

# HOUSE BILL NO. 2399

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TRENT.

4376H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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*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:**

- 2 **(1) "Consultant", a professional who provides noninstructional services including,**
- 3 **but not limited to, administrative, planning, analysis, statistical, or research services to a**
- 4 **local educational agency in accordance with a contract with such local educational agency;**
- 5 **(2) "Contractor", an operator or consultant that is in possession of or has access**
- 6 **to student information, student records, or student-generated content as a result of a**
- 7 **contract with a local educational agency;**
- 8 **(3) "De-identified student information", any student information that has been**
- 9 **altered to prevent the identification of an individual student;**
- 10 **(4) "Directory information", the same meaning given to the term in 34 CFR 99.3,**
- 11 **as amended from time to time;**
- 12 **(5) "Local educational agency":**
- 13 **(a) A public board of education or other public authority legally constituted within**
- 14 **a state for either administrative control of or direction of, or to perform service functions**
- 15 **for, public elementary or secondary schools in:**
- 16 **a. A city, county, township, school district, or other political subdivision of a state;**
- 17 **or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           **b. Such combination of school districts or counties a state recognizes as an**  
19 **administrative agency for its public elementary or secondary schools; or**

20           **(b) Any other public institution or agency that has administrative control and**  
21 **direction of a public elementary or secondary school.**

22

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

25           **(6) "Operator", any person who:**

26           **(a) Operates an internet website, online service, or mobile application with actual**  
27 **knowledge that such internet website, online service, or mobile application is used for**  
28 **school purposes and was designed and marketed for school purposes, to the extent the**  
29 **person is engaged in the operation of such internet website, online service, or mobile**  
30 **application; and**

31           **(b) Collects, maintains, or uses student information;**

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

36           **(8) "Personally identifiable information" or "PII", any information that permits**  
37 **the identity of an individual to be directly or indirectly inferred, including any information**  
38 **that is linked or linkable to that individual, regardless of whether the individual is a United**  
39 **States citizen, legal permanent resident, visitor to the United States, or employee or**  
40 **contractor with the department of elementary and secondary education. The term**  
41 **"personally identifiable information" or "PII" includes sensitive PII;**

42           **(9) "School purposes", purposes that customarily take place at the direction of a**  
43 **teacher or a local educational agency or aid in the administration of school activities**  
44 **including, but not limited to, instruction in the classroom, administrative activities, and**  
45 **collaboration among students, school personnel, or parents or legal guardians of students;**

46           **(10) "Sensitive PII", personally identifiable information that, if lost, compromised,**  
47 **or disclosed without authorization, could result in substantial harm, embarrassment,**  
48 **inconvenience, or unfairness to an individual;**

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

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

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

56           **(a) Created or provided by a student or the parent or legal guardian of a student**  
57 **to the operator in the course of the student, parent, or legal guardian using the operator's**  
58 **internet website, online service, or mobile application for school purposes;**

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

61           **(c) Gathered by an operator through the operation of the operator's internet**  
62 **website, online service, or mobile application and identifies a student including, but not**  
63 **limited to, information in the student's records or electronic mail account, first or last**  
64 **name, home address, telephone number, date of birth, electronic mail address, discipline**  
65 **records, test results, grades, evaluations, criminal records, medical records, health records,**  
66 **Social Security number, biometric information, disabilities, socioeconomic information,**  
67 **food purchases, political affiliations, religious affiliations, text messages, documents,**  
68 **student identifiers, search activity, photographs, voice recordings, survey responses, or**  
69 **behavioral assessments;**

70           **(14) "Student record", any information directly related to a student that is**  
71 **maintained by a local educational agency, the state board of education, or the department**  
72 **of elementary and secondary education or any information acquired from a student**  
73 **through the use of educational software assigned to the student by a teacher or employee**  
74 **of a local educational agency;**

75           **(15) "Targeted advertising", presenting an advertisement to a student where the**  
76 **selection of the advertisement is based on student information, student records, or student-**  
77 **generated content or inferred over time from the usage of the operator's internet website,**  
78 **online service, or mobile application by such student or the retention of such student's**  
79 **online activities or requests over time for the purpose of targeting subsequent**  
80 **advertisements.**

**167.2005. 1. On and after August 28, 2018, a local educational agency shall enter**  
2 **into a written contract with a contractor any time such local educational agency shares or**  
3 **provides access to student information, student records, or student-generated content with**  
4 **such contractor. Each such contract shall include, but need not be limited to, the**  
5 **following:**

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

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

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

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

19           **(5) A statement that the contractor shall take actions designed to ensure the**  
20 **security and confidentiality of student information, student records, and student-generated**  
21 **content;**

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

26           **(7) A statement that student information, student records, and student-generated**  
27 **content shall not be retained or available to the contractor upon completion of the**  
28 **contracted services unless a student, parent, or legal guardian of a student chooses to**  
29 **establish or maintain an electronic account with the contractor for the purpose of storing**  
30 **student-generated content;**

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

33           **(9) A statement that the laws of the state of Missouri shall govern the rights and**  
34 **duties of the contractor and the local educational agency; and**

35           **(10) A statement that if any provision of the contract or the application of the**  
36 **contract is held invalid by a court of competent jurisdiction, the invalidity does not affect**  
37 **other provisions or applications of the contract that can be given effect without the invalid**  
38 **provision or application.**

39           **2. All student-generated content shall be the property of the student or the parent**  
40 **or legal guardian of the student.**

41           **3. A contractor shall implement and maintain security procedures and practices**  
42 **designed to protect student information, student records, and student-generated content**  
43 **from unauthorized access, destruction, use, modification, or disclosure that, based on the**  
44 **sensitivity of the data and the risk from unauthorized access:**

45           **(1) Use technologies and methodologies that are consistent with the guidance issued**  
46 **under Section 13402(h)(2) of Public Law 111-5, as amended from time to time;**

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

50           **(3) Otherwise meet or exceed industry standards.**

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

53           **(1) Student information, student records, or student-generated content for any**  
54 **purposes not directly related to improvement of student learning of curricular academic**  
55 **content established by the local educational agency; or**

56           **(2) Personally identifiable information.**

57           **5. Any provision of a contract entered into between a contractor and a local**  
58 **educational agency on or after August 28, 2018, that conflicts with any provision of this**  
59 **section shall be void.**

60           **6. Any contract entered into on and after August 28, 2018, that does not include a**  
61 **provision required by subsection 1 of this section shall be void, provided the local**  
62 **educational agency has given reasonable notice to the contractor and the contractor has**  
63 **failed within a reasonable time to amend the contract to include the provision required by**  
64 **subsection 1 of this section.**

65           **7. (1) Not later than five business days after executing a contract under this section,**  
66 **a local educational agency shall provide electronic notice to any student and the parent or**  
67 **legal guardian of a student affected by the contract. The notice shall:**

68           **(a) State that the contract has been executed and the date that such contract was**  
69 **executed;**

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

73           **(c) Provide a list of all types of PII to be collected and the purpose of collecting**  
74 **those types of PII; and**

75           **(d) Provide a list of all third parties with whom PII will be shared and the purpose**  
76 **of data sharing, along with a statement explaining the prohibition on third parties sharing**  
77 **data from the contractor.**

78           **(2) The local educational agency shall post such notice on its website and post a link**  
79 **to the contract or copy of the contract on its website or provide a paper copy of the**  
80 **contract immediately upon written request.**

**167.2010. 1. An operator shall:**

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

6           **(2) Delete any student information, student records, or student-generated content**  
7 **within a reasonable amount of time if a student, parent or legal guardian of a student, or**  
8 **local educational agency who has the right to control such student information requests the**  
9 **deletion of such student information, student records, or student-generated content.**

**10           2. An operator shall not knowingly:****11           (1) Engage in:**

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

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

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

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

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

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

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

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

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

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

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

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

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

43           **(1) To maintain, support, improve, evaluate, or diagnose the operator’s internet**  
44 **website, online service, or mobile application;**

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

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

52           **4. An operator may use de-identified student information or aggregated student**  
53 **information:**

54           **(1) To develop or improve the operator’s internet website, online service, or mobile**  
55 **application or other internet websites, online services, or mobile applications owned by the**  
56 **operator; or**

57           **(2) To demonstrate or market the effectiveness of the operator’s internet website,**  
58 **online service, or mobile application.**

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

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

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

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

69           **(3) Impose a duty upon a provider of an interactive computer service, as defined**  
70 **in 47 U.S.C. Section 230, as amended from time to time, to ensure compliance with this**

71 section by third-party information content providers, as defined in 47 U.S.C. Section 230,  
72 as amended from time to time;

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

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

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

83 (7) Apply to internet websites, online services, or mobile applications that are  
84 designed and marketed for use by individuals generally, even if the account credentials  
85 created for an operator's internet website, online service, or mobile application may be  
86 used to access internet websites, online services, or mobile applications that are designed  
87 and marketed for school purposes.

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

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

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

11 (2) Upon the discovery of a breach of security that results in the unauthorized  
12 release, disclosure, or acquisition of directory information, student records, or student-  
13 generated content, a contractor shall notify, without unreasonable delay, but not more than  
14 sixty days after such discovery, the local educational agency of such breach of security.  
15 During such sixty-day period, the contractor may:

16 (a) Conduct an investigation to determine the nature and scope of such  
17 unauthorized release, disclosure, or acquisition and the identity of the students whose  
18 directory information, student records, or student-generated content is involved in such  
19 unauthorized release, disclosure, or acquisition; or



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

21 (3) Upon receipt of notice of a breach of security under subdivision (1) or (2) of this  
22 subsection, a local educational agency shall electronically notify, not later than forty-eight  
23 hours after receipt of such notice, the student and the parents or legal guardians of the  
24 student whose student information, student records, or student-generated content is  
25 involved in such breach of security. The local educational agency shall post such notice on  
26 the local educational agency's internet website.

27 2. (1) Upon the discovery of a breach of security that results in the unauthorized  
28 release, disclosure, or acquisition of student information, student records, or student-  
29 generated content, an operator that is in possession of or maintains student information,  
30 student records, or student-generated content as a result of a student's use of such  
31 operator's internet website, online service, or mobile application shall:

32 (a) Notify, without unreasonable delay, but not more than thirty days after such  
33 discovery, the student or the parents or legal guardians of such student of any breach of  
34 security that results in the unauthorized release, disclosure, or acquisition of student  
35 information, excluding any directory information contained in such student information,  
36 of such student; and

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

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

42 (a) Conduct an investigation to determine the nature and scope of such  
43 unauthorized release, disclosure, or acquisition and the identity of the students whose  
44 student information, student records, or student-generated content is involved in such  
45 unauthorized release, disclosure, or acquisition; or

46 (b) Restore the reasonable integrity of the operator's data system.

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

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

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

9           **(3) Reasonable penalties for violations of the provisions of sections 167.2000 to**  
10 **167.2015, such as restricting a contractor or operator from accessing or collecting student**  
11 **information, student records, or student-generated content;**

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

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

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

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

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

22           **(a) Improve student data contracting practices and compliance, including a**  
23 **statewide template for use by local educational agencies;**

24           **(b) Increase school employee awareness of student data security best practices,**  
25 **including model training components;**

26           **(c) Develop local educational agency-wide lists of approved software applications**  
27 **and internet websites; and**

28           **(d) Increase the availability and accessibility of information on student data privacy**  
29 **for educators and parents and legal guardians of students; and**

30           **(9) Any other issue involving student data security that the task force deems**  
31 **relevant.**

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

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

35           **(2) Two members appointed by the president pro tempore of the senate, one of**  
36 **whom is a representative or member of a state teachers association and one of whom is a**  
37 **high school student in the state of Missouri;**

38           **(3) Two members appointed by the majority floor leader of the house of**  
39 **representatives, one of whom is a representative of a contractor and one of whom is an**  
40 **expert in information technology systems;**

41           **(4) Two members appointed by the majority floor leader of the senate, one of whom**  
42 **is a representative or member of an organization formed to engage parents in school**  
43 **activities and one of whom is a representative or member of a labor union that represents**  
44 **teachers;**

45           **(5) Two members appointed by the minority floor leader of the house of**  
46 **representatives, one of whom is a student privacy advocate and one of whom is a**  
47 **representative or member of an organization that supports school boards;**

48           **(6) Two members appointed by the minority floor leader of the senate, one of whom**  
49 **is a representative of an organization that serves the needs of school superintendents and**  
50 **school administrators and one of whom is a representative or member of an organization**  
51 **that serves the needs of elementary school principals and assistant principals;**

52           **(7) The attorney general, or the attorney general's designee; and**

53           **(8) The commissioner of education, or the commissioner's designee.**

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

56           **4. The speaker of the house of representatives and the president pro tempore of the**  
57 **senate shall select the chairs of the task force from among the members of the task force.**  
58 **Such chairs shall schedule the first meeting of the task force, which shall be held not later**  
59 **than sixty days after the effective date of this section.**

60           **5. Before January 31, 2019, the task force shall submit a report on its findings and**  
61 **recommendations to the joint committee on education. The task force shall terminate on**  
62 **the date that it submits such report or January 31, 2019, whichever is later.**

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