

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 801 (Joe Patterson)
Version: January 12, 2024
Hearing Date: June 11, 2024
Fiscal: No
Urgency: No
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SUBJECT

Student privacy: online personal information

DIGEST

This bill amends student privacy laws to provide students, now “pupils,” or their parents, the ability to delete specified information that is held by an operator of an internet website, online service, online application, or mobile application, as specified, that is not subject to the California Consumer Privacy Act. The bill exempts from the protections of one of these laws certain mandatory and official pupil records.

EXECUTIVE SUMMARY

The Student Online Personal Information Protection Act (SOPIPA) was enacted to protect student personal information by closing loopholes that allowed online companies in the education technology space to profit from student personal information obtained through student, parent, teacher, and administrator use of K-12 online sites. Subsequently, the Early Learning Privacy Information Protection Act (ELPIPA) extended all of the protections offered by SOPIPA to pupils enrolled in preschools and pre-kindergarten. The California Consumer Privacy Act of 2018 (CCPA) grants consumers certain rights with regard to their personal information, including rights to limit the sale or sharing of such information and to request businesses to delete such information, as provided.

While the above laws provide a strong net of protections for students’ privacy, this bill bolsters these laws by empowering students, or their parents or education rights holders, to delete information maintained by operators, where such information is not subject to the CCPA.

This bill is author-sponsored. It is supported by Protection of the Educational Rights of Kids - Advocacy (PERK). No opposition has been received by the Committee. The bill passed out of the Senate Education Committee on a vote of 7 to 0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Children's Online Privacy Protection Act of 1998 (COPPA), which imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age. (15 U.S.C.S. § 6501; 16 C.F.R. Part 312.)
- 2) Establishes the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. (20 U.S.C. § 1232g; 34 C.F.R. Part 99.)

Existing state law:

- 3) Establishes SOPIPA to restrict the use and disclosure of students' "covered information," which means personally identifiable information or materials, in any media or format that meets any of the following:
 - a) Is created or provided by a student, or the student's parent or legal guardian, to an operator 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.
 - b) Is created or provided by an employee or agent of the K-12 school, school district, local education agency, or county office of education, to an operator.
 - c) Is gathered by an operator through the operation of a site, service, or application and is descriptive of a student or otherwise identifies a student, including information in the student's educational record or email, first and last name, home address, telephone number, email 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. (Bus. & Prof. Code § 22584.)
- 4) Prohibits, pursuant to SOPIPA, operators from knowingly engaging in targeting advertising, using information about students to create a profile about them except in furtherance of K-12 school purposes, selling students' information, or disclosing their information, except as provided. (Bus. & Prof. Code § 22584(b).)

- 5) Defines the following terms for purposes of SOPIPA:
 - a) "Operator" means 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.
 - b) "K-12 school purposes" means purposes that customarily take place at the direction of the K-12 school, teacher, or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the school. (Bus. & Prof. Code § 22584.)
- 6) Establishes ELPIPA, which extends the protections of SOPIPA to pupils in preschool and prekindergarten. (Bus. & Prof. Code § 22586.)
- 7) Prohibits an operator of an Internet Web site, online service, online application, or mobile application, as specified, from marketing specified types of products or services to a minor and from knowingly using, disclosing, compiling, or knowingly 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. It also authorizes minor users to remove, or to request and obtain removal of, content or information publicly posted by the minor, subject to specified conditions and exceptions. (Bus. & Prof. Code § 22580.)
- 8) Establishes the CCPA, which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)
- 9) Provides a consumer the right to request that a business delete any personal information about the consumer which the business has collected from the consumer. (Civ. Code § 1798.105.)
- 10) Prohibits a business from selling or sharing the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. (Civ. Code § 1798.120(c).)

- 11) Defines “personal information” as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. The CCPA provides a nonexclusive series of categories of information deemed to be personal information, including biometric information, geolocation data, and “sensitive personal information.” (Civ. Code § 1798.140(v)(1).)
- 12) Provides various exemptions from the obligations imposed by the CCPA, including where they would restrict a business’ ability to comply with federal, state, or local laws. (Civ. Code § 1798.145.)

This bill:

- 1) Amends SOPIPA to refer to “pupils” rather than “students.”
- 2) Requires an operator, pursuant to SOPIPA and ELPIPA, to delete a pupil’s “CCPA-excluded covered information” if a pupil’s parent or guardian, the pupil’s education rights holder, or, in the case of a current or former pupil who is 18 years of age or older, the pupil requests an operator to delete the covered information under the operator’s control if the pupil is no longer enrolled in the LEA, preschool, kindergarten, or district.
- 3) Requires the operator to require documentation that the pupil is no longer enrolled in the LEA, preschool, kindergarten, or district before deleting the above information.
- 4) Defines “CCPA-excluded covered information” as covered information that is not subject to the CCPA.
- 5) Amends SOPIPA to provide that “covered information” does not include mandatory pupil records described in Section 430 of Title 5 of the California Code of Regulations, or any official records, files, and data directly related to a pupil and maintained by the school or local educational agency, including, but not limited to, records encompassing all the material kept in the pupil’s cumulative folder, including, but not limited to, general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.
- 6) Provides that these laws shall not be interpreted to limit or supersede any rights or requirements under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and any rules or regulations promulgated pursuant to those laws.

COMMENTS

1. Existing laws protecting students' privacy

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. (20 U.S.C. § 1232g; 34 C.F.R. Part 99.) The law applies to all schools that receive certain federal funding. Generally, schools must have written permission from the parent or eligible student in order to release information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to certain parties or under certain conditions.

California became the national leader on student privacy when it unanimously passed SB 1177 (Steinberg, Ch. 839, Stats. 2014), establishing SOPIPA. SOPIPA was California's response to reports regarding uses of student information and the inadequacies of state and federal law in protecting student personal information. While FERPA generally protects personally identifiable information from unauthorized disclosure, that provision applies only to schools, not to third parties who operate early education through 12th grade websites, services, or applications.

SOPIPA restricts the use and disclosure of the personally identifiable information or materials of K-12 students. (Bus. & Prof. Code § 22584.) It regulates operators of websites, online services, online applications, or mobile applications with actual knowledge that the sites, services, or applications are used primarily for K-12 school purposes and were designed and marketed for K-12 school purposes. It prohibits operators from knowingly engaging in specified activities with respect to their site, service, or application. This includes:

- engaging in targeted advertising when the targeting of the advertising is based upon any information that the operator has acquired because of the use of that operator's site, service, or application;
- use of information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a K-12 student except in furtherance of K-12 school purposes; or
- selling a student's information.

SOPIPA also restricts disclosing the information but provides various exceptions, including where the disclosure is in furtherance of the K-12 purpose of the site, service, or application. Operators are also required to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, and protect that information from unauthorized access, destruction, use, modification, or disclosure.

To fill the gap for pupils in early education institutions, SB 2799 (Chau, Ch. 620, Stats. 2016) established ELPIPA to extend all of the protections offered by SOPIPA to pupils enrolled in preschools and pre-kindergarten.

Both SOPIPA and ELPIPA apply their protections to “covered information,” defined as personally identifiable information or materials, in any media or format that meets any of the following:

- Is created or provided by a pupil, or the pupil’s parent or legal guardian, to an operator in the course of the pupil’s, parent’s, or legal guardian’s use of the operator’s site, service, or application for school purposes.
- Is created or provided by an employee or agent of the school or LEA to an operator.
- Is gathered by an operator through the operation of a site, service, or application and is descriptive of a pupil or otherwise identifies a pupil, including information in the pupil’s educational record or email, first and last name, home address, telephone number, email 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, pupil identifiers, search activity, photographs, voice recordings, or geolocation information.

The CCPA grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale or sharing of information; and protection from discrimination for exercising these rights. (Civ. Code § 1798.100 et seq.) It places attendant obligations on businesses to respect those rights. In the November 3, 2020 election, voters approved Proposition 24, which established the California Privacy Rights Act of 2020 (CPRA). The CPRA amends the CCPA, limits further amendment, and creates the California Privacy Protection Agency (PPA).

2. Empowering pupils and their parents

Relevant here, SOPIPA and ELPIPA require an operator to delete a student’s covered information but only if the school or LEA requests the operator to delete such information under their control.

The CCPA provides its own deletion rights for personal information in the hands of specified businesses. However, given that most of this information is transferred through these schools, there is concern this data may not be subject to the CCPA, potentially limiting pupils’ rights to seek deletion.

This bill empowers pupils, and their parents, guardians, or educational rights holders, to request deletion of covered information under control of the operator where such information is not already subject to the CCPA and where the pupil is no longer

enrolled in the school. An operator is required to get documentation that the pupil is no longer enrolled.

According to the author:

As a father with 4 young children, the protection of their privacy is of the utmost importance. Most schools have multiple platforms that students need to download or use as part of their curriculum. The individual schools or districts have so much on their plates and, ultimately, this bill will alleviate some of the burden put on the school and district staff while managing students' information. This bill will give control over students' personal information to their parents and guardians where it belongs.

Writing in support, PERK explains:

PERK supports AB 801 because we care about protecting students and their personal and covered information. The state has made it possible to provide technology to all students, and it is important that the state takes steps to ensure protections for these children, especially pertaining to student privacy. Cybersecurity cannot be overlooked, and this bill will make sure students' covered information is protected from unauthorized use, disclosure, and will be appropriately deleted.

The bill also excludes from the definition of "covered information" in SOPIPA specified, mandatory pupil records, or any official records, files, and data directly related to a pupil and maintained by the school or LEA, including records encompassing all the material kept in the pupil's cumulative folder, including general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

The goal of this exclusion was to ensure these mandatory records are not deleted. To effectuate that goal without impacting any existing rights, the author has agreed to amendments that remove this exclusion and instead make clear in the new deletion section that such mandatory records and files not be deleted.

SUPPORT

Protection of the Educational Rights of Kids - Advocacy

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 1971 (Addis, 2024) amends SOPIPA to allow consensual disclosure of students' "covered information" for purposes of college admissions or scholarships and expands its scope to include information related to the administration of standardized tests for postsecondary educational institutions, preparation tests for such standardized tests, and the registration for or score reporting of such tests. The bill also removes the exemption for general audience online services, applications, or websites. AB 1971 is currently in this Committee.

Prior Legislation:

AB 375 (Chau, Ch. 55, Stats. 2018) established the CCPA.

SB 2799 (Chau, Ch. 620, Stats. 2016) *See* Comment 1.

SB 1177 (Steinberg, Ch. 839, Stats. 2014) *See* Comment 1.

PRIOR VOTES:

Senate Education Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 67, Noes 0)

Assembly Education Committee (Ayes 7, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)
