

SB 5419 - S AMD 194
By Senator Litzow

ADOPTED 3/11/2015

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

19 (3) "Student personal information" means information collected
20 through a school service that personally identifies an individual
21 student or other information collected and maintained about an
22 individual student that is linked to information that identifies an
23 individual student.

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

26 (5) "Targeted advertising" means sending advertisements to a
27 student where the advertisement is selected based on information
28 obtained or inferred from that student's online behavior, usage of
29 applications, or student personal information. It does not include
30 (a) advertising to a student at an online location based upon that
31 student's current visit to that location without the collection and

1 retention of a student's online activities over time or (b) adaptive
2 learning, personalized learning, or customized education.

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

8 (2) School service providers shall provide prominent notice
9 before making material changes to their privacy policies for school
10 services.

11 (3) School service providers shall facilitate access to and
12 correction of student personal information by students or their
13 parent or guardian either directly or through the relevant
14 educational institution or teacher.

15 (4) Where the school service is offered to an educational
16 institution or teacher, information required by subsections (1) and
17 (2) of this section may be provided to the educational institution or
18 teacher.

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

22 NEW SECTION. **Sec. 4.** OBLIGATIONS OF SCHOOL SERVICE PROVIDERS—
23 CHOICE AND CONTROL. (1) School service providers may collect, use,
24 and share student personal information only for purposes authorized
25 by the relevant educational institution or teacher, or with the
26 consent of the student or the student's parent or guardian.

27 (2) School service providers may not sell student personal
28 information. This prohibition does not apply to the purchase, merger,
29 or other type of acquisition of a school service provider, or any
30 assets of a school service provider by another entity, as long as the
31 successor entity continues to be subject to the provisions of this
32 section with respect to previously acquired student personal
33 information to the extent that the school service provider was
34 regulated by this chapter with regard to its acquisition of student
35 personal information.

36 (3) School service providers may not use or share any student
37 personal information for purposes of targeted advertising to
38 students.

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

6 (5) School service providers must obtain consent before using
7 student personal information in a manner that is materially
8 inconsistent with the school service provider's privacy policy or
9 school contract for the applicable school service in effect at the
10 time of collection.

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

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

16 (b) Ensure legal or regulatory compliance or to take precautions
17 against liability;

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

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

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

22 (f) A subcontractor, if the school service provider: (i)
23 Contractually prohibits the subcontractor from using any student
24 personal information for any purpose other than providing the
25 contracted service to, or on behalf of, the school service provider;
26 (ii) prohibits the subcontractor from disclosing any student personal
27 information provided by the school service provider to subsequent
28 third parties unless the disclosure is expressly permitted by (a)
29 through (e) of this subsection or by sections 6 and 7 of this act;
30 and (iii) requires the subcontractor to comply with the requirements
31 of this chapter.

32 NEW SECTION. **Sec. 5.** OBLIGATIONS OF SCHOOL SERVICE PROVIDERS—
33 SAFEGUARDS. (1) School service providers must maintain a
34 comprehensive information security program that is reasonably
35 designed to protect the security, privacy, confidentiality, and
36 integrity of student personal information. The information security
37 program should make use of appropriate administrative, technological,
38 and physical safeguards.

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

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

8 (b) The student has transferred to another educational
9 institution and that educational institution has requested that the
10 school service provider retain information related to that student.

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

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

16 (2) Maintaining, developing, supporting, improving, or diagnosing
17 the school service provider's web site, mobile application, online
18 service, or application;

19 (3) Providing recommendations for school, educational, or
20 employment purposes within a school service without the response
21 being determined in whole or in part by payment or other
22 consideration from a third party; or

23 (4) Responding to a student's request for information or for
24 feedback without the information or response being determined in
25 whole or in part by payment or other consideration from a third
26 party.

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

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

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

34 (2) Apply to general audience internet web sites, general
35 audience mobile applications, or general audience online services
36 even if login credentials created for a school service provider's web
37 site, mobile application, or online service may be used to access

1 those general audience web sites, mobile applications, or online
2 services;

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

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

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

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

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

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

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

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26 On page 1, line 2 of the title, after "act;" strike the remainder
27 of the title and insert "adding a new chapter to Title 28A RCW; and
28 providing an effective date."

EFFECT: Makes changes to the definitions of "school service,"
"school service provider," "students," and "student personal
information."

Replaces the term "behaviorally targeting advertisements" with the term "targeted advertising" and adds a definition for "targeted advertising."

Provides that provisions related to transparency, notice of privacy policy changes, and correction of information do not apply to the Education Research and Data Center but do apply to its subcontractors.

Provides that the prohibition against school service providers selling student personal information does not apply to the purchase, merger, or other type of acquisition of a school service provider, or any assets of a service provider by another entity, provided that the successor entity continues to be subject to the provisions related to previously acquired student information.

Removes the limitations on how and from whom school service providers must obtain consent before using student personal information in a manner that is inconsistent with the provider's privacy policy.

Adds exceptions to the use or disclosure of personal information by a school service provider.

Replaces requirements prohibiting school service providers from knowingly retaining student personal information beyond the time period authorized without consent, to a requirement that the school service provider delete student personal information within a reasonable period of time if the relevant educational institution requests deletion of the data under the control of the educational institution except in limited circumstances.

Removes provisions requiring school service providers to obligate (1) third parties involved on the providers' behalf to adhere to certain provisions and (2) successors to abide by privacy and security provisions.

Adds to the provision stating what the chapter is not intended to prohibit.

Adds a section regarding how the chapter may not be construed.

Adds an effective date of July 1, 2016.

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