

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

AB 1971 (Addis)
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Fiscal: No
Urgency: No
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SUBJECT

Student Online Personal Information Protection Act: administration of standardized tests

DIGEST

This bill amends the Student Online Personal Information Protection Act (SOPIPA) to allow consensual disclosure of students' "covered information" for purposes of college admissions or scholarships and expand 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.

EXECUTIVE SUMMARY

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 websites, services, and applications. The law applies to operators of such online sites, services, and applications where they have actual knowledge that they are being used primarily for K-12 school purposes and are designed or marketed for K-12 school purposes.

Concerns have arisen that certain online operators are disregarding the requirements laid out in SOPIPA over potential misinterpretations of the scope of the law's coverage. Specifically, allegations that standardized testing organizations are collecting and using student information in violation of SOPIPA's provisions.

This bill responds by amending the definition of K-12 school purposes to include the administration of standardized tests taken for the purpose of bolstering an application for admission to a postsecondary educational institution or a test to prepare for such tests, including registration and score reporting connected with such tests. The bill also allows disclosure of covered information to postsecondary institutions for the purpose

of facilitating college admission or access to a scholarship with express consent. SOPIPA also currently does not apply to general audience online websites and services. This bill removes that exemption.

The bill is author-sponsored. It is supported by a variety of organizations, including the California School Boards Association and the California Teachers Association. It is opposed by the College Board and ACT. The bill passed out of the Senate Education Committee on a vote of 6 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) Provides that SOPIPA does not 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. (Bus. & Prof. Code § 22584(m).)
- 6) 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.)
- 7) Establishes the Early Learning Personal Information Protection Act (ELPIPA), which extends the protections of SOPIPA to pupils in preschool and prekindergarten. (Bus. & Prof. Code § 22586.)
- 8) 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.)
- 9) Establishes the California Consumer Privacy Act (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.)

- 10) Defines “personal information” for purposes of the CCPA 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).)

This bill:

- 1) Amends the definition of K-12 school purposes in SOPIPA to include the administration in the state of a standardized test taken by a K-12 student for the purpose of bolstering the student’s application for general admission to a postsecondary educational institution or a test used for preparation for a standardized test. It also includes the registration for, or reporting of, scores with respect to, such tests.
- 2) Removes the exemption for general audience online sites and services.
- 3) Authorizes operators to disclose covered information if it is made to postsecondary institutions for the purpose of facilitating a K-12 student’s admission to an institution or facilitating the student’s access to a scholarship only if the K-12 student, or the K-12 student’s legal guardian, expressly consented to the disclosure.

COMMENTS

1. Existing laws protecting students’ privacy

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.

SOPIPA applies its 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 local educational agency 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.

2. Responding to concerns in the standardized testing industry

Concerns have arisen that certain entities are disregarding the provisions of SOPIPA. The author points to a report put out by Consumer Reports, entitled “The College Board Is Sharing Student Data Once Again”:

For millions of students, the College Board is the gatekeeper to higher education. And according to a Consumer Reports investigation, the organization uses that role to collect and share information on those students – despite apparent promises to the contrary.

The nonprofit company owns and operates the SAT test. It also administers the Advanced Placement exams high school students take to earn college credit and strengthen their applications. And when you create an account on collegeboard.org to register for the SAT, sign up for an AP test, or research colleges and scholarships, the College Board sends details about your activity to at least seven tech companies that profit from advertising.

The list includes Adobe, Facebook, Google, Microsoft, Snapchat, Yahoo, and an advertising network called AdMedia.

The personal information was relayed to these companies in a manner that appears to violate specific privacy promises made by the College Board. In some cases, it also appeared to be linked to ads for products and services beyond the organization's scope.¹

The bill responds to these issues by expanding SOPIPA. Specifically, by expanding the definition of K-12 school purposes to include the administration in the state of a standardized test taken by a K-12 student for the purpose of bolstering the student’s application for general admission to a postsecondary educational institution or a test used for preparation for a standardized test. It also includes the registration for, or reporting of scores with respect to, such tests.

However, to ensure that students can take advantage of data sharing for purposes of college admissions or seeking scholarships, the bill allows operators to make disclosures of covered information for such purposes, but only with the express consent of the student or their parent. Given the potential loopholes created by the general audience exemption, the bill removes it.

¹ Thomas Germain, *The College Board Is Sharing Student Data Once Again* (July 30, 2020) Consumer Reports, <https://www.consumerreports.org/colleges-universities/college-board-is-sharing-student-data-once-again/#:~:text=The%20College%20Board%20is%20tracking,from%20the%20College%20Board%20website> [as of June 12, 2024].

According to the author:

There is a clear and concerning lack of protections for California's students when it comes to their data privacy. Advances in technology, including artificial intelligence, have surpassed our state's privacy laws, leaving our students vulnerable to irresponsible uses of their personal data. As technology continues to progress, so should the protections provided to Californians. AB 1971 will ensure that every student's data is protected throughout their educational careers.

The California Teachers Association writes in support:

Vendors of standardized assessments can collect and retain a great deal of information about the schools and students who use their products. CTA believes that when utilizing online assessments, districts should provide appropriate training for staff, adequate resources (including functioning technological devices and reliable internet access) and adequate time to ensure students have equitable experiences. Additionally, CTA believes the privacy of students must be maintained, including student test results and records. AB 1971 (Addis) ensures the concomitant obligation of assessment vendors to also protect the privacy rights of students.

Writing in support, Secure Justice explains:

As a pro-privacy organization, we constantly advocate for tighter safeguards when it comes to data, all the more important when the data pertains to our youth. Data mining has become a big business, and the oversharing, repurposing without permission, and general lack of mindfulness amongst those holding sensitive data is an ongoing concern. We believe that AB 1971 helps solidify the privacy principle of "purpose specification" - only using the data for its intended purpose, which in this context means a legal obligation to disclose or pursuit of an educational scholarship.

Mentioned above, the College Board writes in opposition:

AB-1971 would result in a foundational change to the purpose and scope of SOPIPA, which over half the states have adopted across the country to protect student data which is controlled and directed by K12, when K12 engages a vendor ("operator") of a digital or online service at the explicit direction of the school, for administration of school activities, and for the use and benefit of the school. Under the SOPIPA framework, digital services and data subject to SOPIPA belong to the school, not to the student, and it's the school that controls the online account. AB-1971's newly added provisions would fundamentally change the model, making

SOPIPA apply to activities that are not used in the classroom or at the direction of the school and transferring to schools the ownership, control, and accountability for services that students use in their personal time outside of school.

SUPPORT

ACLU California Action
Administrators Association of San Diego City Schools
California School Boards Association
California Teachers Association
Electronic Frontier Foundation
Oakland Privacy
Protection of the Educational Rights of Kids - Advocacy
Secure Justice

OPPOSITION

ACT
The College Board

RELATED LEGISLATION

Pending Legislation: AB 801 (Joe Patterson, 2024) amends SOPIPA and ELPIPA 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 CCPA. AB 801 exempts from the protections of SOPIPA certain mandatory and official pupil records. AB 801 is currently in this Committee.

Prior Legislation:

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

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

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)
Assembly Floor (Ayes 75, Noes 0)
Assembly Education Committee (Ayes 7, Noes 0)
Assembly Privacy and Consumer Protection Committee (Ayes 10, Noes 0)
