

HOUSE BILL No. 2533

By Committee on Education

1-26

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 3, 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 3, 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.

27 (e) "Personally identifiable information" means information that
28 personally identifies an individual student or that is linked to information
29 that personally identifies an individual student, including, but not limited
30 to: (1) Information in the student's educational record or electronic mail;
31 (2) first and last name; (3) home address; (4) telephone number; (5)
32 electronic mail address; (6) any other information that allows physical or
33 online contact with the student; (7) discipline records; (8) test results; (9)
34 data that is a part of or related to any individualized education program for
35 such student; (10) juvenile dependency records; (11) grades; (12)
36 evaluations; (13) criminal records; (14) medical records; (15) health

1 records; (16) social security number; (17) biometric information; (18)
2 disabilities; (19) socioeconomic information; (20) food purchases; (21)
3 political affiliations; (22) religious information; (23) text messages; (24)
4 documents; (25) student identifiers; (26) search activity; (27) photos; (28)
5 voice recordings; or (29) geolocation information.

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

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

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

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

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

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

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

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

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

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

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

41 (2) use information, including student information and persistent
42 unique identifiers, created or gathered through the operation of such
43 operator's educational online product, to amass a profile about a student,

1 except in furtherance of educational purposes;

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

7 (4) except as provided in subsection (c), disclose student information
8 unless the disclosure is made for the following purposes:

9 (A) In furtherance of the educational purpose of the educational
10 online product, provided the recipient of the student information does not
11 further disclose the student information to another individual or entity
12 unless such disclosure is solely to allow or improve the operation and
13 functionality of the operator's educational online product;

14 (B) to ensure compliance with all federal, state and local laws and
15 regulations, or to protect the operator against liability;

16 (C) in response to an order issued by a court of competent
17 jurisdiction;

18 (D) to protect the safety or integrity of users of the operator's
19 educational online product or other individuals, or the security of such
20 educational online product;

21 (E) for educational or employment purposes upon request by the
22 student or the student's parent or legal guardian, provided the student
23 information is not used or further disclosed for any other purpose;

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

32 (G) in the course of transferring assets as a part of a business
33 purchase, merger or other acquisition as described in subsection (a)(3).

34 (b) An operator shall:

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

39 (2) delete within a reasonable period of time student information
40 upon request by the school district, unless the student or the student's
41 parent or legal guardian requests that such information continue to be
42 maintained.

43 (c) An operator may use or disclose student information:

1 (1) For legitimate research purposes subject to and as allowed by
2 federal and state law, and under the direction of a school district or the
3 state department of education, provided the student information is not used
4 for advertising or to amass a profile on the student for purposes other than
5 educational purposes, or for any other purposes other than educational
6 purposes;

7 (2) upon request by a school district or state agency for educational
8 purposes; or

9 (3) if other provisions of federal or state law require the operator to
10 disclose the information, and the operator complies with federal and state
11 law requirements in protecting and disclosing such information.

12 (d) Nothing in this section shall be construed to prohibit an operator
13 from:

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

16 (2) using student information to improve educational products,
17 provided such information is not associated with an identified student
18 within the operator's educational online product or within other online
19 products owned by the operator;

20 (3) using student information to demonstrate the effectiveness of the
21 operator's educational online products, including in their marketing,
22 provided such information is not associated with an identified student
23 within the operator's educational online product or within other online
24 products owned by the operator;

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

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

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

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

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

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

43 (3) apply to general audience internet websites, general audience

1 online services, general audience online applications or general audience
2 mobile applications, even if login credentials created for an operator's
3 educational online product may be used to access those general audience
4 websites, online services or online applications;

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

7 (5) prohibit an operator from marketing educational products directly
8 to parents and legal guardians, provided such marketing does not result
9 from the use of student information obtained by the operator through the
10 operation of such operator's educational online products;

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

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

18 (8) prohibit students from downloading, exporting, transferring,
19 saving or maintaining such students' own student information or
20 documents.

21 (f) As used in this section, the term "amass a profile" shall not include
22 the collection and retention of account information that remains under the
23 control of the student, the student's parent or legal guardian or the school
24 district.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.