

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 289 entitled “An act relating to age-appropriate design
4 code” respectfully reports that it has considered the same and recommends that
5 the House propose to the Senate that the bill be amended by striking out all
6 after the enacting clause and inserting in lieu thereof the following:

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

8 Subchapter 6. Age-Appropriate Design Code

9 § 2449a. DEFINITIONS

10 As used in this subchapter:

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

14 (B) As used in subdivision (A) of this subdivision (1), “control” or
15 “controlled” means:

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

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

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

1 (2) “Age-appropriate” means a recognition of the distinct needs and
2 diversities of minor consumers at different age ranges. In order to help support
3 the design of online services, products, and features, covered businesses should
4 take into account the unique needs and diversities of different age ranges,
5 including the following developmental stages: zero to five years of age or
6 “preliterate and early literacy”; six to nine years of age or “core primary school
7 years”; 10 to 12 years of age or “transition years”; 13 to 15 years of age or
8 “early teens”; and 16 to 17 years of age or “approaching adulthood.”

9 (3) “Age estimation” means a process that estimates that a user is likely
10 to be of a certain age, fall within an age range, or is over or under a certain age.

11 (A) Age estimation methods include:

12 (i) analysis of behavioral and environmental data the covered
13 business already collects about its users;

14 (ii) comparing the way a user interacts with a device or with users
15 of the same age;

16 (iii) metrics derived from motion analysis; and

17 (iv) testing a user’s capacity or knowledge.

18 (B) Age estimation does not require certainty, and if a covered
19 business estimates a user’s age for the purpose of advertising or marketing, that
20 estimation may also be used to comply with this act.

1 (4) “Age verification” means a system that relies on hard identifiers or
2 verified sources of identification to confirm a user has reached a certain age,
3 including government-issued identification or a credit card.

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

5 (6) “Collect” means buying, renting, gathering, obtaining, receiving, or
6 accessing any personal data by any means. This includes receiving data from
7 the consumer, either actively or passively, or by observing the consumer’s
8 behavior.

9 (7)(A) “Consumer” means an individual who is a Vermont resident.

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

16 (8) “Covered business” means a sole proprietorship, partnership, limited
17 liability company, corporation, association, other legal entity, or an affiliate
18 thereof, that conducts business in this State or that produces online products,
19 services, or features that are targeted to residents of this State and that:

20 (A) collects consumers’ personal data or has consumers’ personal
21 data collected on its behalf by a third party;

1 (B) alone or jointly with others determines the purposes and means of
2 the processing of consumers personal data; and

3 (C) alone or in combination annually buys, receives for commercial
4 purposes, sells, or shares for commercial purposes, alone or in combination,
5 the personal data of at least 50 percent of its consumers.

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

7 (10) “Dark pattern” means a user interface designed or manipulated with
8 the effect of subverting or impairing user autonomy, decision making, or
9 choice, and includes any practice the Federal Trade Commission categorizes as
10 a “dark pattern.”

11 (11) “Default” means a preselected option adopted by the covered
12 business for the online service, product, or feature.

13 (12) “Deidentified” means data that cannot reasonably be used to infer
14 information about, or otherwise be linked to, an identified or identifiable
15 consumer, or a device linked to such consumer, provided that the covered
16 business that possesses the data:

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

19 (B) publicly commits to maintain and use the data only in a
20 deidentified fashion and not attempt to reidentify the data; and

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

3 (13) “Derived data” means data that is created by the derivation of
4 information, data, assumptions, correlations, inferences, predictions, or
5 conclusions from facts, evidence, or another source of information or data
6 about a minor consumer or a minor consumer’s device.

7 (14)(A) “Low-friction variable reward” means a design feature or
8 virtual item that intermittently rewards consumers for scrolling, tapping,
9 opening, or continuing to engage in an online service, product, or feature.

10 (B) Examples of low-friction variable reward designs include
11 endless scroll, auto play, and nudges meant to encourage reengagement.

12 (15)(A) “Minor consumer” means an individual under 18 years of age
13 who is a Vermont resident.

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

1 (16) “Online service, product, or feature” means a digital product that is
2 accessible to the public via the internet, including a website or application, and
3 does not mean any of the following:

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

5 (B) a broadband internet access service as defined in 47 C.F.R.
6 § 54.400; or

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

8 (17) “Personal data” means any information, including derived data and
9 unique identifiers, that is linked or reasonably linkable, alone or in
10 combination with other information, to an identified or identifiable individual
11 or to a device that identifies, is linked to, or is reasonably linkable to one or
12 more identified or identifiable individuals in a household. Personal data does
13 not include deidentified data or publicly available information.

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

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

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

8 (20) “Processor” means a person who processes personal data on behalf
9 of a covered business.

10 (21) “Profile” or “profiling” means any form of automated processing of
11 personal data to evaluate, analyze, or predict personal aspects concerning an
12 identified or identifiable consumer’s economic situation, health, personal
13 preferences, interests, reliability, behavior, location, or movements.

14 (22) “Publicly available information” means information that:

15 (A) is lawfully made available through federal, state, or local
16 government records; or

17 (B) a covered business has a reasonable basis to believe that the
18 consumer has lawfully made available to the general public through widely
19 distributed media.

1 (23) “Reasonably likely to be accessed” means an online service,
2 product, or feature that is likely to be accessed by minor consumers based on
3 any of the following indicators:

4 (A) the online service, product, or feature is directed to children, as
5 defined by the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501–
6 6506 and the Federal Trade Commission rules implementing that Act;

7 (B) the online service, product, or feature is determined, based on
8 competent and reliable evidence regarding audience composition, to be
9 routinely accessed by an audience that is composed of at least two percent
10 minor consumers two through under 18 years of age;

11 (C) the online service, product, or feature contains advertisements
12 marketed to minor consumers;

13 (D) the audience of the online service, product, or feature is
14 determined, based on internal company research, to be composed of at least
15 two percent minor consumers two through under 18 years of age; or

16 (E) the covered business knew or should have known that at least two
17 percent of the audience of the online service, product, or feature includes
18 minor consumers two through under 18 years of age, provided that, in making
19 this assessment, the business shall not collect or process any personal data that
20 is not reasonably necessary to provide an online service, product, or feature
21 with which a minor consumer is actively and knowingly engaged.

1 (24)(A) “Sale,” “sell,” or “sold” means the sale, rent, release, disclosure,
2 dissemination, provision, transfer, or other communication, whether oral, in
3 writing, or by electronic or other means, of a minor consumer’s personal data
4 by the covered business to a third party for monetary or other valuable
5 consideration or for a commercial purpose.

6 (B) For purposes of this subdivision (24), “commercial purpose”
7 means to advance a person’s commercial or economic interests, such as by
8 inducing another person to buy, rent, lease, join, subscribe to, provide, or
9 exchange products, goods, property, information, or services, or by enabling or
10 effecting, directly or indirectly, a commercial transaction.

11 (C) “Sale,” “sell,” or “sold” does not include:

12 (i) the disclosure of personal data to a processor that processes the
13 personal data on behalf of the covered business;

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

16 (iii) the disclosure or transfer of personal data to an affiliate of the
17 covered business;

18 (iv) the disclosure of personal data where the consumer directs the
19 covered business to disclose the personal data or intentionally uses the covered
20 business to interact with a third party;

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

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

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

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

9 (25)(A) "Social media platform" means a public or semi-public internet-
10 based service or application that is primarily intended to connect and allow a
11 user to socially interact within such service or application and enables a user
12 to:

13 (i) construct a public or semi-public profile for the purposes of
14 signing into and using such service or application;

15 (ii) populate a public list of other users with whom the user shares
16 a social connection within such service or application; or

17 (iii) create or post content that is viewable by other users,
18 including content on message boards and in chat rooms, and that presents the
19 user with content generated by other users.

20 (B) "Social media platform" does not mean a public or semi-public
21 internet-based service or application that:

1 (i) exclusively provides electronic mail or direct messaging
2 services;

3 (ii) primarily consists of news, sports, entertainment, interactive
4 video games, electronic commerce, or content that is preselected by the
5 provider for which any interactive functionality is incidental to, directly related
6 to, or dependent on the provision of such content; or

7 (iii) is used by and under the direction of an educational entity,
8 including a learning management system or a student engagement program.

9 (26) “Third party” means a natural or legal person, public authority,
10 agency, or body other than the consumer or the covered business.

11 § 2449b. EXCLUSIONS

12 This subchapter does not apply to:

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

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

18 (3) information used only for public health activities and purposes
19 described in 45 C.F.R. § 164.512;

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

1 (A) activities that are subject to the Federal Policy for the Protection
2 of Human Subjects as set forth in 45 C.F.R. Part 46;

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

7 (C) activities that are subject to the protections provided in 21 C.F.R.
8 50 and 21 C.F.R. Part 56; or

9 (D) research conducted in accordance with the requirements set forth
10 in subdivisions (A)–(C) of this subdivision (4) or otherwise in accordance with
11 State or federal law; and

12 (5) an entity whose primary purpose is journalism as defined in
13 12 V.S.A. § 1615(a)(2) and that has a majority of its workforce consisting of
14 individuals engaging in journalism.

15 § 2449c. MINIMUM DUTY OF CARE

16 (a) A covered business that processes a minor consumer’s data in any
17 capacity owes a minimum duty of care to the minor consumer.

18 (b) As used in this subchapter, “a minimum duty of care” means the use of
19 the personal data of a minor consumer and the design of an online service,
20 product, or feature will not benefit the covered business to the detriment of a
21 minor consumer and will not result in:

1 (1) reasonably foreseeable and material physical or financial injury to a
2 minor consumer;

3 (2) reasonably foreseeable emotional distress as defined in 13 V.S.A.
4 § 1061(2) to a minor consumer;

5 (3) a highly offensive intrusion on the reasonable privacy expectations
6 of a minor consumer;

7 (4) the encouragement of excessive or compulsive use of the online
8 service, product, or feature by a minor consumer; or

9 (5) discrimination against the minor consumer based upon race,
10 ethnicity, sex, disability, sexual orientation, gender identity, gender expression,
11 or national origin.

12 § 2449d. COVERED BUSINESS OBLIGATIONS

13 (a) A covered business that is reasonably likely to be accessed and subject
14 to this subchapter shall:

15 (1) configure all default privacy settings provided to a minor consumer
16 through the online service, product, or feature to a high level of privacy;

17 (2) provide privacy information, terms of service, policies, and
18 community standards concisely and prominently;

19 (3) provide prominent, accessible, and responsive tools to help a minor
20 consumer or, if applicable, their parents or guardians to exercise their privacy
21 rights and report concerns to the covered business;

1 (4) honor the request of a minor consumer to unpublish the minor
2 consumer’s social media platform account not later than 15 business days after
3 a covered business receives such a request from a minor consumer; and

4 (5) provide easily accessible and age-appropriate tools for a minor
5 consumer to limit the ability of users or covered businesses to send unsolicited
6 communications.

7 (b) A violation of this section constitutes a violation of the minimum duty
8 of care as provided in section 2449c of this subchapter.

9 § 2449e. COVERED BUSINESS PROHIBITIONS

10 (a) A covered business that is reasonably likely to be accessed and subject
11 to this subchapter shall not:

12 (1) use low-friction variable reward design features that encourage
13 excessive and compulsive use by a minor consumer;

14 (2) permit, by default, an unknown adult to contact a minor consumer on
15 its platform without the minor consumer first initiating that contact;

16 (3) permit a minor consumer to be exploited by a contract on the online
17 service, product, or feature;

18 (4) process personal data of a minor consumer unless it is strictly
19 necessary in providing an online service, product, or feature requested by a
20 minor consumer with which a minor consumer is actively and knowingly
21 engaged;

1 (5) profile a minor consumer, unless:

2 (A) the covered business can demonstrate it has appropriate
3 safeguards in place to ensure that profiling does not violate the minimum duty
4 of care; or

5 (B) profiling is strictly necessary to provide the online service,
6 product, or feature requested and only with respect to the aspects of the online
7 service, product, or feature with which a minor consumer is actively and
8 knowingly engaged;

9 (6) sell the personal data of a minor consumer;

10 (7) process any precise geolocation information of a minor consumer,
11 unless the collection of that precise geolocation information is strictly
12 necessary for the covered business to provide the service, product, or feature
13 requested by a minor consumer and is then only collected for the amount of
14 time necessary to provide the service, product, or feature;

15 (8) process any precise geolocation information of a minor consumer
16 without providing a conspicuous signal to the minor consumer for the duration
17 of that collection that precise geolocation information is being collected;

18 (9) use dark patterns; or

19 (10) permit a parent or guardian of a minor consumer, or any other
20 consumer, to monitor the online activity of a minor consumer or to track the

1 location of the minor consumer without providing a conspicuous signal to the
2 minor consumer when the minor consumer is being monitored or tracked.

3 (b) A violation of this section constitutes a violation of the minimum duty
4 of care as provided in section 2449c of this subchapter.

5 § 2449f. ATTORNEY GENERAL ENFORCEMENT

6 (a) A covered business that violates this subchapter or rules adopted
7 pursuant to this subchapter commits an unfair and deceptive act in
8 commerce in violation of section 2453 of this title.

9 (b) The Attorney General may, prior to initiating any action for a
10 violation of any provision of this subchapter, issue a notice of violation to a
11 covered business if the Attorney General determines that a covered business
12 is in substantial compliance or that a cure by a covered business is possible.

13 (c) The Attorney General may consider the following in determining
14 whether to grant a covered business the opportunity to cure an alleged
15 violation described in subsection (b) of this section:

16 (1) the number of violations by the covered business;

17 (2) the size and complexity of the covered business controller;

18 (3) the nature and extent of the covered business' activities;

19 (4) the substantial likelihood of injury to the public;

20 (5) the safety of persons or property;

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

3 (7) the sensitivity of the data.

4 § 2449g. LIMITATIONS

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

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

7 § 230.

8 (2) Prevent or preclude any minor consumer from deliberately or
9 independently searching for, or specifically requesting, content.

10 (3) Require a covered business to implement an age verification
11 requirement. The obligations imposed under this act should be done with age
12 estimation techniques and do not require age verification.

13 § 2449h. RIGHTS AND FREEDOMS OF MINOR CONSUMERS

14 It is the intent of the General Assembly that nothing in this act may be
15 construed to infringe on the existing rights and freedoms of minor consumers
16 or be construed to discriminate against the minor consumer based on race,
17 ethnicity, sex, disability, sexual orientation, gender identity, gender expression,
18 or national origin.

1 § 2449i. RULES

2 The Attorney General may adopt by rule any standards or procedures the
3 Attorney General deems necessary to implement the purpose and policies of
4 this subchapter.

5 Sec. 2. EFFECTIVE DATE

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

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11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE