

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 692

Introduced by Morfeld, 46.

Read first time January 06, 2016

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. This act shall be known and may be cited as the Student
2 Online Personal Protection Act.

3 Sec. 2. For purposes of the Student Online Personal Protection Act,
4 unless the context otherwise requires:

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

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

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

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

29 (2) Interactive computer service means that term as defined in 47
30 U.S.C. 230, as such section existed on January 1, 2016;

31 (3) Elementary, middle school, or high school purposes means

1 purposes that are directed by or that customarily take place at the
2 direction of an elementary, middle school, or high school, teacher, or
3 school district or aid in the administration of school activities,
4 including, but not limited to, instruction in the classroom or at home,
5 administrative activities, and collaboration between students, school
6 personnel, or parents, or are otherwise for the use and benefit of the
7 school;

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

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

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

24 (a) Engage in targeted advertising on the operator's site, service,
25 or application, or target advertising on any other site, service, or
26 application if the targeting of the advertising is based on any
27 information, including covered information and persistent unique
28 identifiers that the operator has acquired because of the use of that
29 operator's site, service, or application for elementary, middle school,
30 or high school purposes;

31 (b) Use information, including persistent unique identifiers,

1 created or gathered by the operator's site, service, or application, to
2 amass a profile about a student except in furtherance of elementary,
3 middle school, or high school purposes. Amassing a profile does not
4 include the collection and retention of account information that remains
5 under the control of the student, the student's parent or guardian, or
6 the elementary, middle school, or high school;

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

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

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

20 (ii) In furtherance of the elementary, middle school, or high school
21 purpose of the site, service, or application, if the recipient of the
22 covered information disclosed under this subdivision does not further
23 disclose the information unless done to allow or improve operability and
24 functionality of the operator's site, service, or application;

25 (iii) To ensure legal and regulatory compliance or protect against
26 liability;

27 (iv) To respond to or participate in the judicial process;

28 (v) To protect the safety or integrity of users of the site or
29 others or the security of the site, service, or application;

30 (vi) For a school, educational, or employment purpose requested by
31 the student or the student's parent or guardian, if the information is

1 not used or further disclosed for any other purpose;

2 (vii) To a third party, if the operator contractually prohibits the
3 third party from using any covered information for any purpose other than
4 providing the contracted service to or on behalf of the operator,
5 prohibits the third party from disclosing any covered information
6 provided by the operator with subsequent third parties, and requires the
7 third party to implement and maintain reasonable security procedures and
8 practices; or

9 (viii) For the operator to use the information for maintaining,
10 developing, supporting, improving, or diagnosing the operator's site,
11 service, or application.

12 (2) An operator shall:

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

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

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

25 (a) If other provisions of federal or state law require the operator
26 to disclose the information and the operator complies with the
27 requirements of federal and state law in protecting and disclosing that
28 information;

29 (b) For legitimate research purposes as required by state or federal
30 law and subject to the restrictions under applicable state and federal
31 law or as allowed by state or federal law and under the direction of an

1 elementary, middle school, or high school, school district, or the State
2 Department of Education, if covered information is not used for
3 advertising or to amass a profile on the student for purposes other than
4 elementary, middle school, or high school purposes; or

5 (c) To a state or local educational agency, including elementary,
6 middle school, or high schools and school districts, for elementary,
7 middle school, or high school purposes, as permitted by state or federal
8 law.

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

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

15 (b) Using covered information that is not associated with an
16 identified student to demonstrate the effectiveness of the operator's
17 products or services, including in its marketing;

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

21 (d) Using recommendation engines to recommend to a student either of
22 the following:

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

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

31 (e) Responding to a student's request for information or for

1 feedback without the information or response being determined in whole or
2 in part by payment or other consideration from a third party.

3 (5) This section does not:

4 (a) Limit the authority of a law enforcement agency to obtain any
5 content or information from an operator as authorized by law or under a
6 court order;

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

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

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

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

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

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

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