



House of Representatives

General Assembly

File No. 509

January Session, 2017

Substitute House Bill No. 7207

House of Representatives, April 11, 2017

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 MAKING REVISIONS TO THE STUDENT DATA PRIVACY ACT OF 2016.

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

1 Section 1. Section 10-234bb of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective from passage*):

3 (a) On and after [October 1, 2016] July 1, 2018, a local or regional
4 board of education shall enter into a written contract with a contractor
5 any time such local or regional board of education shares or provides
6 access to student information, student records or student-generated
7 content with such contractor. Each such contract shall include, but
8 need not be limited to, the following:

9 (1) A statement that student information, student records and
10 student-generated content are not the property of or under the control
11 of a contractor;

12 (2) A description of the means by which the local or regional board
13 of education may request the deletion of student information, student
14 records or student-generated content in the possession of the

15 contractor;

16 (3) A statement that the contractor shall not use student
17 information, student records and student-generated content for any
18 purposes other than those authorized pursuant to the contract;

19 (4) A description of the procedures by which a student, parent or
20 legal guardian of a student may review personally identifiable
21 information contained in student information, student records or
22 student-generated content and correct erroneous information, if any, in
23 such student record;

24 (5) A statement that the contractor shall take actions designed to
25 ensure the security and confidentiality of student information, student
26 records and student-generated content;

27 (6) A description of the procedures that a contractor will follow to
28 notify the local or regional board of education, in accordance with the
29 provisions of section 10-234dd, as amended by this act, when there has
30 been an unauthorized release, disclosure or acquisition of student
31 information, student records or student-generated content;

32 (7) A statement that student information, student records or
33 student-generated content shall not be retained or available to the
34 contractor upon completion of the contracted services unless a student,
35 parent or legal guardian of a student chooses to establish or maintain
36 an electronic account with the contractor for the purpose of storing
37 student-generated content;

38 (8) A statement that the contractor and the local or regional board of
39 education shall ensure compliance with the Family Educational Rights
40 and Privacy Act of 1974, 20 USC 1232g, as amended from time to time;

41 (9) A statement that the laws of the state of Connecticut shall govern
42 the rights and duties of the contractor and the local or regional board
43 of education; and

44 (10) A statement that if any provision of the contract or the

45 application of the contract is held invalid by a court of competent
46 jurisdiction, the invalidity does not affect other provisions or
47 applications of the contract which can be given effect without the
48 invalid provision or application.

49 (b) All student-generated content shall be the property of the
50 student or the parent or legal guardian of the student.

51 (c) A contractor shall implement and maintain security procedures
52 and practices designed to protect student information, student records
53 and student-generated content from unauthorized access, destruction,
54 use, modification or disclosure that, based on the sensitivity of the data
55 and the risk from unauthorized access, (1) use technologies and
56 methodologies that are consistent with the guidance issued pursuant
57 to section 13402(h)(2) of Public Law 111-5, as amended from time to
58 time, (2) maintain technical safeguards as it relates to the possession of
59 student records in a manner consistent with the provisions of 45 CFR
60 164.312, as amended from time to time, and (3) otherwise meet or
61 exceed industry standards.

62 (d) A contractor shall not use (1) student information, student
63 records or student-generated content for any purposes other than
64 those authorized pursuant to the contract, or (2) personally identifiable
65 information contained in student information, student records or
66 student-generated content to engage in targeted advertising.

67 (e) Any provision of a contract entered into between a contractor
68 and a local or regional board of education on or after [October 1, 2016]
69 July 1, 2018, that conflicts with any provision of this section shall be
70 void.

71 (f) Any contract entered into on and after [October 1, 2016] July 1,
72 2018, that does not include a provision required by subsection (a) of
73 this section shall be void, provided the local or regional board of
74 education has given reasonable notice to the contractor and the
75 contractor has failed within a reasonable time to amend the contract to
76 include the provision required by subsection (a) of this section.

77 (g) Not later than five business days after executing a contract
78 pursuant to this section, a local or regional board of education shall
79 provide electronic notice to any student and the parent or legal
80 guardian of a student affected by the contract. The notice shall (1) state
81 that the contract has been executed and the date that such contract was
82 executed, (2) provide a brief description of the contract and the
83 purpose of the contract, and (3) state what student information,
84 student records or student-generated content may be collected as a
85 result of the contract. The local or regional board of education shall
86 post such notice and the contract on the board's Internet web site.

87 Sec. 2. Subdivision (3) of subsection (a) of section 10-234dd of the
88 general statutes is repealed and the following is substituted in lieu
89 thereof (*Effective July 1, 2017*):

90 (3) Upon receipt of notice of a breach of security under
91 [subdivisions] subdivision (1) or (2) of this subsection, a local or
92 regional board of education shall electronically notify, not later than
93 [forty-eight hours] two business days after receipt of such notice, the
94 student and the parents or guardians of the student whose student
95 information, student records or student-generated content is involved
96 in such breach of security. The local or regional board of education
97 shall post such notice on the board's Internet web site.

98 Sec. 3. (*Effective from passage*) The Department of Education shall
99 provide guidance to local and regional boards of education concerning
100 the implementation of the Family Educational Rights and Privacy Act
101 of 1974, 20 USC 1232g, as amended from time to time, and the
102 provisions of sections 10-234aa to 10-234dd, inclusive, of the general
103 statutes, as amended by this act.

104 Sec. 4. Section 5 of public act 16-189 is repealed and the following is
105 substituted in lieu thereof (*Effective from passage*):

106 (a) There is established a task force to study issues relating to
107 student data privacy. Such study shall include, but not be limited to,
108 an examination of (1) when a parent or guardian of a student may

109 reasonably or appropriately request the deletion of student
110 information, student records or student-generated content that is in the
111 possession of a contractor or operator, (2) means of providing notice to
112 parents and guardians of students when a student uses an Internet
113 web site, online service or mobile application of an operator for
114 instructional purposes in a classroom or as part of an assignment by a
115 teacher, (3) reasonable penalties for violations of the provisions of
116 sections [2 to 4, inclusive, of this act] 10-234bb to 10-234dd, inclusive,
117 of the general statutes, such as restricting a contractor or operator from
118 accessing or collecting student information, student records or student-
119 generated content, (4) strategies in effect in other states that ensure that
120 school employees, contractors and operators are trained in data
121 security handling, compliance and best practices, (5) the feasibility of
122 developing a school district-wide list of approved Internet web sites,
123 online services and mobile applications, (6) the use of an
124 administrative hearing process designed to provide legal recourse to
125 students and parents and guardians of students aggrieved by any
126 violation of sections [2 to 4, inclusive, of this act] 10-234bb to 10-234dd,
127 inclusive, of the general statutes, (7) the feasibility of creating an
128 inventory of student information, student records and student-
129 generated content currently collected pursuant to state and federal
130 law, (8) the feasibility of developing a tool kit for use by local and
131 regional boards of education to (A) improve student data contracting
132 practices and compliance, including a state-wide template for use by
133 districts, (B) increase school employee awareness of student data
134 security best practices, including model training components, (C)
135 develop district-wide lists of approved software applications and
136 Internet web sites, and (D) increase the availability and accessibility of
137 information on student data privacy for parents and guardians of
138 students and educators, and (9) any other issue involving student data
139 security that the task force deems relevant.

140 (b) The task force shall consist of the following members:

141 (1) Two appointed by the speaker of the House of Representatives,
142 one of whom is an operator, pursuant to section [1 of this act] 10-234aa

143 of the general statutes and one of whom is an expert in information
144 technology systems;

145 (2) Two appointed by the president pro tempore of the Senate, one
146 of whom is a representative or member of the Connecticut Education
147 Association and one of whom is [a high school student in the state of
148 Connecticut] an attorney with expertise in Connecticut school law;

149 (3) Two appointed by the majority leader of the House of
150 Representatives, one of whom is a representative of a contractor,
151 pursuant to section [1 of this act] 10-234aa of the general statutes and
152 one of whom is an expert in information technology systems;

153 (4) Two appointed by the majority leader of the Senate, one of
154 whom is a representative or member of the Connecticut Parent Teacher
155 Association and one of whom is a representative or member of the
156 American Federation of Teachers;

157 (5) Two appointed by the minority leader of the House of
158 Representatives, one of whom is a student privacy advocate and one of
159 whom is a representative or member of the Connecticut Association of
160 Boards of Education;

161 (6) Two appointed by the minority leader of the Senate, one of
162 whom is a representative of the Connecticut Association of School
163 Administrators and one of whom is a representative or member of the
164 Connecticut Association of Public School Superintendents;

165 (7) The Attorney General, or the Attorney General's designee; and

166 (8) The Commissioner of Education or the commissioner's designee.

167 (c) All appointments to the task force shall be made not later than
168 thirty days after the effective date of this section. Any vacancy shall be
169 filled by the appointing authority.

170 (d) The speaker of the House of Representatives and the president
171 pro tempore of the Senate shall select the chairpersons of the task force

172 from among the members of the task force. Such chairpersons shall
173 schedule the first meeting of the task force, which shall be held not
174 later than sixty days after the effective date of this section.

175 (e) The administrative staff of the joint standing committee of the
176 General Assembly having cognizance of matters relating to general
177 law shall serve as administrative staff of the task force.

178 (f) Not later than January 1, [2017] 2018, the task force shall submit a
179 report on its findings and recommendations to the joint standing
180 committee of the General Assembly having cognizance of matters
181 relating to general law and education, in accordance with the
182 provisions of section 11-4a of the general statutes. The task force shall
183 terminate on the date that it submits such report or January 1, [2017]
184 2018, whichever is later.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	10-234bb
Sec. 2	<i>July 1, 2017</i>	10-234dd(a)(3)
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	PA 16-189, Sec. 5

Statement of Legislative Commissioners:

In Section 1(e), "October 1, 2016" was bracketed and "July 1, 2018" was inserted after the closing bracket for consistency with other provisions of the section; in Section 4(a), references to "sections 2 to 4, inclusive, of [this act] public act 16-189" were changed to "sections [2 to 4, inclusive, of this act] 10-234bb to 10-234dd, inclusive, of the general statutes" for accuracy; in Section 4(b)(1) and (3), references to "section 1 of [this act] public act 16-189" were changed to "section [1 of this act] 10-234aa of the general statutes" for accuracy; and in Section 4(f), references to "2017" were bracketed and "2018" was inserted after the closing brackets for 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:

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Various State Agencies	GF - Potential Cost	Less than 1,000	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill extends the Student Data Privacy Taskforce deadline by one year, to January 1, 2018. There may be a cost of less than \$1,000 in FY 18 to those agencies participating in the task force to reimburse legislators and agency staff for mileage expenses, currently at 53.5 cents/mile.

The bill makes various other procedural, conforming and technical changes related to student data privacy, which are not anticipated to result in a fiscal impact.

The Out Years

There is no ongoing fiscal impact because the task force terminates in FY 18.

OLR Bill Analysis**sHB 7207*****AN ACT MAKING REVISIONS TO THE STUDENT DATA PRIVACY ACT OF 2016.*****SUMMARY**

This bill makes the following changes in the education statutes governing student data privacy:

1. extends the date by which local or regional boards of education must begin entering into written contracts with entities with which they share student data (§ 1);
2. modifies the deadline by which a board of education must electronically notify students and their parents or guardians about a breach of student data security from 48 hours to two business days after learning of the breach (§ 2);
3. requires the State Department of Education to provide guidance to boards of education on how to implement the (a) federal Family Educational Rights and Privacy Act (FERPA), which protects student education records, and (b) state's student data privacy laws (§ 3);
4. adds to the members of the student data privacy task force (see BACKGROUND) an attorney with expertise in Connecticut school law, replacing the Connecticut high school student member (§ 4); and
5. extends the task force reporting deadline by one year, from January 1, 2017 to January 1, 2018 (§ 4).

EFFECTIVE DATE: Upon passage, except the provisions about data security breach notice (§ 2) take effect July 1, 2017.

§ 1 — BOARD OF EDUCATION CONTRACTS WITH STUDENT DATA CONTRACTORS

Under current law, boards of education must enter into written contracts with contractors with whom they share student information, student records, or student-generated content beginning October 1, 2016. The bill postpones this start date to July 1, 2018.

Additionally, the bill specifies that any such contract entered into on and after July 1, 2018, rather than October 1, 2016, is void if it lacks any of the provisions required by law (see BACKGROUND). Existing law requires the board to give the contractor reasonable notice to amend the contract to include the missing provisions, however. It also specifies that a contractual provision is void if it conflicts with any of the provisions required by law beginning on July 1, 2018, rather than October 1, 2016.

BACKGROUND***Required Contractual Provisions***

By law, a contract between a board of education and a contractor with whom it shares or provides access to student data must state the following:

1. student records, student information, and student-generated content are not the property of, or under the control of, a contractor;
2. the contractor will not use student information, student records, and student-generated content for any purposes except those the contract authorizes;
3. the contractor must take actions designed to ensure security and confidentiality of student information, student records, and student-generated content;
4. the contractor will not retain or have available student information, student records, or student-generated content 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 (e. g. , essays, research papers, portfolios, creative writing, music, audio files, or photographs, but not standardized assessment responses);

5. the contractor and the board of education must ensure compliance with FERPA;
6. Connecticut law governs the rights and duties of all parties to the contract; and
7. a court finding of invalidity of any contract provision does not invalidate other contract provisions or applications not affected by the finding.

The contract must also describe the following:

1. how the board of education may request deletion of student information, student records, or student-generated content in the contractor's possession;
2. procedures for a student, parent, or guardian to (a) review personally identifiable information in student information, student records, and student-generated content and (b) correct erroneous information, if any, in the record; and
3. procedures that a contractor must follow to notify the board of education when there has been an unauthorized release, disclosure, or acquisition of student information, student records, or student-generated content (CGS § 10-234bb).

Student Data Privacy Task Force

This task force must examine various student data privacy topics, including (1) notice to students and parents when websites or mobile applications are being used for class assignments; (2) strategies other states use to train schools, contractors for student data services, and website operators in data security handling; and (3) reasonable

penalties for contractors and operators who violate state student data privacy laws (Public Act 16-189, § 5).

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute

Yea 31 Nay 0 (03/24/2017)