



House of Representatives

General Assembly

File No. 686

January Session, 2015

Substitute House Bill No. 7017

House of Representatives, April 16, 2015

The Committee on Education reported through REP. FLEISCHMANN of the 18th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STUDENT DATA PRIVACY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015, and applicable to any*
2 *agreement entered into on or after said date*) (a) For the purposes of this
3 section:

4 (1) "Contractor" means an individual, business or other entity that
5 provides educational software or services for the electronic storage,
6 management or retrieval of student records and receives such student
7 records pursuant to a written contract with a local or regional board of
8 education, the State Board of Education or the Department of
9 Education;

10 (2) "De-identified student information" means any information that
11 cannot be used to identify an individual student;

12 (3) "Student-generated content" includes materials created by a

13 student including, but not limited to, essays, research papers,
14 portfolios, creative writing, music or other audio files or photographs,
15 except that it does not include student responses to a standardized
16 assessment; and

17 (4) "Student record" includes any information directly related to a
18 student that is maintained by a local or regional board of education,
19 the State Board of Education or the Department of Education and any
20 information acquired from a student through the use of educational
21 software assigned to the student by a teacher or employee of a local or
22 regional board of education, the State Board of Education or the
23 Department of Education, except that it does not include de-identified
24 student information allowed under the contract to be used by the
25 contractor to (A) improve educational products for adaptive learning
26 purposes and for customizing student learning, (B) demonstrate the
27 effectiveness of the contractor's products in the marketing of those
28 products, and (C) develop and improve the contractor's products and
29 services.

30 (b) Every contract that a local or regional board of education, the
31 State Board of Education or the Department of Education enters into
32 with a contractor shall include, but need not be limited to, the
33 following:

34 (1) A statement that student records continue to be the property of
35 and under the control of the local or regional board of education, the
36 State Board of Education or the Department of Education;

37 (2) A description of the means by which a student, parent or legal
38 guardian of a student may retain possession and control of student-
39 generated content and, if applicable, the means by which a student,
40 parent or legal guardian of a student may transfer such student-
41 generated content to an electronic mail account;

42 (3) A statement that the contractor shall not use student records for
43 any purposes other than those authorized pursuant to the contract;

44 (4) A description of the procedures by which a student, parent or
45 legal guardian of a student may review personally identifiable
46 information contained in the student record and correct erroneous
47 information, if any, in such student record;

48 (5) A description of the actions the contractor shall take to ensure
49 the security and confidentiality of student records;

50 (6) A description of the procedures for notifying a student, parent or
51 legal guardian of a student and the local or regional board of
52 education, the State Board of Education or the Department of
53 Education as soon as practical, but not later than forty-eight hours after
54 the contractor becomes aware of or suspects that any student record
55 under the control of the contractor has been subject to unauthorized
56 access or suspected unauthorized access;

57 (7) A statement that student records shall not be retained or
58 available to the contractor upon completion of the contracted services
59 unless a student, parent or legal guardian of a student chooses to
60 establish or maintain an electronic account with the contractor for the
61 purpose of storing student-generated content; and

62 (8) A statement that the contractor and the local or regional board of
63 education, the State Board of Education or the Department of
64 Education shall ensure compliance with the Family Educational Rights
65 and Privacy Act of 1974, 20 USC 1232g.

66 (c) A contractor shall not use (1) student records for any purposes
67 other than those authorized pursuant to the contract, or (2) personally
68 identifiable information contained in student records to engage in
69 advertising.

70 (d) Any contract that conflicts with the provisions of this section
71 shall be void.

72 Sec. 2. (NEW) (*Effective October 1, 2015*) (a) For the purposes of this
73 section:

74 (1) "Operator" means an operator of an Internet web site, online
75 service, online application or mobile application that is designed, used
76 and marketed for elementary and secondary school purposes;

77 (2) "Elementary and secondary school purposes" means activities
78 that are directed by or that customarily occur at the direction of an
79 elementary or secondary school teacher or a local or regional board of
80 education, including, but not limited to, instruction in the classroom or
81 at home, administrative activities and collaboration among students,
82 school personnel or parents or legal guardians of students;

83 (3) "Covered information" means personally identifiable
84 information, in any media or format, that (A) is created or provided by
85 a student, parent or legal guardian of a student in the course of the
86 student, parent or legal guardian using the operator's Internet web site,
87 service or application for elementary and secondary school purposes,
88 (B) is created or provided by an employee or agent of a local or
89 regional board of education and provided to an operator for
90 elementary and secondary school purposes, or (C) is gathered by an
91 operator through the operation of the operator's Internet web site,
92 service or application and identifies a student, including, but not
93 limited to, information in the student's records or electronic mail
94 account, first or last name, home address, telephone number, date of
95 birth, electronic mail address, discipline records, test results, grades,
96 evaluations, criminal records, medical records, health records, Social
97 Security number, biometric information, disabilities, socioeconomic
98 information, food purchases, political affiliations, religious affiliations,
99 text messages, documents, student identifiers, search activity,
100 photographs or voice recordings; and

101 (4) "De-identified student covered information" means any
102 information that cannot be used to identify an individual student.

103 (b) An operator shall not:

104 (1) Engage in advertising on the operator's Internet web site, service
105 or application, or advertising on any other Internet web site, service or

106 application when such advertising uses any covered information that
107 the operator acquired in the course of a student, parent or legal
108 guardian using the operator's Internet web site, service or application;

109 (2) Use covered information created or gathered by the operator's
110 Internet web site, service or application to create a profile of a student,
111 except in furtherance of elementary and secondary school purposes;

112 (3) Sell covered information, unless the sale is part of the purchase,
113 merger or acquisition of an operator by a successor operator and the
114 operator and successor operator continue to be subject to the
115 provisions of this section regarding covered information; and

116 (4) Disclose covered information, unless the disclosure is made: (A)
117 In furtherance of the elementary and secondary school purposes of the
118 Internet web site, service or application, provided the recipient of the
119 covered information uses such covered information to improve the
120 operability and functionality of the Internet web site, service or
121 application within the student's classroom or school and complies with
122 subsection (d) of this section; (B) to ensure compliance with federal
123 and state law; (C) in response to judicial process; (D) to protect the
124 safety of users or others, or the security of the Internet web site, service
125 or application; or (E) to an entity hired by the operator to provide
126 services for the operator's Internet web site, service or application,
127 provided the operator contractually (i) prohibits the service provider
128 from using any covered information for any purpose other than
129 providing the contracted service to, or on behalf of, the operator, (ii)
130 prohibits the service provider from disclosing any covered information
131 provided by the operator to subsequent third parties, and (iii) requires
132 the service provider to protect confidential information from
133 unauthorized access in accordance with current industry standards.

134 (c) No provision in subsection (b) of this section shall be construed
135 to prohibit the use of covered information by the operator to maintain,
136 develop, support or improve the operator's Internet web site, service or
137 application.

138 (d) An operator shall (1) protect covered information from
 139 unauthorized access, whenever and however stored or maintained, in
 140 accordance with current industry standards, and (2) delete a student's
 141 covered information if a student, parent or legal guardian of a student
 142 or the local or regional board of education requests deletion of such
 143 covered information.

144 (e) An operator may (1) use de-identified student covered
 145 information to improve the operator's Internet web site, service or
 146 application and to demonstrate or market the effectiveness of the
 147 operator's Internet web site, service or application, and (2) use
 148 aggregated de-identified student covered information for
 149 improvement and development of Internet web sites, services or
 150 applications for elementary and secondary school purposes.

151 Sec. 3. (NEW) (*Effective October 1, 2015*) (a) For the purposes of this
 152 section, "directory information" has the same meaning as provided in
 153 34 CFR 99.3, as amended from time to time.

154 (b) Upon determination by a local or regional board of education
 155 that a request for directory information is related to school purposes,
 156 the local or regional board of education may disclose directory
 157 information to any person requesting such directory information. If the
 158 local or regional board of education determines that a request for
 159 directory information is not related to school purposes, the local or
 160 regional board of education shall not disclose such directory
 161 information.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015, and applicable to any agreement entered into on or after said date</i>	New section
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	New section

Statement of Legislative Commissioners:

In Section 1(b)(4), "contained" was inserted before "in the student record" for clarity and ", if any, in such student record" was inserted after "erroneous information" for clarity; in Section 1(b)(8), ", the State Board of Education or the Department of Education" was inserted after "regional board of education" for consistency and accuracy; in Section 1(c), "contained" was inserted before "in student records" for clarity; in Section 2(a)(2), "school" was inserted before "teacher" for clarity; in Section 2(b)(1), "is based upon" was changed to "uses" for clarity; and in Section 2(b)(3) "except if" was changed to "unless" and "provided" was changed to "and" for clarity and accuracy.

ED *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which restricts how software and information contractors and website, internet service, or mobile application operators can use student information, does not result in a fiscal impact as it impacts private individuals and makes procedural changes.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 7017*****AN ACT CONCERNING STUDENT DATA PRIVACY.*****SUMMARY:**

This bill restricts how software and information contractors and website, internet services, and mobile application operators can use student information.

Software and information contractors that do business with boards of education, the State Board of Education (SBE), or the State Department of Education (SDE) must agree to contract provisions that, among other things, prohibit using identifiable student information for advertising and require notifying a student, parent, or guardian as soon as practical, but not later than 48 hours, after a contractor suspects an information security breach.

Under the bill, website, Internet services, or mobile application operators that are not under contract but obtain student information are prohibited from, among other things, (1) using identifiable student information for advertising or, (2) in most cases, selling such information.

The bill also requires school districts to withhold the release of student directory information if the local or regional board of education determines that a request for such information is not related to school purposes.

The bill does not provide any specific enforcement mechanism or penalties. But current law provides a civil penalty of \$500 for each violation, provided the penalty cannot exceed \$500,000 for any single event, for a person's willful failure to safeguard another person's personal information.

EFFECTIVE DATE: October 1, 2015, and the provision regarding contracts is applicable to any contract entered into on or after that date.

§ 1 — RESTRICTIONS ON SOFTWARE AND INFORMATION CONTRACTORS

The bill places a number of restrictions on how software and electronic information services contractors can use student information.

It defines contractors as individuals, businesses, or other entities that (1) provide educational software or services for storing, managing, or retrieving electronic student records and (2) receive student records under a written contract with a local or regional board of education, SBE, or SDE.

Under the bill, such contractors are banned from using (1) student records for any purposes other than those the contract authorizes or (2) personally identifiable information contained in student records for advertising.

Student Records

The bill defines student records as any information (1) directly related to a student that boards of education, SDE, or SBE maintains and (2) acquired through a student's use of educational software that a teacher or other public education employee assigned. Student records do not include de-identified student information allowed under the contract that the contractor uses to:

1. improve educational products for adaptive learning purposes and for customizing student learning,
2. demonstrate the contractor's product effectiveness for marketing purposes, and
3. develop and improve the contractor's products and services.

De-identified student information means any information that cannot be used to identify an individual student.

Contract Requirements

Under the bill, every contract that a board of education, SDE, or SBE enters into with a contractor must include:

1. a statement that student records remain the property of, and under the control of, the board of education, SDE, or SBE;
2. a statement that the contractor will not use student records for any purposes except those the contract authorizes;
3. a description of the procedures for a student, parent, or guardian to (a) review personally identifiable information in the student record and (b) correct erroneous information, if any, in the record;
4. a description of the actions the contractor agrees to take to ensure student record security and confidentiality;
5. a description of the procedures for notifying a student, parent, or guardian and the board of education, SBE, or SDE (as appropriate) as soon as practical, but not later than 48 hours, after the contractor becomes aware of, or suspects, that any student record under the contractor's control has been subject to unauthorized access or suspected unauthorized access;
6. a statement that the contractor and the board of education, SBE, or SDE will ensure compliance with the federal Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USC 1232g (see BACKGROUND).
7. a description of how a student, parent, or legal guardian of a student may retain possession and control of student-generated content and, if applicable, how a student, parent, or guardian can transfer the student-generated content to an email account; and
8. a statement that the contractor will not retain or have available student records after completing the contracted services unless

a student, parent, or guardian chooses to establish or maintain an electronic account with the contractor to store student-generated content.

Under the bill “student-generated content” includes materials a student creates, including essays, research papers, portfolios, creative writing, music or other audio files or photographs, except that it does not include student responses to a standardized assessments. The exclusion for responses to standardized assessments would appear to apply to students’ Connecticut Mastery Test scores.

Noncompliant Contracts Void

Under the bill, any contract that conflicts with the bill’s contract requirement provisions is void.

§ 2 — RESTRICTIONS ON WEBSITE, ONLINE SERVICE, AND APPLICATIONS OPERATORS

The bill restricts Internet website, online service, and application operators from using student information, referred to in the bill as covered information.

The bill prohibits operators from:

1. engaging in advertising on the operator's or any other website, service, or application, that uses any covered information that the operator acquired because a student, parent, or legal guardian used the operator's website, service, or application;
2. using covered information created or gathered by the website, service, or application to create a student profile, except in furthering school purposes;
3. selling covered information, unless the sale is part of the purchase, merger or acquisition of an operator by a successor operator and the successor operator continues to be subject to the bill’s provisions; and
4. disclosing covered information.

The bill applies the restrictions to operators even though they are not under contract with a board of education, SBE, or SDE.

Operators

The bill defines these entities as operators of websites, online services, or mobile applications that are designed, used, and marketed for “school purposes,” which are activities directed by, or customarily occur at the direction of, a public school teacher or board of education and include classroom or at-home instruction, administrative activities, and collaboration among students, school personnel, or parents or guardians of students. (It is not clear what “customarily occur at the direction” of a teacher or board of education means in this context.)

Covered Information

Under the bill, “covered information” means personally identifiable information in any medium or format that:

1. a student, parent, or legal guardian creates or provides by using the operator's website, service, or application for school purposes;
2. an employee or agent of a board of education creates or provides to an operator for school purposes; or
3. an operator gathers through the operator's website, service, or application and identifies a student, including (a) information in the student's records or email account, (b) first or last name, (c) home address, (d) telephone number, (e) date of birth, (f) electronic mail address, (g) discipline records, (h) test results, (i) grades, (j) evaluations, (k) criminal records, (l) medical records, (n) health records, (o) Social Security number, (p) biometric information, (q) disabilities, (r) socioeconomic information, (s) food purchases, (t) political affiliations, (u) religious affiliations, (v) text messages, (w) documents, (x) student identifiers, (y) search activity, and (z) photographs or voice recordings.

Exceptions That Permit Disclosure

The bill allows operators to disclose covered information for the following reasons:

1. to further the website, service, or application's school purposes, provided the recipient of the information (a) uses the information to improve the website, service, or application's operability and functioning within the student's classroom or school and (b) complies with the bill's requirements to protect the information from unauthorized users and to delete student information upon the student, parent, or guardian's request;
2. to ensure compliance with federal and state law;
3. in response to judicial processes;
4. to protect the safety of users or others, or the security of the website, service, or application; or
5. to a service provider the operator hires to provide services for the website, service, or application, provided the operator contractually (a) prohibits the provider from using any covered information for any purpose other than contracted service to, or on behalf of, the operator, (b) prohibits the provider from disclosing any of the operator-provided covered information to subsequent third parties, and (c) requires the provider to protect confidential information from unauthorized access in accordance with industry standards.

Requirement to Protect and, Upon Request, Delete Information

Under the bill, an operator must (1) protect covered information from unauthorized access, whenever and however stored or maintained, in accordance with industry standards, and (2) delete a student's covered information if a student, parent, or guardian or the board of education requests the information be deleted.

Current state consumer protection law has a similar provision that requires anyone who possesses another person's personal information

to safeguard, among other things, the data and computer files from misuse by third parties (CGS § 42-471). It also requires the data be destroyed or made unusable before it is disposed of. Willful violators may be subject to civil penalties of \$500 for each violation, provided the penalty cannot exceed \$500,000 for any single event.

Use of Student Information to Improve Operator's Service

The bill permits an operator to use de-identified student covered information to improve the operator's website, service, or application and to market the effectiveness of the website, service, or application. Another portion of the bill allows the operator to use covered information to maintain, develop, support or improve the operator's website, service, or application without specifying that the information first be de-identified. These two provisions overlap regarding using the information to improve a website or application, but one calls for the information to be de-identified and the other does not.

It permits an operator to use aggregated de-identified student covered information for improvement and development of websites, services, or applications for school purposes.

§ 3 — AUTHORITY TO WITHHOLD STUDENT DIRECTORY INFORMATION

The bill also requires school districts to withhold the release of student directory information if the local or regional board of education determines the request for the information is not related to school purposes. Under FERPA, a district may disclose directory information if a parent has not made a request to restrict disclosure (see BACKGROUND). Under the bill a district must refuse to disclose directory information if the school district determines the request is not related to school purposes. If the determination is made that the request is related to school purposes, then the district may disclose the information.

BACKGROUND

FERPA

FERPA is the federal law that protects the privacy of student education records, with some exceptions (20 USC § 1232g). One exception is FERPA allows school districts to disclose information they designate as “directory information” without prior parental consent (or student consent if the student is age 18 or older). Once a year, districts must notify parents of the policy and give them the opportunity to restrict the disclosure of directory information. Unless the parent affirmatively requests limiting disclosure, the district can disclose directory information. Under FERPA, directory information includes a student’s name, date of birth, place of birth, address, telephone listing, photo, and other information.

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute

Yea 33 Nay 0 (03/27/2015)