

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 510

A bill to prohibit the disclosure or use of certain information.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "student online personal protection act".

3 Sec. 3. As used in this act:

4 (a) "Covered information" means personally identifiable
5 information or material in any media or format that is any of the
6 following:

7 (i) Created by or provided to an operator by a student, or the
8 student's parent or legal guardian, in the course of the student's,
9 parent's, or legal guardian's use of the operator's site, service,
10 or application for K-12 school purposes.

1 (ii) Created by or provided to an operator by an employee or
2 agent of a K-12 school or school district for K-12 school purposes.

3 (iii) Gathered by an operator through the operation of a site,
4 service, or application for K-12 school purposes and personally
5 identifies a student, including, but not limited to, information in
6 the student's educational record or electronic mail, first and last
7 name, home address, telephone number, electronic mail address, or
8 other information that allows physical or online contact,
9 discipline records, test results, special education data, juvenile
10 dependency records, grades, evaluations, criminal records, medical
11 records, health records, social security number, biometric
12 information, disabilities, socioeconomic information, food
13 purchases, political affiliations, religious information, text
14 messages, documents, student identifiers, search activity, photos,
15 voice recordings, or geolocation information.

16 (b) "Interactive computer service" means that term as defined
17 in 47 USC 230.

18 (c) "K-12 school" means a school that offers any of grades
19 kindergarten to 12 and that is operated by a school district.

20 (d) "K-12 school purposes" means purposes that are directed by
21 or that customarily take place at the direction of a K-12 school,
22 teacher, or school district or aid in the administration of school
23 activities, including, but not limited to, instruction in the
24 classroom or at home, administrative activities, and collaboration
25 between students, school personnel, or parents, or are for the use
26 and benefit of the school. Other than advertising described in
27 section 5(3)(b), K-12 school purposes also includes those purposes

1 related to K-12 students preparing for postsecondary education.

2 (e) "Operator" means, to the extent that it is operating in
3 this capacity, the operator of an Internet website, online service,
4 online application, or mobile application with actual knowledge
5 that the site, service, or application is used primarily for K-12
6 school purposes and was designed and marketed for K-12 school
7 purposes.

8 (f) "School district" means a school district, intermediate
9 school district, or public school academy, as those terms are
10 defined in the revised school code, 1976 PA 451, MCL 380.1 to
11 380.1852.

12 (g) "Service provider" means a person or entity that provides
13 a service that enables users to access content, information,
14 electronic mail, or other services offered over the Internet or a
15 computer network.

16 (h) "Targeted advertising" means presenting an advertisement
17 to a student where the advertisement is selected based on
18 information obtained or inferred from that student's online
19 behavior, usage of applications, or covered information. Targeted
20 advertising does not include advertising to a student at an online
21 location based upon that student's current visit to that location
22 or single search query without the collection and retention of a
23 student's online activities over time.

24 Sec. 5. (1) An operator shall not knowingly do any of the
25 following:

26 (a) Engage in targeted advertising on the operator's site,
27 service, or application, or target advertising on any other site,

1 service, or application if the targeting of the advertising is
2 based on any information, including covered information and
3 persistent unique identifiers, that the operator has acquired
4 because of the use of that operator's site, service, or application
5 for K-12 school purposes.

6 (b) Use information, including persistent unique identifiers,
7 created or gathered by the operator's site, service, or
8 application, to amass a profile about a student except in
9 furtherance of K-12 school purposes. As used in this subdivision,
10 "amass a profile" does not include the collection and retention of
11 account registration records or information that remains under the
12 control of the student, the student's parent or guardian, or K-12
13 school.

14 (c) Sell or rent a student's information, including covered
15 information. This subdivision does not apply to the purchase,
16 merger, or other type of acquisition of an operator by another
17 entity, if the operator or successor entity complies with this
18 section regarding previously acquired student information.

19 (d) Except as otherwise provided in subsection (3), disclose
20 covered information unless the disclosure is made for the following
21 purposes:

22 (i) In furtherance of the K-12 school purpose of the site,
23 service, or application, if the recipient of the covered
24 information disclosed under this subparagraph does not further
25 disclose the information unless done to allow or improve
26 operability and functionality of the operator's site, service, or
27 application.

1 (ii) To ensure legal and regulatory compliance or protect
2 against liability.

3 (iii) To respond to or participate in the judicial process.

4 (iv) To protect the safety or integrity of users of the site
5 or others or the security of the site, service, or application.

6 (v) For a school, educational, or employment purpose requested
7 by the student or the student's parent or guardian, provided that
8 that information is not used or further disclosed for any other
9 purpose.

10 (vi) To a service provider, if the operator contractually
11 prohibits the service provider from using any covered information
12 for any purpose other than providing the contracted service to or
13 on behalf of the operator, prohibits the service provider from
14 disclosing any covered information provided by the operator with
15 subsequent third parties, and requires the service provider to
16 implement and maintain reasonable security procedures and
17 practices. This subparagraph does not prohibit the operator's use
18 of information for maintaining, developing, supporting, improving,
19 or diagnosing the operator's site, service, or application.

20 (2) An operator shall do all of the following:

21 (a) Implement and maintain reasonable security procedures and
22 practices appropriate to the nature of the covered information, and
23 protect that covered information from unauthorized access,
24 destruction, use, modification, or disclosure.

25 (b) Delete a student's covered information if the K-12 school
26 or school district requests deletion of covered information under
27 the control of the K-12 school or school district.

1 (3) An operator may use or disclose covered information of a
2 student under the following circumstances:

3 (a) If other provisions of federal or state law require the
4 operator to disclose the information, and the operator complies
5 with the requirements of federal and state law in protecting and
6 disclosing that information.

7 (b) For legitimate research purposes as required by state or
8 federal law and subject to the restrictions under applicable state
9 and federal law or as allowed by state or federal law and under the
10 direction of a K-12 school, school district, or state department of
11 education, if covered information is not used for advertising or to
12 amass a profile on the student for purposes other than K-12 school
13 purposes.

14 (c) To a state or local educational agency, including K-12
15 schools and school districts, for K-12 school purposes, as
16 permitted by state or federal law.

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

19 (a) Using covered information that is not associated with an
20 identified student within the operator's site, service, or
21 application or other sites, services, or applications owned by the
22 operator to improve educational products.

23 (b) Using covered information that is not associated with an
24 identified student to demonstrate the effectiveness of the
25 operator's products or services, including in their marketing.

26 (c) Sharing covered information that is not associated with an
27 identified student for the development and improvement of

1 educational sites, services, or applications.

2 (d) Using recommendation engines to recommend to a student
3 either of the following:

4 (i) Additional content relating to an educational, other
5 learning, or employment opportunity purpose within the operator's
6 site, service, or application if the recommendation is not
7 determined in whole or in part by payment or other consideration
8 from a third party.

9 (ii) Additional services relating to an educational, other
10 learning, or employment opportunity purpose within the operator's
11 site, service, or application if the recommendation is not
12 determined in whole or in part by payment or other consideration
13 from a third party.

14 (e) Responding to a student's request for information or for
15 feedback to help improve learning without the information or
16 response being determined in whole or in part by payment or other
17 consideration from a third party.

18 (5) This section does not do any of the following:

19 (a) Limit the authority of a law enforcement agency to obtain
20 any content or information from an operator as authorized by law or
21 under a court order.

22 (b) Limit the ability of an operator to use student data,
23 including covered information, for adaptive learning or customized
24 student learning purposes.

25 (c) Apply to general audience Internet websites, general
26 audience online services, general audience online applications, or
27 general audience mobile applications, even if login credentials

1 created for an operator's site, service, or application may be used
2 to access those general audience sites, services, or applications.

3 (d) Limit service providers from providing Internet
4 connectivity to schools or students and their families.

5 (e) Prohibit an operator of an Internet website, online
6 service, online application, or mobile application from marketing
7 educational products directly to parents if the marketing did not
8 result from the use of covered information obtained by the operator
9 through the provision of services covered under this section.

10 (f) Impose a duty upon a provider of an electronic store,
11 gateway, marketplace, or other means of purchasing or downloading
12 software or applications to review or enforce compliance with this
13 section on those applications or software.

14 (g) Impose a duty upon a provider of an interactive computer
15 service to review or enforce compliance with this section by third-
16 party content providers.

17 (h) Prohibit students from downloading, exporting,
18 transferring, saving, or maintaining their own student data or
19 documents.

20 (i) Prohibit a K-12 school, school district, operator, or
21 service provider from using a student's information, including
22 covered information, solely to identify or display information to
23 the student about or facilitate connection of the student with a
24 not-for-profit institution of higher education or a scholarship
25 opportunity if the K-12 school or school district has first
26 obtained the express written consent of the student's parent or
27 legal guardian or, if the student is age 18 or older or is an

1 emancipated minor, the student. For the purposes of this
2 subdivision, that express written consent may be obtained as a
3 response to the annual notice required under 34 CFR 99.7 and is not
4 required to be in addition to consent given in response to that
5 annual notice.

6 Enacting section 1. This act takes effect 90 days after the
7 date it is enacted into law.