Senator **Jacob L. Anderegg** proposes the following substitute bill:

1 # STUDENT INFORMATION AMENDMENTS

2 ## 2017 GENERAL SESSION

3 ## STATE OF UTAH

4 **Chief Sponsor: Jacob L. Anderegg**

5 House Sponsor: John Knotwell

6

7 **LONG TITLE**

8 **General Description:**

9   This bill modifies provisions related to student data and information given to students.

10 **Highlighted Provisions:**

11   This bill:

12   ‣   amends definitions;

13   ‣   repeals an incorrect cross reference;

14   ‣   permits a third-party contractor to identify for a student nonprofit institutions of

15 higher education or scholarship providers that are seeking students who meet

16 specific criteria;

17   ‣   amends Utah Futures provisions, including:

18   •   defining terms;

19   •   allowing a student to access information about an education provider or

20 scholarship provider;

21   •   allowing an education provider or Utah business to request that Utah Futures

22 send certain information to a student user; and

23   •   authorizing the Utah Futures Steering Committee to charge a fee; and

24   ‣   makes technical corrections.

25 **Money Appropriated in this Bill:**

26   None

27 **Other Special Clauses:**

28   None

29 **Utah Code Sections Affected:**

30 AMENDS:

31   **53A-1-1402**, as enacted by Laws of Utah 2016, Chapter 221

32   **53A-1-1406**, as enacted by Laws of Utah 2016, Chapter 221

33   **53A-1-1410**, as enacted by Laws of Utah 2016, Chapter 221

34   **53B-17-108**, as last amended by Laws of Utah 2015, Chapters 222, 283 and

35 renumbered and amended by Laws of Utah 2015, Chapter 366

36

37 *Be it enacted by the Legislature of the state of Utah:*

38   Section 1. Section **53A-1-1402** is amended to read:

39   **53A-1-1402.   Definitions.**

40   As used in this part:

41   (1) "Adult student" means a student who:

42   (a) is at least 18 years old;

43   (b) is an emancipated student; or

44   (c) qualifies under the McKinney-Vento Homeless Education Assistance

45 Improvements Act of 2001, 42 U.S.C. Sec. 11431 et seq.

46   (2) "Aggregate data" means data that:

47   (a) are totaled and reported at the group, cohort, school, school district, region, or state

48 level with at least 10 individuals in the level;

49   (b) do not reveal personally identifiable student data; and

50   (c) are collected in accordance with board rule.

51   (3) (a) "Biometric identifier" means a:

52   (i) retina or iris scan;

53   (ii) fingerprint;

54   (iii) human biological sample used for valid scientific testing or screening; or

55   (iv) scan of hand or face geometry.

56   (b) "Biometric identifier" does not include:

57   (i) a writing sample;

58   (ii) a written signature;

59   (iii) a voiceprint;

60   (iv) a photograph;

61   (v) demographic data; or

62   (vi) a physical description, such as height, weight, hair color, or eye color.

63   (4) "Biometric information" means information, regardless of how the information is

64   collected, converted, stored, or shared:

65   (a) based on an individual's biometric identifier; and

66   (b) used to identify the individual.

67   (5) "Board" means the State Board of Education.

68   (6) "Cumulative disciplinary record" means disciplinary student data that is part of a

69   cumulative record.

70   (7) "Cumulative record" means physical or electronic information that the education

71   entity intends:

72   (a) to store in a centralized location for 12 months or more; and

73   (b) for the information to follow the student through the public education system.

74   (8) "Data authorization" means written authorization to collect or share a student's

75   student data, from:

76   (a) the student's parent, if the student is not an adult student; or

77   (b) the student, if the student is an adult student.

78   (9) "Data governance plan" means an education entity's comprehensive plan for

79   managing education data that:

80   (a) incorporates reasonable data industry best practices to maintain and protect student

81   data and other education-related data;

82   (b) provides for necessary technical assistance, training, support, and auditing;

83   (c) describes the process for sharing student data between an education entity and

84   another person;

85   (d) describes the process for an adult student or parent to request that data be

86   expunged; and

87   (e) is published annually and available on the education entity's website.

88   (10) "Education entity" means:

89   (a) the board;

90   (b) a local school board;

91   (c) a charter school governing board;

92   (d) a school district;

93   (e) a charter school;

94   (f) the Utah Schools for the Deaf and the Blind; or

95   (g) for purposes of implementing the School Readiness Initiative described in Chapter

96   1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section

97   53A-1b-103.

98   (11) "Expunge" means to seal or permanently delete data, as described in board rule

99   made under Section 53A-1-1407.

100   (12) "External application" means a general audience:

101   (a) application;

102   (b) piece of software;

103   (c) website; or

104   (d) service.

105   (13) "Individualized education program" or "IEP" means a written statement:

106   (a) for a student with a disability; and

107   (b) that is developed, reviewed, and revised in accordance with the Individuals with

108   Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

109   (14) "Internal application" means an Internet website, online service, online

110   application, mobile application, or software, if the Internet website, online service, online

111   application, mobile application, or software is subject to a third-party contractor's contract with

112   an education entity.

113   (15) "Local education agency" or "LEA" means:

114   (a) a school district;

115   (b) a charter school;

116   (c) the Utah Schools for the Deaf and the Blind; or

117   (d) for purposes of implementing the School Readiness Initiative described in Chapter

118   1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section

119   53A-1b-103.

120   (16) "Metadata dictionary" means a complete list of an education entity's student data

121   elements and other education-related data elements, that:

122   (a) defines and discloses all data collected, used, stored, and shared by the education

123   entity, including:

124   (i) who uses a data element within an education entity and how a data element is used

125   within an education entity;

126   (ii) if a data element is shared externally, who uses the data element externally and how

127   a data element is shared externally;

128   (iii) restrictions on the use of a data element; and

129   (iv) parent and student rights to a data element;

130   (b) designates student data elements as:

131   (i) necessary student data; or

132   (ii) optional student data;

133   (c) designates student data elements as required by state or federal law; and

134   (d) without disclosing student data or security information, is displayed on the

135   education entity's website.

136   (17) "Necessary student data" means data required by state statute or federal law to

137   conduct the regular activities of an education entity, including:

138   (a) name;

139   (b) date of birth;

140   (c) sex;

141   (d) parent contact information;

142   (e) custodial parent information;

143   (f) contact information;

144   (g) a student identification number;

145   (h) local, state, and national assessment results or an exception from taking a local,

146   state, or national assessment;

147   (i) courses taken and completed, credits earned, and other transcript information;

148   (j) course grades and grade point average;

149   (k) grade level and expected graduation date or graduation cohort;

150   (l) degree, diploma, credential attainment, and other school exit information;

151   (m) attendance and mobility;

152   (n) drop-out data;

153   (o) immunization record or an exception from an immunization record;

154   (p) race;

155   (q) ethnicity;

156   (r) tribal affiliation;

157   (s) remediation efforts;

158   (t) an exception from a vision screening required under Section 53A-11-203 or

159 information collected from a vision screening required under Section 53A-11-203;

160   (u) information related to the Utah Registry of Autism and Developmental Disabilities,

161 described in Section 26-7-4;

162   (v) student injury information;

163   (w) a cumulative disciplinary record created and maintained as described in Section

164 53A-1-1407;

165   (x) juvenile delinquency records;

166   (y) English language learner status; and

167   (z) child find and special education evaluation data related to initiation of an IEP.

168   (18) (a) "Optional student data" means student data that is not:

169   (i) necessary student data; or

170   (ii) student data that an education entity may not collect under Section 53A-1-1406.

171   (b) "Optional student data" includes:

172   (i) information that is:

173   (A) related to an IEP or needed to provide special needs services; and

174   (B) not necessary student data;

175   (ii) biometric information; and

176   (iii) information that is not necessary student data and that is required for a student to

177 participate in a federal or other program.

178   (19) "Parent" means a student's parent or legal guardian.

179   (20) (a) "Personally identifiable student data" means student data that identifies or is

180 used by the holder to identify a student.

181   (b) "Personally identifiable student data" includes:

182   (i) a student's first and last name;

183   (ii) the first and last name of a student's family member;

184   (iii) a student's or a student's family's home or physical address;

185   (iv) a student's email address or other online contact information;

186   (v) a student's telephone number;

187   (vi) a student's social security number;

188   (vii) a student's biometric identifier;

189   (viii) a student's health or disability data;

190   (ix) a student's education entity student identification number;

191   (x) a student's social media user name and password or alias;

192   (xi) if associated with personally identifiable student data, the student's persistent

193   identifier, including:

194   (A) a customer number held in a cookie; or

195   (B) a processor serial number;

196   (xii) a combination of a student's last name or photograph with other information that

197   together permits a person to contact the student online;

198   (xiii) information about a student or a student's family that a person collects online and

199   combines with other personally identifiable student data to identify the student; and

200   (xiv) other information that is linked to a specific student that would allow a

201   reasonable person in the school community, who does not have first-hand knowledge of the

202   student, to identify the student with reasonable certainty.

203   (21) "School official" means an employee or agent of an education entity, if the

204   education entity has authorized the employee or agent to request or receive student data on

205   behalf of the education entity.

206   (22) (a) "Student data" means information about a student at the individual student

207   level.

208   (b) "Student data" does not include aggregate or de-identified data.

209   (23) "Student data disclosure statement" means a student data disclosure statement

210   described in Section 53A-1-1406.

211   (24) "Student data manager" means:

212   (a) the state student data officer; or

213   (b) an individual designated as a student data manager by an education entity under

214   Section 53A-1-1404.

215   (25) (a) "Targeted advertising" means [~~advertising to a student on an internal or~~

216   ~~external application, if the advertisement is based on information or student data the third-party~~

217   ~~contractor collected or received under the third-party contractor's contract with an education~~

218   ~~entity~~] presenting advertisements to a student on an internal or external application where the

219   advertisement is selected based on information obtained or inferred from student data, the

220   student's online behavior, or usage of applications.

221   (b) "Targeted advertising" does not include advertisements presented to a student on an

222   internal or external application:

223   (i) where the advertisement is selected based upon the student's current visit to or

224   single search query on a site, software, service, or application; or

225   (ii) for a nonprofit institution of higher education or scholarship provider.

226   (26) "Third-party contractor" means a person who:

227   (a) is not an education entity; and

228   (b) pursuant to a contract with an education entity, collects or receives student data in

229   order to provide a product or service, as described in the contract, if the product or service is

230   not related to school photography, yearbooks, graduation announcements, or a similar product

231   or service.

232   Section 2. Section **53A-1-1406** is amended to read:

233   **53A-1-1406.   Collecting student data -- Prohibition -- Student data disclosure**

234   **statement -- Authorization.**

235   (1) An education entity shall comply with this section beginning with the 2017-18

236   school year.

237   (2) An education entity may not collect a student's:

238   (a) social security number; or

239   (b) except as required in Section 78A-6-112, criminal record.

240   (3) An education entity that collects student data into a cumulative record shall, in

241   accordance with this section, prepare and distribute to parents and students a student data

242   disclosure statement that:

243   (a) is a prominent, stand-alone document;

244   (b) is annually updated and published on the education entity's website;

245   (c) states the necessary and optional student data the education entity collects;

246   (d) states that the education entity will not collect the student data described in

247   Subsection (2);

248   (e) states the student data described in Section 53A-1-1409 that the education entity

249   may not share without a data authorization;

250   [(f) states that students and parents are responsible for the collection, use, or sharing of

251   student data as described in Section 53A-1-1405;]

252   [(g)] (f) describes how the education entity may collect, use, and share student data;

253   [(h)] (g) includes the following statement:

254   "The collection, use, and sharing of student data has both benefits and risks. Parents

255   and students should learn about these benefits and risks and make choices regarding student

256   data accordingly.";

257   [(i)] (h) describes in general terms how the education entity stores and protects student

258   data; and

259   [(j)] (i) states a student's rights under this part.

260   (4) An education entity may collect the necessary student data of a student into a

261   cumulative record if the education entity provides a student data disclosure statement to:

262   (a) the student, if the student is an adult student; or

263   (b) the student's parent, if the student is not an adult student.

264   (5) An education entity may collect optional student data into a cumulative record if

265   the education entity:

266   (a) provides, to an individual described in Subsection (4), a student data disclosure

267   statement that includes a description of:

268   (i) the optional student data to be collected; and

269   (ii) how the education entity will use the optional student data; and

270   (b) obtains a data authorization to collect the optional student data from an individual

271   described in Subsection (4).

272   (6) An education entity may collect a student's biometric identifier or biometric

273   information into a cumulative record if the education entity:

274   (a) provides, to an individual described in Subsection (4), a biometric information

275   disclosure statement that is separate from a student data disclosure statement, which states:

276   (i) the biometric identifier or biometric information to be collected;

277   (ii) the purpose of collecting the biometric identifier or biometric information; and

278   (iii) how the education entity will use and store the biometric identifier or biometric

279   information; and

280   (b) obtains a data authorization to collect the biometric identifier or biometric

281   information from an individual described in Subsection (4).

282   Section 3. Section **53A-1-1410** is amended to read:

283   **53A-1-1410.   Third-party contractors -- Use and protection of student data --**

284   **Contract requirements -- Completion of contract -- Required and allowed uses of student**

285   **data -- Restrictions on the use of student data -- Exceptions.**

286   (1) A third-party contractor shall use personally identifiable student data received

287   under a contract with an education entity strictly for the purpose of providing the contracted

288   product or service.

289   (2) When contracting with a third-party contractor, an education entity shall require the

290   following provisions in the contract:

291   (a) requirements and restrictions related to the collection, use, storage, or sharing of

292   student data by the third-party contractor that are necessary for the education entity to ensure

293   compliance with the provisions of this part and board rule;

294   (b) a description of a person, or type of person, including an affiliate of the third-party

295   contractor, with whom the third-party contractor may share student data;

296   (c) provisions that, at the request of the education entity, govern the deletion of the

297   student data received by the third-party contractor;

298   (d) except as provided in Subsection (4) and if required by the education entity,

299   provisions that prohibit the secondary use of personally identifiable student data by the

300   third-party contractor; and

301   (e) an agreement by the third-party contractor that, at the request of the education entity

302   that is a party to the contract, the education entity or the education entity's designee may audit

303   the third-party contractor to verify compliance with the contract.

304   (3) As authorized by law or court order, a third-party contractor shall share student data

305   as requested by law enforcement.
306   (4) A third-party contractor may:
307   (a) use student data for adaptive learning or customized student learning purposes;
308   (b) market an educational application or product to a parent or legal guardian of a
309   student if the third-party contractor did not use student data, shared by or collected on behalf of
310   an education entity, to market the educational application or product;
311   (c) use a recommendation engine to recommend to a student:
312   (i) content that relates to learning or employment, within the third-party contractor's
313   internal application, if the recommendation is not motivated by payment or other consideration
314   from another party; or
315   (ii) services that relate to learning or employment, within the third-party contractor's
316   internal application, if the recommendation is not motivated by payment or other consideration
317   from another party;
318   (d) respond to a student request for information or feedback, if the content of the
319   response is not motivated by payment or other consideration from another party; [or]
320   (e) use student data to allow or improve operability and functionality of the third-party
321   contractor's internal application[.]; or
322   (f) identify for a student nonprofit institutions of higher education or scholarship
323   providers that are seeking students who meet specific criteria:
324   (i) regardless of whether the identified nonprofit institutions of higher education or
325   scholarship providers provide payment or other consideration to the third-party contractor; and
326   (ii) only if the third-party contractor obtains written consent:
327   (A) of a student's parent or legal guardian through the student's school or LEA; or
328   (B) for a student who is age 18 or older or an emancipated minor, from the student.
329   (5) At the completion of a contract with an education entity, if the contract has not
330   been renewed, a third-party contractor shall:
331   (a) return all personally identifiable student data to the education entity; or
332   (b) as reasonable, delete all personally identifiable student data related to the
333   third-party contractor's work.
334   (6) (a) A third-party contractor may not:
335   (i) except as provided in Subsection (6)(b), sell student data;

336   (ii) collect, use, or share student data, if the collection, use, or sharing of the student

337   data is inconsistent with the third-party contractor's contract with the education entity; or

338   (iii) use student data for targeted advertising.

339   (b) A person may obtain student data through the purchase of, merger with, or

340   otherwise acquiring a third-party contractor if the third-party contractor remains in compliance

341   with this section.

342   (7) A provider of an electronic store, gateway, marketplace, or other means of

343   purchasing an external application is not required to ensure that the external application

344   obtained through the provider complies with this section.

345   (8) The provisions of this section do not:

346   (a) apply to the use of an external application, including the access of an external

347   application with login credentials created by a third-party contractor's internal application;

348   (b) apply to the providing of Internet service; or

349   (c) impose a duty on a provider of an interactive computer service, as defined in 47

350   U.S.C. Sec. 230, to review or enforce compliance with this section.

351   Section 4. Section **53B-17-108** is amended to read:

352   **53B-17-108.   Utah Futures.**

353   (1) As used in this section:

354   (a) "Education provider" means:

355   (i) a Utah institution of higher education as defined in Section 53B-2-101; or

356   (ii) a nonprofit Utah provider of postsecondary education.

357   (b) "Student user" means:

358   (i) a Utah student in kindergarten through grade 12;

359   (ii) a Utah post secondary education student;

360   (iii) a parent or guardian of a Utah public education student; or

361   (iv) a Utah potential post secondary education student.

362   (c) "Utah Futures" means a career planning program developed and administered by

363   the Utah Futures Steering Committee.

364   (d) "Utah Futures Steering Committee" means a committee of members designated by

365   the governor to administer and manage Utah Futures.

366   (2) The Utah Futures Steering Committee shall ensure, as funding allows and is

367   feasible, that Utah Futures will:

368   (a) allow a student user to:

369   [(i) access the student user's full academic record;]

370   [(ii) electronically allow the student user to give access to the student user's academic

371   record and related information to an education provider as allowed by law;]

372   (i) access, subject to Subsection (3), information about an education provider or a

373   scholarship provider;

374   [(iii)] (ii) access information about different career opportunities and understand the

375   related educational requirements to enter that career;

376   [(iv)] (iii) access information about education providers;

377   [(v)] (iv) access up to date information about entrance requirements to education

378   providers;

379   [(vi)] (v) apply for entrance to multiple schools without having to fully replicate the

380   application process;

381   [(vii)] (vi) apply for loans, scholarships, or grants from multiple education providers in

382   one location without having to fully replicate the application process for multiple education

383   providers; and

384   [(viii)] (vii) research open jobs from different companies within the user's career

385   interest and apply for those jobs without having to leave the website to do so;

386   (b) allow all users to:

387   (i) access information about different career opportunities and understand the related

388   educational requirements to enter that career;

389   (ii) access information about education providers;

390   (iii) access up-to-date information about entrance requirements to education providers;

391   (iv) apply for entrance to multiple schools without having to fully replicate the

392   application process;

393   (v) apply for loans, scholarships, or grants from multiple education providers in one

394   location without having to fully replicate the application process for multiple education

395   providers; and

396   (vi) research open jobs from different companies within the user's career interest and

397   apply for those jobs without having to leave the website to do so;

398   (c) allow an education provider to:

399   (i) [research and find student users] request that Utah Futures send information to

400   student users who are interested in various educational [outcomes] opportunities;

401   (ii) promote the education provider's programs and schools to student users; and

402   (iii) connect with student users within the Utah Futures website;

403   (d) allow a Utah business to:

404   (i) [research and find student users] request that Utah Futures send information to

405   student users who are pursuing educational [outcomes] opportunities that are consistent with

406   jobs the Utah business is trying to fill now or in the future; and

407   (ii) market jobs and communicate with student users through the Utah Futures website

408   as allowed by law;

409   (e) provide analysis and reporting on student user interests and education paths within

410   the education system; and

411   (f) allow all users of the Utah Futures' system to communicate and interact through

412   social networking tools within the Utah Futures website as allowed by law.

413   (3) A student may access information described in Subsection (2)(a)(i) only if Utah

414   Futures obtains written consent:

415   (a) of a student's parent or legal guardian through the student's school or LEA; or

416   (b) for a student who is age 18 or older or an emancipated minor, from the student.

417   (4) The Utah Futures Steering Committee:

418   (a) may charge a fee to a Utah business for services provided by Utah Futures under

419   this section; and

420   (b) shall establish a fee described in Subsection (4)(a) in accordance with Section

421   63J-1-504.