

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/18/15 H3/24/15

A Bill

HOUSE BILL 1961

5 By: Representative Leding
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For An Act To Be Entitled

8 AND ACT TO ADOPT THE STUDENT ONLINE PERSONAL
9 INFORMATION PROTECTION ACT; AND FOR OTHER PURPOSES.

Subtitle

10 TO ADOPT THE STUDENT ONLINE PERSONAL
11 INFORMATION PROTECTION ACT.
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13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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16 SECTION 1. Arkansas Code Title 6, Chapter 18, Subchapter 1, is amended
17 to add an additional section to read as follows:
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19 6-18-109. Student Online Personal Information Protection Act.

20 (a) As used in this section:

21 (1) "Covered information" means personally identifiable
22 information or materials regarding a public school student in this state, in
23 any media or format, when the information is:

24 (A) Created or provided by a student or the student's
25 parent or guardian, to an operator in the course of the student's, parent's,
26 or guardian's use of the operator's website, service, or application;

27 (B) Created or provided by an employee or agent of a
28 public school, school district, local education agency, or Department of
29 Education to the operator for public school purposes; or

30 (C) Gathered by an operator through the operation of the
31 website, service, or application and personally identifies a student,
32 including without limitation a student's:

33 (i) First and last name;

34 (ii) Email address;
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- 1 (iii) Home address;
- 2 (iv) Telephone number;
- 3 (v) Discipline records;
- 4 (vi) Test results;
- 5 (vii) Special education data;
- 6 (viii) Juvenile dependency records;
- 7 (ix) Grades;
- 8 (x) Medical or health records;
- 9 (xi) Social Security number;
- 10 (xii) Biometric information;
- 11 (xiii) Socioeconomic information;
- 12 (xiv) Political affiliations;
- 13 (xv) Religious information;
- 14 (xvi) Student identifiers;
- 15 (xvii) Search activity, photos, voice recordings; or
- 16 (xviii) Geolocation information;

17 (2) Public school purpose means a purpose that customarily takes
18 place at the direction of the public school teacher, administrator, or
19 superintendent to aid in the administration of school activities primarily
20 for the use and benefit of the school, including without limitation:

- 21 (A) Instruction in the classroom or at home;
- 22 (B) Administrative activities; or
- 23 (C) Collaboration between student, school personnel, or

24 parents;

25 (3) "Operator" means, to the extent that the owner is operating
26 in the capacity defined under this subdivision (a)(3), owner of an Internet
27 website, online service, online application, or mobile application with
28 actual knowledge that the website, service, or application is:

- 29 (A) Used primarily for public school purposes;
- 30 (B) Designed and marketed for public school purposes; and
- 31 (C) Operating at capacity; and

32 (4)(A) "Targeted advertising" means presenting advertisements to
33 a student where the advertisement is selected based on information obtained
34 or inferred from a student's online behavior, usage of applications, or
35 covered information.

- 36 (B) "Targeted advertising" does not include advertising to

1 a student at an online location based on a student's current visit to that
2 online location or using the search query, without the collection and
3 retention of the student's online activities over time.

4 (b) An operator shall not engage knowingly in the following activities
5 with respect to the website, service, or application:

6 (1) Target advertising when the targeting of the advertising is
7 based on any covered information that the operator has acquired because of
8 the use of the operator's website, service or application;

9 (2)(A) Create or gather covered information obtained by the
10 operator's website, service, or application to compile a profile about a
11 public school student except in furtherance of public school purposes.

12 (B) Compiling a profile does not include the collection and
13 retention of account registration records or information that remains under
14 the control of a student, parent, public school, or school district;

15 (3) Sell a public school student's covered information, other
16 than with respect to the purchase, merger, or other acquisition of an
17 operator by another entity provided that the other entity is subject to the
18 provisions of this section with respect to previously acquired student
19 information that is subject to this section;

20 (4) Disclose covered information of a public school student
21 unless the disclosure is:

22 (A) Done in furtherance of public school purposes or to
23 allow or improve operation and functionality within the student's classroom
24 or school;

25 (B) Necessary disclosure to:

26 (i) Ensure legal or regulatory compliance or protect
27 against liability;

28 (ii) Respond to or participate in the judicial
29 process; or

30 (iii) Protect the safety or integrity of users or
31 others or the security of the website, service, or application;

32 (C) Done to a service provider, if the operator
33 contractually:

34 (i) Prohibits the service provider from using any
35 covered information for any purpose other than providing the contracted
36 service to or on behalf of the operator;

1 (ii) Prohibits the service provider from disclosing
2 any covered information provided by the operator with subsequent third
3 parties, unless the disclosure is expressly permitted under this section; and

4 (iii) Requires the service provider to implement and
5 maintain reasonable security procedures and practices as provided under
6 subsection (d) of this section; or

7 (D) Done for the public school, educational, or employment
8 purpose requested by the student or the student's parent or guardian,
9 provided that the information is not used or further disclosed for any other
10 purpose.

11 (c) Subsection (b) does not prohibit an operator from using covered
12 information to maintain, develop, support, improve, or diagnose the
13 operator's website, service or application.

14 (d) An operator shall:

15 (1) Implement and maintain reasonable security measures that are
16 appropriate to the nature of the covered information obtained and protect the
17 covered information from unauthorized access, destruction, use, modification,
18 or disclosure; and

19 (2) Delete a public school student's covered information within
20 a reasonable time frame if the school or school district requests the
21 deletion of covered information under the control of the public school or
22 school district.

23 (e) Except as provided under subdivision (b)(1), subdivision (b)(2),
24 and subdivision (b)(4) of this section, this section shall be construed to
25 prohibit the use or disclosure of covered information with the affirmative
26 consent of the public school, the student, or the student's parent or
27 guardian in response to clear and conspicuous notice of the use or
28 disclosure.

29 (f) Notwithstanding subdivision (b)(4), an operator may disclose
30 covered information of a public school student under the following
31 circumstances;

32 (1) If other provisions of federal or state law require the
33 operator to disclose the covered information and the operator complies with
34 the applicable requirements of federal and state law in protecting and
35 disclosing the covered information;

36 (2) For legitimate research purposes;

1 (A) As required by federal or state law and subject to the
2 restrictions under the applicable federal or state law;

3 (B) As allowed by federal or state law and under the
4 direction of a school, school district, or Department of Education if no
5 covered information is used for advertising or to compile a profile of a
6 public school student; or

7 (C) As permitted by federal or state law, to a state or
8 local educational agency, including a school or school district, for public
9 school purposes; or

10 (3) To a state or local educational agency, including public
11 schools and school districts, for public school purposes, as permitted by
12 federal or state law.

13 (g) This section does not prohibit an operator from:

14 (1) Using aggregated or deidentified covered information of a
15 public school student as follows:

16 (A) Within the operator's website, service, or application
17 or other websites, services, or applications owned by the operator to develop
18 or improve educational products; or

19 (B) To demonstrate the effectiveness of the operator's
20 website, service, or application, including the operator's marketing of the
21 website, service, or application; or

22 (2) Sharing aggregated or deidentified covered information of a
23 public school student for the development or improvement of educational
24 websites, services, or applications.

25 (h) This section does not limit:

26 (1) The authority of a law enforcement agency to obtain any
27 content or information from an operator that is authorized by law or pursuant
28 to an order of a court of competent jurisdiction;

29 (2) The ability of an operator to use student data, including
30 covered information, for adaptive learning or customized student learning
31 purposes;

32 (3) Internet service providers from providing Internet
33 connectivity to public schools, school districts, or students;

34 (4) The ability of an operator to use recommendation engines to
35 recommend additional content or services to a student within an operator's
36 website, service, or application without the response being determined in

1 whole or in part by payment or other consideration from a third-party;

2 (5) The ability of an operator to respond to a student's request
3 for information or for feedback without the information or response being
4 determined in whole or in part by payment or other consideration from a
5 third-party; or

6 (6) The ability of an operator to use or retain student
7 information to ensure legal or regulatory compliance or to take precautions
8 against liability.

9 (i) This section does not apply to general audience websites,
10 services, or applications, even if login credentials created on the
11 operator's website, service, or application are used to access those general
12 audience websites, services, or applications.

13 (j) This section does not impose a duty on a provider of an:

14 (1) Electronic store, gateway, marketplace, or other means of
15 purchasing or downloading software or applications to review or enforce
16 compliance of this section on those software or applications; or

17 (2) Interactive computer service, as defined in 47 U.S.C § 230,
18 to review or enforce compliance with this section by a third-party content
19 provider.

20 (k) This section does not limit the ability of a student or the
21 student's parent or guardian to download, export, transfer, or otherwise save
22 or maintain his or her own student data or documents.

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24 /s/Leding
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