

**Testimony of
Gary M. Slovin / Mihoko E. Ito/ Rick Tsujimura
on behalf of
Microsoft**

DATE: March 4, 2015

TO: Representative Karl Rhoads
Chair, Committee on Judiciary
Submitted Via JUDTestimony@capitol.hawaii.gov

RE: **H.B. 613 – Relating to Student Data Management**
Hearing Date: Thursday, March 5, 2015 at 2:00 p.m.
Conference Room: 325

Dear Chair Rhoads and Members of the Committee on Judiciary:

We submit this testimony on behalf of Microsoft in **support** of H.B. 613, which protects student privacy by limiting the ways in which a computer service provider working with the DOE can use student data.

Microsoft was one of the first companies to sign the Student Privacy Pledge and to recognize the need to treat sensitive student data in the same way that we treat other enterprise data, such as government, health or financial services data. The company has been a strong supporter of creating more consistent and uniform state legislation to protect the privacy of student data.

H.B. 613 requires schools to ensure adequate safeguards are in place about how their service providers disclose and use the data. This measure will be a key part of protecting student privacy and ensuring that student data is not misused by computer service providers for commercial purposes unrelated to education.

Parents, advocates, and academics increasingly are concerned about data security issues for their children and believe that reform is needed to safeguard student data from being sold or misused for inappropriate commercial purposes when it is transferred from schools to computer service providers. (See *SafeGov 2012 National Data Privacy in Schools Survey*, SAFEGOV, p. 6 (Jan. 2013), *available at*: http://safegov.org/media/43502/brunswick_edu_data_privacy_report_jan_2013.pdf)

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Many states have recognized that the federal laws governing student data are outdated and inadequate. One such law, the Family Educational Rights and Privacy Act (“FERPA”) was passed in 1974, well before the rise of new technologies like cloud computing. The protections provided by the law have failed to keep pace with technology and have gaps that can permit student data collected from schools to be used for commercial practices that have no relation to education, like targeted advertising.

Specifically, FERPA applies only to “personally identifiable information” in a student’s “education records,” and there is a growing range of data collected by online services about students that doesn’t fall within those definitions. It also applies to education institutions, not to online services, and cannot be enforced directly against technology companies. FERPA also contains exemptions that permit the disclosure of personally identifiable information in education records under certain circumstances, and some have interpreted those exemptions as permitting the use of student data for purposes like targeted advertising.

Another federal law, the Children’s Online Privacy Act, similarly fails to solve the specific challenges raised by cloud computing to the protection of student data. COPPA applies to operators of websites or online services that are directed to children under the age of 13 and to operators that have actual knowledge that they collect personal information from children under 13. Consequently, COPPA does not apply to high school students. Even with primary schools, there is considerable confusion about how and when parental consent must be obtained under COPPA. Schools are not deeply familiar with online advertising practices and thus are ill-equipped to grapple with COPPA, especially when cloud providers are not transparent about their data practices. Although the Federal Trade Commission (“FTC”) staff has addressed COPPA’s application to schools in a set of Frequently Asked Questions published on its website, this informal guidance is not a regulation and its reach can be called into question.

State policymakers have become increasingly aware of these gaps in federal law, and many states are now considering passing state legislation to address these gaps. The Virginia Legislature passed legislation based upon The Student Privacy Pledge, an effort endorsed by President Obama and signed by over 90 companies, including Microsoft, Google, Apple and others, who commit to safeguarding student privacy.

Microsoft believes that as a community, we need to focus on ensuring the overall safety of our students, which includes protecting their online safety, especially their privacy.

For the reasons stated above, we support this measure and respectfully request that the Committee move it for further discussion. Thank you very much for the opportunity to testify.

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March 4, 2015

The Honorable Karl Rhoads, Chair
House Judiciary Committee
302 Hawaii State Capitol
Honolulu, HI 96813

Re: HB 613 (Evans and Takumi) Student Data Management

Dear Representative Rhoads,

On behalf of the members of TechAmerica, powered by CompTIA, I appreciate the opportunity to share our perspective on House Bill 613 relating to student data management. While the intention of this legislation is to protect student privacy, the overly broad language of the bill will create barriers to first-class education and innovation in the classroom.

TechAmerica, powered by CompTIA, is the leading voice for the U.S. technology industry – the driving force behind productivity growth and job creation in the United States, representing premier technology companies of all sizes. As security breaches become more prevalent, our members advocate for strong breach notice laws that offer protection for consumers and allow companies to work consistently across the states.

We appreciate Hawaii's interest in protecting the privacy and use of student data, however HB 613 does not accomplish that goal in a workable fashion. Rather than empower schools and educators to take advantage of technologies to transform learning this bill places obstacles between students and tools that enhance the educational environment. The extremely broad restrictions imposed by the bill would make it unnecessarily difficult for Hawaii's students and educators to reap the growing benefits of the online education space and develop career-ready skills, which far outweighs any of the bill's presumed benefits.

A bill has been introduced in the House, however, that offers the foundation for a balanced approach to achieving world class education outcomes while protecting student privacy. HB 106 builds off of a law that California enacted last year to implement privacy protections. While the tech industry would still like to see some changes to the language in HB 106, we think it provides a better starting point to arrive at the best outcome for Hawaii's students. Many other states are considering similar legislation and harmonizing the competing bills is an important part of ensuring quality education products. A number of our member companies who provide education software and services are working with those states on this language and would be prepared to do the same in Hawaii.

We look forward to continuing to collaborate with you and improve the opportunities and outcomes for all students in Hawaii. If you have any questions, please contact Kelly Hitt at KHitt@comptia.org or 916-505-9053.

Thank you,

Kelly Hitt
Director, State Government Affairs - California and Hawaii TechAmerica



House Committee on Judiciary
Hawaii State Capitol, Room 325
March 5, 2015; 2:00 PM
415 South Beretania St.
Honolulu, HI 96813

Written Testimony of Jim Halpert

on behalf of the

State Privacy and Security Coalition, Inc.

Dear Chair Rhoads:

The State Privacy & Security Coalition, which is comprised of 26 leading communications, technology, retail, and media companies, and 6 trade associations, writes to express several concerns regarding to H.B. 613.

This bill would create major obstacles to the use of technology services by schools in Hawaii by prohibiting any disclosure of student data by a service provider for a “commercial purpose.” The result would be to bar commercial service providers from using commercial subcontractors to improve educational services for Hawaii school children. It may also act to prohibit beneficial disclosures by private sector providers of computing services made at the direction of a school, student or parent. Furthermore, although described as a bill about “student data management,” the bill does not address the important issue of security of student data.

For these reasons, among others, we respectfully ask that you instead consider passing H.B. 106. Although we believe H.B. 106 requires some amendments, it is an approach being considered in a number of other states, which would help create consistent protections of student data across the United States.

Please feel free to contact us at the information below if you have any questions or would like to discuss our concerns in greater detail. Thank you for your time and consideration.

Sincerely,

James J. Halpert
General Counsel

State Privacy and Security Coalition, Inc.

March 5, 2015
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March 4, 2015

Representative Karl Rhoads
Chair House Committee on Judiciary – Hawaii State Capitol

RE: HB613 HSCR431 - RELATING TO STUDENT DATA MANAGEMENT

Dear Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee,

The Hawaii State PTSA **strongly supports HB613 HSCR431** relating to student data management which limits and controls the ways in which a computer service provider working with the DOE can use student data.

Technology has advanced and transformed learning for all students. For example, online forums help teachers share lesson plans; social media help students collaborate across classrooms; and web-based applications assist teachers in customizing the learning experience for each student to achieve greater learning outcomes. However, the information sharing, web-hosting, and telecommunication innovations that have enabled these new education technologies raise questions about how best to protect student privacy during use. HB613 will assist with these questions by protecting the rights and privacy of students while continuing to advance education through technology.

The Hawaii State PTSA additionally urges the DOE to consider the U.S. Department of Education's Privacy Technical Assistance Center (PTAC) when reviewing the policies necessary to enact this bill.

The Hawaii Congress of Parents, Teachers, and Students, also known as the Hawaii State PTSA, is a registered 501(c)(3) non-profit organization made up of more than 22,000 volunteers dedicated to improving the lives of Hawaii's keiki. Chartered in 1926, the Hawaii State PTSA is Hawaii's oldest and largest child advocacy organization. We are a state charter of the National PTA, made up of local units throughout the State of Hawaii.

Should you have any questions or need additional information, please feel free to contact our office. We look forward to your continued participation.

Thank you for considering our testimony,

Liz Sager
President

Jessica Wong-Sumida
VP-Legislation

(Original signatures are on file)