

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 175

Introduced by Morfeld, 46.

Read first time January 10, 2017

Committee: Education

- 1 A BILL FOR AN ACT relating to students; to adopt the Student Online
- 2 Personal Protection Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 3 of this act shall be known and may be
2 cited as the Student Online Personal Protection Act.

3 Sec. 2. For purposes of the Student Online Personal Protection Act:

4 (1) Covered information means personally identifiable information or
5 material or information that is linked to personally identifiable
6 information or material in any medium or format that is not publicly
7 available and is any of the following:

8 (a) Created or gathered by or provided to an operator by a student,
9 or the student's parent or legal guardian, in the course of the
10 student's, parent's, or legal guardian's use of the operator's site,
11 service, or application for elementary, middle, or high school purposes,
12 including persistent unique identifiers;

13 (b) Created by or provided to an operator by an employee or agent of
14 an elementary school, middle school, high school, or school district for
15 elementary, middle, or high school purposes; or

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

28 (2) Interactive computer service has the definition found in 47
29 U.S.C. 230, as such section existed on January 1, 2017;

30 (3) Elementary, middle, or high school purposes means purposes that
31 are directed by or that customarily take place at the direction of an

1 elementary school, a middle school, a high school, a teacher, or a school
2 district or that aid in the administration of school activities,
3 including, but not limited to, instruction in the classroom or at home,
4 administrative activities, collaboration between students, school
5 personnel, or parents, and other purposes that are pursued for the use
6 and benefit of the school or school district;

7 (4) Operator means the operator of an Internet web site, online
8 service, online application, or mobile application with actual knowledge
9 that the site, service, or application is used primarily for elementary,
10 middle, or high school purposes and was designed and marketed for
11 elementary, middle, or high school purposes; and

12 (5) Targeted advertising means presenting advertisements to a
13 student where the advertisement is selected based on information obtained
14 or inferred over time from that student's online behavior, usage of
15 applications, or covered information. It does not include advertising to
16 a student at an online location based upon that student's current visit
17 to that location, or in response to that student's request for
18 information or feedback, without the retention of that student's online
19 activities or requests over time for the purpose of targeting subsequent
20 ads.

21 Sec. 3. (1) An operator shall not knowingly:

22 (a) Engage in targeted advertising on the operator's site, service,
23 or application or targeted advertising on any other site, service, or
24 application if the targeting of the advertising is based on any covered
25 information that the operator has acquired because of the use of that
26 operator's site, service, or application for elementary, middle, or high
27 school purposes;

28 (b) Use covered information created or gathered by the operator's
29 site, service, or application to amass a profile about a student except
30 in furtherance of elementary, middle, or high school purposes. Amassing a
31 profile does not include the collection and retention of account

1 information that remains under the control of the student, the student's
2 parent or guardian, or the elementary school, middle school, or high
3 school;

4 (c) Sell or rent a student's covered information. This subdivision
5 does not apply to (i) the purchase, merger, or other type of acquisition
6 of an operator by another entity if the operator or successor entity
7 complies with this section regarding such covered information or (ii) a
8 national assessment provider if the provider secures the express written
9 consent of the student or parent or guardian of the student given in
10 response to clear and conspicuous notice that access to covered
11 information shall only be provided for purposes of obtaining employment,
12 educational scholarships, financial aid, or postsecondary educational
13 opportunities for such student; or

14 (d) Except as otherwise provided in subsection (3) of this section,
15 disclose covered information unless the disclosure is made for the
16 following purposes:

17 (i) In furtherance of the elementary, middle, or high school purpose
18 of the site, service, or application, if the recipient of the covered
19 information disclosed under this subdivision does not further disclose
20 the covered information except to allow or improve operability and
21 functionality of the operator's site, service, or application;

22 (ii) To ensure legal and regulatory compliance or protect against
23 liability;

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

25 (iv) To protect the safety or integrity of users of the site or
26 other individuals or the security of the site, service, or application;

27 (v) For a school, educational, or employment purpose requested by
28 the student or the student's parent or guardian if the covered
29 information is not used or further disclosed for any other purpose; or

30 (vi) To a third party if the operator contractually prohibits the
31 third party from using any covered information for any purpose other than

1 providing the contracted service to or on behalf of the operator,
2 prohibits the third party from disclosing any covered information
3 provided by the operator with subsequent third parties, and requires the
4 third party to implement and maintain reasonable security procedures and
5 practices.

6 (2) Nothing in this section shall prohibit the operator from using
7 covered information for maintaining, developing, supporting, improving,
8 or diagnosing the operator's site, service, or application.

9 (3) An operator shall:

10 (a) Implement and maintain reasonable security procedures and
11 practices appropriate to the nature of the covered information designed
12 to protect that covered information from unauthorized access,
13 destruction, use, modification, or disclosure; and

14 (b) Delete within a reasonable time period a student's covered
15 information if the elementary school, middle school, high school, or
16 school district requests deletion of covered information under the
17 control of the elementary school, middle school, high school, or school
18 district, unless a student or parent or guardian consents to the
19 maintenance of the covered information.

20 (4) An operator may use or disclose covered information of a student
21 under the following circumstances:

22 (a) If other provisions of federal or state law require the operator
23 to disclose the covered information and the operator complies with the
24 requirements of federal and state law in protecting and disclosing such
25 covered information;

26 (b) As long as no covered information is used for advertising or to
27 amass a profile on the student for purposes other than elementary,
28 middle, or high school purposes, for legitimate research purposes as
29 required by state or federal law and subject to the restrictions under
30 applicable state and federal law or as allowed by state or federal law
31 and in furtherance of elementary, middle, or high school purposes or

1 postsecondary educational purposes; or

2 (c) To state or local educational agencies, including elementary
3 schools, middle schools, high schools, and school districts, for
4 elementary, middle, or high school purposes, as permitted by state or
5 federal law.

6 (4) This section does not prohibit an operator from doing any of the
7 following:

8 (a) Using covered information to improve educational products if
9 such covered information is not associated with an identified student
10 within the operator's site, service, or application or other sites,
11 services, or applications owned by the operator;

12 (b) Using covered information that is not associated with an
13 identified student to demonstrate or market the effectiveness of the
14 operator's products or services;

15 (c) Sharing covered information that is not associated with an
16 identified student for the development and improvement of educational
17 sites, services, or applications;

18 (d) Using recommendation engines to recommend to a student either of
19 the following:

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

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

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

31 (5) This section does not:

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

4 (b) Limit the ability of an operator to use student data, including
5 covered information, for adaptive learning or customized student learning
6 purposes;

7 (c) Apply to general audience Internet web sites, general audience
8 online services, general audience online applications, or general
9 audience mobile applications, even if login credentials created for an
10 operator's site, service, or application may be used to access those
11 general audience sites, services, or applications;

12 (d) Limit service providers from providing Internet connectivity to
13 schools or a student and his or her family;

14 (e) Prohibit an operator of an Internet web site, online service,
15 online application, or mobile application from marketing educational
16 products directly to parents if the marketing did not result from the use
17 of covered information obtained by the operator through the provision of
18 services covered under this section;

19 (f) Impose a duty upon a provider of an electronic store, network
20 gateway, marketplace, or other means of purchasing or downloading
21 software or applications to review or enforce compliance with this
22 section on those applications or software;

23 (g) Impose a duty upon a provider of an interactive computer service
24 to review or enforce compliance with this section by third-party content
25 providers; or

26 (h) Prohibit a student from downloading, exporting, transferring,
27 saving, or maintaining his or her own student data or documents.