

Assembly Bill No. 1442

Passed the Assembly August 27, 2014

Chief Clerk of the Assembly

Passed the Senate August 26, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 49073.6 to the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1442, Gatto. Pupil records: social media.

Existing law requires school districts to establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education.

This bill would, notwithstanding that provision, require a school district, county office of education, or charter school that considers a program to gather or maintain in its records any information obtained from social media, as defined, of any pupil enrolled in the school district, county office of education, or charter school to first notify pupils and their parents or guardians about the proposed program, and to provide an opportunity for public comment at a regularly scheduled public meeting before the adoption of the program. The bill would require a school district, county office of education, or charter school that adopts a program pursuant to these provisions to, among other things, gather and maintain only information that pertains directly to school safety or to pupil safety, provide a pupil with access to any information about the pupil obtained from social media, and destroy the information gathered from social media and maintained in its records, as provided. If a school district, county office of education, or charter school contracts with a 3rd party to gather information from social media on an enrolled pupil, the bill would prohibit the 3rd party from using the information for purposes other than to satisfy the terms of the contract, prohibit the 3rd party from selling or sharing the information with any person or entity, except as provided, and would provide additional restrictions on the destruction of the information by the 3rd party, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 49073.6 is added to the Education Code, to read:

49073.6. (a) For purposes of this section, the following terms have the following meanings:

(1) “Educational purposes” means for purposes that aid in instruction in the classroom or at home, or in classroom administration.

(2) (A) “Social media” means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(B) “Social media” shall not include an electronic service or account used exclusively for educational purposes or primarily to facilitate creation of school-sponsored publications, such as a yearbook or pupil newspaper, under the direction or control of a school, teacher, or yearbook adviser.

(b) Notwithstanding any other law or regulation, a school district, county office of education, or charter school that considers a program to gather or maintain in its records any information obtained from social media of any enrolled pupil shall notify pupils and their parents or guardians about the proposed program and provide an opportunity for public comment at a regularly scheduled public meeting of the governing board of the school district or county office of education, or governing body of the charter school, as applicable, before the adoption of the program. The notification required by this subdivision may be provided as part of the notification required pursuant to Section 48980.

(c) Notwithstanding Section 49062, a school district, county office of education, or charter school that adopts a program pursuant to subdivision (b) shall do all of the following:

(1) Gather or maintain only information that pertains directly to school safety or to pupil safety.

(2) Provide a pupil with access to any information about the pupil gathered or maintained by the school district, county office of education, or charter school that was obtained from social media, and an opportunity to correct or delete such information.

(3) (A) Destroy information gathered from social media and maintained in its records within one year after a pupil turns 18 years of age or within one year after the pupil is no longer enrolled in the school district, county office of education, or charter school, whichever occurs first.

(B) Notify each parent or guardian of a pupil subject to the program that the pupil's information is being gathered from social media and that any information subject to this section maintained in the school district's, county office of education's, or charter school's records with regard to the pupil shall be destroyed in accordance with subparagraph (A). The notification required by this subparagraph may be provided as part of the notification required pursuant to Section 48980. The notification shall include, but is not limited to, all of the following:

(i) An explanation of the process by which a pupil or a pupil's parent or guardian may access the pupil's records for examination of the information gathered or maintained pursuant to this section.

(ii) An explanation of the process by which a pupil or a pupil's parent or guardian may request the removal of information or make corrections to information gathered or maintained pursuant to this section.

(C) If the school district, county office of education, or charter school contracts with a third party to gather information from social media on an enrolled pupil, require the contract to do all of the following:

(i) Prohibit the third party from using the information for purposes other than to satisfy the terms of the contract.

(ii) Prohibit the third party from selling or sharing the information with any person or entity other than the school district, county office of education, charter school, or the pupil or his or her parent or guardian.

(iii) Require the third party to destroy the information immediately upon satisfying the terms of the contract.

(iv) Require the third party, upon notice and a reasonable opportunity to act, to destroy information pertaining to a pupil when the pupil turns 18 years of age or is no longer enrolled in the school district, county office of education, or charter school, whichever occurs first. The school district, county office of education, or charter school shall provide notice to the third party when a pupil turns 18 years of age or is no longer enrolled in the school district, county office of education, or charter school. Notice provided pursuant to this clause shall not be used for any other purpose.

Approved _____, 2014

Governor