

FIRST REGULAR SESSION

SENATE BILL NO. 401

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time February 18, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2067S.011

AN ACT

To amend chapter 167, RSMo, by adding thereto five new sections relating to student data privacy.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 167, RSMo, is amended by adding thereto five new sections, to be known as sections 167.2000, 167.2005, 167.2010, 167.2015, and 167.2020, to read as follows:

167.2000. For purposes of sections 167.2000 to 167.2020, the following terms mean:

(1) "Consultant", a professional who provides noninstructional services including, but not limited to, administrative, planning, analysis, statistical, or research services to a local educational agency in accordance with a contract with such local educational agency;

(2) "Contractor", an operator or consultant who is in possession of or has access to student information, student records, or student-generated content as a result of a contract with a local educational agency;

(3) "De-identified student information", any student information that has been altered to prevent the identification of an individual student;

(4) "Directory information", the same meaning given to the term in 34 CFR 99.3, as amended from time to time;

(5) "Local educational agency":

(a) A public board of education or other public authority legally constituted within the state for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in:

21 a. A city, county, township, school district, or other political
22 subdivision of the state; or

23 b. Such combination of school districts or counties the state
24 recognizes as an administrative agency for the public elementary or
25 secondary schools; or

26 (b) Any other public institution or agency that has
27 administrative control and direction of a public elementary or
28 secondary school.

29 The term "local educational agency" includes any other public
30 institution or agency that has administrative control and direction of
31 a vocational education program;

32 (6) "Operator", any person who:

33 (a) Operates an internet website, online service, or mobile
34 application with actual knowledge that such internet website, online
35 service, or mobile application is used for school purposes and was
36 designed and marketed for school purposes, to the extent the person is
37 engaged in the operation of such internet website, online service, or
38 mobile application; and

39 (b) Collects, maintains, or uses student information;

40 (7) "Persistent unique identifier", a unique piece of information
41 that can be used to recognize a user over time and across different
42 internet websites, online services, or mobile applications and is
43 acquired as a result of a student's use of an operator's internet website,
44 online service, or mobile application;

45 (8) "Personally identifiable information" or "PII", any information
46 that permits the identity of an individual to be directly or indirectly
47 inferred, including any information that is linked or linkable to that
48 individual, regardless of whether the individual is a United States
49 citizen, legal permanent resident, visitor to the United States, or
50 employee or contractor with the department of elementary and
51 secondary education. The term "personally identifiable information" or
52 "PII" includes sensitive PII;

53 (9) "School purposes", purposes that customarily take place at the
54 direction of a teacher or a local educational agency or aid in the
55 administration of school activities including, but not limited to,
56 instruction in the classroom, administrative activities, and
57 collaboration among students, school personnel, or parents or legal

58 guardians of students;

59 (10) "Sensitive PII", personally identifiable information that, if
60 lost, compromised, or disclosed without authorization, could result in
61 substantial harm, embarrassment, inconvenience, or unfairness to an
62 individual;

63 (11) "Student", a person who is a resident of the state and
64 enrolled in a local educational agency;

65 (12) "Student-generated content", any student materials created
66 by a student including, but not limited to, standardized assessment
67 responses, essays, research papers, portfolios, creative writing, music,
68 or other audio files or photographs;

69 (13) "Student information", personally identifiable information
70 or material of a student in any media or format that is not publicly
71 available and is any of the following:

72 (a) Created or provided by a student or the parent or legal
73 guardian of a student to the operator in the course of the student,
74 parent, or legal guardian using the operator's internet website, online
75 service, or mobile application for school purposes;

76 (b) Created or provided by an employee or agent of a local
77 educational agency to an operator for school purposes; or

78 (c) Gathered by an operator through the operation of the
79 operator's internet website, online service, or mobile application and
80 identifies a student including, but not limited to, information in the
81 student's records or electronic mail account, first or last name, home
82 address, telephone number, date of birth, electronic mail address,
83 discipline records, test results, grades, evaluations, criminal records,
84 medical records, health records, Social Security number, biometric
85 information, disabilities, socioeconomic information, food purchases,
86 political affiliations, religious affiliations, text messages, documents,
87 student identifiers, search activity, photographs, voice recordings,
88 survey responses, or behavioral assessments;

89 (14) "Student record", any information directly related to a
90 student that is maintained by a local educational agency, the state
91 board of education, or the department of elementary and secondary
92 education or any information acquired from a student through the use
93 of educational software assigned to the student by a teacher or
94 employee of a local educational agency;

95 (15) "Targeted advertising", presenting an advertisement to a
96 student where the selection of the advertisement is based on student
97 information, student records, or student-generated content or inferred
98 over time from the usage of the operator's internet website, online
99 service, or mobile application by such student or the retention of such
100 student's online activities or requests over time for the purpose of
101 targeting subsequent advertisements.

167.2005. 1. On and after August 28, 2019, a local educational
2 agency shall enter into a written contract with a contractor any time
3 such local educational agency shares or provides access to student
4 information, student records, or student-generated content with such
5 contractor. Each such contract shall include, but need not be limited
6 to, the following:

7 (1) A statement that student information, student records, and
8 student-generated content are the property of and under the control of
9 the student or the student's parent or legal guardian;

10 (2) A description of the means by which the local educational
11 agency may request the deletion of student information, student
12 records, or student-generated content in the possession of the
13 contractor;

14 (3) A statement that the contractor shall not use student
15 information, student records, or student-generated content for any
16 purposes other than those authorized under the contract;

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

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

25 (6) A description of the procedures that a contractor will follow
26 to notify the local educational agency, in accordance with the
27 provisions of section 167.2015, when there has been an unauthorized
28 release, disclosure, or acquisition of student information, student
29 records, or student-generated content;

30 (7) A statement that student information, student records, and

31 student-generated content shall not be retained or available to the
32 contractor upon completion of the contracted services unless a student,
33 parent, or legal guardian of a student chooses to establish or maintain
34 an electronic account with the contractor for the purpose of storing
35 student-generated content;

36 (8) A statement that the contractor and the local educational
37 agency shall purchase adequate data breach insurance before the
38 contractor begins its duties under the contract;

39 (9) A statement that the laws of the state of Missouri shall govern
40 the rights and duties of the contractor and the local educational
41 agency; and

42 (10) A statement that if any provision of the contract or the
43 application of the contract is held invalid by a court of competent
44 jurisdiction, the invalidity does not affect other provisions or
45 applications of the contract that can be given effect without the invalid
46 provision or application.

47 2. All student-generated content shall be the property of the
48 student or the parent or legal guardian of the student.

49 3. A contractor shall implement and maintain security
50 procedures and practices designed to protect student information,
51 student records, and student-generated content from unauthorized
52 access, destruction, use, modification, or disclosure that, based on the
53 sensitivity of the data and the risk from unauthorized access:

54 (1) Use technologies and methodologies that are consistent with
55 the guidance issued under Section 13402(h)(2) of Pub. L. 111-5, as
56 amended from time to time;

57 (2) Maintain technical safeguards in relation to the possession
58 of student records in a manner consistent with the provisions of 45 CFR
59 164.312, as amended from time to time; and

60 (3) Otherwise meet or exceed industry standards.

61 4. Except as otherwise provided in sections 167.2000 to 167.2020,
62 a contractor shall not use or transfer:

63 (1) Student information, student records, or student-generated
64 content for any purposes not directly related to improvement of student
65 learning of curricular academic content established by the local
66 educational agency; or

67 (2) Personally identifiable information.

68 5. Any provision of a contract entered into between a contractor
69 and a local educational agency on or after August 28, 2019, that
70 conflicts with any provision of this section shall be void.

71 6. Any contract entered into on and after August 28, 2019, that
72 does not include a provision required by subsection 1 of this section
73 shall be void, provided the local educational agency has given
74 reasonable notice to the contractor and the contractor has failed,
75 within a reasonable time, to amend the contract to include the
76 provision required by subsection 1 of this section.

77 7. (1) Not later than five business days after executing a contract
78 under this section, a local educational agency shall provide electronic
79 notice to any student and the parent or legal guardian of a student
80 affected by the contract. The notice shall:

81 (a) State that the contract has been executed and the date that
82 such contract was executed;

83 (b) State that a link to the contract or copy of the contract is on
84 the website of the local educational agency or state that a paper copy
85 of the contract shall be provided immediately upon written request;

86 (c) Provide a list of all types of PII to be collected and the
87 purpose of collecting those types of PII; and

88 (d) Provide a list of all third parties with whom PII will be
89 shared and the purpose of data sharing, along with a statement
90 explaining the prohibition on third parties sharing data from the
91 contractor.

92 (2) The local educational agency shall post such notice on its
93 website and post a link to the contract or copy of the contract on its
94 website or provide a paper copy of the contract immediately upon
95 written request.

167.2010. 1. An operator shall:

2 (1) Implement and maintain security procedures and practices
3 that meet or exceed industry standards and that are designed to
4 protect student information, student records, and student-generated
5 content from unauthorized access, destruction, use, modification, or
6 disclosure; and

7 (2) Delete any student information, student records, or student-
8 generated content within a reasonable amount of time if a student,
9 parent or legal guardian of a student, or local educational agency who

10 has the right to control such student information requests the deletion
11 of such student information, student records, or student-generated
12 content.

13 **2. An operator shall not knowingly:**

14 **(1) Engage in:**

15 **(a) Targeted advertising on the operator's internet website,**
16 **online service, or mobile application; or**

17 **(b) Targeted advertising on any other internet website, online**
18 **service, or mobile application if such advertising is based on any**
19 **student information, student records, student-generated content, or**
20 **persistent unique identifiers that the operator has acquired because of**
21 **the use of the operator's internet website, online service, or mobile**
22 **application for school purposes;**

23 **(2) Collect, store, or use student information, student records,**
24 **student-generated content, or persistent unique identifiers for purposes**
25 **other than the furtherance of school purposes;**

26 **(3) Sell, rent, or trade student information, student records, or**
27 **student-generated content unless the sale is part of the purchase,**
28 **merger, or acquisition of an operator by a successor operator and the**
29 **operator and successor operator continue to be subject to the**
30 **provisions of this section regarding student information; or**

31 **(4) Disclose student information, student records, or student-**
32 **generated content unless the disclosure is made:**

33 **(a) In response to a judicial order;**

34 **(b) To protect the safety or integrity of users or others or the**
35 **security of the internet website, online service, or mobile application;**

36 **(c) To an entity hired by the operator to provide services for the**
37 **operator's internet website, online service, or mobile application,**
38 **provided the operator contractually:**

39 **a. Prohibits the entity from using student information, student**
40 **records, or student-generated content for any purpose other than**
41 **providing the contracted service to, or on behalf of, the operator;**

42 **b. Prohibits the entity from disclosing student information,**
43 **student records, or student-generated content provided by the operator**
44 **to subsequent third parties; and**

45 **c. Requires the entity to comply with subsection 1 of this section;**

46 **or**

47 **(d) For a school purpose or other educational or employment**
48 **purpose requested by a student or the parent or legal guardian of a**
49 **student, provided such student information is not used or disclosed for**
50 **any other purpose.**

51 **3. An operator may use student information:**

52 **(1) To maintain, support, improve, evaluate, or diagnose the**
53 **operator's internet website, online service, or mobile application;**

54 **(2) To provide recommendation engines to recommend content**
55 **or services relating to school purposes or other educational or**
56 **employment purposes, provided such recommendation is not**
57 **determined in whole or in part by payment or other consideration from**
58 **a third party; or**

59 **(3) To respond to a request for information or feedback from a**
60 **student, provided such response is not determined in whole or in part**
61 **by payment or other consideration from a third party.**

62 **4. An operator may use de-identified student information or**
63 **aggregated student information:**

64 **(1) To develop or improve the operator's internet website, online**
65 **service, or mobile application or other internet websites, online**
66 **services, or mobile applications owned by the operator; or**

67 **(2) To demonstrate or market the effectiveness of the operator's**
68 **internet website, online service, or mobile application.**

69 **5. An operator may share aggregated student information or de-**
70 **identified student information for the improvement and development**
71 **of internet websites, online services, or mobile applications designed**
72 **for school purposes.**

73 **6. Nothing in this section shall be construed to:**

74 **(1) Limit the ability of a law enforcement agency to obtain**
75 **student information, student records, or student-generated content**
76 **from an operator as authorized by law or in accordance with a court**
77 **order;**

78 **(2) Limit the ability of a student or the parent or legal guardian**
79 **of a student to maintain access to student information, student records,**
80 **or student-generated content promptly upon request;**

81 **(3) Impose a duty upon a provider of an interactive computer**
82 **service, as defined in 47 U.S.C. Section 230, as amended from time to**
83 **time, to ensure compliance with this section by third-party information**

84 content providers, as defined in 47 U.S.C. Section 230, as amended from
85 time to time;

86 (4) Impose a duty upon a seller or provider of an electronic
87 store, gateway, marketplace, or other means of purchasing or
88 downloading software applications to review or enforce compliance
89 with this section on such software applications;

90 (5) Limit an internet service provider from providing a student,
91 parent or legal guardian of a student, or local educational agency with
92 the ability to connect to the internet;

93 (6) Prohibit an operator from advertising other internet
94 websites, online services, or mobile applications that are used for
95 school purposes to parents or legal guardians of students, provided
96 such advertising does not result from the operator's use of student
97 information, student records, or student-generated content; or

98 (7) Apply to internet websites, online services, or mobile
99 applications that are designed and marketed for use by individuals
100 generally, even if the account credentials created for an operator's
101 internet website, online service, or mobile application may be used to
102 access internet websites, online services, or mobile applications that
103 are designed and marketed for school purposes.

167.2015. 1. (1) Upon the discovery of a breach of security that
2 results in the unauthorized release, disclosure, or acquisition of
3 student information, excluding any directory information contained in
4 such student information, a contractor shall notify, without
5 unreasonable delay, but not more than thirty days after such discovery,
6 the local educational agency of such breach of security. During such
7 thirty-day period, the contractor may:

8 (a) Conduct an investigation to determine the nature and scope
9 of such unauthorized release, disclosure, or acquisition and the identity
10 of the students whose student information is involved in such
11 unauthorized release, disclosure, or acquisition; or

12 (b) Restore the reasonable integrity of the contractor's data
13 system.

14 (2) Upon the discovery of a breach of security that results in the
15 unauthorized release, disclosure, or acquisition of directory
16 information, student records, or student-generated content, a
17 contractor shall notify, without unreasonable delay, but not more than

18 sixty days after such discovery, the local educational agency of such
19 breach of security. During such sixty-day period, the contractor may:

20 (a) Conduct an investigation to determine the nature and scope
21 of such unauthorized release, disclosure, or acquisition and the identity
22 of the students whose directory information, student records, or
23 student-generated content is involved in such unauthorized release,
24 disclosure, or acquisition; or

25 (b) Restore the reasonable integrity of the contractor's data
26 system.

27 (3) Upon receipt of notice of a breach of security under
28 subdivision (1) or (2) of this subsection, a local educational agency shall
29 electronically notify, not later than forty-eight hours after receipt of
30 such notice, the student and the parents or legal guardians of the
31 student whose student information, student records, or student-
32 generated content is involved in such breach of security. The local
33 educational agency shall post such notice on the local educational
34 agency's internet website.

35 2. (1) Upon the discovery of a breach of security that results in
36 the unauthorized release, disclosure, or acquisition of student
37 information, student records, or student-generated content, an operator
38 that is in possession of or maintains student information, student
39 records, or student-generated content as a result of a student's use of
40 such operator's internet website, online service, or mobile application
41 shall:

42 (a) Notify, without unreasonable delay, but not more than thirty
43 days after such discovery, the student or the parents or legal guardians
44 of such student of any breach of security that results in the
45 unauthorized release, disclosure, or acquisition of student information,
46 excluding any directory information contained in such student
47 information, of such student; and

48 (b) Notify, without unreasonable delay, but not more than sixty
49 days after such discovery, the student or the parents or legal guardians
50 of such student of any breach of security that results in the
51 unauthorized release, disclosure, or acquisition of directory
52 information, student records, or student-generated content of such
53 student.

54 (2) During the thirty-day or sixty-day period, the operator may:

55 **(a) Conduct an investigation to determine the nature and scope**
56 **of such unauthorized release, disclosure, or acquisition and the identity**
57 **of the students whose student information, student records, or student-**
58 **generated content is involved in such unauthorized release, disclosure,**
59 **or acquisition; or**

60 **(b) Restore the reasonable integrity of the operator's data**
61 **system.**

167.2020. 1. There is hereby established a task force to study
2 **issues relating to student data privacy. Such study shall include, but**
3 **not be limited to, an examination of:**

4 **(1) When a parent or legal guardian of a student may reasonably**
5 **or appropriately request the deletion of student information, student**
6 **records, or student-generated content that is in the possession of a**
7 **contractor or operator;**

8 **(2) Means of providing notice to parents and legal guardians of**
9 **students when a student uses an internet website, online service, or**
10 **mobile application of an operator for instructional purposes in a**
11 **classroom or as part of an assignment by a teacher;**

12 **(3) Reasonable penalties for violations of the provisions of**
13 **sections 167.2000 to 167.2015, such as restricting a contractor or**
14 **operator from accessing or collecting student information, student**
15 **records, or student-generated content;**

16 **(4) Strategies in effect in other states that ensure that school**
17 **employees, contractors, and operators are trained in data security**
18 **handling, compliance, and best practices;**

19 **(5) The feasibility of developing a local educational agency-wide**
20 **list of approved internet websites, online services, and mobile**
21 **applications;**

22 **(6) The use of an administrative hearing process designed to**
23 **provide legal recourse to students and parents and legal guardians of**
24 **students aggrieved by any violation of sections 167.2000 to 167.2015;**

25 **(7) The feasibility of creating an inventory of student**
26 **information, student records, and student-generated content currently**
27 **collected under state and federal law;**

28 **(8) The feasibility of developing a tool kit for use by local**
29 **educational agencies to:**

30 **(a) Improve student data contracting practices and compliance,**

31 including a statewide template for use by local educational agencies;

32 (b) Increase school employee awareness of student data security
33 best practices, including model training components;

34 (c) Develop local educational agency-wide lists of approved
35 software applications and internet websites; and

36 (d) Increase the availability and accessibility of information on
37 student data privacy for educators and parents and legal guardians of
38 students; and

39 (9) Any other issue involving student data security that the task
40 force deems relevant.

41 2. The task force shall consist of the following members:

42 (1) Two members appointed by the speaker of the house of
43 representatives, one of whom is an operator and one of whom is an
44 expert in information technology systems;

45 (2) Two members appointed by the speaker of the house of
46 representatives from members of the house of representatives;

47 (3) Two members appointed by the president pro tempore of the
48 senate, one of whom is a representative or member of a state teachers
49 association and one of whom is a high school student in the state of
50 Missouri;

51 (4) Two members appointed by the president pro tempore of the
52 senate from members of the senate;

53 (5) Two members appointed by the majority floor leader of the
54 house of representatives, one of whom is a representative of a
55 contractor and one of whom is an expert in information technology
56 systems;

57 (6) Two members appointed by the majority floor leader of the
58 senate, one of whom is a representative or member of an organization
59 formed to engage parents in school activities and one of whom is a
60 representative or member of a labor union that represents teachers;

61 (7) Two members appointed by the minority floor leader of the
62 house of representatives, one of whom is a student privacy advocate
63 and one of whom is a representative or member of an organization that
64 supports school boards;

65 (8) Two members appointed by the minority floor leader of the
66 senate, one of whom is a representative of an organization that serves
67 the needs of school superintendents and school administrators and one

68 of whom is a representative or member of an organization that serves
69 the needs of elementary school principals and assistant principals;

70 (9) The attorney general, or the attorney general's designee; and

71 (10) The commissioner of education, or the commissioner's
72 designee.

73 3. All appointments to the task force shall be made not later than
74 thirty days after the effective date of this section. Any vacancy shall
75 be filled by the appointing authority.

76 4. Members of the work group shall serve without compensation
77 but may be reimbursed for actual expenses necessary to the
78 performance of their official duties for the work group.

79 5. The speaker of the house of representatives and the president
80 pro tempore of the senate shall select the chairs of the task force from
81 among the legislative members of the task force. Such chairs shall
82 schedule the first meeting of the task force, which shall be held not
83 later than sixty days after the effective date of this section.

84 6. Before January 31, 2020, the task force shall submit a report
85 on its findings and recommendations to the joint committee on
86 education. The task force shall terminate on the date that it submits
87 such report or January 31, 2020, whichever is later.

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