

1 S.289

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

4 Referred to Committee on Economic Development, Housing, and General
5 Affairs

6 Date: January 17, 2024

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

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

13 An act relating to age-appropriate design code

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

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

16 ~~Subchapter 6. Age-Appropriate Design Code~~

17 ~~§ 2449a. DEFINITIONS~~

18 ~~As used in this subchapter:~~

1 ~~(1) “Affiliate” means any person that, directly or indirectly, controls, is~~
2 controlled by, or is under common control with another person. As used in
3 this subdivision, “control” means ownership of, or the power to vote, more
4 than 50 percent of the outstanding shares of any class of voting security of a
5 covered entity; control in any manner over the election of a majority of the
6 directors or of individuals exercising similar functions; or the power to
7 exercise a controlling influence over the management of a covered entity.

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

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

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

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

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

1 ~~(7) “Derived data” means data that is created by the derivation of~~
2 ~~information, data, assumptions, correlations, inferences, predictions, or~~
3 ~~conclusions from facts, evidence, or another source of information or data~~
4 ~~about a child or a child’s device.~~

5 ~~(8) “Online service, product, or feature” does not mean any of the~~
6 ~~following:~~

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

8 ~~(B) a broadband internet access service; or~~

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

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

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

17 ~~(B) a covered entity has a reasonable basis to believe an individual~~
18 ~~has lawfully made available to the public.~~

19 ~~(10) “Precise geolocation” means any data that is derived from a device~~
20 ~~and that is used or intended to be used to locate an individual within a~~

1 ~~geographic area that is equal to or less than the area of a circle with a radius of~~
2 ~~1,350 feet.~~

3 (11) “Process” or “processing” means to conduct or direct any operation
4 or set of operations performed, whether by manual or automated means, on
5 personal data or on sets of personal data, such as the collection, use, storage,
6 disclosure, analysis, deletion, modification, or otherwise handling of personal
7 data.

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

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

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

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

19 (A) the online service, product, or feature is directed to children, as
20 defined by the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501–
21 6506, and the Federal Trade Commission rules implementing that Act,

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

4 ~~(C) the online service, product, or feature contains advertisements~~
5 marketed to children;

6 ~~(D) a significant amount of the audience of the online service,~~
7 product, or feature is determined, based on internal company research, to be
8 children; or

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

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

16 It does not include the following:

17 ~~(A) the disclosure of personal data to a third party who processes the~~
18 personal data on behalf of the covered entity;

19 ~~(B) the disclosure of personal data to a third party with whom the~~
20 individual has a direct relationship for purposes of providing a product or
21 service requested by the individual,

1 ~~(C) the disclosure or transfer of personal data to an affiliate of the~~
2 ~~covered entity;~~

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

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

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

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

20 ~~§ 2449b. SCOPE, EXCLUSIONS~~

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

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

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

7 (3) operates in Vermont; and

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

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

11 (ii) alone or in combination, annually buys, receives for the
12 covered entity's commercial purposes, sells, or shares for commercial
13 purposes, alone or in combination, the personal data of 50,000 or more
14 individuals, households, or devices; or

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

17 (b) This subchapter does not apply to:

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

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

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

13 § 2449c. BEST INTERESTS OF CHILDREN

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

16 (b) "A manner consistent with the best interests of children" means the use
17 of the personal data of a child or the design of an online service, product, or
18 feature that:

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

20 ~~(2) will not result in.~~

1 ~~(A) reasonably foreseeable and material physical or financial harm to~~
2 ~~the child;~~

3 ~~(B) reasonably foreseeable and severe psychological or emotional~~
4 ~~harm to the child;~~

5 ~~(C) a highly offensive intrusion on the reasonable privacy~~
6 ~~expectations of the child; or~~

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

9 § 2449d. COVERED ENTITY OBLIGATIONS

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

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

1 entity has taken and will take to comply with the duty to act in the best
2 interests of children.

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(D) the collection or processing of personal data of children, and~~

1 ~~(E) the use of product experimentation results for the online product~~
2 ~~service, or feature.~~

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

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

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

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

15 § 2449e. COVERED ENTITY PROHIBITIONS

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

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

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

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

6 ~~(B) either of the following is true:~~

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

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

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

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

17 ~~(5) process any precise geolocation information of children by default,~~
18 ~~unless the collection of that precise geolocation information is strictly~~
19 ~~necessary for the covered entity to provide the service, product, or feature~~

20 ~~requested and then only for the limited time that the collection of precise~~

1 ~~geolocation information is necessary to provide the service, product, or~~
2 ~~feature;~~

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

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

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

15 § 2449f. DATA PRACTICES

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

19 ~~(b) To the extent any information contained in a data protection impact~~
20 ~~assessment disclosed to the Attorney General includes information subject to~~

1 ~~attorney-client privilege or work product protection, disclosure pursuant to this~~
2 subchapter does not constitute a waiver of that privilege or protection.

3 § 2449g. ATTORNEY GENERAL ENFORCEMENT

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

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

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

1 ~~provides the Attorney General a written statement that the alleged violations~~
2 have been cured, and sufficient measures have been taken to prevent future
3 violations, the covered entity is not liable for a civil penalty for any violation
4 cured pursuant to this section.

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

7 § 2449h. LIMITATIONS

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

9 (1) impose liability in a manner that is inconsistent with 47 U.S.C.

10 § 230;

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

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

15 § 2449i. APPLICATION

16 (a) On or before September 1, 2024, a covered entity must complete a data
17 protection impact assessment for any online service, product, or feature
18 reasonably likely to be accessed by children offered to the public after July 1,
19 2024 unless that online service, product, or feature is exempt pursuant to this
20 subchapter.

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

3 § 2449j. RIGHTS AND FREEDOMS OF CHILDREN

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

6 § 2449k. RULES

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

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

15 Sec. 2. EFFECTIVE DATE

16 ~~This act shall take effect on July 1, 2024.~~

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

Subchapter 6. Age-Appropriate Design Code

§ 2449a. DEFINITIONS

As used in this subchapter:

(1) "Affiliate" means any person that, directly or indirectly, controls, is controlled by, or is under common control with another person. As used in this subdivision, "control" means ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a

covered entity; control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a covered entity.

(2) “Age-appropriate” means a recognition of the distinct needs and diversities of children at different age ranges. In order to help support the design of online services, products, and features, covered entities should take into account the unique needs and diversities of different age ranges, including the following developmental stages: zero to five years of age or “preliterate and early literacy”; six to nine years of age or “core primary school years”; 10 to 12 years of age or “transition years”; 13 to 15 years of age or “early teens”; and 16 to 17 years of age or “approaching adulthood.”

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

(4) “Consumer” means a individual who is a Vermont resident, and who provides consideration for goods or services either for sale or not for sale.

(5) “Covered entity” means:

(A) A sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners.

(B) An affiliate of a covered entity that shares common branding with the covered entity. As used in this subdivision (5)(B), “common branding” means a shared name, servicemark, or trademark that the average consumer would understand that two or more entities are commonly owned. For purposes of this subchapter, for a joint venture or partnership composed of covered entities in which each covered entity has at least a 40 percent interest, the joint venture or partnership and each covered entity that composes the joint venture or partnership shall separately be considered a single covered entity, except that personal data in the possession of each covered entity and disclosed to the joint venture or partnership shall not be shared with the other covered entity.

(6) “Dark pattern” means a user interface designed or manipulated with the effect of subverting or impairing user autonomy, decision making, or choice, and includes any practice the Federal Trade Commission categorizes as a “dark pattern.”

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

(8) “Deidentified” means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable consumer, or a device linked to such consumer, provided that the covered entity that possesses the data:

(A) takes reasonable measures to ensure that the data cannot be associated with a consumer;

(B) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to re-identify the data; and

(C) contractually obligates any recipients of the data to comply with all provisions of this subchapter.

(9) “Derived data” means data that is created by the derivation of information, data, assumptions, correlations, inferences, predictions, or conclusions from facts, evidence, or another source of information or data about a minor consumer or a minor consumer’s device.

(10)(A) “Low-friction variable reward” means a design feature or virtual item that intermittently rewards consumers for scrolling, tapping, opening, or continuing to engage in an online service, product, or feature.

(B) Examples of low-friction variable reward designs include endless scroll, auto play, and nudges meant to encourage reengagement.

(11) “Minor consumer” means a natural person under 18 years of age, who is a Vermont resident and who provides consideration for goods or services either for sale or not for sale.

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

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

(B) a broadband internet access service as defined in 3 V.S.A. § 348(d); or

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

(13) “Personal data” means any information, including derived data, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable consumer. Personal data does not include deidentified data or publicly available information. As used in this subdivision, “publicly available information” means information that:

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

(B) a covered entity has a reasonable basis to believe a consumer has

lawfully made available to the public.

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

(15) “Process” or “processing” means to conduct or direct 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, modification, or otherwise handling of personal data.

(16) “Profile” or “profiling” means any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable consumer’s economic situation, health, personal preferences, interests, reliability, behavior, location, or movements. “Profiling” does not include the processing of information that does not result in an assessment or judgment about a consumer.

(17) “Reasonably likely to be accessed” means an online service, product, or feature that is likely to be accessed by minor consumers based on any of the following indicators:

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

(B) the online service, product, or feature is determined, based on competent and reliable evidence regarding audience composition, to be routinely accessed by an audience that is composed of at least two percent of minor consumers two through under 18 years of age;

(C) the online service, product, or feature contains advertisements marketed to minor consumers;

(D) the online service, product, or feature is substantially similar or the same as an online service, product, or feature subject to subdivision (B) of this subdivision (17);

(E) the audience of the online service, product, or feature is determined, based on internal company research, to be composed of at least two percent of minor consumers two through under 18 years of age; or

(F) the covered entity knew or should have known that at least two percent of the audience of the online service, product, or feature includes minor consumers two through under 18 years of age, provided that, in making this assessment, the covered entity shall not collect or process any personal

data that is not reasonably necessary to provide an online service, product, or feature with which a minor consumer is actively and knowingly engaged.

(18) “Sale,” “sell,” or “sold” means the exchange of personal data for monetary or other valuable consideration by a covered entity to a third party. It does not include the following:

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

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

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

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

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

(19)(A) “Social media platform” means a public or semi-public internet-based service or application that is primarily intended to connect and allow a user to socially interact within such service or application and enables a user to:

(i) construct a public or semi-public profile for the purposes of signing into and using such service or application;

(ii) populate a public list of other users with whom the user shares a social connection within such service or application; and

(iii) create or post content that is viewable by other users, including content on message boards and in chat rooms, and that presents the user with content generated by other users.

(B) “Social media platform” does not mean a public or semi-public internet-based service or application that:

(i) exclusively provides electronic mail or direct messaging services;

(ii) primarily consists of news, sports, entertainment, interactive video games, electronic commerce, or content that is preselected by the

provider for which any interactive functionality is incidental to, directly related to, or dependent on the provision of such content; or

(iii) is used by and under the direction of an educational entity, including a learning management system or a student engagement program.

(20) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer or the covered entity.

§ 2449b. SCOPE; EXCLUSIONS

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

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

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

(3) operates in Vermont; and

(4) alone or in combination, annually buys, receives for the covered entity's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal data of at least 50 percent of its consumers.

(b) This subchapter does not apply to:

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

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

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

(4) a business whose primary purpose is journalism as defined in 12 V.S.A. § 1615(a)(2) and that has a majority of its workforce consisting of

individuals engaging in journalism.

§ 2449c. MINIMUM DUTY OF CARE

(a) A covered entity that processes a minor consumer's data in any capacity owes a minimum duty of care to the minor consumer.

(b) As used in this subchapter, "a minimum duty of care" means the use of the personal data of a minor consumer and the design of an online service, product, or feature will not benefit the covered entity to the detriment of a minor consumer and will not result in:

(1) reasonably foreseeable and material physical or financial injury to a minor consumer;

(2) reasonably foreseeable emotional distress as defined in 13 V.S.A. § 1061(2) to a minor consumer;

(3) a highly offensive intrusion on the reasonable privacy expectations of a minor consumer;

(4) the encouragement of excessive or compulsive use of the online service, product, or feature by a minor consumer; or

(5) discrimination against the minor consumer based upon race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, or national origin.

§ 2449d. COVERED ENTITY OBLIGATIONS

(a) A covered entity subject to this subchapter shall:

(1) configure all default privacy settings provided to a minor consumer through the online service, product, or feature to a high level of privacy;

(2) provide privacy information, terms of service, policies, and community standards concisely, prominently, and in language suited to the age of a minor consumer reasonably likely to access that online service, product, or feature;

(3) provide prominent, accessible, and responsive tools to help a minor consumer or, if applicable, their parents or guardians to exercise their privacy rights and report concerns to the covered entity;

(4) honor the request of a minor consumer to unpublish the minor consumer's social media platform account not later than 15 business days after a covered entity receives such a request from a minor consumer; and

(5) provide easily accessible and age-appropriate tools for a minor consumer to limit the ability of users or covered entities to send unsolicited communications.

(b) A violation of this section constitutes a violation of the minimum duty of care as provided in section 2449c of this subchapter.

§ 2449e. COVERED ENTITY PROHIBITIONS

(a) A covered entity subject to this subchapter shall not:

(1) use low-friction variable reward design features that encourage excessive and compulsive use by a minor consumer;

(2) permit, by default, an unknown adult to contact a minor consumer on its platform without the minor consumer first initiating that contact;

(3) permit a minor consumer to be exploited by a contract on the online service, product, or feature;

(4) process personal data of a minor consumer unless it is reasonably necessary in providing an online service, product, or feature requested by a minor consumer with which a minor consumer is actively and knowingly engaged;

(5) profile a minor consumer, unless:

(A) the covered entity can demonstrate it has appropriate safeguards in place to ensure that profiling does not violate the minimum duty of care;

(B) profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which a minor consumer is actively and knowingly engaged; or

(C) the covered entity can demonstrate a compelling reason that profiling will benefit a minor consumer;

(6) sell the personal data of a minor consumer;

(7) process any precise geolocation information of a minor consumer by default, unless the collection of that precise geolocation information is strictly necessary for the covered entity to provide the service, product, or feature requested by a minor consumer and is then only collected for the amount of time necessary to provide the service, product, or feature;

(8) process any precise geolocation information of a minor consumer without providing a conspicuous signal to the minor consumer for the duration of that collection that precise geolocation information is being collected;

(9) use dark patterns; or

(10) permit a parent or guardian of a minor consumer, or any other consumer, to monitor the online activity of a minor consumer or to track the location of the minor consumer without providing a conspicuous signal to the

minor consumer when the minor consumer is being monitored or tracked.

(b) A violation of this section constitutes a violation of the minimum duty of care as provided in section 2449c of this chapter.

§ 2449f. ATTORNEY GENERAL ENFORCEMENT

(a) A covered entity that violates this subchapter or rules adopted pursuant to this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

(b) The Attorney General may, prior to initiating any action for a violation of any provision of this subchapter, issue a notice of violation to a covered entity if the Attorney General determines that a covered entity is in substantial compliance or that a cure by a covered entity is possible.

(c) The Attorney General may consider the following in determining whether to grant a covered entity the opportunity to cure an alleged violation described in subsection (b) of this section:

(1) the number of violations by the covered entity;

(2) the size and complexity of the covered entity controller;

(3) the nature and extent of the covered entity's activities;

(4) the substantial likelihood of injury to the public;

(5) the safety of persons or property;

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

(7) the sensitivity of the data.

§ 2449g. LIMITATIONS

Nothing in this subchapter shall be interpreted or construed to:

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

(2) prevent or preclude any minor consumer from deliberately or independently searching for, or specifically requesting, content; or

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

§ 2449h. RIGHTS AND FREEDOMS OF CHILDREN

It is the intent of the General Assembly that nothing in this act may be construed to infringe on the existing rights and freedoms of children or be construed to discriminate against the child based on race, ethnicity, sex,

disability, sexual orientation, gender identity, gender expression, or national origin.

§ 2449i. RULES

The Attorney General may adopt by rule any standards or procedures the Attorney General deems necessary to implement the purpose and policies of this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2024.