

# SENATE BILL No. 510

September 24, 2015, Introduced by Senators PAVLOV, COLBECK, BOOHER, KOWALL, EMMONS, PROOS, SCHUITMAKER, HANSEN, KNOLLENBERG, HORN and MARLEAU and referred to the Committee on Education.

A bill to prohibit the disclosure or use of certain information.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "student online personal protection act".

3       Sec. 3. As used in this act:

4       (a) "Covered information" means personally identifiable  
5 information or material in any media or format that is any of the  
6 following:

7       (i) Created by or provided to an operator by a student, or the  
8 student's parent or legal guardian, in the course of the student's,  
9 parent's, or legal guardian's use of the operator's site, service,  
10 or application for K-12 school purposes.

1           (ii) Created by or provided to an operator by an employee or  
2 agent of a K-12 school or school district.

3           (iii) Gathered by an operator through the operation of a site,  
4 service, or application for K-12 school purposes and is descriptive  
5 of a student or otherwise identifies a student, including, but not  
6 limited to, information in the student's educational record or  
7 electronic mail, first and last name, home address, telephone  
8 number, electronic mail address, or other information that allows  
9 physical or online contact, discipline records, test results,  
10 special education data, juvenile dependency records, grades,  
11 evaluations, criminal records, medical records, health records,  
12 social security number, biometric information, disabilities,  
13 socioeconomic information, food purchases, political affiliations,  
14 religious information, text messages, documents, student  
15 identifiers, search activity, photos, voice recordings, or  
16 geolocation information.

17           (b) "Interactive computer service" means that term as defined  
18 in 47 USC 230.

19           (c) "K-12 school" means a school that offers any of grades  
20 kindergarten to 12 and that is operated by a school district.

21           (d) "K-12 school purposes" means purposes that customarily  
22 take place at the direction of a K-12 school, teacher, or school  
23 district or aid in the administration of school activities,  
24 including, but not limited to, instruction in the classroom or at  
25 home, administrative activities, and collaboration between  
26 students, school personnel, or parents, or are for the use and  
27 benefit of the school.

1 (e) "Operator" means the operator of an Internet website,  
2 online service, online application, or mobile application with  
3 actual knowledge that the site, service, or application is used  
4 primarily for K-12 school purposes and was designed and marketed  
5 for K-12 school purposes.

6 (f) "School district" means a school district, intermediate  
7 school district, or public school academy, as those terms are  
8 defined in the revised school code, 1976 PA 451, MCL 380.1 to  
9 380.1852.

10 (g) "Service provider" means a company that provides its  
11 subscribers with Internet access.

12 Sec. 5. (1) An operator shall not knowingly do any of the  
13 following:

14 (a) Engage in targeted advertising on the operator's site,  
15 service, or application, or target advertising on any other site,  
16 service, or application if the targeting of the advertising is  
17 based on any information, including covered information and  
18 persistent unique identifiers, that the operator has acquired  
19 because of the use of that operator's site, service, or application  
20 for K-12 school purposes.

21 (b) Use information, including persistent unique identifiers,  
22 created or gathered by the operator's site, service, or  
23 application, to amass a profile about a student except in  
24 furtherance of K-12 school purposes.

25 (c) Sell a student's information, including covered  
26 information. This subdivision does not apply to the purchase,  
27 merger, or other type of acquisition of an operator by another

1 entity, if the operator or successor entity complies with this  
2 section regarding previously acquired student information.

3 (d) Except as otherwise provided in subsection (3), disclose  
4 covered information unless the disclosure is made for the following  
5 purposes:

6 (i) In furtherance of the K-12 school purpose of the site,  
7 service, or application, if the recipient of the covered  
8 information disclosed under this subparagraph does not further  
9 disclose the information unless done to allow or improve  
10 operability and functionality within that student's classroom or K-  
11 12 school.

12 (ii) To ensure legal and regulatory compliance.

13 (iii) To respond to or participate in the judicial process.

14 (iv) To protect the safety of users of the site or the  
15 security of the site.

16 (v) To a service provider, if the operator contractually  
17 prohibits the service provider from using any covered information  
18 for any purpose other than providing the contracted service to or  
19 on behalf of the operator, prohibits the service provider from  
20 disclosing any covered information provided by the operator with  
21 subsequent third parties, and requires the service provider to  
22 implement and maintain reasonable security procedures and  
23 practices. This subparagraph does not prohibit the operator's use  
24 of information for maintaining, developing, supporting, improving,  
25 or diagnosing the operator's site, service, or application.

26 (2) An operator shall do all of the following:

27 (a) Implement and maintain reasonable security procedures and

1 practices appropriate to the nature of the covered information, and  
2 protect that covered information from unauthorized access,  
3 destruction, use, modification, or disclosure.

4 (b) Delete a student's covered information if the K-12 school  
5 or school district requests deletion of data under the control of  
6 the K-12 school or school district.

7 (3) An operator may disclose covered information of a student  
8 under the following circumstances:

9 (a) If other provisions of federal or state law require the  
10 operator to disclose the information, and the operator complies  
11 with the requirements of federal and state law in protecting and  
12 disclosing that information.

13 (b) For legitimate research purposes as required by state or  
14 federal law and subject to the restrictions under applicable state  
15 and federal law or as allowed by state or federal law and under the  
16 direction of a K-12 school, school district, or state department of  
17 education, if covered information is not used for advertising or to  
18 amass a profile on the student for purposes other than K-12 school  
19 purposes.

20 (c) To a state or local educational agency, including K-12  
21 schools and school districts, for K-12 school purposes, as  
22 permitted by state or federal law.

23 (4) This section does not prohibit an operator from doing any  
24 of the following:

25 (a) Using covered information that is not associated with an  
26 identified student within the operator's site, service, or  
27 application or other sites, services, or applications owned by the

1 operator to improve educational products.

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

5 (c) Sharing aggregated covered information that is not  
6 associated with an identified student for the development and  
7 improvement of educational sites, services, or applications.

8 (5) This section does not do any of the following:

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

12 (b) Limit the ability of an operator to use student data,  
13 including covered information, for adaptive learning or customized  
14 student learning purposes.

15 (c) Apply to general audience Internet websites, general  
16 audience online services, general audience online applications, or  
17 general audience mobile applications, even if login credentials  
18 created for an operator's site, service, or application may be used  
19 to access those general audience sites, services, or applications.

20 (d) Limit service providers from providing Internet  
21 connectivity to schools or students and their families.

22 (e) Prohibit an operator of an Internet website, online  
23 service, online application, or mobile application from marketing  
24 educational products directly to parents if the marketing did not  
25 result from the use of covered information obtained by the operator  
26 through the provision of services covered under this section.

27 (f) Impose a duty upon a provider of an electronic store,

1 gateway, marketplace, or other means of purchasing or downloading  
2 software or applications to review or enforce compliance with this  
3 section on those applications or software.

4 (g) Impose a duty upon a provider of an interactive computer  
5 service to review or enforce compliance with this section by third-  
6 party content providers.

7 (h) Prohibit students from downloading, exporting, saving, or  
8 maintaining their own student-created data or documents.

9 Enacting section 1. This act takes effect 90 days after the  
10 date it is enacted into law.