

114TH CONGRESS
1ST SESSION

S. 1788

To require operators that provide online and similar services to educational agencies, institutions, or programs to protect the privacy and security of personally identifiable information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2015

Mr. DAINES (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require operators that provide online and similar services to educational agencies, institutions, or programs to protect the privacy and security of personally identifiable information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safeguarding Amer-
5 ican Families from Exposure by Keeping Information and
6 Data Secure Act” or the “SAFE KIDS Act”.

7 **SEC. 2. DEFINITIONS.**

8 (a) IN GENERAL.—In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (2) COVERED INFORMATION.—The term “cov-
4 ered information” means personally identifiable in-
5 formation, and information that is linked or linkable
6 to personally identifiable information, that—

7 (A) is collected or generated through a
8 school service; and

9 (B)(i) the operator of the school service
10 knows or should know relates to a student; or

11 (ii) is collected, generated, or maintained
12 at the direction of an educational agency, insti-
13 tution, or program serving the student or offi-
14 cials of such an agency, institution, or program,
15 including teachers.

16 (3) EARLY CHILDHOOD EDUCATION PRO-
17 GRAM.—The term “early childhood education pro-
18 gram” means a program that meets the require-
19 ments of clauses (i) and (ii)(III) of section
20 103(8)(C) of the Higher Education Act of 1965 (20
21 U.S.C. 1003).

22 (4) EDUCATIONAL AGENCY, INSTITUTION, OR
23 PROGRAM.—The term “educational agency, institu-
24 tion, or program” means—

1 (A) an educational agency or institution,
2 as defined in section 444(a)(3) of the General
3 Education Provisions Act (20 U.S.C.
4 1232g(a)(3)), except that such term does not
5 include an institution of higher education; or

6 (B) an early childhood education program.

7 (5) ELIGIBLE STUDENT.—The term “eligible
8 student” means a student who—

9 (A) is 18 years of age or older;

10 (B) is enrolled in an institution of higher
11 education; or

12 (C) has graduated from a secondary
13 school.

14 (6) INSTITUTION OF HIGHER EDUCATION.—The
15 term “institution of higher education” has the
16 meaning given such term in section 102 of the High-
17 er Education Act of 1965 (20 U.S.C. 1002).

18 (7) PREK-12 PURPOSES.—The term “PreK-12
19 purposes” means purposes that—

20 (A) aid in the administration of activities
21 by an educational agency, institution, or pro-
22 gram, including instruction in the classroom or
23 at home, administrative activities, and collabo-
24 ration between students, school personnel, or
25 parents; or

1 (B) are for the use and benefit of the edu-
2 cational agency, institution, or program.

3 (8) ONLINE CONTACT INFORMATION.—The
4 term “online contact information” means, with re-
5 spect to a student, an email address or any other
6 substantially similar identifier that permits direct
7 contact with the student online, including an instant
8 messaging user identifier, a voice over Internet pro-
9 tocol identifier, a video chat user identifier, or a
10 screen name or user name that permits such con-
11 tact.

12 (9) OPERATOR.—The term “operator” means
13 an entity that operates a school service, except that
14 such term does not include an educational agency,
15 institution, or program.

16 (10) PERSONALLY IDENTIFIABLE INFORMA-
17 TION.—The term “personally identifiable informa-
18 tion” includes, with respect to a student—

19 (A) the student’s first and last name;

20 (B) the first and last name of the stu-
21 dent’s parent or another family member;

22 (C) the home or physical address of the
23 student or student’s family;

24 (D) online contact information for the stu-
25 dent;

1 (E) a personal identifier, such as the stu-
2 dent's social security number, student number,
3 or biometric record;

4 (F) a persistent identifier that can be used
5 to recognize a user over time and across dif-
6 ferent Internet websites, online services, online
7 applications, or mobile applications, including a
8 customer number held in a cookie, an Internet
9 Protocol address, a processor or device serial
10 number, or another unique identifier;

11 (G) a photograph, video, or audio record-
12 ing that contains the student's image or voice;

13 (H) geolocation information sufficient to
14 identify the street name and name of a city or
15 town;

16 (I) other indirect identifiers, such as the
17 student's date of birth, place of birth, or moth-
18 er's maiden name;

19 (J) other information that, alone or in
20 combination, would allow an operator or a rea-
21 sonable person in the school community, who
22 does not have personal knowledge of the rel-
23 evant circumstances, to identify a specific stu-
24 dent with reasonable certainty; and

1 (K) information requested by a person who
 2 the educational agency, institution, or program
 3 reasonably believes knows the identity of the
 4 student to whom the information relates.

5 (11) SCHOOL SERVICE.—The term “school serv-
 6 ice” means an Internet website, online service (in-
 7 cluding a cloud computing service), online applica-
 8 tion, or mobile application that is used for PreK-12
 9 purposes and was designed and marketed for PreK-
 10 12 purposes.

11 (12) STATE.—The term “State” means each
 12 State of the United States, the District of Columbia,
 13 each territory or possession of the United States,
 14 and each federally recognized Indian tribe.

15 (13) STUDENT.—The term “student” means
 16 any individual who is or has been enrolled in an
 17 early childhood education program, elementary
 18 school, or secondary school.

19 (14) TARGETED ADVERTISING.—

20 (A) IN GENERAL.—The term “targeted ad-
 21 vertising” means presenting advertisements to a
 22 student or the student’s parent, where the ad-
 23 vertisements are selected based on information
 24 obtained or inferred from the student’s online
 25 behavior or use of online applications or mobile

1 applications or from covered information about
 2 the student maintained by the operator of a
 3 school service.

4 (B) EXCLUSION.—Such term does not in-
 5 clude presenting advertisements to a student or
 6 the student’s parent at an online location or
 7 through an online application or mobile applica-
 8 tion, if—

9 (i) the advertisements are contextually
 10 relevant;

11 (ii) the advertisements are selected
 12 based on a single visit or session of use
 13 during which the advertisements are pre-
 14 sented; and

15 (iii) information about the student’s
 16 online behavior or use of online applica-
 17 tions or mobile applications is not collected
 18 or retained over time.

19 (b) TERMS DEFINED IN ELEMENTARY AND SEC-
 20 ONDARY EDUCATION ACT OF 1965.—In this Act, the
 21 terms “elementary school”, “parent”, and “secondary
 22 school” have the meanings given such terms in section
 23 9101 of the Elementary and Secondary Education Act of
 24 1965 (20 U.S.C. 7801).

1 **SEC. 3. PROTECTING STUDENT PRIVACY.**

2 (a) PROHIBITED PRACTICES.—An operator may not
3 knowingly—

4 (1) engage in or permit targeted advertising on
5 a school service;

6 (2) collect, generate, use, or disclose any cov-
7 ered information for purposes of targeted adver-
8 tising;

9 (3) sell covered information to a third party;

10 (4) collect, generate, or use covered information
11 (including using covered information to create a per-
12 sonal profile of a student) other than for PreK-12
13 purposes;

14 (5) disclose covered information, unless the dis-
15 closure is made—

16 (A) pursuant to lawful process or to ensure
17 legal and regulatory compliance with Federal or
18 State law;

19 (B) in accordance with subsection (e), pur-
20 suant to an affirmative express request through
21 a student’s educational agency, institution, or
22 program for disclosure of information specified
23 in the request—

24 (i) in the case of information about a
25 student, from the student’s parent; or

1 (ii) in the case of information about a
2 student's parent or another user of the
3 school service, from the parent or such
4 other user, as the case may be;

5 (C) in accordance with subsection (e), pur-
6 suant to an affirmative express request through
7 a student's educational agency, institution, or
8 program from a student who is or has been en-
9 rolled in a secondary school, or the parent of
10 such student, to disclose covered information
11 specified in the request about the student to a
12 third party in furtherance of postsecondary
13 education or employment opportunities, for the
14 purpose of—

15 (i) providing or authenticating the
16 student's transcript, standardized test
17 scores, letters of recommendation, or other
18 information required by an institution of
19 higher education for an application for ad-
20 mission or by a potential employer for an
21 application for employment; or

22 (ii) providing information relating
23 to—

24 (I) admission to an institution of
25 higher education; or

1 (II) a scholarship or financial aid
 2 for attendance at an institution of
 3 higher education; or

4 (D) to protect the safety of users or others
 5 or the security of the school service; or

6 (6) notwithstanding paragraph (5), disclose cov-
 7 ered information to a third-party service provider of
 8 the school service unless the operator contractually
 9 requires the provider to comply with all the provi-
 10 sions of this Act (including such paragraph).

11 (b) REQUIREMENTS.—An operator shall—

12 (1) establish, implement, and maintain reason-
 13 able security procedures appropriate to the nature of
 14 covered information to protect the confidentiality, se-
 15 curity, and integrity of covered information;

16 (2) delete a student’s covered information that
 17 is not included in a student’s education records (as
 18 defined in section 444(a)(4) of the General Edu-
 19 cation Provisions Act (20 U.S.C. 1232g(a)(4)))
 20 (commonly known as the “Family Educational
 21 Rights and Privacy Act of 1974”) within—

22 (A) a reasonable time, not to exceed 45
 23 days, after receiving a request for deletion
 24 through an educational agency, institution, or
 25 program from the student’s parent; or

1 (B) within a reasonable time, not to exceed
2 2 years, after—

3 (i) the information is no longer being
4 used for PreK-12 purposes; and

5 (ii) providing notification, through an
6 educational agency, institution, or pro-
7 gram, to each student's parent of the im-
8 pending deletion of the student's covered
9 information;

10 (3) obtain consent from the educational agency,
11 institution, or program, through contracts or privacy
12 policies in a manner that is clear and easy to under-
13 stand, regarding the types of covered information
14 collected or generated (if any), the purposes for
15 which the covered information is used or disclosed to
16 third parties, and the identity of any such third
17 party;

18 (4) disclose publicly, on the website of the oper-
19 ator, every privacy policy that the operator has es-
20 tablished with an educational agency, institution, or
21 program;

22 (5) obtain consent from the educational agency,
23 institution, or program and provide sufficient notice
24 on its website before making material changes to a
25 contract or privacy policy for a school service; and

1 (6) facilitate access to and correction of covered
 2 information, through an educational agency, institu-
 3 tion, or program—

4 (A) in the case of information about a stu-
 5 dent, by the student’s parent; or

6 (B) in the case of information about a par-
 7 ent or another user of the school service, by the
 8 parent or such other user, as the case may be.

9 (c) EFFECT ON MERGERS AND ACQUISITIONS.—The
 10 prohibitions of this section on sale and disclosure of cov-
 11 ered information do not apply to the merger of an operator
 12 with another entity or the acquisition of the operator by
 13 another entity (including any subsequent merger or acqui-
 14 sition), provided that the operator or successor entity con-
 15 tinues to be subject to the provisions of this section with
 16 respect to covered information acquired before the merger
 17 or acquisition.

18 (d) CONTINUED APPLICATION.—This section shall
 19 continue to apply, after a student is no longer enrolled
 20 in an educational agency, institution, or program, to cov-
 21 ered information relating to the student that was collected
 22 or generated while the student was enrolled.

23 (e) REQUIREMENTS FOR CERTAIN DISCLOSURES.—
 24 An operator may disclose covered information under sub-

1 paragraph (B) or (C) of subsection (a)(5) only after the
2 operator—

3 (1) ensures that the third-party recipient has
4 provided assurances that it will not further disclose
5 covered information to subsequent third parties, use
6 any covered information pursuant to the request for
7 any purpose other than fulfilling the purpose for
8 which the request was made, nor take any other ac-
9 tion inconsistent with this Act;

10 (2) ensures that the third-party recipient has
11 provided assurances that it will establish, implement
12 and maintain reasonable security procedures as de-
13 scribed in subsection (b)(1); and

14 (3) provides a readily available mechanism for
15 the requesting party to revoke the request.

16 **SEC. 4. RULES OF CONSTRUCTION.**

17 (a) IN GENERAL.—This Act shall not—

18 (1) be construed to affect or otherwise alter the
19 protections and guarantees set forth in section 444
20 of the General Education Provisions Act (20 U.S.C.
21 1232g) (commonly known as the “Family Edu-
22 cational Rights and Privacy Act of 1974”), the Chil-
23 dren’s Online Privacy Protection Act of 1998 (15
24 U.S.C. 6501 et seq.), or any other Federal statute
25 relating to privacy protection;

1 (2) be construed to limit the authority of a law
2 enforcement agency to obtain content or information
3 from an operator as authorized by law or pursuant
4 to an order of a court of competent jurisdiction;

5 (3) limit the ability of an operator to use infor-
6 mation, including covered information, for adaptive
7 or personalized student learning purposes;

8 (4) limit an educational agency, institution, or
9 program from providing Internet access service for
10 its own use, to other educational agencies or institu-
11 tions, or to students and their families;

12 (5) be construed to prohibit an operator's use
13 of covered information for maintaining, developing,
14 supporting, improving, or diagnosing the operator's
15 school service;

16 (6) impose a duty upon a provider of an elec-
17 tronic store, gateway, marketplace, or other means
18 of purchasing or downloading software or applica-
19 tions to review or enforce compliance with this Act
20 by operators of school services; or

21 (7) impede the ability of a student or the stu-
22 dent's parent to download, export, create, or other-
23 wise save or maintain data or documents created by
24 or about the student or noncommercial applications
25 created by the student, except to the extent any such

1 activity would result in disclosure prohibited by this
2 Act of covered information of other students or
3 users of a school service.

4 (b) DE-IDENTIFIED COVERED INFORMATION.—

5 (1) IN GENERAL.—Nothing in this Act pro-
6 hibits an operator from—

7 (A) using de-identified covered information
8 within the operator’s school service or other
9 sites, services, or applications owned by the op-
10 erator to improve educational products;

11 (B) using de-identified covered information
12 to demonstrate the effectiveness of the opera-
13 tor’s products or services, including in the mar-
14 keting of such products or services; or

15 (C) disclosing de-identified covered infor-
16 mation for research and development, includ-
17 ing—

18 (i) research, development, and im-
19 provement of educational sites, services,
20 and applications; and

21 (ii) advancements in the science of
22 learning.

23 (c) POWER TO CONSENT AND RIGHTS REGARDING
24 INFORMATION ABOUT ELIGIBLE STUDENT.—Any provi-
25 sion of this Act that refers to the consent of the student’s

1 parent for the use or disclosure of covered information or
2 the right of the student's parent to access or otherwise
3 obtain, use, correct, request disclosure of, or request dele-
4 tion of covered information, shall, in the case of covered
5 information about an eligible student, be considered to
6 refer to the consent or right of the student and not the
7 student's parent.

8 (d) NO EFFECT ON CONSENT UNDER OTHER
9 LAW.—This Act does not modify the requirements or
10 standards for consent, including consent from minors and
11 employees on behalf of educational institutions, under any
12 other provision of Federal law or under State law.

13 **SEC. 5. IMPLEMENTATION AND ENFORCEMENT.**

14 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
15 SION.—

16 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
17 TICES.—A violation of this Act or a regulation pro-
18 mulgated under this Act shall be treated as a viola-
19 tion of a regulation under section 18(a)(1)(B) of the
20 Federal Trade Commission Act (15 U.S.C.
21 57a(a)(1)(B)) regarding unfair or deceptive acts or
22 practices.

23 (2) POWERS OF THE COMMISSION.—The Com-
24 mission shall enforce this Act and the regulations
25 promulgated under this Act in the same manner, by

1 the same means, and with the same jurisdiction,
2 powers, and duties as though all applicable terms
3 and provisions of the Federal Trade Commission Act
4 (15 U.S.C. 41 et seq.) were incorporated into and
5 made a part of this Act, and any person who violates
6 this Act or a regulation promulgated under this Act
7 shall be subject to the penalties entitled to the privi-
8 leges and immunities provided in the Federal Trade
9 Commission Act, except as provided in paragraph
10 (3).

11 (3) ENFORCEMENT WITH RESPECT TO NON-
12 PROFIT ORGANIZATIONS.—Notwithstanding sections
13 4 and 5(a)(2) of the Federal Trade Commission Act
14 (15 U.S.C. 44; 45(a)(2)), any jurisdictional limita-
15 tion of the Commission with respect to nonprofit or-
16 ganizations shall not apply for purposes of this Act.

17 (b) PRESERVATION OF COMMISSION AUTHORITY.—
18 Nothing in this Act may be construed in any way to limit
19 or affect the Commission’s authority under any other pro-
20 vision of law.

21 (c) REGULATIONS.—The Commission may promul-
22 gate regulations under section 553 of title 5, United
23 States Code, to carry out this Act. Such regulations shall
24 further define the terms “targeted advertising”, “re-
25 search, development, and improvement of educational

1 sites, services, and applications”, “advancements in the
2 science of learning”, “postsecondary education or employ-
3 ment opportunities”, and “adaptive or personalized stu-
4 dent learning purposes”, as used in this Act.

5 (d) CONSULTATION AND COOPERATION WITH SEC-
6 RETARY OF EDUCATION.—The Commission shall consult
7 and cooperate with the Secretary of Education in imple-
8 menting and enforcing this Act, including in promulgating
9 any regulations to carry out this Act, in matters involving
10 educational agencies or institutions.

11 (e) RELATIONSHIP TO STATE LAW.—

12 (1) IN GENERAL.—This Act does not annul,
13 alter, or affect, or exempt any person subject to the
14 provisions of this Act from complying with, the laws
15 of any State with respect to the treatment of covered
16 information by operators of school services, except to
17 the extent that such laws are inconsistent with any
18 provision of this Act, and then only to the extent of
19 the inconsistency. For purposes of this paragraph, a
20 law of a State is not inconsistent with this Act if the
21 protection such law affords any user of a school
22 service is greater than the protection provided by
23 this Act.

1 (2) RULE OF CONSTRUCTION.—Any reference
2 in this Act to State law shall be considered also to
3 refer to the law of a political subdivision of a State.

4 **SEC. 6. EFFECTIVE DATE.**

5 This Act shall take effect on the date that is 18
6 months after the date of the enactment of this Act.

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