



GOV. MSG. NO. 1140

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

April 29, 2016

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 29, 2016, the following bill was signed into law:

SB2607 SD2 HD2

RELATING TO STUDENT DATA MANAGEMENT  
**ACT 040 (16)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# 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;



- 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
- 7                   information in the student's educational record or
- 8                   electronic mail, first and last name, home address,
- 9                   telephone number, electronic mail address, or other
- 10                  information that allows physical or online contact,
- 11                  discipline records, test results, special education
- 12                  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 instruction  
8 in the classroom or at home, administrative activities, and  
9 collaboration between students, school personnel, parents or  
10 legal guardians, or are otherwise for the use and benefit of the  
11 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 site,  
11 service, or application; or target advertising on any  
12 other site, service, or application, if the targeting  
13 of the advertising is based on any information,  
14 including covered information and persistent unique  
15 identifiers that the operator has acquired because of  
16 the use of that operator's site, service, or  
17 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



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  
5 K-12 school;

6 (3) Sell or rent a student's information, including  
7 covered information. This paragraph 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 provide to a third party, if the operator
- 14 contractually prohibits the third party from
- 15 using any covered information for any purpose
- 16 other than providing the contracted service to or
- 17 on behalf of the operator, prohibits the third
- 18 party from disclosing any covered information
- 19 provided by the operator with subsequent third
- 20 parties, and requires the third party to



1           implement and maintain reasonable security  
2           procedures and practices.

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





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



- 1           in part by payment or other consideration from a  
2           third party; or
- 3           (C) Responding to a student's request for information  
4           or for feedback without the information or  
5           response being determined in whole or in part by  
6           payment or other consideration from a third  
7           party.
- 8           (e) This section shall not:
- 9           (1) Limit the authority of a law enforcement agency to  
10           obtain any content or information from an operator as  
11           authorized by law or under a court order;
- 12           (2) Limit the ability of an operator to use student data,  
13           including covered information, for adaptive learning  
14           or customized student learning purposes;
- 15           (3) Apply to general audience websites, general audience  
16           online services, general audience online applications,  
17           or general audience mobile applications, even if login  
18           credentials created for an operator's site, service,  
19           or application may be used to access those general  
20           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 or  
7           guardians if the marketing did not result from the use  
8           of covered information obtained by the operator by  
9           providing 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."



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.

APPROVED this 29 day of APR, 2016



GOVERNOR OF THE STATE OF HAWAII