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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. MESSER (for himself and Mr. POLIS) introduced the following bill; which was referred to the Committee on _____

A BILL

To require operators that provide online and similar services to educational agencies or institutions 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 “Student Digital Pri-
5 vacy and Parental Rights Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 (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, and information that is linked or linkable
6 to personally identifiable information, that—

7 (A) is collected or generated through a
8 school service; and

9 (B)(i) the operator of the school service
10 knows or should know relates to a student; or

11 (ii) is collected, generated, or maintained
12 at the direction of an educational agency or in-
13 stitution serving the student or officials of such
14 an agency or institution, including teachers.

15 (3) EDUCATIONAL AGENCY OR INSTITUTION.—
16 The term “educational agency or institution” has
17 the meaning given such term in section 444 of the
18 General Education Provisions Act (20 U.S.C.
19 1232g), except that such term does not include an
20 institution of higher education.

21 (4) ELIGIBLE STUDENT.—The term “eligible
22 student” means a student who—

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

24 (B) is enrolled in an institution of higher
25 education; or

1 (C) has graduated from a secondary
2 school.

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

7 (6) K-12 PURPOSES.—The term “K-12 pur-
8 poses” means purposes that—

9 (A) aid in the administration of activities
10 by an educational agency or institution, includ-
11 ing instruction in the classroom or at home, ad-
12 ministrative activities, and collaboration be-
13 tween students, school personnel, or parents; or

14 (B) are for the use and benefit of the edu-
15 cational agency or institution.

16 (7) ONLINE CONTACT INFORMATION.—The
17 term “online contact information” means, with re-
18 spect to a student, an email address or any other
19 substantially similar identifier that permits direct
20 contact with the student online, including an instant
21 messaging user identifier, a voice over Internet Pro-
22 tocol identifier, a video chat user identifier, or a
23 screen name or user name that permits such con-
24 tact.

1 (8) OPERATOR.—The term “operator” means
2 an entity that operates a school service, except that
3 such term does not include an educational agency or
4 institution.

5 (9) PERSONALLY IDENTIFIABLE INFORMA-
6 TION.—The term “personally identifiable informa-
7 tion” includes, with respect to a student—

8 (A) the student’s first and last name;

9 (B) the first and last name of the stu-
10 dent’s parent or another family member;

11 (C) the home or physical address of the
12 student or student’s family;

13 (D) online contact information for the stu-
14 dent;

15 (E) a personal identifier, such as the stu-
16 dent’s social security number, student number,
17 or biometric record;

18 (F) a persistent identifier that can be used
19 to recognize a user over time and across dif-
20 ferent Internet Web sites, online services, online
21 applications, or mobile applications, including a
22 customer number held in a cookie, an Internet
23 Protocol address, a processor or device serial
24 number, or another unique identifier;

1 (G) a photograph, video, or audio record-
2 ing that contains the student's image or voice;

3 (H) geolocation information sufficient to
4 identify street name and name of a city or
5 town;

6 (I) other indirect identifiers, such as the
7 student's date of birth, place of birth, or moth-
8 er's maiden name;

9 (J) other information that, alone or in
10 combination, would allow an operator or a rea-
11 sonable person in the school community, who
12 does not have personal knowledge of the rel-
13 evant circumstances, to identify a specific stu-
14 dent with reasonable certainty; and

15 (K) information requested by a person who
16 the educational agency or institution reasonably
17 believes knows the identity of the student to
18 whom the information relates.

19 (10) SCHOOL SERVICE.—The term “school serv-
20 ice” means an Internet Web site, online service (in-
21 cluding a cloud computing service), online applica-
22 tion, or mobile application that is used for K-12 pur-
23 poses and was designed and marketed for K-12 pur-
24 poses.

1 (11) STATE.—The term “State” means each
2 State of the United States, the District of Columbia,
3 each territory or possession of the United States,
4 and each federally recognized Indian tribe.

5 (12) STUDENT.—The term “student” means
6 any individual who is or has been enrolled in an ele-
7 mentary school or secondary school.

8 (13) TARGETED ADVERTISING.—

9 (A) IN GENERAL.—The term “targeted ad-
10 vertising” means presenting advertisements to a
11 student or the student’s parent, where the ad-
12 vertisements are selected based on information
13 obtained or inferred from the student’s online
14 behavior or use of online applications or mobile
15 applications or from covered information about
16 the student maintained by the operator of a
17 school service.

18 (B) EXCLUSION.—Such term does not in-
19 clude presenting advertisements to a student or
20 the student’s parent at an online location or
21 through an online application or mobile applica-
22 tion, if—

23 (i) the advertisements are contextually
24 relevant;

1 (ii) the advertisements are selected
2 based on a single visit or session of use
3 during which the advertisements are pre-
4 sented; and

5 (iii) information about the student's
6 online behavior or use of online applica-
7 tions or mobile applications is not collected
8 or retained over time.

9 (b) **TERMS DEFINED IN ELEMENTARY AND SEC-**
10 **ONDARY EDUCATION ACT OF 1965.**—In this Act, the
11 terms “elementary school”, “parent”, and “secondary
12 school” have the meanings given such terms in section
13 9101 of the Elementary and Secondary Education Act of
14 1965 (20 U.S.C. 7801).

15 **SEC. 3. PROTECTING STUDENT PRIVACY.**

16 (a) **PROHIBITED PRACTICES.**—An operator may not
17 knowingly—

18 (1) engage in or permit targeted advertising on
19 a school service;

20 (2) collect, generate, use, or disclose any cov-
21 ered information for purposes of targeted adver-
22 tising;

23 (3) sell covered information to a third party;

24 (4) collect, generate, or use covered information
25 (including using covered information to create a per-

1 sonal profile of a student) other than for K-12 pur-
2 poses; or

3 (5) 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) in accordance with subsection (c), pur-
9 suant to a request for disclosure—

10 (i) in the case of information about a
11 student, from the student's parent; or

12 (ii) in the case of information about a
13 student's parent or another user of the
14 school service, from the parent or such
15 other user, as the case may be;

16 (C) in accordance with subsection (c), pur-
17 suant to a request for disclosure from a student
18 who is or has been enrolled in a secondary
19 school or from the student's parent for the ex-
20 clusive purpose of—

21 (i) providing or authenticating the
22 student's transcript, standardized test
23 scores, letters of recommendation, or other
24 information required by an institution of
25 higher education for an application for ad-

1 mission or by a potential employer for an
2 application for employment; or

3 (ii) providing information relating
4 to—

5 (I) admission to an institution of
6 higher education; or

7 (II) a scholarship or financial aid
8 for attendance at an institution of
9 higher education;

10 (D) to protect the safety of users or others
11 or the security of the school service;

12 (E) to an educational agency or institution,
13 as permitted by Federal and State law; or

14 (F) to a third-party service provider of the
15 operator, and the operator contractually—

16 (i) prohibits the service provider from
17 using any covered information for any pur-
18 pose other than providing the contracted
19 service to, or on behalf of, the operator;

20 (ii) prohibits the service provider from
21 disclosing to subsequent third parties any
22 covered information disclosed by the oper-
23 ator to the service provider; and

24 (iii) requires the service provider to
25 establish, implement, and maintain reason-

1 able security procedures as described in
2 subsection (b)(1).

3 (b) REQUIREMENTS.—An operator shall—

4 (1) establish, implement, and maintain reason-
5 able security procedures appropriate to the nature of
6 covered information to protect the confidentiality, se-
7 curity, and integrity of covered information;

8 (2) delete a student’s covered information (ex-
9 cept for information that is required to be main-
10 tained by Federal or State law) within a reasonable
11 time, not to exceed 45 days, after receiving—

12 (A) a request from an educational agency
13 or institution serving the student; or

14 (B) a request (either directly or through
15 the educational agency or institution) from the
16 student’s parent, except in the case of informa-
17 tion that is included in the student’s education
18 records (as defined in section 444 of the Gen-
19 eral Education Provisions Act (20 U.S.C.
20 1232g)), such as the student’s test scores or
21 grades, or that is directed by the educational
22 agency or institution to be maintained for edu-
23 cational or administrative purposes;

24 (3) disclose publicly and to each educational
25 agency or institution to which the operator provides

1 a school service, in contracts or privacy policies in a
2 manner that is clear and easy to understand, the
3 types of covered information collected or generated
4 (if any), the purposes for which the covered informa-
5 tion is used or disclosed to third parties, and the
6 identity of any such party;

7 (4) facilitate access to and correction of covered
8 information, either directly or through an edu-
9 cational agency or institution—

10 (A) in the case of information about a stu-
11 dent, by the student's parent; or

12 (B) in the case of information about a par-
13 ent or another user of the school service, by the
14 parent or such other user, as the case may be;

15 (5) implement policies and procedures for re-
16 sponding to data breaches involving unauthorized ac-
17 quisition of or access to personally identifiable infor-
18 mation that occur on a school service, in compliance
19 with any obligations imposed by Federal or State
20 law;

21 (6) notify the Commission and, as appropriate,
22 students, parents, educational agencies or institu-
23 tions, or officials of such agencies or institutions (in-
24 cluding teachers) of each data breach involving un-
25 authorized acquisition of or access to personally

1 identifiable information that occurs on a school serv-
2 ice, in compliance with any obligations imposed by
3 Federal or State law; and

4 (7) delete any covered information maintained
5 by a school service (except for information that is re-
6 quired to be maintained by Federal or State law)—

7 (A) except as provided in subparagraph
8 (B), within a reasonable time, not to exceed one
9 year, after the operator ceases to provide the
10 service to the educational agency or institution,
11 unless the information is required to be main-
12 tained at the direction of the educational agen-
13 cy or institution or the student's parent; or

14 (B) if the operator continues providing the
15 service in whole or in part to a student after
16 ceasing to provide the service to the educational
17 agency or institution, within a reasonable time,
18 not to exceed one year, after the operator
19 ceases to provide the service to the student, un-
20 less the information is required to be main-
21 tained at the direction of the student's parent.

22 (c) REQUIREMENTS FOR CERTAIN DISCLOSURES.—
23 An operator may disclose covered information under sub-
24 paragraph (B) or (C) of subsection (a)(5) only after the
25 operator—

1 (1) receives from the student, the student’s par-
2 ent, or other user of the school service, as the case
3 may be (in this subsection referred to as the “re-
4 questing party”), an affirmative express request
5 (whether made directly or through an educational
6 agency or institution serving the student) to disclose
7 information specified in the request;

8 (2) provides to the requesting party, in a man-
9 ner that is clear and easy to understand, a descrip-
10 tion of the types of covered information that will be
11 disclosed to a third party, any fees collected by the
12 operator to cover administrative costs, and the pur-
13 poses for which the covered information will be dis-
14 closed to and used by the third party;

15 (3) ensures that the third party agrees, in writ-
16 ing or an electronic equivalent—

17 (A) not to use any covered information re-
18 ceived pursuant to the request for any purpose
19 other than fulfilling the purpose for which the
20 request was made;

21 (B) not to disclose to subsequent third
22 parties any covered information received pursu-
23 ant to the request; and

1 (C) to establish, implement, and maintain
2 reasonable security procedures as described in
3 subsection (b)(1); and

4 (4) provides a readily available mechanism for
5 the requesting party to revoke the request.

6 (d) EFFECT ON MERGERS AND ACQUISITIONS.—The
7 prohibitions of this section on sale and disclosure of cov-
8 ered information do not apply to the merger of an operator
9 with another entity or the acquisition of the operator by
10 another entity (including any subsequent merger or acqui-
11 sition), provided that the operator or successor entity con-
12 tinues to be subject to the provisions of this section with
13 respect to covered information acquired before the merger
14 or acquisition.

15 (e) CONTINUED APPLICATION.—This section shall
16 continue to apply, after a student is no longer enrolled
17 in an elementary school or secondary school, to covered
18 information relating to the student that was collected or
19 generated while the student was enrolled.

20 **SEC. 4. RULES OF CONSTRUCTION.**

21 (a) IN GENERAL.—This Act shall not—

22 (1) be construed to affect or otherwise alter the
23 protections and guarantees set forth in section 444
24 of the General Education Provisions Act (20 U.S.C.
25 1232g) (commonly known as the “Family Edu-

1 cational Rights and Privacy Act of 1974’), the Chil-
2 dren’s Online Privacy Protection Act of 1998 (15
3 U.S.C. 6501 et seq.), or any other Federal statute
4 relating to privacy protection;

5 (2) be construed to limit the authority of a law
6 enforcement agency to obtain content or information
7 from an operator as authorized by law or pursuant
8 to an order of a court of competent jurisdiction;

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

12 (4) limit an educational agency or institution
13 from providing Internet access service for its own
14 use, to other educational agencies or institutions, or
15 to students and their families;

16 (5) be construed to prohibit an operator’s use
17 of covered information for maintaining, developing,
18 supporting, improving, or diagnosing the operator’s
19 school service;

20 (6) be construed to prohibit an operator of a
21 school service from marketing educational products
22 directly to parents, provided that the marketing does
23 not result from the use of covered information;

24 (7) impose a duty upon a provider of an elec-
25 tronic store, gateway, marketplace, or other means

1 of purchasing or downloading software or applica-
2 tions to review or enforce compliance with this Act
3 by operators of school services;

4 (8) impede the ability of a student or the stu-
5 dent's parent to download, export, create, or other-
6 wise save or maintain data or documents created by
7 or about the student or noncommercial applications
8 created by the student, except to the extent any such
9 activity would result in disclosure prohibited by this
10 Act of covered information of other students or
11 users of a school service; or

12 (9) be construed to prohibit an operator from
13 collecting a reasonable fee to cover the administra-
14 tive costs of making a disclosure under section
15 3(a)(5)(C).

16 (b) DE-IDENTIFIED AND AGGREGATED COVERED IN-
17 FORMATION.—

18 (1) IN GENERAL.—Nothing in this Act pro-
19 hibits an operator from—

20 (A) using de-identified and aggregated cov-
21 ered information—

22 (i) within the operator's school service
23 or other sites, services, or applications
24 owned by the operator to improve edu-
25 cational products; or

1 (ii) to demonstrate the effectiveness of
2 the operator's products or services, includ-
3 ing in the marketing of such products or
4 services; or

5 (B) disclosing de-identified and aggregated
6 covered information for research and develop-
7 ment, including—

8 (i) research, development, and im-
9 provement of educational sites, services,
10 and applications; and

11 (ii) advancements in the science of
12 learning.

13 (2) STEPS TO PREVENT RE-IDENTIFICATION OR
14 DISAGGREGATION.—If an operator uses or discloses
15 covered information as described in paragraph (1),
16 the operator shall take reasonable steps to ensure
17 that the information cannot be manipulated in a
18 manner that would enable—

19 (A) identification of an individual to whom
20 the information relates; or

21 (B) disaggregation of aggregated informa-
22 tion into its component parts.

23 (c) POWER TO CONSENT AND RIGHTS REGARDING
24 INFORMATION ABOUT ELIGIBLE STUDENT.—Any provi-
25 sion of this Act that refers to the consent of the student's

1 parent for the use or disclosure of covered information or
2 the right of the student's parent to access or otherwise
3 obtain, use, correct, request disclosure of, or request dele-
4 tion of covered information, shall, in the case of covered
5 information about an eligible student, be considered to
6 refer to the consent or right of the student and not the
7 student's parent.

8 (d) NO EFFECT ON CONSENT UNDER OTHER
9 LAW.—Except as provided in section 5(g), this Act does
10 not modify the requirements or standards for consent, in-
11 cluding consent from minors and employees on behalf of
12 educational institutions, under any other provision of Fed-
13 eral law or under State law.

14 **SEC. 5. IMPLEMENTATION AND ENFORCEMENT.**

15 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
16 SION.—

17 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
18 TICES.—A violation of this Act or a regulation pro-
19 mulgated under this Act shall be treated as a viola-
20 tion of a regulation under section 18(a)(1)(B) of the
21 Federal Trade Commission Act (15 U.S.C.
22 57a(a)(1)(B)) regarding unfair or deceptive acts or
23 practices.

24 (2) POWERS OF THE COMMISSION.—The Com-
25 mission shall enforce this Act and the regulations

1 promulgated under this Act in the same manner, by
2 the same means, and with the same jurisdiction,
3 powers, and duties as though all applicable terms
4 and provisions of the Federal Trade Commission Act
5 (15 U.S.C. 41 et seq.) were incorporated into and
6 made a part of this Act, and any person who violates
7 this Act or a regulation promulgated under this Act
8 shall be subject to the penalties entitled to the privi-
9 leges and immunities provided in the Federal Trade
10 Commission Act, except as provided in paragraph
11 (3).

12 (3) ENFORCEMENT WITH RESPECT TO NON-
13 PROFIT ORGANIZATIONS.—Notwithstanding sections
14 4 and 5(a)(2) of the Federal Trade Commission Act
15 (15 U.S.C. 44; 45(a)(2)), any jurisdictional limita-
16 tion of the Commission with respect to nonprofit or-
17 ganizations shall not apply for purposes of this Act.

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

22 (c) REGULATIONS.—The Commission may promul-
23 gate regulations under section 553 of title 5, United
24 States Code, to carry out this Act.

1 (d) CONSULTATION AND COOPERATION WITH SEC-
2 RETARY OF EDUCATION.—The Commission shall consult
3 and cooperate with the Secretary of Education in imple-
4 menting and enforcing this Act, including in promulgating
5 any regulations to carry out this Act, in matters involving
6 educational agencies or institutions.

7 (e) REPORT BY COMMISSION.—Not later than 1 year
8 after the effective date described in section 6, and annu-
9 ally thereafter, the Commission shall submit to Congress
10 and make available on the Internet Web site of the Com-
11 mission a report on the number, scope, and nature of the
12 data breaches about which the Commission receives notice
13 under section 3(b)(6).

14 (f) GUIDANCE AND TECHNICAL ASSISTANCE FROM
15 SECRETARY OF EDUCATION.—The Secretary of Edu-
16 cation shall provide educational agencies or institutions
17 with reasonable guidance and technical assistance with re-
18 spect to preventing and responding to data breaches in-
19 volving unauthorized acquisition of or access to personally
20 identifiable information that occur on a school service, in
21 compliance with any obligations imposed by Federal or
22 State law.

23 (g) RELATIONSHIP TO STATE LAW.—

24 (1) IN GENERAL.—This Act does not annul,
25 alter, or affect, or exempt any person subject to the

1 provisions of this Act from complying with, the laws
2 of any State with respect to the treatment of covered
3 information by operators of school services, except to
4 the extent that such laws are inconsistent with any
5 provision of this Act, and then only to the extent of
6 the inconsistency. For purposes of this paragraph, a
7 law of a State is not inconsistent with this Act if the
8 protection such law affords any user of a school
9 service is greater than the protection provided by
10 this Act.

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

14 **SEC. 6. EFFECTIVE DATE.**

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