

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0621
Prime Sponsor(s): Sen. Marble
 Rep. Everett

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Bill Status: Senate Judiciary
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SHORT TITLE: EDUCATION DATA PRIVACY AND SECURITY ACT

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	< \$5,000	< \$5,000
State Expenditures	\$271,964	
General Fund	271,964	
FTE Position Change		
Appropriation Required:	\$133,131 - Colorado Department of Education (FY 2014-15) \$138,833 - Department of Higher Education (FY 2014-15)	

* This summary shows changes from current law under the bill for each fiscal year. Appropriations are required for FY 2014-15 to implement the bill. The appropriation necessary for FY 2015-16 and ongoing is still being analyzed, and will be included in a revised fiscal note to be considered by a committee at a later date.

Summary of Legislation

This bill creates the Student and Teacher Data Privacy and Security Act. The bill's requirements for student and teacher data collection, processing, and storage apply to all state institutions of education, both K-12 public schools and institutions of higher education, and to all state education agencies, including the Colorado Department of Education (CDE), the Department of Higher Education (DHE) and the Department of Human Services (DHS). Among its many provisions, this bill:

- limits the type of student information that can be collected without prior written consent;
- precludes a state agency from using federal grant money to construct, enhance, or expand a data system not in compliance with the provisions of the bill;
- requires that the existence and character of any personally identifiable information be publically disclosed on an agency's or education institution's website;
- requires each state agency and education institution to notify the Governor, the General Assembly, and the State Board of Education (SBE) of any intent to include additional student data in state-maintained databases;
- prohibits an education institution from adopting or administering any student assessment that collects psychological data;
- prohibits an education institution or any state agency from administering student surveys, assessments, analysis, evaluation, or similar instruments that solicit various personal information about a student or his or her parents;
- restricts access to educational records to authorized representatives of the education institution or state agency who require the data in order to perform an assigned duty;
- prohibits vendors or third parties from redistributing, sharing, or selling student educational data or teacher records;

- establishes the conditions under which a state agency may disclose personally identifiable information to an outside contractor, other state agency, federal agency, or assessment consortium;
- outlines the required actions that must be taken in the event of a security breach or unauthorized disclosure of personally identifiable information;
- prohibits the disclosure of personally identifiable information for commercial use; and
- requires that education institutions remove and destroy certain data within five years of a student's graduation or withdrawal from the education institution.

Penalties for violations of the act are established, including a fine of up to \$1,000 for a first offense, up to \$5,000 for a second offense, and up to \$10,000 for any subsequent offenses.

State Revenue

The bill may increase state revenue from fines; however, less than \$5,000 is anticipated in any fiscal year. Fine revenue is deposited into the General Fund.

State Expenditures

For FY 2014-15, this bill increases state expenditures by \$271,964 for contracted information technology (IT) services and for legal services in the CDE and DHE. Estimates of ongoing costs are still being analyzed and will be included in a revised fiscal note at a later date.

This bill increases state expenditures in the Colorado Department of Education, the Department of Higher Education, and the Department of Human Services, and increases workload for institutions of education from pre school through college. Certain expenditures are described qualitatively below. Where data is available, actual costs are included; however, this fiscal note will be revised as additional data is collected. Therefore, all estimates should be considered preliminary.

Colorado Department of Education. The CDE will have increased costs to automate a system to remove personally identifiable data five years after a student graduates or withdraws from school. This is estimated to require 1,000 hours of contracted services in FY 2014-15 only, to upgrade software and hardware in all CDE units with stored data. Contracted services are also required for the additional web posting, data sharing protocols, encryption services, and to implement protocols for a security breach. These additional services are estimated at 550 hours of contracted services in FY 2014-15 only. Total one-time state expenditures for the CDE are estimated at \$124,000.

Department of Higher Education. The DHE will also have increased costs to implement the bill. Most of DHE's costs are for upgrades and improvements to data systems and protocols. For FY 2014-15, the DHE requires information technology improvements to implement increased security restrictions, including naming a chief information security officer. A preliminary estimate of these one-time information technology costs is \$129,703.

Department of Human Services. This fiscal note assumes similar workload changes and information technology upgrades must also occur in the DHS; however, no estimate of this increased cost is available as of the writing of this fiscal note. Estimates will be included in a revised fiscal note, to be considered by a committee at a later date.

Department of Law. The Department of Law will provide a minimum of 200 hours of legal services to assist the CDE, DHE, and DHS to implement the law. The department charges a blended rate of \$91.08 per hour for a total cost of \$18,261 for FY 2014-15.

Institutions of Higher Education

All state institutions of higher education will have increased costs and workload to implement the bill; however, the total increase has not been estimated. Institutions of higher education are subject to significant data reporting requirements to comply with federal and state laws. Penalties for non compliance may include fines and the potential loss of federal financial aid. All institutions will have increased costs to obtain legal services to interpret the bill and avoid non compliance issues.

Most institutions of higher education use Banner software to maintain and organize student records. These institutions will be required to modify this software and review and modify existing business practices to comport with the bill's provisions. Most institutions also contract with outside vendors to provide cloud data storage services, which may not be compliant with the bill's various prohibitions. If third-party contracts for cloud storage are deemed unlawful, institutions may be required to cancel contracts and build these services "in-house."

The bill has implications for all IT practices at state institutions of higher education. In addition to examining the impact on core IT transaction and data warehousing systems, institutions must also assess data feeds to multiple campus systems to ensure compliance. The institutions must evaluate and revise policies and business practices in all student services departments, including admissions, registrars, bursars, financial aid, and human resources. For some institutions of higher education, this workload will require additional financial resources and new staff; however, since these impacts are still being analyzed and vary across institutions and campuses, any change in state appropriations must be addressed as part of the annual budget process, and not as prior appropriations to implement the bill.

School District Impact

All schools and districts will have increased workload to implement the bill and to notify parents and other interested parties of the new data requirements. Districts must create a method to seek and obtain prior written consent before gathering and sharing certain data, which will increase workload costs for schools and districts.

Local education providers may have additional workload and expenses depending on the types of assessments currently in use and how much existing systems must be modified to allow a district to obtain prior written consent for certain data collection. For example, many schools and districts engage in school climate surveys. These surveys must be reviewed and modified to adhere to the bill's prohibition on the collection of personal information on attitudes or social skills.

Schools and districts will likely have increased expenses for legal services to properly interpret the bill and then to adjust existing policies to conform with the new requirements. Similar to institutions of higher education, schools and districts may also have increased costs to create data storage options that are not prohibited by the bill and to renegotiate vendor contracts for cloud storage instead of server storage.

Pursuant to Section 22-32-143, C.R.S., school districts and Boards of Cooperative Educational Services (BOCES) may submit estimates of fiscal impacts within seven days of a bill's introduction. As of the date of this fiscal note, no summaries of fiscal impacts were submitted by districts or BOCES for this bill. If summaries of fiscal impacts are submitted by districts or BOCES in the future, they will be noted in subsequent revisions to the fiscal note and posted at this address: <http://www.colorado.gov/lcs>

Effective Date

The bill takes effect July 1, 2014, and applies to academic years beginning with the 2014-15 academic year.

State Appropriations

For FY 2014-15, the bill requires the following minimum appropriations; however, additional appropriations may be necessary to implement the bill:

- \$133,131 General Fund to the Colorado Department of Education. Of this amount, the Department of Law requires \$9,130 in reappropriated funds; and
- \$138,833 General Fund to the Department of Higher Education. Of this amount, the Department of Law requires \$9,130 in reappropriated funds.

State and Local Government Contacts

Corrections
Human Services

Education
Law

Higher Education
Office of Information Technology