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.

IN THE SENATE OF THE UNITED STATES

Mr. Daines (for himself and Mr. Blumenthal) introduced the following bill; which was read twice and referred to the Committee on

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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:
(1) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(2) COVERED INFORMATION.—The term “covered information” means personally identifiable information, and information that is linked or linkable to personally identifiable information, that—

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

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

(ii) is collected, generated, or maintained at the direction of an educational agency, institution, or program serving the student or officials of such an agency, institution, or program, including teachers.

(3) EARLY CHILDHOOD EDUCATION PROGRAM.—The term “early childhood education program” means a program that meets the requirements of clauses (i) and (ii)(III) of section 103(8)(C) of the Higher Education Act of 1965 (20 U.S.C. 1003).

(4) EDUCATIONAL AGENCY, INSTITUTION, OR PROGRAM.—The term “educational agency, institution, or program” means—
(A) an educational agency or institution, as defined in section 444(a)(3) of the General Education Provisions Act (20 U.S.C. 1232g(a)(3)), except that such term does not include an institution of higher education; or

(B) an early childhood education program.

(5) ELIGIBLE STUDENT.—The term “eligible student” means a student who—

(A) is 18 years of age or older;

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

(C) has graduated from a secondary school.

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

(7) PREK-12 PURPOSES.—The term “PreK-12 purposes” means purposes that—

(A) aid in the administration of activities by an educational agency, institution, or program, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; or
(B) are for the use and benefit of the educational agency, institution, or program.

(8) **Online Contact Information.**—The term “online contact information” means, with respect to a student, an email address or any other substantially similar identifier that permits direct contact with the student online, including an instant messaging user identifier, a voice over Internet protocol identifier, a video chat user identifier, or a screen name or user name that permits such contact.

(9) **Operator.**—The term “operator” means an entity that operates a school service, except that such term does not include an educational agency, institution, or program.

(10) **Personally Identifiable Information.**—The term “personally identifiable information” includes, with respect to a student—

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

(B) the first and last name of the student’s parent or another family member;

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

(D) online contact information for the student;
(E) a personal identifier, such as the student’s social security number, student number, or biometric record;

(F) a persistent identifier that can be used to recognize a user over time and across different Internet websites, online services, online applications, or mobile applications, including a customer number held in a cookie, an Internet Protocol address, a processor or device serial number, or another unique identifier;

(G) a photograph, video, or audio recording that contains the student’s image or voice;

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

(I) other indirect identifiers, such as the student’s date of birth, place of birth, or mother’s maiden name;

(J) other information that, alone or in combination, would allow an operator or a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify a specific student with reasonable certainty; and
(K) information requested by a person who
the educational agency, institution, or program
reasonably believes knows the identity of the
student to whom the information relates.

(11) SCHOOL SERVICE.—The term “school serv-
ice” means an Internet website, online service (in-
cluding a cloud computing service), online applica-
tion, or mobile application that is used for PreK-12
purposes and was designed and marketed for PreK-
12 purposes.

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

(13) STUDENT.—The term “student” means
any individual who is or has been enrolled in an
early childhood education program, elementary
school, or secondary school.

(14) TARGETED ADVERTISING.—

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

(B) EXCLUSION.—Such term does not include presenting advertisements to a student or the student’s parent at an online location or through an online application or mobile application, if—

(i) the advertisements are contextually relevant;

(ii) the advertisements are selected based on a single visit or session of use during which the advertisements are presented; and

(iii) information about the student’s online behavior or use of online applications or mobile applications is not collected or retained over time.

(b) TERMS DEFINED IN ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—In this Act, the terms “elementary school”, “parent”, and “secondary school” have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).
SEC. 3. PROTECTING STUDENT PRIVACY.

(a) Prohibited Practices.—An operator may not knowingly—

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

(2) collect, generate, use, or disclose any covered information for purposes of targeted advertising;

(3) sell covered information to a third party;

(4) collect, generate, or use covered information (including using covered information to create a personal profile of a student) other than for PreK-12 purposes;

(5) disclose covered information, unless the disclosure is made—

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

(B) in accordance with subsection (e), pursuant to an affirmative express request through a student’s educational agency, institution, or program for disclosure of information specified in the request—

(i) in the case of information about a student, from the student’s parent; or
(ii) in the case of information about a student’s parent or another user of the school service, from the parent or such other user, as the case may be;

(C) in accordance with subsection (e), pursuant to an affirmative express request through a student’s educational agency, institution, or program from a student who is or has been enrolled in a secondary school, or the parent of such student, to disclose covered information specified in the request about the student to a third party in furtherance of postsecondary education or employment opportunities, for the purpose of—

(i) providing or authenticating the student’s transcript, standardized test scores, letters of recommendation, or other information required by an institution of higher education for an application for admission or by a potential employer for an application for employment; or

(ii) providing information relating to—

(I) admission to an institution of higher education; or
(II) a scholarship or financial aid for attendance at an institution of higher education;

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

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

(6) notwithstanding paragraph (5), disclose covered information to a third-party service provider of the school service unless the operator contractually requires the provider to comply with all the provisions of this Act (including such paragraph).

(b) REQUIREMENTS.—An operator shall—

(1) establish, implement, and maintain reasonable security procedures appropriate to the nature of covered information to protect the confidentiality, security, and integrity of covered information;

(2) delete a student’s covered information that is not included in a student’s education records (as defined in section 444(a)(4) of the General Education Provisions Act (20 U.S.C. 1232g(a)(4)) (commonly known as the “Family Educational Rights and Privacy Act of 1974”) within—
(A) a reasonable time, not to exceed 45 days, after receiving a request for deletion through an educational agency, institution, or program from the student’s parent; or

(B) within a reasonable time, not to exceed 2 years, after—

(i) the information is no longer being used for PreK–12 purposes; and

(ii) providing notification, through an educational agency, institution, or program, to each student’s parent of the impending deletion of the student’s covered information;

(3) obtain consent from the educational agency, institution, or program, through contracts or privacy policies in a manner that is clear and easy to understand, regarding the types of covered information collected or generated (if any), the purposes for which the covered information is used or disclosed to third parties, and the identity of any such third party;

(4) disclose publicly, on the website of the operator, every privacy policy that the operator has established with an educational agency, institution, or program;
(5) obtain consent from the educational agency, institution, or program and provide sufficient notice on its website before making material changes to a contract or privacy policy for a school service; and

(6) facilitate access to and correction of covered information, through an educational agency, institution, or program—

(A) in the case of information about a student, by the student’s parent; or

(B) in the case of information about a parent or another user of the school service, by the parent or such other user, as the case may be.

(c) EFFECT ON MERGERS AND ACQUISITIONS.—The prohibitions of this section on sale and disclosure of covered information do not apply to the merger of an operator with another entity or the acquisition of the operator by another entity (including any subsequent merger or acquisition), provided that the operator or successor entity continues to be subject to the provisions of this section with respect to covered information acquired before the merger or acquisition.

(d) CONTINUED APPLICATION.—This section shall continue to apply, after a student is no longer enrolled in an educational agency, institution, or program, to cov-
(c) REQUIREMENTS FOR CERTAIN DISCLOSURES.— An operator may disclose covered information under sub-
paragraph (B) or (C) of subsection (a)(5) only after the
operator—

(1) ensures that the third party recipient has
provided assurances that it will not further disclose
covered information to subsequent third parties, use
any covered information pursuant to the request for
any purpose other than fulfilling the purpose for
which the request was made, nor take any other ac-
tion inconsistent with this Act;

(2) ensures that the third party recipient has
provided assurances that it will establish, implement
and maintain reasonable security procedures as de-
scribed in subsection (b)(1); and

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

SEC. 4. RULES OF CONSTRUCTION.

(a) IN GENERAL.—This Act shall not—

(1) be construed to affect or otherwise alter the
 protections and guarantees set forth in section 444
 1232g) (commonly known as the “Family Edu-
cational Rights and Privacy Act of 1974’’), the Chil-

dren’s Online Privacy Protection Act of 1998 (15
U.S.C. 6501 et seq.), or any other Federal statute
relating to privacy protection;

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

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

(4) limit an educational agency, institution, or
program from providing Internet access service for
its own use, to other educational agencies or institu-
tions, or to students and their families;

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

(6) impose a duty upon a provider of an elec-
tronic store, gateway, marketplace, or other means
of purchasing or downloading software or applica-
tions to review or enforce compliance with this Act
by operators of school services; or
(7) impede the ability of a student or the student’s parent to download, export, create, or otherwise save or maintain data or documents created by or about the student or noncommercial applications created by the student, except to the extent any such activity would result in disclosure prohibited by this Act of covered information of other students or users of a school service.

(b) DE-IDENTIFIED COVERED INFORMATION.—

(1) IN GENERAL.—Nothing in this Act prohibits an operator from—

(A) using de-identified covered information within the operator’s school service or other sites, services, or applications owned by the operator to improve educational products;

(B) using de-identified covered information to demonstrate the effectiveness of the operator’s products or services, including in the marketing of such products or services; or

(C) disclosing de-identified covered information for research and development, including—

(i) research, development, and improvement of educational sites, services, and applications; and
(ii) advancements in the science of learning.

(c) Power to Consent and Rights Regarding Information About Eligible Student.—Any provision of this Act that refers to the consent of the student’s parent for the use or disclosure of covered information or the right of the student’s parent to access or otherwise obtain, use, correct, request disclosure of, or request deletion of covered information, shall, in the case of covered information about an eligible student, be considered to refer to the consent or right of the student and not the student’s parent.

(d) No Effect on Consent under Other Law.—This Act does not modify the requirements or standards for consent, including consent from minors and employees on behalf of educational institutions, under any other provision of Federal law or under State law.

SEC. 5. IMPLEMENTATION AND ENFORCEMENT.

(a) Enforcement by Federal Trade Commission.—

(1) Unfair or Deceptive Acts or Practices.—A violation of this Act or a regulation promulgated under this Act shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C.
57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(2) Powers of the Commission.—The Commission shall enforce this Act and the regulations promulgated under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act, and any person who violates this Act or a regulation promulgated under this Act shall be subject to the penalties entitled to the privileges and immunities provided in the Federal Trade Commission Act, except as provided in paragraph (3).

(3) Enforcement with respect to non-profit organizations.—Notwithstanding sections 4 and 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 44; 45(a)(2)), any jurisdictional limitation of the Commission with respect to nonprofit organizations shall not apply for purposes of this Act.

(b) Preservation of Commission Authority.—Nothing in this Act may be construed in any way to limit or affect the Commission’s authority under any other provision of law.
(c) Regulations.—The Commission shall promulgate regulations under section 553 of title 5, United States Code, to carry out this Act and to further define the terms used under this Act, including “targeted advertising”, “research, development, and improvement of educational sites, services, and applications”, “advancements in the science of learning”, “postsecondary education or employment opportunities”, and “adaptive or personalized student learning purposes”, as used in this Act.

(d) Consultation and Cooperation With Secretary of Education.—The Commission shall consult and cooperate with the Secretary of Education in implementing and enforcing this Act, including in promulgating any regulations to carry out this Act, in matters involving educational agencies or institutions.

(e) Relationship to State Law.—

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

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

SEC. 6. EFFECTIVE DATE.

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