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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2370

05/17/2015 Authored by Scott, Simonson, Lucero and Davnie
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to privacy; establishing student user privacy in education rights; requiring
1.3 online educational services to comply with security and privacy standards;
1.4 prohibiting use of student information for targeted marketing or creation of
1.5 student profiles; amending Minnesota Statutes 2014, section 13.321, by adding a
1.6 subdivision; proposing coding for new law in Minnesota Statutes, chapter 125B.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2014, section 13.321, is amended by adding a
1.9 subdivision to read:

1.10 Subd. 11. Student-user privacy requirements. Section 125B.27 governs privacy
1.11 and information practices of online educational services.

1.12 Sec. 2. [125B.27] STUDENT-USER PRIVACY IN EDUCATION RIGHTS.

1.13 Subdivision 1. Definitions. (a) The definitions in section 13.32, subdivision 1,
1.14 and this subdivision apply to this section.

1.15 (b) "Online educational service" means an Internet Web site, online service or
1.16 application, or mobile application that a student, or the student's parent or legal guardian,
1.17 can access via the Internet for school purposes. Online educational service includes a
1.18 cloud computing service.

1.19 (c) "Operator" means a person who operates an online educational service with
1.20 actual knowledge that it is used primarily for school purposes and was designed and
1.21 marketed for these purposes. Operator includes a vendor.

1.22 (d) "Protected information" means educational data, or other personally identifiable
1.23 information or materials in any media or format that:

2.1 (1) is created or provided by a student, or the student's parent or legal guardian, to an
 2.2 operator in the course of the use of the operator's site, service, or application for school
 2.3 purposes;

2.4 (2) is created or provided by an employee or agent of the school to an operator; or

2.5 (3) is gathered by an operator through the operation of an online educational
 2.6 service and is descriptive of a student or otherwise identifies a student, including
 2.7 information in the student's educational record or e-mail, first and last name, home
 2.8 address, telephone number, e-mail address, or other information that allows physical or
 2.9 online contact, discipline records, test results, special education data, juvenile records,
 2.10 grades, evaluations, criminal records, health records, Social Security number, biometric
 2.11 information, disabilities, socioeconomic information, food purchases, political affiliations,
 2.12 religious information, text messages, documents, student identifiers, search activity,
 2.13 photos, voice recordings, or geolocation information.

2.14 (e) "School purposes" means purposes that (1) customarily take place at the
 2.15 direction of the school, teacher, or school district or aid in the administration of school
 2.16 activities, including instruction in the classroom or at home, administrative activities, and
 2.17 collaboration between students, school personnel, or parents or legal guardians, or (2)
 2.18 are for the use and benefit of the school.

2.19 (f) "Student" means a student in prekindergarten through grade 12.

2.20 (g) "Vendor" means a person who enters into a contract with a school to provide an
 2.21 online educational service.

2.22 **Subd. 2. Prohibited activities; targeted advertising; creation of student profiles;**
 2.23 **sale or unauthorized disclosure of information.** (a) An operator must not knowingly
 2.24 engage in any of the following activities with respect to the operator's site, service,
 2.25 or application:

2.26 (1)(i) targeted advertising on the operator's site, service, or application; or

2.27 (ii) targeted advertising on any other site, service, or application when the targeting
 2.28 of the advertising is based upon information, including protected information and unique
 2.29 identifiers, that the operator has acquired or created because of the use of that operator's
 2.30 site, service, or application;

2.31 (2) use or share information, including unique identifiers, acquired or created by
 2.32 the operator's site, service, or application, to create a profile about a student, except in
 2.33 furtherance of school purposes;

2.34 (3) sell a student's information, including protected information. This prohibition
 2.35 does not apply to the purchase, merger, or other type of acquisition of an operator by

3.1 another person, provided that the operator or successor continues to be subject to this
 3.2 section with respect to previously acquired student information; or

3.3 (4) disclose protected information, unless the disclosure:

3.4 (i) is made in furtherance of the purpose of the site, service, or application, provided
 3.5 the recipient of the protected information must not further disclose the information unless
 3.6 done to allow or improve operability and functionality within that student's classroom
 3.7 or school;

3.8 (ii) is legally required to comply with subdivision 3;

3.9 (iii) is made to ensure legal and regulatory compliance, to respond to or participate
 3.10 in judicial process, or to protect the safety of users or others or security of the site; or

3.11 (iv) is made pursuant to a contract between the operator and a service provider. A
 3.12 contract must prohibit the service provider from using protected information for any
 3.13 purpose other than providing the contracted service to, or on behalf of, the operator;
 3.14 prohibit the service provider from disclosing protected information provided by the
 3.15 operator to third parties; and require the service provider to implement and maintain
 3.16 reasonable security procedures and practices as provided in subdivision 3.

3.17 (b) This subdivision does not prohibit the operator's use of information for
 3.18 maintaining, developing, supporting, improving, or diagnosing the operator's site, service,
 3.19 or application.

3.20 Subd. 3. **Security procedures and practices.** An operator shall:

3.21 (1) implement and maintain reasonable security procedures and practices appropriate
 3.22 to the nature of the protected information and protect that information from unauthorized
 3.23 access, destruction, use, modification, or disclosure; and

3.24 (2) delete a student's protected information if the school requests deletion of data
 3.25 under the control of the school.

3.26 Subd. 4. **Permissible disclosures.** Notwithstanding subdivision 2, paragraph
 3.27 (a), clause (4), an operator may disclose protected information of a student under the
 3.28 following circumstances:

3.29 (1) if other provisions of federal or state law require the operator to disclose the
 3.30 information and the operator complies with the requirements of federal or state law in
 3.31 protecting and disclosing that information;

3.32 (2) for legitimate research purposes:

3.33 (i) as required by state or federal law and subject to the restrictions under applicable
 3.34 law; or

3.35 (ii) as allowed by state or federal law and under the direction of a school, school
 3.36 district, or the Department of Education, provided that protected information is not used

4.1 for any purpose in furtherance of advertising or to amass a profile on the student for
4.2 purposes other than school purposes; and

4.3 (3) to a state or local educational agency, including schools and school districts, for
4.4 school purposes as permitted by state or federal law.

4.5 Subd. 5. **Use of information by operator.** (a) This section does not prohibit an
4.6 operator from using information that does not identify a student as follows:

4.7 (1) within the operator's site, service, or application or other sites, services, or
4.8 applications owned by the operator to improve educational products; or

4.9 (2) to demonstrate the effectiveness of the operator's products or services, including
4.10 marketing.

4.11 (b) This section does not prohibit an operator from sharing information that does not
4.12 identify a student for the development and improvement of educational sites, services,
4.13 or applications.

4.14 Subd. 6. **Certain activities not affected.** (a) This section does not limit the
4.15 authority of a law enforcement agency to obtain information from an operator as
4.16 authorized by law or pursuant to a court order.

4.17 (b) This section does not limit the ability of an operator to use student information,
4.18 including protected information, for adaptive learning or customized student learning
4.19 purposes.

4.20 (c) This section does not apply to general audience Internet Web sites, general
4.21 audience online services, general audience online applications, or general audience mobile
4.22 applications, even if login credentials created for an operator's online educational service
4.23 may be used to access those general audience sites, services, or applications.

4.24 (d) This section does not limit Internet service providers from providing Internet
4.25 connectivity to schools or students and their families.

4.26 (e) This section does not prohibit an operator of an Internet Web site, online
4.27 service, online application, or mobile application from marketing educational products
4.28 directly to parents or legal guardians so long as the marketing did not result from the
4.29 use of protected information obtained by the operator through the provision of services
4.30 governed by this section.

4.31 (f) This section does not impose a duty upon a provider of an electronic store, gateway,
4.32 marketplace, or other means of purchasing or downloading software or applications to
4.33 review or enforce compliance with this section on those applications or software.

4.34 (g) This section does not impose a duty upon a provider of an interactive computer
4.35 service, as defined in United States Code, title 47, section 230, to review or enforce
4.36 compliance with this section by third-party content providers.

- 5.1 (h) This section does not impede the ability of students to download, export, or
5.2 otherwise save or maintain their own data or documents.