

1 S.289

2 Introduced by Senators Ram Hinsdale, Clarkson, Cummings, Hardy, Harrison,  
3 Perchlik, Watson and Wrenner

4 Referred to Committee on

5 Date:

6 Subject: Commerce and trade; protection of personal information; data privacy

7 Statement of purpose of bill as introduced: This bill proposes to require that  
8 any covered entity that develops and provides online services, products, or  
9 features that children are reasonably likely to access must consider the best  
10 interests of children when designing, developing, and providing that online  
11 service, product, or feature.

12 An act relating to age-appropriate design code

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 9 V.S.A. chapter 62, subchapter 6 is added to read:

15 Subchapter 6. Age-Appropriate Design Code

16 § 2449a. DEFINITIONS

17 As used in this subchapter:

18 (1) “Affiliate” means any person that, directly or indirectly, controls, is  
19 controlled by, or is under common control with another person. As used in this  
20 subdivision, “control” means ownership of, or the power to vote, more than 50

1 percent of the outstanding shares of any class of voting security of a covered  
2 entity; control in any manner over the election of a majority of the directors or  
3 of individuals exercising similar functions; or the power to exercise a  
4 controlling influence over the management of a covered entity.

5 (2) “Child” means an individual who is under 18 years of age.

6 (3) “Collect” means buying, renting, gathering, obtaining, receiving, or  
7 accessing any personal data pertaining to an individual by any means. This  
8 includes receiving data from the individual, either actively or passively, or by  
9 observing the individual’s behavior.

10 (4) “Dark pattern” means a user interface designed or manipulated with  
11 the purpose of subverting or impairing user autonomy, decision making, or  
12 choice.

13 (5) “Default” means a preselected option adopted by the covered entity  
14 for the online service, product, or feature.

15 (6) “Deidentified” means data that cannot reasonably be used to infer  
16 information about, or otherwise be linked to, an identified or identifiable  
17 individual, or a device linked to such individual.

18 (7) “Derived data” means data that is created by the derivation of  
19 information, data, assumptions, correlations, inferences, predictions, or  
20 conclusions from facts, evidence, or another source of information or data  
21 about a child or a child’s device.

1           (8) “Online service, product, or feature” does not mean any of the  
2           following:

3                   (A) telecommunications service, as defined in 47 U.S.C. § 153;

4                   (B) a broadband internet access service; or

5                   (C) the sale, delivery, or use of a physical product.

6           (9) “Personal data” means any information, including derived data, that  
7           is linked or reasonably linkable, alone or in combination with other  
8           information, to an identified or identifiable individual. Personal data does not  
9           include deidentified data or publicly available information. For purposes of  
10           this paragraph, “publicly available information” means information that:

11                   (A) is lawfully made available from federal, state, or local  
12           government records or widely distributed media; and

13                   (B) a covered entity has a reasonable basis to believe an individual  
14           has lawfully made available to the public.

15           (10) “Precise geolocation” means any data that is derived from a device  
16           and that is used or intended to be used to locate an individual within a  
17           geographic area that is equal to or less than the area of a circle with a radius of  
18           1,850 feet.

19           (11) “Process” or “processing” means to conduct or direct any operation  
20           or set of operations performed, whether by manual or automated means, on  
21           personal data or on sets of personal data, such as the collection, use, storage,

1 disclosure, analysis, deletion, modification, or otherwise handling of personal  
2 data.

3 (12) “Product experimentation results” means the data that companies  
4 collect to understand the experimental impact of their products.

5 (13) “Profile” or “profiling” means any form of automated processing of  
6 personal data to evaluate, analyze, or predict personal aspects concerning an  
7 identified or identifiable individual’s economic situation, health, personal  
8 preferences, interests, reliability, behavior, location, or movements.

9 “Profiling” does not include the processing of information that does not result  
10 in an assessment or judgment about an individual.

11 (14) “Reasonably likely to be accessed” means an online service,  
12 product, or feature that is accessed by children based on any of the following  
13 indicators:

14 (A) the online service, product, or feature is directed to children, as  
15 defined by the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501–  
16 6506, and the Federal Trade Commission rules implementing that Act;

17 (B) the online service, product, or feature is determined, based on  
18 competent and reliable evidence regarding audience composition, to be  
19 routinely accessed by a significant number of children;

20 (C) the online service, product, or feature contains advertisements  
21 marketed to children;

1           (D) a significant amount of the audience of the online service,  
2           product, or feature is determined, based on internal company research, to be  
3           children; or

4           (E) the covered entity knew or should have known that a significant  
5           number of users are children, provided that, in making this assessment, the  
6           covered entity shall not collect or process any personal data that is not  
7           reasonably necessary to provide an online service, product, or feature with  
8           which a child is actively and knowingly engaged.

9           (15) “Sale,” “sell,” or “sold” means the exchange of personal data for  
10          monetary or other valuable consideration by a covered entity to a third party.

11          It does not include the following:

12           (A) the disclosure of personal data to a third party who processes the  
13           personal data on behalf of the covered entity;

14           (B) the disclosure of personal data to a third party with whom the  
15           individual has a direct relationship for purposes of providing a product or  
16           service requested by the individual;

17           (C) the disclosure or transfer of personal data to an affiliate of the  
18           covered entity;

19           (D) the disclosure of data that the individual intentionally made  
20           available to the general public via a channel of mass media and did not restrict  
21           to a specific audience; or

1           (E) the disclosure or transfer of personal data to a third party as an  
2           asset that is part of a completed or proposed merger, acquisition, bankruptcy,  
3           or other transaction in which the third party assumes control of all or part of  
4           the covered entity's assets.

5           (16) "Share" means sharing, renting, releasing, disclosing,  
6           disseminating, making available, transferring, or otherwise communicating  
7           orally, in writing, or by electronic or other means an individual's personal data  
8           by the covered entity to a third party for cross-context behavioral advertising,  
9           whether or not for monetary or other valuable consideration, including  
10           transactions between a covered entity and a third party for cross-context  
11           behavioral advertising for the benefit of a covered entity in which no money is  
12           exchanged.

13           (17) "Third party" means a natural or legal person, public authority,  
14           agency, or body other than the individual or the covered entity.

15           § 2449b. SCOPE; EXCLUSIONS

16           (a) A person is considered a covered entity for the purposes of this  
17           subchapter if it:

18           (1) collects individuals' personal data or has individuals' personal data  
19           collected on its behalf by a third party;

20           (2) alone or jointly with others, determines the purposes and means of  
21           the processing of individuals' personal data;

1           (3) operates in Vermont; and

2           (4) satisfies one or more of the following thresholds:

3                   (i) has annual gross revenues in excess of \$25,000,000.00, as  
4 adjusted every odd-numbered year to reflect the Consumer Price Index;

5                   (ii) alone or in combination, annually buys, receives for the  
6 covered entity's commercial purposes, sells, or shares for commercial  
7 purposes, alone or in combination, the personal data of 50,000 or more  
8 individuals, households, or devices; or

9                   (iii) derives 50 percent or more of its annual revenues from selling  
10 individuals' personal data.

11           (b) This subchapter does not apply to:

12                   (1) protected health information that is collected by a covered entity or  
13 covered entity associate governed by the privacy, security, and breach  
14 notification rules issued by the U.S. Department of Health and Human  
15 Services, 45 C.F.R. Parts 160 and 164;

16                   (2) a covered entity governed by the privacy, security, and breach  
17 notification rules issued by the U.S. Department of Health and Human  
18 Services, 45 C.F.R. Parts 160 and 164, to the extent the provider or covered  
19 entity maintains patient information in the same manner as medical  
20 information or protected health information as described in subdivision (1) of  
21 this subsection; and

1           (3) information collected as part of a clinical trial subject to the Federal  
2           Policy for the Protection of Human Subjects, also known as the Common Rule,  
3           pursuant to good clinical practice guidelines issued by the International  
4           Council for Harmonisation of Technical Requirements for Pharmaceuticals for  
5           Human Use or pursuant to human subject protection requirements of the U.S.  
6           Food and Drug Administration.

7           § 2449c. BEST INTERESTS OF CHILDREN

8           (a) All covered entities that process children’s data in any capacity shall do  
9           so in a manner consistent with the best interests of children.

10          (b) “A manner consistent with the best interests of children” means the use  
11          of the personal data of a child or the design of an online service, product, or  
12          feature that:

13               (1) will not benefit the covered entity to the detriment of the child; and

14               (2) will not result in:

15                       (A) reasonably foreseeable and material physical or financial harm to  
16                       the child;

17                       (B) reasonably foreseeable and severe psychological or emotional  
18                       harm to the child;

19                       (C) a highly offensive intrusion on the reasonable privacy  
20                       expectations of the child; or



1           (D) discrimination against the child based upon race, color, religion,  
2           national origin, disability, sex, or sexual orientation.

3           § 2449d. COVERED ENTITY OBLIGATIONS

4           (a) A covered entity subject to this subchapter must:

5           (1) Complete a data protection impact assessment for an online service,  
6           product, or feature that is reasonably likely to be accessed by children and  
7           maintain documentation of the data protection impact assessment for as long as  
8           the online service, product, or feature is reasonably likely to be accessed by  
9           children. A data protection impact assessment is a systematic survey to assess  
10           compliance with the duty to act in the best interests of children and shall  
11           include a plan to ensure that all online products, services, or features provided  
12           by the covered entity are designed and offered in a manner consistent with the  
13           best interests of children reasonably likely to access the online product,  
14           service, or feature. Such a plan shall include a description of steps the covered  
15           entity has taken and will take to comply with the duty to act in the best  
16           interests of children.

17           (2) Review and modify all data protection impact assessments as  
18           necessary to account for material changes to processing pertaining to the online  
19           service, product, or feature within 90 days after such material changes.

1           (3) Within five days after receipt of a written request by the Attorney  
2           General, provide to the Attorney General a list of all data protection impact  
3           assessments the covered entity has completed.

4           (4) Within seven days after receipt of a written request by the Attorney  
5           General, provide the Attorney General with a copy of a data protection impact  
6           assessment, provided that the Attorney General may, in the Attorney General's  
7           discretion, extend beyond seven days the amount of time allowed for a covered  
8           entity to produce a data protection impact assessment.

9           (5) Configure all default privacy settings provided to children by the  
10           online service, product, or feature to settings that offer a high level of privacy,  
11           unless the covered entity can demonstrate a compelling reason that a different  
12           setting is in the best interests of children.

13           (6) Provide any privacy information, terms of service, policies, and  
14           community standards concisely, prominently, and using clear language suited  
15           to the age of children reasonably likely to access that online service, product,  
16           or feature.

17           (7) Provide prominent, accessible, and responsive tools to help children  
18           in a form or manner required by the General Attorney, or if applicable their  
19           parents or guardians, exercise their privacy rights and report concerns.

20           (b) A data protection impact assessment required by this subchapter must:

1           (1) identify the purpose of the online service, product, or feature; how it  
2           uses children’s personal data; and determine whether the online service,  
3           product, or feature is designed and offered in an age-appropriate manner  
4           consistent with the best interests of children that are reasonably likely to access  
5           the online product; and

6           (2) examine whether any the following would result in reasonably  
7           foreseeable and material physical or financial harm to a child; reasonably  
8           foreseeable and severe psychological or emotional harm to a child; a highly  
9           offensive intrusion on the reasonable privacy expectations of a child; or  
10          discrimination against a child based upon race, color, religion, national origin,  
11          disability, sex, or sexual orientation:

12                   (A) algorithms of the online service, product, or feature;

13                   (B) targeted advertising on the online service, product, or feature;

14                   (C) design features to increase, sustain, or extend use of the online  
15                   service, product, or feature by children, including the automatic playing of  
16                   media, rewards for time spent, and notifications;

17                   (D) the collection or processing of personal data of children; and

18                   (E) the use of product experimentation results for the online product,  
19                   service, or feature.

1       (c) A data protection impact assessment conducted by a covered entity for  
2       the purpose of compliance with any other law complies with this section if the  
3       data protection impact assessment meets the requirements of this subchapter.

4       (d) A single data protection impact assessment may contain multiple  
5       similar processing operations that present similar risk only if each relevant  
6       online service, product, or feature is addressed separately.

7       (e) A covered entity shall process only the personal data reasonably  
8       necessary to estimate age in providing an online service, product, or feature  
9       with which a child is actively and knowingly engaged.

10       (f) A data protection impact assessment created pursuant to this section is  
11       exempt from public disclosure pursuant to the Public Records Act as set forth  
12       in 1 V.S.A. § 318.

13       § 2449e. COVERED ENTITY PROHIBITIONS

14       A covered entity that provides an online service, product, or feature  
15       reasonably likely to be accessed by children shall not:

16               (1) process the personal data of any child in a way that is inconsistent  
17       with the best interests of children reasonably likely to access the online service,  
18       product, or feature;

19               (2) profile a child by default unless both of the following criteria are  
20       met:

1           (A) the covered entity can demonstrate it has appropriate safeguards  
2           in place to ensure that profiling is consistent with the best interests of children  
3           reasonably likely to access the online service, product, or feature; and

4           (B) either of the following is true:

5                 (i) profiling is necessary to provide the online service, product, or  
6                 feature requested and only with respect to the aspects of the online service,  
7                 product, or feature with which a child is actively and knowingly engaged; or

8                 (ii) the covered entity can demonstrate a compelling reason that  
9                 profiling is in the best interests of children;

10           (3) process any personal data that is not reasonably necessary to provide  
11           an online service, product, or feature with which a child is actively and  
12           knowingly engaged;

13           (4) if the end user is a child, process personal data for any reason other  
14           than a reason for which that personal data was collected;

15           (5) process any precise geolocation information of children by default,  
16           unless the collection of that precise geolocation information is strictly  
17           necessary for the covered entity to provide the service, product, or feature  
18           requested and then only for the limited time that the collection of precise  
19           geolocation information is necessary to provide the service, product, or feature;

1           (6) process any precise geolocation information of a child without  
2           providing a conspicuous sign to the child for the duration of that collection that  
3           precise geolocation information is being collected;

4           (7) use dark patterns to cause children to provide personal data beyond  
5           what is reasonably expected to provide that online service, product, or feature  
6           to forego privacy protections, or to take any action that the covered entity  
7           knows, or has reason to know, is not in the best interests of children reasonably  
8           likely to access the online service, product, or feature; or

9           (8) allow an individual who is not a parent or legal guardian of the child  
10          to monitor the child's online activity or track the child's location, without  
11          providing a conspicuous signal to the child when the child is being monitored  
12          or tracked.

13          § 2449f. DATA PRACTICES

14          (a) A data protection impact assessment collected or maintained by the  
15          Attorney General pursuant to this subchapter is classified as nonpublic data or  
16          private data on individuals.

17          (b) To the extent any information contained in a data protection impact  
18          assessment disclosed to the Attorney General includes information subject to  
19          attorney-client privilege or work product protection, disclosure pursuant to this  
20          subchapter does not constitute a waiver of that privilege or protection.

1     § 2449g. ATTORNEY GENERAL ENFORCEMENT

2           (a) The Attorney General may seek the imposition of an injunction and a  
3           civil penalty of not more than \$2,500.00 per affected child for each negligent  
4           violation of this subchapter, or not more than \$7,500.00 per affected child for  
5           each intentional violation of this subchapter, plus costs and reasonable  
6           attorney's fees for each violation.

7           (b) Any penalties, fees, and expenses recovered in an action brought under  
8           this subchapter must be deposited in an account in the special revenue fund and  
9           are appropriated to the Attorney General to offset costs incurred by the  
10          Attorney General in connection with enforcement of this subchapter.

11          (c) If the Attorney General determines that a covered entity is in substantial  
12          compliance with the requirements of this subchapter, the Attorney General  
13          must, before initiating a civil action under this section, provide written notice  
14          to the covered entity identifying the specific provisions of this subchapter that  
15          the Attorney General alleges have been or are being violated. If, for a covered  
16          entity that satisfied the terms pursuant to section 2449d of this chapter before  
17          offering any new online product, service, or feature reasonably likely to be  
18          accessed by children to the public, within 90 days following the notice required  
19          by this section, the covered entity cures any noticed violation and provides the  
20          Attorney General a written statement that the alleged violations have been  
21          cured, and sufficient measures have been taken to prevent future violations, the

1 covered entity is not liable for a civil penalty for any violation cured pursuant  
2 to this section.

3 (d) No individual entitlement or private right of action is created by this  
4 subchapter.

5 § 2449h. LIMITATIONS

6 Nothing in this subchapter shall be interpreted or construed to:

7 (1) impose liability in a manner that is inconsistent with 47 U.S.C.  
8 § 230;

9 (2) prevent or preclude any child from deliberately or independently  
10 searching for, or specifically requesting, content; or

11 (3) require a covered entity to implement an age verification  
12 requirement, such as age gating.

13 § 2449i. APPLICATION

14 (a) On or before September 1, 2024, a covered entity must complete a data  
15 protection impact assessment for any online service, product, or feature  
16 reasonably likely to be accessed by children offered to the public after July 1,  
17 2024 unless that online service, product, or feature is exempt pursuant to this  
18 subchapter.

19 (b) This act does not apply to an online service, product, or feature that is  
20 not offered to the public on or after July 1, 2024.



1     § 2449j. RIGHTS AND FREEDOMS OF CHILDREN

2             It is the intent of the General Assembly that nothing in this act may be  
3     construed to infringe on the existing rights and freedoms of children.

4     § 2449k. RULES

5             (a) The Attorney General may adopt by rule any standards or procedures  
6     the Attorney General deems necessary to implement the purpose and policies  
7     of this subchapter.

8             (b) The rules, as well as any finding of unlawful conduct under this  
9     subchapter, shall be consistent with the rules, regulations, and decisions of the  
10    Federal Trade Commission and the Federal Communications Commission and  
11    with federal court interpretations of the Federal Trade Commission Act, as  
12    amended, and the Communications Act of 1934, as amended.

13    Sec. 2. EFFECTIVE DATE

14            This act shall take effect on July 1, 2024.