

AN ACT concerning education.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Student Online Personal Protection Act.

Section 3. Legislative intent. Schools today are increasingly using a wide range of beneficial online services and other technologies to help students learn, but concerns have been raised about whether sufficient safeguards exist to protect the privacy and security of data about students when it is collected by educational technology companies. This Act is intended to ensure that student data will be protected when it is collected by educational technology companies and that the data may be used for beneficial purposes such as providing personalized learning and innovative educational technologies.

Section 5. Definitions. In this Act:

"Covered information" means personally identifiable information or material or information that is linked to personally identifiable information or material in any media or format that is not publicly available and is any of the following:

- (1) Created by or provided to an operator by a student

or the student's parent or legal guardian in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K through 12 school purposes.

(2) Created by or provided to an operator by an employee or agent of a school or school district for K through 12 school purposes.

(3) Gathered by an operator through the operation of its site, service, or application for K through 12 school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, a social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

"Interactive computer service" has the meaning ascribed to that term in Section 230 of the federal Communications Decency Act of 1996 (47 U.S.C. 230).

"K through 12 school purposes" means purposes that are

directed by or that customarily take place at the direction of a school, teacher, or school district; aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; or are otherwise for the use and benefit of the school.

"Operator" means, to the extent that an entity is operating in this capacity, the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K through 12 school purposes and was designed and marketed for K through 12 school purposes.

"School" means (1) any preschool, public kindergarten, elementary or secondary educational institution, vocational school, special educational facility, or any other elementary or secondary educational agency or institution or (2) any person, agency, or institution that maintains school student records from more than one school. "School" includes a private or nonpublic school.

"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 of targeting subsequent ads.

Section 10. Operator prohibitions. An operator shall not knowingly do any of the following:

(1) Engage in targeted advertising on the operator's site, service, or application or target advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for K through 12 school purposes.

(2) Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of K through 12 school purposes. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the school.

(3) Sell or rent a student's information, including covered information. This subdivision (3) does not apply to the purchase, merger, or other type of acquisition of an

operator by another entity if the operator or successor entity complies with this Act regarding previously acquired student information.

(4) Except as otherwise provided in Section 20 of this Act, disclose covered information, unless the disclosure is made for the following purposes:

(A) In furtherance of the K through 12 school purposes of the site, service, or application if the recipient of the covered information disclosed under this clause (A) does not further disclose the information, unless done to allow or improve operability and functionality of the operator's site, service, or application.

(B) To ensure legal and regulatory compliance or take precautions against liability.

(C) To respond to the judicial process.

(D) To protect the safety or integrity of users of the site or others or the security of the site, service, or application.

(E) For a school, educational, or employment purpose requested by the student or the student's parent or legal guardian, provided that the information is not used or further disclosed for any other purpose.

(F) To a third party if the operator contractually prohibits the third party from using any covered

information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

Nothing in this Section prohibits the operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

Section 15. Operator duties. An operator shall do the following:

(1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information and designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure.

(2) Delete, within a reasonable time period, a student's covered information if the school or school district requests deletion of covered information under the control of the school or school district, unless a student or his or her parent or legal guardian consents to the maintenance of the covered information.

(3) Publicly disclose material information about its

collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document.

Section 20. Permissive use or disclosure. An operator may use or disclose covered information of a student under the following circumstances:

(1) If other provisions of federal or State law require the operator to disclose the information, and the operator complies with the requirements of federal and State law in protecting and disclosing that information.

(2) For legitimate research purposes as required by State or federal law and subject to the restrictions under applicable State and federal law or as allowed by State or federal law and under the direction of a school, school district, or the State Board of Education if the covered information is not used for advertising or to amass a profile on the student for purposes other than for K through 12 school purposes.

(3) To a State or local educational agency, including schools and school districts, for K through 12 school purposes, as permitted by State or federal law.

Section 25. Operator actions that are not prohibited. This Act does not prohibit an operator from doing any of the following:

(1) Using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator.

(2) Using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in their marketing.

(3) Sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications.

(4) Using recommendation engines to recommend to a student either of the following:

(A) Additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party.

(B) Additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party.

(5) Responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

Section 30. Applicability. This Act does not do any of the following:

(1) Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order.

(2) Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes.

(3) Apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

(4) Limit service providers from providing Internet connectivity to schools or students and their families.

(5) Prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents if the marketing did not result from the use of covered information obtained by the operator through the provision

of services covered under this Act.

(6) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this Act on those applications or software.

(7) Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this Act by third-party content providers.

(8) Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents.

(9) Supersede the federal Family Educational Rights and Privacy Act of 1974 or rules adopted pursuant to that Act or the Illinois School Student Records Act.

Section 35. Enforcement. Violations of this Act shall constitute unlawful practices for which the Attorney General may take appropriate action under the Consumer Fraud and Deceptive Business Practices Act.

Section 40. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 50. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2Z as follows:

(815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

Sec. 2Z. Violations of other Acts. Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150, or 18d-153 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, the Reverse Mortgage Act, Section 25 of the Youth Mental Health Protection Act, ~~or~~ the Personal Information Protection Act, or the Student Online Personal

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Protection Act commits an unlawful practice within the meaning of this Act.

(Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642, eff. 7-28-16.)

Section 99. Effective date. This Act takes effect upon becoming law.