

SB 173 - "Data Reporting and Protection Act"
Explanation of Proposed Amendment

L. U. 26

As amended, SB 173 addresses and improves the balance between student data privacy protections, school district processes and industry tools for educational innovation.

Technology companies and school service providers agree with the need to safeguard student privacy and ensure data security. Strong legal protections exist, while ongoing review and update of policies and practices is appropriate. As the sector evolves and new laws are considered, it is critical to provide a clear regulatory framework that ensures continued student and teacher access to advanced learning technologies so essential to student success and Colorado competitiveness.

The Comprehensive Amendment Seeks to Accomplish the Following:

- Clarify Scope: SB 173 is not clear in some cases regarding which students, schools and third parties are covered. The Amendment would eliminate unintended impact, including clarifying that the bill:
 - applies to students of Colorado schools only, and not to students in other states even if, for example, they are served by an operator with legal residence in Colorado;
 - does not necessarily apply to a company in its entirety, since some have multiple business units, but instead only to their operations to the extent it is engaged in the purposes governed by the Act.
 - defines school as a school that serves grades K-12;
 - places online schools, as defined in current law, on the same regulatory plane as school districts;
 - with regard to a company merger or acquisition, would apply the provisions of the bill to a successor entity for all covered information;
 - would define a school purpose to include not only purposes that are customary, but purposes directed by schools to recognize that educators need flexibility to direct their service providers to support innovative educational practices, not just customary or traditional ones.

- Ensure that Appropriate Advertising Restrictions do Not Unintentionally Block Student Access to Education Opportunities: SB 173 appropriately seeks to prevent the targeting of advertisements to students based on student personal information. The amendment would clarify that advertising prohibitions do not include those related to adaptive learning or student search query. This change is needed to ensure the technology purpose of helping identify and respond to unique individual learning needs. The amendment safeguards students by requiring their information related to a search or visit is not retained, and the response or recommendation is not determined by compensation from a third party. Making clear these programs and use of data are allowable is critical to minimizing the degree this bill will create real or perceived barriers to use of technology in the classroom.

- Enable Necessary Operational Procedures: The bill seeks to appropriately limit company uses of data to that necessary to serve the school purpose. The amendment would ensure that companies can still use information for all necessary and appropriate protected business purposes; including those related to user safety, legal requirements, and product R&D.

- Ensure Balanced Transparency: The Amendment inputs transparency provisions modeled off of the Student Privacy Pledge industry commitments to include the operator providing of the following:
 - clear information about the types of collected covered information, how it's used and shared;
 - notice when there are material privacy policy changes;
 - access to and correction of covered information via the relevant public school venue; and
 - information relating to appropriate security procedures and data deletion processes.

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Education.

SB15-173 be amended as follows:

- 1 Amend reengrossed bill, page 4, line 2, strike "MATERIALS," and
2 substitute "MATERIALS REGARDING A PUBLIC SCHOOL STUDENT WHO IS A
3 COLORADO RESIDENT,".
- 4 Page 4, line 10, strike "OPERATOR;" and substitute "OPERATOR FOR A
5 PUBLIC SCHOOL PURPOSE;".
- 6 Page 4, strike lines 11 through 15 and substitute:
7 "(III) GATHERED BY AN OPERATOR AND PERSONALLY IDENTIFIES
8 A STUDENT. THIS INCLUDES, BUT IS NOT LIMITED TO:".
- 9 Page 5, line 10, strike "PURPOSES." and substitute "PURPOSES, TO THE
10 EXTENT THAT IT IS OPERATING IN THAT CAPACITY.".
- 11 Page 5, line 12, strike "OR THE STATE BOARD." and substitute "THE STATE
12 BOARD, OR ON-LINE SCHOOL PROGRAMS AS DEFINED IN SECTIONS
13 22-30.7-102 (9) AND 22-30.7-102 (9.5).".
- 14 Page 5, line 16, after "THAT" insert "IS DIRECTED BY OR".
- 15 Page 5, line 17, strike "SCHOOL," and substitute "SCHOOL THAT SERVES
16 ANY GRADE BETWEEN KINDERGARTEN AND TWELFTH GRADE,".
- 17 Page 5, line 23, after "IS" insert "PRIMARILY".
- 18 Page 5, line 26, strike "DELIVERING" and substitute "PRESENTING".
- 19 Page 6, line 3, strike "INCLUDE" and substitute "INCLUDE:".
- 20 Page 6, strike lines 4 through 6 and substitute:
21 "(I) ADAPTIVE OR INDIVIDUALIZED LEARNING; OR
22 (II) ADVERTISING PRESENTED TO AN INDIVIDUAL STUDENT AT AN
23 ON-LINE LOCATION BASED ON THE STUDENT'S CURRENT VISIT TO THE
24 ON-LINE LOCATION WITHOUT COLLECTION OR RETENTION OF THE
25 STUDENT'S ON-LINE ACTIVITIES OVER TIME, OR IN RESPONSE TO A SINGLE
26 SEARCH QUERY WITHOUT COLLECTION OR RETENTION OF THE STUDENT'S
27 ON-LINE ACTIVITIES OVER TIME.".

- 1 Page 6, line 22, strike "RECORDS OR".
- 2 Page 7, line 3, strike "INFORMATION." and substitute "INFORMATION THAT
3 IS SUBJECT TO THE PROVISIONS OF THIS PART 3."
- 4 Page 7, strike line 13 and substitute "THIS SECTION AND DOES NOT USE THE
5 COVERED INFORMATION IN VIOLATION OF THIS PART 3;"
- 6 Page 7, line 16, after "TO" insert "ENSURE LEGAL OR REGULATORY
7 COMPLIANCE OR TO".
- 8 Page 7, line 17, after the second "TO" insert "OR PARTICIPATE IN".
- 9 Page 7, before line 18 insert:
10 "(V) TO PROTECT THE SAFETY OF USERS OR OTHERS OR THE
11 SECURITY OF THE OPERATOR'S WEB SITE, SERVICE, OR APPLICATION;"
- 12 Renumber succeeding subparagraphs accordingly.
- 13 Page 8, strike line 3 and substitute "OR INSTITUTION, UNLESS THE
14 DISCLOSURE IS EXPRESSLY PERMITTED BY THIS PART 3; AND".
- 15 Page 8, after line 6 insert:
16 "(VIII) FOR A SCHOOL, EDUCATIONAL, OR EMPLOYMENT PURPOSE
17 THAT IS REQUESTED BY THE STUDENT OR THE STUDENT'S PARENT OR
18 LEGAL GUARDIAN, PROVIDED THAT THE STUDENT'S COVERED
19 INFORMATION IS NOT USED OR FURTHER DISCLOSED FOR ANY OTHER
20 PURPOSE."
- 21 Page 8, strike line 18 and substitute "DISCLOSURE; AND".
- 22 Page 8, line 19, before "IF" insert "WITHIN A REASONABLE TIME FRAME".
- 23 Page 8, strike lines 25 through 27.
- 24 Page 9, strike lines 1 through 24 and substitute:
25 "(c) PROVIDE CLEAR AND EASY-TO-UNDERSTAND INFORMATION
26 ABOUT THE TYPES OF COVERED INFORMATION THE OPERATOR COLLECTS
27 AND ABOUT HOW THE OPERATOR USES AND SHARES THE COVERED
28 INFORMATION;
29 (d) PROVIDE PROMINENT NOTICE BEFORE MAKING MATERIAL

1 CHANGES TO ITS PRIVACY POLICIES FOR INTERNET WEB SITES, ON-LINE
2 SERVICES, ON-LINE APPLICATIONS, OR MOBILE APPLICATIONS, AS
3 DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION; AND

4 (e) FACILITATE ACCESS TO AND CORRECTION OF COVERED
5 INFORMATION BY A STUDENT OR HIS OR HER PARENT OR LEGAL GUARDIAN
6 EITHER DIRECTLY OR THROUGH THE RELEVANT PUBLIC SCHOOL, TEACHER,
7 SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE SERVICES,
8 OR THE CHARTER SCHOOL INSTITUTE.

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

18 Renumber succeeding subsections accordingly.

19 Page 10, line 3, strike "OTHER PROVISIONS" and substitute "ANOTHER
20 PROVISION" and strike "REQUIRE" and substitute "REQUIRES".

21 Page 10, line 4, strike the first "THE" and substitute "APPLICABLE".

22 Page 10, line 26, after "TO" insert "DEVELOP OR".

23 Page 11, line 3, strike "AND" and substitute "OR".

24 Page 11, line 4, after "SITES," insert "PRODUCTS,".

25 Page 11, line 6, strike "DOES NOT:" and substitute "MUST NOT BE
26 CONSTRUED TO:".

27 Page 11, lines 11 and 12, strike "STUDENT DATA, INCLUDING COVERED
28 INFORMATION," and substitute "COVERED INFORMATION".

29 Page 11, after line 13 insert:

30 "(c) PROHIBIT AN OPERATOR OF AN INTERNET WEB SITE, ON-LINE
31 SERVICE, ON-LINE APPLICATION, OR MOBILE APPLICATION FROM USING
32 RECOMMENDATION ENGINES TO RECOMMEND TO A STUDENT ADDITIONAL

1 CONTENT OR SERVICES RELATING TO AN EDUCATIONAL, OTHER LEARNING,
2 OR EMPLOYMENT OPPORTUNITY PURPOSE TO STUDENTS WITHIN THE
3 OPERATOR'S WEB SITE, ON-LINE SERVICE, OR APPLICATION IF THE
4 RECOMMENDATION IS NOT DETERMINED IN WHOLE OR IN PART BY
5 PAYMENT OR OTHER CONSIDERATION FROM A THIRD PARTY;

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

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

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

22 Reletter succeeding paragraphs accordingly.

23 Page 12, line 7, strike "AND" and substitute "OR".

24 Page 12, line 8, strike "EXPORT," and substitute "TRANSFER,".

25 Page 12, line 9, strike "STUDENT-CREATED" and substitute "STUDENT".

26 Page 12, line 22, strike "THEREAFTER:" and substitute "THEREAFTER,
27 EACH SCHOOL DISTRICT, CHARTER SCHOOL, AND THE CHARTER".

28 Page 12, strike line 23.

29 Page 13, line 2, strike "YEAR; AND" and substitute "YEAR.".

30 Page 13, strike lines 3 through 7.

31 Page 13, line 17, strike "PURPOSES." and substitute "PURPOSES, TO THE
32 EXTENT THAT IT IS OPERATING IN THAT CAPACITY.".

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