



May 22, 2024

Office of Governor Phil Scott
109 State Street, Pavilion
Montpelier, VT 05609

RE: VETO REQUEST – H. 121

Dear Governor Scott:

We write to respectfully request that you **VETO** H. 121, “An act relating to enhancing consumer privacy and the age-appropriate design code.”¹ As drafted, H. 121 stands in stark contrast to the approach taken by 19 other states that have already enacted privacy legislation. The bill’s limitations on data collection are likely to result in significant degradation of beneficial products and services for Vermont consumers and harm local businesses. Below we provide a non-exhaustive list of key and significant issues with H. 121 that will hinder Vermonters’ access to innovative services and online resources and significantly impair business operations in the state.

- **Private Right of Action.** The inclusion of a private right of action in H. 121 represents a significant break from *all other states that have passed privacy legislation*.² H. 121’s private right of action will benefit opportunistic trial lawyers and plaintiff’s law firms rather than protect the privacy of Vermont consumers. Studies show that only a fraction of any redress from private actions makes it way to affected consumers. Instead, the vast majority of damages go to plaintiff’s counsel.³ The private right of action in H. 121 will also hinder innovation in Vermont and could even cause businesses of all sizes to decline to operate in the state due to the threat of exorbitant legal costs. If H. 121 is enacted, Vermont will stand on its own as the state with the most onerous and unfriendly approach to privacy enforcement in the nation.
- **Overly Restrictive Data Collection Limitations.** H. 121 would require businesses to limit the collection of personal data to what is reasonably necessary and proportionate to provide a product or service requested by the consumer. It is not clear how this restrictive limit on processing is operative with respect to other permissible processing activities under H. 121 that are not related to servicing the specific product or service requested by the consumer. At best, this term is ambiguous; at worst, it could prohibit a Vermont business from using data to develop new products or services for that customer or market its products, services, or discounts to that customer. The data collection limitation could also eliminate access to third-party data needed by Vermont businesses to reach new customers and better serve existing customers. The provision would

¹ Vermont H. 121 (Gen. Sess. 2024), located [here](#).

² California’s privacy law includes a limited private right of action for certain data breaches. Cal. Civ. Code § 1798.150. Vermont H. 121’s private right of action is significantly broader than the private right of action provided under California law.

³ See, e.g., American Tort Reform Foundation, *State Consumer Protection Laws Unhinged: It’s Time to Restore Sanity to the Litigation 4* (2003), located [here](#); see also U.S. Chamber Institute for Legal Reform, *Ill-Suited: Private Rights of Action and Privacy Claims* 7-8 (Jul. 2019), located [here](#).

create an environment where consumers in neighboring states, such as New Hampshire, will enjoy access to services that will be unavailable to consumers in Vermont. Unfortunately, the provision will disproportionately impact small, start-up, and mid-size Vermont businesses that rely on access to data to reach audiences for their new and niche products, making neighboring states more friendly to small and mid-size businesses than Vermont.

- **Overly Broad Definitions for Activities Subject to Consumer Opt-Out.** H. 121 would permit consumers to opt out of “targeted advertising” and “sales” of personal data. The bill’s definition of “targeted advertising,” for example, is so broad that it could encompass most advertising to a consumer. In addition, the bill’s definition of “sale” to include any exchange of personal data for a “commercial purpose” could be read to include *any* exchange of personal data to another entity, including data exchanges for the purpose of improving the product or customer service. These definitions in H. 121 are misaligned with virtually every other state that defines these terms. Every state that has enacted omnibus privacy legislation that regulates the activity of targeted advertising has generally defined the term as displaying advertisements to a consumer where the advertisement is selected based on personal data obtained or inferred from that consumer’s activity over time and across nonaffiliated websites or online applications. A prior version of H. 121 would have defined the term in this manner. The definitions in H.121 today, however, will create consumer confusion, as a Vermont consumer’s decision to opt out of “sales” or “targeted advertising” will likely result in them opting out of product improvements, messaging, and advertising they expect to receive.
- **Ambiguous Anti-Discrimination Terms.** H. 121’s ambiguous requirement to ensure personal data is not processed in a manner that would make unavailable the “equal enjoyment” of goods or services could result in flatly outlawing advertisements and messaging to specific communities. For example, the provision could outlaw advertisements based on gender to connect individuals with clothing that matches their interests. The provision could also impede legitimate anti-discrimination efforts in Vermont by banning entities from purposefully reaching out to particular constituencies and communities with relevant and helpful messaging. Anti-discrimination terms should restrict the processing of personal data in violation of State or federal laws that prohibit unlawful discrimination, as a prior version of H. 121 would have done.
- **Deidentification Requirements Reserved for Protected Health Information.** H. 121 would require data deidentification measures to mirror requirements under the Health Insurance Portability and Accountability Act (“HIPAA”), a federal law that governs the most sensitive type of protected health information. HIPAA deidentification standards were not designed with the processing of general consumer personal data in mind. Such a requirement could severely impede commerce and thwart privacy-protective deidentification methods businesses have employed and continue to employ in other states to protect personal data. Instead of mandating adherence to HIPAA protocols, H. 121 should provide HIPAA deidentification measures as an example of the type of process that could be employed to achieve deidentification rather than requiring such measures.

Bills like H. 121 that are likely to impact both a large volume of consumers and a great portion of Vermont’s economy should be carefully calibrated to ensure strong consumer protection while allowing beneficial offerings that depend on data to persist. While we agree that Vermont consumers deserve meaningful privacy protections supported by reasonable laws and responsible industry

practices, H. 121 would codify unnecessary and ambiguous restrictions that will hinder Vermonters' ability to access vital services in the marketplace.

We strongly urge you to **VETO H. 121**.

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Thank you for your consideration of this request.

Sincerely,

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