SENATE BILL No. 1177

Introduced by Senator Steinberg

February 20, 2014

An act to add Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL’S DIGEST

SB 1177, as introduced, Steinberg. Privacy: students.
Existing law, on and after January 1, 2015, prohibits an operator of an Internet Web site or online service from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile the personal information of a minor for the purpose of marketing or advertising specified types of products or services. Existing law also makes this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

This bill would prohibit an operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes and was designed and marketed for K–12 school purposes from using, sharing, disclosing, or compiling personal information about a K–12 student for commercial purposes. This bill would require an operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes and was designed and marketed for K–12 school purposes to ensure that specified encryption processes are used, to provide a notice to the operator of a secondary site, service, or application that is accessible through the noticing operator’s site, service, or application that their secondary site, service, or application is used...
for K–12 school purposes on a site, service, or application designed and marketed for K–12 school purposes, and to delete a student’s personal information under specified circumstances.


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

SECTION 1. Chapter 22.2 (commencing with Section 22584) is added to Division 8 of the Business and Professions Code, to read:

Chapter 22.2. Student Online Personal Information Protection Act

22584. (a) An operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes and was designed and marketed for K–12 school purposes shall comply with all of the following requirements:

(1) It shall not use, share, disclose, or compile personal information about a K–12 student for any purpose other than the K–12 school purpose and for maintaining the integrity of the site, service, or application.

(2) It shall not use, share, disclose, or compile a student’s personal information for any commercial purpose, including, but not limited to, advertising or profiling.

(3) It shall not allow, facilitate, or aid in the marketing or advertising of a product or service to a K–12 student on the site, service, or application.

(4) It shall take all reasonable steps to protect the data at rest and in motion in a manner that meets or exceeds commercial best practices. An operator shall be deemed to be in compliance with this paragraph if the operator ensures the following:

(A) Valid encryption processes for data at rest are consistent with NIST Special Publication 800-111, Guide to Storage Encryption Technologies for End User Devices.

(B) Valid encryption processes for data in motion are those that comply, as appropriate, with NIST Special Publications 800-52, Guidelines for the Selection and Use of Transport Layer Security
(TLS) Implementations; 800-77, Guide to IPsec VPNs; or 800-113, Guide to SSL VPNs, or others that are Federal Information Processing Standards (FIPS) 140-2 validated.

(b) (1) An operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes and the site, service, or application was designed and marketed for K–12 school purposes shall provide a notice to the operator of a secondary site, service, or application that is accessible through the noticing operator’s site, service, or application that the secondary site, service, or application is used for K–12 school purposes on a site, service, or application designed and marketed for K–12 school purposes.

(2) An operator of a site, service, or application designed and marketed for K–12 school purposes shall comply with this section upon either receiving notice under paragraph (1) that the site, service, or application is used for K–12 school purposes or if the operator otherwise has actual knowledge that the site, service, or application is used for K–12 school purposes.

(3) An operator that fails to provide the notice required by paragraph (1) to a secondary site, service, or application shall be liable for the secondary site, service, or application’s compliance with this section, unless that secondary site, service, or application had actual knowledge it was being used for K–12 purposes and was designed and marketed for K–12 school purposes.

(c) An operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes and that it was designed and marketed for K–12 school purposes shall delete a student’s personal information if any of the following occurs:

(1) The site, service or application is no longer used for the original K–12 school purpose.

(2) The student requests deletion, unless it is being used at the direction of a school or district for legitimate educational purposes and is under the control of the school or district.

(3) The student ceases to be a student at the institution and the operator becomes aware the student is no longer a student, unless it is being used at the direction of a school or district for legitimate
educational purposes and is under the control of the school or
district.
(d) Notwithstanding subdivision (a), an operator of an Internet
Web site, online service, online application, or mobile application
may disclose personal information of a student if other provisions
of federal or state law require the operator to disclose the
information, and the operator complies with the requirements of
federal and state law in disclosing that information.
(e) An “online service” includes cloud computing services.
(f) Notwithstanding subdivision (a), an operator of an Internet
Web site, online service, online application, or mobile application
may disclose personal information of a student for legitimate
research purposes as required by state and federal law and subject
to the restrictions under state and federal law.
(g) For purposes of this section, “personal information” shall
mean any information or materials in any media or format created
or provided by a student, or the student’s parent or legal guardian,
in the course of the student’s, or parent’s or legal guardian’s, use
of the site, service, or application or an employee or agent of the
educational institution, or gathered by the site, service, or
application, that is related to a student and shall include, but not
be limited to, information in the student’s educational record, the
student’s email address, first and last name, home address,
telephone number, other information that permits physical or online
contact of a specific individual, discipline records, test results,
special education data, juvenile delinquency records, grades,
evaluations, criminal records, medical records, health records,
social security number, biometric information, disabilities,
socioeconomic information, food purchases, political affiliations,
religious information, email messages, documents, unique
identifiers, profile, search activity, location information, Internet
Protocol (IP) address, metadata, any aggregation or derivative
thereof, or any information gained through tracking, including
login and logoff information, searches, typing, photos, voice
recordings, and geolocation information.
(h) This section shall not be construed to limit the authority of
a law enforcement agency to obtain any content or information
from an operator as authorized by law or pursuant to an order of
a court of competent jurisdiction.
(i) It is not the intent of the Legislature for this chapter to apply to general audience Internet Web sites.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.