

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-11
HOUSE BILL 632

AN ACT TO PROTECT STUDENT ONLINE PRIVACY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 29 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-401.2. Student online privacy protection.

(a) Definitions. – The following definitions apply in this section:

(1) Covered information. – Personally identifiable information or material in any media or format that is any of the following:

- 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 local school administrative unit for K-12 school purposes.
- c. Gathered by an operator through the operation of a site, service, or application for K-12 school purposes and personally identifies a student, including, but not limited to, the following:
 1. Information in the student's educational record or electronic mail.
 2. First and last name.
 3. Home address.
 4. Telephone number.
 5. Electronic mail address.
 6. Other information that allows physical or online contact.
 7. Discipline records.
 8. Test results.
 9. Special education data.
 10. Juvenile dependency records.
 11. Grades.
 12. Evaluations.
 13. Criminal records.
 14. Medical records.
 15. Health records.
 16. Social Security number.
 17. Biometric information.
 18. Disabilities.
 19. Socioeconomic information.
 20. Food purchases.
 21. Political affiliations.
 22. Religious information.
 23. Text messages.
 24. Documents.
 25. Student identifiers.
 26. Search activity.
 27. Photos.



28. Voice recordings.

29. Geolocation information.

- (2) Interactive computer service. – As defined in 47 U.S.C. § 230.
- (3) K-12 school. – A charter school, a regional school, or a school that offers any of grades kindergarten to 12 operated by a local board of education.
- (4) K-12 school purposes. – Purposes that are directed by or that customarily take place at the direction of a K-12 school, a teacher, a local board of education, or the State Board of Education, or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the K-12 school.
- (5) Local board of education. – A local board as defined in G.S. 115C-5(5), a regional school board of directors as defined in G.S. 115C-238.61(5), or a board of directors of a nonprofit corporation operating a charter as provided in G.S. 115C-218.15.
- (6) Operator. – 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 was designed and marketed for K-12 school purposes. An operator does not include a K-12 school or local board of education that operates an Internet Web site, online service, online application, or mobile application for that K-12 school or local board of education's own K-12 school purposes.
- (7) Subcontractor. – An entity providing a service to an operator under contract and on its behalf to further a K-12 school purpose.
- (8) Targeted advertising. – Presenting an advertisement to a student where the advertisement is 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 ads.

(b) Prohibitions for Operators. – An operator shall not knowingly do any of the following:

- (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, "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 K-12 school.
- (3) Sell or rent a student's information, including covered information. This subdivision 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 to national assessment providers if the provider secures the express written consent of the parent or student who is at least 13 years of age given in response to clear and conspicuous notice, solely to provide access to employment, educational scholarships or financial aid, and to postsecondary educational opportunities.

- (4) Except as otherwise provided in subsection (d) of this section, disclose covered information unless the disclosure is made for the following purposes:
- 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 sub-subdivision 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. To a third party for a school, educational, or employment purpose requested by the student or the student's parent or guardian, provided that that information is required not to be used or further disclosed by the third party for any other purpose.
 - f. To a subcontractor, if the operator contractually prohibits the subcontractor from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the subcontractor from disclosing any covered information provided by the operator with subsequent third parties, and requires the subcontractor to implement and maintain reasonable security procedures and practices. This sub-subdivision does not prohibit the operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.
- (c) Requirements for Operators. – An operator shall do all of the following:
- (1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information and protect that covered information from unauthorized access, destruction, use, modification, or disclosure.
 - (2) Delete a student's covered information within 45 days if the K-12 school or local board of education requests deletion of covered information under the control of the K-12 school or local board of education, or the K-12 school or local board of education notifies the operator of completion of services with that operator, unless a student who is at least 13 years of age, a parent, or a guardian provides express written consent given in response to clear and conspicuous notice to the maintenance of the covered information.
- (d) Permissible Use or Disclosure of Information. – An operator may use or disclose covered information of a student under the following circumstances:
- (1) If other provisions of federal or State law require the operator to disclose the information and the operator complies with the requirements of federal and State law in protecting and disclosing that information.
 - (2) As long as no covered information is used for advertising or to amass a profile on the student for purposes other than K-12 school purposes, for legitimate research purposes as required by State or federal law and subject to the restrictions under applicable State and federal law or as allowed by State or federal law in furtherance of K-12 school purposes or postsecondary educational purposes.
 - (3) To a K-12 school, local school administrative unit, or the State Board of Education, for K-12 school purposes, as permitted by State or federal law.
 - (4) At the direction of a K-12 school, local school administrative unit, or the State Board of Education, for K-12 school purposes, as permitted by State or federal law.
- (e) Permissible Operator Actions. – This section does not prohibit an operator from doing any of the following:
- (1) Using covered information that 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 to improve educational products.

- (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 their 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 either of the following:
 - a. Additional content relating to an educational, other learning, or employment opportunity purpose within the operator's site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party.
 - b. Additional services relating to an educational, other learning, or employment opportunity purpose within the operator's site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party.
- (5) Responding to a student's request for information or for feedback to help improve learning without the information or response being determined in whole or in part by payment or other consideration from a third party.
- (f) Limitations. – This section does not do any of the following:
 - (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 an Internet 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.
 - (8) Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents.
- (g) A parent, K-12 school, teacher, local board of education, or the State Board of Education may report an alleged violation of this section to the Attorney General. The Attorney General, upon ascertaining that an operator has violated this section, may bring a civil action seeking injunctive and other equitable relief. Nothing in this section shall be construed to create a private right of action."

SECTION 2. This act becomes effective October 1, 2016.
In the General Assembly read three times and ratified this the 2nd day of June, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:31 a.m. this 9th day of June, 2016