

**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.

11 (ii) Created by or provided to an operator by an employee or

1 agent of a K-12 school or school district for K-12 school purposes.

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

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

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

19 (d) "K-12 school purposes" means purposes that are directed by
20 or that customarily take place at the direction of a K-12 school,
21 teacher, or school district or aid in the administration of school
22 activities, including, but not limited to, instruction in the
23 classroom or at home, administrative activities, and collaboration
24 between students, school personnel, or parents, or are for the use
25 and benefit of the school.

26 (e) "Operator" means, to the extent that it is operating in
27 this capacity, the operator of an Internet website, online service,

1 online application, or mobile application with actual knowledge
2 that the site, service, or application is used primarily for K-12
3 school purposes and was designed and marketed for K-12 school
4 purposes.

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

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

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

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

23 (a) Engage in targeted advertising on the operator's site,
24 service, or application, or target advertising on any other site,
25 service, or application if the targeting of the advertising is
26 based on any information, including covered information and
27 persistent unique identifiers, that the operator has acquired

1 because of the use of that operator's site, service, or application
2 for K-12 school purposes.

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

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

16 (d) Except as otherwise provided in subsection (3), disclose
17 covered information unless the disclosure is made for the following
18 purposes:

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

25 (ii) To ensure legal and regulatory compliance or protect
26 against liability.

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

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

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

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

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

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

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

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

27 (a) If other provisions of federal or state law require the

1 operator to disclose the information, and the operator complies
2 with the requirements of federal and state law in protecting and
3 disclosing that information.

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

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

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

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

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

23 (c) Sharing covered information that is not associated with an
24 identified student for the development and improvement of
25 educational sites, services, or applications.

26 (d) Using recommendation engines to recommend to a student
27 either of the following:

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

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

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

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

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

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

22 (c) Apply to general audience Internet websites, general
23 audience online services, general audience online applications, or
24 general audience mobile applications, even if login credentials
25 created for an operator's site, service, or application may be used
26 to access those general audience sites, services, or applications.

27 (d) Limit service providers from providing Internet

1 connectivity to schools or students and their families.

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

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

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

14 (h) Prohibit students from downloading, exporting,
15 transferring, saving, or maintaining their own student data or
16 documents.

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