



Economic Affairs Interim Committee

67th Montana Legislature

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TO: Economic Affairs Interim Committee
FROM: Erin Sullivan, Committee Staff
RE: Montana Pupil Online Personal Information Protection Act
DATE: October 3, 2022

[House Bill 745](#) in the 2019 Legislative Session established the [Montana Pupil Online Personal Information Protection Act](#) ("Act"). Codified in Title 20, chapter 7, part 13, the primary purpose of the Act is to protect online student records and prevent targeted marketing to students by online vendors based on a student's personal information that is gathered in relation to online educational applications.

The Act is geared toward online applications used primarily for K-12 school purposes and can include an internet website, online service, cloud computing service, online application, or mobile application. The online applications are for activities that take place at the direction of the school or teacher and aid in instruction or collaboration between students. The applications may also provide communication between parents, teachers, and administrators.

Operators of the applications may not engage in targeted advertising based on any protected information acquired by a student's use of the application, and also may not sell or disclose protected information.

Protected information is defined in [20-7-1324](#), MCA, as:

- (5)(a) "Protected information" means personally identifiable information or materials, in any media or format, that describes or otherwise identifies a pupil and that is:
 - (i) created or provided by a pupil, or the pupil's parent or legal guardian, to an operator in the course of the pupil's, parent's, or legal guardian's use of the operator's K-12 online application;
 - (ii) created or provided by an employee or agent of a school district to an operator in the course of the employee's or agent's use of the operator's K-12 online application; or
 - (iii) gathered by an operator through the operator's K-12 online application.
- (b) The term includes but is not limited to:
 - (i) information in the pupil's educational record or e-mail messages;
 - (ii) first and last name, home address, telephone number, e-mail address, or other information that allows physical or online contact;
 - (iii) discipline records, test results, special education data, juvenile dependency records, grades, or evaluations;
 - (iv) criminal, medical, or health records;
 - (v) social security number;
 - (vi) biometric information;
 - (vii) disability;
 - (viii) socioeconomic information;
 - (ix) food purchases;
 - (x) political affiliation;
 - (xi) religious information; or

- (xii) text messages, documents, pupil identifiers, search activity, photos, voice recordings, or geolocation information.

The definition of protected information includes the term "biometric information"; however, the term is not defined elsewhere in the statute or otherwise in the MCA.

The term "biometric data" is defined in [1-5-602\(13\)](#) (Notarial Acts) as, "including but not limited to facial recognition, voice analysis or fingerprint analysis." The National Institute of Standards and Technology defines biometrics as, "a measurable physical characteristic or personal behavioral trait used to recognize the identity, or verify the claimed identity, of an applicant. Facial images, fingerprints, and iris scan samples are all examples of biometrics."¹ Both of the EAIC's proposed committee bill drafts provided a definition for the term, as the lack of definition in the MCA was identified during the HJ48 study.

The Act prohibits an operator from disclosing protected information unless disclosure, among other requirements, is made in furtherance of K-12 school purposes. Disclosure may be made if done to improve the operability and functionality of the application within the classroom or school if the operator complies with the requirements set forth in [20-7-1325](#), including implementing and maintaining reasonable security procedures and deleting a student's protected information upon request.

The Act also ensures online privacy protections for pupil records. In [20-7-1326](#), MCA, a school district is allowed to enter into a contract with a third party to provide services for the digital storage of the records, provided the school district ensures the contract contains myriad elements including ownership of the records, possession and control of pupil-generated content, procedures surrounding review of personally identifiable information, security and confidentiality, unauthorized disclosure, prohibition against engaging in targeted advertising, and compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g).

¹ <https://csrc.nist.gov/glossary/term/biometrics>