

SECOND REGULAR SESSION

# SENATE BILL NO. 1042

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOLSMAN.

Read 1st time February 9, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6420S.011

## AN ACT

To amend chapter 160, RSMo, by adding thereto one new section relating to the protection of student data.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 160, RSMo, is amended by adding thereto one new section, to be known as section 160.078, to read as follows:

**160.078. 1. This section shall be known and may be cited as the "Student Online Personal Protection Act".**

**2. As used in this section, the following terms mean:**

**(1) "Aggregate data", protected information that is collected or reported at the group, cohort, or institutional level;**

**(2) "Online service provider" or "provider", an entity that has contracted with a state agency to provide educational services through an internet website, online service, online application, or mobile application;**

**(3) "Protected information", personally identifiable information or material, including education records, or information that is linked to personally identifiable information or material, including education records, in any media or format that is not publically available and is:**

**(a) Created by or disclosed to a provider by a student or the student's parent in the course of the student's or parent's use of the provider's educational services;**

**(b) Created by or disclosed to a provider by an employee or agent of a state agency for school purposes; or**

**(c) Gathered by a provider through the provision of its educational services for school purposes;**

**(4) "Public school", a public school as defined in section 160.011,**

22 including public charter schools;

23 (5) "Recommendation engine", software that analyzes available  
24 data to make suggestions for products or services that a website user  
25 may be interested in;

26 (6) "School purposes", any activity that is directed by or that  
27 customarily takes place at the direction of a public school, teacher, or  
28 school district, or aids in the administration of school activities,  
29 including but not limited to instruction in the classroom or at home,  
30 administrative activities, and collaboration between students, school  
31 personnel, or parents, or are otherwise for the use and benefit of the  
32 school;

33 (7) "State agency", the department of elementary and secondary  
34 education, the department of higher education, the state board of  
35 education, the P-20 council, the coordinating board for higher  
36 education, the coordinating board for early childhood, any regional  
37 education service agency, or any other state education entity, including  
38 local school districts and charter schools;

39 (8) "Targeted advertising", the presenting of advertisements to  
40 a student where the advertisement is selected based on information  
41 obtained or inferred over time from that student's online behavior,  
42 usage of applications, or protected information. "Targeted advertising"  
43 shall not include advertising to a student at an online location based  
44 upon that student's current visit to that location, or in response to that  
45 student's request for information or feedback, without the retention of  
46 that student's online activities or requests over time for the purpose of  
47 targeting subsequent advertisements.

48 3. As used in this section, the following terms shall have the  
49 same meaning as defined in 34 C.F.R. Section 99.3:

50 (1) "Disclosure";

51 (2) "Education records";

52 (3) "Parent";

53 (4) "Party";

54 (5) "Personally identifiable information"; and

55 (6) "Student".

56 4. An online service provider shall not:

57 (1) Allow or engage in targeted advertising on the provider's  
58 website, service, or application, or engage in targeted advertising on

59 any other website, service, or application if the targeting of the  
60 advertising is based on protected information that the provider has  
61 acquired in the course of the student's use of that providers's  
62 educational services;

63 (2) Use protected information created or gathered by the  
64 provider's provision of educational services to create a profile about a  
65 student except in furtherance of school purposes;

66 (3) Sell or rent a student's protected information;

67 (4) Disclose protected information unless the disclosure is made  
68 for one of the following purposes:

69 (a) To fulfill the provider's contractual obligations under which  
70 it is providing educational services;

71 (b) To ensure legal and regulatory compliance with state and  
72 federal law;

73 (c) To respond to or participate in judicial proceedings;

74 (d) To fulfill a student's or parent's request for such student's  
75 information;

76 (e) To contract with a third party for services provided for  
77 school purposes, provided that the online service provider  
78 contractually prohibits the third party from using any protected  
79 information for any purpose other than providing the contracted  
80 service to or on behalf of the provider, prohibits the third party from  
81 disclosing to subsequent parties any protected information provided by  
82 the provider, requires the third party to implement and maintain  
83 reasonable security procedures and practices, and ensures the third  
84 party otherwise complies with the provisions of this section;

85 (f) For research purposes as required by state or federal law and  
86 subject to the restrictions under applicable state and federal law,  
87 provided that protected information is not used for advertising or to  
88 create a profile on a student for purposes other than school purposes;  
89 or

90 (g) At the request of a state agency for school purposes.

91 5. An online service provider shall:

92 (1) Implement and maintain reasonable security procedures and  
93 practices designed to prevent the unauthorized access, destruction, use,  
94 modification, or disclosure of protected information;

95 (2) Delete within a reasonable time period a student's protected

96 information if a state agency requests deletion of such information,  
97 unless a student or parent provides written consent to the maintenance  
98 of the protected information; and

99 (3) Comply with all state and federal regulations pertaining to  
100 the privacy of a student's protected information, including the federal  
101 Family Educational Rights and Privacy Act.

102 6. Nothing in this section shall be construed as prohibiting a  
103 provider from:

104 (1) Using aggregate data for maintaining, developing, supporting,  
105 improving, or diagnosing the providers's educational services.

106 (2) Using aggregate data to demonstrate the effectiveness of the  
107 provider's products or services, including in the provider's marketing;  
108 or

109 (3) Using recommendation engines to recommend to a student  
110 additional educational content or services within the provider's online  
111 site, service, or application provided that the recommendation is not  
112 determined in whole or in part by payment or other consideration from  
113 a third party.

114 7. Nothing in this section shall be construed as:

115 (1) Limiting the authority of a law enforcement agency to obtain  
116 any content or information from a provider as authorized by law or  
117 under a court order;

118 (2) Applying to internet websites, services, or applications that  
119 are intended for a general audience;

120 (3) Prohibiting an online service provider from marketing  
121 educational services directly to parents, provided the marketing did  
122 not result from the use of protected information obtained by the  
123 provider through the provision of educational services provided under  
124 this section; or

125 (4) Prohibiting students or parents from downloading, exporting,  
126 transferring, saving, or maintaining their own protected information.

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