
A BILL FOR AN ACT

RELATING TO STUDENT PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 26 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 **STUDENT ONLINE PERSONAL INFORMATION PROTECTION ACT**

6 § -1 **Definitions.** As used in this chapter, unless the
7 context otherwise requires:

8 "Covered information" means personally identifiable
9 information or materials, in any media or format, that meets any
10 of the following criteria:

11 (1) It is created or provided by a student, or the
12 student's parent or legal guardian, to an operator in
13 the course of the student's, parent's, or legal
14 guardian's use of the operator's site, service, or
15 application for K-12 school purposes;

16 (2) It is created or provided by an employee or agent of
17 the K-12 school or the department to an operator;



- 1 (3) It is gathered by an operator through the operation of
2 a site, service, or application and is descriptive of
3 a student or otherwise identifies a student,
4 including:
- 5 (A) Information in the student's educational record
6 or email;
 - 7 (B) First and last name;
 - 8 (C) Home address, telephone number, email address, or
9 other information that allows physical or online
10 contact; or
 - 11 (D) Discipline records, test results, special
12 education data, juvenile dependency records,
13 grades, evaluations, criminal records, medical
14 records, health records, social security number,
15 biometric information, disabilities,
16 socioeconomic information, food purchases,
17 political affiliations, religious information,
18 text messages, documents, student identifiers,
19 search activity, photos, voice recordings, or
20 geolocation information.
- 21 "Department" means the department of education.



1 "K-12 school" means a public school, public charter school,
2 or a private school that provides instruction to students at any
3 level from kindergarten up to the twelfth grade.

4 "K-12 school purposes" means purposes that customarily take
5 place at the direction of the K-12 school, teacher, or the
6 department or aid in the administration of school activities,
7 including instruction in the classroom or at home,
8 administrative activities, and collaboration between students,
9 school personnel, or parents, or are for the use and benefit of
10 the school.

11 "Online service" includes cloud computing services.

12 "Operator" means the operator of an internet web site,
13 online service, online application, or mobile application with
14 actual knowledge that the site, service, or application is used
15 primarily for K-12 school purposes and was designed and marketed
16 for K-12 school purposes.

17 § -2 **Prohibited activities.** (a) No operator shall
18 knowingly engage in any of the following activities with respect
19 to its site, service, or application:

20 (1) Engage in targeted advertising on the operator's site,
21 service, or application;



- 1 (2) Target advertising on any other site, service, or
2 application when the targeting of the advertising is
3 based upon any information, including covered
4 information and persistent unique identifiers, that
5 the operator has acquired because of the use of that
6 operator's site, service, or application;
- 7 (3) Use information, including persistent unique
8 identifiers, created or gathered by the operator's
9 site, service, or application, to create a profile
10 about a K-12 student except in furtherance of K-12
11 school purposes;
- 12 (4) Sell a student's information, including covered
13 information; provided that this paragraph shall not
14 apply to the purchase, merger, or other type of
15 acquisition of an operator by another entity; provided
16 that the operator or successor entity continues to be
17 subject to this chapter with respect to previously
18 acquired student information; or
- 19 (5) Disclose covered information except:
- 20 (A) In furtherance of the K-12 purpose of the site,
21 service, or application; provided that the



1 recipient of the covered information disclosed
2 pursuant to this subparagraph:

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

7 (ii) Is legally required to comply with section
8 -3;

9 (B) To ensure legal and regulatory compliance;

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

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

13 (E) To disclose the covered information to an
14 internet service provider; provided that the
15 operator contractually:

16 (i) Prohibits the internet service provider from
17 using any covered information for any
18 purpose other than providing the contracted
19 service to, or on behalf of, the operator;

20 (ii) Prohibits the internet service provider from
21 disclosing any covered information provided



1 by the operator to subsequent third parties;

2 and

3 (iii) Requires the internet service provider to
4 implement and maintain reasonable security
5 procedures and practices as provided in
6 section -3.

7 (b) Subsection (a) shall not be construed to prohibit the
8 operator's use of information for maintaining, developing,
9 supporting, improving, or diagnosing the operator's site,
10 service, or application.

11 § -3 Required activities. An operator shall:

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

17 (2) Delete a student's covered information if the school
18 or the department requests deletion of data under the
19 control of the school or the department.



1 § -4 **Permissible disclosures of covered information.**

2 Notwithstanding section -2(a)(5), an operator may disclose
3 covered information of a student if disclosure is:

4 (1) Required under other provisions of federal or state
5 law, and the operator complies with the requirements
6 of federal and state law in protecting and disclosing
7 that information;

8 (2) Made for legitimate research purposes:

9 (A) As required by state or federal law and subject
10 to the restrictions under applicable state and
11 federal law; or

12 (B) As allowed by state or federal law and under the
13 direction of a school or the department, if no
14 covered information is used for any purpose in
15 furtherance of advertising or to amass a profile
16 on the student for purposes other than K-12
17 school purposes; or

18 (3) Made to a state or local educational agency, including
19 schools and the department, for K-12 school purposes,
20 as permitted by state or federal law.



1 § **-5 Penalties; civil action.** (a) Any operator that
2 violates this chapter shall be subject to penalties of not more
3 than \$2,500 for each violation. The attorney general or the
4 executive director of the office of consumer protection may
5 bring an action pursuant to this section. No action under this
6 chapter may be brought against a government agency.

7 (b) In addition to any penalty provided for in subsection
8 (a), any operator that violates this chapter shall be liable to
9 the injured party in an amount equal to the sum of any actual
10 damages sustained by the injured party as a result of the
11 violation. The court in any action brought under this section
12 may award reasonable attorneys' fees to the prevailing party.
13 No action under this chapter may be brought against a government
14 agency.

15 (c) The penalties provided in this section shall be
16 cumulative to the remedies or penalties available under all
17 other laws of this State.

18 § **-6 Limits and applicability of chapter.** (a) Nothing
19 in this chapter shall be construed to prohibit or limit an
20 operator from:



- 1 (1) Using deidentified student covered information as
2 follows:
3 (A) Within the operator's site, service, or
4 application or other sites, services, or
5 applications owned by the operator to improve
6 educational products; or
7 (B) To demonstrate the effectiveness of the
8 operator's products or services, including their
9 marketing;
- 10 (2) Sharing aggregated deidentified student covered
11 information for the development and improvement of
12 educational sites, services, or applications;
- 13 (3) Marketing educational products directly to parents,
14 provided that the marketing did not result from the
15 use of covered information obtained by the operator
16 through the provision of services covered under this
17 chapter; or
- 18 (4) Using student data, including covered information, for
19 adaptive learning or customized student learning
20 purposes.
- 21 (b) Nothing in this chapter shall be construed to:



- 1 (1) Limit the authority of the attorney general, the
2 executive director of the office of consumer
3 protection, or other law enforcement agency to obtain
4 any content or information from an operator as
5 authorized by law or pursuant to an order of a court
6 of competent jurisdiction;
- 7 (2) Apply to general audience internet web sites, general
8 audience online services, general audience online
9 applications, or general audience mobile applications,
10 notwithstanding that the login credentials created for
11 an operator's site, service, or application may be
12 used to access those general audience sites, services,
13 or applications;
- 14 (3) Limit internet service providers from providing
15 internet connectivity to schools or students and their
16 families;
- 17 (4) Require a provider of an electronic store, gateway,
18 marketplace, or other means of purchasing or
19 downloading software or applications to review or
20 enforce compliance of this chapter on those
21 applications or software;



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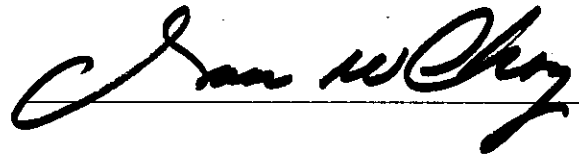
1 (5) Require a provider of an interactive computer service,
2 as defined in 47 U.S.C. section 230(f)(2), to review
3 or enforce compliance with this chapter by third-party
4 content providers; or

5 (6) Limit the ability of students to download, export, or
6 otherwise save or maintain their own student created
7 data or documents."

8 SECTION 2. This Act shall take effect on January 1, 2016.

9

INTRODUCED BY:



JAN 21 2015



Report Title:

Student Privacy; Consumer Protection

Description:

Prohibits an operator of an internet web site, online service, online application, or mobile application from knowingly engaging in targeted advertising to students or their parents or legal guardians, using covered information to create a profile about a K-12 student, selling a student's information, or disclosing covered information. Defines "covered information." Authorizes the disclosure of covered information of a student under specified circumstances.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

