

1 H.121

2 Senator Lyons moves that the report of the Committee on Economic
3 Development, Housing and General Affairs be amended as follows:

4 First: In Sec. 1, 9 V.S.A. chapter 61A, in section 2415, by striking out
5 subdivision (4) in its entirety and inserting in lieu thereof a new subdivision (4)
6 to read:

7 (4) “Biometric data” means information 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 (A) iris or retina scans;

12 (B) fingerprints;

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

14 (D) vein patterns;

15 (E) voice prints;

16 (F) gait or personally identifying physical movement or patterns;

17 (G) depictions, images, descriptions, or recordings; and

18 (H) data derived from any data in subdivision (G) of this subdivision

19 (4), to the extent that it would be reasonably possible to identify the specific

20 individual from whose biometric data the data has been derived.

1 Second: In Sec. 1, 9 V.S.A. chapter 61A, in section 2415, by striking out
2 subdivision (44) in its entirety and inserting in lieu thereof a new subdivision
3 (44) to read:

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

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

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

9 (B) “Publicly available information” does not include biometric data
10 collected by a business about a consumer without the consumer’s knowledge.

11 Third: In Sec. 1, 9 V.S.A. chapter 61A, in section 2415, by striking out
12 subdivision (1) in its entirety and renumbering the remaining subdivisions to
13 be numerically correct.

14 Fourth: In Sec. 1, 9 V.S.A. chapter 61A, in subsection 2417(a), by striking
15 out subdivision (2) in its entirety and inserting in lieu thereof a new
16 subdivision (2) to read:

17 (2) an institution in its capacity as a covered entity or business associate;

18 Fifth: In Sec. 1, 9 V.S.A. chapter 61A, in subdivision 2417(a), by striking
19 out subdivision (8) in its entirety and inserting in lieu thereof a new
20 subdivision (8) to read:

1 (8) information that originates from, that is intermingled so as to be
2 indistinguishable from, or that is treated in the same manner as information
3 described in subdivisions (3)–(7) of this subsection that a covered entity,
4 business associate, or a qualified service organization program creates,
5 collects, processes, uses, or maintains in the same manner as is required under
6 the laws, regulations, and guidelines described in subdivisions (3)–(7) of this
7 subsection;

8 Sixth: In Sec. 1, 9 V.S.A. chapter 61A, by striking out section 2425 in its
9 entirety and inserting in lieu thereof a new section 2425 to read:

10 § 2425. ENFORCEMENT: ATTORNEY GENERAL’S POWERS AND
11 PRIVATE RIGHT OF ACTION

12 (a) A person who violates this chapter or rules adopted pursuant to this
13 chapter commits an unfair and deceptive act in commerce in violation of
14 section 2453 of this title, and the Attorney General shall have exclusive
15 authority to enforce such violations except as provided in subsection (c).

16 (b)(1) If the Attorney General determines that a violation of this chapter or
17 rules adopted pursuant to this chapter may be cured, the Attorney General may,
18 prior to initiating any action for the violation, issue a notice of violation
19 extending a 60-day cure period to the controller, processor, or consumer health
20 data controller alleged to have violated this chapter or rules adopted pursuant
21 to this chapter.

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

5 (A) the number of violations;

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

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

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

11 (E) the safety of persons or property;

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

14 (G) the sensitivity of the data.

15 (c)(1) A consumer who is harmed by a violation of subdivision 2419(b)(2)
16 of this title or section 2426 of this title may bring an action in Superior Court
17 against the controller, processor, or consumer health data controller for the
18 alleged violation if the consumer notifies the controller, processor, or
19 consumer health data controller of the violation and the controller, processor,
20 or consumer health data controller fails to cure the violation within 60 days
21 following receipt of the notice of violation.

1 (2) A consumer bringing an action under this subsection may seek:

2 (A) the greater of \$1,000.00 or actual damages;

3 (B) injunctive relief;

4 (C) punitive damages in the case of an intentional violation; or

5 (D) reasonable costs and attorney's fees.

6 (3) Notwithstanding subsection 2461(b) of this title, the private right of
7 action available to a consumer for violations of this chapter or rules adopted
8 pursuant to this chapter shall be exclusively as provided under this subsection.

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

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

12 (2) the nature of each violation;

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

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

17 Seventh: In Sec. 1, 9 V.S.A. chapter 61A, in section 2426, by striking out
18 subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3)
19 to read:

1 (3) use a geofence to establish a virtual boundary that is within 1,850
2 feet of any health care facility, including any mental health facility or
3 reproductive or sexual health facility; or

4 Eighth: In Sec. 2, 3 V.S.A. § 5023, by striking out subsections (a) and (b)
5 in their entirety and inserting in lieu thereof new subsections (a) and (b) to
6 read:

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

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

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

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

18 (D) engage in research on data privacy and develop policy
19 recommendations for improving data privacy in Vermont, including:

20 (i) development of education and outreach to consumers and
21 businesses on the Vermont Data Privacy Act;

1 (ii) recommendations for enhancing the private right of action
2 under the Vermont Data Privacy Act; and

3 (iii) recommendations for narrowing the exemptions under the
4 Vermont Data Privacy Act, including based on:

5 (I) research on the effects on healthcare industry of the health-
6 related data-level exemptions under the Oregon Consumer Privacy Act; and

7 (II) economic analysis of compliance costs for the healthcare
8 industry.

9 (2)(A) The Advisory Council shall report its findings and any
10 recommendations under subdivision (1)(D) of this subsection to the Senate
11 Committees on Economic Development, Housing and General Affairs, on
12 Health and Welfare, and on Judiciary and the House Committees on
13 Commerce and Economic Development, on Health Care, and on Judiciary by
14 January 15, 2025.

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

18 (b) Members.

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

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

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

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

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

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

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

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

12 (H) the Commissioner of Health or designee;

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

14 (J) the Attorney General or designee;

15 (K) the Secretary of the Agency of Human Services or designee;

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

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

20 (2) Chair. Members of the Advisory Council shall elect by majority
21 vote the Chair of the Advisory Council. Members of the Advisory Council

1 shall be appointed on or before August 1, 2022 in order to prepare as they
2 deem necessary for the establishment of the Advisory Council, including the
3 election of the Chair of the Advisory Council, except that the members
4 appointed under subdivisions (K)–(M) of subdivision (1) of this subsection
5 shall be appointed on or before August 1, 2024.

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

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