

AMENDED IN ASSEMBLY AUGUST 21, 2014

AMENDED IN ASSEMBLY AUGUST 4, 2014

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 information, as defined, about a K–12 student for any purpose other than K–12 school purposes. The bill would generally prohibit an operator from selling or disclosing the information of a student. *from knowingly engaging in targeted advertising to students or their parents or legal guardians, using covered information to amass a profile about a K–12 student, selling a student’s information, or disclosing covered information, as provided.* The bill would require an operator to implement and maintain reasonable security procedures and practices appropriate to the nature of the *covered* 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 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~~ *For the purposes of this section, “operator”*
 9 *means the operator of an Internet Web site, online service, online*
 10 *application, or mobile application with actual knowledge that the*
 11 *site, service, or application is used primarily for K–12 school*
 12 *purposes and was designed and marketed for K–12 school*
 13 *purposes.*

14 (b) ~~An operator shall comply with all of the following with~~
 15 ~~respect to the site, service, or application of the operator:~~ *not*
 16 *knowingly engage in any of the following activities with respect*
 17 *to their site, service, or application:*

1 (1) ~~It shall not use, share, disclose, or compile information about~~
2 ~~a K-12 student for any purpose in furtherance of targeted~~
3 ~~advertising or to amass a profile on a student for any purpose other~~
4 ~~than K-12 school purposes. Nothing in this provision shall be~~
5 ~~construed to prohibit the use of information for maintaining,~~
6 ~~developing, or improving the site, service, or application of the~~
7 ~~operator.~~

8 (1) (A) *Engage in targeted advertising on the operator’s site,*
9 *service, or application, or (B) target advertising on any other site,*
10 *service, or application when the targeting of the advertising is*
11 *based upon any information, including covered information and*
12 *persistent unique identifiers, that the operator has acquired*
13 *because of the use of that operator’s site, service, or application*
14 *described in subdivision (a).*

15 (2) *Use information, including persistent unique identifiers,*
16 *created or gathered by the operator’s site, service, or application,*
17 *to amass a profile about a K-12 student except in furtherance of*
18 *K-12 school purposes.*

19 ~~(2) It shall not sell or disclose~~

20 (3) ~~Sell a student’s information.~~ *information, including covered*
21 *information. This prohibition does not apply to the purchase,*
22 *merger, or other type of acquisition of an entity that operates an*
23 ~~Internet Web site, online service, online application, or mobile~~
24 ~~application operator by another entity, provided that the operator~~
25 ~~or successor entity continues to be subject to the provisions of this~~
26 ~~section with respect to previously acquired student information.~~

27 (4) *Disclose covered information unless the disclosure is made:*

28 (A) *In furtherance of the K-12 purpose of the site, service, or*
29 *application, provided the recipient of the covered information*
30 *disclosed pursuant to this subparagraph:*

31 (i) *Shall not further disclose the information unless done to*
32 *allow or improve operability and functionality within that student’s*
33 *classroom or school; and*

34 (ii) *Is legally required to comply with subdivision (d);*

35 (B) *To ensure legal and regulatory compliance;*

36 (C) *To respond to or participate in judicial process;*

37 (D) *To protect the safety of users or others or security of the*
38 *site; or*

39 (E) *To a service provider, provided the operator contractually*

40 (i) *prohibits the service provider from using any covered*

1 *information for any purpose other than providing the contracted*
 2 *service to, or on behalf of, the operator, (ii) prohibits the service*
 3 *provider from disclosing any covered information provided by the*
 4 *operator with subsequent third parties, and (iii) requires the service*
 5 *provider to implement and maintain reasonable security*
 6 *procedures and practices as provided in subdivision (d).*

7 *(c) Nothing in subdivision (b) shall be construed to prohibit the*
 8 *operator's use of information for maintaining, developing,*
 9 *supporting, improving, or diagnosing the operator's site, service,*
 10 *or application.*

11 *(d) An operator shall:*

12 ~~*(3) It shall implement*~~

13 *(1) Implement and maintain reasonable security procedures and*
 14 *practices appropriate to the nature of the information, to protect*
 15 ~~*the personal*~~ *covered information, and protect that information*
 16 *from unauthorized access, destruction, use, modification, or*
 17 *disclosure.*

18 ~~*(b) An operator shall delete*~~

19 *(2) Delete a student's covered information if the school or*
 20 *district requests deletion of data under the control of the school or*
 21 *district.*

22 ~~*(e)*~~

23 *(e) Notwithstanding paragraph (4) of subdivision ~~(a)~~, (b), an*
 24 *operator may disclose covered information of a ~~student~~ student,*
 25 *as long as paragraphs (1) to (3), inclusive, of subdivision (b) are*
 26 *not violated, under the following circumstances:*

27 *(1) If other provisions of federal or state law require the operator*
 28 *to disclose the information, and the operator complies with the*
 29 *requirements of federal and state law in protecting and disclosing*
 30 *that information.*

31 *(2) For legitimate research purposes: (A) as required by state*
 32 ~~*and*~~ *or federal law and subject to the restrictions under applicable*
 33 *state and federal law or (B) as allowed by state ~~and~~ or federal law*
 34 *and under the direction of a school, school district, or state*
 35 *department of education, if no covered information is used for any*
 36 *purpose in furtherance of advertising or to amass a profile on the*
 37 *student for purposes other than K-12 school purposes.*

38 *(3) To a state or local educational agency, including schools*
 39 *and school districts, for K-12 school purposes, as permitted by*
 40 *state or federal law.*

1 ~~(d) An operator may use~~
2 ~~(f) Nothing in this section prohibits an operator from using~~
3 ~~deidentified student covered information, including aggregated~~
4 ~~and deidentified student covered information, student covered~~
5 ~~information as follows:~~

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

10 (2) To demonstrate the effectiveness of the operator’s ~~products,~~
11 ~~products or services,~~ including in their marketing.

12 ~~(3) An operator may share~~
13 ~~(g) Nothing in this section prohibits an operator from sharing~~
14 ~~aggregated deidentified student covered student covered~~
15 ~~information for the development and improvement of educational~~
16 ~~sites, services, or applications.~~

17 ~~(e)~~
18 ~~(h) “Online service” includes cloud computing services. services,~~
19 ~~which must comply with this section if they otherwise meet the~~
20 ~~definition of an operator.~~

21 ~~(f) “Operator” means the operator of an Internet Web site, online~~
22 ~~service, online application, or mobile application with actual~~
23 ~~knowledge that the site, service, or application is used primarily~~
24 ~~for K–12 school purposes and was designed and marketed for~~
25 ~~K–12 school purposes.~~

26 ~~(g)~~
27 ~~(i) “Covered information” means personally identifiable~~
28 ~~information or materials materials, in any media or format that~~
29 ~~meets any of the following:~~

30 ~~(1) Are~~ ~~Is~~ created or provided by a student, or the student’s
31 parent or legal guardian, ~~to an operator~~ in the course of the
32 student’s, parent’s, or legal guardian’s use of the ~~operator’s~~ site,
33 service, or application for K–12 school purposes.

34 ~~(2) Are~~ ~~Is~~ created or provided by an employee or agent of the
35 ~~educational institution. K–12 school, school district, local~~
36 ~~education agency, or county office of education, to an operator.~~

37 ~~(3) Are~~ ~~Is~~ gathered by ~~the an operator through the operation~~
38 ~~of a site, service, or application, that is application described in~~
39 ~~subdivision (a) and is~~ descriptive of a student or otherwise
40 personally identifies a student, including, but not limited to,

1 information in the student’s educational record or email, first and
 2 last name, home address, telephone number, email address, or
 3 other information that allows physical or online contact, discipline
 4 records, test results, special education data, juvenile dependency
 5 records, grades, evaluations, criminal records, medical records,
 6 health records, social security number, biometric information,
 7 disabilities, socioeconomic information, food purchases, political
 8 affiliations, religious information, text messages, documents,
 9 ~~persistent unique~~ *student* identifiers, search activity, photos, voice
 10 recordings, or geolocation information.

11 ~~(h)~~

12 (j) “K–12 school purposes” means purposes that customarily
 13 take place at the direction of the *K–12* school, teacher, or school
 14 district or aid in the administration of school activities, including,
 15 but not limited to, instruction in the classroom or at home,
 16 administrative activities, and collaboration between students, school
 17 personnel, or parents, or are for the use and benefit of the school.

18 ~~(i)~~

19 (k) This section shall not be construed to limit the authority of
 20 a law enforcement agency to obtain any content or information
 21 from an operator as authorized by law or pursuant to an order of
 22 a court of competent jurisdiction.

23 ~~(j)~~

24 (l) This section does not limit the ability of an operator ~~of an~~
 25 ~~Internet Web site, online service, online application, or mobile~~
 26 ~~application~~ to use student ~~data data~~, *including covered information*,
 27 for adaptive learning or customized student learning purposes.

28 ~~(k)~~

29 (m) This ~~chapter~~ *section* does not apply to general audience
 30 Internet Web sites, general audience online services, general
 31 audience online applications, or general audience mobile
 32 ~~applications~~: *applications, even if login credentials created for an*
 33 *operator’s site, service, or application may be used to access those*
 34 *general audience sites, services, or applications.*

35 ~~(l)~~

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

39 ~~(m)~~

1 (o) This section shall not be construed to prohibit an operator
2 of an Internet Web site, online service, online application, or
3 mobile application from marketing educational products directly
4 to parents so long as the marketing ~~was~~ *did* not the result of student
5 *from the use of* covered information obtained by the operator
6 through the provision of services covered under this section.

7 ~~(n)~~

8 (p) This section does not impose a duty upon a provider of an
9 electronic store, gateway, marketplace, or other means of
10 purchasing or downloading software or applications to review or
11 enforce compliance of this section on those applications or
12 software.

13 (q) *This section does not impose a duty upon a provider of an*
14 *interactive computer service, as defined in Section 230 of Title 47*
15 *of the United States Code, to review or enforce compliance with*
16 *this section by third-party content providers.*

17 ~~(o)~~

18 (r) This section does not impede the ability of students to
19 download, export, or otherwise save or maintain their own student
20 created data or documents.

21 22585. This chapter shall become operative on January 1, 2016.

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