

ACT 40

S.B. NO. 2607

A Bill for an Act Relating to Student Data Management.

Be It Enacted by the Legislature of the State of Hawaii:

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

“ . **STUDENT ONLINE PERSONAL INFORMATION PROTECTION**

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

“Covered information” means personally identifiable information or material, or information that is linked to personally identifiable information or material, in any media or format that is not publically available and is:

- (1) Created by or provided to an operator by a student, or the student’s parent or legal guardian, in the course of the student’s, parent’s, or legal guardian’s use of the operator’s site, service, or application for K–12 school purposes;
- (2) Created by or provided to an operator by an employee or agent of a K-12 school or complex for K-12 school purposes; or
- (3) Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including information in the student’s educational record or electronic mail, first and last name, home address, telephone

number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

“Interactive computer service” means that term as defined in title 47 United States Code section 230.

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

“K-12 school purposes” means purposes that are directed by or that customarily take place at the direction of a K-12 school, teacher, or complex area superintendent or that aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, parents or legal guardians, or are otherwise for the use and benefit of the school.

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

“Targeted advertising” means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student’s online behavior, usage of applications, or covered information. “Targeted advertising” does not include advertising to a student at an online location based upon that student’s current visit to that location, or in response to that student’s request for information or feedback, without the retention of that student’s online activities or requests over time for the purpose of targeting subsequent advertisements.

§302A- Prohibited activity; permitted disclosures and uses; limitations.

(a) An operator shall not knowingly do any of the following:

- (1) Engage in targeted advertising on the operator’s site, service, or application; or target advertising on any other site, service, or application, if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers that the operator has acquired because of the use of that operator’s site, service, or application for K-12 school purposes;
- (2) Use information, including persistent unique identifiers, created or gathered by the operator’s site, service, or application, to amass a profile about a student except in furtherance of K-12 school purposes. As used in this section, “amass a profile” does not include the collection and retention of account information that remains under the control of the student, the student’s parent or guardian, or a K-12 school;
- (3) Sell or rent a student’s information, including covered information. This paragraph does not apply to the purchase, merger, or other type of acquisition of an operator by another entity if the operator or successor entity complies with this section regarding previously acquired student information; or
- (4) Except as otherwise provided in subsection (c), disclose covered information unless the disclosure is made for the following purposes:

- (A) In furtherance of the K–12 school purpose of the site, service, or application, if the recipient of the covered information disclosed under this subsection does not further disclose the information unless done to allow or improve operability and functionality of the operator’s site, service, or application;
- (B) To ensure legal and regulatory compliance or protect against liability;
- (C) To respond to or participate in the judicial process;
- (D) To protect the safety or integrity of users of the site or others or the security of the site, service, or application;
- (E) For a school, educational, or employment purpose requested by the student or the student’s parent or guardian; provided that the information is not used or further disclosed for any other purpose; or
- (F) To provide to a third party, if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

Nothing in this section shall prohibit the operator’s use of information for the purposes of maintaining, developing, supporting, improving, or diagnosing the operator’s site, service, or application.

(b) An operator shall:

- (1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure; and
- (2) Delete within a reasonable time period a student’s covered information if the K-12 school or complex requests deletion of covered information under the control of the K-12 school or complex, unless a student or a student’s parent or guardian consents to the maintenance of the covered information.

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

- (1) If other provisions of federal or state law require the operator to disclose the information and the operator complies with the requirements of federal and state law in protecting and disclosing that information;
- (2) For legitimate research purposes as required by state or federal law and subject to the restrictions under applicable state and federal law or as allowed by state or federal law and under the direction of a K-12 school, complex, or the department, if covered information is not used for advertising or to amass a profile on the student for purposes other than K–12 school purposes; or
- (3) To a state or local educational agency, including K-12 schools and complexes, for K–12 school purposes, as permitted by state or federal law.

(d) This section shall not prohibit an operator from doing any of the following:

- (1) Using covered information to improve educational products if that information is not associated with an identified student within the

- operator's site, service, or application or other sites, services, or applications owned by the operator;
- (2) Using information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including the marketing of the products or services;
 - (3) Sharing information that is not associated with an identified student for the development and improvement of educational sites, services, or applications; or
 - (4) Recommending to a student any of the following:
 - (A) Additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party;
 - (B) Additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or
 - (C) Responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.
 - (e) This section shall not:
 - (1) Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order;
 - (2) Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes;
 - (3) Apply to general audience websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications;
 - (4) Limit service providers from providing internet connectivity to schools or students and their families;
 - (5) Prohibit an operator of a website, online service, online application, or mobile application from marketing educational products directly to parents or guardians if the marketing did not result from the use of covered information obtained by the operator by providing services covered under this section;
 - (6) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software;
 - (7) Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this section by third-party content providers; or
 - (8) Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents."

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

SECTION 3. This Act shall take effect upon its approval.
(Approved April 29, 2016.)