

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 2604

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DATE	D-PG	OFFICIAL STATUS
03/14/2016	5019	Introduction and first reading Referred to Education
03/24/2016	5247a	Comm report: To pass as amended and re-refer to Judiciary
04/01/2016		Comm report: To pass as amended and re-refer to Finance

A bill for an act

1.1 relating to data privacy; education; establishing student-user privacy in education
 1.2 rights; requiring online educational services to comply with security and privacy
 1.3 standards; prohibiting use of student information for targeted marketing or
 1.4 creation of student profiles; amending Minnesota Statutes 2014, sections 13.321,
 1.5 by adding a subdivision; 120B.11, subdivision 4; 120B.30, subdivision 2, by
 1.6 adding subdivisions; 120B.31, subdivision 5, by adding subdivisions; Minnesota
 1.7 Statutes 2015 Supplement, sections 120B.30, subdivision 4; 120B.301; proposing
 1.8 coding for new law in Minnesota Statutes, chapter 125B.
 1.9

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 4, is amended to read:

1.16 Subd. 4. **Site team.** A school ~~may~~ must establish a site team to develop and
 1.17 implement strategies and education effectiveness practices to improve instruction,
 1.18 curriculum, cultural competencies, including cultural awareness and cross-cultural
 1.19 communication, and student achievement at the school site, consistent with subdivision
 1.20 2. The site team must include an equal number of teachers and administrators, as well
 1.21 as at least one parent. The site team advises the board and the advisory committee
 1.22 about developing the annual budget ~~and revising~~; creates an instruction and curriculum
 1.23 improvement plan that aligns curriculum, assessment of student progress, and growth in
 1.24 meeting state and district academic standards and instruction; and coordinates with other
 1.25 district site teams to select the standardized assessments that the school will administer

2.1 to students, in addition to required assessments under section 120B.30, and applicable
2.2 federal law.

2.3 Sec. 3. Minnesota Statutes 2014, section 120B.30, subdivision 2, is amended to read:

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

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

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

2.9 and

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

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

2.14 (c) An entity responsible for evaluating and scoring testing contracted for under
2.15 paragraph (a) must agree that all writing assessments are scored by at least two
2.16 Minnesota-licensed teachers who have been licensed by the state of Minnesota to teach
2.17 language arts, or teacher licensure candidates who have achieved a passing score on the
2.18 basic skills exams in reading and writing adopted by the Board of Teaching.

2.19 Sec. 4. Minnesota Statutes 2015 Supplement, section 120B.30, subdivision 4, is
2.20 amended to read:

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

2.30 **EFFECTIVE DATE.** This section is effective for the 2018-2019 school year and
2.31 later.

3.1 Sec. 5. Minnesota Statutes 2014, section 120B.30, is amended by adding a subdivision
3.2 to read:

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

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

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

3.12 Sec. 7. Minnesota Statutes 2015 Supplement, section 120B.301, is amended to read:

3.13 **120B.301 LIMITS ON LOCAL TESTING.**

3.14 (a) For students in grades 1 through 6, the cumulative total amount of time spent
3.15 taking locally adopted districtwide or schoolwide assessments must not exceed ten hours
3.16 per school year. For students in grades 7 through 12, the cumulative total amount of time
3.17 spent taking locally adopted districtwide or schoolwide assessments must not exceed 11
3.18 hours per school year. For purposes of this paragraph, International Baccalaureate and
3.19 Advanced Placement exams are not considered locally adopted assessments.

3.20 (b) A district or charter school is exempt from the requirements of paragraph (a),
3.21 if the district or charter school, in consultation with the exclusive representative of the
3.22 teachers or other teachers if there is no exclusive representative of the teachers, decides
3.23 to exceed a time limit in paragraph (a) and includes in the report required under section
3.24 120B.11, subdivision 5.

3.25 (c) A district or charter school must, prior to the first day of each school year, publish
3.26 on their Web site a comprehensive calendar of standardized tests to be administered in
3.27 the district or charter school. The calendar must provide the rationale for administering
3.28 each assessment and whether the assessment is a local option, or a state or federally
3.29 required assessment.

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

3.32 Subd. 4a. **Student participation.** The commissioner shall create and publish a
3.33 form for parents to complete if they refuse for their child to participate in standardized

4.1 testing. The form must state why there are academic standards, if the tests are aligned with
4.2 those standards, and what consequences, if any, the school may face if students do not
4.3 participate in standardized testing. This form must request a reason for the refusal.

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

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

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

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

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

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

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

4.24 (c) "Operator" means, to the extent it is operating in this capacity, a person who
4.25 operates an online educational service with actual knowledge that it is used primarily for
4.26 school purposes and was designed and marketed for these purposes. Operator includes
4.27 a vendor.

4.28 (d) "Protected information" means personally identifiable information or materials
4.29 or information that is linked to personally identifiable information or materials, in any
4.30 media or format that is not publicly available, and:

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

5.1 (2) is created or provided by an employee or agent of the school to an operator in the
 5.2 course of the use of the operator's site, service, or application for school purposes; or

5.3 (3) is gathered by an operator through the operation of an online educational
 5.4 service and personally identifies a student, including, but not limited to, information
 5.5 in the student's educational record or e-mail, first and last name, home address,
 5.6 telephone number, e-mail address, or other information that allows physical or online
 5.7 contact, discipline records, test results, special education data, juvenile records, grades,
 5.8 evaluations, criminal records, health records, Social Security number, biometric
 5.9 information, disabilities, socioeconomic information, food purchases, political affiliations,
 5.10 religious information, text messages, documents, student identifiers, search activity,
 5.11 photos, voice recordings, or geolocation information.

5.12 (e) "School purposes" means purposes that (1) are directed by or customarily take
 5.13 place at the direction of the school, teacher, or school district or aid in the administration
 5.14 of school activities, including instruction in the classroom or at home, administrative
 5.15 activities, and collaboration between students, school personnel, or parents or legal
 5.16 guardians, or (2) are for the use and benefit of the school.

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

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

5.20 (h) "Targeted advertising" means presenting advertisements to a student where
 5.21 the advertisement is selected based on information obtained or inferred over time from
 5.22 that student's online behavior, usage of applications, or covered information. It does not
 5.23 include advertising to a student at an online location based upon that student's current
 5.24 visit to that location, or in response to that student's request for information or feedback,
 5.25 without the retention of that student's online activities or requests over time for the
 5.26 purpose of targeting subsequent ads.

5.27 **Subd. 2. Prohibited activities; targeted advertising; creation of student profiles;**
 5.28 **sale or unauthorized disclosure of information.** (a) An operator must not engage in
 5.29 any of the following activities:

5.30 (1)(i) targeted advertising on the operator's online educational service; or

5.31 (ii) targeted advertising on any other site, service, or application when the targeting
 5.32 of the advertising is based upon information, including protected information and unique
 5.33 identifiers, that the operator has acquired or created because of the use of that operator's
 5.34 online educational service;

5.35 (2) gather, use, or share information, including persistent unique identifiers, acquired
 5.36 or created by the operator's online educational service, to create a profile about a student,

6.1 except in furtherance of school purposes. "Create a profile" does not include the collection
6.2 and retention of account information that remains under the control of the student, the
6.3 student's parent or guardian, or kindergarten through grade 12 school;

6.4 (3) sell a student's information, including protected information. This prohibition
6.5 does not apply to the purchase, merger, or other type of acquisition of an operator by
6.6 another person, provided that the operator or successor continues to be subject to this
6.7 section with respect to previously acquired student information or to national assessment
6.8 providers if the provider secures the express written consent of the parent or student, given
6.9 in response to clear and conspicuous notice, solely to provide access to employment,
6.10 educational scholarships or financial aid, or postsecondary educational opportunities; or

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

6.12 (i) is made in furtherance of the educational purpose of the site, service, or
6.13 application, provided the recipient of the protected information must not further disclose
6.14 the information unless done to allow or improve operability and functionality of the
6.15 operator's online educational service;

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

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

6.19 (iv) is for a school, educational, or employment purpose requested by the student
6.20 or the student's parent or guardian, provided that the information is not used or further
6.21 disclosed for any other purposes; or

6.22 (v) is made pursuant to a contract between the operator and a service provider. A
6.23 contract must prohibit the service provider from using protected information for any
6.24 purpose other than providing the contracted service to, or on behalf of, the operator;
6.25 prohibit the service provider from disclosing protected information provided by the
6.26 operator to third parties; and require the service provider to implement and maintain
6.27 reasonable security procedures and practices as provided in subdivision 3.

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

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

6.32 (1) implement and maintain reasonable security procedures and practices appropriate
6.33 to the nature of the protected information in order to protect that information from
6.34 unauthorized access, destruction, use, modification, or disclosure; and

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

7.1 Subd. 4. **Permissible disclosures.** Notwithstanding subdivision 2, paragraph (a),
7.2 clause (4), an operator may use or disclose protected information of a student under the
7.3 following circumstances:

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

7.7 (2) as long as no covered information is used for advertising or to create a profile on
7.8 the student for purposes other than educational purposes, for legitimate research purposes:

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

7.11 (ii) as allowed by state or federal law and in furtherance of educational purposes or
7.12 postsecondary educational purposes; and

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

7.15 Subd. 5. **Use of information by operator.** This section does not prohibit an
7.16 operator from doing any of the following:

7.17 (1) using protected information within the operator's site, service, or application or
7.18 other sites, services, or applications owned by the operator to improve educational products;

7.19 (2) using protected information that is not associated with an identified student to
7.20 demonstrate the effectiveness of the operator's products or services, including marketing;

7.21 (3) sharing aggregate information that does not directly, indirectly, or in combination
7.22 with other information identify a student for the development and improvement of
7.23 educational sites, services, or applications;

7.24 (4) using recommendation engines to recommend to a student either of the following:

7.25 (i) additional content relating to an educational, other learning, or employment
7.26 opportunity purpose within an online site, service, or application if the recommendation is
7.27 not determined in whole or in part by payment or other consideration from a third party; or

7.28 (ii) additional services relating to an educational, other learning, or employment
7.29 opportunity purpose within an online site, service, or application if the recommendation is
7.30 not determined in whole or in part by payment or other consideration from a third party; or

7.31 (5) responding to a student's request for information or for feedback without the
7.32 information or response being determined in whole or in part by payment or other
7.33 consideration from a third party.

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

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

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

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

8.10 (e) This section does not prohibit an operator of a Web site, online service, online
8.11 application, or mobile application from the general marketing of educational products to
8.12 parents or legal guardians so long as the marketing is not based on the use of protected
8.13 information obtained by the operator through the provision of services governed by this
8.14 section.

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

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

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