

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2008**

As Agreed to March 24, 2016

Brief*

Senate Sub. for HB 2008 would enact the Student Online Personal Protection Act (SOPPA). The bill would prohibit an operator (defined as the operator of an educational online product with actual knowledge the product is used primarily for educational purposes and was designed and marketed for educational purposes) from knowingly:

- Engaging in targeted advertising on the operator's educational online product or targeting advertising on any other educational online product using information, including student information and persistent unique identifiers, the operator has acquired because of the use of such operator's educational online product for educational purposes;
- Using information, including student information and persistent unique identifiers, created or gathered through the operation of the operator's educational online product, to amass a profile about a student, except in furtherance of educational purposes;
- Selling or renting student information to a third party, except as part of the assets being transferred during the purchase, merger, or other acquisition of an operator by another entity, provided the successor entity complies with the provisions of

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this subsection as though it were an operator with respect to the acquired information; or

- Disclosing student information, except as provided.

For the purposes of the bill, the term “operator” would not be construed to include any school district or school district employee acting on behalf of a school district employer.

Operators would be required to:

- Implement and maintain reasonable security procedures and practices appropriate to the nature of the student information and designed to protect such information from unauthorized access, destruction, use, modification, or disclosure; and
- Delete student information within a reasonable period of time at the school district’s request, unless the student or student’s parent or legal guardian requests that information be maintained.

The bill also outlines several instances when an operator may disclose information, including the following:

- For legitimate research purposes subject to and as allowed by federal and state law, and under the direction of a school district or the Kansas State Department of Education, provided the information is not used for advertising or to amass a profile on the student for any purpose other than educational purposes;
- A student’s first and last name and test results upon request by a school district or state agency for educational purposes;
- To law enforcement agencies or to a court of competent jurisdiction to protect the safety or integrity of users of the operator’s educational online product or other individuals, or the security of such educational online product;

- For educational or employment purposes upon request by the student or the student's parent or legal guardian, provided the student information is not used or further disclosed for any other purpose;
- To a service provider, so long as the service provider is contractually prohibited from using student information for any purpose other than providing the contracted service, prohibited from disclosing student information to subsequent third parties, and required to implement and maintain reasonable security procedures and practices to ensure confidentiality; and
- In the course of transferring assets as part of a business purchase, merger, or other acquisition, as described above.

The bill would clarify other instances where the bill's provisions are not intended to apply and would define key terms.

Finally, the bill would allow the Attorney General or any district attorney to enforce SOPPA by bringing an action in a court of competent jurisdiction and to seek injunctive relief to enjoin an operator in possession of student information from disclosing any student information in violation of SOPPA.

Conference Committee Action

The House agreed to the Senate amendments. Additionally, the Conference Committee adopted an amendment replacing language that would have allowed a student or student's parent or legal guardian to bring a cause of action against an operator who violates SOPPA with language allowing the Attorney General or any district attorney to enforce SOPPA.

Background

HB 2008, as introduced, would have repealed the statute creating the school district audit team within the Division of Legislative Post Audit and the statute providing for school district performance audits. Identical provisions were enacted in 2015 SB 8. The Senate Committee on Education agreed to strike the contents of HB 2008 and to recommend a substitute bill with the contents of SB 342, as amended by the Senate Committee of the Whole.

SB 342 Background

The bill was introduced in the Senate Committee on Education at the request of Senator Abrams. At the Senate Committee hearing on the bill, a representative of Microsoft testified in support of the bill. A parent and a representative of Educational Management Consultants were opponents to the bill. A representative of the Kansas Association of School Boards (KASB) offered neutral testimony, including a proposed amendment to clarify the term “operator” would not be construed to include any school district or school district employee acting on behalf of a school district employer.

The Senate Committee adopted the amendment proposed by KASB.

The Senate Committee of Whole revised the list of instances when operators would be allowed to disclose student information and added language to allow a student or student’s parent or legal guardian to bring a cause of action against an operator who violates any of the bill’s provisions with respect to such student’s information.

The fiscal note prepared by the Division of the Budget for the bill, as introduced, indicates enactment would have no fiscal effect.

Student Online Personal Protection Act; student data privacy

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