

AN ACT RELATING TO PROTECTING ONLINE STUDENT IDENTIFIABLE INFORMATION

Sec. 1. 16 V.S.A. Section ___ or 9 V.S.A. Section ___ is added to read:

§ ___. Definitions.

(a) “Covered information” means personally identifiable information or materials, in any media or format that is created or provided by an employee or agent of a pre-K–12 school, school district, or local education agency to an operator.

(b) “Online service” includes cloud computing services, which must comply with this subchapter if they otherwise meet the definition of an operator.

(c) “Operator” means the operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for pre-K–12 school purposes and was designed and marketed for pre-K–12 school purposes.

(d) “Pre-K–12 school purposes” means purposes that customarily take place at the direction of the Pre-K–12 school, teacher, or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the school. “Pre-K–12 school purposes” shall also mean systems and services specifically arranged or approved by the Agency of Education including without limitation systems and services provided by third party providers for educational purposes such as assessment, interoperability, transfer of data for educational or Agency research purposes, or education or fiscal administration, reporting of results, innovative learning, general-purpose software as a service utilized for student or educator work, or similar functions by or for the Agency of Education. The Secretary may adopt written standards further defining such allowable purposes on the Secretary’s own initiative, or in response to a request from an educational entity, a provider entity, or a member of the public, on condition that adopted standards will apply equitably for similarly situated scenarios.

Sec. 2. 16 V.S.A. Section ___ or 9 V.S.A. Section ___ is added to read:

§ ___. Protection of Online Student Identifiable Information Act.

(a) An operator shall not knowingly engage in any of the following activities with respect to its site, service, or application:

(1) Engage in targeted advertising on the operator’s site, service, or application, or target advertising on any other site, service, or application when the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired as a result of a redisclosure of covered information to the operator, pursuant to 34 C.F.R. Part 99.

(2) Use covered information, including persistent unique identifiers, to amass a profile about a pre-K–12 student except in furtherance of pre-K–12 school purposes.

(3) Sell a student’s information, including covered information. This prohibition does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, provided that the operator or successor entity continues to be subject to the provisions of this section with respect to previously acquired student information.

(4) Disclose covered information unless the disclosure is made:

(A) In furtherance of the pre-K–12 purpose of the site, service, or application, provided the recipient of the covered information does not further disclose the information except to allow or improve operability and functionality within a classroom or school, and the recipient complies with subdivision (c);

(B) To ensure compliance with any applicable state or federal law;

(C) To respond to or participate in a judicial process;

(D) To protect the safety of users or others or security of the site; or

(E) To a service provider, provided the operator contractually (i) prohibits the service provider from using any covered information for any purpose other than providing the contracted service to, or on behalf of, the operator, (ii) prohibits the service provider from disclosing any covered information provided by the operator with subsequent third parties, and (iii) requires the service provider to implement and maintain reasonable security procedures and practices as provided in subdivision (c).

(b) Nothing in subdivision (a) shall be construed to prohibit the operator’s use of covered information for maintaining, developing, supporting, improving, or diagnosing the operator’s site, service, or application.

(c) An operator shall implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, and protect that information from unauthorized access, destruction, use, modification, or disclosure.

(d) Notwithstanding paragraph (4) of subdivision (a), an operator may disclose covered information of a student, consistent with paragraphs (1) through (3) of subsection (a), under the following circumstances:

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

(2) For legitimate research purposes under the direction of a school, school district, supervisory union, or the Agency of Education as permitted by state or federal law, if no covered information is used for any purpose in furtherance of advertising or to amass a profile on the student for purposes other than pre-K–12 school purposes.

(3) To a state or local educational agency, including schools and school districts, for pre-K–12 school purposes, as permitted by state or federal law.

Sec. 3. 16 V.S.A. Section ____ or 9 V.S.A. Section ____ is added to read:

§ ____. **Enforcement.**

A person who violates this subchapter engages in an unfair and deceptive trade practice in violation of the state’s Consumer Protection Act, 9 V.S.A. §§ 2451 et seq. This subchapter shall not be construed to limit liability under any other law.

Sec. 4. 16 V.S.A. Section ____ or 9 V.S.A. Section ____ is added to read:

§ ____. **Severability.**

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Sec. 5. Effective date.

This act shall take effect on January 1, 2017.