



Sen. James F. Clayborne, Jr.

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1 AMENDMENT TO SENATE BILL 444

2 AMENDMENT NO. _____. Amend Senate Bill 444 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Student Online Personal Protection Act.

6 Section 3. Legislative intent. Schools today are
7 increasingly using a wide range of beneficial online services
8 and other technologies to help students learn, but concerns
9 have been raised about whether sufficient safeguards exist to
10 protect the privacy and security of data about students when it
11 is collected by educational technology companies. This Act is
12 intended to ensure that student data will be protected when it
13 is collected by educational technology companies and that the
14 data may be used for beneficial purposes such as providing
15 personalized learning and innovative educational technologies.

1 Section 5. Definitions. In this Act:

2 "Covered information" means personally identifiable
3 information or material or information that is linked to
4 personally identifiable information or material in any media or
5 format that is not publicly available and is any of the
6 following:

7 (1) Created by or provided to an operator by a student
8 or the student's parent or legal guardian in the course of
9 the student's, parent's, or legal guardian's use of the
10 operator's site, service, or application for K through 12
11 school purposes.

12 (2) Created by or provided to an operator by an
13 employee or agent of a school or school district for K
14 through 12 school purposes.

15 (3) Gathered by an operator through the operation of
16 its site, service, or application for K through 12 school
17 purposes and personally identifies a student, including,
18 but not limited to, information in the student's
19 educational record or electronic mail, first and last name,
20 home address, telephone number, electronic mail address,
21 or other information that allows physical or online
22 contact, discipline records, test results, special
23 education data, juvenile dependency records, grades,
24 evaluations, criminal records, medical records, health
25 records, a social security number, biometric information,
26 disabilities, socioeconomic information, food purchases,

1 political affiliations, religious information, text
2 messages, documents, student identifiers, search activity,
3 photos, voice recordings, or geolocation information.

4 "Interactive computer service" has the meaning ascribed to
5 that term in Section 230 of the federal Communications Decency
6 Act of 1996 (47 U.S.C. 230).

7 "K through 12 school purposes" means purposes that are
8 directed by or that customarily take place at the direction of
9 a school, teacher, or school district; aid in the
10 administration of school activities, including, but not
11 limited to, instruction in the classroom or at home,
12 administrative activities, and collaboration between students,
13 school personnel, or parents; or are otherwise for the use and
14 benefit of the school.

15 "Operator" means, to the extent that an entity is operating
16 in this capacity, the operator of an Internet website, online
17 service, online application, or mobile application with actual
18 knowledge that the site, service, or application is used
19 primarily for K through 12 school purposes and was designed and
20 marketed for K through 12 school purposes.

21 "School" means (1) any preschool, public kindergarten,
22 elementary or secondary educational institution, vocational
23 school, special educational facility, or any other elementary
24 or secondary educational agency or institution or (2) any
25 person, agency, or institution that maintains school student
26 records from more than one school. "School" includes a private

1 or nonpublic school.

2 "Targeted advertising" means presenting advertisements to
3 a student where the advertisement is selected based on
4 information obtained or inferred over time from that student's
5 online behavior, usage of applications, or covered
6 information. The term does not include advertising to a student
7 at an online location based upon that student's current visit
8 to that location or in response to that student's request for
9 information or feedback, without the retention of that
10 student's online activities or requests over time for the
11 purpose of targeting subsequent ads.

12 Section 10. Operator prohibitions. An operator shall not
13 knowingly do any of the following:

14 (1) Engage in targeted advertising on the operator's
15 site, service, or application or target advertising on any
16 other site, service, or application if the targeting of the
17 advertising is based on any information, including covered
18 information and persistent unique identifiers, that the
19 operator has acquired because of the use of that operator's
20 site, service, or application for K through 12 school
21 purposes.

22 (2) Use information, including persistent unique
23 identifiers, created or gathered by the operator's site,
24 service, or application to amass a profile about a student,
25 except in furtherance of K through 12 school purposes.

1 "Amass a profile" does not include the collection and
2 retention of account information that remains under the
3 control of the student, the student's parent or legal
4 guardian, or the school.

5 (3) Sell or rent a student's information, including
6 covered information. This subdivision (3) does not apply to
7 the purchase, merger, or other type of acquisition of an
8 operator by another entity if the operator or successor
9 entity complies with this Act regarding previously
10 acquired student information.

11 (4) Except as otherwise provided in Section 20 of this
12 Act, disclose covered information, unless the disclosure
13 is made for the following purposes:

14 (A) In furtherance of the K through 12 school
15 purposes of the site, service, or application if the
16 recipient of the covered information disclosed under
17 this clause (A) does not further disclose the
18 information, unless done to allow or improve
19 operability and functionality of the operator's site,
20 service, or application.

21 (B) To ensure legal and regulatory compliance or
22 take precautions against liability.

23 (C) To respond to the judicial process.

24 (D) To protect the safety or integrity of users of
25 the site or others or the security of the site,
26 service, or application.

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

6 (F) To a third party if the operator contractually
7 prohibits the third party from using any covered
8 information for any purpose other than providing the
9 contracted service to or on behalf of the operator,
10 prohibits the third party from disclosing any covered
11 information provided by the operator with subsequent
12 third parties, and requires the third party to
13 implement and maintain reasonable security procedures
14 and practices.

15 Nothing in this Section prohibits the operator's use of
16 information for maintaining, developing, supporting,
17 improving, or diagnosing the operator's site, service, or
18 application.

19 Section 15. Operator duties. An operator shall do the
20 following:

21 (1) Implement and maintain reasonable security
22 procedures and practices appropriate to the nature of the
23 covered information and designed to protect that covered
24 information from unauthorized access, destruction, use,
25 modification, or disclosure.

1 (2) Delete, within a reasonable time period, a
2 student's covered information if the school or school
3 district requests deletion of covered information under
4 the control of the school or school district, unless a
5 student or his or her parent or legal guardian consents to
6 the maintenance of the covered information.

7 (3) Publicly disclose material information about its
8 collection, use, and disclosure of covered information,
9 including, but not limited to, publishing a terms of
10 service agreement, privacy policy, or similar document.

11 Section 20. Permissive use or disclosure.

12 (a) An operator may use or disclose covered information of
13 a student under the following circumstances:

14 (1) If other provisions of federal or State law require
15 the operator to disclose the information, and the operator
16 complies with the requirements of federal and State law in
17 protecting and disclosing that information.

18 (2) For legitimate research purposes as required by
19 State or federal law and subject to the restrictions under
20 applicable State and federal law or as allowed by State or
21 federal law and under the direction of a school, school
22 district, or the State Board of Education if the covered
23 information is not used for advertising or to amass a
24 profile on the student for purposes other than for K
25 through 12 school purposes.

1 (3) To a State or local educational agency, including
2 schools and school districts, for K through 12 school
3 purposes, as permitted by State or federal law.

4 (4) For the purpose of identifying or displaying
5 information to the student about or facilitating the
6 connection of the student with a not-for-profit
7 institution of higher education or a scholarship
8 opportunity. Information under this paragraph (4) may be
9 disclosed only if the operator has first obtained the
10 express written consent of the student's parent or legal
11 guardian or, if the student is 18 years old or older or is
12 an emancipated minor, the student. For the purposes of this
13 paragraph (4), express written consent may be obtained as a
14 response to the annual notice required under 34 CFR 99.7
15 and is not required to be in addition to consent given in
16 response to that annual notice.

17 If the operator is a national assessment provider and the
18 student's covered information is not being collected or used
19 for K through 12 school purposes but is collected and used for
20 a college entrance exam, the national assessment provider may,
21 in response to a request directly from the student who owns the
22 covered information and upon securing the express written
23 consent of the student or the student's parent or legal
24 guardian given in response to clear and conspicuous notice, use
25 or disclose covered information solely to provide the student
26 with access to employment opportunities, educational

1 scholarships, financial aid, or postsecondary educational
2 opportunities.

3 (b) A school may use or disclose covered information of a
4 student for the purpose of identifying or displaying
5 information to the student about or facilitating the connection
6 of the student with a not-for-profit institution of higher
7 education or a scholarship opportunity. Information under this
8 subsection (b) may be disclosed only if the operator has first
9 obtained the express written consent of the student's parent or
10 legal guardian or, if the student is 18 years old or older or
11 is an emancipated minor, the student. For the purposes of this
12 subsection (b), express written consent may be obtained as a
13 response to the annual notice required under 34 CFR 99.7 and is
14 not required to be in addition to consent given in response to
15 that annual notice.

16 Section 25. Operator actions that are not prohibited. This
17 Act does not prohibit an operator from doing any of the
18 following:

19 (1) Using covered information to improve educational
20 products if that information is not associated with an
21 identified student within the operator's site, service, or
22 application or other sites, services, or applications
23 owned by the operator.

24 (2) Using covered information that is not associated
25 with an identified student to demonstrate the

1 effectiveness of the operator's products or services,
2 including in their marketing.

3 (3) Sharing covered information that is not associated
4 with an identified student for the development and
5 improvement of educational sites, services, or
6 applications.

7 (4) Using recommendation engines to recommend to a
8 student either of the following:

9 (A) Additional content relating to an educational,
10 other learning, or employment opportunity purpose
11 within an online site, service, or application if the
12 recommendation is not determined in whole or in part by
13 payment or other consideration from a third party.

14 (B) Additional services relating to an
15 educational, other learning, or employment opportunity
16 purpose within an online site, service, or application
17 if the recommendation is not determined in whole or in
18 part by payment or other consideration from a third
19 party.

20 (5) Responding to a student's request for information
21 or for feedback without the information or response being
22 determined in whole or in part by payment or other
23 consideration from a third party.

24 Section 30. Applicability. This Act does not do any of the
25 following:

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

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

7 (3) Apply to general audience Internet websites,
8 general audience online services, general audience online
9 applications, or general audience mobile applications,
10 even if login credentials created for an operator's site,
11 service, or application may be used to access those general
12 audience sites, services, or applications.

13 (4) Limit service providers from providing Internet
14 connectivity to schools or students and their families.

15 (5) Prohibit an operator of an Internet website, online
16 service, online application, or mobile application from
17 marketing educational products directly to parents if the
18 marketing did not result from the use of covered
19 information obtained by the operator through the provision
20 of services covered under this Act.

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

26 (7) Impose a duty upon a provider of an interactive

1 computer service to review or enforce compliance with this
2 Act by third-party content providers.

3 (8) Prohibit students from downloading, exporting,
4 transferring, saving, or maintaining their own student
5 data or documents.

6 (9) Supersede the federal Family Educational Rights
7 and Privacy Act of 1974 or rules adopted pursuant to that
8 Act or the Illinois School Student Records Act.

9 Section 35. Enforcement. Violations of this Act shall
10 constitute unlawful practices for which the Attorney General
11 may take appropriate action under the Consumer Fraud and
12 Deceptive Business Practices Act.

13 Section 40. Severability. The provisions of this Act are
14 severable under Section 1.31 of the Statute on Statutes.

15 Section 50. The Consumer Fraud and Deceptive Business
16 Practices Act is amended by changing Section 2Z as follows:

17 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

18 Sec. 2Z. Violations of other Acts. Any person who knowingly
19 violates the Automotive Repair Act, the Automotive Collision
20 Repair Act, the Home Repair and Remodeling Act, the Dance
21 Studio Act, the Physical Fitness Services Act, the Hearing
22 Instrument Consumer Protection Act, the Illinois Union Label

1 Act, the Job Referral and Job Listing Services Consumer
2 Protection Act, the Travel Promotion Consumer Protection Act,
3 the Credit Services Organizations Act, the Automatic Telephone
4 Dialers Act, the Pay-Per-Call Services Consumer Protection
5 Act, the Telephone Solicitations Act, the Illinois Funeral or
6 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
7 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
8 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
9 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
10 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
11 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
12 Internet Caller Identification Act, paragraph (6) of
13 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
14 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
15 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
16 Residential Real Property Disclosure Act, the Automatic
17 Contract Renewal Act, the Reverse Mortgage Act, Section 25 of
18 the Youth Mental Health Protection Act, ~~or~~ the Personal
19 Information Protection Act, or the Student Online Personal
20 Protection Act commits an unlawful practice within the meaning
21 of this Act.

22 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642,
23 eff. 7-28-16.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."