

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 2219

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DATE	D-PG	OFFICIAL STATUS
05/16/2015	3601	Introduction and first reading Referred to Education
03/29/2016	5286a	Comm report: To pass as amended and re-refer to Judiciary
04/01/2016		Comm report: To pass as amended Second reading

A bill for an act
relating to privacy; establishing student user privacy in education rights; requiring
online educational services to comply with security and privacy standards;
prohibiting use of student information for targeted marketing or creation of student
profiles; proposing coding for new law in Minnesota Statutes, chapter 125B.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[125B.27] STUDENT-USER PRIVACY IN EDUCATION RIGHTS.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision and section 13.32, subdivision 1, apply to this section.

(b) "Online educational service" means a Web site, online service or application, or mobile application that a student or the student's parent or legal guardian can access via the Internet for school purposes. Online educational service includes a cloud computing service.

(c) "Operator" means, to the extent it is operating in this capacity, a person who operates an online educational service with actual knowledge that it is used primarily for school purposes and was designed and marketed for these purposes. Operator includes a vendor.

(d) "Protected information" means materials or information that is linked to personally identifiable information or materials, in any media or format that is not publicly available; and

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

(2) is created or provided by an employee or agent of the school to an operator in the course of the use of the operator's site, service, or application for school purposes; or

(3) is gathered by an operator through the operation of an online educational service and personally identifies a student, including, but not limited to, information in the student's educational record or e-mail, first and last name, home address, telephone number, e-mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile records, grades, evaluations, criminal records, health records, 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.

(e) "School purposes" means purposes that (1) are directed by or customarily take place at the direction of the school, teacher, or school district or aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents or legal guardians, or (2) are for the use and benefit of the school.

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

(g) "Vendor" means a person who enters into a contract with a school to provide an online educational service.

(h) "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. It 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.

Subd. 2. Prohibited activities; targeted advertising; creation of student profiles; sale or unauthorized disclosure of information. (a) An operator must not engage in any of the following activities:

(1)(i) targeted advertising on the operator's online educational service; or

(ii) targeted advertising on any other site, service, or application when the targeting of the advertising is based upon information, including protected information and unique identifiers, that the operator has acquired or created because of the use of that operator's online educational service;

(2) gather, use, or share information, including persistent unique identifiers, acquired or created by the operator's online educational service, to create a profile about a student, except in furtherance of school purposes. "Create 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 guardian, or kindergarten through grade 12 school;

(3) sell a student's information, including protected information. This prohibition does not apply to the purchase, merger, or other type of acquisition of an operator by another person, provided that the operator or successor continues to be subject to this section with respect to previously acquired student information or to national assessment providers if the provider secures the express written consent of the parent or student, given in response to clear and conspicuous notice, solely to provide access to employment, educational scholarships or financial aid, or postsecondary educational opportunities; or

(4) disclose protected information, unless the disclosure:

(i) is made in furtherance of the educational purpose of the site, service, or application, provided the recipient of the protected information must not further disclose the information unless done to allow or improve operability and functionality of the operator's online educational service;

(ii) is legally required to comply with subdivision 3;

(iii) is made to ensure legal and regulatory compliance, to respond to or participate in judicial process, or to protect the safety of users or others or security of the site;

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

(v) is made pursuant to a contract between the operator and a service provider. A contract must prohibit the service provider from using protected information for any purpose other than providing the contracted service to, or on behalf of, the operator; prohibit the service provider from disclosing protected information provided by the operator to third parties; and require the service provider to implement and maintain reasonable security procedures and practices as provided in subdivision 3.

(b) This subdivision does not prohibit the operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

Subd. 3. Security procedures and practices. An operator shall:

(1) implement and maintain reasonable security procedures and practices appropriate to the nature of the protected information in order to protect that information from unauthorized access, destruction, use, modification, or disclosure; and

(2) delete a student's protected information if the school requests deletion of data under the control of the school.

4.1 Subd. 4. **Permissible disclosures.** Notwithstanding subdivision 2, paragraph (a),
4.2 clause (4), an operator may use or disclose protected information of a student under the
4.3 following circumstances:

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

4.7 (2) as long as no covered information is used for advertising or to create a profile on
4.8 the student for purposes other than educational purposes, for legitimate research purposes:

4.9 (i) as required by state or federal law and subject to the restrictions under applicable
4.10 law; or

4.11 (ii) as allowed by state or federal law and in furtherance of educational purposes or
4.12 postsecondary educational purposes; and

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

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

4.17 (1) using protected information within the operator's site, service, or application or
4.18 other sites, services, or applications owned by the operator to improve educational products;

4.19 (2) using protected information that is not associated with an identified student to
4.20 demonstrate the effectiveness of the operator's products or services, including marketing;

4.21 (3) sharing aggregate information that does not directly, indirectly, or in combination
4.22 with other information identify a student for the development and improvement of
4.23 educational sites, services, or applications;

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

4.25 (i) additional content relating to an educational, other learning, or employment
4.26 opportunity purpose within an online site, service, or application if the recommendation is
4.27 not determined in whole or in part by payment or other consideration from a third party; or

4.28 (ii) additional services relating to an educational, other learning, or employment
4.29 opportunity purpose within an online site, service, or application if the recommendation is
4.30 not determined in whole or in part by payment or other consideration from a third party; or

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

4.34 Subd. 6. **Certain activities not affected.** (a) This section does not limit the
4.35 authority of a law enforcement agency to obtain information from an operator as
4.36 authorized by law or pursuant to a court order.

5.1 (b) This section does not limit the ability of an operator to use student information,
5.2 including protected information, for adaptive learning or customized student learning
5.3 purposes.

5.4 (c) This section does not apply to general audience Web sites, general audience
5.5 online services, general audience online applications, or general audience mobile
5.6 applications, even if log-in credentials created for an operator's online educational service
5.7 may be used to access those general audience Web sites, services, or applications.

5.8 (d) This section does not limit Internet service providers from providing Internet
5.9 connectivity to schools or students and their families.

5.10 (e) This section does not prohibit an operator of a Web site, online service, online
5.11 application, or mobile application from the general marketing of educational products to
5.12 parents or legal guardians so long as the marketing is not based on the use of protected
5.13 information obtained by the operator through the provision of services governed by this
5.14 section.

5.15 (f) This section does not impose a duty upon a provider of an electronic store, gateway,
5.16 marketplace, or other means of purchasing or downloading software or applications to
5.17 review or enforce compliance with this section on those applications or software.

5.18 (g) This section does not impose a duty on a provider of an interactive computer
5.19 service, as defined in United States Code, title 47, section 230, to review or enforce
5.20 compliance with this section by third-party content providers.

5.21 (h) This section does not impede the ability of students to download, export, or
5.22 otherwise save or maintain their own data or documents.