

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to  
3 which was referred House Bill No. 121 entitled “An act relating to enhancing  
4 consumer privacy” respectfully reports that it has considered the same and  
5 recommends that the Senate propose to the House that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

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

9 CHAPTER 61A. VERMONT DATA PRIVACY ACT

10 § 2415. DEFINITIONS

11 As used in this chapter:

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

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

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

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

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

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

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

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

11                    (i) iris or retina scans;

12                    (ii) fingerprints;

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

14                    (iv) vein patterns;

15                    (v) voice prints; and

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

17                    (B) “Biometric data” does not include:

18                    (i) a digital or physical photograph;

19                    (ii) an audio or video recording; or

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

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

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

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

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

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

12                    (C) “Consent” does not include:

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

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

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

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

20                    (B) “Consumer” does not include an individual acting in a  
21                    commercial or employment context or as an employee, owner, director, officer,

1 or contractor of a company, partnership, sole proprietorship, nonprofit, or  
2 government agency whose communications or transactions with the controller  
3 occur solely within the context of that individual’s role with the company,  
4 partnership, sole proprietorship, nonprofit, or government agency.

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

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

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

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

15 (14) “COPPA” means the Children’s Online Privacy Protection Act of  
16 1998, 15 U.S.C. § 6501–6506, and any regulations, rules, guidance, and  
17 exemptions promulgated pursuant to the act, as the act and regulations, rules,  
18 guidance, and exemptions may be amended.

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

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

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

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

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

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

19           (ii) for purposes of this subdivision (A), “reasonable measures”  
20           shall include the de-identification requirements set forth under 45 C.F.R.

1 § 164.514 (other requirements relating to uses and disclosures of protected  
2 health information):

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

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

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

10 (21) “Financial institution”:

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

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

15 (22) “Gender-affirming health care services” has the same meaning as in  
16 1 V.S.A. § 150.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1           (30) “Independent trust company” has the same meaning as in 8 V.S.A.  
2           § 2401.

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

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

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

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

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

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

15           (ii) broadband internet access service, as that term is defined in  
16           47 C.F.R. § 54.400 (universal service support); or

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

18           (35) “Patient identifying information” has the same meaning as in  
19           42 C.F.R. § 2.11 (confidentiality of substance use disorder patient records).

20           (36) “Patient safety work product” has the same meaning as in 42 C.F.R.  
21           § 3.20 (patient safety organizations and patient safety work product).

1           (37)(A) “Personal data” means any information, including derived data  
2           and unique identifiers, that is linked or reasonably linkable to an identified or  
3           identifiable individual or to a device that identifies, is linked to, or is  
4           reasonably linkable to one or more identified or identifiable individuals in a  
5           household.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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                   controller;

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

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

1                   (I) intentionally made available to the general public via 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 transaction, or a  
6                   proposed merger, acquisition, bankruptcy, or other transaction, in which the  
7                   third party assumes control of all or part of the controller’s assets.

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

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

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

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

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

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

1           (F) is consumer health data;

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

8           (H) is biometric or genetic data;

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

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

12          (K) is precise geolocation data.

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

18          (B) “Targeted advertising” does not include:

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

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

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

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

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

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

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

15                   § 2416. APPLICABILITY

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

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

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

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

10           § 2417. EXEMPTIONS

11           (a) This chapter does not apply to:

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

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

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

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, codified as 45 C.F.R. part 46 (HHS protection of human  
3           subjects) and in various other federal regulations;

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

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

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

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

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

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

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

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

13               (A) an individual’s employment or application for employment;

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

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

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

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

20               (10) any activity that involves collecting, maintaining, disclosing,  
21               selling, communicating, or using information for the purpose of evaluating a

1 consumer’s creditworthiness, credit standing, credit capacity, character,  
2 general reputation, personal characteristics, or mode of living if done strictly in  
3 accordance with the provisions of the Fair Credit Reporting Act, 15 U.S.C.  
4 § 1681–1681x, as may be amended, by:

5 (A) a consumer reporting agency;

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

9 (C) a person who uses a consumer report as provided in 15 U.S.C.  
10 § 1681b(a)(3) (permissible purposes of consumer reports);

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

13 (A) the Driver’s Privacy Protection Act of 1994, 18 U.S.C. § 2721–  
14 2725;

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

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

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

1           (12) nonpublic personal information that is processed by a financial  
2           institution or data subject to the Gramm-Leach-Bliley Act, Pub. L. No. 106-  
3           102, and regulations adopted to implement that act;

4           (13) information that originates from, or is intermingled so as to be  
5           indistinguishable from, information described in subdivision (12) of this  
6           subsection and that a controller or processor collects, processes, uses, or  
7           maintains in the same manner as is required under the law and regulations  
8           specified in subdivision (12) of this subsection;

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

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

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

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

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

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

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

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

12           (22) noncommercial activity of:

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

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

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

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

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

5        § 2418. CONSUMER PERSONAL DATA RIGHTS

6        (a) A consumer shall have the right to:

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

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

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

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

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

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

2                   (A) targeted advertising;

3                   (B) the sale of personal data; or

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

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

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

12           (3) A parent or legal guardian may exercise rights under this section on  
13 behalf of the parent’s child or on behalf of a child for whom the guardian has  
14 legal responsibility. A guardian or conservator may exercise the rights under  
15 this section on behalf of a consumer that is subject to a guardianship,  
16 conservatorship, or other protective arrangement.

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

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

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

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

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

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

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



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

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

7           (4)(A) If a controller is unable to authenticate a request to exercise any  
8           of the rights afforded under subdivisions (a)(1)–(5) of this section using  
9           commercially reasonable efforts, the controller shall not be required to comply  
10           with a request to initiate an action pursuant to this section and shall provide  
11           notice to the consumer that the controller is unable to authenticate the request  
12           to exercise the right or rights until the consumer provides additional  
13           information reasonably necessary to authenticate the consumer and the  
14           consumer’s request to exercise the right or rights.

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

18           (C) If a controller denies an opt-out request because the controller  
19           believes the request is fraudulent, the controller shall send a notice to the  
20           person who made the request disclosing that the controller believes the request

1 is fraudulent, why the controller believes the request is fraudulent, and that the  
2 controller shall not comply with the request.

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

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

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

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

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

18 (B) the employment of any dark pattern.

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

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

3           (2) Be conspicuously available to the consumer.

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

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

12          § 2419. DUTIES OF CONTROLLERS

13          (a) A controller shall:

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

17               (2) process personal data only:

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

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

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

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

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

14          (b) A controller shall not:

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

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

20           (3)(A) except as provided in subdivision (B) of this subdivision (3),  
21           process a consumer’s personal data in a manner that discriminates against

1 individuals or otherwise makes unavailable the equal enjoyment of goods or  
2 services on the basis of an individual’s actual or perceived race, color, sex,  
3 sexual orientation or gender identity, physical or mental disability, religion,  
4 ancestry, or national origin;

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

6 (i) a private establishment, as that term is used in 42 U.S.C.  
7 § 2000a(e) (prohibition against discrimination or segregation in places of  
8 public accommodation);

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

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

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

19 (5) discriminate or retaliate against a consumer who exercises a right  
20 provided to the consumer under this chapter or refuses to consent to the

1 collection or processing of personal data for a separate product or service,

2 including by:

3 (A) denying goods or services;

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

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

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

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

10 or

11 (2) prohibit a controller from offering a different price, rate, level of  
12 quality, or selection of goods or services to a consumer, including an offer for  
13 no fee or charge, in connection with a consumer's voluntary participation in a  
14 financial incentive program, such as a bona fide loyalty, rewards, premium  
15 features, discount, or club card program.

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

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

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

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

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

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

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

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

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

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

3           (2) The privacy notice shall adhere to the accessibility and usability  
4           guidelines recommended under 42 U.S.C. chapter 126 (the Americans with  
5           Disabilities Act) and 29 U.S.C. 794d (section 508 of the Rehabilitation Act of  
6           1973), including ensuring readability for individuals with disabilities across  
7           various screen resolutions and devices and employing design practices that  
8           facilitate easy comprehension and navigation for all users.

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

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

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

20          (3) allow a consumer or authorized agent to send a signal to the  
21          controller that indicates the consumer’s preference to opt out of the sale of



1 personal data or targeted advertising pursuant to subdivision 2418(a)(6) of this  
2 title by means of a platform, technology, or mechanism that:

3 (A) does not unfairly disadvantage another controller;

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

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

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

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

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

1 reward, club card, or loyalty program or the program that provides premium  
2 features or discounts. If the consumer affirms that the consumer intends to  
3 withdraw, the controller shall comply with the request to opt out.

4 § 2420. DUTIES OF CONTROLLERS TO MINORS

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

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

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

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

16 (A) targeted advertising;

17 (B) the sale of personal data; or

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

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

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

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

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

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

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

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

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

17           (C) the controller provides to the minor a signal indicating that the  
18           controller is collecting the minor’s precise geolocation data and makes the  
19           signal available to the minor for the entire duration of the collection of the  
20           minor’s precise geolocation data.

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

3            (1) the minor’s consent; or

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

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

8            (1) employ any dark pattern; or

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

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

15            (1) e-mail; or

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

18            (A) shared between the sender and the recipient;

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

20            (C) not posted publicly.

21        § 2421. DUTIES OF PROCESSORS

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

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

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

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

10               (2) adopt administrative, technical, and physical safeguards that are  
11       reasonably designed to protect the security and confidentiality of the personal  
12       data the processor processes, taking into account how the processor processes  
13       the personal data and the information available to the processor.

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

16               (1) be valid and binding on both parties;

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

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

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

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

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

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

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

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

1           (C) at the controller’s request, report the results of the assessment to  
2 the controller.

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

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

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

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

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

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

1     § 2422. DUTIES OF PROCESSORS TO MINORS

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

5           (1) the nature of the processing;

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

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

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

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

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



1 processor that continues to adhere to a controller’s instructions with respect to  
2 a specific processing of personal data remains a processor. If a processor  
3 begins, alone or jointly with others, determining the purposes and means of the  
4 processing of personal data, the processor is a controller with respect to the  
5 processing and may be subject to an enforcement action under section 2425 of  
6 this title.

7 § 2423. DE-IDENTIFIED OR PSEUDONYMOUS DATA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6       § 2424. CONSTRUCTION OF DUTIES OF CONTROLLERS AND  
7       PROCESSORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14                   (2) effectuate a product recall; or

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

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

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

5           (d)(1) A controller, processor, or consumer health data controller that  
6           discloses personal data to a processor or third-party controller pursuant to this  
7           chapter shall not be deemed to have violated this chapter if the processor or  
8           third-party controller that receives and processes the personal data violates this  
9           chapter, provided, at the time the disclosing controller, processor, or consumer  
10          health data controller disclosed the personal data, the disclosing controller,  
11          processor, or consumer health data controller did not have actual knowledge  
12          that the receiving processor or third-party controller would violate this chapter.

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

18          (e) This chapter shall not be construed to:

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

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

3           (B) under 12 V.S.A. § 1615; or

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

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

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

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

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

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

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

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

9        § 2425. ENFORCEMENT; ATTORNEY GENERAL’S POWERS

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

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

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

20       (A) the number of violations;



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

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

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

6           (E) the safety of persons or property;

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

9           (G) the sensitivity of the data.

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

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

13           (2) the nature of each violation;

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

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

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

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

6       § 2426. CONFIDENTIALITY OF CONSUMER HEALTH DATA

7       Except as provided in subsections 2417(a) and (b) of this title and section  
8       2424 of this title, no person shall:

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

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

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

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

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

2 § 5023. ARTIFICIAL INTELLIGENCE AND DATA PRIVACY

3 ADVISORY COUNCIL

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

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

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

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

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

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

4           (b) Members.

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

7                   (A) the Secretary of Digital Services or designee;

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

10                  (C) the Commissioner of Public Safety or designee;

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

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

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

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

19                  (H) the Commissioner of Health or designee;

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

21                  (J) the Attorney General or designee;

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

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

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

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

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

16               (1) on or before January 31, 2024, not more than 12 times; and

17               (2) on or after February 1, 2024, not more than monthly.

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

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

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

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

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

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

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

19 CHAPTER 62. PROTECTION OF PERSONAL INFORMATION

20 Subchapter 1. General Provisions

21 § 2430. DEFINITIONS

1 As used in this chapter:

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

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

7 (i) name;

8 (ii) address;

9 (iii) date of birth;

10 (iv) place of birth;

11 (v) mother’s maiden name;

12 (vi) ~~unique biometric data generated from measurements or~~  
13 ~~technical analysis of human body characteristics used by the owner or licensee~~  
14 ~~of the data to identify or authenticate the consumer, such as a fingerprint, retina~~  
15 ~~or iris image, or other unique physical representation or digital representation~~  
16 ~~of biometric data;~~

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

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

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

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

7 ~~(2)~~(3) “Business” means a controller, a consumer health data controller,  
8 a processor, or a commercial entity, including a sole proprietorship,  
9 partnership, corporation, association, limited liability company, or other group,  
10 however organized and whether or not organized to operate at a profit,  
11 including a financial institution organized, chartered, or holding a license or  
12 authorization certificate under the laws of this State, any other state, the United  
13 States, or any other country, or the parent, affiliate, or subsidiary of a financial  
14 institution, but does not include the State, a State agency, any political  
15 subdivision of the State, or a vendor acting solely on behalf of, and at the  
16 direction of, the State.

17 ~~(3)~~(4) “Consumer” means an individual ~~residing in this State~~ who is a  
18 resident of the State or an individual who is in the State at the time a data  
19 broker collects the individual’s data.

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



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

2           ~~(4)(7)~~(A) “Data broker” means a business, or unit or units of a business,  
3 separately or together, that knowingly collects and sells or licenses to third  
4 parties the brokered personal information of a consumer with whom the  
5 business does not have a direct relationship.

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

8           (i) customer, client, subscriber, user, or registered user of the  
9 business’s goods or services;

10           (ii) employee, contractor, or agent of the business;

11           (iii) investor in the business; or

12           (iv) donor to the business.

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

16           (i) developing or maintaining third-party e-commerce or  
17 application platforms;

18           (ii) providing 411 directory assistance or directory information  
19 services, including name, address, and telephone number, on behalf of or as a  
20 function of a telecommunications carrier;

1 (iii) providing publicly available information related to a  
2 consumer’s business or profession; or

3 (iv) providing publicly available information via real-time or near-  
4 real-time alert services for health or safety purposes.

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

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

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

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

14 ~~(5)(8)(A)~~ “Data broker security breach” means an unauthorized  
15 acquisition or a reasonable belief of an unauthorized acquisition of more than  
16 one element of brokered personal information maintained by a data broker  
17 when the brokered personal information is not encrypted, redacted, or  
18 protected by another method that renders the information unreadable or  
19 unusable by an unauthorized person.

20 (B) “Data broker security breach” does not include good faith but  
21 unauthorized acquisition of brokered personal information by an employee or

1 agent of the data broker for a legitimate purpose of the data broker, provided  
2 that the brokered personal information is not used for a purpose unrelated to  
3 the data broker’s business or subject to further unauthorized disclosure.

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

8 (i) indications that the brokered personal information is in the  
9 physical possession and control of a person without valid authorization, such  
10 as a lost or stolen computer or other device containing brokered personal  
11 information;

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

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

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

18 ~~(6)~~(9) “Data collector” means a person who, for any purpose, whether  
19 by automated collection or otherwise, handles, collects, disseminates, or  
20 otherwise deals with personally identifiable information, and includes the  
21 State, State agencies, political subdivisions of the State, public and private

1 universities, privately and publicly held corporations, limited liability  
2 companies, financial institutions, and retail operators.

3 ~~(7)~~(10) “Encryption” means use of an algorithmic process to transform  
4 data into a form in which the data is rendered unreadable or unusable without  
5 use of a confidential process or key.

6 ~~(8)~~(11) “License” means a grant of access to, or distribution of, data by  
7 one person to another in exchange for consideration. A use of data for the sole  
8 benefit of the data provider, where the data provider maintains control over the  
9 use of the data, is not a license.

10 ~~(9)~~(12) “Login credentials” means a consumer’s user name or e-mail  
11 address, in combination with a password or an answer to a security question,  
12 that together permit access to an online account.

13 ~~(40)~~(13)(A) “Personally identifiable information” means a consumer’s  
14 first name or first initial and last name in combination with one or more of the  
15 following digital data elements, when the data elements are not encrypted,  
16 redacted, or protected by another method that renders them unreadable or  
17 unusable by unauthorized persons:

18 (i) a Social Security number;

19 (ii) a driver license or nondriver State identification card number,  
20 individual taxpayer identification number, passport number, military  
21 identification card number, or other identification number that originates from

1 a government identification document that is commonly used to verify identity  
2 for a commercial transaction;

3 (iii) a financial account number or credit or debit card number, if  
4 the number could be used without additional identifying information, access  
5 codes, or passwords;

6 (iv) a password, personal identification number, or other access  
7 code for a financial account;

8 (v) ~~unique biometric data generated from measurements or~~  
9 ~~technical analysis of human body characteristics used by the owner or licensee~~  
10 ~~of the data to identify or authenticate the consumer, such as a fingerprint, retina~~  
11 ~~or iris image, or other unique physical representation or digital representation~~  
12 ~~of biometric data;~~

13 (vi) genetic information; and

14 (vii)(I) health records or records of a wellness program or similar  
15 program of health promotion or disease prevention;

16 (II) a health care professional’s medical diagnosis or treatment  
17 of the consumer; or

18 (III) a health insurance policy number.

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

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

2            ~~(11)~~(15) “Record” means any material on which written, drawn, spoken,  
3 visual, or electromagnetic information is recorded or preserved, regardless of  
4 physical form or characteristics.

5            ~~(12)~~(16) “Redaction” means the rendering of data so that the data are  
6 unreadable or are truncated so that ~~no~~ not more than the last four digits of the  
7 identification number are accessible as part of the data.

8            ~~(13)~~(17)(A) “Security breach” means unauthorized acquisition of  
9 electronic data, or a reasonable belief of an unauthorized acquisition of  
10 electronic data, that compromises the security, confidentiality, or integrity of a  
11 consumer’s personally identifiable information or login credentials maintained  
12 by a data collector.

13            (B) “Security breach” does not include good faith but unauthorized  
14 acquisition of personally identifiable information or login credentials by an  
15 employee or agent of the data collector for a legitimate purpose of the data  
16 collector, provided that the personally identifiable information or login  
17 credentials are not used for a purpose unrelated to the data collector’s business  
18 or subject to further unauthorized disclosure.

19            (C) In determining whether personally identifiable information or  
20 login credentials have been acquired or is reasonably believed to have been

1 acquired by a person without valid authorization, a data collector may consider  
2 the following factors, among others:

3 (i) indications that the information is in the physical possession  
4 and control of a person without valid authorization, such as a lost or stolen  
5 computer or other device containing information;

6 (ii) indications that the information has been downloaded or  
7 copied;

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

11 (iv) that the information has been made public.

12 \* \* \*

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

14 \* \* \*

15 § 2436. NOTICE OF DATA BROKER SECURITY BREACH

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

18 (b) Notice of breach.

19 (1) Except as otherwise provided in subsection (c) of this section, any  
20 data broker shall notify the consumer that there has been a data broker security  
21 breach following discovery or notification to the data broker of the breach.

1 Notice of the security breach shall be made in the most expedient time possible  
2 and without unreasonable delay, but not later than 45 days after the discovery  
3 or notification, consistent with the legitimate needs of the law enforcement  
4 agency, as provided in subdivisions (3) and (4) of this subsection, or with any  
5 measures necessary to determine the scope of the security breach and restore  
6 the reasonable integrity, security, and confidentiality of the data system.

7 (2) A data broker shall provide notice of a breach to the Attorney  
8 General as follows:

9 (A)(i) The data broker shall notify the Attorney General of the date of  
10 the security breach and the date of discovery of the breach and shall provide a  
11 preliminary description of the breach within 14 business days, consistent with  
12 the legitimate needs of the law enforcement agency, as provided in  
13 subdivisions (3) and (4) of this subsection (b), after the data broker’s discovery  
14 of the security breach or when the data broker provides notice to consumers  
15 pursuant to this section, whichever is sooner.

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

19 (iii) Unless otherwise ordered by a court of this State for good  
20 cause shown, a notice provided under this subdivision (2)(A) shall not be  
21 disclosed to any person other than the authorized agent or representative of the



1 Attorney General, a State’s Attorney, or another law enforcement officer  
2 engaged in legitimate law enforcement activities without the consent of the  
3 data broker.

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

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

13 (3) The notice to a consumer required by this subsection shall be  
14 delayed upon request of a law enforcement agency. A law enforcement agency  
15 may request the delay if it believes that notification may impede a law  
16 enforcement investigation or a national or Homeland Security investigation or  
17 jeopardize public safety or national or Homeland Security interests. In the  
18 event law enforcement makes the request for a delay in a manner other than in  
19 writing, the data broker shall document the request contemporaneously in  
20 writing and include the name of the law enforcement officer making the  
21 request and the officer’s law enforcement agency engaged in the investigation.

1 A law enforcement agency shall promptly notify the data broker in writing  
2 when the law enforcement agency no longer believes that notification may  
3 impede a law enforcement investigation or a national or Homeland Security  
4 investigation, or jeopardize public safety or national or Homeland Security  
5 interests. The data broker shall provide notice required by this section without  
6 unreasonable delay upon receipt of a written communication, which includes  
7 facsimile or electronic communication, from the law enforcement agency  
8 withdrawing its request for delay.

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

13 (A) the incident in general terms;

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

16 (C) the general acts of the data broker to protect the brokered  
17 personal information from further security breach;

18 (D) a telephone number, toll-free if available, that the consumer may  
19 call for further information and assistance;

20 (E) advice that directs the consumer to remain vigilant by reviewing  
21 account statements and monitoring free credit reports; and

1           (F) the approximate date of the data broker security breach.

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

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

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

8           (i) the data broker’s primary method of communication with the  
9 consumer is by electronic means, the electronic notice does not request or  
10 contain a hypertext link to a request that the consumer provide personal  
11 information, and the electronic notice conspicuously warns consumers not to  
12 provide personal information in response to electronic communications  
13 regarding security breaches; or

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

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

18 or

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

21           (c) Exception.

1           (1) Notice of a security breach pursuant to subsection (b) of this section  
2           is not required if the data broker establishes that misuse of brokered personal  
3           information is not reasonably possible and the data broker provides notice of  
4           the determination that the misuse of the brokered personal information is not  
5           reasonably possible pursuant to the requirements of this subsection. If the data  
6           broker establishes that misuse of the brokered personal information is not  
7           reasonably possible, the data broker shall provide notice of its determination  
8           that misuse of the brokered personal information is not reasonably possible and  
9           a detailed explanation for said determination to the Vermont Attorney General.  
10          The data broker may designate its notice and detailed explanation to the  
11          Vermont Attorney General as a trade secret if the notice and detailed  
12          explanation meet the definition of trade secret contained in 1 V.S.A.  
13          § 317(c)(9).

14           (2) If a data broker established that misuse of brokered personal  
15          information was not reasonably possible under subdivision (1) of this  
16          subsection and subsequently obtains facts indicating that misuse of the  
17          brokered personal information has occurred or is occurring, the data broker  
18          shall provide notice of the security breach pursuant to subsection (b) of this  
19          section.

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



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

4 (1) register with the Secretary of State;

5 (2) pay a registration fee of \$100.00; and

6 (3) provide the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (3) other penalties imposed by law.

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





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

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

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

8           (1) brokered personal information that is:

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

12           (B) regulated pursuant to the Driver’s Privacy Protection Act of  
13           1994, 18 U.S.C. § 2721–2725, if the data broker is fully complying with the  
14           Act;

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

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

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

1       Sec. 4. EFFECTIVE DATES

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

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

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13           (Committee vote: \_\_\_\_\_)

14

\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE