

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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.

16 Section 5. Definitions. In this Act:

17 "Covered information" means personally identifiable
18 information or material or information that is linked to
19 personally identifiable information or material in any media or
20 format that is not publicly available and is any of the
21 following:

22 (1) Created by or provided to an operator by a student

1 or the student's parent or legal guardian in the course of
2 the student's, parent's, or legal guardian's use of the
3 operator's site, service, or application for K through 12
4 school purposes.

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

8 (3) Gathered by an operator through the operation of
9 its site, service, or application for K through 12 school
10 purposes and personally identifies a student, including,
11 but not limited to, information in the student's
12 educational record or electronic mail, first and last name,
13 home address, telephone number, electronic mail address,
14 or other information that allows physical or online
15 contact, discipline records, test results, special
16 education data, juvenile dependency records, grades,
17 evaluations, criminal records, medical records, health
18 records, a social security number, biometric information,
19 disabilities, socioeconomic information, food purchases,
20 political affiliations, religious information, text
21 messages, documents, student identifiers, search activity,
22 photos, voice recordings, or geolocation information.

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

26 "K through 12 school purposes" means purposes that are

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

8 "Operator" means, to the extent that an entity is operating
9 in this capacity, the operator of an Internet website, online
10 service, online application, or mobile application with actual
11 knowledge that the site, service, or application is used
12 primarily for K through 12 school purposes and was designed and
13 marketed for K through 12 school purposes.

14 "School" means (1) any preschool, public kindergarten,
15 elementary or secondary educational institution, vocational
16 school, special educational facility, or any other elementary
17 or secondary educational agency or institution or (2) any
18 person, agency, or institution that maintains school student
19 records from more than one school. "School" includes a private
20 or nonpublic school.

21 "Targeted advertising" means presenting advertisements to
22 a student where the advertisement is selected based on
23 information obtained or inferred over time from that student's
24 online behavior, usage of applications, or covered
25 information. The term does not include advertising to a student
26 at an online location based upon that student's current visit

1 to that location or in response to that student's request for
2 information or feedback, without the retention of that
3 student's online activities or requests over time for the
4 purpose of targeting subsequent ads.

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

7 (1) Engage in targeted advertising on the operator's
8 site, service, or application or target advertising on any
9 other site, service, or application if the targeting of the
10 advertising is based on any information, including covered
11 information and persistent unique identifiers, that the
12 operator has acquired because of the use of that operator's
13 site, service, or application for K through 12 school
14 purposes.

15 (2) Use information, including persistent unique
16 identifiers, created or gathered by the operator's site,
17 service, or application to amass a profile about a student,
18 except in furtherance of K through 12 school purposes.
19 "Amass a profile" does not include the collection and
20 retention of account information that remains under the
21 control of the student, the student's parent or legal
22 guardian, or the school.

23 (3) Sell or rent a student's information, including
24 covered information. This subdivision (3) does not apply to
25 the purchase, merger, or other type of acquisition of an

1 operator by another entity if the operator or successor
2 entity complies with this Act regarding previously
3 acquired student information.

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

7 (A) In furtherance of the K through 12 school
8 purposes of the site, service, or application if the
9 recipient of the covered information disclosed under
10 this clause (A) does not further disclose the
11 information, unless done to allow or improve
12 operability and functionality of the operator's site,
13 service, or application.

14 (B) To ensure legal and regulatory compliance or
15 take precautions against liability.

16 (C) To respond to the judicial process.

17 (D) To protect the safety or integrity of users of
18 the site or others or the security of the site,
19 service, or application.

20 (E) For a school, educational, or employment
21 purpose requested by the student or the student's
22 parent or legal guardian, provided that the
23 information is not used or further disclosed for any
24 other purpose.

25 (F) To a third party if the operator contractually
26 prohibits the third party from using any covered

1 information for any purpose other than providing the
2 contracted service to or on behalf of the operator,
3 prohibits the third party from disclosing any covered
4 information provided by the operator with subsequent
5 third parties, and requires the third party to
6 implement and maintain reasonable security procedures
7 and practices.

8 Nothing in this Section prohibits the operator's use of
9 information for maintaining, developing, supporting,
10 improving, or diagnosing the operator's site, service, or
11 application.

12 Section 15. Operator duties. An operator shall do the
13 following:

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

19 (2) Delete, within a reasonable time period, a
20 student's covered information if the school or school
21 district requests deletion of covered information under
22 the control of the school or school district, unless a
23 student or his or her parent or legal guardian consents to
24 the maintenance of the covered information.

25 (3) Publicly disclose material information about its

1 collection, use, and disclosure of covered information,
2 including, but not limited to, publishing a terms of
3 service agreement, privacy policy, or similar document.

4 Section 20. Permissive use or disclosure. An operator may
5 use or disclose covered information of a student under the
6 following circumstances:

7 (1) If other provisions of federal or State law require
8 the operator to disclose the information, and the operator
9 complies with the requirements of federal and State law in
10 protecting and disclosing that information.

11 (2) For legitimate research purposes as required by
12 State or federal law and subject to the restrictions under
13 applicable State and federal law or as allowed by State or
14 federal law and under the direction of a school, school
15 district, or the State Board of Education if the covered
16 information is not used for advertising or to amass a
17 profile on the student for purposes other than for K
18 through 12 school purposes.

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

22 Section 25. Operator actions that are not prohibited. This
23 Act does not prohibit an operator from doing any of the
24 following:

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

6 (2) Using covered information that is not associated
7 with an identified student to demonstrate the
8 effectiveness of the operator's products or services,
9 including in their marketing.

10 (3) Sharing covered information that is not associated
11 with an identified student for the development and
12 improvement of educational sites, services, or
13 applications.

14 (4) Using recommendation engines to recommend to a
15 student either of the following:

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

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

1 (5) Responding to a student's request for information
2 or for feedback without the information or response being
3 determined in whole or in part by payment or other
4 consideration from a third party.

5 Section 30. Applicability. This Act does not do any of the
6 following:

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

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

13 (3) Apply to general audience Internet websites,
14 general audience online services, general audience online
15 applications, or general audience mobile applications,
16 even if login credentials created for an operator's site,
17 service, or application may be used to access those general
18 audience sites, services, or applications.

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

21 (5) Prohibit an operator of an Internet website, online
22 service, online application, or mobile application from
23 marketing educational products directly to parents if the
24 marketing did not result from the use of covered
25 information obtained by the operator through the provision

1 of services covered under this Act.

2 (6) Impose a duty upon a provider of an electronic
3 store, gateway, marketplace, or other means of purchasing
4 or downloading software or applications to review or
5 enforce compliance with this Act on those applications or
6 software.

7 (7) Impose a duty upon a provider of an interactive
8 computer service to review or enforce compliance with this
9 Act by third-party content providers.

10 (8) Prohibit students from downloading, exporting,
11 transferring, saving, or maintaining their own student
12 data or documents.

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

16 Section 35. Enforcement. Violations of this Act shall
17 constitute unlawful practices for which the Attorney General
18 may take appropriate action under the Consumer Fraud and
19 Deceptive Business Practices Act.

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

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

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

2 Sec. 2Z. Violations of other Acts. Any person who knowingly
3 violates the Automotive Repair Act, the Automotive Collision
4 Repair Act, the Home Repair and Remodeling Act, the Dance
5 Studio Act, the Physical Fitness Services Act, the Hearing
6 Instrument Consumer Protection Act, the Illinois Union Label
7 Act, the Job Referral and Job Listing Services Consumer
8 Protection Act, the Travel Promotion Consumer Protection Act,
9 the Credit Services Organizations Act, the Automatic Telephone
10 Dialers Act, the Pay-Per-Call Services Consumer Protection
11 Act, the Telephone Solicitations Act, the Illinois Funeral or
12 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
13 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
14 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
15 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
16 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
17 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
18 Internet Caller Identification Act, paragraph (6) of
19 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
20 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
21 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
22 Residential Real Property Disclosure Act, the Automatic
23 Contract Renewal Act, the Reverse Mortgage Act, Section 25 of
24 the Youth Mental Health Protection Act, ~~or~~ the Personal
25 Information Protection Act, or the Student Online Personal

1 Protection Act commits an unlawful practice within the meaning
2 of this Act.

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

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.