
ENGROSSED SENATE BILL 5419

State of Washington

64th Legislature

2015 Regular Session

By Senators Litzow, McAuliffe, Rivers, Fain, Mullet, Frockt, Hill, Dammeier, Rolfes, Kohl-Welles, and Chase

Read first time 01/21/15. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to the student user privacy in education rights
2 act; adding a new chapter to Title 28A RCW; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and
6 cited as the student user privacy in education rights act or SUPER
7 act.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 requires otherwise.

11 (1) "School service" means a web site, mobile application, or
12 online service that: (a) Is designed and marketed primarily for use
13 in a K-12 school; (b) is used at the direction of teachers or other
14 employees of a K-12 school; and (c) collects, maintains, or uses
15 student personal information. A "school service" does not include a
16 web site, mobile application, or online service that is designed and
17 marketed for use by individuals or entities generally, even if also
18 marketed to a United States K-12 school.

19 (2) "School service provider" means an entity that operates a
20 school service to the extent it is operating in that capacity.

1 (3) "Student personal information" means information collected
2 through a school service that personally identifies an individual
3 student or other information collected and maintained about an
4 individual student that is linked to information that identifies an
5 individual student.

6 (4) "Students" means students of K-12 schools in Washington
7 state.

8 (5) "Targeted advertising" means sending advertisements to a
9 student where the advertisement is selected based on information
10 obtained or inferred from that student's online behavior, usage of
11 applications, or student personal information. It does not include
12 (a) advertising to a student at an online location based upon that
13 student's current visit to that location without the collection and
14 retention of a student's online activities over time or (b) adaptive
15 learning, personalized learning, or customized education.

16 NEW SECTION. **Sec. 3.** OBLIGATIONS OF SCHOOL SERVICE PROVIDERS—
17 TRANSPARENCY. (1) School service providers shall provide clear and
18 easy to understand information about the types of student personal
19 information they collect and about how they use and share the student
20 personal information.

21 (2) School service providers shall provide prominent notice
22 before making material changes to their privacy policies for school
23 services.

24 (3) School service providers shall facilitate access to and
25 correction of student personal information by students or their
26 parent or guardian either directly or through the relevant
27 educational institution or teacher.

28 (4) Where the school service is offered to an educational
29 institution or teacher, information required by subsections (1) and
30 (2) of this section may be provided to the educational institution or
31 teacher.

32 (5) The provisions of this section do not apply to the education
33 data center established under RCW 43.41.400, but do apply to any
34 subcontractors of the education data center.

35 NEW SECTION. **Sec. 4.** OBLIGATIONS OF SCHOOL SERVICE PROVIDERS—
36 CHOICE AND CONTROL. (1) School service providers may collect, use,
37 and share student personal information only for purposes authorized

1 by the relevant educational institution or teacher, or with the
2 consent of the student or the student's parent or guardian.

3 (2) School service providers may not sell student personal
4 information. This prohibition does not apply to the purchase, merger,
5 or other type of acquisition of a school service provider, or any
6 assets of a school service provider by another entity, as long as the
7 successor entity continues to be subject to the provisions of this
8 section with respect to previously acquired student personal
9 information to the extent that the school service provider was
10 regulated by this chapter with regard to its acquisition of student
11 personal information.

12 (3) School service providers may not use or share any student
13 personal information for purposes of targeted advertising to
14 students.

15 (4) School service providers may not use student personal
16 information to create a personal profile of a student other than for
17 supporting purposes authorized by the relevant educational
18 institution or teacher, or with the consent of the student or the
19 student's parent or guardian.

20 (5) School service providers must obtain consent before using
21 student personal information in a manner that is materially
22 inconsistent with the school service provider's privacy policy or
23 school contract for the applicable school service in effect at the
24 time of collection.

25 (6) The provisions of subsections (1), (2), (4), and (5) of this
26 section may not apply to the use or disclosure of personal
27 information by a school service provider to:

28 (a) Protect the security or integrity of its web site, mobile
29 application, or online service;

30 (b) Ensure legal or regulatory compliance or to take precautions
31 against liability;

32 (c) Respond to or participate in judicial process;

33 (d) Protect the safety of users or others on the web site, mobile
34 application, or online service;

35 (e) Investigate a matter related to public safety; or

36 (f) A subcontractor, if the school service provider: (i)
37 Contractually prohibits the subcontractor from using any student
38 personal information for any purpose other than providing the
39 contracted service to, or on behalf of, the school service provider;
40 (ii) prohibits the subcontractor from disclosing any student personal

1 information provided by the school service provider to subsequent
2 third parties unless the disclosure is expressly permitted by (a)
3 through (e) of this subsection or by sections 6 and 7 of this act;
4 and (iii) requires the subcontractor to comply with the requirements
5 of this chapter.

6 NEW SECTION. **Sec. 5.** OBLIGATIONS OF SCHOOL SERVICE PROVIDERS—
7 SAFEGUARDS. (1) School service providers must maintain a
8 comprehensive information security program that is reasonably
9 designed to protect the security, privacy, confidentiality, and
10 integrity of student personal information. The information security
11 program should make use of appropriate administrative, technological,
12 and physical safeguards.

13 (2) School service providers must delete student personal
14 information within a reasonable period of time if the relevant
15 educational institution requests deletion of the data under the
16 control of the educational institution unless:

17 (a) The school service provider has obtained student consent or
18 the consent of the student's parent or guardian to retain information
19 related to that student; or

20 (b) The student has transferred to another educational
21 institution and that educational institution has requested that the
22 school service provider retain information related to that student.

23 NEW SECTION. **Sec. 6.** ADAPTIVE LEARNING AND CUSTOMIZED
24 EDUCATION. Notwithstanding sections 2 through 7 of this act, nothing
25 in this chapter is intended to prohibit the use of student personal
26 information for purposes of:

27 (1) Adaptive learning or personalized or customized education;

28 (2) Maintaining, developing, supporting, improving, or diagnosing
29 the school service provider's web site, mobile application, online
30 service, or application;

31 (3) Providing recommendations for school, educational, or
32 employment purposes within a school service without the response
33 being determined in whole or in part by payment or other
34 consideration from a third party; or

35 (4) Responding to a student's request for information or for
36 feedback without the information or response being determined in
37 whole or in part by payment or other consideration from a third
38 party.

1 NEW SECTION. **Sec. 7.** This chapter adopts and does not modify
2 existing law regarding consent, including consent from minors and
3 employees on behalf of educational institutions.

4 NEW SECTION. **Sec. 8.** This chapter shall not be construed to:

5 (1) Impose a duty upon a provider of an interactive computer
6 service, as defined in 47 U.S.C. Sec. 230, to review or enforce
7 compliance with this section by third-party content providers;

8 (2) Apply to general audience internet web sites, general
9 audience mobile applications, or general audience online services
10 even if login credentials created for a school service provider's web
11 site, mobile application, or online service may be used to access
12 those general audience web sites, mobile applications, or online
13 services;

14 (3) Impede the ability of students to download, export, or
15 otherwise save or maintain their own student data or documents;

16 (4) Limit internet service providers from providing internet
17 connectivity to schools or students and their families;

18 (5) Prohibit a school service provider from marketing educational
19 products directly to parents so long as the marketing did not result
20 from use of student personal information obtained by the school
21 service provider through the provision of its web site, mobile
22 application, or online service; or

23 (6) Impose a duty on a school service provider of an electronic
24 store, gateway, marketplace, or other means of purchasing or
25 downloading software or applications to review or enforce compliance
26 with this chapter on those applications or software.

27 NEW SECTION. **Sec. 9.** TRANSITIONAL PROVISIONS. If a school
28 service provider entered into a signed, written contract with an
29 educational institution or teacher before the effective date of this
30 section, the school service provider is not liable for the
31 requirements of sections 2 through 6 of this act with respect to that
32 contract until the next renewal date of the contract.

33 NEW SECTION. **Sec. 10.** Sections 1 through 9 and 11 of this act
34 constitute a new chapter in Title 28A RCW.

1 NEW SECTION. **Sec. 11.** EFFECTIVE DATE. This act takes effect
2 July 1, 2016.

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