



General Assembly

**Substitute Bill No. 7017**

January Session, 2015



**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.*