

House Bill 144

By: Representatives Gordon of the 163rd and Randall of the 142nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Subpart 3 of Part 1 of Article 16 of Chapter 2 of Title 20 of the Official Code of
2 Georgia Annotated, relating to student records, so as to enact the "Student Online Personal
3 Information Protection Act"; to provide for definitions; to provide for requirements for
4 operators of online educational sites, services, and applications regarding certain student
5 information; to provide for certain security measures; to provide for statutory construction;
6 to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Subpart 3 of Part 1 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia
10 Annotated, relating to student records, is amended by adding a new Code section to read as
11 follows:

12 "20-2-721.

13 (a) This Code section shall be known and may be referred to as the 'Student Online
14 Personal Information Protection Act.'

15 (b) As used in this Code section, the term:

16 (1) 'Covered information' means personally identifiable student information or materials,
17 in any media or format, that meets any of the following:

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

21 (B) Is created or provided by an employee or agent of a K-12 school, local school
22 system, local education agency, or local board of education, to an operator; or

23 (C) Is gathered by an operator through the operation of a site, service, or application
24 and is descriptive of a student or otherwise identifies a student, including, but not
25 limited to, information in the student's educational record or e-mail, first and last name,
26 home address, telephone number, e-mail address, other information that allows physical

27 or online contact, discipline records, test results, special education data, juvenile
 28 dependency records, grades, evaluations, criminal records, medical records, health
 29 records, social security number, biometric information, disabilities, socioeconomic
 30 information, food purchases, political affiliations, religious information, text messages,
 31 documents, student identifiers, search activity, photos, voice recordings, or geolocation
 32 information.

33 (2) 'K-12 school purposes' means purposes that customarily take place at the direction
 34 of a K-12 school, teacher, or local school system or aid in the administration of school
 35 activities, including, but not limited to, instruction in the classroom or at home,
 36 administrative activities, and collaboration between students, school personnel, or
 37 parents, or are for the use and benefit of the school.

38 (3) 'Operator' means the operator of a site, service, or application with actual knowledge
 39 that the site, service, or application is used primarily for K-12 school purposes and was
 40 designed and marketed for K-12 school purposes.

41 (4) 'Site, service, or application' means an Internet website; online service, including
 42 cloud computing services; online application; or mobile application used primarily for
 43 K-12 school purposes.

44 (c) An operator shall not knowingly engage in any of the following activities with respect
 45 to their site, service, or application:

46 (1) Engage in targeted advertising on the operator's site, service, or application or on any
 47 other site, service, or application when the targeting of the advertising is based upon any
 48 information, including covered information and persistent unique identifiers, that the
 49 operator has acquired because of the use of that operator's site, service, or application;

50 (2) Use information, including persistent unique identifiers, created or gathered by the
 51 operator's site, service, or application, to amass a profile about a K-12 student except in
 52 furtherance of K-12 school purposes;

53 (3) Sell a student's information, including covered information. This paragraph shall not
 54 apply to the purchase, merger, or other type of acquisition of an operator by another
 55 entity, provided that the operator or successor entity continues to be subject to the
 56 provisions of this Code section with respect to previously acquired student information;
 57 or

58 (4) Disclose covered information unless the disclosure is made:

59 (A) In furtherance of the K-12 purpose of the site, service, or application, provided the
 60 recipient of the covered information disclosed pursuant to this subparagraph:

61 (i) Shall not further disclose the information unless done to allow or improve
 62 operability and functionality within that student's classroom or school; and

63 (ii) Is legally required to comply with subsection (e) of this Code section;

- 64 (B) To ensure legal and regulatory compliance;
 65 (C) To respond to or participate in judicial process;
 66 (D) To protect the safety of users or others or security of the site; or
 67 (E) To a service provider, provided the operator contractually (i) prohibits the service
 68 provider from using any covered information for any purpose other than providing the
 69 contracted service to, or on behalf of, the operator, (ii) prohibits the service provider
 70 from disclosing any covered information provided by the operator with subsequent third
 71 parties, and (iii) requires the service provider to implement and maintain reasonable
 72 security procedures and practices as provided in subsection (e) of this Code section.
- 73 (d) Nothing in subsection (c) of this Code section shall be construed to prohibit the
 74 operator's use of information for maintaining, developing, supporting, improving, or
 75 diagnosing the operator's site, service, or application.
- 76 (e) An operator shall:
- 77 (1) Implement and maintain reasonable security procedures and practices appropriate to
 78 the nature of the covered information, and protect that information from unauthorized
 79 access, destruction, use, modification, or disclosure; and
- 80 (2) Delete a student's covered information if the school or local school system requests
 81 deletion of data under the control of the school or local school system.
- 82 (f) Notwithstanding paragraph (4) of subsection (c) of this Code section, an operator may
 83 disclose covered information of a student, so long as paragraphs (1) through (3) of
 84 subsection (c) of this Code section are not violated, under the following circumstances:
- 85 (1) If other provisions of federal or state law require the operator to disclose the
 86 information, and the operator complies with the requirements of federal and state law in
 87 protecting and disclosing that information;
- 88 (2) For legitimate research purposes:
- 89 (A) As required by state or federal law and subject to the restrictions under applicable
 90 state and federal law; or
- 91 (B) As allowed by state or federal law and under the direction of a school, school
 92 district, or the Department of Education, if no covered information is used for any
 93 purpose in furtherance of advertising or to amass a profile on the student for purposes
 94 other than K–12 school purposes; or
- 95 (3) To a state or local educational agency, including schools and local school systems,
 96 for K–12 school purposes, as permitted by state or federal law.
- 97 (g) Nothing in this Code section shall be construed to:
- 98 (1) Prohibit an operator from using deidentified student covered information as follows:
- 99 (A) Within the operator's site, service, or application or other sites, services, or
 100 applications owned by the operator to improve educational products; or

- 101 (B) To demonstrate the effectiveness of the operator's products or services, including
102 in their marketing;
- 103 (2) Prohibit an operator from sharing aggregated deidentified student covered
104 information for the development and improvement of educational sites, services, or
105 applications;
- 106 (3) Limit the authority of a law enforcement agency to obtain any content or information
107 from an operator as authorized by law or pursuant to an order of a court of competent
108 jurisdiction;
- 109 (4) Limit the ability of an operator to use student data, including covered information,
110 for adaptive learning or customized student learning purposes;
- 111 (5) Limit Internet service providers from providing Internet connectivity to schools or
112 students and their families;
- 113 (6) Prohibit an operator of site, service, or application from marketing educational
114 products directly to parents so long as the marketing did not result from the use of
115 covered information obtained by the operator through the provision of services covered
116 under this Code section;
- 117 (7) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other
118 means of purchasing or downloading software or applications to review or enforce
119 compliance of this Code section on those applications or software;
- 120 (8) Impose a duty upon a provider of an interactive computer service, as defined in
121 Section 230 of Title 47 of the United States Code, to review or enforce compliance with
122 this Code section by third-party content providers; or
- 123 (9) Impede the ability of students to download, export, or otherwise save or maintain
124 their own student created data or documents.
- 125 (h) This Code section shall not apply to general audience Internet websites, general
126 audience online services, general audience online applications, or general audience mobile
127 applications, even if login credentials created for an operator's site, service, or application
128 may be used to access those general audience sites, services, or applications."

129 **SECTION 2.**

130 All laws and parts of laws in conflict with this Act are repealed.