

AMENDED IN ASSEMBLY JULY 2, 2014
AMENDED IN ASSEMBLY JUNE 10, 2014
AMENDED IN ASSEMBLY JUNE 5, 2014
AMENDED IN SENATE APRIL 21, 2014

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 amended, 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 3rd 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, as defined, and was designed and marketed for K–12 school purposes, from using, sharing, disclosing, or compiling covered information, as defined, about a K–12 student for any purpose other than the K–12 school purpose and for maintaining, developing, and

improving the integrity and effectiveness of the site, service, or application, as specified: *purposes*. The bill would *generally* prohibit these operators of Internet Web sites, online services, online applications, or mobile applications *an operator* from selling or disclosing the covered information of a student. The bill would require these operators of Internet Web sites, online services, online applications, or mobile applications to ensure that covered information is protected in a manner that meets or exceeds reasonable and appropriate commercial best practices *an operator to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure*, and to delete a student's covered information if the school or district requests ~~deletion~~: *deletion of data under the control of the school or district*. The bill would authorize the disclosure of covered information of a student under specified circumstances. The bill's provisions would become operative January 1, 2016.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

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

4
5 CHAPTER 22.2. STUDENT ONLINE PERSONAL INFORMATION
6 PROTECTION ACT
7

8 22584. (a) An operator of an Internet Web site, online service,
9 online application, or mobile application with actual knowledge
10 that the site, service, or application is used primarily for K-12
11 school purposes and was designed and marketed for K-12 school
12 purposes shall comply with all of the following requirements: *with*
13 *respect to the site, service, or application of the operator:*

14 (1) It shall not use, share, disclose, or compile covered
15 information about a K-12 student for any *purpose in furtherance*
16 *of targeted advertising or to amass a profile on a student for any*
17 *purpose other than the K-12 school purpose and purposes*. *Nothing*
18 *in this provision shall be construed to prohibit the use of*

1 ~~information for maintaining, developing, and or improving the~~
2 ~~integrity and effectiveness of the site, service, or application, as~~
3 ~~long as no personal information is used for any purpose in~~
4 ~~furtherance of targeted advertising or to amass a profile on the~~
5 ~~student for purposes other than K-12 school purposes.~~ *application*
6 *of the operator.*

7 (2) It shall not sell or disclose a student's covered information.
8 *This prohibition does not apply to the purchase, merger, or other*
9 *type of acquisition of an entity that operates an Internet Web site,*
10 *online service, online application, or mobile application by another*
11 *entity.*

12 ~~(3) It shall take reasonable steps to protect the covered~~
13 ~~information at rest and in transmission in a manner that meets or~~
14 ~~exceeds reasonable and appropriate commercial best practices.~~

15 *(3) It shall implement and maintain reasonable security*
16 *procedures and practices appropriate to the nature of the*
17 *information, to protect the personal information from unauthorized*
18 *access, destruction, use, modification, or disclosure.*

19 ~~(b) An operator of an Internet Web site, online service, online~~
20 ~~application, or mobile application with actual knowledge that the~~
21 ~~site, service, or application is used primarily for K-12 school~~
22 ~~purposes and that it was designed and marketed for K-12 school~~
23 ~~purposes shall delete a student's covered information if the school~~
24 ~~or district requests deletion.~~ *deletion of data under the control of*
25 *the school or district.*

26 ~~(c) Notwithstanding subdivision (a), an operator of an Internet~~
27 ~~Web site, online service, online application, or mobile application~~
28 ~~may disclose covered information of a student if other provisions~~
29 ~~of federal or state law require the operator to disclose the~~
30 ~~information, and the operator complies with the requirements of~~
31 ~~federal and state law in protecting and disclosing that information.~~
32 *under the following circumstances:*

33 *(1) If other provisions of federal or state law require the*
34 *operator to disclose the information, and the operator complies*
35 *with the requirements of federal and state law in protecting and*
36 *disclosing that information.*

37 *(2) For legitimate research purposes as required by state and*
38 *federal law and subject to the restrictions under state and federal*
39 *law or as allowed by state and federal law and under the direction*
40 *of a school, school district, or state department of education, if no*

1 covered information is used for any purpose in furtherance of
2 advertising or to amass a profile on the student for purposes other
3 than K–12 school purposes.

4 (d) An operator may use deidentified student covered
5 information, including aggregated and deidentified student covered
6 information, as follows:

7 (1) Within the operator’s site, service, or application or other
8 sites, services, or applications owned by the operator to improve
9 educational products, for adaptive learning purposes, and for
10 customizing student learning.

11 (2) To demonstrate the effectiveness of the operator’s products,
12 including in their marketing.

13 (3) An operator may share aggregated deidentified student
14 covered information for the development and improvement of
15 educational sites, services, or applications.

16 ~~(d) An “online~~

17 ~~(e) “Online service” includes cloud computing services.~~

18 ~~(e) Notwithstanding subdivision (a), an operator of an Internet~~
19 ~~Web site, online service, online application, or mobile application~~
20 ~~may disclose covered information of a student for legitimate~~
21 ~~research purposes as required by state and federal law and subject~~
22 ~~to the restrictions under state and federal law or as allowed by state~~
23 ~~and federal law and under the direction of a school, school district,~~
24 ~~or state department of education, as long as no covered information~~
25 ~~is used for any purpose in furtherance of advertising or to amass~~
26 ~~a profile on the student for purposes other than K–12 school~~
27 ~~purposes.~~

28 (f) “Operator” means the operator of an Internet Web site,
29 online service, online application, or mobile application with
30 actual knowledge that the site, service, or application is used
31 primarily for K–12 school purposes and was designed and
32 marketed for K–12 school purposes.

33 ~~(f)~~

34 (g) “Covered information” means personally identifiable
35 information or materials in any media or format that meets any of
36 the following:

37 (1) Are created or provided by a student, or the student’s parent
38 or legal guardian, in the course of the student’s, parent’s, or legal
39 guardian’s, guardian’s use of the site, service, or application for
40 K–12 school purposes.

1 (2) Are created or provided by an employee or agent of the
2 educational institution.

3 (3) Are gathered by the site, service, or application, that is
4 descriptive of a student or otherwise ~~identified~~ *personally identifies*
5 a student, including, but not limited to, information in the student's
6 educational record or email, first and last name, home address,
7 telephone number, email address, or other information that allows
8 physical or online contact, discipline records, test results, special
9 education data, juvenile dependency records, grades, evaluations,
10 criminal records, medical records, health records, social security
11 number, biometric information, disabilities, socioeconomic
12 information, food purchases, political affiliations, religious
13 information, text messages, documents, persistent unique
14 identifiers, search activity, photos, voice recordings, or geolocation
15 information.

16 ~~(g)~~

17 (h) "K-12 school purposes" means purposes that customarily
18 take place at the direction of the school, teacher, or school district
19 or aid in the administration of school activities, including, but not
20 limited to, instruction in the classroom or at home, administrative
21 activities, and collaboration between students, school personnel,
22 or parents, or are for the use and benefit of the school.

23 ~~(h)~~

24 (i) This section shall not be construed to limit the authority of
25 a law enforcement agency to obtain any content or information
26 from an operator as authorized by law or pursuant to an order of
27 a court of competent jurisdiction.

28 (j) *This section does not limit the ability of an operator of an*
29 *Internet Web site, online service, online application, or mobile*
30 *application to use student data for adaptive learning or customized*
31 *student learning purposes.*

32 ~~(i)~~

33 (k) This chapter does not apply to general audience Internet
34 Web sites, general audience online services, general audience
35 online applications, or general audience mobile applications.

36 ~~(j)~~

37 (l) This section does not limit Internet service providers from
38 providing Internet connectivity to schools or students and their
39 families.

1 ~~(k) (1) An operator of an Internet Web site, online service,~~
2 ~~online application, or mobile application may use deidentified~~
3 ~~student covered information, including aggregated deidentified~~
4 ~~student covered information, within the operator's site, service, or~~
5 ~~application or other sites, services, or applications owned by the~~
6 ~~operator to improve educational products, for adaptive learning~~
7 ~~purposes, and for customizing student learning.~~

8 ~~(2) An operator of an Internet Web site, online service, online~~
9 ~~application, or mobile application may use deidentified student~~
10 ~~covered information, including aggregated deidentified student~~
11 ~~covered information, to demonstrate the effectiveness of the~~
12 ~~operator's products, including in their marketing.~~

13 ~~(3) An operator of an Internet Web site, online service, online~~
14 ~~application, or mobile application may share aggregated~~
15 ~~deidentified student covered information for the development and~~
16 ~~improvement of educational sites, services, or applications.~~

17 ~~(t)~~

18 ~~(m) This section shall not be construed to prohibit an operator~~
19 ~~of an Internet Web site, online service, online application, or~~
20 ~~mobile application from marketing educational products directly~~
21 ~~to parents so long as the marketing was not the result of student~~
22 ~~covered information provided to obtained by the operator of the~~
23 ~~Internet Web site, online service, online application, or mobile~~
24 ~~application. through the provision of services covered under this~~
25 ~~section.~~

26 ~~(n) This section does not impose a duty upon a provider of an~~
27 ~~electronic store, gateway, marketplace, or other means of~~
28 ~~purchasing or downloading software or applications to review or~~
29 ~~enforce compliance of this section on those applications or~~
30 ~~software.~~

31 ~~(o) This section does not impede the ability of students to~~
32 ~~download, export, or otherwise save or maintain their own student~~
33 ~~created data or documents.~~

34 22585. This chapter shall become operative on January 1, 2016.

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

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