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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2353

- 03/22/2021 Authored by Feist and Sundin
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law
- 02/10/2022 Adoption of Report: Placed on the General Register
Read for the Second Time
- 03/14/2022 Calendar for the Day
Read for the Third Time
- 05/17/2022 Passed by the House and transmitted to the Senate
Passed by the Senate as Amended and returned to the House
The House concurred in the Senate Amendments and repassed the bill as Amended by the Senate

1.1 A bill for an act

1.2 relating to data practices; modifying certain education data provisions; classifying

1.3 education support service data; amending Minnesota Statutes 2020, section 13.32,

1.4 subdivision 1, by adding subdivisions; proposing coding for new law in Minnesota

1.5 Statutes, chapter 13.

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

1.7 Section 1. Minnesota Statutes 2020, section 13.32, subdivision 1, is amended to read:

1.8 Subdivision 1. **Definitions.** As used in this section:

1.9 (a) "Educational data" means data on individuals maintained by a public educational

1.10 agency or institution or by a person acting for the agency or institution which relates to a

1.11 student.

1.12 Records of instructional personnel which are in the sole possession of the maker thereof

1.13 and are not accessible or revealed to any other individual except a substitute teacher, and

1.14 are destroyed at the end of the school year, shall not be deemed to be government data.

1.15 Records of a law enforcement unit of a public educational agency or institution which

1.16 are maintained apart from education data and are maintained solely for law enforcement

1.17 purposes, and are not disclosed to individuals other than law enforcement officials of the

1.18 jurisdiction are not educational data; provided, that education records maintained by the

1.19 educational agency or institution are not disclosed to the personnel of the law enforcement

1.20 unit. The University of Minnesota police department is a law enforcement agency for

1.21 purposes of section 13.82 and other sections of Minnesota Statutes dealing with law

1.22 enforcement records. Records of organizations providing security services to a public

1.23 educational agency or institution must be administered consistent with section 13.861.

2.1 Records relating to a student who is employed by a public educational agency or
2.2 institution which are made and maintained in the normal course of business, relate exclusively
2.3 to the individual in that individual's capacity as an employee, and are not available for use
2.4 for any other purpose are classified pursuant to section 13.43.

2.5 (b) "Juvenile justice system" includes criminal justice agencies and the judiciary when
2.6 involved in juvenile justice activities.

2.7 (c) "Parent" means a parent of a student and includes a natural parent, a guardian, or an
2.8 individual acting as a parent in the absence of a parent or a guardian.

2.9 (d) "School-issued device" means hardware or software that a public educational agency
2.10 or institution, acting independently or with a technology provider, provides to an individual
2.11 student for that student's dedicated personal use. A school-issued device includes a device
2.12 issued through a one-to-one program.

2.13 ~~(e)~~ (e) "Student" means an individual currently or formerly enrolled or registered,
2.14 applicants for enrollment or registration at a public educational agency or institution, or
2.15 individuals who receive shared time educational services from a public agency or institution.

2.16 ~~(d)~~ (f) "Substitute teacher" means an individual who performs on a temporary basis the
2.17 duties of the individual who made the record, but does not include an individual who
2.18 permanently succeeds to the position of the maker of the record.

2.19 (g) "Technology provider" means a person who:

2.20 (1) contracts with a public educational agency or institution, as part of a one-to-one
2.21 program or otherwise, to provide a school-issued device for student use; and

2.22 (2) creates, receives, or maintains educational data pursuant or incidental to a contract
2.23 with a public educational agency or institution.

2.24 **EFFECTIVE DATE.** This section is effective for the 2022-2023 school year and later.

2.25 Sec. 2. Minnesota Statutes 2020, section 13.32, is amended by adding a subdivision to
2.26 read:

2.27 Subd. 13. **Technology providers.** (a) A technology provider is subject to the provisions
2.28 of section 13.05, subdivision 11.

2.29 (b) All educational data created, received, maintained, or disseminated by a technology
2.30 provider pursuant or incidental to a contract with a public educational agency or institution
2.31 are not the technology provider's property.

3.1 (c) If educational data maintained by the technology provider are subject to a breach of
3.2 the security of the data, as defined in section 13.055, the technology provider must, following
3.3 discovery of the breach, disclose to the public educational agency or institution all
3.4 information necessary to fulfill the requirements of section 13.055.

3.5 (d) Unless renewal of the contract is reasonably anticipated, within 90 days of the
3.6 expiration of the contract, a technology provider must destroy or return to the appropriate
3.7 public educational agency or institution all educational data created, received, or maintained
3.8 pursuant or incidental to the contract.

3.9 (e) A technology provider must not sell, share, or disseminate educational data, except
3.10 as provided by this section or as part of a valid delegation or assignment of its contract with
3.11 a public educational agency or institution. An assignee or delegee that creates, receives, or
3.12 maintains educational data is subject to the same restrictions and obligations under this
3.13 section as the technology provider.

3.14 (f) A technology provider must not use educational data for any commercial purpose,
3.15 including but not limited to marketing or advertising to a student or parent. For purposes
3.16 of this paragraph, a commercial purpose does not include providing the specific services
3.17 contracted for by a public educational agency or institution. Nothing in this subdivision
3.18 prohibits the operator's use of deidentified, aggregate information for improving, maintaining,
3.19 developing, supporting, or diagnosing the operator's site, service, or operation.

3.20 (g) A contract between a technology provider and a public educational agency or
3.21 institution must include requirements to ensure appropriate security safeguards for educational
3.22 data. The contract must require that:

3.23 (1) the technology provider's employees or contractors have access to educational data
3.24 only if authorized; and

3.25 (2) the technology provider's employees or contractors may be authorized to access
3.26 educational data only if access is necessary to fulfill the official duties of the employee or
3.27 contractor.

3.28 (h) Within 30 days of the start of each school year, a public educational agency or
3.29 institution must give parents and students direct and timely notice, by United States mail,
3.30 e-mail, or other direct form of communication, of any curriculum, testing, or assessment
3.31 technology provider contract affecting a student's educational data. The notice must:

3.32 (1) identify each curriculum, testing, or assessment technology provider with access to
3.33 educational data;

4.1 (2) identify the educational data affected by the curriculum, testing, or assessment
4.2 technology provider contract; and

4.3 (3) include information about the contract inspection and provide contact information
4.4 for a school department to which a parent or student may direct questions or concerns
4.5 regarding any program or activity that allows a curriculum, testing, or assessment technology
4.6 provider to access a student's educational data.

4.7 (i) A public educational agency or institution must provide parents and students an
4.8 opportunity to inspect a complete copy of any contract with a technology provider.

4.9 **EFFECTIVE DATE.** This section is effective for the 2022-2023 school year and later.

4.10 Sec. 3. Minnesota Statutes 2020, section 13.32, is amended by adding a subdivision to
4.11 read:

4.12 Subd. 14. **School-issued devices.** (a) Except as provided in paragraph (b), a government
4.13 entity or technology provider must not electronically access or monitor:

4.14 (1) any location-tracking feature of a school-issued device;

4.15 (2) any audio or visual receiving, transmitting, or recording feature of a school-issued
4.16 device; or

4.17 (3) student interactions with a school-issued device, including but not limited to
4.18 keystrokes and web-browsing activity.

4.19 (b) A government entity or technology provider may only engage in activities prohibited
4.20 by paragraph (a) if:

4.21 (1) the activity is limited to a noncommercial educational purpose for instruction,
4.22 technical support, or exam-proctoring by district employees, student teachers, staff contracted
4.23 by a district, a vendor, or the Department of Education, and notice is provided in advance;

4.24 (2) the activity is permitted under a judicial warrant;

4.25 (3) the public educational agency or institution is notified or becomes aware that the
4.26 device is missing or stolen;

4.27 (4) the activity is necessary to respond to an imminent threat to life or safety and the
4.28 access is limited to that purpose;

4.29 (5) the activity is necessary to comply with federal or state law, including but not limited
4.30 to section 121A.031; or

5.1 (6) the activity is necessary to participate in federal or state funding programs, including
5.2 but not limited to the E-Rate program.

5.3 (c) If a government entity or technology provider interacts with a school-issued device
5.4 as provided in paragraph (b), clause (4), it must, within 72 hours of the access, notify the
5.5 student to whom the school-issued device was issued or that student's parent and provide a
5.6 written description of the interaction, including which features of the device were accessed
5.7 and a description of the threat. This notice is not required at any time when the notice itself
5.8 would pose an imminent threat to life or safety, but must instead be given within 72 hours
5.9 after that imminent threat has ceased.

5.10 **EFFECTIVE DATE.** This section is effective for the 2022-2023 school year and later.

5.11 Sec. 4. Minnesota Statutes 2020, section 13.32, is amended by adding a subdivision to
5.12 read:

5.13 Subd. 15. **Application to postsecondary institutions; exemption.** (a) A postsecondary
5.14 institution is exempt from subdivisions 13 and 14. This exemption extends to a technology
5.15 provider for purposes of a contract with a postsecondary institution.

5.16 (b) Subdivisions 13 and 14 shall not apply to a nonprofit national assessment provider
5.17 solely for purposes of providing access to employment, educational scholarships and
5.18 programs, financial aid, or postsecondary educational opportunities, if the provider secures
5.19 express digital or written consent of the student or the student's parent or guardian, in
5.20 response to clear and conspicuous notice.

5.21 **EFFECTIVE DATE.** This section is effective for the 2022-2023 school year and later.

5.22 Sec. 5. **[13.463] EDUCATION SUPPORT SERVICES DATA.**

5.23 Subdivision 1. **Definition.** As used in this section, "education support services data"
5.24 means data on individuals collected, created, maintained, used, or disseminated relating to
5.25 programs administered by a government entity or entity under contract with a government
5.26 entity designed to eliminate disparities and advance equities in educational achievement
5.27 for youth by coordinating services available to participants, regardless of the youth's
5.28 involvement with other government services. Education support services data does not
5.29 include welfare data under section 13.46.

5.30 Subd. 2. **Classification.** Unless otherwise provided by law, all education support services
5.31 data are private data on individuals and must not be disclosed except according to section
5.32 13.05 or a court order.