

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 3065

(SENATE AUTHORS: LIMMER and Rest)

DATE	D-PG	OFFICIAL STATUS
03/21/2016	5163	Introduction and first reading Referred to Education
03/23/2016	5240	Author added Rest

1.1

A bill for an act

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relating to data privacy; providing kindergarten through grade 12 students who

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use online computer services for school purposes with privacy of personally

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identifiable information; amending Minnesota Statutes 2014, section 13.321,

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by adding a subdivision; proposing coding for new law in Minnesota Statutes,

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chapter 125B.

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

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Section 1. Minnesota Statutes 2014, section 13.321, is amended by adding a

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subdivision to read:

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Subd. 11. **Student online personal protection.** Section 125B.30 governs privacy

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and information practices of online computer services used by kindergarten through grade

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12 students for kindergarten through grade 12 school purposes.

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Sec. 2. **[125B.30] STUDENT ONLINE PERSONAL PROTECTION.**

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Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms

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have the meanings given.

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(b) "Covered information" means personally identifiable information or material, or

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information that is linked to personally identifiable information or material, in any media

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or format that is not publicly available and is:

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(1) created by or provided to an operator by a student, or the student's parent or legal

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guardian, in the course of the student's, parent's, or legal guardian's use of the operator's

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site, service, or application for kindergarten through grade 12 school purposes;

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(2) created by or provided to an operator by an employee or agent of a kindergarten

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through grade 12 school or school district for kindergarten through grade 12 school

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purposes; or

(3) gathered by an operator through the operation of its site, service, or application for kindergarten through grade 12 school purposes 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 dependency records, grades, evaluations, criminal records, medical 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.

(c) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions, as defined in United States Code, title 47, section 230.

(d) "Kindergarten through grade 12 school" means a school that offers any of grades kindergarten through 12 and that is operated by a school district.

(e) "Kindergarten through grade 12 school purposes" means purposes that are directed by or that customarily take place at the direction of a kindergarten through grade 12 school, teacher, or school district or 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.

(f) "Operator" means, to the extent that it is operating in this capacity, the operator of a Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for kindergarten through grade 12 school purposes and was designed and marketed for kindergarten through grade 12 school purposes.

(g) "School district" means a school district, intermediate school district, or special district as defined in section 120A.05.

(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 on 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 advertisements.

Subd. 2. Operator prohibitions; exceptions; limitations. (a) 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 kindergarten through grade 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 kindergarten through grade 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 guardian, or the kindergarten through grade 12 school;

(3) sell or rent a student's information, including covered information. This subdivision 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 section regarding previously acquired student information;

(4) except as otherwise provided in clause (3), disclose covered information unless the disclosure is made for the following purposes:

(i) in furtherance of the kindergarten through grade 12 school purpose of the site, service, or application, if the recipient of the covered information disclosed under this item does not further disclose the information unless done to allow or improve operability and functionality of the operator's site, service, or application;

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

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

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

(v) 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 purpose; and

(vi) 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.

4.1 Nothing in this paragraph shall prohibit the operator's use of information for
4.2 maintaining, developing, supporting, improving, or diagnosing the operator's site, service,
4.3 or application.

4.4 (b) An operator shall do all of the following:

4.5 (1) implement and maintain reasonable security procedures and practices appropriate
4.6 to the nature of the covered information designed to protect the covered information from
4.7 unauthorized access, destruction, use, modification, or disclosure; and

4.8 (2) within a reasonable time period, delete a student's covered information if the
4.9 kindergarten through grade 12 school or school district requests deletion of covered
4.10 information under the control of the kindergarten through grade 12 school or school
4.11 district, unless a student, parent, or guardian consents to the maintenance of the covered
4.12 information.

4.13 (c) An operator may use or disclose covered information of a student under the
4.14 following circumstances:

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

4.18 (2) for legitimate research purposes as required by state or federal law and subject to
4.19 the restrictions under applicable state and federal law or as allowed by state or federal
4.20 law and under the direction of a kindergarten through grade 12 school, school district, or
4.21 Department of Education, if covered information is not used for advertising or to amass
4.22 a profile on the student for purposes other than kindergarten through grade 12 school
4.23 purposes; and

4.24 (3) to a state or local educational agency, including kindergarten through grade
4.25 12 schools and school districts, for kindergarten through grade 12 school purposes, as
4.26 permitted by state or federal law.

4.27 (d) This section does not prohibit an operator from doing any of the following:

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

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

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

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

(i) 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; or

(ii) 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; and

(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.

(e) This section 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 Web sites, general audience online services, general audience online applications, or general audience mobile applications, even if log-in 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 a Web site, 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 section;

(6) impose a duty on 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 section on those applications or software;

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

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

EFFECTIVE DATE. This section is effective August 1, 2016.