

By: VanDeaver

H.B. No. 2087

A BILL TO BE ENTITLED

AN ACT

relating to restricting the use of covered information, including student personally identifiable information, by an operator of a website, online service, online application, or mobile application for a school purpose.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 32, Education Code, is amended to read as follows:

CHAPTER 32. COMPUTERS, ~~AND~~ COMPUTER-RELATED EQUIPMENT, AND  
STUDENT INFORMATION PROTECTION

SECTION 2. Chapter 32, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. STUDENT INFORMATION

Sec. 32.151. DEFINITIONS. In this subchapter:

(1) "Covered information" means personally identifiable information or information that is linked to personally identifiable information, in any media or format, that is not publicly available and is:

(A) created by or provided to an operator by a student or the student's parent in the course of the student's or parent's use of the operator's website, online service, online application, or mobile application for a school purpose;

(B) created by or provided to an operator by an employee of a school district or school campus for a school purpose;

1 or

2 (C) gathered by an operator through the operation  
3 of the operator's website, online service, online application, or  
4 mobile application for a school purpose and personally identifies a  
5 student, including the student's educational record, electronic  
6 mail, first and last name, home address, telephone number,  
7 electronic mail address, information that allows physical or online  
8 contact, discipline records, test results, special education data,  
9 juvenile delinquency records, grades, evaluations, criminal  
10 records, medical records, health records, social security number,  
11 biometric information, disabilities, socioeconomic information,  
12 food purchases, political affiliations, religious information,  
13 text messages, student identifiers, search activity, photograph,  
14 voice recordings, or geolocation information.

15 (2) "Interactive computer service" has the meaning  
16 assigned by 47 U.S.C. Section 230.

17 (3) "Operator" means, to the extent operating in this  
18 capacity, the operator of a website, online service, online  
19 application, or mobile application who has actual knowledge that  
20 the website, online service, online application, or mobile  
21 application is used primarily for a school purpose and was designed  
22 and marketed for a school purpose.

23 (4) "Parent" includes a person standing in parental  
24 relation.

25 (5) "School purpose" means a purpose that is directed  
26 by or customarily takes place at the direction of a school district,  
27 school campus, or teacher or assists in the administration of

1 school activities, including instruction in the classroom or at  
2 home, administrative activities, and collaboration between  
3 students, school personnel, or parents, or is otherwise for the use  
4 and benefit of the school.

5 (6) "Targeted advertising" means presenting an  
6 advertisement to a student in which the advertisement is selected  
7 for the student based on information obtained or inferred over time  
8 from the student's online behavior, usage of applications, or  
9 covered information. The term does not include advertising to a  
10 student at an online location based on the student's visit to that  
11 location at that time, or in response to the student's request for  
12 information or feedback, without the retention of the student's  
13 online activities or requests over time for the purpose of  
14 targeting subsequent advertisements.

15 Sec. 32.152. PROHIBITED USE OF COVERED INFORMATION. (a) An  
16 operator may not knowingly:

17 (1) engage in targeted advertising on any website,  
18 online service, online application, or mobile application if the  
19 target of the advertising is based on any information, including  
20 covered information and persistent unique identifiers, that the  
21 operator has acquired through the use of the operator's website,  
22 online service, online application, or mobile application for a  
23 school purpose;

24 (2) use information, including persistent unique  
25 identifiers, created or gathered by the operator's website, online  
26 service, online application, or mobile application, to create a  
27 profile about a student unless the profile is created for a school

1 purpose; or

2 (3) except as provided by Subsection (c), sell or rent  
3 any student's covered information.

4 (b) For purposes of Subsection (a)(2), the collection and  
5 retention of account information by an operator that remains under  
6 the control of the student, the student's parent, or the campus or  
7 district is not an attempt to create a profile by the operator.

8 (c) Subsection (a)(3) does not apply to:

9 (1) the purchase, merger, or any other type of  
10 acquisition of an operator by another entity, if the operator or  
11 successor entity complies with this subchapter regarding  
12 previously acquired student information; or

13 (2) a national assessment provider if the provider  
14 secures the express written consent of the student if the student is  
15 18 years of age or older or the student's parent if the student is 17  
16 years of age or younger, given in response to clear and conspicuous  
17 notice, if the information is used solely to provide access to  
18 employment, educational scholarships, financial aid, or  
19 postsecondary educational opportunities.

20 Sec. 32.153. ALLOWED DISCLOSURE OF COVERED INFORMATION.

21 (a) An operator may use or disclose covered information if the  
22 disclosure is:

23 (1) to further a school purpose of the website, online  
24 service, online application, or mobile application and the  
25 recipient of the covered information disclosed under this  
26 subsection does not further disclose the information unless the  
27 disclosure is to allow or improve operability and functionality of

1 the operator's website, online service, online application, or  
2 mobile application;

3 (2) to ensure legal and regulatory compliance;

4 (3) to protect against liability;

5 (4) to respond to or participate in the judicial  
6 process;

7 (5) to protect:

8 (A) the safety or integrity of users of the  
9 website, online service, online application, or mobile  
10 application; or

11 (B) the security of the website, online service,  
12 online application, or mobile application;

13 (6) for a school, education, or employment purpose  
14 requested by the student or the student's parent and the  
15 information is not used or disclosed for any other purpose;

16 (7) to use the covered information for:

17 (A) a legitimate research purpose; or

18 (B) a school purpose or postsecondary  
19 educational purpose; or

20 (8) requested by the agency or the school district for  
21 a school purpose.

22 (b) An operator may disclose covered information if a  
23 provision of federal or state law requires the operator to disclose  
24 the information. The operator must comply with the requirements of  
25 federal and state law to protect the information being disclosed.

26 (c) An operator may disclose covered information to a third  
27 party if the operator has contracted with the third party to provide

1 a service for a school purpose for or on behalf of the operator. The  
2 contract must prohibit the third party from using any covered  
3 information for any purpose other than providing the contracted  
4 service. The operator must require the third party to implement and  
5 maintain reasonable procedures and practices designed to prevent  
6 disclosure of covered information.

7 (d) Nothing in this subchapter prohibits the operator's use  
8 of covered information for maintaining, developing, supporting,  
9 improving, or diagnosing the operator's website, online service,  
10 online application, or mobile application.

11 Sec. 32.154. ALLOWED USE OF COVERED INFORMATION. This  
12 subchapter does not prohibit an operator from:

13 (1) using covered information:

14 (A) to improve educational products if that  
15 information is not associated with an identified student using the  
16 operator's website, online service, online application, or mobile  
17 application; and

18 (B) that is not associated with an identified  
19 student to demonstrate the effectiveness of the operator's products  
20 or services and to market the operator's services;

21 (2) sharing covered information that is not associated  
22 with an identified student for the development and improvement of  
23 educational websites, online services, online applications, or  
24 mobile applications;

25 (3) recommending to a student additional services or  
26 content relating to an educational, learning, or employment  
27 opportunity within a website, online service, online application,

1 or mobile application if the recommendation is not determined by  
2 payment or other consideration from a third party;

3 (4) responding to a student's request for information  
4 or for feedback without the information or response being  
5 determined by payment or other consideration from a third party; or

6 (5) identifying for a student, with the express  
7 affirmative consent of the student if the student is 18 years of age  
8 or older or the student's parent if the student is 17 years of age or  
9 younger, institutions of higher education or scholarship providers  
10 that are seeking students who meet specific criteria, regardless of  
11 whether the identified institution of higher education or  
12 scholarship provider provides consideration to the operator.

13 Sec. 32.155. PROTECTION OF COVERED INFORMATION. An  
14 operator must implement and maintain reasonable security  
15 procedures and practices designed to protect any covered  
16 information from unauthorized access, deletion, use, modification,  
17 or disclosure.

18 Sec. 32.156. DELETION OF COVERED INFORMATION. If a school  
19 district requests the deletion of a student's covered information  
20 under the control of the school district and maintained by the  
21 operator, the operator shall delete the information not later than  
22 the 60th day after the date of the request, or as otherwise  
23 specified in the contract or terms of service, unless the student or  
24 the student's parent consents to the operator's maintenance of the  
25 covered information.

26 Sec. 32.157. APPLICABILITY. This subchapter does not:

27 (1) limit the authority of a law enforcement agency to

1 obtain any information from an operator as authorized by law or  
2 under a court order;

3 (2) limit the ability of an operator to use student  
4 data, including covered information, for adaptive learning or  
5 customized student learning purposes;

6 (3) apply to general audience:

7 (A) websites;

8 (B) online services;

9 (C) online applications; or

10 (D) mobile applications;

11 (4) limit service providers from providing Internet  
12 connection to school districts or students and students' families;

13 (5) prohibit an operator from marketing educational  
14 products directly to a student's parent if the marketing is not a  
15 result of the use of covered information obtained by the operator  
16 through providing services to the school district;

17 (6) impose a duty on a provider of an electronic store,  
18 gateway, marketplace, or other means of purchasing or downloading  
19 software or applications to review or enforce compliance with this  
20 subchapter on those applications or software;

21 (7) impose a duty on a provider of an interactive  
22 computer service to review or enforce compliance with this  
23 subchapter by third-party content providers; or

24 (8) prohibit a student from downloading, exporting,  
25 transferring, saving, or maintaining the student's data or  
26 documents.

27 SECTION 3. This Act takes effect September 1, 2017.