



April 30, 2026

Testimony on S.71 - Maggie Lenz, on behalf of the Vermont Retail & Grocers Association

Good afternoon Chair Marcotte, Vice Chair Graning, and members of the Committee. Thank you for the opportunity to testify on S.71 on behalf of VRGA members including small retailers, grocers, and larger stores across Vermont. I want to sincerely recognize the work this Committee, the Senate, the Attorney General's Office, advocates, businesses, and many others have put into privacy legislation over multiple sessions. VRGA supports passing a meaningful privacy bill. We support consumer rights and protections for sensitive information. We are not asking Vermont to do nothing. We are asking Vermont to pass a privacy law that is strong enough to matter and clear enough to work on the ground.

That is why we are asking the Committee to use the Senate-passed version of S.71 as the framework. The Senate version gives consumers core rights: the ability to access, correct, delete, and obtain a copy of their data, along with the ability to opt out of targeted advertising, sale, and certain profiling. It requires clear privacy notices, consent before processing sensitive data, and data protection assessments for higher-risk processing. It gives the Attorney General enforcement authority, provides a clear compliance path, and includes strong consumer health data protections.

VRGA supports this version of the bill because it is strong without being unknowable. It requires businesses to change their behavior, but it does so through a structure that can be better understood, administered, and improved over time. By contrast, Draft 2.3 raises significant concerns for VRGA members.

The first concern is applicability. Draft 2.3 not only lowers the threshold to 35,000 consumers but it separately applies to any business that handles what the bill defines as sensitive data. The concern is not that businesses use data, it is that these triggers pull in a much broader range of ordinary Vermont businesses based on routine operations. Retailers and grocers are handling deliveries, online orders, loyalty programs, returns, fraud prevention, recalls, and everyday customer communications, all of which can involve data that may fall within these definitions. As a result, a framework aimed at higher-risk data practices ends up applying to standard, day-to-day activity, making it harder to understand when and how the full set of obligations applies and moving Vermont away from a more consistent regional approach.

That ties into the second concern, 2.3's definition of sensitive data. VRGA supports strong protections for genuinely sensitive information like health data, biometric data, precise geolocation data, immigration status, reproductive or sexual health data, gender-affirming health data, children's data, or other highly sensitive categories. But Draft 2.3 defines sensitive data broadly and then applies a strict-necessity standard and bans selling questionably (in our opinion) sensitive data. That combination may be aimed at the worst forms of behavioral tracking, but retailers and grocers do not operate in a vacuum.

Draft 2.3 includes construction provisions that preserve activities like fraud prevention, product recalls, and internal operations, but businesses still have to reconcile those allowances with the bill's front-end restrictions on data use in the context of ordinary retail operations: returns, deliveries, age-restricted sales, coupons, recall communications, and measuring whether a promotion worked. They rely on delivery platforms, loyalty vendors, email vendors, fraud-prevention tools, point-of-sale systems, and advertising platforms. That is why the Senate version's consent-based approach to sensitive data is more workable. It does not ignore sensitive data. It requires consent. It preserves consumer choice. It allows Vermont to protect sensitive information without forcing every ordinary business relationship into a strict-necessity analysis that may be very difficult to apply.

The third concern is advertising. Draft 2.3 permits some advertising, including first-party advertising and targeted advertising under certain conditions, but it also places restrictions around sensitive data and opt-outs. Again, the question is not whether there should be limits. The question is whether an ordinary Vermont business can make sense of them and operationalize them. Can a store use a third-party email vendor to send a customer a coupon? Can a grocer advertise a sale to people who have shopped with it before? Can a retailer measure whether a promotion worked? Can a small business use a platform's advertising tools without understanding every downstream data classification?

The Senate version handles this in a clearer way. It gives consumers the right to opt out of targeted advertising and sale. It requires clear and conspicuous disclosure, reasonable and necessary data limits, and consent for sensitive data. It does not leave local businesses trying to reverse-engineer the technical architecture of advertising platforms in order to know whether routine customer communication is allowed.

The fourth concern is data minimization. Draft 2.3 does not simply require responsible data practices. It limits collection and processing to what is "reasonably necessary and proportionate" to provide or maintain a specific product or service requested by the consumer. That is a major shift from the Senate version, which already includes data minimization by requiring collection to be adequate, relevant, and reasonably necessary in relation to disclosed purposes, and by barring processing for incompatible purposes without consent. The concern is how the House draft functions in ordinary Vermont commerce. What is the specific product or service when a

grocery store sends a coupon, uses a system to prevent fraud, processes a return, manages a delivery, handles an age-restricted sale, sends a recall notice, or tries to understand whether a promotion worked?

Equally important to the policy itself is the process. It is worth acknowledging where it has fallen short and how to avoid those pitfalls going forward. This is not about revisiting old disagreements or criticizing individuals, but about naming a dynamic that took on a life of its own and needs to be addressed in order to rebuild trust on all sides.

Over the last several years, the process around privacy legislation has become unusually charged, at least by Vermont standards. Legitimate concerns raised by Vermont businesses and associations have at times been dismissed as not local, not substantive, or not informed. That dynamic has made it harder to pass a privacy bill than it needed to be, and it has strained otherwise strong working relationships.

In most policy areas, when multiple organizations, even across different sectors, identify similar issues in a bill, that is treated as a normal part of the legislative process. People may disagree or believe those concerns are overstated, but the act of raising them is not questioned. This debate has felt different. When business organizations have raised similar concerns, it has at times been framed as a coordinated effort or a broader national campaign to mislead. National organizations do pay attention to state outcomes across many issues, including privacy, education, health care, housing, and energy, and while they may share the concerns of Vermont businesses, that does not make those concerns any less real. Businesses are arriving at similar conclusions because they are reading the same bill and encountering the same practical challenges.

What those businesses are expressing is not confusion for its own sake, but real uncertainty about how to comply and what is expected of them. That uncertainty creates anxiety for the people who will be responsible for getting this right on the ground. In this bill, that uncertainty is not incidental or easily resolved through guidance alone. It is a central concern. A system that helps businesses get it right is what ultimately produces meaningful consumer protection.

That is the central reason VRGA is asking you to use the Senate-passed S.71 as the foundation. Preserve meaningful consumer protections, consumer rights, sensitive-data protections, consumer health-data protections, Attorney General enforcement, guidance, and compliance support. And then come back, as other states ahead of us are doing, and make targeted updates to the law when they are ready.

Thank you,

Maggie Lenz