

Amendment No. 1 to SB1900

Gresham
Signature of Sponsor

AMEND Senate Bill No. 1900

House Bill No. 1931*

by deleting all language after the caption and substituting instead the following:

WHEREAS, schools across the nation have undergone a technological revolution, and are bringing a range of beneficial online services and technologies into the classroom that operate in "the cloud"; and

WHEREAS, this proliferation of online services and technologies has led to the collection of large amounts of data by the technology companies that provide such services; and

WHEREAS, nationwide, stakeholders have voiced concerns about the sufficiency of safeguards in place to prevent technology companies from using data about K-12 students for commercial purposes that have no relationship to education; and

WHEREAS, parents are overwhelmingly opposed to companies using student data for commercial purposes unrelated to education and are joined by advocacy groups and academics in calls for new regulations to protect student privacy and increased enforcement against vendors; and

WHEREAS, federal laws governing the protection of student data have failed to address the upsurge of cloud computing technology with significant gaps within both the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA) that can enable cloud computing providers to misuse student data for commercial purposes unrelated to education, such as advertising; and

WHEREAS, to safeguard student privacy, many states are enacting legislation to ensure that technology companies who are invited into schools will use data about

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students for authorized educational purposes, and not for targeted advertising or creating student profiles for non-educational purposes; and

WHEREAS, the State of Tennessee addressed student privacy by enacting the Data Accessibility, Transparency and Accountability Act in 2014 that dealt with the collection of student data by school systems and the use of student data by school systems and their vendors, but did not fully address operators of online services and educational technologies using student information for commercial purposes; and

WHEREAS, now the State of Tennessee must further address student privacy concerns relating to online services and must strengthen trust in educational technologies by eliminating commercial practices that do not belong in the classroom, yet allow use of student data to provide personalized learning and develop new educational technologies that can improve education and help students learn; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Student Online Personal Protection Act".

SECTION 2. Tennessee Code Annotated, Section 49-1-702, is amended by adding the following language as new, appropriately designated subdivisions:

() "Covered information" means personally identifiable information or material, or information that is linked to personally identifiable information or material, in any media or format that is not publicly available and is:

(A) Created by or provided to an operator by a student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K-12 school purposes;

(B) Created by or provided to an operator by an employee or agent of a K-12 school or an LEA for K-12 school purposes; or

(C) Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student;

() "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions;

() "K-12 school" means a school that offers any of the grades kindergarten through twelve (K-12) and is operated by an LEA;

() "K-12 school purposes" means purposes that are directed by or that customarily take place at the direction of a K-12 school, teacher, or LEA or that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration among students, school personnel, or parents, or are otherwise for the use and benefit of the school;

() "Operator" means, to the extent that it is operating in this capacity, the operator of an Internet web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and is designed and marketed for K-12 school purposes;

() "Persistent unique identifier" means a unique reference number used as an identifier in computer software that is stored across different usage sessions;

() "Targeted advertising" means presenting advertisements to a student where advertisements are selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. "Targeted advertising" does not include advertising to a student at an online location based upon that student's current visit to that location, or in response to that student's request for information or feedback, without the retention of that student's online activities or requests over time for the purpose of targeting subsequent advertisements;

SECTION 3. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new, appropriately designated section:

(a) An operator shall not knowingly:

(1) Engage in targeted advertising on the operator's site, service, or application, or target advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for K-12 school purposes;

(2) Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a student except in furtherance of K-12 school purposes. As used in this subdivision (a)(2) and subdivision (d)(2), "amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or guardian, or the K-12 school;

(3) Sell or rent a student's information, including covered information.

This subdivision (a)(3) does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, if the operator or successor entity complies with this section regarding previously acquired student information; or

(4) Except as otherwise provided in subsection (d), disclose covered information unless the disclosure is made:

(A) In furtherance of the K-12 school purpose of the site, service, or application, if the recipient of the covered information disclosed under this subdivision (a)(4)(A) does not further disclose the information unless done to allow or improve operability and functionality of the operator's site, service, or application;

(B) To ensure legal and regulatory compliance or protect against liability;

(C) To respond to or participate in the judicial process;

(D) To protect the safety or integrity of users of the site or others or the security of the site, service, or application;

(E) For a school, educational, or employment purpose requested by the student or the student's parent or guardian; provided, that the information is not used or further disclosed for any other purpose; or

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

(b) Nothing in subsection (a) shall prohibit the operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

(c) An operator shall:

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

(2) Delete within a reasonable time period a student's covered information if the K-12 school or LEA requests deletion of covered information under the control of the K-12 school or LEA, unless a student or parent or legal guardian consents to the maintenance of the covered information.

(d) An operator may use or disclose covered information of a student:

(1) If federal or state law requires the operator to disclose the information, and the operator complies with the requirements of federal or state law in protecting and disclosing that information;

(2) For legitimate research purposes as required by state or federal law and subject to the restrictions under applicable state or federal law or as allowed by state or federal law and under the direction of a K-12 school, LEA, or the department of education, if covered information is not used for advertising or to amass a profile on the student for purposes other than K-12 school purposes; or

(3) To the department, an LEA, or a K-12 school for K-12 school purposes, as permitted by state or federal law.

(e) An operator is not prohibited from:

(1) Using covered information to improve educational products if that information is not associated with an identified student within the operator's site,

service, or application or other sites, services, or applications owned by the operator;

(2) Using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in its marketing;

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

(4) Using recommendation engines to recommend to a student:

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

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

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

(f) This section does not:

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

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

(3) Apply to general audience Internet web sites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications;

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

(5) Prohibit an operator of a web site, online service, online application, or mobile application from marketing educational products directly to parents if the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section;

(6) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software;

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

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

(g)

(1) Any violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, and shall be enforced solely by the attorney general and reporter in the attorney general's discretion. The attorney general and reporter shall have the

authority to conduct civil investigations and bring civil actions, as provided in § 8-6-109 and title 8, chapter 6, part 4; and §§ 47-18-106 and 47-18-108.

(2) In an action brought by the attorney general under this chapter, the court may award or impose any relief available under the Tennessee Consumer Protection Act of 1977.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it.