

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 817

Introduced by Assembly Member Calderon

February 26, 2015

An act to amend Section 22584 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 817, as amended, Calderon. Privacy: students.

Existing law, commencing on January 1, 2016, prohibits an operator from knowingly engaging in targeted advertising to students or their parents or legal guardians using covered information, as defined, amassing a profile of a K–12 student, selling a student's information, or disclosing covered information, as provided. Existing law defines an "operator" as the operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes *purposes, as defined*, and was designed and marketed for K–12 school purposes. *Under existing law, "K-12 school purposes" means those purposes that customarily take place at the direction of the K–12 school, teacher, or school district or aid in the administration of school activities.*

~~This bill would redefine an "operator" as the operator of an Internet Web site, online service, online application, or mobile application that, pursuant to a contract or agreement with a school or district, establishes the site, service, or application used primarily for K–12 school purposes and was designed and marketed primarily for K–12 school purposes.~~

This bill would specify that “K-12 school purposes” do not include communications to and from parents or students 14 years of age or older regarding postsecondary or extracurricular educational, military, or career products or services, as specified.

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. Section 22584 of the Business and Professions
2 Code is amended to read:

3 22584. (a) For the purposes of this section, “operator” means
4 the operator of an Internet Web site, online service, online
5 application, or mobile application ~~that, pursuant to a contract or~~
6 ~~agreement with a school or district, establishes with actual~~
7 *knowledge that* the site, service, or application ~~that~~ is used primarily
8 for K–12 school purposes and was designed and marketed ~~primarily~~
9 for K–12 school purposes.

10 (b) An operator shall not knowingly engage in any of the
11 following activities with respect to their site, service, or application:

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

19 (2) Use information, including persistent unique identifiers,
20 created or gathered by the operator’s site, service, or application,
21 to amass a profile about a K–12 student except in furtherance of
22 K–12 school purposes.

23 (3) Sell a student’s information, including covered information.
24 This prohibition does not apply to the purchase, merger, or other
25 type of acquisition of an operator by another entity, provided that
26 the operator or successor entity continues to be subject to the
27 provisions of this section with respect to previously acquired
28 student information.

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

1 (A) In furtherance of the K–12 purpose of the site, service, or
2 application, provided the recipient of the covered information
3 disclosed pursuant to this subparagraph:

4 (i) Shall not further disclose the information unless done to
5 allow or improve operability and functionality within that student’s
6 classroom or school; and

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

8 (B) To ensure legal and regulatory compliance;

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

10 (D) To protect the safety of users or others or security of the
11 site; or

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

13 (i) prohibits the service provider from using any covered
14 information for any purpose other than providing the contracted
15 service to, or on behalf of, the operator, (ii) prohibits the service
16 provider from disclosing any covered information provided by the
17 operator with subsequent third parties, and (iii) requires the service
18 provider to implement and maintain reasonable security procedures
19 and practices as provided in subdivision (d).

20 (c) Nothing in subdivision (b) shall be construed to prohibit the
21 operator’s use of information for maintaining, developing,
22 supporting, improving, or diagnosing the operator’s site, service,
23 or application.

24 (d) An operator shall:

25 (1) Implement and maintain reasonable security procedures and
26 practices appropriate to the nature of the covered information, and
27 protect that information from unauthorized access, destruction,
28 use, modification, or disclosure.

29 (2) Delete a student’s covered information if the school or
30 district requests deletion of data under the control of the school or
31 district.

32 (e) Notwithstanding paragraph (4) of subdivision (b), an operator
33 may disclose covered information of a student, as long as
34 paragraphs (1) to (3), inclusive, of subdivision (b) are not violated,
35 under the following circumstances:

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

1 (2) For legitimate research purposes: (A) as required by state
2 or federal law and subject to the restrictions under applicable state
3 and federal law or (B) as allowed by state or federal law and under
4 the direction of a school, school district, or state department of
5 education, if no covered information is used for any purpose in
6 furtherance of advertising or to amass a profile on the student for
7 purposes other than K–12 school purposes.

8 (3) To a state or local educational agency, including schools
9 and school districts, for K–12 school purposes, as permitted by
10 state or federal law.

11 (f) Nothing in this section prohibits an operator from using
12 deidentified student covered information as follows:

13 (1) Within the operator’s site, service, or application or other
14 sites, services, or applications owned by the operator to improve
15 educational products.

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

18 (g) Nothing in this section prohibits an operator from sharing
19 aggregated deidentified student covered information for the
20 development and improvement of educational sites, services, or
21 applications.

22 (h) “Online service” includes cloud computing services, which
23 must comply with this section if they otherwise meet the definition
24 of an operator.

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

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

32 (2) Is created or provided by an employee or agent of the K–12
33 school, school district, local education agency, or county office of
34 education, to an operator for K–12 school purposes.

35 (3) Is gathered by an operator through the operation of a site,
36 service, or application described in subdivision (a) and is
37 descriptive of a student or otherwise identifies a student, including,
38 but not limited to, information in the student’s educational record
39 or email, first and last name, home address, telephone number,
40 email address, or other information that allows physical or online

1 contact, discipline records, test results, special education data,
2 juvenile dependency records, grades, evaluations, criminal records,
3 medical records, health records, social security number, biometric
4 information, disabilities, socioeconomic information, food
5 purchases, political affiliations, religious information, text
6 messages, documents, student identifiers, search activity, photos,
7 voice recordings, or geolocation information.

8 (j) “K–12 school purposes” means purposes that customarily
9 take place at the direction of the K–12 school, teacher, or school
10 district or aid in the administration of school activities, including,
11 but not limited to, instruction in the classroom or at home,
12 administrative activities, and collaboration between students, school
13 personnel, or parents, or are for the use and benefit of the school.
14 *“K-12 school purposes” do not include communications to and*
15 *from parents or students 14 years of age or older regarding*
16 *postsecondary or extracurricular educational, military, or career*
17 *products or services, including, but not limited to, college readiness*
18 *assessments and preparation for them, recruitment for and*
19 *financing of the costs of those product and service opportunities,*
20 *and educational assistance or enrichment opportunities.*

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

25 (l) This section does not limit the ability of an operator to use
26 student data, including covered information, for adaptive learning
27 or customized student learning purposes.

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

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

37 (o) This section shall not be construed to prohibit an operator
38 of an Internet Web site, online service, online application, or
39 mobile application from marketing educational products directly
40 to parents so long as the marketing did not result from the use of

1 covered information obtained by the operator through the provision
2 of services covered under this section.

3 (p) This section does not impose a duty upon a provider of an
4 electronic store, gateway, marketplace, or other means of
5 purchasing or downloading software or applications to review or
6 enforce compliance of this section on those applications or
7 software.

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

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