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Senate Committee on Institutions  
State House  
Montpelier, Vermont

Subject: S.71, consumer data privacy and online surveillance and S.93, consumer data privacy

Dear Committee:

I have been testifying on data privacy and protection bills since 2018. This includes participating in hearings and forums held by the Attorney General.

These comments continue my efforts to persuade the General Assembly to eliminate the continued proliferation of terms and the continued multiple definitions for the same (or a very similar) term.

I do not yet understand the two bills enough to favor either over the other.

I propose that whichever bill is passed out of the committee, that the contents be placed into a new subchapter 6 in chapter 62. I have talked with Rik Sehgal about his choice of a new chapter 61A instead of into the existing chapter 62. I was not convinced by his explanation to favor a new subchapter.

Placing the new bills into a new subchapter will require a reconciliation of the new bills with the existing statute. This letter contains two exhibits that show the proliferation of terms and the differences. One exhibit shows the multiple aggregations of data elements. The other shows conflicting definitions between existing statutes and the bills.

I am not asking that you eliminate all the disparities in whichever bill you choose. I am asking that you not introduce new disparities and confusion with whichever bill.

The new bills have many common (or similar) terms that have different definitions from those in chapter 62. Those differences will lead to confusion among those regulated by both chapter 62 and a chapter 61A. Using a new subchapter 61A will cause an evaluation of the conflicting definitions in order to come up with one definition that satisfies both existing chapter 62 and the new bills.

The exhibits show how S.71 and its definitions overlap with and in some instances conflict with, the existing content of Chapter 62. For example, the bills propose definitions for terms that are used in chapter 62 without being defined. If a term needs to be defined in the new bills, then perhaps it should also be defined in chapter 62. The easiest way to do that is to unify the bill into chapter 62, adding the new definitions to those already in the general provisions subchapter of chapter 62.

S.71 and S.93 do not stand alone in the realm of data privacy and protection in Vermont Statutes. Rather the bills are extensions of those protections. I consider an understanding of the realm to be essential to understand the place of S.71 and S.93 into that realm. I believe that either S.71 or S.93 belongs in a new subchapter 6 of chapter 62 of title 9.

The realm of those protections are contained in chapter 62 of title 9.

Chapter 62, protection of personal information, contains general provisions and then additional subchapters.

- Security Breach Notice Act (subchapter 2)
- Social Security Number Protection Act (subchapter 3)
- Student Privacy (subchapter 3A)
- Document Safe Destruction Act (subchapter 4)
- Data Brokers (subchapter 5)

I ask you to review the two exhibits and to have the contents of S.71 or S.93 moved into new subchapter 6. I believe this will reduce confusion of those entities regulated by chapter 62 and the new bills; and will reduce conflicts and confusion.

Sincerely,  
Thomas Weiss

Enclosures:

Exhibit 1 - data elements classified in 9 V. S. A. chapter 62 and as proposed in S.71 and S.93

Exhibit 2 - Comparison of definitions in 9 V.S.A. chapter 62 and as proposed in S.71 and S.93

**Exhibit 1 - data elements classified in 9 V. S. A. chapter 62 and as proposed in S.71 and S.93**  
Chapter 62 data elements as amended by Act 89 (2020)  
prepared by Thomas Weiss  
March 12, 2025

SD S.71	SD (Sensitive data), S.93	PII (data collectors)	LC (data collectors)	BPI (data brokers)	CI (student privacy)	SSN (use of SSN)	PI (destruction of records)
§2415: definition of SD applies to all of proposed chapter 61A	§2415: definition of SD applies to all of proposed chapter 61A	§2430: definition of PII applies to §2430 through 2447 (all of chapter 62)	§2430: definition of LC applies to §2430 through 2447 (all of chapter 62)	§2430: definition of BPI applies to §2430 through 2447 (all of chapter 62)	§2443: definition of CI applies to §2443 only (subchapter 3A only)	§2440: there is no definition (subchapter 3 only)	§2445: definition of PI applies to §2445 only (subchapter 4 only)
		form of information: non-encrypted- digital	(all formats)	non-encrypted-digital; categorized or organized for dissemination to third parties	not publicly available or publicly available through a specific federal act. in any media or format	(all formats)	any material, regardless of the physical form
controllers, consumer health data controllers, processors, subcontractors to processors, controller's designees, qualified and independent persons engaged to assess the processor	controllers, consumer health data controllers, processors, subcontractors to processors	entities handling the information: person (in the legal jargon sense); the State, State agencies, political subdivisions	person (in the legal jargon sense); the State, State agencies, political subdivisions	commercial entity (profit or non-profit); financial institution, and its parent, affiliate or subsidiary: excludes any governmental entity of the State; excludes vendors acting solely at the direction of the State	operator of services or applications used primarily for PreK through 12 students.	commercial entity (profit or non-profit); financial institution, and its parent, affiliate or subsidiary: separate provisions for the State, political subdivisions, and agents or employees of the State.	businesses (definition specific to §2445) that destroy records of their customers. Entities in the business of disposing of personal financial information.
		first name or first initial and last name plus any other(s)		name	first and last name		
social security number		social security number		social security number	social security number	social security number	social security number
driver's license number		driver's license number		other government issued ID number			driver's license number
		non-driver State ID card number		other government issued ID number			State ID card number
		individual taxpayer ID number		other government issued ID number			
passport number		passport number		other government issued ID number			passport number
military ID card number		military ID card number		other government issued ID number			
		other government issued ID number commonly used to verify identity for a commercial transaction		other government issued ID number			
personal data that reveals a government issued identifier							
		financial account number, credit card number, or debit card number that could be used without passwords, access codes, or additional identifying information					bank account number
personal data that is a consumer's tax return and account number, financial account log-in, financial account, debit card number, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account;							

SD S.71	SD (Sensitive data), S.93	PII (data collectors)	LC (data collectors)	BPI (data brokers)	CI (student privacy)	SSN (use of SSN)	PI (destruction of records)
							credit card or debit card number (whether or not in can be used without passwords, access codes, or additional identifying information)
							insurance policy number
							any other financial information
		password, PIN, or other access code for a financial account					
			user name or e-mail address combined with a password or security answer				
		unique biometric data . . . used . . . to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other physical representation or digital representation of biometric data		unique biometric data . . . used . . . to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other physical representation or digital representation of biometric data	biometric information		physical characteristics or description
personal data that is biometric data (defined)	personal data that includes the processing of biometric data [defined differently] for the purpose of uniquely identifying an individual						
		genetic information					
personal data that is genetic data (defined)	personal data that includes genetic data [undefined] for the purpose of identifying an individual						
		health records			health records		
		records of a wellness program or similar program of health promotion or disease prevention					
		health care professional's medical diagnosis or treatment					
					medical records		
personal data that is consumer health data	personal data that includes consumer health data						
personal data that is collected and analyzed concerning consumer health data that describes or reveals a past, present, or future mental or physical health condition, treatment, disability, or diagnosis, including pregnancy, to the extent the personal data is used by the controller for a purpose other than to identify a specific consumer's physical or mental health condition or diagnosis;							
		health insurance policy number					

SD S.71	SD (Sensitive data), S.93	PII (data collectors)	LC (data collectors)	BPI (data brokers)	CI (student privacy)	SSN (use of SSN)	PI (destruction of records)
				address	home address		
				name or address of immediate family or household member			
				date of birth			
				place of birth			
				mother's maiden name			
							signature
				other information that, alone or in combination, with the other information is linked or linkable to the consumer that would allow a reasonable person to identify the consumer with reasonable certainty			
					telephone number		
					electronic mail address		
					other information that allows physical or online contact		
					information in the student's education record or electronic mail, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, disability status, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.		
precise geolocation data (defined)	personal data that includes an individual's precise geolocation data. (defined differently)						
					personal information or material, or information that is linked to personal information or material that a student (or parent or guardian) creates or provides to an operator of certain online activities		
				excludes publicly available information to the extent that it is related to a consumer's business or profession.			

SD S.71	SD (Sensitive data), S.93	PII (data collectors)	LC (data collectors)	BPI (data brokers)	CI (student privacy)	SSN (use of SSN)	PI (destruction of records)
personal data that reveals a consumer's racial or ethnic origin, national origin, citizenship or immigration status, religious or philosophical beliefs, a mental or physical health condition, diagnosis, disability or treatment, status as pregnant, income level or indebtedness, or union membership	personal data that includes data revealing racial or ethnic origin, religious beliefs, mental or physical health condition or diagnosis, sex life, sexual orientation, or citizenship or immigration status;						
personal data that reveals a consumer's sexual orientation, sex life, sexuality, or status as transgender or nonbinary							
personal data that reveals a consumer's status as a victim of a crime	personal data that includes data concerning an individual's status as a victim of crime						
personal data that is collected from a consumer that a controller knew or should have known is a minor	personal data that includes personal data collected from a known child;						
personal data that are keystrokes							
personal data that is driving behavior							
personal data that is neural data							
personal data that are the online activities of a consumer over time and across devices, websites, online applications, and mobile applications, that do not share common branding, or data generated by, profiling performed on such data.							

Shaded data elements are part of personally identifiable information.

Vermont requires notice to consumers only for the unauthorized acquisition of PII (personally identifiable information), and only in some cases. Vermont does not require notice to consumers for unauthorized acquisition of all other information.

SD - sensitive data

PII - personally identifiable information

LC - login credentials

BPI - brokered personal information

CI - covered information

SSN - social security number protection

PI - personal information

**Exhibit 2 - Comparison of definitions in 9 V.S.A. chapter 62 and as proposed in S.71 and S.93**  
 prepared by Thomas Weiss  
 March 12, 2025

This table provides defined terms that exist in chapters 62 and 63 and are proposed in S.71 and in S.93.  
 The objective for S.71 (or S.93) is to move the proposed chapter 61A into chapter 62; and to unify definitions.  
 S.71 (and S.93) has definitions of unidentified terms in chapter 62. Those definitions would go into subchapter 1.

This chart omits aggregations of data elements: PPI, etc.

"Used" and "not used" refer to whether the term is used or not.

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
	Definitions are in section 2415.		Subchapter 1, General Provisions has definitions for all of chapter 62. Subchapters 2, Security Breach Notice Act has no definitions, Subchapter 3, Social Security Number Protection Act, has no definitions. Subchapter 3A, Student Privacy has definitions that pply only to subchapter 3A Subchapter 4, Document Safe Destruction Act has definitions that only apply to section 2445, the only section in subchapter 4. Subchapter 5, Data Brokers has no definitions.
(1) Affiliate	(1)(A) “Affiliate” means a legal entity that shares common branding with another legal entity or controls, is controlled by, or is under common control with another legal entity.  (B) As used in subdivision (A) of this subdivision (1), “control” or “controlled” means: (i) ownership of, or the power to vote, more than 50 percent of the 1 outstanding shares of any class of voting security of a company; (ii) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or (iii) the power to exercise controlling influence over the 5 management of a company.	(1)(A) “Affiliate” means a legal entity that shares common branding with another legal entity or controls, is controlled by, or is under common control with another legal entity.  (B) As used in subdivision (A) of this subdivision (1), “control” or “controlled” means: (i) ownership of, or the power to vote, more than 50 percent of the 1 outstanding shares of any class of voting security of a company; (ii) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or (iii) the power to exercise controlling influence over the 5 management of a company.	Undefined. Used in subchapters 1 and 44 as part of the definitions of business.
(3) biometric data	(3)(A) “Biometric data” means data generated from the technological processing of an individual’s unique biological, physical, or physiological characteristics that allow or confirm the unique identification of the consumer, including: (i) iris or retina scans; (ii) fingerprints; (iii) facial or hand mapping, geometry, or templates; (iv) vein patterns; (v) voice prints or vocal biomarkers; and (vi) gait or personally identifying physical movement or patterns. (B) “Biometric data” does not include: (i) a digital or physical photograph; (ii) an audio or video recording; or (iii) any data generated from a digital or physical photograph, or an audio or video recording, unless such data is generated to identify a specific individual.	(4)(A) “Biometric data” means personal data generated by automatic measurements of an individual’s unique biological patterns or characteristics that are used to identify a specific individual. (B) “Biometric data” does not include: (i) a digital or physical photograph; (ii) an audio or video recording; (iii) any data generated from a digital or physical photograph, or an audio or video recording, unless such data is generated to identify a specific individual.	Undefined  Used in all of chapter 62 as a data element included in the definitions of "borkered personal information" and "personally identifiable information."  Used only in subchaoter 3A as "biometric information" as a data element included included in the definition of "covered information".  Used in subchapter 5 as biometrics as an example of a unique identifier technology.

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(2) business	Undefined. Used as a noun in S.71	"Business" is not used as a noun.	<p>Used in all of chapter 62.</p> <p>(2) "Business" means a commercial entity, including a sole proprietorship, partnership, corporation, association, limited liability company, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent, affiliate, or subsidiary of a financial institution, but does not include the State, a State agency, any political subdivision of the State, or a vendor acting solely on behalf of, and at the direction of, the State.</p> <p>Used only in subchapter 4</p> <p>(1) "Business" means sole proprietorship, partnership, corporation, association, limited liability company, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent, affiliate, or subsidiary of a financial institution, but in no case shall it include the State, a State agency, or any political subdivision of the State. The term includes an entity that destroys records.</p>
(6) Consent	<p>(6)(A) "Consent" means a clear affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement to allow the processing of personal data relating to the consumer in response to a specific request, provided the request:</p> <ul style="list-style-type: none"> <li>(i) is provided to the consumer in a clear and conspicuous disclosure;</li> <li>(ii) includes a description of the processing purpose for which the consumer's consent is sought;</li> <li>(iii) clearly distinguishes between an act or practice that is necessary to fulfill a request of the consumer and an act or practice that is for another purpose;</li> <li>(iv) clearly states the specific categories of personal data that the controller intends to collect or process under each act or practice;</li> <li>(v) clearly states the specific categories of personal data that the controller intends to collect or process under each act or practice; and</li> <li>(vi) is accessible to a consumer with disabilities.</li> </ul> <p>(B) "Consent" may include a written statement, including by electronic means, or any other unambiguous affirmative action.</p> <p>(C) "Consent" does not include:</p> <ul style="list-style-type: none"> <li>(i) acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information;</li> <li>(ii) hovering over, muting, pausing, or closing a given piece of content;</li> <li>(iii) inaction of the consumer or the consumer's continued use of a service or product provided by the controller; or</li> <li>(iv) an agreement obtained through the use of dark patterns.</li> </ul>	<p>(7)(A) "Consent" means a clear affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement to allow the processing of personal data relating to the consumer.</p> <p>(B) "Consent" may include a written statement, including by electronic means, or any other unambiguous affirmative action.</p> <p>(C) "Consent" does not include:</p> <ul style="list-style-type: none"> <li>(i) acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information;</li> <li>(ii) hovering over, muting, pausing, or closing a given piece of content; or</li> <li>(iii) agreement obtained through the use of dark patterns.</li> </ul>	<p>Undefined. Used in subchapters 2, 3, and 3A.</p> <p>Used in subchapter 4 as part of the definition of "record"</p>

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(7) Consumer	(7)(A) "Consumer" means an individual who is a resident of the State. (B) "Consumer" does not include an individual acting in a commercial capacity or as an owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency whose communications or transactions with the controller occur solely within the context of that individual's role with the company, partnership, sole proprietorship, nonprofit, or government agency.	(8)(A) "Consumer" means an individual who is a resident of the State. (B) "Consumer" does not include an individual acting in a commercial capacity or as an owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency whose communications or transactions with the controller occur solely within the context of that individual's role with the company, partnership, sole proprietorship, nonprofit, or government agency.	(3) "Consumer" means an individual residing in this State.
(8) Consumer health data	(8) "Consumer health data" means any personal data that a controller uses to identify a consumer's physical or mental health condition or diagnosis, including gender-affirming health data and reproductive or sexual health data.	(9) "Consumer health data" means any personal data that a controller uses to identify a consumer's physical or mental health condition or diagnosis, including gender-affirming health data and reproductive or sexual health data.	Undefined. Used in subchapter 3A as "health records"  Subchapter 4 does not apply to "individually identifiable health information".
(9) Consumer health data controller	(9) "Consumer health data controller" means any controller that, alone or jointly with others, determines the purpose and means of processing consumer health data.	(10) "Consumer health data controller" means any controller that, alone or jointly with others, determines the purpose and means of processing consumer health data.	Undefined. Used in subchapter 3A as "health insurer or health care facility"
(10) Consumer reporting agency	(10) "Consumer reporting agency" has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).	Used and not defined.	Undefined. Used in subchapters 2, 3, and 4.
(12) Controller	(12) "Controller" means a person who, alone or jointly with others, determines the purpose and means of processing personal data.	(11) "Controller" means a person who, alone or jointly with others, determines the purpose and means of processing personal data.	Subchapter 3a uses "control"
(15) Credit union	(15) "Credit union" has the same meaning as in V.S.A. § 30101.	Not used.	Undefined. Used in subchapters 2.and 4
(2) Customer	Undefined. Used on page 18	Not used.	Undefined in subchapters 1 and 2.  Defined in subchapter 4. (2) "Customer" means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(17) "Data broker"	(17) "Data broker" has the same meaning as in section 2430 of this title.	Used and not defined.	(4)(A) "Data broker" means a business, or unit or units of a business, separately or together, that knowingly collects and sells or licenses to third parties the brokered personal information of a consumer with whom the business does not have a direct relationship. (B) Examples of a direct relationship with a business include if the consumer is a past or present: (i) customer, client, subscriber, user, or registered user of the business's goods or services; (ii) employee, contractor, or agent of the business; (iii) investor in the business; or (iv) donor to the business. (C) The following activities conducted by a business, and the collection and sale or licensing of brokered personal information incidental to conducting these activities, do not qualify the business as a data broker: (i) developing or maintaining third-party e-commerce or application platforms; (ii) providing 411 directory assistance or directory information services, including name, address, and telephone number, on behalf of or as a function of a telecommunications carrier; (iii) providing publicly available information related to a consumer's business or profession; or (iv) providing publicly available information via real-time or near-real-time alert services for health or safety purposes. (D) The phrase "sells or licenses" does not include: (i) a one-time or occasional sale of assets of a business as part of a transfer of control of those assets that is not part of the ordinary conduct of the business; or (ii) a sale or license of data that is merely incidental to the business.
(19) De-identified data	(19) "De-identified data" means data that does not identify and cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable individual, or a device linked to the individual, if the controller that possesses the data: (A) takes reasonable physical, technical, or administrative measures to ensure that the data cannot be used to reidentify an identified or identifiable individual or be associated with an individual or device that identifies or is linked or reasonably linkable to an individual or household, provided that such reasonable measures for protected health information covered by HIPAA shall include the de-identification requirements set forth under 45 C.F.R. § 164.514 (other requirements relating to uses and disclosures of protected health information); (B) publicly commits to process the data only in a de-identified fashion and not attempt to reidentify the data; and (C) contractually obligates any recipients of the data to satisfy the criteria set forth in subdivisions (A) and (B) of this subdivision (19).	(16) "De-identified data" means data that does not identify and cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable individual, or a device linked to the individual, if the controller that possesses the data: (A) takes reasonable measures to ensure that the data cannot be associated with an individual; (B) publicly commits to process the data only in a de-identified fashion and not attempt to re-identify the data; and (C) contractually obligates any recipients of the data to satisfy the criteria set forth in subdivisions (A) and (B) of this subdivision	Subchapter 3A §2443d(2) uses a perhaps similar "not associated with an identified student"

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(20) Financial institution	(20) "Financial institution" as used in subdivision 2417(a)(11) of this title, has the same meaning as in 15 U.S.C. § 6809.	Used and not defined.	Undefined. Included in subchapter 1 in the definitions of "business", "data collector"  Included in subchapter 4 in the definition of "business"
(26) Genetic data	(26) "Genetic data" means any data, regardless of its format, that results from the analysis of a biological sample of an individual, or from another source enabling equivalent information to be obtained, and concerns genetic material, including deoxyribonucleic acids (DNA), ribonucleic acids (RNA), genes, chromosomes, alleles, genomes, alterations or modifications to DNA or RNA, single nucleotide polymorphisms (SNPs), epigenetic markers,	Used and not defined.	Undefined. Used in subchapter 1 as "genetic information" in the definition of personally identifiable information.
(2) Goods or services	Undefined. Used in multiple locations.	Undefined. Used in multiple locations.	Undefined in chapter 62. It is used in subchapters 1 (definition of "data broker") and in subchapter 3.  It is defined in chapter 63, subchapter 1. "Goods" or "services" shall include any objects, wares, goods, commodities, work, labor, intangibles, courses of instruction or training, securities, bonds, debentures, stocks, real estate, or other property or services of any kind. The term also includes bottled liquified petroleum (LP or propane) gas.
(29) Health care facility	(29) "Health care facility" has the same meaning as in 18 V.S.A. § 9432.	Used and not defined.	Undefined. Used in the definition of "Record" in subchapter 4.
(30) HIPAA	(30) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and any regulations promulgated pursuant to the act, as may be amended.	Not used.	Undefined. Used in full, not acronym, in subchapter 3
(6) Identity Theft	Undefined. Used	Undefined. Used	Undefined. Used in subchapter 1 in the definition of "Security breach" and elsewhere.  It is defined in chapter 63, subchapter 3. (6) "Identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property.
(8) License	Undefined. Used.	Undefined. Used	(8) "License" means a grant of access to, or distribution of, data by one person to another in exchange for consideration. A use of data for the sole benefit of the data provider, where the data provider maintains control over the use of the data, is not a license.
(9) Login credentials	Undefined. Used as "log-in"	Not used.	(9) "Login credentials" means a consumer's user name or e-mail address, in combination with a password or an answer to a security question, that together permit access to an online account.
(38) Minor	(38) "Minor" means any consumer who is younger than 18 years of age.	Not used.	Undefined. Used in subchapter 5.
(40) Nonpublic personal information	(40) "Nonpublic personal information" has the same meaning as in 15 U.S.C. § 6809.	Not used.	Subchapter 3A uses "not publicly available" in the definition of "covered information"
(25) "Person"	Undefined. Used.	(25) "Person" means an individual, association, company, limited liability company, corporation, partnership, sole proprietorship, trust, or other legal entity.	Undefined. Used.

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(44) Personal data	(44)(A) "Personal data" means any information, including derived data and unique identifiers, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual or to a device that identifies, is linked to, or is reasonably linkable to one or more identified or identifiable individuals in a household. (B) "Personal data" does not include de-identified data or publicly available information.	(26)(A) "Personal data" means any information that is linked or reasonably linkable to an identified or identifiable individual. (B) "Personal data" does not include de-identified data or publicly available information.	Defined only for subchapter 4. (3) "Personal information" means the following information that identifies, relates to, describes, or is capable of being associated with a particular individual: his or her signature, Social Security number, physical characteristics or description, passport number, driver's license or State identification card number, insurance policy number, bank account number, credit card number, debit card number, or any other financial information.  Subchapter 2 uses "personal information" is part of the definition of "covered information" Subchapter 3 uses "personal information"
(45) Precise geolocation data	(45)(A) "Precise geolocation data" means information derived from technology that reveals the past or present physical location of a consumer or device that identifies or is linked or reasonably linkable to one or more consumers with precision and accuracy within a radius of 1,850 feet. (B) "Precise geolocation data" does not include: (i) the content of communications; (ii) data generated by or connected to an advanced utility metering infrastructure system; (iii) a photograph, or metadata associated with a photograph or video, that cannot be linked to an individual; or (iv) data generated by equipment used by a utility company.	(27)(A) "Precise geolocation data" means information derived from technology, including global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with precision and accuracy within a radius of 1,750 feet. (B) "Precise geolocation data" does not include: (i) the content of communications; (ii) data generated by or connected to an advanced utility metering infrastructure system; or (iii) data generated by equipment used by a utility company.	
(46) Process or processing	(46) "Process" or "processing" means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.	(46) "Process" or "processing" means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.	Undefined. Used in the definition of "encryption" Subchapters 3, 3A and 5 use process as part of "enrollment process", "judicial process", and "purchaser credentialing process" and "process for evaluating ... safeguards"
(48) Profiling	(48) "Profiling" means any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects, including an individual's economic situation, health, personal preferences, interests, reliability, behavior, location, movements, or identifying characteristics.	(30) "Profiling" means any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable individual's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.	Undefined. Subchapter 3A has a perhaps similar undefined term "amass a profile"
(49) Protected health information	(49) "Protected health information" has the same meaning as in HIPAA.	(49) "Protected health information" has the same meaning as in HIPAA.	

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(50) Publicly available information	(50)(A) "Publicly available information" means information that: (i) is made available: (I) through federal, state, or local government records; or (II) to the general public from widely distributed media; or (ii) a controller has a reasonable basis to believe that the consumer has lawfully made available to the general public. (B) "Publicly available information" does not include: (i) biometric data collected by a business about a consumer without the consumer's knowledge; (ii) information that is collated and combined to create a consumer profile that is made available to a user of a publicly available website either in exchange for payment or free of charge; (iii) information that is made available for sale; (iv) an inference that is generated from the information described in subdivision (ii) or (iii) of this subdivision (50)(B); (v) any obscene visual depiction, as defined in 18 U.S.C. § 1460; (vi) any inference made exclusively from multiple independent sources of publicly available information that reveals sensitive data with respect to a consumer; (vii) personal data that is created through the combination of personal data with publicly available information; (viii) genetic data, unless otherwise made publicly available by the consumer to whom the information pertains; (ix) information provided by a consumer on a website or online service made available to all members of the public, for free or for a fee, where the consumer has maintained a reasonable expectation of privacy in the information, such as by restricting the information to a specific audience; or (x) intimate images, authentic or computer-generated, known to be nonconsensual.	(33) "Publicly available information" means information that: (A) is lawfully made available through federal, state, or local government records or widely distributed media; or (B) a controller has a reasonable basis to believe that the consumer has lawfully made available to the general public.	Undefined. Used in subchapter 1 as part of the definition of "BPI" and of "data broker" and of "PII"  Used in subchapter 3A as part of the definition of "covered information"  Used in subchapter 4 as part of the definition of "record"
(11) Record	Undefined. Used.	Undefined. Used.	Subchapter 1. (11) "Record" means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.  Subchapter 4. (4)(A) "Record" means any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted.

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(55) Sale of personal data	(55)(A) "Sale of personal data" means the exchange of a consumer's personal data by the controller to a third party for monetary or other valuable consideration. (B) "Sale of personal data" does not include: (i) the disclosure of personal data to a processor that processes the personal data on behalf of the controller; (ii) the disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer; (iii) the disclosure or transfer of personal data to an affiliate of the controller; (iv) the disclosure, with the consumer's consent, of personal data where the consumer directs the controller to disclose the personal data or intentionally uses the controller to interact with a third party; (v) the disclosure of publicly available information; (vi) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction, in which the third party assumes control of all or part of the controller's assets.	(55)(A) "Sale of personal data" means the exchange of a consumer's personal data by the controller to a third party for monetary or other valuable consideration. (B) "Sale of personal data" does not include: (i) the disclosure of personal data to a processor that processes the personal data on behalf of the controller; (ii) the disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer; (iii) the disclosure or transfer of personal data to an affiliate of the controller; (iv) the disclosure, with the consumer's consent, of personal data where the consumer directs the controller to disclose the personal data or intentionally uses the controller to interact with a third party; (v) the disclosure of publicly available information; (vi) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, in which the third party assumes control of all or part of the controller's assets.	Undefined. Used as part of the definition of "brokered personal information." Used as part of the definition of "data broker".
(57) Targeted advertising	(57)(A) "Targeted advertising" means displaying or presenting an online advertisement to a consumer or to a device identified by a unique persistent identifier, if the advertisement is selected based, in whole or in part, on known or predicted preferences, characteristics, behavior, or interests associated with the consumer or a device identified by a unique persistent identifier. "Targeted advertising" includes displaying or presenting an online advertisement for a product or service based on the previous interaction of a consumer or a device identified by a unique persistent identifier with such product or service on a website or online service that does not share common branding with the website or online service displaying or presenting the advertisement, and marketing measurement related to such advertisements. (B) "Targeted advertising" does not include: (i) first-party advertising; or (ii) contextual advertising.	(39)(A) "Targeted advertising" means displaying advertisements to a consumer where the advertisement is selected based on personal data obtained or inferred from that consumer's activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests. (B) "Targeted advertising" does not include: (i) an advertisement based on activities within the controller's own commonly branded website or online application; (ii) an advertisement based on the context of a consumer's current search query, visit to a website, or use of an online application; (iii) an advertisement directed to a consumer in response to the consumer's request for information or feedback; or (iv) processing personal data solely to measure or report advertising frequency, performance, or reach.	Subchapter 3A (5) "Targeted advertising" means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon that student's current visit to that location or in response to that student's request for information or feedback, without the retention of that student's online activities or requests over time for the purpose in whole or in part of targeting subsequent ads.
(58) Third party	(58) "Third party" means a person who collects personal data from another person who is not the consumer to whom the data pertains and is not a processor with respect to such data. "Third party" does not include a person who collects personal data from another entity if the entities are affiliates.	(40) "Third party" means a person, public authority, agency, or body, other than the consumer, controller, or processor or an affiliate of the processor or the controller.	Undefined. Used in definitions of "brokered personal data" and "data broker";  Also used in subchapters 3, 3A, and 5.

Term	Proposed Chapter 61A (S.71) Vermont Data Privacy and Online Surveillance Act	Proposed Chapter 61A (S.93) Vermont Data Privacy Act	Chapter 62 Protection of Personal Information
(59) Trade secret	<p>(59) “Trade secret” has the same meaning as in section 4601 of this title.</p> <p>§4601 (3) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:</p> <p>(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and</p> <p>(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.</p>	<p>(59) “Trade secret” has the same meaning as in section 4601 of this title.</p>	<p>Used. Refers to def. in 1 VSA 317(c)(9)</p> <p>(9) Trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, which a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 are not exempt under this subdivision.</p>
(60) Unique persistent identifier	<p>(60)(A) “Unique persistent identifier” means a technologically created identifier to the extent that such identifier is reasonably linkable to a consumer or a device that identifies or is linked or reasonably linkable to one or more consumers, including device identifiers, internet protocol addresses, cookies, beacons, pixel tags, mobile ad identifiers or similar technology customer numbers, unique pseudonyms, user aliases, telephone numbers, or other forms of persistent or probabilistic identifiers that are linked or reasonably linkable to one or more consumers or devices.</p> <p>(B) “Unique persistent identifier” does not include an identifier assigned by a controller for the sole purpose of giving effect to the exercise of affirmative consent or opt out by a consumer with respect to the collection or processing of personal data or otherwise limiting the collection or processing of personal data.</p>	<p>Not used.</p>	<p>Undefined. Used in the definition of "brokered personal informaiton".</p> <p>Used in subchapter 3 as "persistent unique identifier"</p> <p>Used in subchapter 5 as "unique identifier technologies, such as biometrics ..."</p>