

1 AN ACT

2 relating to restricting the use of covered information, including
3 student personally identifiable information, by an operator of a
4 website, online service, online application, or mobile application
5 for a school purpose.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. The heading to Chapter 32, Education Code, is
8 amended to read as follows:

9 CHAPTER 32. COMPUTERS, ~~[AND]~~ COMPUTER-RELATED EQUIPMENT, AND
10 STUDENT INFORMATION PROTECTION

11 SECTION 2. Chapter 32, Education Code, is amended by adding
12 Subchapter D to read as follows:

13 SUBCHAPTER D. STUDENT INFORMATION

14 Sec. 32.151. DEFINITIONS. In this subchapter:

15 (1) "Covered information" means personally
16 identifiable information or information that is linked to
17 personally identifiable information, in any media or format, that
18 is not publicly available and is:

19 (A) created by or provided to an operator by a
20 student or the student's parent in the course of the student's or
21 parent's use of the operator's website, online service, online
22 application, or mobile application for a school purpose;

23 (B) created by or provided to an operator by an
24 employee of a school district or school campus for a school purpose;

1 or

2 (C) gathered by an operator through the operation
3 of the operator's website, online service, online application, or
4 mobile application for a school purpose and personally identifies a
5 student, including the student's educational record, electronic
6 mail, first and last name, home address, telephone number,
7 electronic mail address, information that allows physical or online
8 contact, discipline records, test results, special education data,
9 juvenile delinquency records, grades, evaluations, criminal
10 records, medical records, health records, social security number,
11 biometric information, disabilities, socioeconomic information,
12 food purchases, political affiliations, religious information,
13 text messages, student identifiers, search activity, photograph,
14 voice recordings, or geolocation information.

15 (2) "Interactive computer service" has the meaning
16 assigned by 47 U.S.C. Section 230.

17 (3) "Operator" means, to the extent operating in this
18 capacity, the operator of a website, online service, online
19 application, or mobile application who has actual knowledge that
20 the website, online service, online application, or mobile
21 application is used primarily for a school purpose and was designed
22 and marketed for a school purpose.

23 (4) "Parent" includes a person standing in parental
24 relation.

25 (5) "School purpose" means a purpose that is directed
26 by or customarily takes place at the direction of a school district,
27 school campus, or teacher or assists in the administration of

1 school activities, including instruction in the classroom or at
2 home, administrative activities, and collaboration between
3 students, school personnel, or parents, or is otherwise for the use
4 and benefit of the school.

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

15 Sec. 32.152. PROHIBITED USE OF COVERED INFORMATION. (a) An
16 operator may not knowingly:

17 (1) engage in targeted advertising on any website,
18 online service, online application, or mobile application if the
19 target of the advertising is based on any information, including
20 covered information and persistent unique identifiers, that the
21 operator has acquired through the use of the operator's website,
22 online service, online application, or mobile application for a
23 school purpose;

24 (2) use information, including persistent unique
25 identifiers, created or gathered by the operator's website, online
26 service, online application, or mobile application, to create a
27 profile about a student unless the profile is created for a school

1 purpose; or

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

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

8 (c) Subsection (a)(3) does not apply to:

9 (1) the purchase, merger, or any other type of
10 acquisition of an operator by another entity, if the operator or
11 successor entity complies with this subchapter regarding
12 previously acquired student information; or

13 (2) a national assessment provider if the provider
14 secures the express affirmative consent of the student or the
15 student's parent, given in response to clear and conspicuous
16 notice, and if the information is used solely to provide access to
17 employment, educational scholarships, financial aid, or
18 postsecondary educational opportunities.

19 Sec. 32.153. ALLOWED DISCLOSURE OF COVERED INFORMATION.

20 (a) An operator may use or disclose covered information under the
21 following circumstances:

22 (1) to further a school purpose of the website, online
23 service, online application, or mobile application and the
24 recipient of the covered information disclosed under this
25 subsection does not further disclose the information unless the
26 disclosure is to allow or improve operability and functionality of
27 the operator's website, online service, online application, or

1 mobile application;
2 (2) to ensure legal and regulatory compliance;
3 (3) to protect against liability;
4 (4) to respond to or participate in the judicial
5 process;
6 (5) to protect:
7 (A) the safety or integrity of users of the
8 website, online service, online application, or mobile
9 application; or
10 (B) the security of the website, online service,
11 online application, or mobile application;
12 (6) for a school, education, or employment purpose
13 requested by the student or the student's parent and the
14 information is not used or disclosed for any other purpose;
15 (7) to use the covered information for:
16 (A) a legitimate research purpose; or
17 (B) a school purpose or postsecondary
18 educational purpose; or
19 (8) for a request by the agency or the school district
20 for a school purpose.
21 (b) A national assessment provider or a provider of a
22 college and career counseling service may, in response to a request
23 of a student, and on receiving the express affirmative consent of
24 the student or the student's parent given in response to clear and
25 conspicuous notice, use or disclose covered information solely to
26 provide access to employment, educational scholarships, financial
27 aid, or postsecondary educational opportunities.

1 (c) An operator may disclose covered information if a
2 provision of federal or state law requires the operator to disclose
3 the information. The operator must comply with the requirements of
4 federal and state law to protect the information being disclosed.

5 (d) An operator may disclose covered information to a third
6 party if the operator has contracted with the third party to provide
7 a service for a school purpose for or on behalf of the operator. The
8 contract must prohibit the third party from using any covered
9 information for any purpose other than providing the contracted
10 service. The operator must require the third party to implement and
11 maintain reasonable procedures and practices designed to prevent
12 disclosure of covered information.

13 (e) Nothing in this subchapter prohibits the operator's use
14 of covered information for maintaining, developing, supporting,
15 improving, or diagnosing the operator's website, online service,
16 online application, or mobile application.

17 Sec. 32.154. ALLOWED USE OF COVERED INFORMATION. This
18 subchapter does not prohibit an operator from:

19 (1) using covered information:

20 (A) to improve educational products if that
21 information is not associated with an identified student using the
22 operator's website, online service, online application, or mobile
23 application; and

24 (B) that is not associated with an identified
25 student to demonstrate the effectiveness of the operator's products
26 or services and to market the operator's services;

27 (2) sharing covered information that is not associated

1 with an identified student for the development and improvement of
2 educational websites, online services, online applications, or
3 mobile applications;

4 (3) recommending to a student additional services or
5 content relating to an educational, learning, or employment
6 opportunity within a website, online service, online application,
7 or mobile application if the recommendation is not determined by
8 payment or other consideration from a third party;

9 (4) responding to a student's request for information
10 or for feedback without the information or response being
11 determined by payment or other consideration from a third party; or

12 (5) if the operator is a national assessment provider
13 or a provider of a college and career counseling service,
14 identifying for a student, with the express affirmative consent of
15 the student or the student's parent, institutions of higher
16 education or scholarship providers that are seeking students who
17 meet specific criteria, regardless of whether the identified
18 institution of higher education or scholarship provider provides
19 consideration to the operator.

20 Sec. 32.155. PROTECTION OF COVERED INFORMATION. An
21 operator must implement and maintain reasonable security
22 procedures and practices designed to protect any covered
23 information from unauthorized access, deletion, use, modification,
24 or disclosure.

25 Sec. 32.156. DELETION OF COVERED INFORMATION. If a school
26 district requests the deletion of a student's covered information
27 under the control of the school district and maintained by the

1 operator, the operator shall delete the information not later than
2 the 60th day after the date of the request, or as otherwise
3 specified in the contract or terms of service, unless the student or
4 the student's parent consents to the operator's maintenance of the
5 covered information.

6 Sec. 32.157. APPLICABILITY. This subchapter does not:

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

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

13 (3) apply to general audience:

14 (A) websites;

15 (B) online services;

16 (C) online applications; or

17 (D) mobile applications;

18 (4) limit service providers from providing Internet
19 connection to school districts or students and students' families;

20 (5) prohibit an operator from marketing educational
21 products directly to a student's parent if the marketing is not a
22 result of the use of covered information obtained by the operator
23 through providing services to the school district;

24 (6) impose a duty on a provider of an electronic store,
25 gateway, marketplace, or other means of purchasing or downloading
26 software or applications to review or enforce compliance with this
27 subchapter on those applications or software;

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

4 (8) prohibit a student from downloading, exporting,
5 transferring, saving, or maintaining the student's data or
6 documents; or

7 (9) alter the rights or duties of the operator,
8 provider, school, parent, or student under the Family Educational
9 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other
10 federal law.

11 SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 2087 was passed by the House on May 11, 2017, by the following vote: Yeas 146, Nays 1, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2087 was passed by the Senate on May 22, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor