

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 15-0279.02 Jane Ritter x4342

SENATE BILL 15-173

SENATE SPONSORSHIP

Holbert,

HOUSE SPONSORSHIP

Pabon,

Senate Committees
Education

House Committees
Education

A BILL FOR AN ACT

101 CONCERNING EXPANDING PROTECTIONS FOR STUDENT DATA SECURITY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill adds additional protections to existing law concerning student data privacy and transparency. A vendor is defined as an operator of a web site, on-line service, on-line application, or mobile application (site or service) with knowledge that the site or service is used primarily for public school purposes and was designed and marketed for public school purposes.

The bill prohibits vendors from:

! Engaging in targeted advertising if the targeting is based

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 23, 2015

SENATE
3rd Reading Unamended
March 18, 2015

SENATE
Amended 2nd Reading
March 17, 2015

upon any student information acquired because of the use of a vendor's site or service;

- ! Using information acquired through the site or service to create a profile of a student that is not in furtherance of a public school purpose;
- ! Selling a student's information; and
- ! Disclosing covered student information unless specific requirements are met.

The bill allows vendors to:

- ! Implement and maintain reasonable security procedures and practices;
- ! Delete a student's data at the request of the school or school district with control of the data;
- ! Disclose covered student information if required by state or federal law;
- ! Disclose covered student information for legitimate research purposes, provided applicable requirements of state and federal law are met;
- ! Disclose deidentified covered student information in order to improve the vendor's sites or services or other educational products or for marketing uses.

The bill does not:

- ! Limit the authority of law enforcement to access any information allowed by law or authorized by a court order;
- ! Apply to general audience sites and services or to internet service providers in the course of providing internet connectivity;
- ! Prohibit a vendor from marketing its product or services, provided the marketing did not result from the use of covered student information obtained by the vendor in violation of the bill;
- ! Impose duties on electronic stores, gateways, marketplaces, or other means of purchasing or downloading software or applications; or
- ! Impede the ability of a student to download, export, or otherwise save or maintain his or her own student-created data or documents.

The bill moves existing law related to parental written consent for obtaining and releasing data to part 3 of article 2 of title 22, C.R.S., along with other relevant law related to student data.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. In Colorado Revised Statutes, amend 22-2-301 as**

1 follows:

2 22-2-301. Short title. This part 3 shall be known and may be cited
3 as the "Data Reporting and Technology PROTECTION Act".

4 SECTION 2. In Colorado Revised Statutes, add 22-2-310 as
5 follows:

6 22-2-310. Student data protection - accountability and
7 transparency - legislative declaration - definitions - prohibited
8 actions - remedies. (1) THE GENERAL ASSEMBLY FINDS THAT ALTHOUGH
9 THERE ARE FEDERAL STATUTES LIMITING THE USE OF STUDENT DATA
10 COLLECTED BY SCHOOLS, THESE STATUTES PRIMARILY GOVERN THE
11 ACTIONS OF SCHOOLS AND GOVERNMENT ENTITIES AND HAVE LESS
12 APPLICABILITY TO THIRD-PARTY VENDORS. THE EFFECTIVE USE OF
13 STUDENT DATA TO IMPROVE LEARNING REQUIRES A FRAMEWORK OF TRUST
14 AROUND ITS USE.

15 (2) IT IS THEREFORE THE INTENT OF THE GENERAL ASSEMBLY TO
16 ACHIEVE THE FOLLOWING PURPOSES:

17 (a) TO ENSURE THE PRIVACY OF ALL PUBLIC SCHOOL STUDENTS BY
18 RESTRICTING THIRD-PARTY VENDORS FROM SHARING, MINING, SELLING, OR
19 USING PERSONALLY IDENTIFIABLE DATA COLLECTED BY SCHOOLS, SCHOOL
20 DISTRICTS, AND BOARDS OF COOPERATIVE SERVICES; AND

21 (b) TO PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
22 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM USING,
23 DISCLOSING, OR COMPILING PERSONAL INFORMATION OF A PUBLIC SCHOOL
24 STUDENT FOR THE PURPOSE OF MARKETING, ADVERTISING, OR RESEARCH
25 THAT IS DIRECTED AT UNDERSTANDING THE BEHAVIORS, ATTITUDES, OR
26 PREFERENCES OF SCHOOL-AGE CHILDREN FOR COMMERCIAL PURPOSES.

27 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE

1 REQUIRES:

2 (a) "COVERED INFORMATION" MEANS PERSONALLY IDENTIFIABLE
3 INFORMATION OR MATERIALS REGARDING A PUBLIC SCHOOL STUDENT WHO
4 IS A COLORADO RESIDENT, IN ANY MEDIA OR FORMAT THAT IS:

5 (I) CREATED OR PROVIDED BY A STUDENT, OR THE STUDENT'S
6 PARENT OR LEGAL GUARDIAN, TO AN OPERATOR IN THE COURSE OF THE
7 STUDENT'S, PARENT'S, OR LEGAL GUARDIAN'S USE OF THE OPERATOR'S WEB
8 SITE, SERVICE, OR APPLICATION FOR PUBLIC SCHOOL PURPOSES;

9 (II) CREATED OR PROVIDED BY AN EMPLOYEE OR AGENT OF THE
10 PUBLIC SCHOOL, SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,
11 CHARTER SCHOOL INSTITUTE, LOCAL EDUCATION AGENCY, OR
12 DEPARTMENT TO AN OPERATOR FOR A PUBLIC SCHOOL PURPOSE; OR

13 (III) GATHERED BY AN OPERATOR AND PERSONALLY IDENTIFIES A
14 STUDENT. THIS INCLUDES, BUT IS NOT LIMITED TO:

15 (A) INFORMATION IN THE STUDENT'S EDUCATIONAL RECORD OR
16 ELECTRONIC MAIL;

17 (B) STUDENT DATA;

18 (C) FIRST AND LAST NAME, HOME ADDRESS, TELEPHONE NUMBER,
19 ELECTRONIC MAIL ADDRESS, OR ANY OTHER INFORMATION THAT ALLOWS
20 PHYSICAL OR ON-LINE CONTACT; OR

21 (D) DISCIPLINE OR CRIMINAL RECORDS, JUVENILE DEPENDENCY
22 RECORDS, MEDICAL OR HEALTH RECORDS, SOCIAL SECURITY NUMBER,
23 BIOMETRIC INFORMATION, DISABILITIES, SOCIOECONOMIC INFORMATION,
24 POLITICAL AFFILIATIONS, RELIGIOUS INFORMATION, TEXT MESSAGES,
25 DOCUMENTS, STUDENT IDENTIFIERS, SEARCH ACTIVITY, PHOTOS, VOICE
26 RECORDINGS, FOOD PURCHASES, OR GEOLOCATION INFORMATION.

27 (b) "EDUCATION RECORD" HAS THE SAME MEANING AS DEFINED IN

1 THE FEDERAL "FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF
2 1974", AS AMENDED, 20 U.S.C. SEC. 1232g. "EDUCATION RECORD"
3 INCLUDES AN INDIVIDUALIZED EDUCATION PROGRAM.

4 (c) "OPERATOR" MEANS ANY OPERATOR OF AN INTERNET WEB SITE;
5 AN ON-LINE SERVICE, INCLUDING CLOUD COMPUTING SERVICES; AN
6 ON-LINE APPLICATION; OR A MOBILE APPLICATION WITH ACTUAL
7 KNOWLEDGE THAT THE SITE, SERVICE, OR APPLICATION IS USED PRIMARILY
8 FOR PUBLIC SCHOOL PURPOSES AND WAS DESIGNED AND MARKETED FOR
9 PUBLIC SCHOOL PURPOSES, TO THE EXTENT THAT IT IS OPERATING IN THAT
10 CAPACITY. "OPERATOR" DOES NOT INCLUDE A SCHOOL, A SCHOOL
11 DISTRICT, BOARD OF COOPERATIVE SERVICES, THE CHARTER SCHOOL
12 INSTITUTE, THE DEPARTMENT, THE STATE BOARD, OR ON-LINE SCHOOL
13 PROGRAMS AS DEFINED IN SECTIONS 22-30.7-102 (9) AND 22-30.7-102
14 (9.5).

15 (d) "PERSONALLY IDENTIFIABLE INFORMATION" HAS THE SAME
16 MEANING AS DEFINED IN THE FEDERAL "FAMILY EDUCATIONAL RIGHTS
17 AND PRIVACY ACT OF 1974", AS AMENDED, 20 U.S.C. SEC. 1232g.

18 (e) "PUBLIC SCHOOL PURPOSE" MEANS ANY PURPOSE THAT IS
19 DIRECTED BY OR CUSTOMARILY TAKES PLACE AT THE DIRECTION OF A
20 PUBLIC SCHOOL THAT SERVES ANY GRADE BETWEEN KINDERGARTEN AND
21 TWELFTH GRADE, TEACHER, SCHOOL DISTRICT, CHARTER SCHOOL, A
22 BOARD OF COOPERATIVE SERVICES, OR THE CHARTER SCHOOL INSTITUTE,
23 OR AIDS IN THE ADMINISTRATION OF SCHOOL ACTIVITIES, INCLUDING, BUT
24 NOT LIMITED TO, INSTRUCTION IN THE CLASSROOM OR AT HOME,
25 ADMINISTRATIVE ACTIVITIES, AND COLLABORATION BETWEEN STUDENTS,
26 SCHOOL PERSONNEL, OR PARENTS, OR ANY OTHER PURPOSE THAT IS
27 PRIMARILY FOR THE USE AND BENEFIT OF A PUBLIC SCHOOL, CHARTER

1 SCHOOL, OR BOARD OF COOPERATIVE SERVICES.

2 (f) "TARGETED ADVERTISING" MEANS PRESENTING
3 ADVERTISEMENTS TO A STUDENT WHERE THE ADVERTISEMENT IS
4 SELECTED BASED ON INFORMATION OBTAINED OR INFERRED FROM THAT
5 STUDENT'S ON-LINE VIEWING BEHAVIOR, USAGE OF APPLICATIONS, OR
6 COVERED INFORMATION. "TARGETED ADVERTISING" DOES NOT INCLUDE:

7 (I) ADAPTIVE OR INDIVIDUALIZED LEARNING; OR

8 (II) ADVERTISING PRESENTED TO AN INDIVIDUAL STUDENT AT AN
9 ON-LINE LOCATION BASED ON THE STUDENT'S CURRENT VISIT TO THE
10 ON-LINE LOCATION WITHOUT COLLECTION OR RETENTION OF THE
11 STUDENT'S ON-LINE ACTIVITIES OVER TIME, OR IN RESPONSE TO A SINGLE
12 SEARCH QUERY WITHOUT COLLECTION OR RETENTION OF THE STUDENT'S
13 ON-LINE ACTIVITIES OVER TIME.

14 (4) AN OPERATOR SHALL NOT KNOWINGLY ENGAGE IN ANY OF THE
15 FOLLOWING ACTIVITIES WITH RESPECT TO ITS WEB SITE, SERVICE, OR
16 APPLICATION:

17 (a) (I) ENGAGE IN TARGETED ADVERTISING ON THE OPERATOR'S
18 WEB SITE, SERVICE, OR APPLICATION; OR

19 (II) TARGET ADVERTISING ON ANY OTHER WEB SITE, SERVICE, OR
20 APPLICATION WHEN THE TARGETING OF THE ADVERTISING IS BASED UPON
21 ANY INFORMATION, INCLUDING COVERED INFORMATION AND PERSISTENT
22 UNIQUE IDENTIFIERS, THAT THE OPERATOR HAS ACQUIRED BECAUSE OF THE
23 USE OF THAT OPERATOR'S WEB SITE, SERVICE, OR APPLICATION;

24 (b) USE INFORMATION, INCLUDING PERSISTENT UNIQUE
25 IDENTIFIERS, CREATED OR GATHERED BY THE OPERATOR'S WEB SITE,
26 SERVICE, OR APPLICATION, TO AMASS A PROFILE ABOUT A PUBLIC SCHOOL
27 STUDENT, EXCEPT IN FURTHERANCE OF A PUBLIC SCHOOL PURPOSE.

1 AMASSING A PROFILE DOES NOT INCLUDE COLLECTION AND RETENTION OF
2 ACCOUNT INFORMATION THAT REMAINS UNDER THE CONTROL OF THE
3 STUDENT, PARENT, SCHOOL, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE
4 SERVICES.

5 (c) SELL A STUDENT'S INFORMATION, INCLUDING COVERED
6 INFORMATION. THIS PROHIBITION DOES NOT APPLY TO THE PURCHASE,
7 MERGER, OR OTHER TYPE OF ACQUISITION OF AN OPERATOR BY ANOTHER
8 ENTITY, PROVIDED THAT THE OPERATOR OR SUCCESSOR ENTITY CONTINUES
9 TO COMPLY WITH THE PROVISIONS OF THIS SECTION CONCERNING
10 PREVIOUSLY ACQUIRED STUDENT INFORMATION THAT IS SUBJECT TO THE
11 PROVISIONS OF THIS PART 3.

12 (d) DISCLOSE COVERED INFORMATION UNLESS THE DISCLOSURE IS
13 MADE, TO THE EXTENT REASONABLY NECESSARY:

14 (I) IN FURTHERANCE OF THE PUBLIC SCHOOL PURPOSE OF THE WEB
15 SITE, SERVICE, OR APPLICATION, PROVIDED THE RECIPIENT OF THE
16 COVERED INFORMATION DISCLOSED PURSUANT TO THIS PARAGRAPH (d):

17 (A) DOES NOT FURTHER DISCLOSE THE COVERED INFORMATION
18 UNLESS DONE TO ALLOW OR IMPROVE OPERABILITY AND FUNCTIONALITY
19 WITHIN THAT STUDENT'S CLASSROOM OR SCHOOL; AND

20 (B) IS LEGALLY REQUIRED TO COMPLY WITH SUBSECTION (6) OF
21 THIS SECTION AND DOES NOT USE THE COVERED INFORMATION IN
22 VIOLATION OF THIS PART 3;

23 (II) TO PROTECT THE SECURITY OR INTEGRITY OF ITS WEB SITE,
24 SERVICE, OR APPLICATION;

25 (III) TO ENSURE LEGAL OR REGULATORY COMPLIANCE OR TO TAKE
26 PRECAUTIONS AGAINST LIABILITY;

27 (IV) TO RESPOND TO OR PARTICIPATE IN THE JUDICIAL PROCESS;

1 (V) TO PROTECT THE SAFETY OF USERS OR OTHERS OR THE
2 SECURITY OF THE OPERATOR'S WEB SITE, SERVICE, OR APPLICATION;

3 (VI) TO THE EXTENT PERMITTED UNDER OTHER PROVISIONS OF
4 LAW, TO PROVIDE INFORMATION TO LAW ENFORCEMENT AGENCIES OR FOR
5 AN INVESTIGATION ON A MATTER RELATED TO PUBLIC SAFETY; OR

6 (VII) TO A SERVICE PROVIDER, PROVIDED THAT THE OPERATOR
7 CONTRACTUALLY:

8 (A) PROHIBITS THE SERVICE PROVIDER FROM USING ANY COVERED
9 INFORMATION FOR ANY PURPOSE OTHER THAN PROVIDING THE
10 CONTRACTED SERVICE TO, OR ON BEHALF OF, THE OPERATOR;

11 (B) PROHIBITS THE SERVICE PROVIDER FROM DISCLOSING ANY
12 COVERED INFORMATION PROVIDED BY THE OPERATOR WITH SUBSEQUENT
13 THIRD PARTIES, EXCEPT TO THE EXTENT NECESSARY TO CARRY OUT
14 LEGITIMATE EDUCATIONAL FUNCTIONS DELEGATED TO IT BY THE AGENCY
15 OR INSTITUTION, UNLESS THE DISCLOSURE IS EXPRESSLY PERMITTED BY
16 THIS PART 3; AND

17 (C) REQUIRES THE SERVICE PROVIDER TO IMPLEMENT AND
18 MAINTAIN REASONABLE SECURITY PROCEDURES AND PRACTICES AS
19 PROVIDED FOR IN SUBSECTION (6) OF THIS SECTION.

20 (VIII) FOR A SCHOOL, EDUCATIONAL, OR EMPLOYMENT PURPOSE
21 THAT IS REQUESTED BY THE STUDENT OR THE STUDENT'S PARENT OR
22 LEGAL GUARDIAN, PROVIDED THAT THE STUDENT'S COVERED
23 INFORMATION IS NOT USED OR FURTHER DISCLOSED FOR ANY OTHER
24 PURPOSE.

25 (5) NOTHING IN SUBSECTION (4) OF THIS SECTION SHALL BE
26 CONSTRUED TO PROHIBIT THE OPERATOR'S USE OF INFORMATION FOR
27 MAINTAINING, DEVELOPING, SUPPORTING, IMPROVING, OR DIAGNOSING THE

1 OPERATOR'S WEB SITE, SERVICE, OR APPLICATION.

2 (6) AN OPERATOR SHALL:

3 (a) IMPLEMENT AND MAINTAIN REASONABLE SECURITY
4 PROCEDURES AND PRACTICES THAT, AT A MINIMUM, MEET THE
5 REQUIREMENTS DEVELOPED BY THE DEPARTMENT AND STATE BOARD
6 PURSUANT TO SECTION 22-2-309 AND THAT ARE APPROPRIATE TO THE
7 NATURE OF THE COVERED INFORMATION AND PROTECT THAT INFORMATION
8 FROM UNAUTHORIZED ACCESS, DESTRUCTION, USE, MODIFICATION, OR
9 DISCLOSURE;

10 (b) DELETE A STUDENT'S COVERED INFORMATION WITHIN A
11 REASONABLE TIME FRAME IF THE PUBLIC SCHOOL, SCHOOL DISTRICT,
12 CHARTER SCHOOL, BOARD OF COOPERATIVE SERVICES, OR CHARTER
13 SCHOOL INSTITUTE REQUESTS SUCH DELETION OF ANY DATA UNDER THE
14 CONTROL OF THE PUBLIC SCHOOL, SCHOOL DISTRICT, CHARTER SCHOOL,
15 BOARD OF COOPERATIVE SERVICES, OR CHARTER SCHOOL INSTITUTE;

16 (c) PROVIDE CLEAR AND EASY-TO-UNDERSTAND INFORMATION
17 ABOUT THE TYPES OF COVERED INFORMATION THE OPERATOR COLLECTS
18 AND ABOUT HOW THE OPERATOR USES AND SHARES THE COVERED
19 INFORMATION;

20 (d) PROVIDE PROMINENT NOTICE BEFORE MAKING MATERIAL
21 CHANGES TO ITS PRIVACY POLICIES FOR INTERNET WEB SITES, ON-LINE
22 SERVICES, ON-LINE APPLICATIONS, OR MOBILE APPLICATIONS, AS
23 DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION; AND

24 (e) FACILITATE ACCESS TO AND CORRECTION OF COVERED
25 INFORMATION BY A STUDENT OR HIS OR HER PARENT OR LEGAL GUARDIAN
26 EITHER DIRECTLY OR THROUGH THE RELEVANT PUBLIC SCHOOL, TEACHER,
27

1 SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE SERVICES,
2 OR THE CHARTER SCHOOL INSTITUTE.

3 (7) IF THE INTERNET WEB SITE, ON-LINE SERVICE, ON-LINE
4 APPLICATION, OR MOBILE APPLICATION, AS DESCRIBED IN PARAGRAPH (c)
5 OF SUBSECTION (3) OF THIS SECTION IS OFFERED TO A PUBLIC SCHOOL,
6 TEACHER, SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE
7 SERVICES, OR THE CHARTER SCHOOL INSTITUTE, THE INFORMATION
8 REQUIRED PURSUANT TO PARAGRAPHS (a) AND (b) OF SUBSECTION (6) OF
9 THIS SECTION MAY BE PROVIDED TO THE PUBLIC SCHOOL, TEACHER,
10 SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE SERVICES,
11 OR THE CHARTER SCHOOL INSTITUTE.

12 (8) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (d) OF
13 SUBSECTION (4) OF THIS SECTION, AN OPERATOR MAY DISCLOSE COVERED
14 INFORMATION OF A STUDENT UNDER THE FOLLOWING CIRCUMSTANCES, AS
15 LONG AS PARAGRAPHS (a) TO (c) OF SUBSECTION (4) OF THIS SECTION,
16 INCLUSIVE, ARE NOT VIOLATED:

17 (a) IF ANOTHER PROVISION OF STATE OR FEDERAL LAW REQUIRES
18 THE OPERATOR TO DISCLOSE APPLICABLE COVERED INFORMATION AND THE
19 OPERATOR COMPLIES WITH THE APPLICABLE REQUIREMENTS OF STATE AND
20 FEDERAL LAW IN PROTECTING AND DISCLOSING THE INFORMATION;

21 (b) FOR LEGITIMATE RESEARCH PURPOSES APPROVED BY THE
22 SCHOOL DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR THE CHARTER
23 SCHOOL INSTITUTE:

24 (I) AS REQUIRED BY STATE OR FEDERAL LAW AND SUBJECT TO THE
25 RESTRICTIONS UNDER APPLICABLE STATE AND FEDERAL LAW; OR

26 (II) AS ALLOWED BY STATE OR FEDERAL LAW AND UNDER THE
27 DIRECTION OF A PUBLIC SCHOOL, SCHOOL DISTRICT, CHARTER SCHOOL,

1 BOARD OF COOPERATIVE SERVICES, CHARTER SCHOOL INSTITUTE, OR THE
2 DEPARTMENT, IF NO COVERED INFORMATION IS USED FOR ANY PURPOSE IN
3 FURTHERANCE OF ADVERTISING OR TO AMASS A PROFILE ON A STUDENT
4 FOR A PURPOSE OTHER THAN A PUBLIC SCHOOL PURPOSE; AND

5 (c) TO A STATE OR LOCAL EDUCATION AGENCY, INCLUDING PUBLIC
6 SCHOOLS, SCHOOL DISTRICTS, CHARTER SCHOOLS, BOARDS OF
7 COOPERATIVE SERVICES, OR THE CHARTER SCHOOL INSTITUTE FOR A
8 PUBLIC SCHOOL PURPOSE, AS PERMITTED BY STATE OR FEDERAL LAW.

9 (9) NOTHING IN THIS SECTION PROHIBITS AN OPERATOR FROM
10 USING DEIDENTIFIED COVERED INFORMATION AS FOLLOWS:

11 (a) WITHIN THE OPERATOR'S WEB SITE, SERVICE, OR APPLICATION,
12 OR OTHER WEB SITES, SERVICES, OR APPLICATIONS OWNED BY THE
13 OPERATOR, TO DEVELOP OR IMPROVE ITS EDUCATIONAL PRODUCTS; OR

14 (b) TO DEMONSTRATE THE EFFECTIVENESS OF THE OPERATOR'S
15 PRODUCTS OR SERVICES, INCLUDING ITS MARKETING.

16 (10) NOTHING IN THIS SECTION PROHIBITS AN OPERATOR FROM
17 SHARING AGGREGATED OR DEIDENTIFIED COVERED INFORMATION FOR THE
18 DEVELOPMENT AND IMPROVEMENT OF EDUCATIONAL WEB SITES,
19 PRODUCTS, SERVICES, OR APPLICATIONS.

20 (11) THIS SECTION MUST NOT BE CONSTRUED TO:

21 (a) LIMIT THE AUTHORITY OF A LAW ENFORCEMENT AGENCY TO
22 OBTAIN ANY CONTENT OR INFORMATION FROM AN OPERATOR AS
23 AUTHORIZED BY LAW OR PURSUANT TO AN ORDER OF A COURT OF
24 COMPETENT JURISDICTION;

25 (b) LIMIT THE ABILITY OF AN OPERATOR TO USE COVERED
26 INFORMATION FOR ADAPTIVE LEARNING OR CUSTOMIZED STUDENT
27 LEARNING PURPOSES;

1 (c) PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
2 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM USING
3 RECOMMENDATION ENGINES TO RECOMMEND TO A STUDENT ADDITIONAL
4 CONTENT OR SERVICES RELATING TO AN EDUCATIONAL, OTHER LEARNING,
5 OR EMPLOYMENT OPPORTUNITY PURPOSE TO STUDENTS WITHIN THE
6 OPERATOR'S WEB SITE, ON-LINE SERVICE, OR APPLICATION IF THE
7 RECOMMENDATION IS NOT DETERMINED IN WHOLE OR IN PART BY
8 PAYMENT OR OTHER CONSIDERATION FROM A THIRD PARTY;

9 (d) PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
10 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM
11 RESPONDING TO A STUDENT'S SEARCH, QUERY, OR OTHER REQUEST FOR
12 INFORMATION OR FOR FEEDBACK WITHOUT THE INFORMATION OR
13 RESPONSE BEING DETERMINED IN WHOLE OR IN PART BY PAYMENT OR
14 OTHER CONSIDERATION FROM A THIRD PARTY;

15 (e) PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
16 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM USING OR
17 RETAINING A STUDENT'S INFORMATION TO ENSURE LEGAL OR REGULATORY
18 COMPLIANCE OR TO TAKE PRECAUTIONS AGAINST LIABILITY;

19 (f) PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
20 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM USING OR
21 DISCLOSING COVERED INFORMATION WITH THE AFFIRMATIVE CONSENT OF
22 THE SCHOOL, STUDENT, OR THE STUDENT'S PARENT OR LEGAL GUARDIAN
23 IF THE CONSENT IS GIVEN IN RESPONSE TO CLEAR AND CONSPICUOUS
24 NOTICE OF THE USE OR DISCLOSURE OF THE COVERED INFORMATION;

25 (g) APPLY TO GENERAL-AUDIENCE INTERNET WEB SITES, ON-LINE
26 SERVICES, ON-LINE APPLICATIONS, OR MOBILE APPLICATIONS, EVEN IF
27 LOG-IN CREDENTIALS CREATED FOR AN OPERATOR'S WEB SITE, SERVICE, OR

1 APPLICATION MAY BE USED TO ACCESS THE GENERAL-AUDIENCE WEB SITE,
2 SERVICE, APPLICATION, OR MOBILE APPLICATION;

3 (h) LIMIT INTERNET SERVICE PROVIDERS FROM PROVIDING
4 INTERNET CONNECTIVITY TO SCHOOLS OR STUDENTS AND THEIR FAMILIES;

5 (i) PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
6 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM
7 MARKETING EDUCATIONAL PRODUCTS DIRECTLY TO PARENTS, SO LONG AS
8 THE MARKETING DID NOT RESULT FROM THE USE OF COVERED
9 INFORMATION OBTAINED BY THE OPERATOR THROUGH THE PROVISION OF
10 SERVICES COVERED UNDER THIS SECTION;

11 (j) IMPOSE A DUTY UPON A PROVIDER OF AN ELECTRONIC STORE,
12 GATEWAY, MARKETPLACE, OR OTHER MEANS OF PURCHASING OR
13 DOWNLOADING SOFTWARE OR APPLICATIONS TO REVIEW OR ENFORCE
14 COMPLIANCE OF THIS SECTION ON THOSE APPLICATIONS OR SOFTWARE;

15 (k) IMPOSE A DUTY UPON A PROVIDER OF AN INTERACTIVE
16 COMPUTER SERVICE, AS DEFINED IN SECTION 230 OF TITLE 47, U.S.C., TO
17 REVIEW OR ENFORCE COMPLIANCE WITH THIS SECTION BY THIRD-PARTY
18 CONTENT PROVIDERS; OR

19 (l) IMPEDE THE ABILITY OF A STUDENT TO DOWNLOAD, TRANSFER,
20 OR OTHERWISE SAVE OR MAINTAIN HIS OR HER STUDENT DATA OR
21 DOCUMENTS.

22 (12) ANY INTERESTED PARTY MAY MAKE AN INITIAL REPORT OF
23 ALLEGED VIOLATIONS OF THIS SECTION TO THE DEPARTMENT. THE
24 DEPARTMENT SHALL CONTACT THE OPERATOR DIRECTLY AND PROVIDE THE
25 OPERATOR WITH THE OPPORTUNITY TO EXPLAIN OR RECTIFY. IF THE
26 DEPARTMENT CONTINUES TO RECEIVE COMPLAINTS ABOUT THE SAME
27 OPERATOR, IT MAY BRING THE ISSUE TO THE OFFICE OF THE ATTORNEY

1 GENERAL FOR REVIEW AND ACTION.

2 **SECTION 3.** In Colorado Revised Statutes, **add 22-2-311** as
3 follows:

4 **22-2-311. Data protection - disclosure and transparency -**
5 **definition.** (1) BEGINNING WITH THE START OF THE 2015-16 ACADEMIC
6 YEAR, AND AT THE START OF EACH ACADEMIC YEAR THEREAFTER, EACH
7 SCHOOL DISTRICT, CHARTER SCHOOL, AND THE CHARTER [REDACTED] SCHOOL
8 INSTITUTE SHALL PROVIDE AN ANNUAL NOTICE TO PARENTS AND LEGAL
9 GUARDIANS LISTING ALL OPERATORS WITH WHOM THE SCHOOL DISTRICT,
10 CHARTER SCHOOL, OR CHARTER SCHOOL INSTITUTE HAS ENTERED INTO A
11 NEGOTIATED CONTRACT, EXCLUDING END-USER AGREEMENTS, THAT
12 PROVIDES FOR THE TRANSFER OF COVERED INFORMATION FOR THE
13 UPCOMING ACADEMIC YEAR.

14 [REDACTED]

15 (2) THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION DO
16 NOT APPLY TO RURAL PUBLIC SCHOOLS, RURAL SCHOOL DISTRICTS, OR
17 RURAL CHARTER SCHOOLS AS THOSE TERMS ARE DEFINED BY THE
18 DEPARTMENT.

19 (3) AS USED IN THIS SECTION, "OPERATOR" MEANS ANY OPERATOR
20 OF AN INTERNET WEB SITE; AN ON-LINE SERVICE, INCLUDING CLOUD
21 COMPUTING SERVICES; AN ON-LINE APPLICATION; OR A MOBILE
22 APPLICATION WITH ACTUAL KNOWLEDGE THAT THE SITE, SERVICE, OR
23 APPLICATION IS USED PRIMARILY FOR PUBLIC SCHOOL PURPOSES AND WAS
24 DESIGNED AND MARKETED FOR PUBLIC SCHOOL PURPOSES, TO THE EXTENT
25 THAT IT IS OPERATING IN THAT CAPACITY. "OPERATOR" DOES NOT INCLUDE
26 A SCHOOL, A SCHOOL DISTRICT, THE DEPARTMENT, OR THE STATE BOARD.

27 **SECTION 4.** In Colorado Revised Statutes, 22-1-123, **add (14)**

1 as follows:

2 **22-1-123. Protection of student data - parental or legal**
3 **guardian consent for surveys.** (14) (a) IF A PUBLIC SCHOOL, SCHOOL
4 DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE SERVICES, OR THE
5 CHARTER SCHOOL INSTITUTE UTILIZES CLOUD COMPUTING SERVICES, WEB
6 SITES, ON-LINE PROGRAMS, OR APPLICATIONS THAT COLLECT OR STORE
7 STUDENT INFORMATION, WHETHER THE INFORMATION IS PERSONALLY
8 IDENTIFIABLE OR NOT, IT SHALL DEVELOP AN EDUCATION TECHNOLOGY
9 PLAN THAT PROVIDES FOR THE FOLLOWING:

10 (I) ANNUAL NOTICE TO PARENTS AND LEGAL GUARDIANS
11 CONCERNING CLOUD COMPUTING SERVICE PROVIDERS;

12 (II) TRAINING FOR STUDENTS AND STAFF CONCERNING THE
13 APPROPRIATE USE OF TECHNOLOGY, INCLUDING SAFETY AND PRIVACY
14 SAFEGUARDS AND PROTOCOLS; AND

15 (III) NOTICE TO THE PARENT OR LEGAL GUARDIAN IF THERE IS A
16 SECURITY BREACH OR OTHER UNAUTHORIZED DISCLOSURE OF HIS OR HER
17 CHILD'S INFORMATION.

18 (b) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO RURAL
19 PUBLIC SCHOOLS, RURAL SCHOOL DISTRICTS, OR RURAL CHARTER
20 SCHOOLS, AS THOSE TERMS ARE DEFINED BY THE DEPARTMENT OF
21 EDUCATION OR TO BOARDS OF COOPERATIVE SERVICES.

22 **SECTION 5.** In Colorado Revised Statutes, amend 22-2-106.5
23 as follows:

24 **22-2-106.5. State board - duties with regard to student data -**
25 **memorandum of understanding.** (1) Notwithstanding the provisions of
26 section 22-2-111 (3) (a), the state board shall enter into a memorandum
27 of understanding on or before September 1, 2006, with the Colorado

1 commission on higher education to adopt a policy to share student data.
2 At a minimum, the policy shall ensure that the exchange of information
3 is conducted in conformance with the requirements of the federal "Family
4 Educational Rights and Privacy Act of 1974", as amended, 20 U.S.C. sec.
5 1232g, and all federal regulations and applicable guidelines adopted in
6 accordance therewith. The policy shall additionally require the state
7 board, upon request, to share student data with qualified researchers. For
8 purposes of this section, qualified researchers shall include, but need not
9 be limited to, institutions of higher education, school districts, and public
10 policy research and advocacy organizations.

11 (2) ANY RELEASE OF DATA PURSUANT TO SUBSECTION (1) OF THIS
12 SECTION MUST CONFORM TO THE REQUIREMENTS OF SECTION 22-2-310.

13 **SECTION 6.** In Colorado Revised Statutes, 22-2-111, **add** (4) as
14 follows:

15 **22-2-111. Commissioner of education - office - records -**
16 **confidential nature.** (4) ANY RELEASE OF DATA PURSUANT TO
17 SUBSECTION (3) OF THIS SECTION MUST CONFORM TO THE REQUIREMENTS
18 OF SECTION 22-2-310.

19 **SECTION 7.** In Colorado Revised Statutes, 25-1-1202, **amend**
20 (1) (I) as follows:

21 **25-1-1202. Index of statutory sections regarding medical**
22 **record confidentiality and health information.** (1) Statutory provisions
23 concerning policies, procedures, and references to the release, sharing,
24 and use of medical records and health information include the following:

25 (II) ~~Section~~ SECTIONS 22-1-123 (5) AND 22-2-310, C.R.S.,
26 concerning the protection of student data;

27 **SECTION 8. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2016 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.