

**PROPOSED AMENDMENTS TO
SENATE BILL 187**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest
2 of the line and insert “creating new provisions; amending ORS 646.607; and
3 prescribing an effective date.

4 “Whereas some Internet websites, online services, online applications and
5 mobile applications that are designed and used for kindergarten through
6 grade 12 purposes involve gathering identifiable private information of stu-
7 dents, many of whom are too young to understand the significance of being
8 asked to share personal information; and

9 “Whereas this vulnerable population will be better protected by the de-
10 velopment of standards for operators of Internet websites, online services,
11 online applications or mobile applications that have actual knowledge that
12 their sites, services or applications are used primarily for kindergarten
13 through grade 12 purposes and that their sites, services or applications were
14 designed and marketed for kindergarten through grade 12 school purposes;
15 now, therefore,”.

16 Delete lines 4 through 29 and delete page 2 and insert:

17 **“SECTION 1. Section 2 of this 2015 Act is added to and made a part
18 of ORS chapter 646.**

19 **“SECTION 2. (1) This section shall be known and may be cited as
20 the Oregon Student Information Protection Act.**

21 **“(2) As used in this section:**

22 **“(a) ‘Covered information’ means personally identifiable informa-**

1 tion or materials in any media or format that meets any of the fol-
2 lowing:

3 “(A) Is created or provided by a student, or the student’s parent or
4 legal guardian, to an operator in the course of the student’s, parent’s
5 or legal guardian’s use of the operator’s site, service or application for
6 kindergarten through grade 12 purposes;

7 “(B) Is created for an operator or provided to an operator by an
8 employee or agent of the kindergarten through grade 12 school, school
9 district or education service district; or

10 “(C) Is gathered by an operator through the operation of a site,
11 service or application for kindergarten through grade 12 school pur-
12 poses and is descriptive of a student or otherwise identifies a student,
13 including, but not limited to:

14 “(i) Information in the student’s educational record or electronic
15 mail;

16 “(ii) The student’s first and last name, home address, telephone
17 number, electronic mail address or other information that allows
18 physical or online contact; or

19 “(iii) The student’s discipline records, test results, special education
20 data, juvenile dependency records, grades, evaluations, criminal re-
21 cords, medical records, health records, Social Security number,
22 biometric information, disabilities, socioeconomic information, food
23 purchases, political affiliations, religious information, text messages,
24 documents, student identifiers, search activity, photographs, voice re-
25 cordings or geolocation information.

26 “(b) ‘Kindergarten through grade 12 school purposes’ means pur-
27 poses that:

28 “(A) Customarily take place at the direction of a kindergarten
29 through grade 12 school, teacher or school district;

30 “(B) Aid in the administration of school activities, including in-

1 **struction in the classroom or at home, administrative activities and**
2 **collaboration between students, school personnel or parents; or**

3 **“(C) Are for the use and benefit of the school.**

4 **“(c) ‘Operator’ means the operator of an Internet website, online**
5 **service, online application or mobile application with actual knowledge**
6 **that the site, service or application is used primarily for kindergarten**
7 **through grade 12 school purposes and was designed and marketed for**
8 **kindergarten through grade 12 school purposes.**

9 **“(3)(a) An operator may not knowingly engage in any of the fol-**
10 **lowing activities with respect to the operator’s site, service or appli-**
11 **cation:**

12 **“(A) Engage in targeted advertising on the operator’s site, service**
13 **or application.**

14 **“(B) Target advertising on any other site, service or application**
15 **when the targeting of the advertising is based upon any information,**
16 **including covered information and persistent unique identifiers, that**
17 **the operator has acquired because of the use of that operator’s site,**
18 **service or application for kindergarten through grade 12 school pur-**
19 **poses.**

20 **“(C) Use information, including persistent unique identifiers, cre-**
21 **ated or gathered by the operator’s site, service or application, to**
22 **amass a profile about a kindergarten through grade 12 student, except**
23 **in furtherance of kindergarten through 12 school purposes.**

24 **“(D) Sell a student’s information, including covered information.**
25 **The prohibition of this subparagraph does not apply to the purchase,**
26 **merger or other type of acquisition of an operator by another entity,**
27 **provided that the operator or successor entity continues to be subject**
28 **to the provisions of this section with respect to previously acquired**
29 **student information.**

30 **“(E) Disclose covered information, unless the disclosure is made:**

1 “(i) In furtherance of the kindergarten through grade 12 school
2 purposes of the site, service or application, provided the recipient of
3 the covered information:

4 “(I) Does not further disclose covered information, unless the dis-
5 closure is to allow or improve the operability and functionality within
6 the student’s classroom or school; and

7 “(II) Is legally required to comply with the requirements of sub-
8 section (4) of this section.

9 “(ii) To ensure legal and regulatory compliance;

10 “(iii) To respond to or participate in the judicial process;

11 “(iv) To protect the safety of users or others or the security of the
12 site; or

13 “(v) To a service provider, provided the operator contractually:

14 “(I) Prohibits the service provider from using any covered infor-
15 mation for any purpose other than providing the contracted service
16 to, or on behalf of, the operator;

17 “(II) Prohibits the service provider from disclosing any covered in-
18 formation provided by the operator with subsequent third parties; and

19 “(III) Requires the service provider to implement and maintain
20 reasonable security procedures and practices as provided by subsection
21 (4) of this section.

22 “(b) Nothing in this subsection shall be construed to prohibit the
23 operator’s use of information for maintaining, developing, supporting,
24 improving or diagnosing the operator’s site, service or application.

25 “(4) An operator shall:

26 “(a) Implement and maintain reasonable security procedures and
27 practices appropriate to the nature of the covered information;

28 “(b) Protect covered information from unauthorized access, de-
29 struction, use, modification or disclosure; and

30 “(c) Delete a student’s covered information if the school or school

1 district requests deletion of data that is under the control of the
2 school or school district.

3 “(5) Notwithstanding subsection (3)(a)(E) of this section, an opera-
4 tor may disclose covered information of a student if the disclosure:

5 “(a) Does not violate subsection (3)(a)(A) to (D) of this section;

6 “(b) Is required by federal or state law and the operator complies
7 with the requirements of federal and state law in protecting and dis-
8 closing the information;

9 “(c) Is for legitimate research purposes that are:

10 “(A) Required by federal or state law and subject to the restrictions
11 under applicable federal and state law; or

12 “(B) Allowed by federal or state law and made under the direction
13 of a school, school district or the Department of Education, if the
14 covered information is not used for any purpose in furtherance of ad-
15 vertising or amassing a profile on the student for purposes other than
16 kindergarten through grade 12 school purposes; or

17 “(d) Is made to a state or local educational agency, including
18 schools and school districts, for kindergarten through grade 12 school
19 purposes as permitted by federal or state law.

20 “(6) Nothing in this section prohibits an operator from:

21 “(a) Using deidentified student covered information if the disclosure
22 is:

23 “(A) Within the operator’s site, service or application or other sites,
24 services or applications owned by the operator to improve educational
25 products; or

26 “(B) Made to demonstrate the effectiveness of the operator’s pro-
27 ducts or services, including marketing for the operator’s products or
28 services.

29 “(b) Sharing aggregated deidentified student covered information
30 for the development and improvement of educational sites, services

1 or applications; or

2 “(c) Using student data, including covered information, for adaptive
3 learning or customized student learning purposes.

4 “(7) Nothing in this section shall be construed to limit the authority
5 of:

6 “(a) A law enforcement agency to obtain any content or informa-
7 tion from an operator as authorized by law or pursuant to an order
8 of a court of competent jurisdiction;

9 “(b) An Internet service provider from providing Internet
10 connectivity to schools or students and their families;

11 “(c) An operator of an Internet website, online service, online ap-
12 plication or mobile application from marketing educational products
13 directly to parents, as long as the marketing does not result from the
14 use of covered information obtained by the operator through the pro-
15 vision of services covered under this section; or

16 “(d) Students to download, export or otherwise save or maintain
17 their own student-created data or documents.

18 “(8) Nothing in this section shall be construed to impose a duty
19 upon:

20 “(a) A provider of an electronic store, gateway, marketplace or
21 other means of purchasing or downloading software or applications to
22 review or enforce compliance with this section by those applications
23 or software; or

24 “(b) A provider of an interactive computer service to review or en-
25 force compliance with this section by third-party content providers.
26 As used in this paragraph, ‘interactive computer service’ means any
27 information service, system or access software provider that provides
28 or enables computer access by multiple users to a computer server,
29 including specifically a service or system that provides access to the
30 Internet and such services or systems operated or offered by libraries

1 or educational institutions.

2 “(9) This section does not apply to general audience Internet
3 websites, general audience online services, general audience online
4 applications or general audience mobile applications, even if login
5 credentials created for an operator’s site, service or application may
6 be used to access those general audience sites, services or applications.

7 “(10) Violation of this section is an unlawful practice under ORS
8 646.607.

9 **“SECTION 3.** ORS 646.607 is amended to read:

10 “646.607. A person engages in an unlawful practice if in the course of the
11 person’s business, vocation or occupation the person:

12 “(1) Employs any unconscionable tactic in connection with selling, rent-
13 ing or disposing of real estate, goods or services, or collecting or enforcing
14 an obligation;

15 “(2) Fails to deliver all or any portion of real estate, goods or services
16 as promised, and at a customer’s request, fails to refund money that the
17 customer gave to the person to purchase the undelivered real estate, goods
18 or services and that the person does not retain pursuant to any right, claim
19 or defense the person may assert in good faith. This subsection does not
20 create a warranty obligation and does not apply to a dispute over the quality
21 of real estate, goods or services delivered to a customer;

22 “(3) Violates ORS 401.965 (2);

23 “(4) Violates a provision of ORS 646A.725 to 646A.750;

24 “(5) Violates ORS 646A.530;

25 “(6) Employs a collection practice that is unlawful under ORS 646.639;

26 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
27 86.732 (1) or (2); [or]

28 “(8) Violates ORS 646A.093[.]; or

29 **“(9) Violates section 2 of this 2015 Act.**

30 **“SECTION 4. Section 2 of this 2015 Act and the amendments to ORS**

1 **646.607 by section 3 of this 2015 Act first apply to data created, provided**
2 **or gathered on or after the effective date of this 2015 Act.**

3 **SECTION 5. This 2015 Act takes effect July 1, 2016.”.**

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