

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1635 Session of
2015

INTRODUCED BY D. MILLER, NESBIT, KINSEY, MURT, ENGLISH,
D. COSTA, ROZZI, PASHINSKI, THOMAS, SCHLOSSBERG, CUTLER,
BIZZARRO, GROVE, SAYLOR, TALLMAN, NEILSON, DUSH, COHEN,
LAWRENCE, HENNESSEY, DRISCOLL, KAUFER AND HARHAI,
OCTOBER 19, 2015

REFERRED TO COMMITTEE ON EDUCATION, OCTOBER 19, 2015

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in preliminary provisions, providing
6 for protection of student online personal information.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding a
11 section to read:

12 Section 124. Protection of Student Online Personal
13 Information.--(a) No operator may knowingly engage in any of
14 the following activities with respect to its site, service or
15 application:

16 (1) Conduct targeted advertising on the operator's site,
17 service or application or other site, service or application
18 when the targeting of the advertising is based upon any

1 information, including covered information and persistent unique
2 identifiers, that the operator has acquired because of the use
3 of that operator's site, service or application.

4 (2) Use information, including persistent unique
5 identifiers, created or gathered by the operator's site, service
6 or application to amass a profile about a student attending a K-
7 12 school except in furtherance of K-12 school purposes.

8 (3) Sell a student's information, including covered
9 information. This paragraph does not apply to the purchase,
10 merger or other type of acquisition of an operator by another
11 entity, provided that the operator or successor entity continues
12 to be subject to the provisions of this section with respect to
13 previously acquired student information.

14 (4) Disclose covered information, unless the disclosure is
15 made:

16 (i) In furtherance of the K-12 school purpose of the site,
17 service or application, provided the recipient of the covered
18 information disclosed pursuant to this paragraph:

19 (A) Does not further disclose the information unless done to
20 allow or improve functionality within the student's classroom or
21 school;

22 (B) Is legally required to comply with subsection (b):

23 (I) to ensure legal and regulatory compliance;

24 (II) to respond to or participate in a judicial process;

25 (III) to protect the safety of users or others or security
26 of the site; and

27 (ii) is contractually:

28 (A) Prohibited from using covered information for a purpose
29 other than providing the contracted service to, or on behalf of,
30 the operator.

1 (B) Prohibited from disclosing covered information provided
2 by the operator with subsequent third parties.

3 (C) Required to implement and maintain reasonable security
4 procedures and practices as provided in subsection (b).

5 (b) An operator shall:

6 (1) Implement and maintain reasonable security procedures
7 and practices appropriate to the nature of the covered
8 information and protect covered information from unauthorized
9 access, destruction, use, modification or disclosure.

10 (2) Delete a student's covered information, if the school or
11 district requests deletion of data under the control of the K-12
12 school or school district.

13 (c) Notwithstanding subsection (a) (4), an operator may
14 disclose covered information of a student, as long as subsection
15 (a) (1), (2) and (3) are not violated, under the following
16 circumstances:

17 (1) If a provision of Federal or State law requires the
18 operator to disclose the information and the operator complies
19 with the requirements of Federal and State law in protecting and
20 disclosing the information.

21 (2) For legitimate research purposes:

22 (i) as required by and subject to the restrictions under
23 applicable Federal and State law; or

24 (ii) as allowed by Federal and State law and under the
25 direction of a K-12 school, school district or the Department of
26 Education, if no covered information is used for any purpose in
27 furtherance of advertising or to amass a profile on the student
28 for a purpose other than K-12 school purposes.

29 (3) To a State or local educational agency, including K-12
30 schools and school districts, for K-12 school purposes, as

1 permitted by Federal or State law.

2 (d) A school district shall develop and implement a policy
3 to determine whether an operator's application used in the
4 school district is in compliance with this section. The policy
5 shall include:

6 (1) Notice to parents and legal guardians of students about:

7 (i) The requirements of this section.

8 (ii) The school district's determination of each application
9 used in the school district.

10 (iii) The right of students not to use an application that
11 the school district determines is not in compliance with this
12 section or that the school district is unable to determine is in
13 compliance with this section.

14 (2) A procedure by which a parent or legal guardian of a
15 student may, on behalf of the student, exercise the right not to
16 use an application that the school district determines is not in
17 compliance with this section or that the school district is
18 unable to determine is in compliance with this section.

19 (e) Nothing in this section shall be construed to:

20 (1) Prohibit an operator from using information that does
21 not identify covered information as follows:

22 (i) Within the operator's site, service or application or
23 other site, service or applications owned by the operator to
24 improve educational products.

25 (ii) To demonstrate the effectiveness of the operator's
26 products or services, including in the operator's marketing.

27 (2) Prohibit an operator from sharing aggregated information
28 that does not identify covered information for the development
29 and improvement of educational sites, services or applications.

30 (3) Limit the authority of a law enforcement agency to

1 obtain any content or information from an operator as authorized
2 by law or pursuant to an order of a court of competent
3 jurisdiction.

4 (4) Limit the ability of an operator to use student data,
5 including covered information, for adaptive learning or
6 customized student learning purposes.

7 (5) Limit an Internet service provider from providing
8 Internet connectivity to schools or students and their families.

9 (6) Prohibit an operator of an Internet website, online
10 service, online application or mobile application from marketing
11 educational products directly to parents, so long as the
12 marketing does not result from the use of covered information
13 obtained by the operator through the provision of services
14 covered under this section.

15 (7) Impose a duty upon a provider of an electronic store,
16 gateway, marketplace or other means of purchasing or downloading
17 software or applications to review or enforce compliance of this
18 section on those applications or software.

19 (8) Impose a duty upon a provider of an interactive computer
20 service, as defined in section 230 of the Communications Act of
21 1934 (48 Stat. 1064, 47 U.S.C. § 230), to review or enforce
22 compliance with this section by third-party content providers.

23 (9) Impede the ability of students to download, export or
24 otherwise save or maintain their own student-created data or
25 documents.

26 (10) Prohibit an operator's use of information for
27 maintaining, developing, supporting, improving or diagnosing the
28 operator's site, service or application.

29 (f) This section does not apply to general audience Internet
30 websites, general audience online services, general audience

1 online applications or general audience mobile applications,
2 even if log-in credentials created for an operator's site,
3 service or application may be used to access the general
4 audience sites, services or applications.

5 (g) As used in this section, the following words and phrases
6 shall have the meanings given to them in this subsection unless
7 the context clearly indicates otherwise:

8 "Covered information." Personally identifiable information
9 or materials, in any media or format that meets any of the
10 following:

11 (1) Is created or provided by a student, or the student's
12 parent or legal guardian, to an operator in the course of the
13 student's, parent's or legal guardian's use of the operator's
14 site, service or application for K-12 school purposes.

15 (2) Is created or provided by an employe or agent of a K-12
16 school to an operator for K-12 school purposes.

17 (3) Is gathered by an operator through the operation of a
18 site, service or application described in subsection (a) and is
19 descriptive of a student or otherwise identifies a student,
20 including, but not limited to, information in the student's
21 educational record or e-mail, first and last name, home address,
22 telephone number, e-mail address or other information that
23 allows physical or online contact, discipline records, test
24 results, special education data, juvenile dependency records,
25 grades, evaluations, criminal records, medical records, health
26 records, Social Security number, biometric information,
27 disabilities, socioeconomic information, food purchases,
28 political affiliations, religious information, text messages,
29 documents, student identifiers, search activity, photos, voice
30 recordings or geolocation information.

1 "K-12 school." A school that provides instruction in any
2 grade between kindergarten and grade twelve.

3 "K-12 school purposes." Purposes that customarily take place
4 at the direction of a K-12 school, teacher or school district or
5 aid in the administration of school activities, including, but
6 not limited to, instruction in the classroom or at home or
7 during administrative activities and collaboration between
8 students, school personnel or parents, or are for the use and
9 benefit of the school.

10 "Online service." The term includes, but is not limited to,
11 cloud computing services that comply with this section if the
12 person that performs is an operator.

13 "Operator." A person who operates, owns or controls an
14 Internet website, online service, online application or mobile
15 application with actual knowledge that the site, service or
16 application is used primarily for K-12 school purposes and was
17 designed and marketed for K-12 school purposes.

18 Section 2. This act shall take effect in 60 days.