

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 1971 (Addis) – As Amended March 4, 2024

[Note: This bill was double referred to the Assembly Privacy and Consumer Protection Committee and was heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Student Online Personal Information Protection Act: administration of standardized tests

SUMMARY: Prohibits, under the requirements of the Student Online Personal Information Protection Act (SOPIPA), operators from disclosing covered information unless the disclosure is made to a postsecondary institution for the purpose of facilitating a K–12 student’s admission to that institution and only if the K–12 student, or the K–12 student’s legal guardian, has consented to the disclosure with respect to the operator’s site, service, or application. Specifically, **this bill:**

- 1) Defines “operator” to mean 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.
- 2) Prohibits operators from disclosing covered information unless the disclosure is made to a postsecondary institution for the purpose of facilitating a K–12 student’s admission to that institution and only if the K–12 student, or the K–12 student’s legal guardian, has consented to the disclosure with respect to the operator’s site, service, or application.
- 3) Defines “K–12 school purposes” to include the administration in the state of a standardized test that a K–12 student takes for the purpose of bolstering the K–12 student’s application for admission to a postsecondary educational institution or a postsecondary institution’s program, or a test used for preparation for a standardized test that a K–12 student takes for the purpose of bolstering the K–12 student’s application for admission to a postsecondary educational institution or a postsecondary institution’s program.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (California Constitution, Article I, § 1.)
- 2) Establishes the SOPIPA, which prohibits an operator of a website, online service, online application, or mobile application from knowingly engaging in targeted advertising to students or their parents or legal guardians using covered information, as defined, amassing a profile of a K-12 student, selling a student’s information, or disclosing covered information, as provided. (Business and Professions Code (BPC) 22584-85)
- 3) Defines an “operator” to mean the operator of an internet web site, 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. (BPC 22584(a))

- 4) Defines “K-12 school purposes” as those that customarily take place at the direction of the K-12 school, teacher, or district or aid in the administration of school activities. (BPC 22584(b)(4))
- 5) Defines “covered information” as personally identifiable information or materials, in any media or format that meets any of the following:
 - a) It 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, parents’, or legal guardian’s use of the operator’s site, service, or application for the school’s purposes.
 - b) It is created or provided by an employee or agent of the preschool, prekindergarten, school district, local educational agency (LEA), or county office of education (COE), to an operator.
 - c) It is gathered by an operator through the operation of a site, service, or application, as defined in number 7, and is descriptive of a pupil or otherwise identifies a pupil, including, but not limited to, 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, student identifiers, search activity, photos, voice recordings, or geolocation information. (BPC 22584(i) and 22586(i))
- 6) Requires an operator of a commercial website or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its website to conspicuously post its privacy policy. (BPC 22575)
- 7) Protects, pursuant to the federal Family Educational Rights and Privacy Act (FERPA), the confidentiality of educational records meaning those records, files, documents, and other materials which, contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution by prohibiting the funding of schools that permit the release of those records. FERPA applies to all schools that receive funds under an applicable program of the U.S. Department of Education. Generally, schools must have written permission from the parent or eligible student in order to release any information from a student’s education record. FERPA’s prohibition only applies to the school itself and contains various exemptions allowing the data to be released without the written consent of the parents. (20 U.S.C. § 1232g(b)(1))
- 8) Requires, pursuant to the federal Children’s Online Privacy Protection Act (COPPA), that an operator of an internet website or online service directed to a child, as defined, or an operator of an internet website or online service that has actual knowledge that it is collecting personal information from a child, to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator’s further collection of information from the child. (15 U.S.C. § 6502)
- 9) Establishes the California Consumer Privacy Act (CCPA). (Civil Code (CIV) 1798.100-1798.199.100)

- 10) Provides that the CCPA applies to any for-profit entity that collects consumers' personal information, does business in California, and meets one or more of the following criteria:
 - a) It had gross annual revenue of over \$25 million in the previous calendar year;
 - b) It buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually; and
 - c) It derives 50% or more of its annual revenue from selling California residents' personal information. (CIV 1798.140(d))
- 11) 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 those who are between 13 and 16 years of age, or the consumers' 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 information. (CIV 1798.120)
- 12) Defines "consumer" as a natural person who is a California resident. (CIV 1798.140(i))
- 13) 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. Personal information includes such information as:
 - a) Name, alias, postal address, unique personal identifier, online identifier, IP address, email address, account name, social security number, driver's license number, passport number, or other identifier;
 - b) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies;
 - c) Biometric information;
 - d) Internet activity information, including browsing history and search history;
 - e) Geolocation data; and
 - f) Professional or employment-related information. (CIV 1798.140(v))
- 14) Defines "sensitive personal information" as personal information that reveals:
 - a) A consumer's social security, driver's license, state identification card, or passport number;
 - b) A consumer's account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account;
 - c) A consumer's precise geolocation;

- d) A consumer's racial or ethnic origin, religious or philosophical beliefs, or union membership;
 - e) The contents of a consumer's mail, email, and text messages unless the business is the intended recipient of the communication; and
 - f) A consumer's genetic data. (CIV 1798.140(ae))
- 15) Provides a consumer, subject to exemptions and qualifications, various rights, including the following:
- a) The right to know the business or commercial purpose for collecting, selling, or sharing personal information and the categories of persons to whom the business discloses personal information; (CIV 1798.110)
 - b) The right to request that a business disclose the specific pieces of information the business has collected about the consumer and the categories of third parties to whom the personal information was disclosed; (CIV 1798.110)
 - c) The right to request deletion of personal information that a business has collected from the consumer; (CIV 1798.105)
 - d) The right to opt-out of the sale of the consumer's personal information if the consumer is over 16 years of age. Sale of the personal information of a consumer below the age of 16 is barred unless the minor opts-in to its sale; and (CIV 1798.120)
 - e) The right to equal service and price, despite the consumer's exercise of any of these rights, unless the difference in price is reasonably related to the value of the customer's data. (CIV 1798.125)
- 16) Limits a business providing test proctoring services in an educational setting to collecting, using, retaining, and disclosing only the personal information strictly necessary to provide those services. (BPC 22588(a))

FISCAL EFFECT: This bill has been keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. 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."

Student privacy laws. Existing law, the SOPIPA establishes privacy protections for students in California's K-12 public schools. The CCPA offers additional privacy protections for consumers of all ages when it comes to the personal data collected by large businesses. Despite these protections, the cumulative protections in SOPIPA and the CCPA have not stopped the sale of students' private information by non-profit organizations that are advertised as helping students

prepare for college, including non-profit standardized test administrators, such as the College Board.

There is some ambiguity as to which entities fall under the SOPIPA. There is ambiguity related to the entities SOPIPA applies to, with the existing definition being an “operator of an internet 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.” Specifically, the author argues that the definition of “primarily used for K-12 purposes” has led to some entities, primarily standardized testing organizations, to determine that the protections that SOPIPA gives to California’s students does not apply when it comes to the personal information they are collecting. In addition, the CCPA requires businesses that meet one or more of the following criteria to protect consumers’ private information:

- 1) Had gross annual revenue of over \$25 million in the previous calendar year;
- 2) Buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually; and
- 3) Derives 50% or more of annual revenue from selling California residents’ personal information.

College Board. The College Board is a large, non-profit organization that owns and administers the SAT suite of tests, including the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT). In addition, the College Board manages other tests, including Advanced Placement (AP) tests, and offers a number of services to help students and their families make decisions about secondary education. While it is likely that the College Board would meet the criteria under one and two, above, that require specified businesses to protect consumers’ private information, the CCPA applies to large for-profit businesses and excludes non-profit organizations, regardless of their size.

Investigative reports of the College Board’s use of personal student data suggest the need for changes to further protect the private information of students and their parents. According to an investigative report published by Consumer Reports in 2020, *The College Board Is Sharing Student Data Once Again*, the College Board collected and relayed personal student information to companies such as Facebook, Google, Microsoft, Snapchat, Adobe, Yahoo, and others. Among the personal data shared with these companies were user names and unique identifiers, which can be used to track student activity across websites beyond the College Board website. At the time of the report, the College Board’s own privacy policy stated that they did not share any personally identifiable information (the same policy classified usernames as personal information). The investigation also found that much of the personal information shared with 3rd party entities was later used for “behavioral targeted advertising” to those same students.

A 2018 New York Times article, *For Sale: Survey Data on Millions of High School Students*, conducted an investigation into the College Board and ACT’s collection and dispersion of student information provided in online surveys designed to match students with colleges they might be interested in. Their investigation found that both companies charged educational institutions approximately 45 cents per name to allow access to the information provided by over 3 million high school juniors who took the surveys. In the Times article, Joel Reidenberg, a

professor at the Fordham University School of Law noted, “The harm is that these children are being profiled, stereotyped, and their data profiles are being traded commercially for all sorts of uses — including attempts to manipulate them and their families.”

According to the Assembly Committee on Privacy and Consumer Protection’s analysis of this bill, “The evidence strongly supports the need for the changes contained in this bill. Closing this loophole when it comes to protecting the private information of students and their parents furthers California’s privacy goals.”

Key provisions of the bill. The purpose of this bill is to expand the SOPIPA definition of “primarily used for K-12 purposes” to include standardized testing for the purpose of college admissions. The expansion of the definition will help to ensure that the personal data collected by non-profit standardized test administrators is subject to all of the protections included in the SOPIPA, including a prohibition against selling or sharing specific covered information either by the College Board and other non-profit college preparation and standardized testing organizations or by the post-secondary institutions that those businesses share the students’ personal data with. Under SOPIPA, this bill proposes to do two things:

- 1) Prohibits operators from sharing students’ information with post-secondary institutions without first obtaining consent from the student, if at least 18 years old, or their parents or guardians, if under 18 years old.
- 2) Expands the current definition of “for K-12 purposes” to include the administration of standardized tests taken to bolster a student’s chances of admission, as well as tests taken to prepare for those standardized tests.

Related legislation. AB 801 (Patterson) of the 2023-24 Session would require an operator of a website, online service, online application, or mobile application used primarily for school purposes to delete any personally identifiable information or materials related to a pupil, that is not otherwise covered under the CCPA, at the request of a pupil, parent, or guardian if the child is no longer attending the school or district.

AB 375 (Chau), Chapter 55, Statutes of 2018, establishes the CCPA of 2018 which provides consumers the right to access their personal information that is collected by a business, the right to delete it, the right to know what personal information is collected, the right to know whether and what personal information is being sold or disclosed, the right to stop a business from selling their information, and the right to equal service and price.

AB 2799 (Chau), Chapter 620, Statutes of 2016, establishes the Early Learning Personal Information Protection Act which prohibits operators of websites, online services, and mobile apps that are designed, marketed, and used primarily for prekindergarten and preschool pupils, from using data about those pupils for targeting, marketing or profiling, and prohibits selling or disclosing a pupil's information with limited exceptions.

SB 1172 (Pan), Chapter 770, Statutes of 2022, prohibits a business providing test proctoring services in an educational setting from collecting, retaining, using, or disclosing personal information except to the extent necessary to provide those proctoring services and in other specified circumstances.

SB 1177 (Steinberg), Chapter 839, Statutes of 2014 established the SOPIPA to restrict the use and disclosure of information about K-12 students.

Arguments in support. Gen Up writes, “The SOPIPA was established in 2014, creating landmark data protections for students in K-12 education. SOPIPA applies to the operator of an internet website, online service, or mobile application that is used primarily for K-12 education purposes. The major protections provided by SOPIPA include prohibiting (on an operator’s website or application): engaging in targeted advertising with information gathered from their application, amassing a profile about a student with information gathered from their application, selling a student’s information, or disclosing covered information (with exceptions). However, there is ambiguity as to who the Act applies to. Standardized testing organizations are not expressly included within SOPIPA, yet they collect, store, and distribute data from over 120,000 California students on a yearly basis. Many of these standardized testing entities are also classified as nonprofits, so they are not required to meet the data protections established by the California Consumer Privacy Act. Some of the services provided by these standardized testing organizations are essentially required for college admissions and post-secondary educational opportunities, leaving students with few options or protections from irresponsible uses of their personal data.”

REGISTERED SUPPORT / OPPOSITION:

Support

Generation Up
Oakland Privacy

Opposition

None on file

Analysis Prepared by: Marguerite Ries / ED. / (916) 319-2087