

**SENATE**  
**STATE OF MINNESOTA**  
**NINETIETH SESSION**

**S.F. No. 1961**

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DATE	D-PG	OFFICIAL STATUS
03/08/2017	1191	Introduction and first reading Referred to E-12 Policy
03/05/2018		Chief author stricken Abeler
	6280	Chief author added Pratt
03/08/2018	6336a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy
	6370	Author stricken Isaacson Author added Kent
03/29/2018	7114a	Comm report: To pass as amended and re-refer to E-12 Policy
04/09/2018	7153	Comm report: To pass
	7252	Second reading

1.1 A bill for an act  
1.2 relating to education; providing for student online privacy; amending Minnesota  
1.3 Statutes 2016, section 13.321, by adding a subdivision; proposing coding for new  
1.4 law in Minnesota Statutes, chapter 125B.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 13.321, is amended by adding a subdivision  
1.7 to read:

1.8 Subd. 12. **Student online privacy.** Section 125B.27 governs student privacy and  
1.9 information practices of operators of online services for school purposes.

1.10 Sec. 2. [125B.27] STUDENT ONLINE PRIVACY.

1.11 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

1.12 (b) "Covered information" means personally identifiable information or material, or  
1.13 information that is linked to personally identifiable information or material, in any media  
1.14 or format that is not publicly available and is any of the following:

1.15 (1) created by or provided to an operator by a student, or the student's parent or legal  
1.16 guardian, in the course of the student's, parent's, or legal guardian's use of the operator's  
1.17 site, service, or application for school purposes;

1.18 (2) created by or provided to an operator by an employee or agent of a school or school  
1.19 district for school purposes; or

1.20 (3) gathered by an operator through the operation of its site, service, or application for  
1.21 school purposes and personally identifies a student including, but not limited to, information

2.1 in the student's educational record or e-mail, first and last name, home address, telephone  
2.2 number, e-mail address, or other information that allows physical or online contact, discipline  
2.3 records, test results, special education data, juvenile dependency records, grades, evaluations,  
2.4 criminal records, medical records, health records, Social Security number, biometric  
2.5 information, disabilities, socioeconomic information, food purchases, political affiliations,  
2.6 religious information, text messages, documents, student identifiers, search activity, photos,  
2.7 voice recordings, or geolocation information.

2.8 (c) "Interactive computer service" has the meaning given in United States Code, title  
2.9 47, section 230.

2.10 (d) "Operator" means, to the extent that it is operating in this capacity, the operator of  
2.11 an Internet Web site, online service, online application, or mobile application with actual  
2.12 knowledge that the site, service, or application is used primarily for school purposes and  
2.13 was designed and marketed for school purposes. Operator includes:

2.14 (1) an agent or assignee of the operator or a person acting under the supervision or control  
2.15 of the operator; or

2.16 (2) a vendor.

2.17 (e) "School purposes" means purposes that are directed by or that customarily take place  
2.18 at the direction of a school, teacher, or school district or aid in the administration of school  
2.19 activities including, but not limited to, instruction in the classroom or at home, administrative  
2.20 activities, and collaboration between students, school personnel, or parents or legal guardians  
2.21 or are otherwise for the use and benefit of the school.

2.22 (f) "Student" means a student in prekindergarten through grade 12.

2.23 (g) "Targeted advertising" means presenting advertisements to a student where the  
2.24 advertisement is selected based on information obtained or inferred over time from that  
2.25 student's online behavior, usage of applications, or covered information. It does not include  
2.26 advertising to a student at an online location based upon that student's current visit to that  
2.27 location, or in response to that student's request for information or feedback, without the  
2.28 retention of that student's online activities or requests over time for the purpose of targeting  
2.29 subsequent advertisements.

2.30 (h) "Vendor" means a person who contracts with a school or school district to provide  
2.31 access to an Internet Web site, online service, online application, or mobile application for  
2.32 school purposes.

2.33 Subd. 2. **Prohibited activities.** (a) An operator must not do any of the following:

3.1 (1) engage in targeted advertising on the operator's site, service, or application or target  
3.2 advertising on any other site, service, or application, or by any other means, if the targeting  
3.3 of the advertising is based on any information, including covered information and persistent  
3.4 unique identifiers, that the operator has acquired because of the use of that operator's site,  
3.5 service, or application for school purposes;

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

3.11 (3) sell or rent a student's information, including covered information. This clause does  
3.12 not apply to the purchase, merger, or other type of acquisition of an operator by another  
3.13 entity if the operator or successor entity complies with this section regarding previously  
3.14 acquired student information; or

3.15 (4) except as otherwise provided under subdivision 4, disclose covered information  
3.16 unless the disclosure is:

3.17 (i) in furtherance of the school purpose of the site, service, or application if the recipient  
3.18 of the covered information disclosed under this item does not further disclose the information  
3.19 unless done to allow or improve operability and functionality of the operator's site, service,  
3.20 or application;

3.21 (ii) to ensure legal and regulatory compliance or protect against liability;

3.22 (iii) to respond to or participate in the judicial process;

3.23 (iv) to protect the safety or integrity of users of the site or others or the security of the  
3.24 site, service, or application;

3.25 (v) for a school, educational, or employment purpose requested by the student or the  
3.26 student's parent or guardian, provided that the information is not used or further disclosed  
3.27 for any other purpose;

3.28 (vi) to a national assessment provider if the provider secures the express written consent  
3.29 of the student, parent, or legal guardian given in response to clear and conspicuous notice,  
3.30 solely for the purpose of providing access to employment, educational scholarships or  
3.31 financial aid, or postsecondary educational opportunities; or

3.32 (vii) to a third party, if the operator contractually prohibits the third party from using  
3.33 any covered information for any purpose other than providing the contracted service to or

4.1 on behalf of the operator, prohibits the third party from disclosing any covered information  
4.2 provided by the operator with subsequent third parties, and requires the third party to  
4.3 implement and maintain reasonable security procedures and practices.

4.4 (b) Nothing in this subdivision prohibits the operator's use of information for maintaining,  
4.5 developing, supporting, improving, or diagnosing the operator's site, service, or application.

4.6 **Subd. 3. Security procedures and practices; return or destruction of information.**

4.7 (a) An operator must implement and maintain reasonable security procedures and practices  
4.8 in writing that are appropriate to the nature of the covered information and designed to  
4.9 ensure protection of covered information from unauthorized access, destruction, use,  
4.10 modification, or disclosure.

4.11 (b) Within 30 days of a request from a student, parent, or legal guardian, an operator  
4.12 that is not a vendor must destroy or return the covered information to the student, parent,  
4.13 or legal guardian. A vendor must comply with the provisions of subdivision 7 governing  
4.14 destruction or return of data to the school.

4.15 **Subd. 4. Permissible disclosures.** An operator may use or disclose covered information  
4.16 of a student under the following circumstances:

4.17 (1) if other provisions of federal or state law require the operator to disclose the  
4.18 information and the operator complies with the requirements of federal and state law in  
4.19 protecting and disclosing that information;

4.20 (2) for legitimate research purposes as required by state or federal law and subject to  
4.21 the restrictions under applicable state and federal law or as allowed by state or federal law  
4.22 and under the direction of a school, school district, or the Department of Education if covered  
4.23 information is not used for advertising or to amass a profile on the student for purposes  
4.24 other than school purposes; or

4.25 (3) to a state or local educational agency, including schools and school districts, for  
4.26 school purposes as permitted by state or federal law.

4.27 **Subd. 5. Use of information by operator.** This section does not prohibit an operator  
4.28 from doing any of the following:

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

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

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

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

5.9 Subd. 6. **Certain activities not affected.** This section does not:

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

5.12 (2) limit the ability of an operator to use student data, including covered information,  
5.13 for adaptive learning or customized student learning purposes;

5.14 (3) apply to general audience Internet Web sites, general audience online services, general  
5.15 audience online applications, or general audience mobile applications even if the login  
5.16 credentials created for an operator's site, service, or application may be used to access those  
5.17 general audience sites, services, or applications;

5.18 (4) limit service providers from providing Internet connectivity to schools or students  
5.19 and their families;

5.20 (5) prohibit an operator of an Internet Web site, online service, online application, or  
5.21 mobile application from marketing educational products directly to parents or legal guardians  
5.22 if the marketing did not result from the use of covered information obtained by the operator  
5.23 through the provision of services covered under this section;

5.24 (6) impose a duty upon a provider of an electronic store, gateway, marketplace, or other  
5.25 means of purchasing or downloading software or applications to review or enforce  
5.26 compliance with this section on those applications or software;

5.27 (7) impose a duty upon a provider of an interactive computer service to review or enforce  
5.28 compliance with this section by third-party content providers; or

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

5.31 Subd. 7. **Special requirements applicable to vendors.** (a) In addition to the requirements  
5.32 of subdivisions 2 to 6, a vendor must comply with this subdivision.

6.1 (b) A vendor is subject to the provisions of section 13.05, subdivision 11. Covered  
6.2 information created, received, or maintained by a vendor pursuant or incidental to the  
6.3 contract are the property of the school and are not the property of the vendor. Unless renewal  
6.4 of the contract is reasonably anticipated, within 30 days of expiration of the contract, or  
6.5 within 30 days of a request from the school, the vendor must destroy or return the covered  
6.6 information to the school.