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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **3461**

03/21/2016 Authored by Hornstein, Lucero and Hortman
The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act
1.2 relating to data privacy; education; establishing student-user privacy in education
1.3 rights; requiring online educational services to comply with security and privacy
1.4 standards; prohibiting use of student information for targeted marketing or
1.5 creation of student profiles; amending Minnesota Statutes 2014, sections 13.321,
1.6 by adding a subdivision; 120B.11, subdivisions 3, 4; 120B.30, subdivision 2, by
1.7 adding subdivisions; 120B.31, subdivision 5, by adding subdivisions; Minnesota
1.8 Statutes 2015 Supplement, section 120B.30, subdivision 4; proposing coding for
1.9 new law in Minnesota Statutes, chapter 125B.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2014, section 13.321, is amended by adding a
1.12 subdivision to read:

1.13 Subd. 11. Student-user privacy requirements. Section 125B.27 governs privacy
1.14 and information practices of online educational services.

1.15 Sec. 2. Minnesota Statutes 2014, section 120B.11, subdivision 3, is amended to read:

1.16 Subd. 3. **District advisory committee.** Each school board shall establish an
1.17 advisory committee to ensure active community participation in all phases of planning
1.18 and improving the instruction and curriculum affecting state and district academic
1.19 standards, consistent with subdivision 2. A district advisory committee, to the extent
1.20 possible, shall reflect the diversity of the district and its school sites, include teachers,
1.21 parents, support staff, students, and other community residents, and provide translation
1.22 to the extent appropriate and practicable. The district advisory committee shall pursue
1.23 community support to accelerate the academic and native literacy and achievement of
1.24 English learners with varied needs, from young children to adults, consistent with section
1.25 124D.59, subdivisions 2 and 2a. The district may establish site teams as subcommittees

2.1 of the district advisory committee under subdivision 4. The district advisory committee
 2.2 shall recommend to the school board rigorous academic standards, student achievement
 2.3 goals and measures consistent with subdivision 1a and sections 120B.022, subdivisions 1a
 2.4 and 1b, and 120B.35, district assessments, and program evaluations. School sites may
 2.5 expand upon district evaluations of instruction, curriculum, assessments, or programs.
 2.6 Whenever possible, parents and other community residents shall comprise at least
 2.7 two-thirds of advisory committee members. The advisory committee must, prior to the
 2.8 first day of each school year, publish a comprehensive calendar of standardized tests that
 2.9 will be administered in the school district.

2.10 Sec. 3. Minnesota Statutes 2014, section 120B.11, subdivision 4, is amended to read:

2.11 Subd. 4. **Site team.** A school ~~may~~ must establish a site team to develop and
 2.12 implement strategies and education effectiveness practices to improve instruction,
 2.13 curriculum, cultural competencies, including cultural awareness and cross-cultural
 2.14 communication, and student achievement at the school site, consistent with subdivision 2.
 2.15 The site team must include at least three teachers and one administrator. A majority of the
 2.16 site team must be comprised of teachers. The site team advises the board and the advisory
 2.17 committee about developing the annual budget ~~and revising~~; creates an instruction and
 2.18 curriculum improvement plan that aligns curriculum, assessment of student progress, and
 2.19 growth in meeting state and district academic standards and instruction; and selects the
 2.20 standardized assessments that the school will administer to students.

2.21 Sec. 4. Minnesota Statutes 2014, section 120B.30, subdivision 2, is amended to read:

2.22 Subd. 2. **Department of Education assistance.** (a) The Department of Education
 2.23 shall contract for professional and technical services according to competitive solicitation
 2.24 procedures under chapter 16C for purposes of this section.

2.25 (b) A bid submitted under this section must include disclosures containing:

2.26 (1) comprehensive information regarding test administration monitoring practices;

2.27 and

2.28 (2) data privacy safeguards for student information to be transmitted to or used by
 2.29 the bidding entity.

2.30 Such information provided in the bid must not be classified as nonpublic according
 2.31 to section 13.37, subdivision 2.

2.32 (c) An entity responsible for evaluating and scoring testing contracted for under
 2.33 paragraph (a) must agree that all writing assessments are scored by at least two
 2.34 Minnesota-licensed teachers who have been licensed by the state of Minnesota to teach

3.1 language arts, or teacher licensure candidates who have achieved a passing score on the
3.2 basic skills exams in reading and writing adopted by the Board of Teaching.

3.3 Sec. 5. Minnesota Statutes 2015 Supplement, section 120B.30, subdivision 4, is
3.4 amended to read:

3.5 Subd. 4. **Access to tests.** Consistent with section 13.34, the commissioner
3.6 must adopt and publish a ~~policy to provide public and parental access for review of~~
3.7 on the commissioner's Web site Minnesota-developed assessments which would not
3.8 compromise the objectivity or fairness of the testing or examination process after data
3.9 from the assessments are made publicly available. Upon receiving a written request, The
3.10 commissioner must make available send to parents or guardians a copy of their student's
3.11 actual responses to the test questions for their review as well as the test questions and the
3.12 correct answers, no later than the first day of the academic year following the year in
3.13 which their student took the assessment.

3.14 Sec. 6. Minnesota Statutes 2014, section 120B.30, is amended by adding a subdivision
3.15 to read:

3.16 Subd. 6. **Database.** The commissioner shall establish a reporting system for
3.17 teachers, administrators, and students to report service disruptions and technical
3.18 interruptions. The information reported through this system shall be maintained in a
3.19 database accessible through the department's Web site.

3.20 Sec. 7. Minnesota Statutes 2014, section 120B.30, is amended by adding a subdivision
3.21 to read:

3.22 Subd. 7. **Retaliation prohibited.** A report to the commissioner concerning service
3.23 disruptions and technical interruptions is subject to the protection of section 181.932,
3.24 governing disclosure of information by employees.

3.25 Sec. 8. Minnesota Statutes 2014, section 120B.31, is amended by adding a subdivision
3.26 to read:

3.27 Subd. 4a. **Student participation.** The commissioner shall create and publish a form
3.28 for parents to complete if they refuse for their child to participate in standardized testing.
3.29 This form must request a reason for the refusal, and this information must be maintained
3.30 by the department in an accessible format, subject to the requirements of chapter 13.

3.31 Sec. 9. Minnesota Statutes 2014, section 120B.31, subdivision 5, is amended to read:

4.1 Subd. 5. **Parent Access to information.** To ensure the effective involvement
 4.2 of parents and to support a partnership between the school and parents, each district
 4.3 shall ~~annually~~ provide parents and teachers a timely written summary, in an electronic
 4.4 or other format, of their student's current and longitudinal performance and progress
 4.5 on the state's academic content standards as measured by state assessments. Providing
 4.6 parents with a summary prepared by the Department of Education fulfills the requirements
 4.7 of this subdivision.

4.8 Sec. 10. Minnesota Statutes 2014, section 120B.31, is amended by adding a
 4.9 subdivision to read:

4.10 Subd. 6. **Test preparation costs.** The department must annually compile and
 4.11 publish data relating to expenditures by school districts for preparation of assessments
 4.12 administered pursuant to section 120B.30, including the costs of materials and staff time.

4.13 Sec. 11. **[125B.27] STUDENT-USER PRIVACY IN EDUCATION RIGHTS.**

4.14 Subdivision 1. **Definitions.** (a) The definitions in this subdivision and section 13.32,
 4.15 subdivision 1, apply to this section.

4.16 (b) "Online educational service" means a Web site, online service or application, or
 4.17 mobile application that a student or the student's parent or legal guardian can access via
 4.18 the Internet for school purposes. Online educational service includes a cloud computing
 4.19 service.

4.20 (c) "Operator" means a person who operates an online educational service with
 4.21 actual knowledge that it is used primarily for school purposes and was designed and
 4.22 marketed for these purposes. Operator includes a vendor.

4.23 (d) "Protected information" means educational data or other personally identifiable
 4.24 information or materials in any media or format that:

4.25 (1) is created or provided by a student or the student's parent or legal guardian to an
 4.26 operator in the course of the use of the operator's site, service, or application for school
 4.27 purposes;

4.28 (2) is created or provided by an employee or agent of the school to an operator; or

4.29 (3) is gathered by an operator through the operation of an online educational
 4.30 service and is descriptive of a student or otherwise identifies a student, including
 4.31 information in the student's educational record or e-mail, first and last name, home
 4.32 address, telephone number, e-mail address, or other information that allows physical or
 4.33 online contact, discipline records, test results, special education data, juvenile records,
 4.34 grades, evaluations, criminal records, health records, Social Security number, biometric

5.1 information, disabilities, socioeconomic information, food purchases, political affiliations,
 5.2 religious information, text messages, documents, student identifiers, search activity,
 5.3 photos, voice recordings, or geolocation information.

5.4 (e) "School purposes" means purposes that (1) customarily take place at the
 5.5 direction of the school, teacher, or school district or aid in the administration of school
 5.6 activities, including instruction in the classroom or at home, administrative activities, and
 5.7 collaboration between students, school personnel, or parents or legal guardians, or (2)
 5.8 are for the use and benefit of the school.

5.9 (f) "Student" means a student in prekindergarten through grade 12.

5.10 (g) "Vendor" means a person who enters into a contract with a school to provide an
 5.11 online educational service.

5.12 **Subd. 2. Prohibited activities; targeted advertising; creation of student profiles;**
 5.13 **sale or unauthorized disclosure of information.** (a) An operator must not knowingly
 5.14 engage in any of the following activities with respect to the operator's site, service,
 5.15 or application:

5.16 (1)(i) targeted advertising on the operator's site, service, or application; or

5.17 (ii) targeted advertising on any other site, service, or application when the targeting
 5.18 of the advertising is based upon information, including protected information and unique
 5.19 identifiers, that the operator has acquired or created because of the use of that operator's
 5.20 site, service, or application;

5.21 (2) use or share information, including unique identifiers, acquired or created by
 5.22 the operator's site, service, or application, to create a profile about a student, except in
 5.23 furtherance of school purposes;

5.24 (3) sell a student's information, including protected information. This prohibition
 5.25 does not apply to the purchase, merger, or other type of acquisition of an operator by
 5.26 another person, provided that the operator or successor continues to be subject to this
 5.27 section with respect to previously acquired student information; or

5.28 (4) disclose protected information, unless the disclosure:

5.29 (i) is made in furtherance of the purpose of the site, service, or application, provided
 5.30 the recipient of the protected information must not further disclose the information unless
 5.31 done to allow or improve operability and functionality in that student's classroom or school;

5.32 (ii) is legally required to comply with subdivision 3;

5.33 (iii) is made to ensure legal and regulatory compliance, to respond to or participate
 5.34 in judicial process, or to protect the safety of users or others or security of the site; or

5.35 (iv) is made pursuant to a contract between the operator and a service provider. A
 5.36 contract must prohibit the service provider from using protected information for any

6.1 purpose other than providing the contracted service to, or on behalf of, the operator;
 6.2 prohibit the service provider from disclosing protected information provided by the
 6.3 operator to third parties; and require the service provider to implement and maintain
 6.4 reasonable security procedures and practices as provided in subdivision 3.

6.5 (b) This subdivision does not prohibit the operator's use of information for
 6.6 maintaining, developing, supporting, improving, or diagnosing the operator's site, service,
 6.7 or application.

6.8 Subd. 3. **Security procedures and practices.** An operator shall:

6.9 (1) implement and maintain reasonable security procedures and practices appropriate
 6.10 to the nature of the protected information and protect that information from unauthorized
 6.11 access, destruction, use, modification, or disclosure; and

6.12 (2) delete a student's protected information if the school requests deletion of data
 6.13 under the control of the school.

6.14 Subd. 4. **Permissible disclosures.** Notwithstanding subdivision 2, paragraph
 6.15 (a), clause (4), an operator may disclose protected information of a student under the
 6.16 following circumstances:

6.17 (1) if other provisions of federal or state law require the operator to disclose the
 6.18 information and the operator complies with the requirements of federal or state law in
 6.19 protecting and disclosing that information;

6.20 (2) for legitimate research purposes:

6.21 (i) as required by state or federal law and subject to the restrictions under applicable
 6.22 law; or

6.23 (ii) as allowed by state or federal law and under the direction of a school, school
 6.24 district, or the Department of Education, provided that protected information is not used
 6.25 for any purpose in furtherance of advertising or to amass a profile on the student for
 6.26 purposes other than school purposes; and

6.27 (3) to a state or local educational agency, including schools and school districts, for
 6.28 school purposes as permitted by state or federal law.

6.29 Subd. 5. **Use of information by operator.** (a) This section does not prohibit an
 6.30 operator from using information that does not identify a student as follows:

6.31 (1) within the operator's site, service, or application or other sites, services, or
 6.32 applications owned by the operator to improve educational products; or

6.33 (2) to demonstrate the effectiveness of the operator's products or services, including
 6.34 marketing.

7.1 (b) This section does not prohibit an operator from sharing information that does not
7.2 identify a student for the development and improvement of educational sites, services,
7.3 or applications.

7.4 Subd. 6. **Certain activities not affected.** (a) This section does not limit the
7.5 authority of a law enforcement agency to obtain information from an operator as
7.6 authorized by law or pursuant to a court order.

7.7 (b) This section does not limit the ability of an operator to use student information,
7.8 including protected information, for adaptive learning or customized student learning
7.9 purposes.

7.10 (c) This section does not apply to general audience Web sites, general audience
7.11 online services, general audience online applications, or general audience mobile
7.12 applications, even if log-in credentials created for an operator's online educational service
7.13 may be used to access those general audience Web sites, services, or applications.

7.14 (d) This section does not limit Internet service providers from providing Internet
7.15 connectivity to schools or students and their families.

7.16 (e) This section does not prohibit an operator of a Web site, online service, online
7.17 application, or mobile application from marketing educational products directly to parents
7.18 or legal guardians so long as the marketing did not result from the use of protected
7.19 information obtained by the operator through the provision of services governed by this
7.20 section.

7.21 (f) This section does not impose a duty upon a provider of an electronic store, gateway,
7.22 marketplace, or other means of purchasing or downloading software or applications to
7.23 review or enforce compliance with this section on those applications or software.

7.24 (g) This section does not impose a duty on a provider of an interactive computer
7.25 service, as defined in United States Code, title 47, section 230, to review or enforce
7.26 compliance with this section by third-party content providers.

7.27 (h) This section does not impede the ability of students to download, export, or
7.28 otherwise save or maintain their own data or documents.