By:  Parker S.B. No. 928

A BILL TO BE ENTITLED

AN ACT

relating to the protection of personally identifiable student information and the use of covered information by an operator or educational entity; authorizing a civil and administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 32.151, Education Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (1-c), (1-d), (1-e), (1-f), and (5-a) to read as follows:

(1)  "Aggregate student information" means student information collected by an educational entity that:

(A)  is totaled and reported at the group, cohort, school, school district, region, or state level, as determined by the educational entity;

(B)  does not reveal personally identifiable student information; and

(C)  cannot reasonably be used to identify, contact, single out, or infer information about a student or a device used by a student.

(1-a)  "Biometric identifier" means any measurement of the human body or its movement that is used to attempt to uniquely identify or authenticate the identity of an individual, including a blood sample, hair sample, skin sample, body scan, retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(1-b)  "Coordinating board" means the Texas Higher Education Coordinating Board.

(1-c)  "Covered information" means personally identifiable information or information that is linked to personally identifiable information, in any media or format, that is not publicly available and is:

(A)  created by or provided to an operator or educational entity by a student or the student's parent in the course of the student's or parent's use of the operator's or entity's website, online service, online application, or mobile application for a school purpose;

(B)  created by or provided to an operator or educational entity by an employee of a school district or school campus for a school purpose; or

(C)  gathered by an operator or educational entity through the operation of the operator's or entity's website, online service, online application, or mobile application for a school purpose and personally identifies a student, including the student's educational record, electronic mail, first and last name, home address, telephone number, electronic mail address, information that allows physical or online contact, discipline records, test results, special education data, juvenile delinquency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric identifier information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, student identifiers, search activity, photograph, voice recordings, or geolocation information.

(1-d)  "Data breach" means an incident in which student information that is sensitive, protected, or confidential, as provided by state or federal law, is stolen or is copied, transmitted, viewed, or used by a person unauthorized to engage in that action.

(1-e)  "Educational entity" includes school districts, open-enrollment charter schools, regional education service centers, institutions of higher education, and other local education agencies.

(1-f)  "Information privacy officer" means the information privacy officer designated by the commissioner under Section 32.1512.

(5-a)  "Student" means a person who is enrolled at a public primary or secondary school.

SECTION 2.  Subchapter D, Chapter 32, Education Code, is amended by adding Sections 32.1511, 32.1512, 32.1513, 32.1514, 32.1515, 32.1516, 32.1517, 32.1518, 32.1521, 32.1531, 32.1551, 32.1552, 32.1561, 32.1562, 32.1563, 32.158, 32.159, and 32.160 to read as follows:

Sec. 32.1511.  OWNERSHIP OF COVERED INFORMATION AND WORK PRODUCT. (a) A student retains ownership over the student's own:

(1)  covered information; and

(2)  work or intellectual product, regardless of whether the product was created for academic credit.

(b)  A student may download, export, transfer, or otherwise save or maintain any document, covered information, or other data created by the student that is held or maintained by an educational entity.

Sec. 32.1512.  INFORMATION PRIVACY OFFICER; DUTIES. (a) The commissioner shall designate an agency employee to serve as an information privacy officer to oversee privacy and security policies regarding student information.

(b)  The information privacy officer shall:

(1)  ensure that the agency handles covered information maintained by the agency in a manner that complies with this subchapter, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any other federal or state information privacy or security law;

(2)  establish and publish in a form that is easily accessible policies necessary to ensure that the use of technology sustains, enhances, and does not erode privacy protections related to the use, collection, and disclosure of covered information;

(3)  develop and provide to each educational entity a model student information privacy and security plan;

(4)  evaluate legislative and regulatory proposals involving the use, collection, and disclosure of covered information by educational entities;

(5)  conduct privacy impact assessments, including an assessment of the type of covered information collected and the number of students affected, for:

(A)  legislative proposals affecting educational entities; and

(B)  agency and coordinating board rules and program initiatives;

(6)  consult and coordinate with representatives of the state, agency, and coordinating board and other appropriate persons regarding the use of covered information and the implementation of this subchapter;

(7)  establish and operate a privacy incident response program to ensure that each incident related to covered information involving the agency is properly reported, investigated, and mitigated;

(8)  establish a model process and policy for a student or the student's parent to file a complaint regarding:

(A)  a violation of student information privacy; or

(B)  an inability to access, review, or correct information contained in the student's educational record; and

(9)  provide training, guidance, technical assistance, and outreach to build a culture of student information protection and student data security among educational entities and third parties who contract with those entities.

(c)  Not later than February 1 of each year, the information privacy officer shall prepare and submit a written report to the standing committees of each house of the legislature with primary jurisdiction over primary, secondary, and higher education regarding actions taken by the agency related to student information privacy, including complaints regarding privacy violations, internal controls, and other related matters.

Sec. 32.1513.  GENERAL INVESTIGATIVE POWER OF INFORMATION PRIVACY OFFICER. (a) The information privacy officer may investigate an operator or educational entity as necessary to enforce this subchapter and protect covered information gathered from students in this state.

(b)  On request of the information privacy officer, an operator, educational entity, or a third party who contracts with an operator or educational entity shall make all applicable records and materials available to the officer as necessary to enable the officer to determine compliance with this subchapter.

(c)  The information privacy officer shall:

(1)  limit the scope of the investigation and any accompanying report to those matters that are necessary to the administration of this subchapter; and

(2)  in matters related to compliance with federal law, refer the matter to the appropriate federal agency and cooperate with an investigation by the federal agency.

Sec. 32.1514.  AGENCY COMPREHENSIVE STUDENT INFORMATION INVENTORY. The agency shall, to the maximum extent possible, develop, maintain, and post on the agency's Internet website a comprehensive student information inventory that accounts for all covered information assets created by, collected by, under the control or direction of, or maintained by the agency, including student information that:

(1)  is required to be reported by law;

(2)  has been proposed for inclusion in the agency's student information system with a statement regarding the reason for the proposed inclusion; and

(3)  is collected or maintained by the agency for no current purpose or reason.

Sec. 32.1515.  INFORMATION SECURITY POLICIES AND PROCEDURES. (a) Subject to the approval of the information privacy officer, each educational entity shall adopt and implement reasonable information security policies and procedures in accordance with this subchapter to protect students' educational records and covered information from unauthorized access, destruction, use, modification, or disclosure.

(b)  An educational entity must take into account the entity's specific needs and priorities in adopting policies and procedures under Subsection (a).

Sec. 32.1516.  STUDENT INFORMATION MANAGER. (a) Each educational entity shall designate an individual to act as a student information manager. The student information manager shall:

(1)  create, maintain, and submit to the information privacy officer an information governance plan addressing the protection of existing and future student information and records; and

(2)  establish a review process for all covered information requests for the purpose of external research or evaluation.

(b)  Not later than December 1 of each year, the student information manager shall submit a report to the agency's information privacy officer. The report must include:

(1)  proposed changes to the educational entity's information security policies and procedures adopted under Section 32.1515; and

(2)  any data breaches or attempted data breaches detected by the educational entity.

Sec. 32.1517.  CONTRACT PROVISIONS. A contract between an educational entity and an operator must include the following provisions:

(1)  requirements and restrictions related to the collection, use, storage, and sharing of covered information by the operator that are necessary for the educational entity to ensure the operator's compliance with this subchapter and other law;

(2)  a description of the person or type of person, including an affiliate or subcontractor of the operator, with whom the operator may share covered information;

(3)  when and how to delete covered information received by the operator;

(4)  a prohibition on the secondary use of covered information by the operator, except when used for a legitimate school or research purpose or as described by Sections 32.153 and 32.154;

(5)  an agreement by the operator that the educational entity or the educational entity's designee may audit the operator to verify compliance with the contract;

(6)  requirements for the operator or a subcontractor of the operator to establish security measures to prevent, detect, or mitigate a data breach; and

(7)  requirements for the operator or a subcontractor of the operator to notify the educational entity of a suspected data breach.

Sec. 32.1518.  NOTICE OF INFORMATION DISCLOSURE. (a) Not less than annually, an educational entity that collects covered information shall provide to each parent of a student whose covered information is collected a notice of information disclosure form stating in plain language the conditions under which the student's covered information may be disclosed. The educational entity shall provide the form as a stand-alone document.

(b)  The notice of information disclosure form must:

(1)  list the covered information that the educational entity collects and the rationale for collecting the information, including whether the information is required by law to be collected;

(2)  state that a student's covered information collected by the educational entity may not be shared without the written consent of the student's parent;

(3)  list each operator or other third party with access to or control of covered information maintained by the educational entity;

(4)  outline the rights and responsibilities of the educational entity under this subchapter; and

(5)  contain an acknowledgment section that:

(A)  states that the intended recipient of the notice actually received the notice and understands its contents;

(B)  allows for the recipient to record the recipient's objection to the collection of any covered information relating to the parent's student that is not required by law to be collected; and

(C)  includes a signature line.

(c)  Each parent who receives a notice of information disclosure form under Subsection (a) shall sign the acknowledgement section described by Subsection (b)(5) and return the form to the educational entity as soon as possible.

(d)  An educational entity shall:

(1)  annually update its notice of information disclosure form; and

(2)  maintain a written or electronic record of each signed acknowledgment form received under this section.

Sec. 32.1521.  PROHIBITED USE OF COVERED INFORMATION AND COLLECTION OF BIOMETRIC IDENTIFIER INFORMATION BY EDUCATIONAL ENTITY. (a) Except as otherwise provided by this subchapter, an educational entity may not release or otherwise disclose a student's covered information in exchange for a good, product, application, service, or any other thing of measurable value.

(b)  An educational entity may not use or release covered information for the purpose of targeted advertising unless the release of the data is essential for a school purpose, including the use of adaptive educational software or other strictly tailored educational endeavor with the sole purpose of providing a tailored educational experience to the student.

(c)  An educational entity may not collect a student's biometric identifier information unless required by law.

Sec. 32.1531.  ALLOWED DISCLOSURE OF COVERED INFORMATION BY EDUCATIONAL ENTITY. (a) An educational entity may disclose covered information if the disclosure is:

(1)  authorized in writing by the student's parent;

(2)  determined by the entity to be necessary because of an imminent health or safety emergency;

(3)  ordered by a court of competent jurisdiction; or

(4)  authorized or required by a provision of federal or state law.

(b)  The educational entity must comply with the requirements of federal and state law to protect any student information disclosed under this section.

(c)  This subchapter may not be construed to prohibit or otherwise limit the ability of an educational entity to report or make available aggregate student information or other collective information for reasonable use.

Sec. 32.1551.  NOTIFICATION OF DATA BREACH AFFECTING OPERATOR. (a) Not later than 24 hours after an operator becomes aware of a data breach, the operator shall notify the applicable educational entity with whom the operator has contracted of the breach and take action to determine the scope of student information affected by the breach.

(b)  The operator shall update the educational entity as soon as the full scope of the data breach is assessed and take all reasonable steps to notify all persons affected by the breach.

Sec. 32.1552.  NOTIFICATION OF DATA BREACH AFFECTING EDUCATIONAL ENTITY. (a) Not later than 24 hours after an educational entity becomes aware of a data breach, the educational entity shall notify the information privacy officer of the suspected or confirmed breach.

(b)  Not later than the third business day after the date a data breach is verified, an educational entity shall notify the parent of each student affected by the breach.

Sec. 32.1561.  INSPECTION OF INFORMATION CONTAINED IN STUDENT'S EDUCATIONAL RECORD. (a) On request of a student's parent, an educational entity or operator shall allow the student's parent to inspect the covered information and other information contained in the student's educational record maintained by the entity or operator.

(b)  The educational entity or operator shall provide the information requested under Subsection (a) in a timely manner and, if possible, in an electronic format.

(c)  An educational entity or operator is not required to provide information requested under Subsection (a) if:

(1)  the information cannot reasonably be made available to the requesting individual; or

(2)  the reproduction of the requested information would be unduly burdensome.

Sec. 32.1562.  CORRECTION OF INFORMATION CONTAINED IN STUDENT'S EDUCATIONAL RECORD. (a) After reviewing information requested under Section 32.1561, a student's parent may request that the educational entity or operator make corrections to address inaccurate or incomplete data in the student's educational record maintained by the entity or operator.

(b)  On request by a student's parent, an educational entity or operator shall expunge from the student's educational record covered information related to:

(1)  an unsubstantiated accusation made against the student; or

(2)  alleged conduct committed by the student if:

(A)  prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution were initiated; or

(B)  the court or jury found the student not guilty or made a finding the student did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

(c)  Not later than the 90th day after the date an educational entity or operator receives a request under Subsection (a) or (b), the educational entity or operator shall make changes to the student's educational record as necessary and confirm the changes with the student's parent.

Sec. 32.1563.  RULES; FORMS. (a) The commissioner shall adopt rules as necessary to implement this subchapter.

(b)  The commissioner shall develop forms as necessary to implement this subchapter, including model forms for:

(1)  providing the notice of information disclosure required by Section 32.1518; and

(2)  obtaining written parental consent for the disclosure of covered information as required by Section 32.1531.

Sec. 32.158.  CIVIL PENALTY. (a) An operator that violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty if the violation resulted in a negligent data breach.

(b)  In determining the amount of a civil penalty to impose under this section, the court shall include:

(1)  the cost of identity protection for each person affected by the data breach or compromise;

(2)  legal fees and costs incurred by each person affected by the data breach or compromise; and

(3)  any other penalty that the court deems reasonable or appropriate.

Sec. 32.159.  ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty for a violation of this subchapter in an amount of not less than $1,000 or more than $5,000.

(b)  The aggregate amount of penalties that the commissioner may assess against a person under this section during a calendar year may not exceed $1,000,000.

Sec. 32.160.  CRIMINAL LIABILITY NOT AFFECTED. This subchapter may not be construed to limit or otherwise affect a person's criminal liability under other law.

SECTION 3.  The heading to Section 32.152, Education Code, is amended to read as follows:

Sec. 32.152.  PROHIBITED USE OF COVERED INFORMATION AND COLLECTION OF BIOMETRIC IDENTIFIER INFORMATION BY OPERATOR.

SECTION 4.  Section 32.152, Education Code, is amended by amending Subsection (a) to read as follows:

(a)  An operator may not knowingly:

(1)  engage in targeted advertising on any website, online service, online application, or mobile application if the target of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired through the use of the operator's website, online service, online application, or mobile application for a school purpose;

(2)  use information, including persistent unique identifiers, created or gathered by the operator's website, online service, online application, or mobile application, to create a profile about a student unless the profile is created for a school purpose; [~~or~~]

(3)  except as provided by Subsection (c), sell or rent any student's covered information;

(4)  exchange a student's covered information for any good, service, or application;

(5)  disclose covered information except as provided under this subchapter; or

(6)  unless required by law, collect a student's biometric identifier information.

SECTION 5.  The heading to Section 32.153, Education Code, is amended to read as follows:

Sec. 32.153.  ALLOWED DISCLOSURE OF COVERED INFORMATION BY OPERATOR.

SECTION 6.  Section 32.153, Education Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a)  An operator may use or disclose covered information under the following circumstances:

(1)  to further a school purpose of the website, online service, online application, or mobile application and the recipient of the covered information disclosed under this subsection does not further disclose the information unless the disclosure is to allow or improve operability and functionality of the operator's website, online service, online application, or mobile application;

(2)  to ensure legal and regulatory compliance;

(3)  to protect against liability;

(4)  to respond to or participate in the judicial process, including to comply with an investigation by law enforcement as authorized by law or a court order;

(5)  to protect:

(A)  the safety or integrity of users of the website, online service, online application, or mobile application; or

(B)  the security of the website, online service, online application, or mobile application;

(6)  for a school, education, or employment purpose requested by the student or the student's parent and the information is not used or disclosed for any other purpose;

(7)  to use the covered information for:

(A)  a legitimate research purpose; or

(B)  a school purpose or postsecondary educational purpose; [~~or~~]

(8)  for a request by the agency or the school district for a school purpose;

(9)  to market an educational application or product to a student's parent, if the operator did not use covered information shared or collected by or on behalf of an educational entity to develop the application or product;

(10)  to allow a recommendation engine on the operator's website, online service, online application, or mobile application to recommend to a student's parent content or services related to learning or employment, if the recommendation is not motivated by payment or other consideration from another party; or

(11)  to respond to the request of a student's parent for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.

(f)  Notwithstanding any other law, an operator shall use a student's covered information received under a contract with an educational entity strictly for the purpose provided under the contract unless the student's parent affirmatively chooses to disclose the student's information for a secondary purpose.

SECTION 7.  The heading to Section 32.154, Education Code, is amended to read as follows:

Sec. 32.154.  ALLOWED USE OF COVERED INFORMATION BY OPERATOR.

SECTION 8.  The heading to Section 32.155, Education Code, is amended to read as follows:

Sec. 32.155.  PROTECTION OF COVERED INFORMATION BY OPERATOR.

SECTION 9.  Sections 32.155(c), (d), and (e), Education Code, are amended to read as follows:

(c)  In addition to including the unique identifier in releasing information as provided by Subsection (b), an operator may include any other data field identified by the agency or by an educational entity [~~a school district, open-enrollment charter school, regional education service center, or other local education agency~~] as necessary for the information being released to be useful.

(d)  An educational entity [~~A school district, open-enrollment charter school, regional education service center, or other local education agency~~] may include additional data fields in an agreement with an operator or the amendment of an agreement with an operator under this section. An operator may agree to include the additional data fields requested by an educational entity [~~a school district, open-enrollment charter school, regional education service center, or other local education agency~~] but may not require that additional data fields be included.

(e)  An educational entity [~~A school district, open-enrollment charter school, regional education service center, or other local education agency~~] may require an operator that contracts directly with the entity to adhere to a state-required student data sharing agreement that includes the use of an established unique identifier standard for all operators as prescribed by the agency.

SECTION 10.  The heading to Section 32.156, Education Code, is amended to read as follows:

Sec. 32.156.  DELETION OF COVERED INFORMATION BY OPERATOR.

SECTION 11.  This Act takes effect September 1, 2023.