

Senate Substitute for HOUSE BILL No. 2008

By Committee on Education

3-15

1 AN ACT concerning schools; creating the student online personal
2 protection act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 4, and amendments thereto, shall be
6 known and may be cited as the student online personal protection act.

7 Sec. 2. As used in sections 1 through 4, and amendments thereto:

8 (a) "Educational purposes" means purposes that are directed by an
9 employee or agent of a school district, that customarily take place at an
10 attendance center operated by a school district or that aid in the
11 administration of school activities, including, but not limited to, instruction
12 in the classroom or at home, administrative activities and collaboration
13 between students, school personnel or parents, or which are otherwise for
14 the use and benefit of the school district.

15 (b) "Interactive computer service" means any service, system or
16 software provider that provides or enables multiple users access to a
17 computer server, including a service or system that provides access to the
18 internet and systems or services offered by libraries or educational
19 institutions.

20 (c) "Educational online product" means an internet website, online
21 service, online application or mobile application that is used primarily, and
22 was designed and marketed for, educational purposes.

23 (d) "Operator" means, to the extent it is operating in this capacity, the
24 operator of an educational online product with actual knowledge that the
25 educational online product is used primarily for educational purposes and
26 was designed and marketed for educational purposes. For the purposes of
27 this act, the term "operator" shall not be construed to include any school
28 district or school district employee acting on behalf of a school district
29 employer.

30 (e) "Personally identifiable information" means information that
31 personally identifies an individual student or that is linked to information
32 that personally identifies an individual student, including, but not limited
33 to: (1) Information in the student's educational record or electronic mail;
34 (2) first and last name; (3) home address; (4) telephone number; (5)
35 electronic mail address; (6) any other information that allows physical or
36 online contact with the student; (7) discipline records; (8) test results; (9)

1 data that is a part of or related to any individualized education program for
2 such student; (10) juvenile dependency records; (11) grades; (12)
3 evaluations; (13) criminal records; (14) medical records; (15) health
4 records; (16) social security number; (17) biometric information; (18)
5 disabilities; (19) socioeconomic information; (20) food purchases; (21)
6 political affiliations; (22) religious information; (23) text messages; (24)
7 documents; (25) student identifiers; (26) search activity; (27) photos; (28)
8 voice recordings; or (29) geolocation information.

9 (f) "School district" means any unified school district organized and
10 operating under the laws of this state.

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

15 (h) "Student information" means personally identifiable information
16 or material in any media or format that is not otherwise available to the
17 public and was:

18 (1) Created by an operator in the course of the use of the operator's
19 educational online product for educational purposes;

20 (2) provided to an operator by a student, or the student's parent or
21 legal guardian, in the course of the use of the operator's educational online
22 product for educational purposes;

23 (3) created by an operator as a result of the activities of an employee
24 or agent of a school district;

25 (4) provided to an operator by an employee or agent of a school
26 district for educational purposes; or

27 (5) gathered by an operator through the operation of such operator's
28 educational online product for educational purposes.

29 (i) "Targeted advertising" means presenting an advertisement to a
30 student where the advertisement is selected based on information obtained
31 or inferred over time from that student's online behavior, usage of online
32 applications or student information. Targeted advertising does not include
33 advertising to a student at an online location based upon that student's
34 current visit to that location, or in response to that student's request for
35 information or feedback, without the retention of that student's online
36 activities or requests over time for the purpose of targeting subsequent ads.

37 Sec. 3. (a) An operator shall not knowingly:

38 (1) Engage in targeted advertising on the operator's educational
39 online product, or target advertising on any other educational online
40 product if the targeting of the advertising is based on any information,
41 including student information and persistent unique identifiers, that the
42 operator has acquired because of the use of such operator's educational
43 online product for educational purposes;

1 (2) use information, including student information and persistent
2 unique identifiers, created or gathered through the operation of such
3 operator's educational online product, to amass a profile about a student,
4 except in furtherance of educational purposes;

5 (3) sell or rent student information to a third party, except when such
6 information is part of the assets being transferred during the purchase,
7 merger or other acquisition of an operator by another entity, provided, the
8 successor entity complies with the provisions of this subsection as though
9 it were an operator with respect to the acquired student information; or

10 (4) disclose student information unless the disclosure is made for the
11 following purposes:

12 (A) For legitimate research purposes subject to and as allowed by
13 federal and state law, and under the direction of a school district or the
14 state department of education, provided the student information is not used
15 for advertising or to amass a profile on the student for purposes other than
16 educational purposes, or for any other purposes other than educational
17 purposes;

18 (B) that information described in section 2(e)(2) and (e)(8), and
19 amendments thereto, upon request by a school district or state agency for
20 educational purposes;

21 (C) to law enforcement agencies or to a court of competent
22 jurisdiction to protect the safety or integrity of users of the operator's
23 educational online product or other individuals, or the security of such
24 educational online product;

25 (D) for educational or employment purposes upon request by the
26 student or the student's parent or legal guardian, provided the student
27 information is not used or further disclosed for any other purpose;

28 (E) to a service provider, provided the operator contractually: (i)
29 Prohibits the service provider from using any student information for any
30 purpose other than providing the contracted service to or on behalf of the
31 operator; (ii) prohibits the service provider from disclosing any student
32 information provided by the operator with subsequent third parties; and
33 (iii) requires the service provider to implement and maintain reasonable
34 security procedures and practices to ensure the confidentiality of the
35 student information; or

36 (F) in the course of transferring assets as a part of a business
37 purchase, merger or other acquisition as described in subsection (a)(3).

38 (b) An operator shall:

39 (1) Implement and maintain reasonable security procedures and
40 practices appropriate to the nature of the student information which are
41 designed to protect such information from unauthorized access,
42 destruction, use, modification or disclosure; and

43 (2) delete within a reasonable period of time student information

1 upon request by the school district, unless the student or the student's
2 parent or legal guardian requests that such information continue to be
3 maintained.

4 (c) Nothing in this section shall be construed to prohibit an operator
5 from:

6 (1) Using student information to maintain, develop, support, improve
7 or diagnose the operator's educational online product;

8 (2) using student information to improve educational products,
9 provided such information is not associated with an identified student
10 within the operator's educational online product or within other online
11 products owned by the operator;

12 (3) using student information to demonstrate the effectiveness of the
13 operator's educational online products, including in their marketing,
14 provided such information is not associated with an identified student
15 within the operator's educational online product or within other online
16 products owned by the operator;

17 (4) sharing student information for purposes of development and
18 improvement of educational online products, provided such information is
19 not associated with an identified student within the operator's educational
20 online product or within other online products owned by the operator;

21 (5) using recommendation engines to suggest to a student additional
22 content or services within the operator's educational online product related
23 to an educational, other learning or employment opportunity purpose,
24 provided the recommendation is not determined in whole or in part by
25 payment or other consideration from a third party; or

26 (6) responding to a student's request for information or feedback,
27 provided such response is not determined in whole or in part by payment
28 or other consideration from a third party.

29 (d) Nothing in this section shall be construed to:

30 (1) Limit the authority of a law enforcement agency to obtain any
31 content or information from an operator as authorized by law or pursuant
32 to a court order;

33 (2) limit the ability of an operator to use student information for
34 adaptive learning or customized student learning purposes;

35 (3) apply to general audience internet websites, general audience
36 online services, general audience online applications or general audience
37 mobile applications, even if login credentials created for an operator's
38 educational online product may be used to access those general audience
39 websites, online services or online applications;

40 (4) limit service providers from providing internet connectivity to
41 schools or to students and the students' parents or legal guardians;

42 (5) prohibit an operator from marketing educational products directly
43 to parents and legal guardians, provided such marketing does not result

1 from the use of student information obtained by the operator through the
2 operation of such operator's educational online products;

3 (6) impose a duty upon a provider of an electronic store, gateway,
4 marketplace or other means of purchasing or downloading software or
5 applications to review or enforce the compliance with this section on such
6 software or applications;

7 (7) impose a duty upon a provider of an interactive computer service
8 to review or enforce the compliance with this section by third-party
9 content providers; or

10 (8) prohibit students from downloading, exporting, transferring,
11 saving or maintaining such student's own student information or
12 documents.

13 (e) As used in this section, the term "amass a profile" shall not
14 include the collection and retention of account information that remains
15 under the control of the student, the student's parent or legal guardian or
16 the school district.

17 Sec. 4. (a) A student, or such student's parent or legal guardian, may
18 bring a cause of action against any operator who violates any provision of
19 section 3, and amendments thereto, with respect to such student's student
20 information. Such action may be brought in the district court of the county
21 in which such student resides.

22 (b) Upon a finding that an operator violated any provision of section
23 3, and amendments thereto, the court may award appropriate relief,
24 including:

25 (1) Money damages for all psychological, emotional and physical
26 harm suffered as a result of such violation; and

27 (2) reasonable attorney fees and costs.

28 Sec. 5. This act shall take effect and be in force from and after its
29 publication in the statute book.