

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE DRS15205-TC-1 (09/18)

Short Title: Student Data Protection Act.

(Public)

Sponsors: Senator Stein (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT OPERATORS OF CERTAIN ONLINE SERVICES FROM  
3 DISCLOSING, SELLING, OR TARGETING ADVERTISING BASED ON STUDENT  
4 DATA GATHERED FROM THOSE SERVICES AND TO REQUIRE CONTRACTS  
5 FOR ONLINE SERVICES TO PROTECT STUDENT DATA.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** Article 29 of Chapter 115C of the General Statutes is amended by  
8 adding a new section to read:

9 **"§ 115C-402.10. Contracts for and protection of student information in online services.**

10 (a) Definitions. – The following definitions apply in this section:

11 (1) Covered information. – Personally identifiable student data or student  
12 records, in any media or format, that meet any of the following criteria:

13 a. Is created or provided by a student, or the student's parent or legal  
14 guardian, to an operator in the course of the student's, parent's, or  
15 legal guardian's use of the operator's online service.

16 b. Is created or provided by an employee or agent of the public school  
17 or local school administrative unit to an operator.

18 c. Is gathered by an operator through the operation of an online service.

19 (2) De-identified student covered information. – Information from which all  
20 personally identifiable student data has been removed and that cannot be  
21 used to identify an individual student.

22 (3) Eligible student. – A student who has reached 18 years of age.

23 (4) Local board of education. – A local board of education, a board of directors  
24 of a charter school, or a board of directors of a regional school.

25 (5) Online service. – An Internet Web site, online service, instructional software  
26 or application, mobile application, or cloud computing service designed,  
27 marketed, and used for public school purposes.

28 (6) Operator. – The operator of an online service with actual knowledge that the  
29 online service is used for public school purposes.

30 (7) Personally identifiable student data. – As defined in G.S. 115C-402.5(a)(4).

31 (8) Public school. – A school under the control and supervision of a local board  
32 of education, a charter school authorized as provided in Article 14A of this  
33 Chapter, or a regional school authorized as provided in Part 10 of Article 16  
34 of this Chapter.

35 (9) Public school purposes. – Purposes that take place at the direction of the  
36 public school, teacher, or local school administrative unit that aid in the



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1 administration of school activities, including, but not limited to, instruction  
2 in the classroom or at home, administrative activities, and collaboration  
3 between students, school personnel, or parents.

4 (10) Student. – A child enrolled in a public school.

5 (11) Student-generated content. – Materials created by a student, including, but  
6 not limited to, essays, research reports, portfolios, creative writing, music or  
7 other audio files, photographs, and account information that enables ongoing  
8 possession and control by the student. Student-generated content does not  
9 include student responses to a standardized assessment where student  
10 possession and control would jeopardize the validity and reliability of that  
11 assessment.

12 (b) Requirements for Operators. – An operator of an online service shall do the  
13 following:

14 (1) Implement and maintain reasonable security procedures and practices  
15 appropriate to the nature of the covered information and protect that covered  
16 information from unauthorized access, destruction, use, modification, or  
17 disclosure.

18 (2) Delete a student's covered information that was created or provided by the  
19 student, an employee, or agent of the public school or local school  
20 administrative unit if the public school or local school administrative unit  
21 requests deletion of such covered information.

22 (c) Prohibited Activities for Operators. – An operator shall not engage in any of the  
23 following activities with respect to their online service:

24 (1) Targeted advertising on the operator's online service or targeted advertising  
25 on any other online service, when targeting of advertising is based upon any  
26 covered information.

27 (2) Use of covered information to discriminate or allow discrimination against a  
28 student.

29 (3) Sale of covered information. This prohibition does not apply to the purchase,  
30 merger, or other type of acquisition of an operator by another entity,  
31 provided that the operator or successor entity continues to be subject to the  
32 provisions of this section with respect to previously acquired covered  
33 information.

34 (4) Knowing disclosure of covered information, except as provided in  
35 subsection (d) of this section.

36 (d) Exceptions to Prohibition on Disclosure of Covered Information. – An operator may  
37 disclose covered information under the following circumstances:

38 (1) To ensure legal and regulatory compliance.

39 (2) To respond to or participate in judicial process.

40 (3) To protect the safety of users or others or the security of the online service.

41 (4) In furtherance of the public school purpose of the online service, provided  
42 that the recipient of the covered information shall not further disclose the  
43 covered information unless done to allow or improve operability and  
44 functionality within that student's classroom or public school and is legally  
45 required to comply with the requirements of this section.

46 (5) To a third party service provider, provided the operator contractually  
47 requires all of the following:

48 a. Prohibits the service provider from using any covered information  
49 for any purpose other than providing the contracted service to, or on  
50 behalf of, the operator.

- 1                    b. Prohibits the service provider from disclosing any covered  
2                    information provided by the operator to subsequent third parties.  
3                    c. Requires the service provider to implement and maintain reasonable  
4                    security procedures and practices as provided in subsection (b) of this  
5                    section.  
6                    (6) If other provisions of State or federal law require the operator to disclose the  
7                    covered information and the operator complies with the requirements of  
8                    State and federal law in protecting and disclosing that covered information.  
9                    (7) For legitimate research purposes as (i) required by State or federal law and  
10                    subject to the restrictions under applicable State and federal law or (ii)  
11                    allowed by State or federal law and under the direction of a public school,  
12                    local school administrative unit, or the Department of Public Instruction, if  
13                    no covered information is used for any purpose in furtherance of advertising  
14                    or to amass a profile on the student for purposes other than public school  
15                    purposes.  
16                    (8) To the Department of Public Instruction or local school administrative unit  
17                    for public school purposes, as permitted by State or federal law.  
18                    (e) Internal Use of Information Not Prohibited. – The prohibitions of subsection (d) of  
19                    this section shall not be construed to prohibit the operator's use of information for maintaining,  
20                    developing, supporting, improving, or diagnosing the operator's online service. This section  
21                    does not limit the ability of an operator to use student data, including covered information, for  
22                    adaptive learning or customized student learning purposes.  
23                    (f) Contracts for Online Services. – A local board of education, or an employee of a  
24                    local board of education who has been delegated contracting authority, may enter into a  
25                    contract with an operator of an online service. Such contract shall contain all of the following:  
26                    (1) A statement that covered information continues to be the property of and  
27                    under the control of the local board of education.  
28                    (2) A description of the means by which students may retain possession and  
29                    control of their own student-generated content, if applicable, including  
30                    options by which students may transfer student-generated content to a  
31                    personal account with the operator or another third party.  
32                    (3) A prohibition against the operator using any covered information for any  
33                    purpose other than those required or specifically permitted by the contract.  
34                    (4) A description of the actions the operator will take, including the designation  
35                    and training of responsible individuals, to ensure the security and  
36                    confidentiality of covered information. Compliance with this requirement  
37                    shall not, in itself, absolve the operator of liability in the event of an  
38                    unauthorized disclosure of covered information.  
39                    (5) A description of the procedures for notifying the local board of education in  
40                    the event of an unauthorized disclosure of covered information.  
41                    (6) A description of the timing and procedures for returning or deleting covered  
42                    information upon completion of the terms of the contract.  
43                    (7) A description of how the local board of education and the operator will  
44                    jointly ensure compliance with the federal Family Educational Rights and  
45                    Privacy Act, 20 U.S.C. § 1232g.  
46                    (8) A commitment to comply with the requirements of subsection (b) of this  
47                    section.  
48                    (9) A prohibition against the operator engaging in any prohibited activity  
49                    identified in subsection (c) of this section.

1        (g) Use of De-identified Student Covered Information. – Nothing in this section  
2 prohibits an operator from using de-identified student covered information in any of the  
3 following ways:

4            (1) Within the operator's online service to improve educational products.

5            (2) To demonstrate the effectiveness of the operator's products or services,  
6 including in marketing.

7            (3) For the development and improvement of educational online services.

8        (h) Limits of Application. -

9            (1) This section shall not be construed to apply to or limit the following:

10            a. The authority of a law enforcement agency to obtain any content or  
11 information from an operator as authorized by law or pursuant to an  
12 order of a court of competent jurisdiction.

13            b. General audience Internet Web sites, general audience online  
14 services, general audience online applications, or general audience  
15 mobile applications, even if login credentials created for an operator's  
16 online service may be used to access those general audience sites,  
17 services, or applications.

18            c. Internet service providers from providing Internet connectivity to  
19 public schools or students and their families.

20            d. An operator of an online service from marketing educational  
21 products directly to parents, so long as the marketing did not result  
22 from the use of covered information obtained by the operator through  
23 the provision of online services covered under this section.

24            e. The ability of students to download, export, or otherwise save or  
25 maintain their own student-generated content.

26            (2) This section shall not be construed to impose a duty on the following:

27            a. A provider of an electronic store, gateway, marketplace, or other  
28 means of purchasing or downloading software or applications to  
29 review or enforce compliance of this section on those applications or  
30 software.

31            b. A provider of an interactive computer service, as defined in 47  
32 U.S.C. § 230, to review or enforce compliance with this section by  
33 third-party content providers.

34        (i) Noncompliant Contracts Void. – In addition to any other penalties, a contract that  
35 fails to comply with the requirements of this section shall be rendered void if, upon notice and a  
36 reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure  
37 any defect. Written notice of noncompliance may be provided by any party to the contract. All  
38 parties subject to a contract voided under this subsection shall return all covered information in  
39 their possession to the local board of education.

40        (j) Penalties. – A violation of subsection (c) of this section shall be punished as  
41 provided in G.S. 115C-401.1(c) and G.S. 115C-401.1(d)."

42        **SECTION 1.(b)** If the provisions of this section are in conflict with the terms of a  
43 contract in effect before July 1, 2015, the provisions of this section shall not apply to the local  
44 board of education or the operator subject to that agreement until the expiration, amendment, or  
45 renewal of the agreement.

46        **SECTION 2.** This act becomes effective July 1, 2015.