

MAINE STATE LEGISLATURE

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S.M.S.
H. of S.

L.D. 454

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EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE

SENATE

127TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 183, L.D. 454, Bill, "An Act To Enact the Student Information Privacy Act"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 20-A MRSA c. 13 is enacted to read:

CHAPTER 13

THE STUDENT INFORMATION PRIVACY ACT

§951. Short title

This chapter may be known and cited as "the Student Information Privacy Act."

§952. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Aggregate student data. "Aggregate student data" means data that is not personally identifiable and that is collected or reported at the group, cohort or institutional level.

2. Eligible student. "Eligible student" means a student who has reached 18 years of age or who is attending a postsecondary educational institution.

3. Kindergarten to grade 12 school purposes. "Kindergarten to grade 12 school purposes" means purposes that take place at the direction of a school administrative unit, a school that provides instruction to any grades from kindergarten to grade 12 or a teacher at such a school or purposes that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, preparation for postsecondary education or employment opportunities and collaboration between students, school personnel or parents, or that are for the use and benefit of the school.

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4. Operator. "Operator" means any entity other than the department, school administrative unit or school to the extent that the entity:

A. Operates an Internet website, online service, online application or mobile application with actual knowledge that the website, service or application is used for kindergarten to grade 12 school purposes and was designed and marketed for kindergarten to grade 12 school purposes to the extent that the operator is operating in that capacity; and

B. Collects, maintains or uses student personally identifiable information in a digital or electronic format.

5. State-assigned student identifier. "State-assigned student identifier" means the unique student identifier assigned by the State to each student, which may not be and may not include the student's social security number in whole or in part.

6. Student data. "Student data" means information that is collected and maintained at the individual student level in this State, including, but not limited to:

A. Data descriptive of a student in any media or format, including, but not limited to:

- (1) The student's first and last names;
- (2) The names of the student's parent and other family members;
- (3) The physical address, e-mail address, phone number and any other information that allows contact with the student or the student's family;
- (4) A student's personal identifier, such as the state-assigned student identifier, when used for identification purposes;
- (5) Other indirect identifiers, such as the student's date of birth, place of birth and mother's maiden name;
- (6) Results of assessments administered by the State, school administrative unit, school or teacher, including participation information;
- (7) Course transcript information, including, but not limited to, courses taken and completed, course grades and grade point average, credits earned and degree, diploma, credential attainment or other school exit information;
- (8) Attendance and mobility information between and within school administrative units within the State;
- (9) The student's gender, race and ethnicity;
- (10) Educational program participation information required by state or federal law;
- (11) The student's disability status;
- (12) The student's socioeconomic information;
- (13) The student's food purchases; and

1 (14) The student's e-mails, text messages, documents, search activity, photos,
2 voice recordings and geolocation information; and

3 B. Information that:

4 (1) Is created by a student or the student's parent or provided to an employee or
5 agent of the school, school administrative unit, the department or an operator in
6 the course of the student's or parent's use of the operator's website, service or
7 application for kindergarten to grade 12 school purposes;

8 (2) Is created or provided by an employee or agent of the school or school
9 administrative unit, including information provided to an operator in the course
10 of the employee's or agent's use of the operator's website, service or application
11 for kindergarten to grade 12 school purposes; or

12 (3) Is gathered by an operator through the operation of an operator's website,
13 service or application for kindergarten to grade 12 school purposes.

14 7. Student personally identifiable information. "Student personally identifiable
15 information" means student data that, alone or in combination, is linked to a specific
16 student and would allow a reasonable person who does not have knowledge of the
17 relevant circumstances to identify the student.

18 8. Targeted advertising. "Targeted advertising" means advertisements presented to
19 a student when the advertisement is selected based on information obtained or inferred
20 from that student's online behavior, usage of applications or student data. "Targeted
21 advertising" includes advertising to a student at an online location based upon a single
22 search query without collection and retention of a student's online activities over time.
23 "Targeted advertising" includes contextual targeted advertising that is based upon factors,
24 including, but not limited to, the central theme of an Internet website, the student's recent
25 browsing history, the student's language and the student's location. "Targeted advertising"
26 does not include advertising to a student at an online location based upon that student's
27 current visit to that location.

28 §953. Restrictions on operator's use of student data

29 1. Prohibitions. An operator may not knowingly engage in any of the following
30 activities with respect to the operator's website, service or application without explicit
31 written or electronic consent from a student's parent or an eligible student:

32 A. Use student data to engage in targeted advertising on the operator's website,
33 service or application or targeted advertising on any other website, service or
34 application when the targeting of the advertising is based upon any student data and
35 state-assigned student identifiers or other persistent unique identifiers that the
36 operator has acquired because of the use of the operator's website, service or
37 application;

38 B. Use student data, including state-assigned student identifiers or other persistent
39 unique identifiers, created or gathered by the operator to amass a profile of a student
40 except for kindergarten to grade 12 school purposes. For purposes of this paragraph,
41 "amass a profile" does not include collection and retention of account information
42 that remains under the control of a student, parent or school administrative unit;

1 C. Sell student data. This prohibition does not apply to the purchase, merger or other
2 type of acquisition of an operator by another entity as long as the operator or
3 successor entity continues to be subject to the provisions of this section with respect
4 to previously acquired student data subject to this chapter.

5 D. Except as provided in subsection 3, disclose student personally identifiable
6 information, unless the disclosure is made:

7 (1) To advance the kindergarten to grade 12 school purposes of the website,
8 service or application, as long as the recipient of the student data disclosed:

9 (a) May not further disclose the student data except to allow or improve
10 operability and functionality of the website, service or application within that
11 student's classroom or school; and

12 (b) Is legally required to comply with the requirements of this chapter;

13 (2) To ensure legal or regulatory compliance or protect against liability;

14 (3) To respond to or participate in judicial process;

15 (4) To protect the security or integrity of the operator's website, service or
16 application;

17 (5) To protect the safety of users or others; or

18 (6) To a service provider, as long as the operator contractually:

19 (a) Prohibits the service provider from using any student data for any
20 purpose other than providing the contracted service to, or on behalf of, the
21 operator;

22 (b) Requires the service provider to impose the restrictions of this subsection
23 on its own service providers; and

24 (c) Requires the service provider to implement and maintain reasonable
25 security procedures and practices as provided in subsection 2.

26 **2. Security procedures and practices. An operator shall:**

27 A. Implement and maintain reasonable security procedures and practices appropriate
28 to the nature of the student data to protect that data from unauthorized access,
29 destruction, use, modification and disclosure; and

30 B. Delete student data within 45 days of a school's or school administrative unit's
31 request.

32 **3. Permitted disclosures. The following provisions apply to disclosure of student**
33 **data by an operator.**

34 A. Notwithstanding subsection 1, paragraph D, and in accordance with subsection 1,
35 paragraphs A, B and C, an operator may disclose student data under the following
36 circumstances:

1 (1) If another provision of federal or state law requires the operator to disclose
2 the student data and the operator complies with applicable requirements of
3 federal and state law in protecting and disclosing that information;

4 (2) For legitimate research purposes:

5 (a) As required by state or federal law and subject to the restrictions under
6 applicable state and federal law; or

7 (b) As allowed by state or federal law and under the direction of a school,
8 school administrative unit or the department; or

9 (3) To a state agency, school administrative unit or school for kindergarten to
10 grade 12 purposes, as permitted by state or federal law.

11 B. Nothing in this section prohibits an operator from using student data, including
12 student personally identifiable information, as follows:

13 (1) For maintaining, delivering, developing, supporting, evaluating, improving or
14 diagnosing the operator's website, service or application;

15 (2) Within other websites, services or applications owned by the operator and
16 intended for school or student use, to evaluate and improve educational products
17 or services intended for school or student use;

18 (3) For adaptive learning or customized student learning purposes;

19 (4) For recommendation engines to recommend additional content or services for
20 educational, other learning or job opportunities to students within the operator's
21 website, service or application without the response being determined in whole or
22 in part by payment or other consideration from a 3rd party; or

23 (5) To ensure legal or regulatory compliance or to retain student data for these
24 purposes.

25 C. Nothing in this section prohibits an operator from using or sharing aggregate
26 student data or data from which personally identifying information has been removed
27 as follows:

28 (1) For the development and improvement of the operator's website, service or
29 application or other educational websites, services or applications; or

30 (2) To demonstrate or market the effectiveness of the operator's products or
31 services.

32 **4. Construction.** The following provisions govern the application and construction
33 of this chapter.

34 A. This chapter may not be construed to limit the authority of a law enforcement
35 agency to obtain any content or student data from an operator as authorized by law or
36 pursuant to an order of a court of competent jurisdiction.

37 B. This chapter does not apply to general audience Internet websites, general
38 audience online services, general audience online applications or general audience

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

4 C. This chapter may not be construed to restrict Internet service providers from
5 providing Internet connectivity to schools or students and their families.

6 D. This chapter may not be construed to prohibit an operator from marketing
7 educational products directly to parents so long as the marketing does not result from
8 the use of student data obtained without parental consent by the operator through the
9 provision of services covered under this section.

10 E. This chapter may not be construed to impose a duty upon a provider of an
11 electronic store, gateway, marketplace or other means of purchasing or downloading
12 software or applications to review or enforce compliance of this section on those
13 applications or software.

14 F. This chapter may not be construed to impose a duty upon a provider of an
15 interactive computer service, as defined in 47 United States Code, Section 230, to
16 review or enforce compliance with this section by 3rd-party content providers.

17 G. This chapter may not be construed to impede the ability of a student or a student's
18 parent to download, transfer or otherwise save or maintain student data or documents
19 belonging to the student.

20 H. Nothing in this chapter prevents this State or a school administrative unit or
21 employee of this State or a school administrative unit from recommending, directly or
22 via a product or service, any educational materials, online content, services or other
23 products to any student or the student's family if this State or a school administrative
24 unit determines that such products will benefit the student and the State or school
25 administrative unit does not receive compensation for developing, enabling or
26 communicating such recommendations.

27 I. Nothing in this chapter authorizes the dissemination of information in violation of
28 section 6001.

29 **Sec. 2. Transition.** Pursuant to the Maine Revised Statutes, Title 20-A, chapter
30 13, an operator who enters into a signed, written contract with a school, teacher or local
31 educational agency prior to the effective date of this Act must meet the requirements of
32 this Act by the beginning of the 2016-17 school year.'

33 **SUMMARY**

34 This amendment replaces the bill. This amendment enacts the Student Information
35 Privacy Act, which prohibits the operator of an Internet website, online service or mobile
36 application designed, marketed and used for kindergarten to grade 12 purposes from
37 presenting targeted advertising to students, amassing a profile of a student except in
38 furtherance of school purposes, selling student data or disclosing student personally
39 identifiable data without consent. This amendment permits an operator to disclose data in
40 certain circumstances and under certain limitations, including to ensure legal and
41 regulatory compliance, to participate in judicial process, for legitimate research purposes
42 and for school purposes to a school, school administrative unit or state agency. This

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COMMITTEE AMENDMENT "A" to S.P. 183, L.D. 454

1 amendment requires an operator to maintain reasonable security procedures and practices
2 to protect student data and requires an operator to delete data upon request of a school or
3 school administrative unit. The amendment requires compliance with the Student
4 Information Privacy Act by the 2016-2017 school year when an operator has signed a
5 contract with the Department of Education, a school administrative unit or a school prior
6 to enactment.