By: Parker   S.B. No. 928

A BILL TO BE ENTITLED

1   AN ACT

2 relating to the protection of personally identifiable student

3 information and the use of covered information by an operator or

4 educational entity; authorizing a civil and administrative

5 penalty.

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

7   SECTION 1. Section 32.151, Education Code, is amended by

8 amending Subdivision (1) and adding Subdivisions (1-a), (1-b),

9 (1-c), (1-d), (1-e), (1-f), and (5-a) to read as follows:

10   (1) "Aggregate student information" means student

11 information collected by an educational entity that:

12   (A) is totaled and reported at the group, cohort,

13 school, school district, region, or state level, as determined by

14 the educational entity;

15   (B) does not reveal personally identifiable

16 student information; and

17   (C) cannot reasonably be used to identify,

18 contact, single out, or infer information about a student or a

19 device used by a student.

20   (1-a) "Biometric identifier" means any measurement of

21 the human body or its movement that is used to attempt to uniquely

22 identify or authenticate the identity of an individual, including a

23 blood sample, hair sample, skin sample, body scan, retina or iris

24 scan, fingerprint, voiceprint, or record of hand or face geometry.

1

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

3   (1-c) "Covered information" means personally
4 identifiable information or information that is linked to
5 personally identifiable information, in any media or format, that
6 is not publicly available and is:

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

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

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

1 voice recordings, or geolocation information.

2 (1-d) "Data breach" means an incident in which student

3 information that is sensitive, protected, or confidential, as

4 provided by state or federal law, is stolen or is copied,

5 transmitted, viewed, or used by a person unauthorized to engage in

6 that action.

7 (1-e) "Educational entity" includes school districts,

8 open-enrollment charter schools, regional education service

9 centers, institutions of higher education, and other local

10 education agencies.

11 (1-f) "Information privacy officer" means the

12 information privacy officer designated by the commissioner under

13 Section 32.1512.

14 (5-a) "Student" means a person who is enrolled at a

15 public primary or secondary school.

16 SECTION 2. Subchapter D, Chapter 32, Education Code, is

17 amended by adding Sections 32.1511, 32.1512, 32.1513, 32.1514,

18 32.1515, 32.1516, 32.1517, 32.1518, 32.1521, 32.1531, 32.1551,

19 32.1552, 32.1561, 32.1562, 32.1563, 32.158, 32.159, and 32.160 to

20 read as follows:

21 Sec. 32.1511. OWNERSHIP OF COVERED INFORMATION AND WORK

22 PRODUCT. (a) A student retains ownership over the student's own:

23 (1) covered information; and

24 (2) work or intellectual product, regardless of

25 whether the product was created for academic credit.

26 (b) A student may download, export, transfer, or otherwise

27 save or maintain any document, covered information, or other data

1 created by the student that is held or maintained by an educational

2 entity.

3   Sec. 32.1512. INFORMATION PRIVACY OFFICER; DUTIES. (a)

4 The commissioner shall designate an agency employee to serve as an

5 information privacy officer to oversee privacy and security

6 policies regarding student information.

7   (b) The information privacy officer shall:

8   (1) ensure that the agency handles covered information

9 maintained by the agency in a manner that complies with this

10 subchapter, the Family Educational Rights and Privacy Act of 1974

11 (20 U.S.C. Section 1232g), and any other federal or state

12 information privacy or security law;

13   (2) establish and publish in a form that is easily

14 accessible policies necessary to ensure that the use of technology

15 sustains, enhances, and does not erode privacy protections related

16 to the use, collection, and disclosure of covered information;

17   (3) develop and provide to each educational entity a

18 model student information privacy and security plan;

19   (4) evaluate legislative and regulatory proposals

20 involving the use, collection, and disclosure of covered

21 information by educational entities;

22   (5) conduct privacy impact assessments, including an

23 assessment of the type of covered information collected and the

24 number of students affected, for:

25   (A) legislative proposals affecting educational

26 entities; and

27   (B) agency and coordinating board rules and

4

1 program initiatives;

2   (6) consult and coordinate with representatives of the

3 state, agency, and coordinating board and other appropriate persons

4 regarding the use of covered information and the implementation of

5 this subchapter;

6   (7) establish and operate a privacy incident response

7 program to ensure that each incident related to covered information

8 involving the agency is properly reported, investigated, and

9 mitigated;

10   (8) establish a model process and policy for a student

11 or the student's parent to file a complaint regarding:

12   (A) a violation of student information privacy;

13 or

14   (B) an inability to access, review, or correct

15 information contained in the student's educational record; and

16   (9) provide training, guidance, technical assistance,

17 and outreach to build a culture of student information protection

18 and student data security among educational entities and third

19 parties who contract with those entities.

20   (c) Not later than February 1 of each year, the information

21 privacy officer shall prepare and submit a written report to the

22 standing committees of each house of the legislature with primary

23 jurisdiction over primary, secondary, and higher education

24 regarding actions taken by the agency related to student

25 information privacy, including complaints regarding privacy

26 violations, internal controls, and other related matters.

27   Sec. 32.1513. GENERAL INVESTIGATIVE POWER OF INFORMATION

1 PRIVACY OFFICER. (a) The information privacy officer may

2 investigate an operator or educational entity as necessary to

3 enforce this subchapter and protect covered information gathered

4 from students in this state.

5 (b) On request of the information privacy officer, an

6 operator, educational entity, or a third party who contracts with

7 an operator or educational entity shall make all applicable records

8 and materials available to the officer as necessary to enable the

9 officer to determine compliance with this subchapter.

10 (c) The information privacy officer shall:

11 (1) limit the scope of the investigation and any

12 accompanying report to those matters that are necessary to the

13 administration of this subchapter; and

14 (2) in matters related to compliance with federal law,

15 refer the matter to the appropriate federal agency and cooperate

16 with an investigation by the federal agency.

17 Sec. 32.1514. AGENCY COMPREHENSIVE STUDENT INFORMATION

18 INVENTORY. The agency shall, to the maximum extent possible,

19 develop, maintain, and post on the agency's Internet website a

20 comprehensive student information inventory that accounts for all

21 covered information assets created by, collected by, under the

22 control or direction of, or maintained by the agency, including

23 student information that:

24 (1) is required to be reported by law;

25 (2) has been proposed for inclusion in the agency's

26 student information system with a statement regarding the reason

27 for the proposed inclusion; and

1   (3) is collected or maintained by the agency for no

2   current purpose or reason.

3   Sec. 32.1515. INFORMATION   SECURITY   POLICIES   AND

4   PROCEDURES. (a) Subject to the approval of the information privacy

5   officer, each educational entity shall adopt and implement

6   reasonable information security policies and procedures in

7   accordance with this subchapter to protect students' educational

8   records and covered information from unauthorized access,

9   destruction, use, modification, or disclosure.

10   (b) An educational entity must take into account the

11   entity's specific needs and priorities in adopting policies and

12   procedures under Subsection (a).

13   Sec. 32.1516. STUDENT   INFORMATION   MANAGER.   (a) Each

14   educational entity shall designate an individual to act as a

15   student information manager. The student information manager

16   shall:

17   (1) create, maintain, and submit to the information

18   privacy officer an information governance plan addressing the

19   protection of existing and future student information and records;

20   and

21   (2) establish a review process for all covered

22   information requests for the purpose of external research or

23   evaluation.

24   (b) Not later than December 1 of each year, the student

25   information manager shall submit a report to the agency's

26   information privacy officer. The report must include:

27   (1) proposed changes to the educational entity's

1 information security policies and procedures adopted under Section

2 32.1515; and

3 (2) any data breaches or attempted data breaches

4 detected by the educational entity.

5 Sec. 32.1517. CONTRACT PROVISIONS. A contract between an

6 educational entity and an operator must include the following

7 provisions:

8 (1) requirements and restrictions related to the

9 collection, use, storage, and sharing of covered information by the

10 operator that are necessary for the educational entity to ensure

11 the operator's compliance with this subchapter and other law;

12 (2) a description of the person or type of person,

13 including an affiliate or subcontractor of the operator, with whom

14 the operator may share covered information;

15 (3) when and how to delete covered information

16 received by the operator;

17 (4) a prohibition on the secondary use of covered

18 information by the operator, except when used for a legitimate

19 school or research purpose or as described by Sections 32.153 and

20 32.154;

21 (5) an agreement by the operator that the educational

22 entity or the educational entity's designee may audit the operator

23 to verify compliance with the contract;

24 (6) requirements for the operator or a subcontractor

25 of the operator to establish security measures to prevent, detect,

26 or mitigate a data breach; and

27 (7) requirements for the operator or a subcontractor

1 of the operator to notify the educational entity of a suspected data

2 breach.

3   Sec. 32.1518.   NOTICE OF INFORMATION DISCLOSURE.   (a)   Not

4 less than annually, an educational entity that collects covered

5 information shall provide to each parent of a student whose covered

6 information is collected a notice of information disclosure form

7 stating in plain language the conditions under which the student's

8 covered information may be disclosed. The educational entity shall

9 provide the form as a stand-alone document.

10   (b)   The notice of information disclosure form must:

11   (1)   list the covered information that the educational

12 entity collects and the rationale for collecting the information,

13 including whether the information is required by law to be

14 collected;

15   (2)   state that a student's covered information

16 collected by the educational entity may not be shared without the

17 written consent of the student's parent;

18   (3)   list each operator or other third party with

19 access to or control of covered information maintained by the

20 educational entity;

21   (4)   outline the rights and responsibilities of the

22 educational entity under this subchapter; and

23   (5)   contain an acknowledgment section that:

24   (A)   states that the intended recipient of the

25 notice actually received the notice and understands its contents;

26   (B)   allows for the recipient to record the

27 recipient's objection to the collection of any covered information

1 relating to the parent's student that is not required by law to be

2 collected; and

3 (C) includes a signature line.

4 (c) Each parent who receives a notice of information

5 disclosure form under Subsection (a) shall sign the acknowledgement

6 section described by Subsection (b)(5) and return the form to the

7 educational entity as soon as possible.

8 (d) An educational entity shall:

9 (1) annually update its notice of information

10 disclosure form; and

11 (2) maintain a written or electronic record of each

12 signed acknowledgment form received under this section.

13 Sec. 32.1521. PROHIBITED USE OF COVERED INFORMATION AND

14 COLLECTION OF BIOMETRIC IDENTIFIER INFORMATION BY EDUCATIONAL

15 ENTITY. (a) Except as otherwise provided by this subchapter, an

16 educational entity may not release or otherwise disclose a

17 student's covered information in exchange for a good, product,

18 application, service, or any other thing of measurable value.

19 (b) An educational entity may not use or release covered

20 information for the purpose of targeted advertising unless the

21 release of the data is essential for a school purpose, including the

22 use of adaptive educational software or other strictly tailored

23 educational endeavor with the sole purpose of providing a tailored

24 educational experience to the student.

25 (c) An educational entity may not collect a student's

26 biometric identifier information unless required by law.

27 Sec. 32.1531. ALLOWED DISCLOSURE OF COVERED INFORMATION BY

1 EDUCATIONAL ENTITY. (a) An educational entity may disclose

2 covered information if the disclosure is:

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

4   (2) determined by the entity to be necessary because

5 of an imminent health or safety emergency;

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

7   (4) authorized or required by a provision of federal

8 or state law.

9   (b) The educational entity must comply with the

10 requirements of federal and state law to protect any student

11 information disclosed under this section.

12   (c) This subchapter may not be construed to prohibit or

13 otherwise limit the ability of an educational entity to report or

14 make available aggregate student information or other collective

15 information for reasonable use.

16   Sec. 32.1551. NOTIFICATION OF DATA BREACH AFFECTING

17 OPERATOR. (a) Not later than 24 hours after an operator becomes

18 aware of a data breach, the operator shall notify the applicable

19 educational entity with whom the operator has contracted of the

20 breach and take action to determine the scope of student

21 information affected by the breach.

22   (b) The operator shall update the educational entity as soon

23 as the full scope of the data breach is assessed and take all

24 reasonable steps to notify all persons affected by the breach.

25   Sec. 32.1552. NOTIFICATION OF DATA BREACH AFFECTING

26 EDUCATIONAL ENTITY. (a) Not later than 24 hours after an

27 educational entity becomes aware of a data breach, the educational

1 entity shall notify the information privacy officer of the

2 suspected or confirmed breach.

3 (b) Not later than the third business day after the date a

4 data breach is verified, an educational entity shall notify the

5 parent of each student affected by the breach.

6 Sec. 32.1561. INSPECTION OF INFORMATION CONTAINED IN

7 STUDENT'S EDUCATIONAL RECORD. (a) On request of a student's

8 parent, an educational entity or operator shall allow the student's

9 parent to inspect the covered information and other information

10 contained in the student's educational record maintained by the

11 entity or operator.

12 (b) The educational entity or operator shall provide the

13 information requested under Subsection (a) in a timely manner and,

14 if possible, in an electronic format.

15 (c) An educational entity or operator is not required to

16 provide information requested under Subsection (a) if:

17 (1) the information cannot reasonably be made

18 available to the requesting individual; or

19 (2) the reproduction of the requested information

20 would be unduly burdensome.

21 Sec. 32.1562. CORRECTION OF INFORMATION CONTAINED IN

22 STUDENT'S EDUCATIONAL RECORD. (a) After reviewing information

23 requested under Section 32.1561, a student's parent may request

24 that the educational entity or operator make corrections to address

25 inaccurate or incomplete data in the student's educational record

26 maintained by the entity or operator.

27 (b) On request by a student's parent, an educational entity

1 or operator shall expunge from the student's educational record

2 covered information related to:

3   (1) an unsubstantiated accusation made against the

4 student; or

5   (2) alleged conduct committed by the student if:

6   (A) prosecution of the student's case was refused

7 for lack of prosecutorial merit or insufficient evidence and no

8 formal proceedings, deferred adjudication, or deferred prosecution

9 were initiated; or

10   (B) the court or jury found the student not

11 guilty or made a finding the student did not engage in delinquent

12 conduct or conduct indicating a need for supervision and the case

13 was dismissed with prejudice.

14   (c) Not later than the 90th day after the date an

15 educational entity or operator receives a request under Subsection

16 (a) or (b), the educational entity or operator shall make changes to

17 the student's educational record as necessary and confirm the

18 changes with the student's parent.

19   Sec. 32.1563. RULES; FORMS. (a) The commissioner shall

20 adopt rules as necessary to implement this subchapter.

21   (b) The commissioner shall develop forms as necessary to

22 implement this subchapter, including model forms for:

23   (1) providing the notice of information disclosure

24 required by Section 32.1518; and

25   (2) obtaining written parental consent for the

26 disclosure of covered information as required by Section 32.1531.

27   Sec. 32.158. CIVIL PENALTY. (a) An operator that violates

1 this subchapter or a rule adopted under this subchapter is liable

2 for a civil penalty if the violation resulted in a negligent data

3 breach.

4   (b) In determining the amount of a civil penalty to impose

5 under this section, the court shall include:

6   (1) the cost of identity protection for each person

7 affected by the data breach or compromise;

8   (2) legal fees and costs incurred by each person

9 affected by the data breach or compromise; and

10   (3) any other penalty that the court deems reasonable

11 or appropriate.

12   Sec. 32.159. ADMINISTRATIVE PENALTY. (a) The commissioner

13 may assess an administrative penalty for a violation of this

14 subchapter in an amount of not less than $1,000 or more than $5,000.

15   (b) The aggregate amount of penalties that the commissioner

16 may assess against a person under this section during a calendar

17 year may not exceed $1,000,000.

18   Sec. 32.160. CRIMINAL LIABILITY NOT AFFECTED. This

19 subchapter may not be construed to limit or otherwise affect a

20 person's criminal liability under other law.

21   SECTION 3. The heading to Section 32.152, Education Code,

22 is amended to read as follows:

23   Sec. 32.152. PROHIBITED USE OF COVERED INFORMATION AND

24 COLLECTION OF BIOMETRIC IDENTIFIER INFORMATION BY OPERATOR.

25   SECTION 4. Section 32.152, Education Code, is amended by

26 amending Subsection (a) to read as follows:

27   (a) An operator may not knowingly:

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

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

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

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

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

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

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

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

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

15

1   (a) An operator may use or disclose covered information
2 under the following circumstances:
3   (1) to further a school purpose of the website, online
4 service, online application, or mobile application and the
5 recipient of the covered information disclosed under this
6 subsection does not further disclose the information unless the
7 disclosure is to allow or improve operability and functionality of
8 the operator's website, online service, online application, or
9 mobile application;
10   (2) to ensure legal and regulatory compliance;
11   (3) to protect against liability;
12   (4) to respond to or participate in the judicial
13 process, including to comply with an investigation by law
14 enforcement as authorized by law or a court order;
15   (5) to protect:
16   (A) the safety or integrity of users of the
17 website, online service, online application, or mobile
18 application; or
19   (B) the security of the website, online service,
20 online application, or mobile application;
21   (6) for a school, education, or employment purpose
22 requested by the student or the student's parent and the
23 information is not used or disclosed for any other purpose;
24   (7) to use the covered information for:
25   (A) a legitimate research purpose; or
26   (B) a school purpose or postsecondary
27 educational purpose; [or]

1   (8) for a request by the agency or the school district
2 for a school purpose;
3   (9) to market an educational application or product to
4 a student's parent, if the operator did not use covered information
5 shared or collected by or on behalf of an educational entity to
6 develop the application or product;
7   (10) to allow a recommendation engine on the
8 operator's website, online service, online application, or mobile
9 application to recommend to a student's parent content or services
10 related to learning or employment, if the recommendation is not
11 motivated by payment or other consideration from another party; or
12   (11) to respond to the request of a student's parent
13 for information or feedback, if the content of the response is not
14 motivated by payment or other consideration from another party.
15   (f) Notwithstanding any other law, an operator shall use a
16 student's covered information received under a contract with an
17 educational entity strictly for the purpose provided under the
18 contract unless the student's parent affirmatively chooses to
19 disclose the student's information for a secondary purpose.
20   SECTION 7. The heading to Section 32.154, Education Code,
21 is amended to read as follows:
22   Sec. 32.154. ALLOWED USE OF COVERED INFORMATION BY
23 OPERATOR.
24   SECTION 8. The heading to Section 32.155, Education Code,
25 is amended to read as follows:
26   Sec. 32.155. PROTECTION OF COVERED INFORMATION BY OPERATOR.
27   SECTION 9. Sections 32.155(c), (d), and (e), Education

1 Code, are amended to read as follows:

2   (c) In addition to including the unique identifier in

3 releasing information as provided by Subsection (b), an operator

4 may include any other data field identified by the agency or by an

5 educational entity [a school district, open-enrollment charter

6 school, regional education service center, or other local education

7 agency] as necessary for the information being released to be

8 useful.

9   (d) An educational entity [A school district,

10 open-enrollment charter school, regional education service center,

11 or other local education agency] may include additional data fields

12 in an agreement with an operator or the amendment of an agreement

13 with an operator under this section. An operator may agree to

14 include the additional data fields requested by an educational

15 entity [a school district, open-enrollment charter school,

16 regional education service center, or other local education agency]

17 but may not require that additional data fields be included.

18   (e) An educational entity [A school district,

19 open-enrollment charter school, regional education service center,

20 or other local education agency] may require an operator that

21 contracts directly with the entity to adhere to a state-required

22 student data sharing agreement that includes the use of an

23 established unique identifier standard for all operators as

24 prescribed by the agency.

25   SECTION 10. The heading to Section 32.156, Education Code,

26 is amended to read as follows:

27   Sec. 32.156. DELETION OF COVERED INFORMATION BY OPERATOR.

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