

**ASSEMBLY BILL**

**No. 2799**

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**Introduced by Assembly Member Chau**

February 19, 2016

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An act to add Chapter 22.2.5 (commencing with Section 22586) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as introduced, Chau. Privacy: personal information: preschool and prekindergarten purposes.

Existing law, The Student Online Personal Information Protection Act, restricts the use of information about elementary and secondary school students by operators of certain Internet Web sites and online services and applications by, among other things, prohibiting operators from engaging in targeted advertising, amassing student profiles except for K–12 school purposes, or selling or disclosing student information, as specified. Existing law also requires an operator to implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information to protect the information from unauthorized access, use, and disclosure.

Existing law also prohibits an operator of an Internet Web site or online service from knowingly using, disclosing, compiling, or allowing a 3rd party to use, disclose, or compile the personal information of a minor for the purpose of marketing or advertising specified types of products or services. Existing law also makes this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

This bill would, commencing on July 1, 2017, prohibit the operator of an Internet Web site, online service, online application, or mobile application that is used primarily for preschool or prekindergarten purposes, as defined, and was designed and marketed for preschool and prekindergarten purposes, to knowingly engage in specified activities with respect to their site, service, or application, including, among other things, engaging in targeted advertising, using specified information to amass a profile about a child except in furtherance of preschool or prekindergarten purposes, and selling or disclosing a child’s information, as specified. The bill would also require an operator to, among other things, implement and maintain reasonable security procedures and practices appropriate to the information to protect that information from unauthorized access, and to delete a child’s information at the request of a preschool or prekindergarten, as specified. The bill would authorize the disclosure of a child’s information under specified circumstances. The bill would also provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 22.2.5 (commencing with Section 22586)  
 2 is added to Division 8 of the Business and Professions Code, to  
 3 read:

4  
 5 CHAPTER 22.2.5. EARLY LEARNING PERSONAL INFORMATION  
 6 PROTECTION ACT  
 7

8 22586. (a) For purposes of this section, “operator” means the  
 9 operator of an Internet Web site, online service, online application,  
 10 or mobile application with actual knowledge that the site, service,  
 11 or application is used primarily for preschool or prekindergarten  
 12 purposes and was designed and marketed for preschool and  
 13 prekindergarten purposes.

14 (b) An operator shall not knowingly engage in any of the  
 15 following activities with respect to their site, service, or application:

16 (1) (A) Engage in targeted advertising on the operator’s site,  
 17 service, or application.

18 (B) Target advertising on any other site, service, or application  
 19 if the targeting of the advertising is based upon any information,

1 including covered information and persistent unique identifiers,  
2 that the operator has acquired because of the use of that operator’s  
3 site, service, or application described in subdivision (a).

4 (2) Use information, including persistent unique identifiers,  
5 created or gathered by the operator’s site, service, or application,  
6 to amass a profile about a child except in furtherance of preschool  
7 or prekindergarten purposes.

8 (3) Sell a child’s information, including covered information.  
9 This prohibition does not apply to the purchase, merger, or other  
10 type of acquisition of an operator by another entity, provided that  
11 the operator or successor entity continues to be subject to the  
12 provisions of this section with respect to previously acquired child  
13 information.

14 (4) Disclose covered information unless the disclosure is made:

15 (A) In furtherance of the preschool and prekindergarten purposes  
16 of the site, service, or application, provided that the recipient of  
17 the covered information disclosed pursuant to this subparagraph:

18 (i) Is prohibited from further disclosure of the information unless  
19 the disclosure is done to allow or improve operability and  
20 functionality within that child’s preschool and prekindergarten.

21 (ii) Is required to comply with subdivision (d).

22 (B) To ensure legal and regulatory compliance.

23 (C) To respond to or participate in a judicial process.

24 (D) To protect the safety of users or others, or the security of  
25 the site.

26 (E) To a service provider, if the operator contractually (i)  
27 prohibits the service provider from using any covered information  
28 for any purpose other than providing the contracted service to, or  
29 on behalf of, the operator, (ii) prohibits the service provider from  
30 disclosing any covered information provided to the operator with  
31 subsequent third parties, and (iii) requires the service provider to  
32 implement and maintain reasonable security procedures and  
33 practices as provided in subdivision (d).

34 (c) Nothing in subdivision (b) shall be constructed to prohibit  
35 the operator’s use of information for maintaining, developing,  
36 supporting, improving, or diagnosing the operator’s site, service,  
37 or application.

38 (d) An operator shall:

39 (1) Implement and maintain reasonable security procedures and  
40 practices appropriate to the nature of the covered information, and

1 protect that information from unauthorized access, destruction,  
2 use, modification, or disclosure.

3 (2) Delete a child’s covered information if the preschool or  
4 prekindergarten requests the deletion of data under the control of  
5 the preschool, prekindergarten, school, or school district.

6 (e) Notwithstanding paragraph (4) of subdivision (b), an operator  
7 may disclose covered information of a child if paragraphs (1) to  
8 (3), inclusive, of subdivision (b) are not violated under the  
9 following circumstances:

10 (1) If other provisions of law require the operator to disclose  
11 the information, and the operator complies with that law in  
12 protecting and disclosing the information.

13 (2) For research purposes (A) as required by law and subject to  
14 the restrictions under that law or (B) as permitted by law and under  
15 the direction of a preschool, prekindergarten, school, school district,  
16 or state department of education, if no covered information is used  
17 for any purpose in furtherance of advertising or to amass a profile  
18 of the child for purposes other than preschool and prekindergarten  
19 purposes.

20 (3) To a state or local educational agency, including preschools  
21 and prekindergartens, schools and school districts, for preschool  
22 and prekindergarten purposes, as permitted by state or federal law.

23 (f) Nothing in this section prohibits an operator from using  
24 deidentified covered information of a child as follows:

25 (1) Within the operator’s site, service, or application or other  
26 sites, services, or applications owned by the operator to improve  
27 educational products.

28 (2) To demonstrate the effectiveness of the operator’s products  
29 or services, including their marketing.

30 (g) Nothing in this section prohibits an operator from sharing  
31 aggregated deidentified covered information of a child for the  
32 development and improvement of educational sites, services, or  
33 applications.

34 (h) “Online service” includes a cloud computing service, which  
35 must comply with this section if it otherwise meets the definition  
36 of an operator.

37 (i) “Covered information” means personally identifiable  
38 information or materials, in any media or format that meets any  
39 of the following:

1 (1) Is created or provided by a child, or the child’s parent or  
2 legal guardian, to an operator in the course of the child’s, parent’s,  
3 or legal guardian’s use of the operator’s site, service, or application  
4 for preschool and prekindergarten purposes.

5 (2) Is created or provided by an employee or agent of the  
6 preschool, prekindergarten, school district, local educational  
7 agency, or county office of education, to an operator.

8 (3) Is gathered by an operator through the operation of the site,  
9 service, or application described in subdivision (a), and is  
10 descriptive of a child or otherwise identifies a child, including, but  
11 not limited to, information in the child’s educational record, first  
12 and last name, home address, telephone number, email address,  
13 or other information that allows physical or online contact,  
14 discipline records, test results, special education data, juvenile  
15 dependency records, grades, evaluations, criminal records, medical  
16 records, health records, social security number, biometric  
17 information, disabilities, socioeconomic information, food  
18 purchases, political affiliations, religious information, text  
19 messages, documents, student identifiers, search activity, photos,  
20 voice recordings, or geolocation information.

21 (j) “Preschool or prekindergarten purposes” means purposes  
22 that customarily take place at the direction of preschools,  
23 prekindergartens, teachers, school districts, and aids, including,  
24 but not limited to, instruction in the classroom, facility, or home,  
25 administrative activities, and collaboration between children, early  
26 learning personnel, or parents, or are for the use and benefit of the  
27 preschools, prekindergartens, school district, or early learning  
28 personnel.

29 (k) This section shall not be construed to limit the authority of  
30 a law enforcement agency to obtain any content or information  
31 from an operator as authorized by law or pursuant to an order of  
32 a court of competent jurisdiction.

33 (l) This section does not limit the ability of an operator to use  
34 a child’s educational data, including covered information, for  
35 adaptive learning or customized early learning purposes.

36 (m) This section does not apply to general audience Internet  
37 Web site, general audience online services, general audience online  
38 applications, or general audience mobile applications, even if login  
39 credentials created for an operator’s site, service, or application

1 may be used to access those general audience sites, services, or  
2 applications.

3 (n) This section does not limit Internet service providers from  
4 providing Internet connectivity to preschools, prekindergartens,  
5 schools, or children and their families.

6 (o) This section shall not be construed to prohibit an operator  
7 of an Internet Web site, online service, online application, or  
8 mobile application from marketing educational products directly  
9 to parents so long as the marketing did not result from the use of  
10 covered information obtained by the operator through the provision  
11 of services covered by this section.

12 (p) This section does not impose a duty upon a provider of an  
13 electronic store, gateway, marketplace, or other means of  
14 purchasing or downloading software or applications to review or  
15 enforce compliance of this section on those applications or  
16 software.

17 (q) This section does not impose a duty upon a provider of an  
18 interactive computer service, as defined in Section 230 of Title 47  
19 of the United States Code, to review or enforce compliance with  
20 this section by third-party content providers.

21 (r) This section does not impede the ability of minors to  
22 download, export, or otherwise save or maintain their own  
23 personally created data or documents.

24 22587. This chapter shall become operative on July 1, 2017.

25 SEC. 2. The provisions of this act are severable. If any  
26 provision of this act or its application is held invalid, that invalidity  
27 shall not affect other provisions or applications that can be given  
28 effect without the invalid provision or application.