

Senate Bill No. 1177

CHAPTER 839

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

[Approved by Governor September 29, 2014. Filed with Secretary of State September 29, 2014.]

*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) For the purposes of this section, “operator” means 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 and was designed and marketed for K–12 school purposes to the extent that it is operating in that capacity.

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

(1) (A) Engage in targeted advertising on the operator’s site, service, or application, or

(B) target advertising on any other site, service, or application when the targeting of the advertising is based upon any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator’s site, service, or application described in subdivision (a).

(2) Use information, including persistent unique identifiers, created or gathered by the operator’s site, service, or application, to amass a profile about a K–12 student except in furtherance of K–12 school purposes. “Amass a profile” does not include collection and retention of account records or information that remains under the control of the student, parent, school or district.

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

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

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

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

(ii) Is legally required to comply with subdivision (d) and not to use that covered information in violation of this Act;

(B) To ensure legal ~~and or~~ regulatory compliance, or protect against liability;

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

(D) To protect the security or integrity of its website, service or application;

~~(E)~~ To protect the safety of users or others or security of the school service's site, service, or application; or

~~(F)~~ To a service provider, provided the operator contractually (i) prohibits the service provider from using any covered information for any purpose other than providing the contracted service to, or on behalf of, the operator,

(ii) prohibits the service provider from disclosing any covered information provided by the operator with subsequent third parties, unless the disclosure is expressly permitted by paragraphs (A)-(E) or (f), and (iii) requires the service provider to implement and maintain reasonable security procedures and practices as provided in subdivision (d).

(G) for a school, educational or employment purpose requested by the student or the student's parent or guardian, provided that the information is not used or further disclosed for any other purpose

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

(d) An operator shall:

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

(2) Delete a student's covered information within a reasonable time frame if the school or district requests deletion of data under the control of the school or district.

(e) Nothing in Subsections (b)(1), (2), or (4) shall be construed to prohibit the use or disclosure of covered information with the affirmative consent of the school, student or their parent or guardian given in response to clear and conspicuous notice of the use or disclosure.

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

(1) If an other provisions of federal or state law requires the operator to disclose the information, and the operator complies with ~~the applicable~~ requirements of federal and state law in protecting and disclosing that information.

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

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

(fg) Nothing in this section prohibits an operator from using aggregated or de-identified student covered information as follows:

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

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

(gh) Nothing in this section prohibits an operator from sharing aggregated or de-identified student covered information for the development or and improvement of educational sites, services, or applications.

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

(i) “Covered information” means personally identifiable information or materials regarding a K-12 student who is a resident of this State, in any media or format that meets any of the following:

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

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

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

(j) “K–12 school purposes” means 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, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are primarily for the use and benefit of the school.

(k) “Targeted advertising” means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred from that student’s online behavior, usage of applications, or covered information.

“Targeted advertising” does not include advertising to a student at an online location based upon that student’s current visit to that location or single search query without collection and retention of a student’s online activities over time.

(kl) 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.

(l) This section does not limit the ability of an operator to:

(1) use student data, including covered information, for adaptive learning or customized student learning purposes;

(2) use recommendation engines to recommend content or additional services to students within a school service’s site, service, or application without the response being determined in whole or in part by payment or other consideration from a third party; ~~or~~

(3) respond to a student’s request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party; ~~or~~

(4) use or retain student information to ensure legal or and regulatory compliance, or take precautions against liability.

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

(n) This section ~~does shall~~ not be construed to limit Internet service providers from providing Internet connectivity to schools or students and their families.

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

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

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

(r) This section shall does not be construed to impede the ability of students to download,

Formatted: Not Highlight

Formatted: Not Highlight

| export, or otherwise save or maintain their own student ~~created~~ data or documents.

| 22585. This chapter shall become operative on ~~January~~ July 1, 2016.

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.

EAST\90827018.4