

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN ASSEMBLY APRIL 7, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Chau

February 19, 2016

An act to add Chapter 22.2.5 (commencing with Section 22586) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Chau. Privacy: personal information: preschool and prekindergarten purposes.

Existing law, The Student Online Personal Information Protection Act, restricts the use of information about elementary and secondary school students by operators of certain Internet Web sites and online services and applications by, among other things, prohibiting operators from engaging in targeted advertising, amassing student profiles except for K–12 school purposes, or selling or disclosing student information, as specified. Existing law also requires an operator to implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information to protect the information from unauthorized access, use, and disclosure.

Existing law also 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, commencing on July 1, 2017, prohibit the operator of an Internet Web site, online service, online application, or mobile application that is used primarily for preschool or prekindergarten purposes, as defined, and was designed and marketed for preschool and prekindergarten purposes, to knowingly engage in specified activities with respect to their site, service, or application, including, among other things, engaging in targeted advertising, using specified information to amass a profile about a pupil except in furtherance of preschool or prekindergarten purposes, and selling or disclosing a pupil’s information, as specified. The bill would also require an operator to, among other things, implement and maintain reasonable security procedures and practices appropriate to the information to protect that information from unauthorized access, and to delete a pupil’s information at the request of a preschool, prekindergarten, or district, as specified. The bill would authorize the disclosure of a pupil’s information under specified circumstances. The bill would also provide that its provisions are severable.

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 22.2.5 (commencing with Section 22586)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 22.2.5. EARLY LEARNING PERSONAL INFORMATION
6 PROTECTION ACT
7

8 22586. (a) For purposes of this section:

9 (1) “Operator” means the operator of an Internet Web site, online
10 service, online application, or mobile application with actual
11 knowledge that the site, service, or application is used primarily
12 for preschool or prekindergarten purposes and was designed and
13 marketed for preschool and prekindergarten purposes.

14 (2) “Pupil” means a child enrolled in a preschool or
15 prekindergarten course of instruction.

- 1 (b) An operator shall not knowingly engage in any of the
2 following activities with respect to their site, service, or application:
- 3 (1) (A) Engage in targeted advertising on the operator’s site,
4 service, or application.
- 5 (B) Target advertising on any other site, service, or application
6 ~~if~~ *when* the targeting of the advertising is based upon any
7 information, including covered information and persistent unique
8 identifiers, that the operator has acquired because of the use of
9 that operator’s site, service, or application described in subdivision
10 (a).
- 11 (2) Use information, including persistent unique identifiers,
12 created or gathered by the operator’s site, service, or application,
13 to amass a profile about a pupil except in furtherance of preschool
14 or prekindergarten purposes.
- 15 (3) Sell a pupil’s information, including covered information.
16 This prohibition does not apply to the purchase, merger, or other
17 type of acquisition of an operator by another entity, provided that
18 the operator or successor entity continues to be subject to the
19 provisions of this section with respect to previously acquired pupil
20 information.
- 21 (4) Disclose covered information unless the disclosure is made:
- 22 (A) In furtherance of the preschool and prekindergarten purposes
23 of the site, service, or application, provided that the recipient of
24 the covered information disclosed pursuant to this subparagraph:
- 25 ~~(i) Is prohibited from further disclosure of~~ *Shall not further*
26 *disclose* the information unless done to allow or improve
27 operability and functionality within that pupil’s classroom,
28 preschool, or prekindergarten.
- 29 (ii) ~~Is legally required to comply with subdivision (d).~~ *(d)*;
- 30 (B) To ensure legal and regulatory ~~compliance.~~ *compliance*;
- 31 (C) To respond to or participate in a judicial ~~process.~~ *process*;
- 32 (D) To protect the safety of users or ~~others, or the~~ *others or*
33 ~~security of the site.~~ *site; or*
- 34 (E) To a service provider, ~~if~~ *provided* the operator contractually
35 (i) prohibits the service provider from using any covered
36 information for any purpose other than providing the contracted
37 service to, or on behalf of, the operator, (ii) prohibits the service
38 provider from disclosing any covered information provided ~~to~~ *by*
39 the operator with subsequent third parties, and (iii) requires the

1 service provider to implement and maintain reasonable security
2 procedures and practices as provided in subdivision (d).

3 (c) Nothing in subdivision (b) shall be construed to prohibit the
4 operator’s use of information for maintaining, developing,
5 supporting, improving, or diagnosing the operator’s site, service,
6 or application.

7 (d) An operator shall:

8 (1) Implement and maintain reasonable security procedures and
9 practices appropriate to the nature of the covered information, and
10 protect that information from unauthorized access, destruction,
11 use, modification, or disclosure.

12 (2) Delete a pupil’s covered information if the preschool,
13 prekindergarten, or district requests ~~the~~ deletion of data under the
14 control of the preschool, prekindergarten, or district.

15 (e) Notwithstanding paragraph (4) of subdivision (b), an operator
16 may disclose covered information of ~~a pupil if~~ *pupil, as long as*
17 paragraphs (1) to (3), inclusive, of subdivision (b) are not ~~violated~~
18 *violated*, under the following circumstances:

19 (1) If other provisions of federal or state law require the operator
20 to disclose the information, and the operator complies with the
21 requirements of federal and state law in protecting and disclosing
22 that information.

23 (2) For ~~legitimate research purposes~~ *purposes*: (A) as required
24 by state or federal law and subject to the restrictions under
25 applicable state ~~or~~ *and* federal law or (B) as allowed by state or
26 federal law and under the direction of a preschool, prekindergarten,
27 school district, or state department of education, if no covered
28 information is used for any purpose in furtherance of advertising
29 or to amass a profile ~~of~~ *on* the pupil for purposes other than
30 preschool and prekindergarten purposes.

31 (3) To a state or local educational agency, including preschools,
32 prekindergartens, and school districts, for preschool and
33 prekindergarten purposes, as permitted by state or federal law.

34 (f) Nothing in this section prohibits an operator from using
35 deidentified pupil covered information as follows:

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

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

1 (g) Nothing in this section prohibits an operator from sharing
2 aggregated deidentified *pupil* covered information ~~of a pupil~~ for
3 the development and improvement of educational sites, services,
4 or applications.

5 (h) “Online service” includes cloud computing services, which
6 must comply with this section if ~~it~~ *they* otherwise ~~meets~~ *meet* the
7 definition of an operator.

8 (i) “Covered information” means personally identifiable
9 information or materials, in any media or format that meets any
10 of the following:

11 (1) Is created or provided by a pupil, or the pupil’s parent or
12 legal guardian, to an operator in the course of the pupil’s, parent’s,
13 or legal guardian’s use of the operator’s site, service, or application
14 for preschool and prekindergarten purposes.

15 (2) Is created or provided by an employee or agent of the
16 preschool, prekindergarten, school district, local educational
17 agency, or county office of education, to an operator.

18 (3) Is gathered by an operator through the operation of ~~the a~~
19 site, service, or application described in subdivision (a), and is
20 descriptive of a pupil or otherwise identifies a pupil, including,
21 but not limited to, information in the pupil’s educational record or
22 email, first and last name, home address, telephone number, email
23 address, or other information that allows physical or online contact,
24 discipline records, test results, special education data, juvenile
25 dependency records, grades, evaluations, criminal records, medical
26 records, health records, social security number, biometric
27 information, disabilities, socioeconomic information, food
28 purchases, political affiliations, religious information, text
29 messages, documents, student identifiers, search activity, photos,
30 voice recordings, or geolocation information.

31 (j) “Preschool or prekindergarten purposes” means purposes
32 that customarily take place at the direction of the preschool,
33 prekindergarten, teacher, or school district, or aid in the
34 administration of preschool or prekindergarten activities, including,
35 but not limited to, instruction in the ~~classroom~~, *classroom* or at
36 home, administrative activities, and collaboration between pupils,
37 preschool or prekindergarten personnel, or parents, or are for the
38 use and benefit of the preschool or prekindergarten.

39 (k) This section shall not be construed to limit the authority of
40 a law enforcement agency to obtain any content or information

1 from an operator as authorized by law or pursuant to an order of
2 a court of competent jurisdiction.

3 (l) This section does not limit the ability of an operator to use
4 a pupil’s ~~educational~~ data, including covered information, for
5 adaptive learning or customized early learning purposes.

6 (m) This section does not apply to general audience Internet
7 Web-site, *sites*, general audience online services, general audience
8 online applications, or general audience mobile applications, even
9 if login credentials created for an operator’s site, service, or
10 application may be used to access those general audience sites,
11 services, or applications.

12 (n) This section does not limit Internet service providers from
13 providing Internet connectivity to preschools, prekindergartens,
14 or pupils and their families.

15 (o) This section shall not be construed to prohibit an operator
16 of an Internet Web site, online service, online application, or
17 mobile application from marketing educational products directly
18 to parents so long as the marketing did not result from the use of
19 covered information obtained by the operator through the provision
20 of services covered ~~by~~ *under* this section.

21 (p) This section does not impose a duty upon a provider of an
22 electronic store, gateway, marketplace, or other means of
23 purchasing or downloading software or applications to review or
24 enforce compliance of this section on those applications or
25 software.

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

30 (r) This section does not impede the ability of pupils to
31 download, export, or otherwise save or maintain their own
32 personally created data or documents.

33 22587. This chapter shall become operative on July 1, 2017.

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

O