

1-1 By: VanDeaver, Fallon, Springer H.B. No. 2087
 1-2 (Senate Sponsor - Taylor of Galveston)
 1-3 (In the Senate - Received from the House May 12, 2017;
 1-4 May 12, 2017, read first time and referred to Committee on
 1-5 Education; May 19, 2017, reported favorably by the following vote:
 1-6 Yeas 10, Nays 0; May 19, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Taylor of Galveston	X			
1-9 Lucio	X			
1-10 Bettencourt	X			
1-11 Campbell	X			
1-12 Hall	X			
1-13 Huffines			X	
1-14 Hughes	X			
1-15 Seliger	X			
1-16 Taylor of Collin	X			
1-17 Uresti	X			
1-18 West	X			

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to restricting the use of covered information, including
 1-23 student personally identifiable information, by an operator of a
 1-24 website, online service, online application, or mobile application
 1-25 for a school purpose.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. The heading to Chapter 32, Education Code, is
 1-28 amended to read as follows:

1-29 CHAPTER 32. COMPUTERS, ~~[AND]~~ COMPUTER-RELATED EQUIPMENT, AND
 1-30 STUDENT INFORMATION PROTECTION

1-31 SECTION 2. Chapter 32, Education Code, is amended by adding
 1-32 Subchapter D to read as follows:

1-33 SUBCHAPTER D. STUDENT INFORMATION

1-34 Sec. 32.151. DEFINITIONS. In this subchapter:

1-35 (1) "Covered information" means personally
 1-36 identifiable information or information that is linked to
 1-37 personally identifiable information, in any media or format, that
 1-38 is not publicly available and is:

1-39 (A) created by or provided to an operator by a
 1-40 student or the student's parent in the course of the student's or
 1-41 parent's use of the operator's website, online service, online
 1-42 application, or mobile application for a school purpose;

1-43 (B) created by or provided to an operator by an
 1-44 employee of a school district or school campus for a school purpose;
 1-45 or

1-46 (C) gathered by an operator through the operation
 1-47 of the operator's website, online service, online application, or
 1-48 mobile application for a school purpose and personally identifies a
 1-49 student, including the student's educational record, electronic
 1-50 mail, first and last name, home address, telephone number,
 1-51 electronic mail address, information that allows physical or online
 1-52 contact, discipline records, test results, special education data,
 1-53 juvenile delinquency records, grades, evaluations, criminal
 1-54 records, medical records, health records, social security number,
 1-55 biometric information, disabilities, socioeconomic information,
 1-56 food purchases, political affiliations, religious information,
 1-57 text messages, student identifiers, search activity, photograph,
 1-58 voice recordings, or geolocation information.

1-59 (2) "Interactive computer service" has the meaning
 1-60 assigned by 47 U.S.C. Section 230.

1-61 (3) "Operator" means, to the extent operating in this

2-1 capacity, the operator of a website, online service, online
 2-2 application, or mobile application who has actual knowledge that
 2-3 the website, online service, online application, or mobile
 2-4 application is used primarily for a school purpose and was designed
 2-5 and marketed for a school purpose.

2-6 (4) "Parent" includes a person standing in parental
 2-7 relation.

2-8 (5) "School purpose" means a purpose that is directed
 2-9 by or customarily takes place at the direction of a school district,
 2-10 school campus, or teacher or assists in the administration of
 2-11 school activities, including instruction in the classroom or at
 2-12 home, administrative activities, and collaboration between
 2-13 students, school personnel, or parents, or is otherwise for the use
 2-14 and benefit of the school.

2-15 (6) "Targeted advertising" means presenting an
 2-16 advertisement to a student in which the advertisement is selected
 2-17 for the student based on information obtained or inferred over time
 2-18 from the student's online behavior, usage of applications, or
 2-19 covered information. The term does not include advertising to a
 2-20 student at an online location based on the student's visit to that
 2-21 location at that time, or in response to the student's request for
 2-22 information or feedback, without the retention of the student's
 2-23 online activities or requests over time for the purpose of
 2-24 targeting subsequent advertisements.

2-25 Sec. 32.152. PROHIBITED USE OF COVERED INFORMATION. (a) An
 2-26 operator may not knowingly:

2-27 (1) engage in targeted advertising on any website,
 2-28 online service, online application, or mobile application if the
 2-29 target of the advertising is based on any information, including
 2-30 covered information and persistent unique identifiers, that the
 2-31 operator has acquired through the use of the operator's website,
 2-32 online service, online application, or mobile application for a
 2-33 school purpose;

2-34 (2) use information, including persistent unique
 2-35 identifiers, created or gathered by the operator's website, online
 2-36 service, online application, or mobile application, to create a
 2-37 profile about a student unless the profile is created for a school
 2-38 purpose; or

2-39 (3) except as provided by Subsection (c), sell or rent
 2-40 any student's covered information.

2-41 (b) For purposes of Subsection (a)(2), the collection and
 2-42 retention of account information by an operator that remains under
 2-43 the control of the student, the student's parent, or the campus or
 2-44 district is not an attempt to create a profile by the operator.

2-45 (c) Subsection (a)(3) does not apply to:

2-46 (1) the purchase, merger, or any other type of
 2-47 acquisition of an operator by another entity, if the operator or
 2-48 successor entity complies with this subchapter regarding
 2-49 previously acquired student information; or

2-50 (2) a national assessment provider if the provider
 2-51 secures the express affirmative consent of the student or the
 2-52 student's parent, given in response to clear and conspicuous
 2-53 notice, and if the information is used solely to provide access to
 2-54 employment, educational scholarships, financial aid, or
 2-55 postsecondary educational opportunities.

2-56 Sec. 32.153. ALLOWED DISCLOSURE OF COVERED INFORMATION.

2-57 (a) An operator may use or disclose covered information under the
 2-58 following circumstances:

2-59 (1) to further a school purpose of the website, online
 2-60 service, online application, or mobile application and the
 2-61 recipient of the covered information disclosed under this
 2-62 subsection does not further disclose the information unless the
 2-63 disclosure is to allow or improve operability and functionality of
 2-64 the operator's website, online service, online application, or
 2-65 mobile application;

2-66 (2) to ensure legal and regulatory compliance;

2-67 (3) to protect against liability;

2-68 (4) to respond to or participate in the judicial
 2-69 process;

3-1 (5) to protect:
3-2 (A) the safety or integrity of users of the
3-3 website, online service, online application, or mobile
3-4 application; or
3-5 (B) the security of the website, online service,
3-6 online application, or mobile application;
3-7 (6) for a school, education, or employment purpose
3-8 requested by the student or the student's parent and the
3-9 information is not used or disclosed for any other purpose;
3-10 (7) to use the covered information for:
3-11 (A) a legitimate research purpose; or
3-12 (B) a school purpose or postsecondary
3-13 educational purpose; or
3-14 (8) for a request by the agency or the school district
3-15 for a school purpose.
3-16 (b) A national assessment provider or a provider of a
3-17 college and career counseling service may, in response to a request
3-18 of a student, and on receiving the express affirmative consent of
3-19 the student or the student's parent given in response to clear and
3-20 conspicuous notice, use or disclose covered information solely to
3-21 provide access to employment, educational scholarships, financial
3-22 aid, or postsecondary educational opportunities.
3-23 (c) An operator may disclose covered information if a
3-24 provision of federal or state law requires the operator to disclose
3-25 the information. The operator must comply with the requirements of
3-26 federal and state law to protect the information being disclosed.
3-27 (d) An operator may disclose covered information to a third
3-28 party if the operator has contracted with the third party to provide
3-29 a service for a school purpose for or on behalf of the operator. The
3-30 contract must prohibit the third party from using any covered
3-31 information for any purpose other than providing the contracted
3-32 service. The operator must require the third party to implement and
3-33 maintain reasonable procedures and practices designed to prevent
3-34 disclosure of covered information.
3-35 (e) Nothing in this subchapter prohibits the operator's use
3-36 of covered information for maintaining, developing, supporting,
3-37 improving, or diagnosing the operator's website, online service,
3-38 online application, or mobile application.
3-39 Sec. 32.154. ALLOWED USE OF COVERED INFORMATION. This
3-40 subchapter does not prohibit an operator from:
3-41 (1) using covered information:
3-42 (A) to improve educational products if that
3-43 information is not associated with an identified student using the
3-44 operator's website, online service, online application, or mobile
3-45 application; and
3-46 (B) that is not associated with an identified
3-47 student to demonstrate the effectiveness of the operator's products
3-48 or services and to market the operator's services;
3-49 (2) sharing covered information that is not associated
3-50 with an identified student for the development and improvement of
3-51 educational websites, online services, online applications, or
3-52 mobile applications;
3-53 (3) recommending to a student additional services or
3-54 content relating to an educational, learning, or employment
3-55 opportunity within a website, online service, online application,
3-56 or mobile application if the recommendation is not determined by
3-57 payment or other consideration from a third party;
3-58 (4) responding to a student's request for information
3-59 or for feedback without the information or response being
3-60 determined by payment or other consideration from a third party; or
3-61 (5) if the operator is a national assessment provider
3-62 or a provider of a college and career counseling service,
3-63 identifying for a student, with the express affirmative consent of
3-64 the student or the student's parent, institutions of higher
3-65 education or scholarship providers that are seeking students who
3-66 meet specific criteria, regardless of whether the identified
3-67 institution of higher education or scholarship provider provides
3-68 consideration to the operator.
3-69 Sec. 32.155. PROTECTION OF COVERED INFORMATION. An

4-1 operator must implement and maintain reasonable security
4-2 procedures and practices designed to protect any covered
4-3 information from unauthorized access, deletion, use, modification,
4-4 or disclosure.

4-5 Sec. 32.156. DELETION OF COVERED INFORMATION. If a school
4-6 district requests the deletion of a student's covered information
4-7 under the control of the school district and maintained by the
4-8 operator, the operator shall delete the information not later than
4-9 the 60th day after the date of the request, or as otherwise
4-10 specified in the contract or terms of service, unless the student or
4-11 the student's parent consents to the operator's maintenance of the
4-12 covered information.

4-13 Sec. 32.157. APPLICABILITY. This subchapter does not:
4-14 (1) limit the authority of a law enforcement agency to
4-15 obtain any information from an operator as authorized by law or
4-16 under a court order;

4-17 (2) limit the ability of an operator to use student
4-18 data, including covered information, for adaptive learning or
4-19 customized student learning purposes;

4-20 (3) apply to general audience:

4-21 (A) websites;

4-22 (B) online services;

4-23 (C) online applications; or

4-24 (D) mobile applications;

4-25 (4) limit service providers from providing Internet
4-26 connection to school districts or students and students' families;

4-27 (5) prohibit an operator from marketing educational
4-28 products directly to a student's parent if the marketing is not a
4-29 result of the use of covered information obtained by the operator
4-30 through providing services to the school district;

4-31 (6) impose a duty on a provider of an electronic store,
4-32 gateway, marketplace, or other means of purchasing or downloading
4-33 software or applications to review or enforce compliance with this
4-34 subchapter on those applications or software;

4-35 (7) impose a duty on a provider of an interactive
4-36 computer service to review or enforce compliance with this
4-37 subchapter by third-party content providers;

4-38 (8) prohibit a student from downloading, exporting,
4-39 transferring, saving, or maintaining the student's data or
4-40 documents; or

4-41 (9) alter the rights or duties of the operator,
4-42 provider, school, parent, or student under the Family Educational
4-43 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other
4-44 federal law.

4-45 SECTION 3. This Act takes effect September 1, 2017.

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