
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 e-mail;

7 (B) First and last name;

8 (C) Home address, telephone number, e-mail address,
9 or other information that allows physical or
10 online 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 "Student" means a student at a K-12 school.

18 § -2 Prohibited activities. (a) No operator shall
19 knowingly engage in any of the following activities with respect
20 to any site, service, or application that it operates for K-12
21 purposes:



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



- 1 (5) Disclose covered information except:
 - 2 (A) In furtherance of the K-12 purpose of the site,
 - 3 service, or application; provided that the
 - 4 recipient of the covered information disclosed
 - 5 pursuant to this subparagraph:
 - 6 (i) Shall not further disclose the information
 - 7 except to allow or improve operability and
 - 8 functionality within that student's
 - 9 classroom or school; and
 - 10 (ii) Is legally required to comply with section
 - 11 -3;
 - 12 (B) To ensure statutory and regulatory compliance;
 - 13 (C) To respond to or participate in judicial process;
 - 14 (D) To protect the safety of users or others, or the
 - 15 security of the site, service, or application; or
 - 16 (E) To disclose the covered information to an
 - 17 internet service provider; provided that the
 - 18 operator contractually:
 - 19 (i) Prohibits the internet service provider from
 - 20 using any covered information for any



1 purpose other than providing the contracted
2 service to, or on behalf of, the operator;
3 (ii) Prohibits the internet service provider from
4 disclosing any covered information provided
5 by the operator to subsequent third parties;
6 and
7 (iii) Requires the internet service provider to
8 implement and maintain reasonable security
9 procedures and practices as provided in
10 section -3.

11 (b) Subsection (a) shall not be construed to prohibit the
12 operator's use of information for maintaining, developing,
13 supporting, improving, or diagnosing the operator's site,
14 service, or application.

15 § -3 **Required activities.** An operator shall:

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



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

4 § -4 Permissible disclosures of covered information.

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

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

11 (2) Made for legitimate research purposes:

12 (A) As required by state or federal law and subject
13 to the restrictions under applicable state and
14 federal law; or

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



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

4 § -5 Penalties; civil action. (a) Any operator that
5 violates this chapter shall be subject to penalties of not more
6 than \$2,500 for each violation. Except as otherwise provided in
7 subsection (e), the attorney general or the executive director
8 of the office of consumer protection may bring an action
9 pursuant to this section.

10 (b) In addition to any penalty provided for in subsection
11 (a), any operator that violates this chapter shall be liable to
12 the injured party in an amount equal to the sum of any actual
13 damages sustained by the injured party as a result of the
14 violation.

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 (d) The court in any action brought under this section may
19 award reasonable attorneys' fees to the prevailing party.

20 (e) No action under this chapter may be brought against a
21 government agency.



1 § -6 Limits and applicability of chapter. (a) Nothing
2 in this chapter shall be construed to prohibit or limit an
3 operator from:

4 (1) Using de-identified student covered information as
5 follows:

6 (A) Within the operator's site, service, or
7 application for K-12 school purposes or other
8 sites, services, or applications owned by the
9 operator to improve educational products; or

10 (B) To demonstrate the effectiveness of the
11 operator's products or services, including their
12 marketing;

13 (2) Sharing aggregated de-identified student covered
14 information for the development and improvement of
15 educational sites, services, or applications;

16 (3) Marketing educational products directly to parents,
17 provided that the marketing did not result from the
18 use of covered information obtained by the operator
19 through the provision of services covered under this
20 chapter; or



1 (4) Using student data, including covered information, for
2 adaptive learning or customized student learning
3 purposes.

4 (b) Nothing in this chapter shall be construed to:

5 (1) Limit the authority of the attorney general, the
6 executive director of the office of consumer
7 protection, or other law enforcement agency to obtain
8 any content or information from an operator as
9 authorized by law or pursuant to an order of a court
10 of competent jurisdiction;

11 (2) Apply to general audience internet web sites, general
12 audience online services, general audience online
13 applications, or general audience mobile applications,
14 notwithstanding that the login credentials created for
15 an operator's site, service, or application may be
16 used to access those general audience sites, services,
17 or applications;

18 (3) Limit internet service providers from providing
19 internet connectivity to schools or students and their
20 families;



1 (4) Require a provider of an electronic store, gateway,
2 marketplace, or other means of purchasing or
3 downloading software or applications to review or
4 enforce compliance of this chapter on those
5 applications or software;

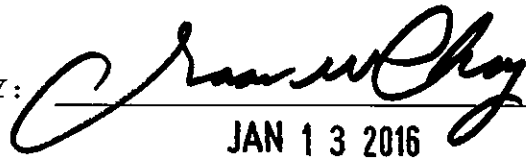
6 (5) Require a provider of an interactive computer service,
7 as defined in 47 U.S.C. section 230(f)(2), to review
8 or enforce compliance with this chapter by third-party
9 content providers; or

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

13 SECTION 2. This Act shall take effect on January 1, 2017.

14

INTRODUCED BY:


JAN 13 2016



H.B. NO. 1528

Report Title:

Student Privacy; Consumer Protection

Description:

Prohibits an operator of an internet web site, online service, online application, or mobile application used for K-12 school purposes from knowingly engaging in targeted advertising to students or their parents or legal guardians, using covered information to create a profile about a 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.

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