



The Out-of-State Advantage: How S.71 puts Vermont jobs, businesses, and makers at risk.

S.71's intent is sound, and we can live with the bill as the Senate passed it. But Draft 2.3, the House Committee's amendment, would be a disaster for Vermont small businesses. As reported by the House Committee on Commerce and Economic Development, the amendment would significantly limit Vermont businesses from using technology to find new customers — and hand a competitive advantage to the out-of-state brands that don't make anything in Vermont and never will.

01 Who we are, and how we got here

We are Vermont Nut Free Chocolates, founded in 1998 by Gail and Mark Elvidge after their son Tanner was diagnosed with a life-threatening peanut allergy. Today we are 35 Vermonters — 88% of us women — working in a dedicated nut-free facility in Colchester, producing 200+ products that ship to families across the country. We were one of the country's first online-native specialty food businesses, because we had to be. The families who need our chocolate are not browsing the candy aisle. They are 32 million Americans with food allergies, scattered nationwide, who find us through search, online communities, and the kind of targeted digital advertising that the House Committee's amendment would put outside our reach.

02 What the amendment actually does

Draft 2.3 — the House Committee's amendment to S.71 — reclassifies cross-platform behavioral data, the technical layer that makes targeted digital advertising possible, as "sensitive data" under §2415a(b)(53)(N). Sensitive data may only be processed when "strictly necessary" to provide a product the consumer requested (§2415e(a)(4)). There is no consent override. A Vermont customer cannot opt in even if they want to.

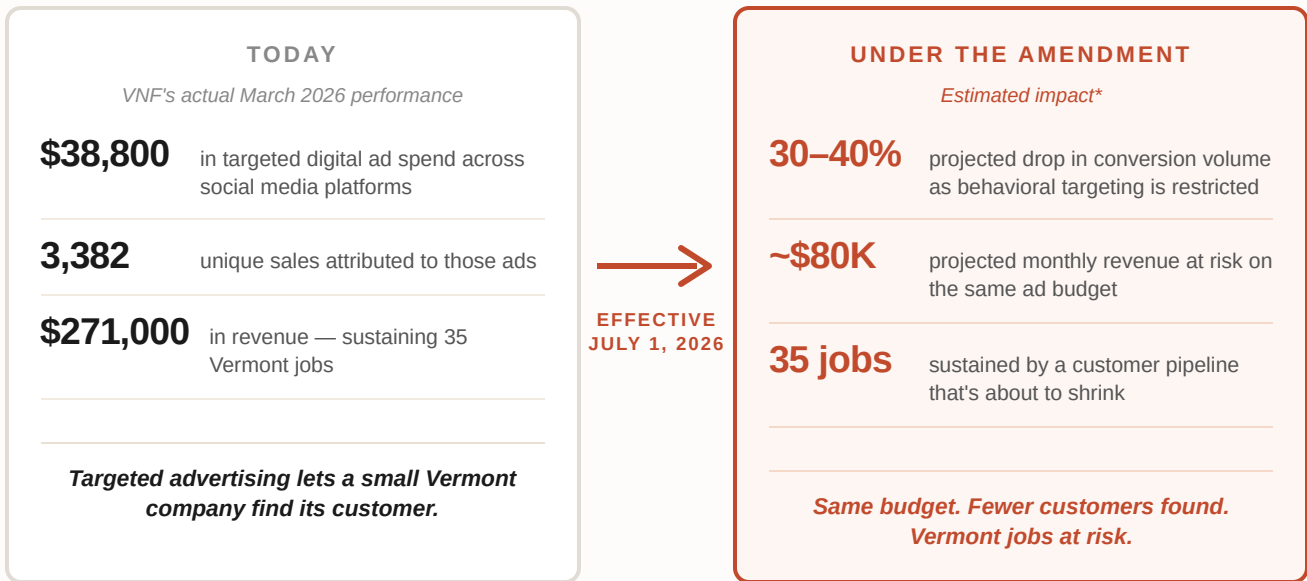
The amendment claims to apply only to businesses with 35,000 or more Vermont customers (§2415b). But because it also covers any business processing any "sensitive data" — and now classifies cross-platform behavioral data as sensitive — that 35,000-customer threshold is largely meaningless. Small Vermont businesses that assumed they were too small to be regulated will discover they are not.

03 This is the Out-of-State Advantage

Vermont makers rely on technology to get in front of the right customers — we don't have the resources national brands have to completely change their marketing plans and spend big on lawyers to comply with new burdensome regulations. Many also have brand recognition deep enough that customers find them without targeted advertising. We don't — and neither do the maple producers, craft brewers, and other Vermont businesses built online. The amendment will cost Vermont taxpayers to enforce a regime small Vermont businesses cannot compete under. When the playing field tilts toward large out-of-state competitors, Vermonters lose ground in the markets we built. The chocolate, the syrup, the beer, the welcome at the inn — what makes those things Vermont — gets harder for the rest of the country to find.



What changes the day the amendment takes effect.



Today figures: Vermont Nut Free Chocolates' actual paid digital advertising performance in March 2026 across social media platforms. ***Under-amendment figures:** estimates based on conservative published industry benchmarks for the impact of cross-platform behavioral data restrictions on advertising performance. Not a worst case — a likely case.

WHAT'S AT STAKE FOR VERMONT JOBS

Vermont has a culture of making things — and making them well. These products are the result of generations of Vermont craft, and they are why customers from across the country seek out Vermont brands in the first place.

That craft is also a business model. Vermont Nut Free Chocolates was built to serve a scattered, nationwide community of allergy families. Businesses like ours depend on connecting with specific audiences beyond Vermont's borders. Tourism and hospitality businesses depend on reaching travelers at the right moment to fill rooms and sustain year-round operations. The out-of-state customer is what keeps Vermont makers afloat, and what allows them to keep serving the Vermonters next door.

"It's not just marketing that disappears — it's jobs."

When that connection is cut off, the makers who can't compete with national brands lose ground first, growth stalls, revenue declines, and jobs disappear. Eventually, the products themselves change — quality drops, prices rise, or the Vermont-made option simply isn't there anymore, for in-state customers or anyone else. Vermonters end up paying more for less, from competitors who never built anything here and never will.

The amendment doesn't just put Vermont businesses on the wrong side of the Out-of-State Advantage. It puts the craft of Vermont production itself at risk.

The Out-of-State Advantage is not Vermont's advantage. The amendment hands it to our competition.

