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STATE OF NEW JERSEY
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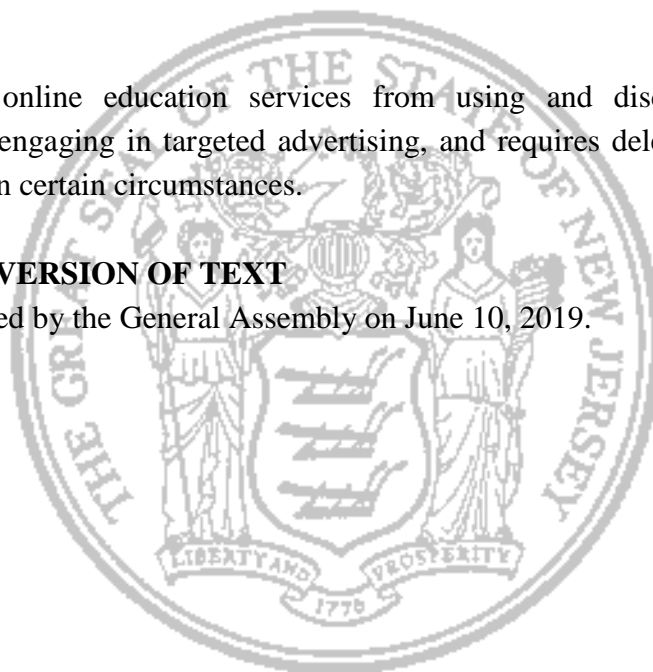
Assemblywomen McKnight, Lopez and Assemblyman Conaway

SYNOPSIS

Prohibits online education services from using and disclosing certain information, engaging in targeted advertising, and requires deletion of certain information in certain circumstances.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 10, 2019.



(Sponsorship Updated As Of: 1/10/2020)

1 AN ACT concerning online education services and student
2 educational records and supplementing P.L.1960, c.39 (C.56:8-1
3 et seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in P.L. , c. (C.) (pending before the Legislature
9 as this bill):

10 ³["Cloud computing service" means a service that enables on-
11 demand self-service network access to a shared pool of configurable
12 computer resources to provide a student account-based productivity
13 applications, including, but not limited to, electronic mail, document
14 storage, and document editing, which can be rapidly provisioned and
15 released with minimal management effort or cloud computing service
16 provider interaction.]

17 "Covered information" means personally identifiable information
18 or material, or information that is linked to personally identifiable
19 information or material, in any media or format that is not publicly
20 available and is:

21 created by or provided to an operator by a student, or the student's
22 parent or guardian, in the course of the student's, parent's, or
23 guardian's use of the operator's site, service, or application for K-12
24 school purposes;

25 created by or provided to an operator by an employee or agent of a
26 K-12 school or school district for K-12 school purposes; or

27 gathered by an operator through the operation of its site, service, or
28 application for K-12 school purposes and personally identifies a
29 student, including, but not limited to, information in the student's
30 education record or electronic mail, first and last name, home address,
31 telephone number, electronic mail address, or other information that
32 allows physical or online contact with the student, discipline records,
33 test results, special education data, juvenile dependency records,
34 grades, evaluations, criminal records, medical records, health records,
35 social security number, biometric information, disabilities,
36 socioeconomic information, persistent unique identifiers, food
37 purchases, political affiliations, religious information, text messages,
38 documents, student identifiers, search activity, photographs, voice
39 recordings, or geolocation data.³

40 "De-identified data" means information that ³["does not identify an
41 individual and for which there is no reasonable basis to believe that the
42 information can be used to identify an individual"] is not or can no
43 longer be linked or reasonably linkable to a person or the person's

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AST committee amendments adopted February 14, 2019.

²Assembly floor amendments adopted February 25, 2019.

³Assembly floor amendments adopted June 10, 2019.

1 computer, telecommunications device, or wireless telecommunications
2 device, but which may still contain unique records or attributes. “De-
3 identified data” shall not mean covered information³.

4 ³【“Educational record” means an official record, file, or data, in
5 any medium or format, directly related to the student of an online
6 education service as provided by a student, parent, legal guardian,
7 school, or school district in the course of the student’s use of the online
8 education service, including, but not limited to, records encompassing
9 all the material stored or recorded in the student’s cumulative folders,
10 files, or applications, such as general identifying data, electronic mail
11 addresses, records of academic work, records of achievement, results
12 of evaluative tests, health data, test protocols, criminal records,
13 biometric information, food purchases, political affiliations, search
14 activity, persistent unique identifiers, photos, voice recordings, global
15 positioning system data, and individualized education plans or
16 programs.】

17 “Interactive computer service” shall have the same meaning as
18 provided in 47 U.S.C. s.230.

19 “K-12 school” means a public school that offers any of grades
20 kindergarten to 12 and that is operated by any school district in this
21 State.

22 “K-12 school purposes” means purposes that are directed by or that
23 customarily take place at the direction of a school district, K-12
24 school, teacher, or school district or aid in the administration of school
25 activities, including, but not limited to, instruction in the classroom or
26 at home, administrative activities, and collaboration between students,
27 school personnel, or parents or guardians, or are otherwise for the use
28 of a benefit of the school district or K-12 school.³

29 “Online education service” or “service” means an Internet website,
30 online service, online computer application, ³【cloud computing
31 service,】³ or mobile application ³【designed, marketed, and offering
32 education for grades kindergarten through 12, or any combination
33 thereof, to supplement, or use in lieu of, physical attendance at a
34 private or public school in this State】 that is used primarily for K-12
35 school purposes and is designed and marketed for K-12 school
36 purposes³.

37 “Operator” means the ¹【operator】 ³【owner¹】 operator³ of an
38 online education service with actual knowledge that the online
39 education service is used primarily for K-12 school purposes and is
40 designed and marketed for K-12 school purposes³.

41 “Persistent unique identifier” means a digital label given to an
42 object, such as a digital file, or entity, such as a person, which is used
43 on the online education service.

44 ³【“Process” or “processing” means to use, access, manipulate,
45 scan, modify, transform, disclose, store, transmit, transfer, retain,
46 aggregate, or dispose of educational records.】

1 “Personally identifiable information” means information that is
2 linked or reasonably linkable to an identified or identifiable person.
3 “Personally identifiable information” shall not include de-identified
4 data or publicly available information.

5 “Publicly available information” means information that is
6 lawfully made available from federal, State, or local government
7 records.

8 “Recommendation engine” means software that uses an
9 algorithm to predict and recommend what information, product, or
10 item a student may prefer.

11 “School district” means any school district established pursuant to
12 Title 18A of the New Jersey Statutes.³

13 “Student” means a minor user of an online education service.

14 ³“Targeted advertising” means the presenting of advertisements to
15 a student where the advertisement is selected based on information
16 obtained or inferred over time from that student’s online behavior, use
17 of Internet websites, online services, online computer applications, or
18 mobile applications, or covered information. “Targeted advertising”
19 shall not include advertising to a student at an online location based
20 upon that student’s current visit to that location, or in response to that
21 student’s request for information or feedback, without the retention of
22 the student’s online activities or requests over time for the purpose of
23 targeting subsequent advertisements.³

24
25 2. a. An operator of an online education service shall not
26 knowingly:

27 (1) use information, including ³[educational] covered
28 information³, created or gathered by the ³[operator] operator’s online
29 education service³, to amass a profile about a student for any purpose
30 other than ³[the furtherance of the student’s kindergarten through 12
31 grade education] K-12 school purposes. A profile shall not include the
32 collection and retention of account information that remains under the
33 control of the student, the student’s parents or guardian, or K-12
34 school³;

35 (2) sell ³[an educational record to any person unless sold in the
36 course of the purchase, merger, or other type of acquisition of an
37 online education service by another entity, provided that the online
38 education service continues to be subject to the provisions of this
39 section with respect to previously acquired student educational
40 records] or rent a student’s information, including covered
41 information. This paragraph shall not apply to the purchase, merger, or
42 other type of acquisition of an operator by another entity if the
43 operator or successor entity complies with this section concerning
44 previously acquired student information, including covered
45 information, or to national assessment providers if the provider secures
46 express written consent of the student’s parent or guardian, given in
47 response to clear and conspicuous notice, solely to provide access to

- 1 employment, educational scholarships, financial aid, or postsecondary
2 educational opportunities³; ³**[and]**³
- 3 (3) disclose ³**[an educational record collected or maintained by the**
4 **online education service]** covered information³ unless the disclosure
5 is:
- 6 (a) made in furtherance of the ³**[educational purpose]** K-12 school
7 purposes³ purpose of the service, provided the recipient of the
8 ³**[educational record]** covered information³ shall not further disclose
9 the information unless done to allow or improve the operability and
10 functionality ³**[within that student's classroom or school]** of the
11 operator's online education service³;
- 12 (b) required by federal or State law ³**to protect against liability**³;
- 13 (c) made to respond to or participate in a judicial process;
- 14 (d) to protect the safety of students or security of the service; ³**[or]**
15 (e) for educational or employment purposes requested by the
16 student's parent or guardian, provided that the covered information is
17 not used or further disclosed for any other purpose not requested by
18 the student's parent or guardian;
- 19 (f) to a third party if the operator contractually prohibits the third
20 party from using any covered information for any purpose other than
21 providing the contracted service to or on behalf of the operator,
22 prohibits the third party from disclosing any covered information
23 provided by the operator with subsequent third parties, and requires
24 the third party to implement and maintain reasonable security
25 procedures and practices; or
- 26 (g)³ for legitimate research purposes ³**[made in accordance with]**
27 , subject to the requirements of³ paragraphs (1) through (3) of this
28 subsection ¹**[.]**¹:
- 29 (i) as required by federal or State law and subject to the
30 restrictions of ³**the**³ application of federal or State law; ³**[or]**³
- 31 (ii) as allowed by federal or State law and under the direction of a
32 ³**K-12**³ school, school district, or the Department of Education, if no
33 ³**[educational record]** covered information³ is used for any purpose in
34 furtherance of advertising or to amass a profile on the student for any
35 purpose that is not in furtherance of ³**[kindergarten through 12 grade**
36 **education]** a K-12 school purpose³; ³**or**³
- 37 (iii) for use by a federal, State, or local educational agency,
38 including ³**K-12**³ schools and school districts, for ³**[kindergarten**
39 **through 12 grade educational]** K-12 school³ purposes, as permitted by
40 federal or State law ³; and
- 41 (4) engage in targeted advertising on the operator's service, or
42 target advertising on any other Internet website, online service, online
43 computer application, or mobile application if the targeted advertising
44 is based on any information, including covered information, that the
45 operator's service has acquired because of the use of the operator's
46 service for K-12 school purposes³.

1 b. Nothing in this section shall be construed to prohibit the
2 operator's use of ³educational records ³covered information³ for
3 maintaining, developing, supporting, ³diagnosing,³ or improving the
4 operator's online education service.

5
6 3. An operator of an online education service shall:

7 a. implement and maintain reasonable security procedures and
8 practices appropriate to the nature of the ³educational record
9 covered information³;

10 b. protect that information from unauthorized access,
11 destruction, use, modification, or disclosure; and

12 c. delete ³an educational record covered information³ at the
13 request of a ³K-12³ school or a school district overseeing the
14 student's education through the service or a student who has
15 subsequently reached the age of majority ³, unless a student after
16 having reached the age of majority or parent or guardian requests
17 that the operator maintain the covered information³.

18
19 4. Nothing in P.L. , c. (C.) (pending before the
20 Legislature as this bill) shall be construed to prohibit an operator of
21 an online education service from using de-identified data ³as
22 follows ³to³:

23 a. ³to³ improve the educational products within the service
24 owned by the operator; ³or³

25 b. ³to³ demonstrate the effectiveness of the operator's
26 products or services, including their marketing ³;

27 c. develop or improve websites, online services, or online or
28 mobile applications for K-12 school purposes;

29 d. use a recommendation engine to recommend to a student
30 additional content or services concerning an educational or
31 employment opportunity purpose on an Internet website, online
32 service, online computer application, or mobile application if the
33 recommendation is not determined in whole or in part by payment
34 or other consideration from a third party; or

35 e. respond to a student's request for information or for
36 feedback if the information or response is not determined, in whole
37 or in part, by payment or other consideration from a third party³.

38
39 ³5. Nothing in P.L. , c. (C.) (pending before the
40 Legislature as this bill) shall be construed to:

41 a. limit the authority of a law enforcement agency to obtain
42 any content or information from an operator as authorized by law or
43 under a court order;

44 b. limit the ability of an operator to use student data, including
45 covered information, for adaptive learning or customized student
46 learning purposes;

1 c. apply to general audience Internet websites, general
2 audience online services, general audience online applications, or
3 general audience mobile applications, even if login credentials
4 created for an operator's website, service, or application may be
5 used to access those general audience websites, services, or
6 applications;

7 d. limit service providers from providing Internet connectivity
8 to schools or students and their families;

9 e. prohibit an operator from marketing educational products
10 directly to parents or guardians if the marketing did not result from
11 the use of covered information obtained by the operator through the
12 provision of services pursuant to P.L. , c. (C.) (pending
13 before the Legislature as this bill);

14 f. impose a duty upon a provider of an electronic store,
15 gateway, marketplace, or other means of purchasing or
16 downloading software or applications to review or enforce
17 compliance with P.L. , c. (C.) (pending before the
18 Legislature as this bill) on the software of applications;

19 g. impose a duty upon a provider of an interactive computer
20 service to review or enforce compliance with P.L. , c. (C.)
21 (pending before the Legislature as this bill) by a third-party content
22 provider; or

23 h. prohibit students from downloading, exporting, transferring,
24 saving, or maintaining their own student data or documents.³

25
26 ³**[5.] 6.³** It shall be an unlawful practice pursuant to P.L.1960,
27 c.39 (C.56:8-1 et seq.) for an operator of an online education
28 service to violate the provisions of P.L. , c. (C.) (pending
29 before the Legislature as this bill), or any rule or regulation adopted
30 pursuant thereto.

31
32 ³**[6.] 7.³** The Director of the Division of Consumer Affairs in
33 the Department of Law and Public Safety ², in consultation with the
34 Commissioner of Education,² shall adopt, pursuant to the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.), rules and regulations necessary to effectuate the purposes of
37 P.L. , c. (C.) (pending before the Legislature as this bill).

38
39 ³**[7.] 8.³** This act shall take effect immediately, but shall
40 remain inoperative for 180 days following the date of enactment.