

115TH CONGRESS  
2D SESSION

# S. 2640

To require operators that provide online and similar services to educational agencies, institutions, or programs to protect the privacy and security of personally identifiable information, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 10, 2018

Mr. DAINES (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To require operators that provide online and similar services to educational agencies, institutions, or programs to protect the privacy and security of personally identifiable information, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Safeguarding Amer-  
5       ican Families from Exposure by Keeping Information and  
6       Data Secure Act” or the “SAFE KIDS Act”.

7       **SEC. 2. DEFINITIONS.**

8       (a) IN GENERAL.—In this Act:

1           (1) COMMISSION.—The term “Commission”  
2 means the Federal Trade Commission.

3           (2) COVERED INFORMATION.—The term “cov-  
4 ered information” means personally identifiable in-  
5 formation or material, or information that is linked  
6 or reasonably linkable to personally identifiable in-  
7 formation or material, in any media or format,  
8 that—

9                   (A) is created by or provided to an oper-  
10 ator by a student, or the student’s parent, in  
11 the course of the student’s or parent’s use of  
12 the operator’s site or service for preK–12 pur-  
13 poses;

14                   (B) is collected, generated, or maintained  
15 by an educational agency, institution, or pro-  
16 gram, including teachers of such agency, insti-  
17 tution, or program; or

18                   (C) is collected by an operator through the  
19 operation of its site or service for preK–12 pur-  
20 poses and personally identifies a student, in-  
21 cluding—

22                           (i) the student’s first and last name;

23                           (ii) the first and last name of the stu-  
24 dent’s parent or another family member;

1 (iii) the home or physical address of  
 2 the student or student's family;

3 (iv) online contact information, as de-  
 4 fined in section 1302 of the Children's On-  
 5 line Privacy Protection Act of 1998 (15  
 6 U.S.C. 6501), for the student;

7 (v) a personal identifier, such as the  
 8 student's Social Security number, student  
 9 number, or biometric record;

10 (vi) an identifier described in subpara-  
 11 graph (D), (F), or (G) of section 1302(8)  
 12 of such Act (15 U.S.C. 6501(8)) for the  
 13 student;

14 (vii) a photograph, video, or audio re-  
 15 cording that contains the student's image  
 16 or voice;

17 (viii) geolocation information suffi-  
 18 cient to identify the street name and name  
 19 of a city or town; and

20 (ix) other indirect identifiers, such as  
 21 the student's date of birth, place of birth,  
 22 or mother's maiden name.

23 (3) DE-IDENTIFIED COVERED INFORMATION.—

24 The term “de-identified covered information” means  
 25 covered information that—

1 (A) has been de-identified by reasonable  
2 measures;

3 (B) is maintained in a de-identified fashion  
4 without attempt to re-identify; and

5 (C) is not made available to other entities  
6 absent contractual agreement to not re-identify  
7 the covered information.

8 (4) EARLY CHILDHOOD EDUCATION PRO-  
9 GRAM.—The term “early childhood education pro-  
10 gram” means a program that meets the require-  
11 ments of clauses (i) and (ii)(III) of section  
12 103(8)(C) of the Higher Education Act of 1965 (20  
13 U.S.C. 1003(8)(C)).

14 (5) EDUCATIONAL AGENCY, INSTITUTION, OR  
15 PROGRAM.—The term “educational agency, institu-  
16 tion, or program” means—

17 (A) an educational agency or institution,  
18 as defined in section 444(a)(3) of the General  
19 Education Provisions Act (20 U.S.C.  
20 1232g(a)(3)), except that such term does not  
21 include an institution of higher education; or

22 (B) an early childhood education program.

23 (6) ELIGIBLE STUDENT.—The term “eligible  
24 student” means a student who—

25 (A) is 18 years of age or older;

1 (B) is enrolled in an institution of higher  
2 education; or

3 (C) has graduated from a secondary  
4 school.

5 (7) INSTITUTION OF HIGHER EDUCATION.—The  
6 term “institution of higher education” has the  
7 meaning given such term in section 102 of the High-  
8 er Education Act of 1965 (20 U.S.C. 1002).

9 (8) OPERATOR.—The term “operator”—

10 (A) means the operator of a website lo-  
11 cated on the Internet or online service that is  
12 used primarily for preK–12 purposes and was  
13 designed and marketed for preK–12 purposes,  
14 to the extent that it is operating in this capac-  
15 ity; and

16 (B) does not include an educational agen-  
17 cy, institution, or program.

18 (9) PREK–12 PURPOSES.—The term “preK–12  
19 purposes” means purposes that—

20 (A) are directed by or that customarily  
21 take place at the direction of an educational  
22 agency, institution, or program;

23 (B) aid in the administration of activities  
24 by an educational agency, institution, or pro-  
25 gram, including instruction in the classroom or

1 at home, administrative activities, and collabo-  
2 ration between students, school personnel, or  
3 parents; or

4 (C) are otherwise for the use and benefit  
5 of the educational agency, institution, or pro-  
6 gram.

7 (10) STATE.—The term “State” means each  
8 State of the United States, the District of Columbia,  
9 each territory or possession of the United States,  
10 and each federally recognized Indian tribe.

11 (11) STUDENT.—The term “student” means  
12 any individual who attends or has attended an early  
13 childhood education program, elementary school, or  
14 secondary school.

15 (12) TARGETED ADVERTISING.—

16 (A) IN GENERAL.—The term “targeted ad-  
17 vertising” means presenting advertisements to a  
18 student or the student’s parent, where the ad-  
19 vertisements are selected based on information  
20 obtained or inferred over time from the stu-  
21 dent’s online behavior, use of online services, or  
22 covered information.

23 (B) EXCLUSION.—Such term does not in-  
24 clude presenting advertisements to a student or

1 the student’s parent at an online location or  
 2 through an online service, as long as—

3 (i) information about the student’s  
 4 online behavior or use of the online loca-  
 5 tion or online service is not retained over  
 6 time for the purpose of targeting subse-  
 7 quent advertisements; and

8 (ii)(I) the advertisements are based  
 9 solely upon that student’s current visit to  
 10 the online location; or

11 (II) the advertisements are in re-  
 12 sponse to a student’s request for informa-  
 13 tion or feedback.

14 (b) TERMS DEFINED IN ELEMENTARY AND SEC-  
 15 ONDARY EDUCATION ACT OF 1965.—In this Act, the  
 16 terms “elementary school”, “parent”, and “secondary  
 17 school” have the meanings given such terms in section  
 18 8101 of the Elementary and Secondary Education Act of  
 19 1965 (20 U.S.C. 7801).

20 **SEC. 3. PROTECTING STUDENT PRIVACY.**

21 (a) PROHIBITED PRACTICES.—An operator may  
 22 not—

23 (1) collect, generate, use or disclose any covered  
 24 information, or allow third parties to do so, for pur-  
 25 poses of engaging in or permitting targeted adver-

1       tising on the operator’s site or online service, or tar-  
2       get advertising on any other site or service, if the  
3       targeting of the advertising is based on any informa-  
4       tion, including covered information and persistent  
5       unique identifiers, that the operator has acquired be-  
6       cause of the use of that operator’s site or service for  
7       preK–12 purposes;

8           (2) sell or rent covered information to a third  
9       party, except this paragraph shall not apply to a na-  
10      tionally recognized high school academic assessment  
11      provider solely to the extent that the provider se-  
12      cures the express written consent of the parent or  
13      student, given in response to clear and conspicuous  
14      notice, only to provide access to employment, edu-  
15      cational scholarships or financial aid, or postsec-  
16      ondary educational opportunities;

17          (3) use information, including covered informa-  
18      tion and persistent unique identifiers, created or  
19      gathered by the operator’s site or service to create  
20      a personal profile of a student other than for preK–  
21      12 purposes, except that for purposes of this para-  
22      graph, creating a personal profile shall not include  
23      the collection and retention of account information  
24      that remains under the control of the student, the



1 student's parent, or the educational agency, institu-  
2 tion, or program; or

3 (4) disclose covered information, unless the dis-  
4 closure is made—

5 (A) pursuant to lawful process or to ensure  
6 legal and regulatory compliance with Federal or  
7 State law;

8 (B)(i) in furtherance of the preK–12 pur-  
9 pose of the site or service; and

10 (ii) if the recipient of the covered informa-  
11 tion disclosed under this paragraph does not  
12 further disclose the information unless the dis-  
13 closure is done to allow or improve operability  
14 and functionality of the operator's site or serv-  
15 ice;

16 (C) for a school, educational, or employ-  
17 ment purpose requested by the student or the  
18 student's parent, as long as the information is  
19 not used or further disclosed for any other pur-  
20 pose;

21 (D) to protect the safety or integrity of  
22 users or others or the security of the school  
23 service; or

24 (E) to a State or local educational agency,  
25 including elementary schools and secondary

1 schools, for preK–12 purposes, as permitted by  
2 Federal or State law; or

3 (5) notwithstanding paragraph (4), disclose cov-  
4 ered information to a third-party service provider of  
5 the school service for purposes of maintaining, devel-  
6 oping, supporting, improving, or diagnosing the op-  
7 erator’s site or service unless the operator contrac-  
8 tually requires the provider to comply with all the  
9 provisions of this Act (including such paragraph).

10 (b) REQUIREMENTS.—An operator shall—

11 (1) establish, implement, and maintain reason-  
12 able security procedures appropriate to the nature of  
13 the covered information that are designed to protect  
14 the covered information from unauthorized access,  
15 destruction, use, modification, or disclosure;

16 (2) unless the educational agency, institution,  
17 or program or a student’s parent consents to the  
18 maintenance of the covered information, delete a  
19 student’s covered information—

20 (A) within a reasonable time after receiv-  
21 ing a request for deletion through an edu-  
22 cational agency, institution, or program, or  
23 from the student’s parent; or

24 (B) once the data has outlived the legiti-  
25 mate purpose for which the data was collected;

1           (3) obtain consent from the educational agency,  
 2           institution, or program, through contracts or privacy  
 3           policies in a manner that is clear and easy to under-  
 4           stand, regarding the types of covered information  
 5           collected, the purposes for which the covered infor-  
 6           mation is used or disclosed to third parties, and the  
 7           identity of any such third parties;

8           (4) disclose publicly, on the website of the oper-  
 9           ator, every privacy policy that the operator has es-  
 10          tablished with an educational agency, institution, or  
 11          program;

12          (5) obtain consent from the educational agency,  
 13          institution, or program and provide sufficient notice  
 14          on its website before making material changes to a  
 15          contract or privacy policy for a school service; and

16          (6) support access to and correction of covered  
 17          information through an educational agency, institu-  
 18          tion, or program.

19          (c) AUTHORIZED USES.—

20               (1) USES OF COVERED INFORMATION.—An op-  
 21               erator may use or disclose covered information of a  
 22               student under the following circumstances:

23                       (A) If other provisions of Federal or State  
 24                       law require the operator to disclose the infor-  
 25                       mation, and the operator complies with the re-

1           quirements of Federal and State law in pro-  
2           tecting and disclosing that information.

3           (B) For legitimate research purposes, as  
4           required by Federal or State law and subject to  
5           the restrictions under applicable Federal and  
6           State law or as allowed by Federal or State law  
7           and under the direction of an educational agen-  
8           cy, institution, or program (including a State  
9           educational agency), if covered information is  
10          not used for advertising or to amass a profile  
11          on the student for purposes other than preK-  
12          12 purposes.

13          (C) To an educational agency, institution,  
14          or program for preK-12 purposes, as permitted  
15          by Federal or State law.

16          (d) EFFECT ON MERGERS AND ACQUISITIONS.—The  
17          prohibitions of this section on sale and disclosure of cov-  
18          ered information do not apply to the merger of an operator  
19          with another entity or the acquisition of the operator by  
20          another entity (including any subsequent merger or acqui-  
21          sition), provided that the operator or successor entity con-  
22          tinues to be subject to the provisions of this section with  
23          respect to covered information acquired before the merger  
24          or acquisition.

1 (e) CONTINUED APPLICATION.—This section shall  
2 continue to apply, after a student is no longer enrolled  
3 in an educational agency, institution, or program, to cov-  
4 ered information relating to the student that was collected  
5 or generated while the student was enrolled.

6 **SEC. 4. RULES OF CONSTRUCTION.**

7 (a) IN GENERAL.—This Act shall not—

8 (1) be construed to affect or otherwise alter the  
9 protections and guarantees set forth in section 444  
10 of the General Education Provisions Act (20 U.S.C.  
11 1232g) (commonly known as the “Family Edu-  
12 cational Rights and Privacy Act of 1974”), the Chil-  
13 dren’s Online Privacy Protection Act of 1998 (15  
14 U.S.C. 6501 et seq.), or any other Federal statute  
15 relating to privacy protection;

16 (2) be construed to limit the authority of a law  
17 enforcement agency to obtain content or information  
18 from an operator as authorized by law or pursuant  
19 to an order of a court of competent jurisdiction;

20 (3) limit the ability of an operator to use infor-  
21 mation, including covered information, for adaptive  
22 or personalized student learning purposes;

23 (4) limit an educational agency, institution, or  
24 program from providing Internet access service for

1 its own use, to other educational agencies or institu-  
2 tions, or to students and their families;

3 (5) be construed to prohibit an operator's use  
4 of information, including covered information, for  
5 maintaining, developing, supporting, improving, or  
6 diagnosing the operator's school service;

7 (6) impose a duty upon a provider of an elec-  
8 tronic store, gateway, marketplace, or other means  
9 of purchasing or downloading software or applica-  
10 tions, to review or enforce compliance with this Act  
11 by operators of school services;

12 (7) impede the ability of a student or the stu-  
13 dent's parent to download, export, transfer, or other-  
14 wise save or maintain data or documents created by  
15 or about the student or noncommercial applications  
16 created by the student;

17 (8) be construed to apply to general audience  
18 Internet websites or general audience online services,  
19 even if login credentials created for an operator's  
20 site or service may be used to access those general  
21 audience sites or services;

22 (9) prohibit an operator of a website or online  
23 service from marketing educational products directly  
24 to parents if the marketing did not result from the  
25 use of covered information obtained by the operator

1 through the provision of services covered under this  
2 Act;

3 (10) limit service providers from providing  
4 Internet connectivity to schools or students and their  
5 families; or

6 (11) be construed to apply to the sale, under  
7 the direction and control of the educational agency,  
8 institution, or program, of student and class pic-  
9 tures, yearbooks, memory books, and similar tradi-  
10 tional school-sanctioned commemorative activities.

11 (b) NONPROHIBITED ACTIONS.—Nothing in this Act  
12 prohibits an operator from—

13 (1) using de-identified covered information  
14 within the operator’s school service or other sites or  
15 online services owned by the operator to improve  
16 educational products;

17 (2) using de-identified covered information to  
18 demonstrate the effectiveness of the operator’s prod-  
19 ucts or services, including in the marketing of such  
20 products or services;

21 (3) disclosing de-identified covered information  
22 for the development and improvement of educational  
23 sites and services; or

24 (4) disclosing de-identified covered information  
25 for research and development, including—

1 (A) research, development, and improve-  
 2 ment of educational sites, services, and applica-  
 3 tions; and

4 (B) advancements in the science of learn-  
 5 ing;

6 (5) using recommendation engines to rec-  
 7 ommend to a student additional content, websites, or  
 8 online services for preK–12 purposes offered by an  
 9 operator within a website or online service if the rec-  
 10 ommendation is based on educational improvement  
 11 and is not determined in whole or in part by finan-  
 12 cial gain from a third party; and

13 (6) responding to a student’s request for infor-  
 14 mation or for feedback without the information or  
 15 response being determined in whole or in part by  
 16 payment or other consideration from a third party.

17 (c) POWER TO CONSENT AND RIGHTS REGARDING  
 18 INFORMATION ABOUT ELIGIBLE STUDENT.—Any provi-  
 19 sion of this Act that refers to the consent of the student’s  
 20 parent for the use or disclosure of covered information or  
 21 the right of the student’s parent to access or otherwise  
 22 obtain, use, correct, request disclosure of, or request dele-  
 23 tion of covered information, shall, in the case of covered  
 24 information about an eligible student, be considered to



1 refer to the consent or right of the student and not the  
2 student's parent.

3 (d) NO EFFECT ON CONSENT UNDER OTHER  
4 LAW.—This Act does not modify the requirements or  
5 standards for consent, including consent from minors and  
6 employees on behalf of educational institutions, under any  
7 other provision of Federal law or under State law.

8 **SEC. 5. IMPLEMENTATION AND ENFORCEMENT.**

9 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
10 SION.—

11 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
12 TICES.—A violation of this Act shall be treated as  
13 a violation of a rule prescribed under section  
14 18(a)(1)(B) of the Federal Trade Commission Act  
15 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-  
16 tive acts or practices.

17 (2) POWERS OF THE COMMISSION.—

18 (A) IN GENERAL.—The Commission shall  
19 enforce this Act in the same manner, by the  
20 same means, and with the same jurisdiction,  
21 powers, and duties as though all applicable  
22 terms and provisions of the Federal Trade  
23 Commission Act (15 U.S.C. 41 et seq.) were in-  
24 corporated into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Any  
 2 person who violates this Act shall be subject to  
 3 the penalties entitled to the privileges and im-  
 4 munities provided in the Federal Trade Com-  
 5 mission Act, except as provided in paragraph  
 6 (3).

7 (3) ENFORCEMENT WITH RESPECT TO NON-  
 8 PROFIT ORGANIZATIONS.—Notwithstanding sections  
 9 4, 5(a)(2), and 6 of the Federal Trade Commission  
 10 Act (15 U.S.C. 44; 45(a)(2); 46), any jurisdictional  
 11 limitation of the Commission with respect to non-  
 12 profit organizations or common carriers subject to  
 13 the Communications Act of 1934, or Acts amending  
 14 or supplementing that Act, shall not apply for pur-  
 15 poses of this Act.

16 (b) PRESERVATION OF COMMISSION AUTHORITY.—  
 17 Nothing in this Act may be construed in any way to limit  
 18 or affect the Commission’s authority under any other pro-  
 19 vision of law.

20 (c) CONSULTATION AND COOPERATION WITH SEC-  
 21 RETARY OF EDUCATION.—The Commission shall consult  
 22 and cooperate with the Secretary of Education in enforce-  
 23 ing this Act in matters involving educational agencies, in-  
 24 stitutions, or programs.

25 (d) RELATIONSHIP TO STATE LAW.—

1           (1) IN GENERAL.—This Act does not annul,  
2       alter, or affect, or exempt any person subject to the  
3       provisions of this Act from complying with, the laws  
4       of any State with respect to the treatment of covered  
5       information by operators of school services, except to  
6       the extent that such laws are inconsistent with any  
7       provision of this Act, and then only to the extent of  
8       the inconsistency. For purposes of this paragraph, a  
9       law of a State is not inconsistent with this Act if the  
10      protection such law affords any user of a school  
11      service is greater than the protection provided by  
12      this Act.

13           (2) RULE OF CONSTRUCTION.—Any reference  
14      in this Act to State law shall be considered also to  
15      refer to the law of a political subdivision of a State.

16 **SEC. 6. EFFECTIVE DATE.**

17      This Act shall take effect on the date that is 18  
18      months after the date of the enactment of this Act.

○