

JAN 22 2016

A BILL FOR AN ACT

RELATING TO STUDENT DATA MANAGEMENT.

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

1 SECTION 1. Chapter 302A, Hawaii Revised Statutes, is
2 amended by adding a new subpart to part II to be appropriately
3 designated and to read as follows:

4 " . **STUDENT ONLINE PERSONAL INFORMATION PROTECTION**

5 **§302A- Definitions.** As used in this subpart, unless the
6 context otherwise requires:

7 "Covered information" means personally identifiable
8 information or material, or information that is linked to
9 personally identifiable information or material, in any media or
10 format that is not publically available and is:

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



S.B. NO. 2607

1 (2) Created by or provided to an operator by an employee
2 or agent of a K-12 school or complex for K-12 school
3 purposes; or

4 (3) Gathered by an operator through the operation of its
5 site, service, or application for K-12 school purposes
6 and personally identifies a student, including but not
7 limited to information in the student's educational
8 record or electronic mail, first and last name, home
9 address, telephone number, electronic mail address, or
10 other information that allows physical or online
11 contact, discipline records, test results, special
12 education data, juvenile dependency records, grades,
13 evaluations, criminal records, medical records, health
14 records, social security number, biometric
15 information, disabilities, socioeconomic information,
16 food purchases, political affiliations, religious
17 information, text messages, documents, student
18 identifiers, search activity, photos, voice
19 recordings, or geolocation information.

20 "Interactive computer service" means that term as defined
21 in title 47 United States Code section 230.



1 "K-12 school" means a school that offers any of grades
2 kindergarten to twelve and that is a public school, as defined
3 in section 302A-101.

4 "K-12 school purposes" means purposes that are directed by
5 or that customarily take place at the direction of a K-12
6 school, teacher, or complex area superintendent or that aid in
7 the administration of school activities, including but not
8 limited to instruction in the classroom or at home,
9 administrative activities, and collaboration between students,
10 school personnel, or parents, or are otherwise for the use and
11 benefit of the school.

12 "Operator" means, to the extent that it is operating in
13 this capacity, the operator of a website, online service, online
14 application, or mobile application with actual knowledge that
15 the site, service, or application is used primarily for K-12
16 school purposes and was designed and marketed for K-12 school
17 purposes.

18 "Targeted advertising" means presenting advertisements to a
19 student where the advertisement is selected based on information
20 obtained or inferred over time from that student's online
21 behavior, usage of applications, or covered information.



1 "Targeted advertising" does not include advertising to a student
2 at an online location based upon that student's current visit to
3 that location, or in response to that student's request for
4 information or feedback, without the retention of that student's
5 online activities or requests over time for the purpose of
6 targeting subsequent advertisements.

7 §302A- Prohibited activity; permitted disclosures and
8 uses; limitations. (a) An operator shall not knowingly do any
9 of the following:

- 10 (1) Engage in targeted advertising on the operator's
11 site, service, or application; or target advertising
12 on any other site, service, or application, if the
13 targeting of the advertising is based on any
14 information, including covered information and
15 persistent unique identifiers that the operator has
16 acquired because of the use of that operator's site,
17 service, or application for K-12 school purposes;
- 18 (2) Use information, including persistent unique
19 identifiers, created or gathered by the operator's
20 site, service, or application, to amass a profile
21 about a student except in furtherance of K-12 school



S.B. NO. 2607

1 purposes. As used in this section, "amass a profile"
2 does not include the collection and retention of
3 account information that remains under the control of
4 the student, the student's parent or guardian, or a K-
5 12 school;

6 (3) Sell or rent a student's information, including
7 covered information. This section does not apply to
8 the purchase, merger, or other type of acquisition of
9 an operator by another entity, if the operator or
10 successor entity complies with this section regarding
11 previously acquired student information; or

12 (4) Except as otherwise provided in subsection (c),
13 disclose covered information unless the disclosure is
14 made for the following purposes:

15 (A) In furtherance of the K-12 school purpose of the
16 site, service, or application, if the recipient
17 of the covered information disclosed under this
18 subsection does not further disclose the
19 information unless done to allow or improve
20 operability and functionality of the operator's
21 site, service, or application;



- 1 (B) To ensure legal and regulatory compliance or
- 2 protect against liability;
- 3 (C) To respond to or participate in the judicial
- 4 process;
- 5 (D) To protect the safety or integrity of users of
- 6 the site or others or the security of the site,
- 7 service, or application;
- 8 (E) For a school, educational, or employment purpose
- 9 requested by the student or the student's parent
- 10 or guardian, provided that the information is not
- 11 used or further disclosed for any other purpose;
- 12 or
- 13 (F) To a third party, if the operator contractually
- 14 prohibits the third party from using any covered
- 15 information for any purpose other than providing
- 16 the contracted service to or on behalf of the
- 17 operator, prohibits the third party from
- 18 disclosing any covered information provided by
- 19 the operator with subsequent third parties, and
- 20 requires the third party to implement and



1 maintain reasonable security procedures and
2 practices.

3 Nothing in this section shall prohibit the operator's use
4 of information for maintaining, developing, supporting,
5 improving, or diagnosing the operator's site, service, or
6 application.

7 (b) An operator shall:

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

13 (2) Delete within a reasonable time period a student's
14 covered information if the K-12 school or complex
15 requests deletion of covered information under the
16 control of the K-12 school or complex, unless a
17 student or a student's parent or guardian consents to
18 the maintenance of the covered information.

19 (c) An operator may use or disclose covered information of
20 a student under the following circumstances:



S.B. NO. 2607

- 1 (1) If other provisions of federal or state law require
2 the operator to disclose the information, and the
3 operator complies with the requirements of federal and
4 state law in protecting and disclosing that
5 information;
- 6 (2) For legitimate research purposes as required by state
7 or federal law and subject to the restrictions under
8 applicable state and federal law or as allowed by
9 state or federal law and under the direction of a K-12
10 school, complex, or the department, if covered
11 information is not used for advertising or to amass a
12 profile on the student for purposes other than K-12
13 school purposes; or
- 14 (3) To a state or local educational agency, including K-12
15 schools and complexes, for K-12 school purposes, as
16 permitted by state or federal law.
- 17 (d) This section does not prohibit an operator from doing
18 any of the following:
- 19 (1) Using covered information to improve educational
20 products if that information is not associated with an
21 identified student within the operator's site,



- 1 service, or application or other sites, services, or
2 applications owned by the operator;
- 3 (2) Using covered information that is not associated with
4 an identified student to demonstrate the effectiveness
5 of the operator's products or services, including the
6 marketing of the products or services;
- 7 (3) Sharing covered information that is not associated
8 with an identified student for the development and
9 improvement of educational sites, services, or
10 applications; or
- 11 (4) Using recommendation engines to recommend to a student
12 either of the following:
- 13 (A) Additional content relating to an educational,
14 other learning, or employment opportunity purpose
15 within an online site, service, or application if
16 the recommendation is not determined in whole or
17 in part by payment or other consideration from a
18 third party;
- 19 (B) Additional services relating to an educational,
20 other learning, or employment opportunity purpose
21 within an online site, service, or application if



1 the recommendation is not determined in whole or
2 in part by payment or other consideration from a
3 third party; or

4 (C) Responding to a student's request for information
5 or for feedback without the information or
6 response being determined in whole or in part by
7 payment or other consideration from a third
8 party.

9 (e) This section shall not:

10 (1) Limit the authority of a law enforcement agency to
11 obtain any content or information from an operator as
12 authorized by law or under a court order;

13 (2) Limit the ability of an operator to use student data,
14 including covered information, for adaptive learning
15 or customized student learning purposes;

16 (3) Apply to general audience websites, general audience
17 online services, general audience online applications,
18 or general audience mobile applications, even if login
19 credentials created for an operator's site, service,
20 or application may be used to access those general
21 audience sites, services, or applications;



- 1 (4) Limit service providers from providing internet
2 connectivity to schools or students and their
3 families;
- 4 (5) Prohibit an operator of a website, online service,
5 online application, or mobile application from
6 marketing educational products directly to parents if
7 the marketing did not result from the use of covered
8 information obtained by the operator by providing
9 services covered under this section;
- 10 (6) Impose a duty upon a provider of an electronic store,
11 gateway, marketplace, or other means of purchasing or
12 downloading software or applications to review or
13 enforce compliance with this section on those
14 applications or software;
- 15 (7) Impose a duty upon a provider of an interactive
16 computer service to review or enforce compliance with
17 this section by third-party content providers; or
- 18 (8) Prohibit students from downloading, exporting,
19 transferring, saving, or maintaining their own student
20 data or documents."



S.B. NO. 2607

1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. This Act shall take effect upon its approval.
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S.B. NO. 2607

Report Title:

Student Data; Computer Services

Description:

Limits the ways in which the operator of a website, online service, online application, or mobile application working with the DOE can use student data.

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

