

SENATE BILL NO. 403—SENATOR DENIS

MARCH 20, 2019

Referred to Committee on Education

SUMMARY—Revises provisions relating to data privacy for pupils. (BDR 34-309)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; requiring each public and private school to provide certain information to a pupil or the parent or legal guardian of a pupil before providing technology to a pupil or allowing a pupil to use a school service; requiring a pupil or parent or legal guardian of a pupil to consent before providing technology to the pupil or allowing the pupil to use a school service; revising provisions relating to school service providers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally controls the manner in which a school service provider may use the personally identifiable information of a pupil and prohibits a school service provider from engaging in targeted advertising. (NRS 388.292) **Section 2** of this bill revises the prohibition on targeted advertising by a school service provider to prohibit the school service provider from engaging in targeted advertising within its school service or on any other Internet website, online service or mobile application if the targeted advertising is based upon information gathered from its school service. **Section 2** also authorizes a school service provider to use the personally identifiable information of a pupil to perform certain research which is required or authorized by federal or state law. **Section 3** of this bill authorizes a school service provider to use aggregated, deidentified information derived from the personally identifiable information of pupils to develop and improve the products of the school service provider.

Section 1 of this bill requires a public school to provide information regarding the risks associated with the collection of covered information of a pupil to a pupil or the parent or legal guardian of a pupil before the public school allows the pupil to use any school service or provides any item of technology to the pupil. **Section 1** also requires the written consent of a pupil or the parent or legal guardian of a pupil before the public school allows the pupil to use any school service or provides any



item of technology to the pupil. If written consent is not received, **section 1** requires the public school to withhold the school service or item of technology from the pupil and provide an alternative method for the pupil to receive the same educational benefit. **Sections 5-10** of this bill establish similar provisions for private schools.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 388 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before a public school allows a pupil to use any school service or provides a pupil with any technology, the public school must:

(a) Provide information to the pupil or, if the pupil is less than 18 years of age, the parent or legal guardian of the pupil, which fully describes the risks associated with the collection of covered information as a result of the use of a school service or any technology provided by the public school; and

(b) Request the pupil or, if the pupil is less than 18 years of age, the parent or legal guardian of the pupil, to consent in writing to the use of each school service or item of technology provided by the public school.

2. If a pupil or, if the pupil is less than 18 years of age, the parent or legal guardian of a pupil, does not provide the consent required by paragraph (b) of subsection 1 for the use of a school service or item of technology, the public school:

(a) Shall not allow the pupil to use the school service or item of technology;

(b) Shall not penalize or in any way discriminate against the pupil because the pupil does not use the school service or item of technology; and

(c) Shall provide an alternative method for the pupil to receive the same educational benefit as would have been provided by use of the school service or item of technology.

3. Nothing in this section shall be construed to require the consent of a pupil or the parent or legal guardian of a pupil before information relating to the pupil is entered into or used as part of the automated system of accountability information for Nevada established pursuant to NRS 385A.800 or the statewide longitudinal data system maintained pursuant to paragraph (e) of subsection 4 of NRS 223.820.

4. As used in this section:



(a) "Covered information" means the personally identifiable information of a pupil or any information that is linked to the personally identifiable information of a pupil which is:

(1) Created by or provided to a school service provider by a pupil or the parent or legal guardian of a pupil through the use of a school service;

(2) Created by or provided to a school service provider by an employee of a public school, a school district or the governing body of a charter school; or

(3) Gathered by a school service provider from any other source and associated with the identity of a pupil.

(b) "Personally identifiable information" has the meaning ascribed to it in 34 C.F.R. § 99.3.

(c) "School service" has the meaning ascribed to it in NRS 388.283.

(d) "School service provider" has the meaning ascribed to it in NRS 388.284.

Sec. 2. NRS 388.292 is hereby amended to read as follows:

388.292 1. Except as otherwise provided in subsections 2 and 5, a school service provider may collect, use, allow access to or transfer personally identifiable information concerning a pupil only:

(a) For purposes inherent to the use of a school service by a teacher in a classroom or for the purposes authorized by the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable, so long as it is authorized by federal and state law;

(b) If required by federal or state law;

(c) In response to a subpoena issued by a court of competent jurisdiction;

(d) To protect the safety of a user of the school service; or

(e) With the consent of any person required in a policy of the school district, charter school or university school for profoundly gifted pupils, as applicable, or, if none, with the consent of the pupil, if the pupil is at least 18 years of age, or the parent or legal guardian of the pupil if the pupil is less than 18 years of age.

2. A school service provider may transfer personally identifiable information concerning a pupil to a third-party service provider if the school service provider provides notice to any person designated in a policy of the school district, charter school or university school for profoundly gifted pupils, as applicable, to receive such notice or, if none, to the pupil, if the pupil is at least 18 years of age, or the parent or guardian of the pupil and:



(a) Contractually prohibits the third-party service provider from using any such information for any purpose other than providing the contracted school services to, or on behalf of, the school service provider;

(b) Prohibits the third-party service provider from disclosing any personally identifiable information concerning a pupil unless the disclosure is authorized pursuant to subsection 1; and

(c) Requires the third-party service provider to comply with the requirements of NRS 388.281 to 388.296, inclusive ~~H~~, *and section 1 of this act.*

3. A school service provider shall delete any personally identifiable information concerning a pupil that is collected or maintained by the school service provider and that is under the control of the school service provider within a reasonable time not to exceed 30 days after receiving a request from the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable. The board of trustees or the governing body, as applicable, must have a policy which allows a pupil who is at least 18 years of age or the parent or legal guardian of any pupil to review such information and request that such information about the pupil be deleted. The school service provider shall delete such information upon the request of the parent or legal guardian of a pupil if no such policy exists.

4. Any agreement entered into by a school service provider that provides for the disclosure of personally identifiable information must require that the person or governmental entity to whom the information will be disclosed abide by the requirements imposed pursuant to this section.

5. A school service provider shall not:

(a) Use personally identifiable information to engage in targeted advertising ~~H~~ *within the school service or on any other Internet website, online service or mobile application if the targeted advertising is based upon any information acquired from use of the school service.*

(b) Except as otherwise provided in this paragraph, sell personally identifiable information concerning a pupil. A school service provider may transfer personally identifiable information concerning pupils to an entity that purchases, merges with or otherwise acquires the school service and the acquiring entity becomes subject to the requirements of NRS 388.281 to 388.296, inclusive, *and section 1 of this act*, and any contractual provisions between the school service provider and the board of trustees of a school district, the governing body of a charter school or the



governing body of a university school for profoundly gifted pupils, as applicable, governing such information.

(c) Use personally identifiable information concerning a pupil to create a profile of the pupil for any purpose not related to the instruction of the pupil provided by the school without the consent of the appropriate person described in paragraph (e) of subsection 1.

(d) Use personally identifiable information concerning a pupil in a manner that is inconsistent with any contract governing the activities of the school service provider for the school service in effect at the time the information is collected or in a manner that violates any of the provisions of NRS 388.281 to 388.296, inclusive ~~H~~, and section 1 of this act.

(e) Knowingly retain, without the consent of the appropriate person described in paragraph (e) of subsection 1, personally identifiable information concerning a pupil beyond the period authorized by the contract governing the activities of the school service provider.

6. This section does not prohibit the use of personally identifiable information concerning a pupil that is collected or maintained by a school service provider for the purposes of:

(a) Adaptive learning or providing personalized or customized education;

(b) Maintaining or improving the school service;

(c) Recommending additional content or services within a school service;

(d) Responding to a request for information by a pupil;

(e) Soliciting feedback regarding a school service; ~~or~~

(f) *Performing research which:*

(1) Is required by federal or state law; or

(2) Is authorized by federal or state law, is performed under the direction of a public school, school district or the Department and does not use any personally identifiable information concerning a pupil for any purpose relating to advertising or creating a profile of the pupil for any purpose not related to the instruction of the pupil; or

(g) Allowing a pupil who is at least 18 years of age or the parent or legal guardian of any pupil to download, transfer, or otherwise maintain data concerning a pupil.

7. A school service provider that violates the provisions of this section is subject to a civil penalty in an amount not to exceed \$5,000 per violation. The Attorney General may recover the penalty in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction.



Sec. 3. NRS 388.295 is hereby amended to read as follows:

388.295 A school service provider may use and disclose information derived from personally identifiable information concerning a pupil to demonstrate the effectiveness of the products or services of the school service provider, including, without limitation, for use in advertising or marketing regarding the school service, *and to develop and improve a school service or any other Internet website, online service or mobile application of the school service provider* so long as the information is aggregated or is presented in a manner which does not disclose the identity of the pupil about whom the information relates.

Sec. 4. Chapter 394 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 10, inclusive, of this act.

Sec. 5. *As used in sections 5 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 6 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 6. *“Covered information” means the personally identifiable information of a pupil or any information that is linked to the personally identifiable information of a pupil which is:*

1. Created by or provided to a school service provider by a pupil or the parent or legal guardian of a pupil through the use of a school service;

2. Created by or provided to a school service provider by an employee of a private school or the governing body of a private school; or

3. Gathered by a school service provider from any other source and associated with the identity of a pupil.

Sec. 7. *“Personally identifiable information” has the meaning ascribed to it in 34 C.F.R. § 99.3.*

Sec. 8. 1. *“School service” means an Internet website, online service or mobile application that:*

(a) Collects or maintains personally identifiable information concerning a pupil;

(b) Is used primarily for educational purposes; and

(c) Is designed and marketed for use in private schools and is used at the direction of teachers and other educational personnel.

2. The term does not include:

(a) An Internet website, online service or mobile application that is designed or marketed for use by a general audience, even if the school service is also marketed to private schools;



(b) *An internal database, system or program maintained or operated by a private school or the governing body of a private school;*

(c) *A school service for which a school service provider has:*

(1) *Been designated by the governing body of a private school as a school official pursuant to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g;*

(2) *Entered into a contract with the governing body of a private school; and*

(3) *Agreed to comply with and be subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, relating to personally identifiable information; or*

(d) *Any instructional programs purchased by the governing body of a private school.*

Sec. 9. *“School service provider” means a person that operates a school service, to the extent the provider is operating in that capacity.*

Sec. 10. 1. *Before a private school allows a pupil to use any school service or provides a pupil with any technology, the private school must:*

(a) *Provide information to the pupil or, if the pupil is less than 18 years of age, the parent or legal guardian of the pupil, which fully describes the risks associated with the collection of covered information as a result of the use of a school service or any technology provided by the private school; and*

(b) *Request the pupil or, if the pupil is less than 18 years of age, the parent or legal guardian of the pupil, to consent in writing to the use of each school service or item of technology provided by the private school.*

2. *If a pupil or, if the pupil is less than 18 years of age, the parent or legal guardian of a pupil, does not provide the consent required by paragraph (b) of subsection 1 for the use of a school service or item of technology, the private school:*

(a) *Shall not allow the pupil to use the school service or item of technology;*

(b) *Shall not penalize or in any way discriminate against the pupil because the pupil does not use the school service or item of technology; and*

(c) *Shall provide an alternative method for the pupil to receive the same educational benefit as would have been provided by use of the school service or item of technology.*

Sec. 11. *This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other*



- 1 administrative tasks that are necessary to carry out the provisions of
- 2 this act and on January 1, 2020, for all other purposes.

