. Clothing items intended for regular wear or formal occasions do not include clothing items for exclusive use by the U.S. Armed Forces, ~~outdoor apparel for severe wet conditions~~, and personal protective equipment.

(B) Outdoor apparel.

(C) Outdoor apparel for severe wet conditions.

Sec. 6. 9 V.S.A. § 2494e(15) is amended to read:

(15) “Regulated perfluoroalkyl and polyfluoroalkyl substances” or “regulated PFAS” means:

(A) PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product, including PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product; or

(B) the presence of PFAS in a product or product component at or above ~~100~~ 50 parts per million, as measured in total organic fluorine.

* * * PFAS in Firefighting Agents and Equipment * * *

Sec. 7. 9 V.S.A. chapter 63, subchapter 12b is added to read:

Subchapter 12b. PFAS in Firefighting Agents and Equipment

§ 2494p. DEFINITIONS

As used in this subchapter:

(1) “Class B firefighting foam” means chemical foams designed for flammable liquid fires.

(2) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(3) “Manufacturer” means any person engaged in the business of making or assembling a consumer product directly or indirectly available to consumers. “Manufacturer” excludes a distributor or retailer, except when a consumer product is made or assembled outside the United States, in which case a “manufacturer” includes the importer or first domestic distributor of the consumer product.

(4) “Municipality” means any city, town, incorporated village, town fire district, or other political subdivision that provides firefighting services pursuant to general law or municipal charter.

(5) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(6) “Personal protective equipment” means clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for use in fire and rescue activities, and includes jackets, pants, shoes, gloves, helmets, and respiratory equipment.

(7) “Terminal” means an establishment primarily engaged in the wholesale distribution of crude petroleum and petroleum products, including liquefied petroleum gas from bulk liquid storage facilities.

§ 2494q. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

A person, municipality, or State agency shall not discharge or otherwise use for training or testing purposes class B firefighting foam that contains intentionally added PFAS.

§ 2494r. RESTRICTION ON MANUFACTURE, SALE, AND DISTRIBUTION; EXCEPTIONS

(a) A manufacturer of class B firefighting foam shall not manufacture, sell, offer for sale, or distribute for sale or use in this State class B firefighting foam to which PFAS have been intentionally added.

(b) A person operating a terminal who seeks to purchase class B firefighting foam containing intentionally added PFAS for the purpose of fighting emergency class B fires, may apply to the Department of Environmental Conservation for a temporary exemption from the restrictions on the manufacture, sale, offer for sale, or distribution of class B firefighting foam for use at a terminal. An exemption shall not exceed one year. The Department of Environmental Conservation, in consultation with the Department of Health, may grant an exemption under this subsection if the applicant provides:

(1) clear and convincing evidence that there is not a commercially available alternative that:

(A) does not contain intentionally added PFAS; and

(B) is capable of suppressing a large atmospheric tank fire or emergency class B fire at the terminal;

(2) information on the amount of class B firefighting foam containing intentionally added PFAS that is annually stored, used, or released at the terminal;

(3) a report on the progress being made by the applicant to transition at the terminal to class B firefighting foam that does not contain intentionally added PFAS; and

(4) an explanation of how:

(A) all releases of class B firefighting foam containing intentionally added PFAS shall be fully contained at the terminal; and

(B) existing containment measures prevent firewater, wastewater, runoff, and other wastes from being released into the environment, including into soil, groundwater, waterways, and stormwater.

(c) Nothing in this section shall prohibit a terminal from providing class B firefighting foam in the form of aid to another terminal in the event of a class B fire.

§ 2494s. SALE OF PERSONAL PROTECTIVE EQUIPMENT
CONTAINING PFAS

(a) A manufacturer or other person that sells firefighting equipment to any person, municipality, or State agency shall provide written notice to the purchaser at the time of sale, citing to this subchapter, if the personal protective equipment contains PFAS. The written notice shall include a statement that the personal protective equipment contains PFAS and the reason PFAS are added to the equipment.

(b) The manufacturer or person selling personal protective equipment and the purchaser of the personal protective equipment shall retain the notice for at least three years from the date of the transaction.

§ 2494t. NOTIFICATION; RECALL OF PROHIBITED PRODUCTS

(a) A manufacturer of class B firefighting foam containing intentionally added PFAS shall provide written notice to persons that sell the manufacturer's products in this State about the restrictions imposed by this subchapter not less than one year prior to the effective date of the restrictions.

(b) Unless a class B firefighting foam containing intentionally added PFAS is intended for use at a terminal and the person operating a terminal holds a temporary exemption pursuant to subsection 2494r(b) of this title, a manufacturer that produces, sells, or distributes a class B firefighting foam containing intentionally added PFAS shall:

(1) recall the product and reimburse the retailer or any other purchaser for the product; and

(2) issue either a press release or notice on the manufacturer's website describing the product recall and reimbursement requirement established in this subsection.

§ 2494u. CERTIFICATE OF COMPLIANCE

(a) The Attorney General may request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment. Within 60 days after receipt of the Attorney General's request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this subchapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this subchapter and submit to the Attorney General a list of the names and addresses of those persons notified.

(b) A manufacturer required to submit a certificate of compliance pursuant to this section may rely upon a certificate of compliance provided to the manufacturer by a supplier for the purpose of determining the manufacturer's reporting obligations. A certificate of compliance provided by a supplier in accordance with this subsection shall be used solely for the purpose of determining a manufacturer's compliance with this section.

* * * Chemicals of Concern in Food Packaging * * *

Sec. 8. 9 V.S.A. chapter 63, subchapter 12c is added to read:

Subchapter 12c. Chemicals of Concern in Food Packaging

§ 2494x. DEFINITIONS

As used in this subchapter:

(1) "Bisphenols" means any member of a class of industrial chemicals that contain two hydroxyphenyl groups. Bisphenols are used primarily in the manufacture of polycarbonate plastic and epoxy resins.

(2) "Department" means the Department of Health.

(3) "Food package" or "food packaging" means a package or packaging component that is intended for direct food contact.

(4) "Intentionally added" means the addition of a chemical in a product that serves an intended function in the product component.

(5) "Ortho-phthalates" means any member of the class of organic chemicals that are esters of phthalic acid containing two carbon chains located in the ortho position.

(6) "Package" means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. "Package" also means unsealed receptacles, such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(7) "Packaging component" means an individual assembled part of a package, such as any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels, and disposable gloves used in commercial or institutional food service.

(8) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

§ 2494y. FOOD PACKAGING

(a) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a food package to which PFAS have been intentionally added and are present in any amount.

(b)(1) Pursuant to 3 V.S.A. chapter 25, the Department may adopt rules prohibiting a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package to which bisphenols have been intentionally added and are present in any amount. The Department may exempt specific chemicals within the bisphenol class when clear and convincing evidence suggests they are not endocrine-active or otherwise toxic.

(2) The Department may only prohibit a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package in accordance with this subsection if the Department or at least one other state has determined that a safer alternative is readily available in sufficient quantity and at a comparable cost and that the safer alternative performs as well as or better than bisphenols in a specific application of bisphenols to a food package or the packaging component of a food package.

(3) If the Department prohibits a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package in accordance with this subsection, the prohibition shall not take effect until two years after the Department adopts the rules.

(c) A manufacturer shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a food package that includes inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers, or any other additives to which ortho-phthalates have been intentionally added and are present in any amount.

(d) This section shall not apply to the sale or resale of used products.

§ 2494z. CERTIFICATE OF COMPLIANCE

(a) The Attorney General may request a certificate of compliance from a manufacturer of food packaging. Within 60 days after receipt of the Attorney General’s request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this subchapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this subchapter and submit to the Attorney General a list of the names and addresses of those persons notified.

(b) A manufacturer required to submit a certificate of compliance pursuant to this section may rely upon a certificate of compliance provided to the manufacturer by a supplier for the purpose of determining the manufacturer's reporting obligations. A certificate of compliance provided by a supplier in accordance with this subsection shall be used solely for the purpose of determining a manufacturer's compliance with this section.

* * * Engagement and Implementation Plans * * *

Sec. 9. COMMUNITY ENGAGEMENT PLAN

(a) On or before July 1, 2025, the Department of Health shall develop and submit a community engagement plan to the Senate Committee on Health and Welfare and to the House Committee on Human Services related to the enactment of 9 V.S.A. chapter 63, subchapter 12. The community engagement plan shall:

(1) provide education to the general public on chemicals of concern in cosmetic and menstrual products and specifically address the unique impact these products have on marginalized communities by providing the use of language access services, participant compensation, and other resources that support equitable access to participation; and

(2) outline the methodology and costs to conduct outreach for the purposes of:

(A) identifying cosmetic products of concern, including those marketed to or utilized by marginalized communities in Vermont;

(B) conducting research on the prevalence of potentially harmful ingredients within cosmetic products, including those marketed to or utilized by marginalized communities in Vermont;

(C) proposing a process for regulating chemicals or products containing potentially harmful ingredients, including those marketed to or utilized by marginalized communities in Vermont; and

(D) creating culturally appropriate public health awareness campaigns concerning harmful ingredients used in cosmetic products.

(b) As used in the section, “marginalized communities” means individuals with shared characteristics who experience or have historically experienced discrimination based on race, ethnicity, color, national origin, English language proficiency, disability, gender identity, gender expression, or sexual orientation.

Sec. 10. IMPLEMENTATION PLAN; CONSUMER PRODUCTS CONTAINING PFAS

(a) The Agency of Natural Resources, in consultation with the Agency of Agriculture, Food and Markets; the Department of Health; and the Office of the Attorney General, shall propose a program requiring the State to identify and restrict the sale and distribution of consumer products containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) that could impact public health and the environment. The proposed program shall:

(1) identify categories of consumer products that could have an impact on public health and environmental contamination;

(2) propose a process by which manufacturers determine whether a consumer product contains PFAS and how that information is communicated to the State;

(3) address how information about the presence or lack of PFAS in a consumer product is conveyed to the public;

(4) describe which agency or department is responsible for administration of the proposed program, including what additional staff, information technology changes, and other resources, if any, are necessary to implement the program;

(5) determine whether and how other states have structured and implemented similar programs and identify the best practices used in these efforts;

(6) propose definitions of “intentionally added,” “consumer product,” and “perfluoroalkyl and polyfluoroalkyl substances”;

(7) propose a related public service announcement program and website content to inform the public and health care providers about the potential public health impacts of exposure to PFAS and actions that can be taken to reduce risk;

(8) provide recommendations for the regulation of PFAS within consumer products that use recycled materials, including food packaging, cosmetic product packaging, and textiles; and

(9) determine whether “personal protective equipment” regulated by the U.S. Occupational Safety and Health Administration under the Occupational Safety and Health Act, the U.S. Food and Drug Administration, or the U.S. Centers for Disease Control and Prevention, or a product that is regulated as a drug, medical device, or dietary supplement by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act or the Dietary Supplement Health and Education Act, is appropriately regulated under 9 V.S.A. chapter 63, subchapters 12–12c.

(b) The Agency of Natural Resources shall obtain input on its recommendation from interested parties, including those that represent environmental, agricultural, and industry interests.

(c) On or before November 1, 2024, the Agency of Natural Resources shall submit an implementation plan developed pursuant to this section and corresponding draft legislation to the House Committees on Environment and Energy and on Human Services and the Senate Committees on Health and Welfare and on Natural Resources and Energy.

(d) For the purposes of this section, “consumer products” includes restricted and nonrestricted use pesticides.

* * * Repeal * * *

Sec. 11. REPEAL; PFAS IN VARIOUS CONSUMER PRODUCTS

18 V.S.A. chapter 33 (PFAS in firefighting agents and equipment), 18 V.S.A. chapter 33A (chemicals of concern in food packaging), 18 V.S.A. chapter 33B (PFAS in rugs, carpets, and aftermarket stain and water resistant treatments), and 18 V.S.A. chapter 33C (PFAS in ski wax) are repealed on January 1, 2026.

* * * Compliance Notification * * *

Sec. 12. COMPLIANCE NOTIFICATION

If, upon a showing by a manufacturer, the Office of the Attorney General determines that it is not feasible to produce a particular consumer product as required by this act on the effective date listed in Sec. 13 (effective dates), the Attorney General may postpone the compliance date for that product for up to one year. If the Attorney General postpones a compliance date pursuant to this section, the Office of the Attorney General shall post notification of the postponement on its website.

* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES

This act shall take effect on July 1, 2024, except that:

(1) Sec. 1 (chemicals in cosmetic and menstrual products), Sec. 3 (PFAS in consumer products), Sec. 7 (PFAS in firefighting agents and equipment), and Sec. 8 (chemicals of concern in food packaging) shall take effect on January 1, 2026;

(2) Sec. 2 (9 V.S.A. § 2494b) and Sec. 6 (9 V.S.A. § 2494e(15)) shall take effect on July 1, 2027;

(3) Sec. 4 (artificial turf) shall take effect on January 1, 2028; and

(4) Sec. 5 (9 V.S.A. § 2494e(2)) shall take effect on July 1, 2028.

And that after passage the title of the bill be amended to read:

An act relating to regulating consumer products containing perfluoroalkyl and polyfluoroalkyl substances or other chemicals

UNFINISHED BUSINESS OF TUESDAY, APRIL 23, 2024

Second Reading

Favorable with Proposal of Amendment

H. 534.

An act relating to retail theft.

Reported favorably with recommendation of proposal of amendment by Senator Baruth for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2575 is amended to read:

§ 2575. OFFENSE OF RETAIL THEFT

A person commits the offense of retail theft when the person, with intent of depriving a merchant wrongfully of the lawful possession of merchandise, money, or credit:

(1) takes and carries away or causes to be taken and carried away or aids and abets the carrying away of, any merchandise from a retail mercantile establishment without paying the retail value of the merchandise; or

* * *

Sec. 2. 13 V.S.A. § 2577 is amended to read:

§ 2577. PENALTY

(a) A person convicted of the offense of retail theft of merchandise having a retail value not in excess of \$900.00 shall:

(1) for a first offense, be punished by a fine of not more than \$500.00 or imprisonment for not more than ~~six months~~ 30 days, or both;

(2) for a second offense, be punished by a fine of not more than \$1,000.00 or imprisonment for not more than six months, or both;

(3) for a third offense, be punished by a fine of not more than \$1,500.00 or imprisonment for not more than three years, or both; or

(4) for a fourth or subsequent offense, be punished by a fine of not more than \$2,500.00 or imprisonment for not more than 10 years, or both.

(b) A person convicted of the offense of retail theft of merchandise having a retail value in excess of \$900.00 shall be punished by a fine of not more than \$1,000.00 or imprisonment for not more than 10 years, or both.

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

(No House amendments)

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 24, 2024

Third Reading

H. 27.

An act relating to coercive controlling behavior and abuse prevention orders.

H. 546.

An act relating to administrative and policy changes to tax laws.

H. 868.

An act relating to the fiscal year 2025 Transportation Program and miscellaneous changes to laws related to transportation.

Proposal of amendment to H. 868 to be offered by Senators Harrison and Sears before Third Reading

Senators Harrison and Sears move to amend the Senate proposal of amendment by striking out Sec. 31, 5 V.S.A. § 3405, in its entirety and inserting in lieu thereof a new Sec. 31 to read as follows:

Sec. 31. 5 V.S.A. § 3405 is amended to read:

§ 3405. LEASE FOR CONTINUED OPERATION

(a) The Secretary, as agent for the State, and, to the extent permitted under federal law, with the approval of the Governor and the General Assembly or, if the General Assembly is not in session, approval of a special committee consisting of the Joint Fiscal Committee and the Chairs of the House and Senate Committees on Transportation, is authorized to lease or otherwise arrange for the continued operation of all or any State-owned railroad property to any responsible person, provided that approval for the operation, if necessary, is granted by the federal Surface Transportation Board under 49 C.F.R. Part 1150 (certificate to construct, acquire, or operate railroad lines). The transaction shall be subject to any further terms and conditions as in the opinion of the Secretary are necessary and appropriate to accomplish the purpose of this chapter.

(b) To preserve continuity of service on State-owned railroads, the Secretary may enter into a short-term lease or operating agreement, for a term not to exceed six months, with a responsible railroad operator. Within 10 days of entering into any lease or agreement, the Secretary shall report the details of the transaction to the members of the House and Senate Committees on Transportation.

Proposal of amendment to H. 868 to be offered by Senator Watson before Third Reading

Senator Watson moves to amend the Senate proposal of amendment by striking out Sec. 30, Central Garage; real property; facility design; authority, in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. CENTRAL GARAGE; REAL PROPERTY; FACILITY DESIGN;
AUTHORITY

(a) Pursuant to 19 V.S.A. § 26(b), the Secretary of Transportation is authorized to use up to \$2,000,000.00 in Central Garage Fund reserve funds

for the purpose of purchasing real property on which to site a new Central Garage.

(b) Notwithstanding 19 V.S.A. § 13(a), the Secretary may use Central Garage Fund reserve funds for design services necessary to construct a new Central Garage on the site.

Second Reading

Favorable

H. 350.

An act relating to the Uniform Directed Trust Act.

Reported favorably by Senator Hashim for the Committee on Judiciary.

The Committee on Judiciary recommends that the bill ought to pass in concurrence.

(Committee vote: 5-0-0)

(No House amendments)

H. 884.

An act relating to the modernization of governance for the St. Albans Cemetery Association.

Reported favorably by Senator Norris for the Committee on Government Operations.

The Committee on Government Operations recommends that the bill ought to pass in concurrence.

(Committee vote: 5-0-1)

(No House amendments)

House Proposal of Amendment

S. 189.

An act relating to mental health response service guidelines and social service provider safety

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 7260 is added to read:

§ 7260. MENTAL HEALTH RESPONSE SERVICE GUIDELINES

(a) The Department shall develop guidelines for use by municipalities, including use by emergency medical technicians and public safety personnel, such as law enforcement officers as defined by 20 V.S.A. § 2351a and firefighters as defined in 20 V.S.A. § 3151, who are employed, volunteer, or are under contract with a municipality. The guidelines shall recommend best practices for de-escalation and for mental health response services, including crisis response services. The Department shall make the guidelines available to municipalities and publish the guidelines on the Department's website.

(b) In developing the guidelines required pursuant to subsection (a) of this section, the Department shall consult with the following entities:

- (1) the Department of Health;
- (2) the Department of Disabilities, Aging, and Independent Living;
- (3) the Department of Public Safety;
- (4) the Vermont Care Partners;
- (5) the Vermont Psychiatric Survivors;
- (6) the Vermont chapter of the National Alliance on Mental Illness;
- (7) the Vermont Criminal Justice Council;
- (8) the Vermont League of Cities and Towns;
- (9) Disability Rights Vermont;
- (10) the Department's State Program Standing Committees; and
- (11) any other stakeholders the Department deems appropriate.

Sec. 2. PRESENTATION; SOCIAL SERVICE PROVIDER SAFETY

(a) On or before November 15, 2024, the Agency of Human Services, in collaboration with the Vermont chapter of the National Association of Social Workers, shall convene one or more meetings related to social service provider safety with community-based social service organizations.

(1) The following community-based social service organizations, professions, and individuals may be included in the meeting or meetings described in this subsection:

- (A) the Vermont Network Against Domestic and Sexual Violence;
- (B) the Vermont Coalition to End Homelessness;

(C) mental health and health care providers;

(D) community action programs;

(E) restorative justice service providers;

(F) disability service providers and advocates;

(G) individuals with lived experience of a mental health condition, substance use disorder, or any other condition or circumstance requiring social work services; and

(H) any other stakeholder deemed appropriate by the Agency.

(2) In advance of the meeting or meetings described in this subsection, the participating community-based social service organizations and individuals from a participating profession may review relevant studies related to social service provider safety and individual social service provider safety experiences.

(b) On or before January 31, 2025, the Agency of Human Services, in collaboration with the Vermont chapter of the National Association of Social Workers, shall present findings and recommendations to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare, including a list of the community-based social service organizations that participated in the meeting or meetings and the number of meetings convened.

Sec. 3. 33 V.S.A. § 6309 is added to read:

§ 6309. STAFF SAFETY; DISCHARGE FROM SERVICE

(a) If an individual was previously discharged from service by a home health agency to protect the safety of staff in accordance with the rules adopted by the Department of Disabilities, Aging, and Independent Living pursuant to subsection 6303(a) of this chapter, and the behavior or conditions causing the discharge cannot be reasonably mitigated or eliminated, a home health agency may:

(1) deny a subsequent admission; or

(2) decline to send a home health agency employee to make a visit if the home health agency has reason to believe that the individual who exhibited the behavior that resulted in the discharge is present in the home.

(b) Nothing in this section shall be construed to require a home health agency to enter a home to determine if a risk can be mitigated or eliminated.

(c) A home health agency shall provide notice of any denial of admission made pursuant to this section. The notice shall include the reason for the denial of admission and information regarding how an individual may submit a complaint pursuant to section 6308 of this chapter in accordance with the rules adopted by the Department of Disabilities, Aging, and Independent Living pursuant to subsection 6303(a) of this chapter.

Sec. 4. REPORT; HOME HEALTH AGENCY SAFETY DISCHARGES

On or after February 15, 2025, in consultation with home health agencies, the Department of Disabilities, Aging, and Independent Living shall provide an update to the House Committee on Health Care and the Senate Committee on Health and Welfare regarding the implementation of Sec. 3 (33 V.S.A. § 6309) of this act. Specifically, the update shall address:

(1) the number of safety discharges made by home health agencies during the previous calendar year;

(2) the nature of the risks posed that result in a safety discharge; and

(3) the number of individuals denied subsequent admission to or services from a home health agency due to a previous safety discharge.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

And that after passage the title of the bill be amended to read:

An act relating to mental health response service guidelines and the safety of social service and home health providers

NEW BUSINESS

Third Reading

H. 766.

An act relating to prior authorization and step therapy requirements, health insurance claims, and provider contracts.

H. 883.

An act relating to making appropriations for the support of government.

Second Reading
Favorable with Proposal of Amendment

H. 606.

An act relating to professional licensure and immigration status.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

(a) The purpose of this act is to amend the laws of Vermont to allow any individual who meets the standards required by the State to obtain a professional or occupational license or certification, regardless of that individual's immigration status.

(b) The General Assembly acts pursuant to the authority provided in section 411 of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, Title IV, § 411, codified at 8 U.S.C. § 1621(d), as such section existed on January 1, 2024.

(c) Nothing in this act shall be construed to grant eligibility for any public benefits, as defined in 8 U.S.C. § 1621(c), other than obtaining a professional license.

Sec. 2. 3 V.S.A. § 139 is added to read:

§ 139. IMMIGRATION STATUS

(a) Notwithstanding any provision of law to the contrary, an applicant shall not be denied any professional license or certification enumerated in this title or Titles 16, 20, or 26 of the Vermont Statutes Annotated on the basis of the applicant's citizenship status or immigration status or lack thereof.

(b) If an applicant is required by State law to provide a Social Security number for the purpose of obtaining or maintaining a professional license or certification under this title or Titles 16, 20, or 26 of the Vermont Statutes Annotated, the applicant may provide a federal employer identification number, an individual taxpayer identification number, or a Social Security number; provided, however, that an applicant shall provide a Social Security number if a federal law or an interstate compact of which the State is a member requires that an applicant provide a Social Security number to obtain or maintain a professional license.

Sec. 3. EFFECTIVE DATE

This act shall take effect on September 1, 2024.

(Committee vote: 5-1-0)

(For House amendments, see House Journal of March 19, 2024, page 586)

Reported favorably by Senator McCormack for the Committee on Finance.

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

(Committee vote: 6-0-1)

H. 706.

An act relating to banning the use of neonicotinoid pesticides.

Reported favorably with recommendation of proposal of amendment by Senator Collamore for the Committee on Agriculture.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Wild and managed pollinators are essential to the health and vitality of Vermont's agricultural economy, environment, and ecosystems. According to the Department of Fish and Wildlife (DFW), between 60 and 80 percent of the State's wild plants depend on pollinators to reproduce.

(2) Vermont is home to thousands of pollinators, including more than 300 native bee species. Many pollinator species are in decline or have disappeared from Vermont, including three bee species that the State lists as endangered. The Vermont Center for Ecostudies and DFW's State of Bees 2022 Report concludes that at least 55 of Vermont's native bee species need significant conservation action.

(3) Neonicotinoids are a class of neurotoxic, systemic insecticides that are extremely toxic to bees and other pollinators. Neonicotinoids are the most widely used class of insecticides in the world and include imidacloprid, clothianidin, thiamethoxam, acetamiprid, dinotefuran, thiacloprid, and nithiazine.

(4) Among other uses, neonicotinoids are commonly applied to crop seeds as a prophylactic treatment. More than 90 percent of neonicotinoids applied to treated seeds move into soil, water, and nontarget plants. According to the Agency of Agriculture, Food and Markets, at least 1197.66 tons of seeds sold in Vermont in 2022 were treated with a neonicotinoid product.

(5) Integrated pest management is a pest management technique that protects public health, the environment, and agricultural productivity by prioritizing nonchemical pest management techniques. Under integrated pest management, pesticides are a measure of last resort. According to the European Academies Science Advisory Council, neonicotinoid seed treatments are incompatible with integrated pest management.

(6) A 2020 Cornell University report that analyzed more than 1,100 peer-reviewed studies found that neonicotinoid corn and soybean seed treatments pose substantial risks to bees and other pollinators but provide no overall net income benefits to farms. DFW similarly recognizes that neonicotinoid use contributes to declining pollinator populations.

(7) A 2014 peer-reviewed study conducted by the Harvard School of Public Health and published in the journal Bulletin of Insectology concluded that sublethal exposure to neonicotinoids is likely to be the main culprit for the occurrence of colony collapse disorder in honey bees.

(8) A 2020 peer-reviewed study published in the journal Nature Sustainability found that increased neonicotinoid use in the United States between 2008 and 2014 led to statistically significant reductions in bird biodiversity, particularly among insectivorous and grassland birds.

(9) A 2022 peer-reviewed study published in the journal Environmental Science and Technology found neonicotinoids in 95 percent of the 171 pregnant women who participated in the study. Similarly, a 2019 peer-reviewed study published in the journal Environmental Research found that 49.1 percent of the U.S. general population had recently been exposed to neonicotinoids.

(10) The European Commission and the provinces of Quebec and Ontario have implemented significant prohibitions on the use of neonicotinoids.

(11) The New York General Assembly passed legislation that prohibits the sale or use of corn, soybean, and wheat seed treated with imidacloprid, clothianidin, thiamethoxam, dinotefuran, or acetamiprid. The same legislation prohibits the nonagricultural application of imidacloprid, clothianidin, thiamethoxam, dinotefuran, or acetamiprid to outdoor ornamental plants and turf.

Sec. 2. 6 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

As used in this chapter unless the context clearly requires otherwise:

(1) “Secretary” ~~shall have~~ has the same meaning stated in subdivision 911(4) of this title.

(2) “Cumulative” when used in reference to a substance means that the substance so designated has been demonstrated to increase twofold or more in concentration if ingested or absorbed by successive life forms.

(3) “Dealer or pesticide dealer” means any person who regularly sells pesticides in the course of business, but not including a casual sale.

(4) “Economic poison” ~~shall have~~ has the same meaning stated in subdivision 911(5) of this title.

(5) “Pest” means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or ~~virus~~ viruses, bacteria, or other microorganisms that the Secretary declares as being injurious to health or environment. “Pest shall” does not mean any viruses, bacteria, or other microorganisms on or in living humans or other living animals.

(6) “Pesticide” for the purposes of this chapter ~~shall be~~ is used interchangeably with “economic poison.”

(7) “Treated article” means a pesticide or class of pesticides exempt under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y.

(8) “Neonicotinoid pesticide” means any economic poison containing a chemical belonging to the neonicotinoid class of chemicals.

(9) “Neonicotinoid treated article seeds” are treated article seeds that are treated or coated with a neonicotinoid pesticide.

(10) “Agricultural commodity” means any food in its raw or natural state, including all fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(11) “Agricultural emergency” means an occurrence of any pest that presents an imminent risk of significant harm, injury, or loss to agricultural crops.

(12) “Bloom” means the period from the onset of flowering or inflorescence until petal fall is complete.

(13) “Crop group” means the groupings of agricultural commodities specified in 40 C.F.R. § 180.41(c) (2023).

(14) “Environmental emergency” means an occurrence of any pest that presents a significant risk of harm or injury to the environment, or significant harm, injury, or loss to agricultural crops, including any exotic or foreign pest that may need preventative quarantine measures to avert or prevent that risk, as determined by the Secretary of Agriculture, Food and Markets.

(15) “Ornamental plants” mean perennials, annuals, and groundcover purposefully planted for aesthetic reasons.

Sec. 3. 6 V.S.A. § 1105b is added to read:

§ 1105b. USE AND SALE OF NEONICOTINOID TREATED ARTICLE SEEDS

(a) No person shall sell, offer for sale or use, distribute, or use any neonicotinoid treated article seed for soybeans or for any crop in the cereal grains crop group (crop groups 15, 15-22, 16, and 16-22).

(b) The Secretary of Agriculture, Food and Markets, after consultation with the Secretary of Natural Resources, may issue a written exemption order to suspend the provisions of subsection (a) of this section, only if the following conditions are met:

(1) the person seeking the exemption order shall complete an integrated pest management training, provided by the Secretary or an approved third party;

(2) the person seeking the exemption order shall complete a pest risk assessment and submit a pest risk assessment report to the Secretary;

(3) any seeds authorized for use under the exemption order shall be planted only on the property or properties identified in the pest risk assessment report; and

(4) the persons seeking the exemption order shall maintain current records of the pest risk assessment report and records of when treated seeds are planted, both of which shall be subject to review upon request by the Secretary.

(c) A written exemption order issued under subsection (b) of this section shall:

(1) not be valid for more than one year; and

(2) specify the types of neonicotinoid treated article seeds to which the exemption order applies, the date on which the exemption order takes effect, and the exemption order's duration.

(d) A written exemption order issued under subsection (b) of this section may:

(1) establish restrictions related to the use of neonicotinoid treated article seeds to which the exemption order applies to minimize harm to pollinator populations, bird populations, ecosystem health, and public health; and

(2) establish other restrictions related to the use of neonicotinoid treated article seeds to which the exemption order applies that the Secretary of Agriculture, Food and Markets considers necessary.

(e) Upon issuing a written exemption order under subsection (b) of this section, the Secretary of Agriculture, Food and Markets shall submit a copy of the exemption order to the Senate Committees on Natural Resources and Energy and on Agriculture; the House Committees on Environment and Energy and on Agriculture, Food Resiliency, and Forestry; and the Agricultural Innovation Board. The General Assembly shall post the written exemption order to the website of the General Assembly.

(f) The Secretary of Agriculture, Food and Markets, after consultation with the Secretary of Natural Resources, may rescind a written exemption order issued under subsection (b) of this section at any time. Such rescission shall come into effect not sooner than 30 days after its issuance and shall not apply to neonicotinoid treated article seeds planted or sown before such rescission comes into effect.

Sec. 4. 6 V.S.A. § 1105c is added to read:

§ 1105c. NEONICOTINOID PESTICIDES; PROHIBITED USES

(a) The following uses of neonicotinoid pesticides are prohibited:

(1) the outdoor application of neonicotinoid pesticides to any crop during bloom;

(2) the outdoor application of neonicotinoid pesticides to soybeans or any crop in the cereal grains crop group (crop groups 15, 15-22, 16, and 16-22);

(3) the outdoor application of neonicotinoid pesticides to crops in the leafy vegetables; brassica; bulb vegetables; herbs and spices; and stalk, stem, and leaf petiole vegetables crop groups (crop groups 3, 3-07, 4, 4-16, 5, 5-16, 19, 22, 25, and 26) harvested after bloom; and

(4) the application of neonicotinoid pesticides to ornamental plants.

(b) The Secretary of Agriculture, Food and Markets, after consultation with the Secretary of Natural Resources, may issue a written exemption order to suspend the provisions of subsection (a) of this section if the Secretary determines that:

(1) a valid environmental emergency or agricultural emergency exists;

(2) the pesticide would be effective in addressing the environmental emergency or the agricultural emergency; and

(3) no other, less harmful pesticide or pest management practice would be effective in addressing the environmental emergency or the agricultural emergency.

(c) A written exemption order issued under subsection (b) of this section shall:

(1) not be valid for more than one year;

(2) specify the neonicotinoid pesticides, uses, and crops, or plants to which the exemption order applies; the date on which the exemption order takes effect; the exemption order's duration; and the exemption order's geographic scope, which may include specific farms, fields, or properties; and

(3) provide a detailed evaluation determining that an agricultural emergency or an environmental emergency exists.

(d) A written exemption order issued under subsection (b) of this section may:

(1) establish restrictions related to the use of neonicotinoid pesticides to which the exemption order applies to minimize harm to pollinator populations, bird populations, ecosystem health, and public health; or

(2) establish other restrictions related to the use of neonicotinoid pesticides to which the exemption order applies that the Secretary of Agriculture, Food and Markets considers necessary.

(e) Upon issuing a written exemption order under subsection (b) of this section, the Secretary of Agriculture, Food and Markets shall submit a copy of the exemption order to the Senate Committees on Natural Resources and Energy and on Agriculture; the House Committees on Environment and Energy and on Agriculture, Food Resiliency, and Forestry; and the Agricultural Innovation Board. The General Assembly shall post the written exemption order to the website of the General Assembly.

(f) The Secretary of Agriculture, Food and Markets, after consultation with the Secretary of Natural Resources, may rescind any written exemption order issued under subsection (b) of this section at any time. Such rescission shall come into effect not sooner than 15 days after its issuance.

Sec. 5. 6 V.S.A. § 918 is amended to read:

§ 918. REGISTRATION

(a) Every economic poison that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the Office of the Secretary, and such registration shall be renewed annually, provided that products that have the same formula are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison, and additional names and labels shall be added by supplemental statements during the current period of registration. It is further provided that any economic poison imported into this State, which is subject to the provisions of any federal act providing for the registration of economic poisons and that has been duly registered under the provisions of this chapter, may, in the discretion of the Secretary, be exempted from registration under this chapter when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the Secretary a statement including:

* * *

(f) Unless the use or sale of a neonicotinoid pesticide is otherwise prohibited, the Secretary shall register as a restricted use pesticide any neonicotinoid pesticide labeled as approved for outdoor use that is distributed, sold, sold into, or offered for sale within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State, provided that the Secretary shall not register the following products as restricted use pesticides unless classified under federal law as restricted use products:

(1) pet care products used for preventing, destroying, repelling, or mitigating fleas, mites, ticks, heartworms, or other insects or organisms;

(2) personal care products used for preventing, destroying, repelling, or mitigating lice or bedbugs; and

(3) indoor pest control products used for preventing, destroying, repelling, or mitigating insects indoors; ~~and~~

~~(4) treated article seed.~~

Sec. 6. 6 V.S.A. § 1105a(c) is amended to read:

(c)(1) Under subsection (a) of this section, the Secretary of Agriculture, Food and Markets, after consultation with the Agricultural Innovation Board, shall adopt by rule BMPs for the use in the State of:

(A) neonicotinoid treated article seeds when used prior to January 1, 2031;

(B) neonicotinoid treated article seeds when the Secretary issues a written exemption order pursuant to section 1105b of this chapter authorizing the use of neonicotinoid treated article seeds;

(C) neonicotinoid pesticides when the Secretary issues a written exemption order pursuant to section 1105c of this chapter authorizing the use of neonicotinoid pesticides; and

(D) the agricultural use after July 1, 2025 of neonicotinoid pesticides the use of which is not otherwise prohibited under law.

(2) In developing the rules with the Agricultural Innovation Board, the Secretary shall address:

(A) establishment of threshold levels of pest pressure required prior to use of neonicotinoid treated article seeds or neonicotinoid pesticides;

(B) availability of nontreated article seeds that are not neonicotinoid treated article seeds;

(C) economic impact from crop loss as compared to crop yield when neonicotinoid treated article seeds or neonicotinoid pesticides are used;

(D) relative toxicities of different neonicotinoid treated article seeds or neonicotinoid pesticides and the effects of neonicotinoid treated article seeds or neonicotinoid pesticides on human health and the environment;

(E) surveillance and monitoring techniques for in-field pest pressure;

(F) ways to reduce pest harborage from conservation tillage practices; and

(G) criteria for a system of approval of neonicotinoid treated article seeds or neonicotinoid pesticides.

(2)(3) In implementing the rules required under this subsection, the Secretary of Agriculture, Food and Markets shall work with farmers, seed companies, and other relevant parties to ensure that farmers have access to appropriate varieties and amounts of untreated seed or treated seed that are not neonicotinoid treated article seeds.

Sec. 7. 2022 Acts and Resolves No. 145, Sec. 4 is amended to read:

Sec. 4. IMPLEMENTATION; REPORT; RULEMAKING

(a) On or before March 1, 2024, the Secretary of Agriculture, Food, and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture, Food Resiliency, and Forestry a copy of the proposed rules required to be adopted under 6 V.S.A. § 1105a(c)(1)(A).

(b) The Secretary of Agriculture shall not file the final proposal of the rules required by 6 V.S.A. § 1105a(c)(1)(A) under 3 V.S.A. § 841 until at least 90 days from submission of the proposed rules to the General Assembly under subsection (a) of this section or July 1, 2024, ~~which-ever~~ whichever shall occur first.

Sec. 8. CONTINGENT REPEAL

(a) 6 V.S.A. §1105b (use and sale of neonicotinoid treated article seeds; prohibition) shall be repealed if the prohibition on the use of neonicotinoid treated article seed in New York under N.Y. Environmental Conservation Law § 37-1101(1) is repealed.

(b) 6 V.S.A. § 1105c (neonicotinoid pesticides; prohibited uses) shall be repealed if the prohibition on the use of neonicotinoid pesticides on ornamental plants in New York under N.Y. Environmental Conservation Law § 37-1101(2) is repealed.

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 1 (findings), 2 (definitions), 5 (registration), 6 (BMP rules), 7 (implementation), and 8 (contingent repeal) shall take effect on passage.

(b) Sec. 4 (prohibited use; neonicotinoid pesticides) shall take effect on July 1, 2025, provided that the prohibition on the use of neonicotinoid pesticides on ornamental plants in New York under N.Y. Environmental Conservation Law § 37-1101(2) is in effect on July 1, 2025. If N.Y. Environmental Conservation Law § 37-1101(2) is not in effect on July 1, 2025, Sec. 4 of this act shall not take effect until the effective date of N.Y. Environmental Conservation Law § 37-1101(2).

(c) Sec. 3 (treated article seed) shall take effect on January 1, 2031, provided that the prohibition on the use of neonicotinoid treated article seed in New York under N.Y. Environmental Conservation Law § 37-1101(1) is in effect on January 1, 2031. If N.Y. Environmental Conservation Law § 37-1101(1) is not in effect on January 1, 2031, Sec. 3 of this act shall not take effect until the effective date of N.Y. Environmental Conservation Law § 37-1101(1).

(Committee vote: 4-1-0)

(For House amendments, see House Journal of March 21, 2024, pages 685-694)

Reported favorably by Senator Westman for the Committee on Appropriations.

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Agriculture.

(Committee vote: 6-0-1)

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 121.

An act relating to enhancing consumer privacy.

Reported favorably with recommendation of proposal of amendment by Senator Ram Hinsdale for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 61A is added to read:

CHAPTER 61A. VERMONT DATA PRIVACY ACT

§ 2415. DEFINITIONS

As used in this chapter:

(1) “Abortion” has the same meaning as in section 2492 of this title.

(2)(A) “Affiliate” means a legal entity that shares common branding with another legal entity or controls, is controlled by, or is under common control with another legal entity.

(B) As used in subdivision (A) of this subdivision (2), “control” or “controlled” means:

(i) ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a company;

(ii) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or

(iii) the power to exercise controlling influence over the management of a company.

(3) “Authenticate” means to use reasonable means to determine that a request to exercise any of the rights afforded under subdivisions 2418(a)(1)–(5) of this title is being made by, or on behalf of, the consumer who is entitled to exercise the consumer rights with respect to the personal data at issue.

(4)(A) “Biometric data” means personal data generated from the technological processing of an individual’s unique biological, physical, or physiological characteristics that is linked or reasonably linkable to an individual, including:

(i) iris or retina scans;

(ii) fingerprints;

(iii) facial or hand mapping, geometry, or templates;

(iv) vein patterns;

(v) voice prints; and

(vi) gait or personally identifying physical movement or patterns.

(B) “Biometric data” does not include:

(i) a digital or physical photograph;

(ii) an audio or video recording; or

(iii) any data generated from a digital or physical photograph, or an audio or video recording, unless such data is generated to identify a specific individual.

(5) “Broker-dealer” has the same meaning as in 9 V.S.A. § 5102.

(6) “Business associate” has the same meaning as in HIPAA.

(7) “Child” has the same meaning as in COPPA.

(8)(A) “Consent” means a clear affirmative act signifying a consumer’s freely given, specific, informed, and unambiguous agreement to allow the processing of personal data relating to the consumer.

(B) “Consent” may include a written statement, including by electronic means, or any other unambiguous affirmative action.

(C) “Consent” does not include:

(i) acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information;

(ii) hovering over, muting, pausing, or closing a given piece of content; or

(iii) agreement obtained through the use of dark patterns.

(9)(A) “Consumer” means an individual who is a resident of the State.

(B) “Consumer” does not include an individual acting in a commercial or employment context or as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency whose communications or transactions with the controller occur solely within the context of that individual’s role with the company, partnership, sole proprietorship, nonprofit, or government agency.

(10) “Consumer health data” means any personal data that a controller uses to identify a consumer’s physical or mental health condition or diagnosis, including gender-affirming health data and reproductive or sexual health data.

(11) “Consumer health data controller” means any controller that, alone or jointly with others, determines the purpose and means of processing consumer health data.

(12) “Consumer reporting agency” has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f);

(13) “Controller” means a person who, alone or jointly with others, determines the purpose and means of processing personal data.

(14) “COPPA” means the Children’s Online Privacy Protection Act of 1998, 15 U.S.C. § 6501–6506, and any regulations, rules, guidance, and exemptions promulgated pursuant to the act, as the act and regulations, rules, guidance, and exemptions may be amended.

(15) “Covered entity” has the same meaning as in HIPAA.

(16) “Credit union” has the same meaning as in 8 V.S.A. § 30101.

(17) “Dark pattern” means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice and includes any practice the Federal Trade Commission refers to as a “dark pattern.”

(18) “Decisions that produce legal or similarly significant effects concerning the consumer” means decisions made by the controller that result in the provision or denial by the controller of financial or lending services, housing, insurance, education enrollment or opportunity, criminal justice, employment opportunities, health care services, or access to essential goods or services.

(19) “De-identified data” means data that does not identify and cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable individual, or a device linked to the individual, if the controller that possesses the data:

(A)(i) takes reasonable measures to ensure that the data cannot be used to re-identify an identified or identifiable individual or be associated with an individual or device that identifies or is linked or reasonably linkable to an individual or household;

(ii) for purposes of this subdivision (A), “reasonable measures” shall include the de-identification requirements set forth under 45 C.F.R. § 164.514 (other requirements relating to uses and disclosures of protected health information);

(B) publicly commits to process the data only in a de-identified fashion and not attempt to re-identify the data; and

(C) contractually obligates any recipients of the data to satisfy the criteria set forth in subdivisions (A) and (B) of this subdivision (19).

(20) “Educational institution” has the same meaning as “educational agency or institution” in 20 U.S.C. § 1232g (family educational and privacy rights);

(21) “Financial institution”:

(A) as used in subdivision 2417(a)(12) of this title, has the same meaning as in 15 U.S.C. § 6809; and

(B) as used in subdivision 2417(a)(14) of this title, has the same meaning as in 8 V.S.A. § 11101.

(22) “Gender-affirming health care services” has the same meaning as in 1 V.S.A. § 150.

(23) “Gender-affirming health data” means any personal data concerning a past, present, or future effort made by a consumer to seek, or a consumer’s receipt of, gender-affirming health care services, including:

(A) precise geolocation data that is used for determining a consumer’s attempt to acquire or receive gender-affirming health care services;

(B) efforts to research or obtain gender-affirming health care services; and

(C) any gender-affirming health data that is derived from nonhealth information.

(24) “Genetic data” means any data, regardless of its format, that results from the analysis of a biological sample of an individual, or from another source enabling equivalent information to be obtained, and concerns genetic material, including deoxyribonucleic acids (DNA), ribonucleic acids (RNA), genes, chromosomes, alleles, genomes, alterations or modifications to DNA or RNA, single nucleotide polymorphisms (SNPs), epigenetic markers, uninterpreted data that results from analysis of the biological sample or other source, and any information extrapolated, derived, or inferred therefrom.

(25) “Geofence” means any technology that uses global positioning coordinates, cell tower connectivity, cellular data, radio frequency identification, wireless fidelity technology data, or any other form of location detection, or any combination of such coordinates, connectivity, data, identification, or other form of location detection, to establish a virtual boundary.

(26) “Health care facility” has the same meaning as in 18 V.S.A. § 9432.

(27) “Heightened risk of harm to a minor” means processing the personal data of a minor in a manner that presents a reasonably foreseeable risk of:

(A) material physical or financial injury to a minor;

(B) emotional distress, as that term is defined in 13 V.S.A. § 1061(2), to a minor;

(C) a highly offensive intrusion on the reasonable privacy expectations of a minor;

(D) the encouragement of excessive or compulsive use of an online service, product, or feature by a minor; or

(E) discrimination against the minor based upon the minor’s race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, or national origin.

(28) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and any regulations promulgated pursuant to the act, as may be amended.

(29) “Identified or identifiable individual” means an individual who can be readily identified, directly or indirectly, including by reference to an identifier such as a name, an identification number, specific geolocation data, or an online identifier.

(30) “Independent trust company” has the same meaning as in 8 V.S.A. § 2401.

(31) “Investment adviser” has the same meaning as in 9 V.S.A. § 5102.

(32) “Mental health facility” means any health care facility in which at least 70 percent of the health care services provided in the facility are mental health services.

(33) “Nonpublic personal information” has the same meaning as in 15 U.S.C. § 6809.

(34)(A) “Online service, product, or feature” means any service, product, or feature that is provided online, except as provided in subdivision (B) of this subdivision (33).

(B) “Online service, product, or feature” does not include:

(i) telecommunications service, as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153;

(ii) broadband internet access service, as that term is defined in 47 C.F.R. § 54.400 (universal service support); or

(iii) the delivery or use of a physical product.

(35) “Patient identifying information” has the same meaning as in 42 C.F.R. § 2.11 (confidentiality of substance use disorder patient records).

(36) “Patient safety work product” has the same meaning as in 42 C.F.R. § 3.20 (patient safety organizations and patient safety work product).

(37)(A) “Personal data” means any information, including derived data and unique identifiers, that is linked or reasonably linkable to an identified or identifiable individual or to a device that identifies, is linked to, or is

reasonably linkable to one or more identified or identifiable individuals in a household.

(B) “Personal data” does not include de-identified data or publicly available information.

(38)(A) “Precise geolocation data” means personal data derived from technology that accurately identifies within a radius of 1,850 feet a consumer’s present or past location or the present or past location of a device that links or is linkable to a consumer or any data that is derived from a device that is used or intended to be used to locate a consumer within a radius of 1,850 feet by means of technology that includes a global positioning system that provides latitude and longitude coordinates.

(B) “Precise geolocation data” does not include the content of communications or any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

(39) “Process” or “processing” means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(40) “Processor” means a person who processes personal data on behalf of a controller.

(41) “Profiling” means any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable individual’s economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(42) “Protected health information” has the same meaning as in HIPAA.

(43) “Pseudonymous data” means personal data that cannot be attributed to a specific individual without the use of additional information, provided the additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data is not attributed to an identified or identifiable individual.

(44) “Publicly available information” means information that:

(A) is lawfully made available through federal, state, or local government records or widely distributed media; or

(B) a controller has a reasonable basis to believe a consumer has lawfully made available to the general public.

(45) “Qualified service organization” has the same meaning as in 42 C.F.R. § 2.11 (confidentiality of substance use disorder patient records);

(46) “Reproductive or sexual health care” has the same meaning as “reproductive health care services” in 1 V.S.A. § 150(c)(1).

(47) “Reproductive or sexual health data” means any personal data concerning a past, present, or future effort made by a consumer to seek, or a consumer’s receipt of, reproductive or sexual health care.

(48) “Reproductive or sexual health facility” means any health care facility in which at least 70 percent of the health care-related services or products rendered or provided in the facility are reproductive or sexual health care.

(49)(A) “Sale of personal data” means the exchange of a consumer’s personal data by the controller to a third party for monetary or other valuable consideration.

(B) “Sale of personal data” does not include:

(i) the disclosure of personal data to a processor that processes the personal data on behalf of the controller;

(ii) the disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer;

(iii) the disclosure or transfer of personal data to an affiliate of the controller;

(iv) the disclosure of personal data where the consumer directs the controller to disclose the personal data or intentionally uses the controller to interact with a third party;

(v) the disclosure of personal data that the consumer:

(I) intentionally made available to the general public via a channel of mass media; and

(II) did not restrict to a specific audience; or

(vi) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction, in which the third party assumes control of all or part of the controller’s assets.

(50) “Sensitive data” means personal data that:

(A) reveals a consumer's government-issued identifier, such as a Social Security number, passport number, state identification card, or driver's license number, that is not required by law to be publicly displayed;

(B) reveals a consumer's racial or ethnic origin, national origin, citizenship or immigration status, religious or philosophical beliefs, or union membership;

(C) reveals a consumer's sexual orientation, sex life, sexuality, or status as transgender or nonbinary;

(D) reveals a consumer's status as a victim of a crime;

(E) is financial information, including a consumer's tax return and account number, financial account log-in, financial account, debit card number, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account;

(F) is consumer health data;

(G) is personal data collected and analyzed concerning consumer health data or personal data that describes or reveals a past, present, or future mental or physical health condition, treatment, disability, or diagnosis, including pregnancy, to the extent the personal data is not used by the controller to identify a specific consumer's physical or mental health condition or diagnosis;

(H) is biometric or genetic data;

(I) is personal data collected from a known child;

(J) is a photograph, film, video recording, or other similar medium that shows the naked or undergarment-clad private area of a consumer; or

(K) is precise geolocation data.

(51)(A) "Targeted advertising" means displaying an advertisement to a consumer where the advertisement is selected based on personal data obtained or inferred from that consumer's activities over time and across nonaffiliated internet websites or online applications to predict the consumer's preferences or interests.

(B) "Targeted advertising" does not include:

(i) an advertisement based on activities within a controller's own websites or online applications;

(ii) an advertisement based on the context of a consumer's current search query, visit to a website, or use of an online application;

(iii) an advertisement directed to a consumer in response to the consumer's request for information or feedback; or

(iv) processing personal data solely to measure or report advertising frequency, performance, or reach.

(52) "Third party" means a person, such as a public authority, agency, or body, other than the consumer, controller, or processor or an affiliate of the processor or the controller.

(53) "Trade secret" has the same meaning as in section 4601 of this title.

(54) "Victim services organization" means a nonprofit organization that is established to provide services to victims or witnesses of child abuse, domestic violence, human trafficking, sexual assault, violent felony, or stalking.

§ 2416. APPLICABILITY

(a) Except as provided in subsection (b) of this section, this chapter applies to a person that conducts business in this State or a person that produces products or services that are targeted to residents of this State and that during the preceding calendar year:

(1) controlled or processed the personal data of not fewer than 25,000 consumers, excluding personal data controlled or processed solely for the purpose of completing a payment transaction; or

(2) derived more than 50 percent of the person's gross revenue from the sale of personal data.

(b) Sections 2420 and 2426 of this title, and the provisions of this chapter concerning consumer health data and consumer health data controllers apply to a person that conducts business in this State or a person that produces products or services that are targeted to residents of this State.

§ 2417. EXEMPTIONS

(a) This chapter does not apply to:

(1) a federal, State, tribal, or local government entity in the ordinary course of its operation;

(2) protected health information that a covered entity or business associate processes in accordance with, or documents that a covered entity or business associate creates for the purpose of complying with HIPAA;

(3) information used only for public health activities and purposes described in 45 C.F.R. § 164.512 (disclosure of protected health information without authorization);

(4) information that identifies a consumer in connection with:

(A) activities that are subject to the Federal Policy for the Protection of Human Subjects, codified as 45 C.F.R. part 46 (HHS protection of human subjects) and in various other federal regulations;

(B) research on human subjects undertaken in accordance with good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use;

(C) activities that are subject to the protections provided in 21 C.F.R. parts 50 (FDA clinical investigations protection of human subjects) and 56 (FDA clinical investigations institutional review boards); or

(D) research conducted in accordance with the requirements set forth in subdivisions (A) through (C) of this subdivision (a)(4) or otherwise in accordance with applicable law;

(5) patient identifying information that is collected and processed in accordance with 42 C.F.R. part 2 (confidentiality of substance use disorder patient records);

(6) patient safety work product that is created for purposes of improving patient safety under 42 C.F.R. part 3 (patient safety organizations and patient safety work product);

(7) information or documents created for the purposes of the Healthcare Quality Improvement Act of 1986, 42 U.S.C. § 11101–11152, and regulations adopted to implement that act;

(8) information that originates from, that is intermingled so as to be indistinguishable from, or that is treated in the same manner as information described in subdivisions (2)–(7) of this subsection that a covered entity, business associate, or a qualified service organization program creates, collects, processes, uses, or maintains in the same manner as is required under the laws, regulations, and guidelines described in subdivisions (2)–(7) of this subsection;

(9) information processed or maintained solely in connection with, and for the purpose of, enabling:

(A) an individual's employment or application for employment;

(B) an individual's ownership of, or function as a director or officer of, a business entity;

(C) an individual's contractual relationship with a business entity;

(D) an individual's receipt of benefits from an employer, including benefits for the individual's dependents or beneficiaries; or

(E) notice of an emergency to persons that an individual specifies;

(10) any activity that involves collecting, maintaining, disclosing, selling, communicating, or using information for the purpose of evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living if done strictly in accordance with the provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681–1681x, as may be amended, by:

(A) a consumer reporting agency;

(B) a person who furnishes information to a consumer reporting agency under 15 U.S.C. § 1681s-2 (responsibilities of furnishers of information to consumer reporting agencies); or

(C) a person who uses a consumer report as provided in 15 U.S.C. § 1681b(a)(3) (permissible purposes of consumer reports);

(11) information collected, processed, sold, or disclosed under and in accordance with the following laws and regulations:

(A) the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721–2725;

(B) the Airline Deregulation Act, Pub. L. No. 95-504, only to the extent that an air carrier collects information related to prices, routes, or services, and only to the extent that the provisions of the Airline Deregulation Act preempt this chapter;

(C) the Farm Credit Act, Pub. L. No. 92-181, as may be amended; or

(D) federal policy under 21 U.S.C. § 830 (regulation of listed chemicals and certain machines);

(12) nonpublic personal information that is processed by a financial institution or data subject to the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, and regulations adopted to implement that act;

(13) information that originates from, or is intermingled so as to be indistinguishable from, information described in subdivision (12) of this subsection and that a controller or processor collects, processes, uses, or

maintains in the same manner as is required under the law and regulations specified in subdivision (12) of this subsection;

(14) a financial institution, credit union, independent trust company, broker-dealer, or investment adviser or a financial institution's, credit union's, independent trust company's, broker-dealer's, or investment adviser's affiliate or subsidiary that is only and directly engaged in financial activities, as described in 12 U.S.C. § 1843(k);

(15) a person regulated pursuant to part 3 of Title 8 (chapters 101–165) other than a person that, alone or in combination with another person, establishes and maintains a self-insurance program and that does not otherwise engage in the business of entering into policies of insurance;

(16) a third-party administrator, as that term is defined in the Third Party Administrator Rule adopted pursuant to 18 V.S.A. § 9417;

(17) a nonprofit organization that is established to detect and prevent fraudulent acts in connection with insurance;

(18) a public service company subject to the rules and orders of the Vermont Public Utility Commission regarding data sharing and service quality;

(19) an educational institution subject to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and regulations adopted to implement that act;

(20) personal data of a victim or witness of child abuse, domestic violence, human trafficking, sexual assault, violent felony, or stalking that a victim services organization collects, processes, or maintains in the course of its operation;

(21) personal data of health care service volunteers held by nonprofit organizations to facilitate provision of health care services; or

(22) noncommercial activity of:

(A) a publisher, editor, reporter, or other person who is connected with or employed by a newspaper, magazine, periodical, newsletter, pamphlet, report, or other publication in general circulation;

(B) a radio or television station that holds a license issued by the Federal Communications Commission;

(C) a nonprofit organization that provides programming to radio or television networks; or

(D) an entity that provides an information service, including a press association or wire service.

(b) Controllers, processors, and consumer health data controllers that comply with the verifiable parental consent requirements of COPPA shall be deemed compliant with any obligation to obtain parental consent pursuant to this chapter, including pursuant to section 2420 of this title.

§ 2418. CONSUMER PERSONAL DATA RIGHTS

(a) A consumer shall have the right to:

(1) confirm whether or not a controller is processing the consumer's personal data and access the personal data, unless the confirmation or access would require the controller to reveal a trade secret;

(2) obtain from a controller a list of third parties, other than individuals, to which the controller has transferred, at the controller's election, either the consumer's personal data or any personal data;

(3) correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;

(4) delete personal data provided by, or obtained about, the consumer;

(5) obtain a copy of the consumer's personal data processed by the controller, in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance, where the processing is carried out by automated means, provided such controller shall not be required to reveal any trade secret; and

(6) opt out of the processing of the personal data for purposes of:

(A) targeted advertising;

(B) the sale of personal data; or

(C) profiling in furtherance of solely automated decisions that produce legal or similarly significant effects concerning the consumer.

(b)(1) A consumer may exercise rights under this section by submitting a request to a controller using the method that the controller specifies in the privacy notice under section 2419 of this title.

(2) A controller shall not require a consumer to create an account for the purpose described in subdivision (1) of this subsection, but the controller may require the consumer to use an account the consumer previously created.

(3) A parent or legal guardian may exercise rights under this section on behalf of the parent's child or on behalf of a child for whom the guardian has legal responsibility. A guardian or conservator may exercise the rights under

this section on behalf of a consumer that is subject to a guardianship, conservatorship, or other protective arrangement.

(4)(A) A consumer may designate another person to act on the consumer's behalf as the consumer's authorized agent for the purpose of exercising the consumer's rights under subdivision (a)(4) or (a)(6) of this section.

(B) The consumer may designate an authorized agent by means of an internet link, browser setting, browser extension, global device setting, or other technology that enables the consumer to exercise the consumer's rights under subdivision (a)(4) or (a)(6) of this section.

(c) Except as otherwise provided in this chapter, a controller shall comply with a request by a consumer to exercise the consumer rights authorized pursuant to this chapter as follows:

(1)(A) A controller shall respond to the consumer without undue delay, but not later than 60 days after receipt of the request.

(B) The controller may extend the response period by 45 additional days when reasonably necessary, considering the complexity and number of the consumer's requests, provided the controller informs the consumer of the extension within the initial 60-day response period and of the reason for the extension.

(2) If a controller declines to take action regarding the consumer's request, the controller shall inform the consumer without undue delay, but not later than 45 days after receipt of the request, of the justification for declining to take action and instructions for how to appeal the decision.

(3)(A) Information provided in response to a consumer request shall be provided by a controller, free of charge, once per consumer during any 12-month period.

(B) If requests from a consumer are manifestly unfounded, excessive, or repetitive, the controller may charge the consumer a reasonable fee to cover the administrative costs of complying with the request or decline to act on the request.

(C) The controller bears the burden of demonstrating the manifestly unfounded, excessive, or repetitive nature of the request.

(4)(A) If a controller is unable to authenticate a request to exercise any of the rights afforded under subdivisions (a)(1)–(5) of this section using commercially reasonable efforts, the controller shall not be required to comply with a request to initiate an action pursuant to this section and shall provide

notice to the consumer that the controller is unable to authenticate the request to exercise the right or rights until the consumer provides additional information reasonably necessary to authenticate the consumer and the consumer's request to exercise the right or rights.

(B) A controller shall not be required to authenticate an opt-out request, but a controller may deny an opt-out request if the controller has a good faith, reasonable, and documented belief that the request is fraudulent.

(C) If a controller denies an opt-out request because the controller believes the request is fraudulent, the controller shall send a notice to the person who made the request disclosing that the controller believes the request is fraudulent, why the controller believes the request is fraudulent, and that the controller shall not comply with the request.

(5) A controller that has obtained personal data about a consumer from a source other than the consumer shall be deemed in compliance with a consumer's request to delete the data pursuant to subdivision (a)(4) of this section by:

(A) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the controller's records and not using the retained data for any other purpose pursuant to the provisions of this chapter; or

(B) opting the consumer out of the processing of the personal data for any purpose except for those exempted pursuant to the provisions of this chapter.

(6) A controller may not condition the exercise of a right under this section through:

(A) the use of any false, fictitious, fraudulent, or materially misleading statement or representation; or

(B) the employment of any dark pattern.

(d) A controller shall establish a process by means of which a consumer may appeal the controller's refusal to take action on a request under subsection (b) of this section. The controller's process must:

(1) Allow a reasonable period of time after the consumer receives the controller's refusal within which to appeal.

(2) Be conspicuously available to the consumer.

(3) Be similar to the manner in which a consumer must submit a request under subsection (b) of this section.

(4) Require the controller to approve or deny the appeal within 45 days after the date on which the controller received the appeal and to notify the consumer in writing of the controller's decision and the reasons for the decision. If the controller denies the appeal, the notice must provide or specify information that enables the consumer to contact the Attorney General to submit a complaint.

§ 2419. DUTIES OF CONTROLLERS

(a) A controller shall:

(1) specify in the privacy notice described in subsection (d) of this section the express purposes for which the controller is collecting and processing personal data;

(2) process personal data only:

(A) as reasonably necessary and proportionate to achieve a disclosed purpose for which the personal data was collected, consistent with the reasonable expectations of the consumer whose personal data is being processed;

(B) for another disclosed purpose that is compatible with the context in which the personal data was collected; or

(C) for a further disclosed purpose if the controller obtains the consumer's consent;

(3) establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data appropriate to the volume and nature of the personal data at issue; and

(4) provide an effective mechanism for a consumer to revoke consent to the controller's processing of the consumer's personal data that is at least as easy as the mechanism by which the consumer provided the consumer's consent and, upon revocation of the consent, cease to process the data as soon as practicable, but not later than 60 days after receiving the request.

(b) A controller shall not:

(1) process personal data beyond what is reasonably necessary and proportionate to the processing purpose;

(2) process sensitive data about a consumer without first obtaining the consumer's consent or, if the controller knows the consumer is a child, without processing the sensitive data in accordance with COPPA;

(3)(A) except as provided in subdivision (B) of this subdivision (3), process a consumer's personal data in a manner that discriminates against individuals or otherwise makes unavailable the equal enjoyment of goods or services on the basis of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, or national origin;

(B) subdivision (A) of this subdivision (3) shall not apply to:

(i) a private establishment, as that term is used in 42 U.S.C. § 2000a(e) (prohibition against discrimination or segregation in places of public accommodation);

(ii) processing for the purpose of a controller's or processor's self-testing to prevent or mitigate unlawful discrimination; or

(iii) processing for the purpose of diversifying an applicant, participant, or consumer pool.

(4) process a consumer's personal data for the purposes of targeted advertising, of profiling the consumer in furtherance of decisions that produce legal or similarly significant effects concerning the consumer, or of selling the consumer's personal data without the consumer's consent if the controller knows that the consumer is at least 13 years of age and not older than 16 years of age; or

(5) discriminate or retaliate against a consumer who exercises a right provided to the consumer under this chapter or refuses to consent to the collection or processing of personal data for a separate product or service, including by:

(A) denying goods or services;

(B) charging different prices or rates for goods or services; or

(C) providing a different level of quality or selection of goods or services to the consumer.

(c) Subsections (a) and (b) of this section shall not be construed to:

(1) require a controller to provide a good or service that requires personal data from a consumer that the controller does not collect or maintain; or

(2) prohibit a controller from offering a different price, rate, level of quality, or selection of goods or services to a consumer, including an offer for no fee or charge, in connection with a consumer's voluntary participation in a

financial incentive program, such as a bona fide loyalty, rewards, premium features, discount, or club card program.

(d)(1) A controller shall provide to consumers a reasonably accessible, clear, and meaningful privacy notice that:

(A) lists the categories of personal data, including the categories of sensitive data, that the controller processes;

(B) describes the controller's purposes for processing the personal data;

(C) describes how a consumer may exercise the consumer's rights under this chapter, including how a consumer may appeal a controller's denial of a consumer's request under section 2418 of this title;

(D) lists all categories of personal data, including the categories of sensitive data, that the controller shares with third parties;

(E) describes all categories of third parties with which the controller shares personal data at a level of detail that enables the consumer to understand what type of entity each third party is and, to the extent possible, how each third party may process personal data;

(F) specifies an e-mail address or other online method by which a consumer can contact the controller that the controller actively monitors;

(G) identifies the controller, including any business name under which the controller registered with the Secretary of State and any assumed business name that the controller uses in this State;

(H) provides a clear and conspicuous description of any processing of personal data in which the controller engages for the purposes of targeted advertising, sale of personal data to third parties, or profiling the consumer in furtherance of decisions that produce legal or similarly significant effects concerning the consumer, and a procedure by which the consumer may opt out of this type of processing; and

(I) describes the method or methods the controller has established for a consumer to submit a request under subdivision 2418(b)(1) of this title.

(2) The privacy notice shall adhere to the accessibility and usability guidelines recommended under 42 U.S.C. chapter 126 (the Americans with Disabilities Act) and 29 U.S.C. 794d (section 508 of the Rehabilitation Act of 1973), including ensuring readability for individuals with disabilities across various screen resolutions and devices and employing design practices that facilitate easy comprehension and navigation for all users.

(e) The method or methods under subdivision (d)(1)(I) of this section for submitting a consumer's request to a controller must:

(1) take into account the ways in which consumers normally interact with the controller, the need for security and reliability in communications related to the request, and the controller's ability to authenticate the identity of the consumer that makes the request;

(2) provide a clear and conspicuous link to a website where the consumer or an authorized agent may opt out from a controller's processing of the consumer's personal data pursuant to subdivision 2418(a)(6) of this title or, solely if the controller does not have a capacity needed for linking to a webpage, provide another method the consumer can use to opt out; and

(3) allow a consumer or authorized agent to send a signal to the controller that indicates the consumer's preference to opt out of the sale of personal data or targeted advertising pursuant to subdivision 2418(a)(6) of this title by means of a platform, technology, or mechanism that:

(A) does not unfairly disadvantage another controller;

(B) does not use a default setting but instead requires the consumer or authorized agent to make an affirmative, voluntary, and unambiguous choice to opt out;

(C) is consumer friendly and easy for an average consumer to use;

(D) is as consistent as possible with similar platforms, technologies, or mechanisms required under federal or state laws or regulations; and

(E) enables the controller to reasonably determine whether the consumer has made a legitimate request pursuant to subsection 2418(b) of this title to opt out pursuant to subdivision 2418(a)(6) of this title.

(f) If a consumer or authorized agent uses a method under subdivision (d)(1)(I) of this section to opt out of a controller's processing of the consumer's personal data pursuant to subdivision 2418(a)(6) of this title and the decision conflicts with a consumer's voluntary participation in a bona fide reward, club card, or loyalty program or a program that provides premium features or discounts in return for the consumer's consent to the controller's processing of the consumer's personal data, the controller may either comply with the request to opt out or notify the consumer of the conflict and ask the consumer to affirm that the consumer intends to withdraw from the bona fide reward, club card, or loyalty program or the program that provides premium features or discounts. If the consumer affirms that the consumer intends to withdraw, the controller shall comply with the request to opt out.

§ 2420. DUTIES OF CONTROLLERS TO MINORS

(a)(1) A controller that offers any online service, product, or feature to a consumer whom the controller knows is a minor shall use reasonable care to avoid any heightened risk of harm to minors caused by the online service, product, or feature.

(2) In any action brought pursuant to section 2425 of this title, there is a rebuttable presumption that a controller used reasonable care as required under this section if the controller complied with this section.

(b) Unless a controller has obtained consent in accordance with subsection (c) of this section, a controller that offers any online service, product, or feature to a consumer whom the controller knows is a minor shall not:

(1) process a minor's personal data for the purposes of:

(A) targeted advertising;

(B) the sale of personal data; or

(C) profiling in furtherance of any solely automated decisions that produce legal or similarly significant effects concerning the consumer;

(2) process a minor's personal data for any purpose other than:

(A) the processing purpose that the controller disclosed at the time the controller collected the minor's personal data; or

(B) a processing purpose that is reasonably necessary for, and compatible with, the processing purpose that the controller disclosed at the time the controller collected the minor's personal data; or

(3) process a minor's personal data for longer than is reasonably necessary to provide the online service, product, or feature;

(4) use any system design feature, except for a service or application that is used by and under the direction of an educational entity, to significantly increase, sustain, or extend a minor's use of the online service, product, or feature; or

(5) collect a minor's precise geolocation data unless:

(A) the minor's precise geolocation data is reasonably necessary for the controller to provide the online service, product, or feature;

(B) the controller only collects the minor's precise geolocation data for the time necessary to provide the online service, product, or feature; and

(C) the controller provides to the minor a signal indicating that the controller is collecting the minor's precise geolocation data and makes the

signal available to the minor for the entire duration of the collection of the minor's precise geolocation data.

(c) A controller shall not engage in the activities described in subsection (b) of this section unless the controller obtains:

(1) the minor's consent; or

(2) if the minor is a child, the consent of the minor's parent or legal guardian.

(d) A controller that offers any online service, product, or feature to a consumer whom that controller knows is a minor shall not:

(1) employ any dark pattern; or

(2) except as provided in subsection (e) of this section, offer any direct messaging apparatus for use by a minor without providing readily accessible and easy-to-use safeguards to limit the ability of an adult to send unsolicited communications to the minor with whom the adult is not connected.

(e) Subdivision (d)(2) of this section does not apply to an online service, product, or feature of which the predominant or exclusive function is:

(1) e-mail; or

(2) direct messaging consisting of text, photographs, or videos that are sent between devices by electronic means, where messages are:

(A) shared between the sender and the recipient;

(B) only visible to the sender and the recipient; and

(C) not posted publicly.

§ 2421. DUTIES OF PROCESSORS

(a) A processor shall adhere to a controller's instructions and shall assist the controller in meeting the controller's obligations under this chapter. In assisting the controller, the processor must:

(1) enable the controller to respond to requests from consumers pursuant to subsection 2418(b) of this title by means that:

(A) take into account how the processor processes personal data and the information available to the processor; and

(B) use appropriate technical and organizational measures to the extent reasonably practicable; and

(2) adopt administrative, technical, and physical safeguards that are reasonably designed to protect the security and confidentiality of the personal

data the processor processes, taking into account how the processor processes the personal data and the information available to the processor.

(b) Processing by a processor must be governed by a contract between the controller and the processor. The contract must:

(1) be valid and binding on both parties;

(2) set forth clear instructions for processing data, the nature and purpose of the processing, the type of data that is subject to processing, and the duration of the processing;

(3) specify the rights and obligations of both parties with respect to the subject matter of the contract;

(4) ensure that each person that processes personal data is subject to a duty of confidentiality with respect to the personal data;

(5) require the processor to delete the personal data or return the personal data to the controller at the controller's direction or at the end of the provision of services, unless a law requires the processor to retain the personal data;

(6) require the processor to make available to the controller, at the controller's request, all information the controller needs to verify that the processor has complied with all obligations the processor has under this chapter;

(7) require the processor to enter into a subcontract with a person the processor engages to assist with processing personal data on the controller's behalf and in the subcontract require the subcontractor to meet the processor's obligations concerning personal data; and

(8)(A) allow the controller, the controller's designee, or a qualified and independent person the processor engages, in accordance with an appropriate and accepted control standard, framework, or procedure, to assess the processor's policies and technical and organizational measures for complying with the processor's obligations under this chapter;

(B) require the processor to cooperate with the assessment; and

(C) at the controller's request, report the results of the assessment to the controller.

(c) This section does not relieve a controller or processor from any liability that accrues under this chapter as a result of the controller's or processor's actions in processing personal data.

(d)(1) For purposes of determining obligations under this chapter, a person is a controller with respect to processing a set of personal data and is subject to an action under section 2425 of this title to punish a violation of this chapter, if the person:

(A) does not adhere to a controller's instructions to process the personal data; or

(B) begins at any point to determine the purposes and means for processing the personal data, alone or in concert with another person.

(2) A determination under this subsection is a fact-based determination that must take account of the context in which a set of personal data is processed.

(3) A processor that adheres to a controller's instructions with respect to a specific processing of personal data remains a processor.

§ 2422. DUTIES OF PROCESSORS TO MINORS

(a) A processor shall adhere to the instructions of a controller and shall assist the controller in meeting the controller's obligations under section 2420 of this title, taking into account:

(1) the nature of the processing;

(2) the information available to the processor by appropriate technical and organizational measures; and

(3) whether the assistance is reasonably practicable and necessary to assist the controller in meeting its obligations.

(b) A contract between a controller and a processor must satisfy the requirements in subsection 2421(b) of this title.

(c) Nothing in this section shall be construed to relieve a controller or processor from the liabilities imposed on the controller or processor by virtue of the controller's or processor's role in the processing relationship as described in section 2420 of this title.

(d) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal data is to be processed. A person that is not limited in the person's processing of personal data pursuant to a controller's instructions, or that fails to adhere to the instructions, is a controller and not a processor with respect to a specific processing of data. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor. If a processor

begins, alone or jointly with others, determining the purposes and means of the processing of personal data, the processor is a controller with respect to the processing and may be subject to an enforcement action under section 2425 of this title.

§ 2423. DE-IDENTIFIED OR PSEUDONYMOUS DATA

(a) A controller in possession of de-identified data shall:

(1) take reasonable measures to ensure that the data cannot be used to re-identify an identified or identifiable individual or be associated with an individual or device that identifies or is linked or reasonably linkable to an individual or household;

(2) publicly commit to maintaining and using de-identified data without attempting to re-identify the data; and

(3) contractually obligate any recipients of the de-identified data to comply with the provisions of this chapter.

(b) This section does not prohibit a controller from attempting to re-identify de-identified data solely for the purpose of testing the controller's methods for de-identifying data.

(c) This chapter shall not be construed to require a controller or processor to:

(1) re-identify de-identified data; or

(2) maintain data in identifiable form, or collect, obtain, retain, or access any data or technology, in order to associate a consumer with personal data in order to authenticate the consumer's request under subsection 2418(b) of this title; or

(3) comply with an authenticated consumer rights request if the controller:

(A) is not reasonably capable of associating the request with the personal data or it would be unreasonably burdensome for the controller to associate the request with the personal data;

(B) does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer; and

(C) does not sell or otherwise voluntarily disclose the personal data to any third party, except as otherwise permitted in this section.

(d) The rights afforded under subdivisions 2418(a)(1)–(5) of this title shall not apply to pseudonymous data in cases where the controller is able to demonstrate that any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.

(e) A controller that discloses or transfers pseudonymous data or de-identified data shall exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or de-identified data is subject and shall take appropriate steps to address any breaches of those contractual commitments.

§ 2424. CONSTRUCTION OF DUTIES OF CONTROLLERS AND PROCESSORS

(a) This chapter shall not be construed to restrict a controller's, processor's, or consumer health data controller's ability to:

(1) comply with federal, state, or municipal laws, ordinances, or regulations;

(2) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, municipal, or other governmental authorities;

(3) cooperate with law enforcement agencies concerning conduct or activity that the controller, processor, or consumer health data controller reasonably and in good faith believes may violate federal, state, or municipal laws, ordinances, or regulations;

(4) carry out obligations under a contract under subsection 2421(b) of this title for a federal, State, tribal, or local government entity;

(5) investigate, establish, exercise, prepare for, or defend legal claims;

(6) provide a product or service specifically requested by the consumer to whom the personal data pertains;

(7) perform under a contract to which a consumer is a party, including fulfilling the terms of a written warranty;

(8) take steps at the request of a consumer prior to entering into a contract;

(9) take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or another individual, and where the processing cannot be manifestly based on another legal basis;

(10) prevent, detect, protect against, or respond to a network security or physical security incident, including an intrusion or trespass, medical alert, or fire alarm;

(11) prevent, detect, protect against, or respond to identity theft, fraud, harassment, malicious or deceptive activity, or any criminal activity targeted at or involving the controller or processor or its services, preserve the integrity or security of systems, or investigate, report, or prosecute those responsible for the action;

(12) assist another controller, processor, consumer health data controller, or third party with any of the obligations under this chapter; or

(13) process personal data for reasons of public interest in the area of public health, community health, or population health, but solely to the extent that the processing is:

(A) subject to suitable and specific measures to safeguard the rights of the consumer whose personal data is being processed; and

(B) under the responsibility of a professional subject to confidentiality obligations under federal, state, or local law.

(b) The obligations imposed on controllers, processors, or consumer health data controllers under this chapter shall not restrict a controller's, processor's, or consumer health data controller's ability to collect, use, or retain data for internal use to:

(1) conduct internal research to develop, improve, or repair products, services, or technology;

(2) effectuate a product recall; or

(3) identify and repair technical errors that impair existing or intended functionality.

(c)(1) The obligations imposed on controllers, processors, or consumer health data controllers under this chapter shall not apply where compliance by the controller, processor, or consumer health data controller with this chapter would violate an evidentiary privilege under the laws of this State.

(2) This chapter shall not be construed to prevent a controller, processor, or consumer health data controller from providing personal data concerning a consumer to a person covered by an evidentiary privilege under the laws of the State as part of a privileged communication.

(d)(1) A controller, processor, or consumer health data controller that discloses personal data to a processor or third-party controller pursuant to this

chapter shall not be deemed to have violated this chapter if the processor or third-party controller that receives and processes the personal data violates this chapter, provided, at the time the disclosing controller, processor, or consumer health data controller disclosed the personal data, the disclosing controller, processor, or consumer health data controller did not have actual knowledge that the receiving processor or third-party controller would violate this chapter.

(2) A third-party controller or processor receiving personal data from a controller, processor, or consumer health data controller in compliance with this chapter is not in violation of this chapter for the transgressions of the controller, processor, or consumer health data controller from which the third-party controller or processor receives the personal data.

(e) This chapter shall not be construed to:

(1) impose any obligation on a controller, processor, or consumer health data controller that adversely affects the rights or freedoms of any person, including the rights of any person:

(A) to freedom of speech or freedom of the press guaranteed in the First Amendment to the U.S. Constitution; or

(B) under 12 V.S.A. § 1615; or

(2) apply to any person's processing of personal data in the course of the person's purely personal or household activities.

(f)(1) Personal data processed by a controller or consumer health data controller pursuant to this section may be processed to the extent that the processing is:

(A) reasonably necessary and proportionate to the purposes listed in this section; and

(B) adequate, relevant, and limited to what is necessary in relation to the specific purposes listed in this section.

(2)(A) Personal data collected, used, or retained pursuant to subsection (b) of this section shall, where applicable, take into account the nature and purpose or purposes of the collection, use, or retention.

(B) Personal data collected, used, or retained pursuant to subsection (b) of this section shall be subject to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data and to reduce reasonably foreseeable risks of harm to consumers relating to the collection, use, or retention of personal data.

(g) If a controller or consumer health data controller processes personal data pursuant to an exemption in this section, the controller or consumer health data controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (f) of this section.

(h) Processing personal data for the purposes expressly identified in this section shall not solely make a legal entity a controller or consumer health data controller with respect to the processing.

§ 2425. ENFORCEMENT; ATTORNEY GENERAL'S POWERS

(a) The Attorney General shall have exclusive authority to enforce violations of this chapter.

(b)(1) The Attorney General may, prior to initiating any action for a violation of any provision of this chapter, issue a notice of violation to the controller or consumer health data controller if the Attorney General determines that a cure is possible.

(2) The Attorney General may, in determining whether to grant a controller, processor, or consumer health data controller the opportunity to cure an alleged violation described in subdivision (1) of this subsection, consider:

(A) the number of violations;

(B) the size and complexity of the controller, processor, or consumer health data controller;

(C) the nature and extent of the controller's, processor's, or consumer health data controller's processing activities;

(D) the substantial likelihood of injury to the public;

(E) the safety of persons or property;

(F) whether the alleged violation was likely caused by human or technical error; and

(G) the sensitivity of the data.

(c) Annually, on or before February 1, the Attorney General shall submit a report to the General Assembly disclosing:

(1) the number of notices of violation the Attorney General has issued;

(2) the nature of each violation;

(3) the number of violations that were cured during the available cure period; and

(4) any other matter the Attorney General deems relevant for the purposes of the report.

(d) This chapter shall not be construed as providing the basis for, or be subject to, a private right of action for violations of this chapter or any other law.

(e) A violation of the requirements of this chapter shall constitute an unfair and deceptive act in commerce in violation of section 2453 of this title and shall be enforced solely by the Attorney General, provided that a consumer private right of action under subsection 2461(b) of this title shall not apply to the violation.

§ 2426. CONFIDENTIALITY OF CONSUMER HEALTH DATA

Except as provided in subsections 2417(a) and (b) of this title and section 2424 of this title, no person shall:

(1) provide any employee or contractor with access to consumer health data unless the employee or contractor is subject to a contractual or statutory duty of confidentiality;

(2) provide any processor with access to consumer health data unless the person and processor comply with section 2421 of this title;

(3) use a geofence to establish a virtual boundary that is within 1,850 feet of any health care facility, mental health facility, or reproductive or sexual health facility for the purpose of identifying, tracking, collecting data from, or sending any notification to a consumer regarding the consumer's consumer health data; or

(4) sell or offer to sell consumer health data without first obtaining the consumer's consent.

Sec. 2. 3 V.S.A. § 5023 is amended to read:

§ 5023. ARTIFICIAL INTELLIGENCE AND DATA PRIVACY ADVISORY COUNCIL

(a)(1) Advisory Council. There is established the Artificial Intelligence and Data Privacy Advisory Council to:

(A) provide advice and counsel to the Director of the Division of Artificial Intelligence ~~with regard to~~ on the Division's responsibilities to review all aspects of artificial intelligence systems developed, employed, or procured in State government;

(B) ~~The Council,~~ in consultation with the Director of the Division, ~~shall also~~ engage in public outreach and education on artificial intelligence;

(C) provide advice and counsel to the Attorney General in carrying out the Attorney General's enforcement responsibilities under the Vermont Data Privacy Act; and

(D) develop policy recommendations for improving data privacy in Vermont, including recommendations for implementing a private right of action and developing education and outreach on the Vermont Data Privacy Act, which shall be provided to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development by January 15, 2025.

(2) The Advisory Council shall have the authority to establish subcommittees to carry out the purposes of subdivision (1)(D) of this subsection.

(b) Members.

(1) Members. The Advisory Council shall be composed of the following members:

(A) the Secretary of Digital Services or designee;

(B) the Secretary of Commerce and Community Development or designee;

(C) the Commissioner of Public Safety or designee;

(D) the Executive Director of the American Civil Liberties Union of Vermont or designee;

(E) one member who is an expert in constitutional and legal rights, appointed by the Chief Justice of the Supreme Court;

(F) one member with experience in the field of ethics and human rights, appointed by the Governor;

(G) one member who is an academic at a postsecondary institute, appointed by the Vermont Academy of Science and Engineering;

(H) the Commissioner of Health or designee;

(I) the Executive Director of Racial Equity or designee; ~~and~~

(J) the Attorney General or designee;

(K) one member representing Vermont small businesses, appointed by the Speaker of the House; and

(L) one member who is an expert in data privacy, appointed by the Committee on Committees.

(2) Chair. Members of the Advisory Council shall elect by majority vote the Chair of the Advisory Council. Members of the Advisory Council shall be appointed on or before August 1, 2022 in order to prepare as they deem necessary for the establishment of the Advisory Council, including the election of the Chair of the Advisory Council, except that the member representing Vermont small businesses and the member who is an expert in data privacy shall be appointed on or before August 1, 2024.

(3) Qualifications. Members shall be drawn from diverse backgrounds and, to the extent possible, have experience with artificial intelligence.

(c) Meetings. The Advisory Council shall meet at the call of the Chair as follows:

- (1) on or before January 31, 2024, not more than 12 times; and
- (2) on or after February 1, 2024, not more than monthly.

(d) Quorum. A majority of members shall constitute a quorum of the Advisory Council. Once a quorum has been established, the vote of a majority of the members present at the time of the vote shall be an act of the Advisory Council.

(e) Assistance. The Advisory Council shall have the administrative and technical support of the Agency of Digital Services.

(f) Reimbursement. Members of the Advisory Council who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

(g) Consultation. ~~The~~ In its advice and counsel to the Director of the Division of Artificial Intelligence, the Advisory Council shall consult with any relevant national bodies on artificial intelligence, including the National Artificial Intelligence Advisory Committee established by the Department of Commerce, and its applicability to Vermont. In its advice and counsel to the Attorney General, the Advisory Council shall consult with enforcement authorities in states with comparable comprehensive data privacy regimes.

(h) Repeal. This section shall be repealed on June 30, 2027.

(i) Limitation. The advice and counsel of the Advisory Council shall not limit the discretionary authority of the Attorney General to enforce the Vermont Data Privacy Act.

Sec. 3. 9 V.S.A. chapter 62 is amended to read:

CHAPTER 62. PROTECTION OF PERSONAL INFORMATION

Subchapter 1. General Provisions

§ 2430. DEFINITIONS

As used in this chapter:

(1) “Biometric data” shall have the same meaning as in section 2415 of this title.

(2)(A) “Brokered personal information” means one or more of the following computerized data elements about a consumer, if categorized or organized for dissemination to third parties:

- (i) name;
- (ii) address;
- (iii) date of birth;
- (iv) place of birth;
- (v) mother’s maiden name;

(vi) ~~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;~~

(vii) name or address of a member of the consumer’s immediate family or household;

(viii) Social Security number or other government-issued identification number; or

(ix) other information that, alone or in combination with the other information sold or licensed, would allow a reasonable person to identify the consumer with reasonable certainty.

(B) “Brokered personal information” does not include publicly available information ~~to the extent that it is related to a consumer’s business or profession as that term is defined in section 2415 of this title.~~

(2)(3) “Business” means a controller, a consumer health data controller, a processor, or a commercial entity, including a sole proprietorship, partnership, corporation, association, limited liability company, or other group, however organized and whether or not organized to operate at a profit,

including a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent, affiliate, or subsidiary of a financial institution, but does not include the State, a State agency, any political subdivision of the State, or a vendor acting solely on behalf of, and at the direction of, the State.

(3)(4) “Consumer” means an individual residing in this State who is a resident of the State or an individual who is in the State at the time a data broker collects the individual’s data.

(5) “Consumer health data controller” has the same meaning as in section 2415 of this title.

(6) “Controller” has the same meaning as in section 2415 of this title.

(4)(7)(A) “Data broker” means a business, or unit or units of a business, separately or together, that knowingly collects and sells or licenses to third parties the brokered personal information of a consumer with whom the business does not have a direct relationship.

(B) Examples of a direct relationship with a business include if the consumer is a past or present:

- (i) customer, client, subscriber, user, or registered user of the business’s goods or services;
- (ii) employee, contractor, or agent of the business;
- (iii) investor in the business; or
- (iv) donor to the business.

(C) The following activities conducted by a business, and the collection and sale or licensing of brokered personal information incidental to conducting these activities, do not qualify the business as a data broker:

- (i) developing or maintaining third-party e-commerce or application platforms;
- (ii) providing 411 directory assistance or directory information services, including name, address, and telephone number, on behalf of or as a function of a telecommunications carrier;
- (iii) providing publicly available information related to a consumer’s business or profession; or
- (iv) providing publicly available information via real-time or near-real-time alert services for health or safety purposes.

(D) The phrase “sells or licenses” does not include:

(i) a one-time or occasional sale of assets of a business as part of a transfer of control of those assets that is not part of the ordinary conduct of the business; or

(ii) a sale or license of data that is merely incidental to the business; or

(iii) the disclosure of brokered personal information that a consumer intentionally made available to the general public via a channel of mass media and did not restrict to a specific audience.

~~(5)(8)~~(A) “Data broker security breach” means an unauthorized acquisition or a reasonable belief of an unauthorized acquisition of more than one element of brokered personal information maintained by a data broker when the brokered personal information is not encrypted, redacted, or protected by another method that renders the information unreadable or unusable by an unauthorized person.

(B) “Data broker security breach” does not include good faith but unauthorized acquisition of brokered personal information by an employee or agent of the data broker for a legitimate purpose of the data broker, provided that the brokered personal information is not used for a purpose unrelated to the data broker’s business or subject to further unauthorized disclosure.

(C) In determining whether brokered personal information has been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data broker may consider the following factors, among others:

(i) indications that the brokered personal 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 brokered personal information;

(ii) indications that the brokered personal information has been downloaded or copied;

(iii) indications that the brokered personal information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the brokered personal information has been made public.

~~(6)(9)~~ “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)(10) “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)(11) “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)(12) “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.

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

- (i) a Social Security number;
- (ii) 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 the number could be used without additional identifying information, access codes, or passwords;
- (iv) a password, personal identification number, or other access 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.

(14) "Processor" has the same meaning as in section 2415 of this title.

~~(11)~~(15) "Record" means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

~~(12)~~(16) "Redaction" means the rendering of data so that the data are unreadable or are truncated so that ~~no~~ not more than the last four digits of the identification number are accessible as part of the data.

~~(13)~~(17)(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 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 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.

* * *

Subchapter 2. ~~Security Breach Notice Act~~ Data Security Breaches

* * *

§ 2436. NOTICE OF DATA BROKER SECURITY BREACH

(a) Short title. This section shall be known as the Data Broker Security Breach Notice Act.

(b) Notice of breach.

(1) Except as otherwise provided in subsection (c) of this section, any data broker shall notify the consumer that there has been a data broker security breach following discovery or notification to the data broker 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, 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) A data broker shall provide notice of a breach to the Attorney General as follows:

(A)(i) The data broker shall notify the Attorney General 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 subdivisions (3) and (4) of this subsection (b), after the data broker's discovery of the security breach or when the data broker provides notice to consumers pursuant to this section, whichever is sooner.

(ii) If the date of the breach is unknown at the time notice is sent to the Attorney General, the data broker shall send the Attorney General the date of the breach as soon as it is known.

(iii) Unless otherwise ordered by a court of this State for good cause shown, a notice provided under this subdivision (2)(A) shall not be disclosed to any person other than 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 broker.

(B)(i) When the data broker provides notice of the breach pursuant to subdivision (1) of this subsection (b), the data broker shall notify the Attorney General of the number of Vermont consumers affected, if known to the data broker, and shall provide a copy of the notice provided to consumers under subdivision (1) of this subsection (b).

(ii) The data broker may send to the Attorney General a second copy of the consumer notice, from which is redacted the type of brokered personal information that was subject to the breach, that the Attorney General shall use for any public disclosure of the breach.

(3) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation or a national or Homeland Security investigation or jeopardize public safety or national or Homeland Security interests. In the event law enforcement makes the request for a delay in a manner other than in writing, the data broker shall document the request contemporaneously in writing and include the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data broker in writing when the law enforcement agency no longer believes that notification may impede a law enforcement investigation or a national or Homeland Security investigation, or jeopardize public safety or national or Homeland Security interests. The data broker shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

(4) The notice to a consumer required in subdivision (1) of this subsection shall be clear and conspicuous. A notice to a consumer of a security breach involving brokered personal information shall include a description of each of the following, if known to the data broker:

(A) the incident in general terms;

(B) the type of brokered personal information that was subject to the security breach;

(C) the general acts of the data broker to protect the brokered personal 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 data broker security breach.

(5) A data broker may provide notice of a security breach involving brokered personal information to a consumer by two or more of the following methods:

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

(B) electronic notice, for those consumers for whom the data broker has a valid e-mail address, if:

(i) the data broker'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;

(C) telephonic notice, provided that telephonic contact is made directly with each affected consumer and not through a prerecorded message; or

(D) notice by publication in a newspaper of statewide circulation in the event the data broker cannot effectuate notice by any other means.

(c) Exception.

(1) Notice of a security breach pursuant to subsection (b) of this section is not required if the data broker establishes that misuse of brokered personal information is not reasonably possible and the data broker provides notice of the determination that the misuse of the brokered personal information is not reasonably possible pursuant to the requirements of this subsection. If the data broker establishes that misuse of the brokered personal information is not reasonably possible, the data broker shall provide notice of its determination that misuse of the brokered personal information is not reasonably possible and a detailed explanation for said determination to the Vermont Attorney General. The data broker may designate its notice and detailed explanation to the Vermont Attorney General as a 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 broker established that misuse of brokered personal information was not reasonably possible under subdivision (1) of this subsection and subsequently obtains facts indicating that misuse of the brokered personal information has occurred or is occurring, the data broker shall provide notice of the security breach pursuant to subsection (b) of this section.

(d) Waiver. Any waiver of the provisions of this subchapter is contrary to public policy and is void and unenforceable.

(e) Enforcement.

(1) With respect to a controller or processor other than a controller or processor 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 chapter and to enforce, prosecute, obtain, and impose remedies for a violation of this chapter or any rules or regulations adopted pursuant to this chapter as the 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 controller or processor that is 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 chapter and to enforce, prosecute, obtain, and impose remedies for a violation of this chapter or any rules or regulations adopted pursuant to this chapter, as the Department has under title 8 or this title or any other applicable law or regulation.

* * *

Subchapter 5. Data Brokers

§ 2446. DATA BROKERS; ANNUAL REGISTRATION

(a) Annually, on or before January 31 following a year in which a person meets the definition of data broker as provided in section 2430 of this title, a data broker shall:

- (1) register with the Secretary of State;
- (2) pay a registration fee of \$100.00; and
- (3) provide the following information:

(A) the name and primary physical, e-mail, and ~~Internet~~ internet addresses of the data broker;

(B) if the data broker permits a consumer to opt out of the data broker's collection of brokered personal information, opt out of its databases, or opt out of certain sales of data:

(i) the method for requesting an opt-out;

(ii) if the opt-out applies to only certain activities or sales, which ones; and

(iii) whether the data broker permits a consumer to authorize a third party to perform the opt-out on the consumer's behalf;

(C) a statement specifying the data collection, databases, or sales activities from which a consumer may not opt out;

(D) a statement whether the data broker implements a purchaser credentialing process;

(E) the number of data broker security breaches that the data broker has experienced during the prior year, and if known, the total number of consumers affected by the breaches;

(F) where the data broker has actual knowledge that it possesses the brokered personal information of minors, a separate statement detailing the data collection practices, databases, sales activities, and opt-out policies that are applicable to the brokered personal information of minors; and

(G) any additional information or explanation the data broker chooses to provide concerning its data collection practices.

(b) A data broker that fails to register pursuant to subsection (a) of this section is liable to the State for:

(1) a civil penalty of ~~\$50.00~~ \$125.00 for each day, ~~not to exceed a total of \$10,000.00 for each year,~~ it fails to register pursuant to this section;

(2) an amount equal to the fees due under this section during the period it failed to register pursuant to this section; and

(3) other penalties imposed by law.

(c) A data broker that omits required information from its registration shall file an amendment to include the omitted information within 30 business days following notification of the omission and is liable to the State for a civil penalty of \$1,000.00 per day for each day thereafter.

(d) A data broker that files materially incorrect information in its registration:

(1) is liable to the State for a civil penalty of \$25,000.00; and

(2) if it fails to correct the false information within 30 business days after discovery or notification of the incorrect information, an additional civil penalty of \$1,000.00 per day for each day thereafter that it fails to correct the information.

(e) The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in this section and to seek appropriate injunctive relief.

* * *

§ 2448. DATA BROKERS; CREDENTIALING

(a) Credentialing.

(1) A data broker shall maintain reasonable procedures designed to ensure that the brokered personal information it discloses is used for a legitimate and legal purpose.

(2) These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information shall be used for no other purpose.

(3) A data broker shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user brokered personal information.

(4) A data broker shall not furnish brokered personal information to any person if it has reasonable grounds for believing that the consumer report will not be used for a legitimate and legal purpose.

(b) Exemption. Nothing in this section applies to:

(1) brokered personal information that is:

(A) regulated as a consumer report pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681–1681x, if the data broker is fully complying with the Act; or

(B) regulated pursuant to the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721–2725, if the data broker is fully complying with the Act;

(2) a public service company subject to the rules and orders of the Vermont Public Utility Commission regarding data sharing and service quality;

(3) a nonprofit organization that is established to detect and prevent fraudulent acts in connection with insurance; or

(4) a nonprofit organization that is established to provide enrollment data reporting services on behalf of postsecondary schools as that term is defined in 16 V.S.A. § 176.

Sec. 4. EFFECTIVE DATES

(a) This section and Sec. 2 (AI and Data Privacy Advisory Council) shall take effect on July 1, 2024.

(b) Sec. 1 (Vermont Data Privacy Act) and Sec. 3 (Protection of Personal Information) shall take effect on July 1, 2025.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 21, 2024, pages 697-743)

H. 622.

An act relating to emergency medical services.

Reported favorably with recommendation of proposal of amendment by Senator Williams for the Committee on Health and Welfare.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

In Sec. 3, 33 V.S.A. § 1901m, subsection (b), following “equal to the,” by striking out “Medicare basic life support rate” and inserting in lieu thereof applicable Medicare rate

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 22, 2024, pages 763-772)

Reported favorably with recommendation of proposal of amendment by Senator Hardy for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 6, EMS Advisory Committee statewide EMS system design, as follows:

First: In subsection (b), following “statewide EMS system”, by inserting before the comma that aligns with the purpose expressed in 18 V.S.A. § 901, optimizes patient care, and incorporates nationally recognized best practices

Second: By designating the existing subsection (c) as subdivision (c)(1) and by adding a subdivision (c)(2) to read as follows:

(2) The EMS Advisory Committee and the Department of Health shall coordinate with the Public Safety Communications Task Force and the County and Regional Governance Study Committee to ensure appropriate coordination and alignment of the groups’ recommendations and system designs.

(Committee vote: 6-0-0)

H. 794.

An act relating to services provided by the Vermont Veterans’ Home.

Reported favorably with recommendation of proposal of amendment by Senator Norris for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 20 V.S.A. § 1714, powers and duties of the Board, after subdivision (15), by inserting a subdivision (16) to read as follows:

(16) Establish a nursing home in Vermont to provide services and supports to Vermont veterans who do not reside at the Home, provided that the nursing home shall comply with all applicable State and federal licensing and regulatory requirements.

Second: In Sec. 2, 20 V.S.A. § 1717, in subdivision (b)(2), by striking out the following: “1714(5), (13), (14), and (15)” and inserting in lieu thereof the following: 1714(5), (13), (14), (15), and (16)

(Committee vote: 6-0-0)

(For House amendments, see House Journal of March 20, 2024, page 612)

House Proposal of Amendment

S. 30.

An act relating to creating a Sister State Program

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. VERMONT SISTER STATE PROGRAM; WORKING GROUP

(a) Creation. There is created the Vermont Sister State Program Working Group for the purpose of determining the administration, oversight, scope, and objectives of a Vermont Sister State Program.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Secretary of Commerce and Community Development or designee;

(2) the Secretary of Education or designee;

(3) the Secretary of Agriculture or designee;

(4) the Chair of the Board of Trustees of the Vermont Arts Council or designee of the Board of the Trustees;

(5) the Chair of the Board of Directors of the Vermont Council on World Affairs or designee of the Board of the Directors; and

(6) the Vermont Adjutant General or designee.

(c) Meetings.

(1) The Secretary of Commerce and Community Development or designee shall call the first meeting of the Working Group to occur on or before September 1, 2024.

(2) The Working Group shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) In furtherance of its duties, the Working Group is encouraged to solicit input and participation from interested stakeholders, including those with experience in cultural exchange or in international relations, agriculture, trade, education, arts, recreation, or governance.

(d) Powers and duties. The Working Group shall review sister state programs in other jurisdictions and receive testimony from relevant stakeholders in order to make recommendations for legislative action. In

conducting its analysis, the Working Group shall consider and make recommendations on the following:

(1) which department in State government is best suited to administer, house, and provide support to the Program;

(2) the makeup of the membership of the Committee overseeing the Program;

(3) sources of funding that will financially support the Program;

(4) specific objectives of the Program that align with the following goals:

(A) that the Program exist to create, administer, and maintain mutually beneficial and long-lasting partnerships between Vermont and other select countries or provinces;

(B) that the Program foster the connection of immigrants and refugee communities in Vermont with their nations of origin;

(C) that the Program promote and foster cultural exchange, tourism, trade, and education between Vermont and Sister States; and

(D) that through the Program, the Committee communicate with and support military personnel, foreign service officers, aid organizations, nongovernmental organizations, Peace Corps volunteers, and any other relevant entities working in Sister States.

(5) the criteria for evaluating proposed and existing Sister State agreements;

(6) the requirements for creating and managing Sister State agreements, including:

(A) the term length for agreements; and

(B) the appropriate number of active agreements at one time; and

(7) any other issue the Working Group deems relevant to the success of the Vermont Sister State Program.

(e) Compensation and reimbursement.

(1) A nonlegislative member of the Working Group shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 10 meetings.

(2) Payments to members of the Working Group authorized under this subsection shall be made from monies appropriated to the General Assembly.

(f) Reporting.

(1) An initial report on the Working Group's progress on the work set forth in this section shall be submitted to the General Assembly on or before February 15, 2025.

(2) A final report shall include the Working Group's findings and recommendations for legislative language based on the requirements set forth in this section. The report shall also include the names of the stakeholders that the Working Group heard from during its work. The report shall be submitted to the General Assembly on or before November 1, 2025.

(g) Expiration. The Working Group shall cease to exist on March 31, 2026.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

ORDERED TO LIE

S. 94.

An act relating to the City of Barre tax increment financing district.

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 231 - 241 (For text of Resolutions, see Addendum to House Calendar of April 25, 2024)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Julie Hulburd of Colchester - Member, Cannabis Control Board - Sen. Vyhovsky for the Committee on Government Operations. (4/10/2024)

JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

JFO #3199: \$1,000,000.00 from the U.S. Department of Energy through Vermont Energy Efficiency Coop to the Vermont Military Department. Funds will be used for facility upgrades in the Westminster and Berlin Armories to help study the effects of thermal energy storage on heating and cooling loads in electrified facilities. The grant requires a 20% state match of \$250,000.00 which will be funded through an appropriation of existing capital funds.

[Received April 18, 2024]

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 15, 2024**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day. House Committee bills must be voted out of Committee by Friday, March 15, 2024 and introduced the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday**,

March 22, 2024, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, Pay Bill, and Miscellaneous Tax Bill).