Doug Fiefia proposes the following substitute bill:

1   **Software in Education Amendments**

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Doug Fiefia

2

3   **LONG TITLE**

4   **General Description:**

5   This bill requires the State Board of Education (state board) to create a statewide digital

6   privacy agreement and creates certain requirements and accountability procedures regarding a

7   student's use of software in a public school.

8   **Highlighted Provisions:**

9   This bill:

10   ‣ defines terms;

11   ‣ requires the state board to:

12   • create a statewide digital privacy agreement for educational software;

13   • ensure that all educational software used in a public school is executed under the

14   statewide digital privacy agreement and academically effective;

15   • create a process for a vendor to certify that the vendor's software is academically

16   effective;

17   • monitor compliance with certain requirements;

18   • create a list of approved software;

19   • verify software as academically effective;

20   • create a process for a parent to submit a complaint; and

21   • create rules to implement the requirements of this section;

22   ‣ creates exceptions for the statewide digital privacy agreement;

23   ‣ requires a local education agency (LEA), the Utah Education and Telehealth Network,

24   and the state board to:

25   • execute the statewide digital privacy agreement for all educational software contracts;

26   and

27   • verify certain software is academically effective;

28   ‣ requires the use of a digital privacy agreement for administrative software;

29   ‣ allows a vendor to offer educational software to a contracting entity on a provisional basis;

30   ‣ requires an LEA to notify parents of all software a public school uses during the school

31 year;

32   ‣ requires the state board to consult with the Office of the Attorney General; and

33   ‣ requires a vendor to:

34   • execute the statewide digital privacy agreement for all educational software contracts

35 with a contracting entity; and

36   • verify all educational software is academically effective.

37 **Money Appropriated in this Bill:**

38   None

39 **Other Special Clauses:**

40   This bill provides a special effective date.

41 **Utah Code Sections Affected:**

42 ENACTS:

43   **53G-7-1401**, Utah Code Annotated 1953

44   **53G-7-1402**, Utah Code Annotated 1953

45   **53G-7-1403**, Utah Code Annotated 1953

46   **53G-7-1404**, Utah Code Annotated 1953

47   **53G-7-1405**, Utah Code Annotated 1953

48   **53G-7-1406**, Utah Code Annotated 1953

49   **53G-7-1407**, Utah Code Annotated 1953

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

52   Section 1. Section **53G-7-1401** is enacted to read:

53   **Part 14. Software Policy**

54   **53G-7-1401 . General provisions -- Definitions.**

55   As used in this part:

56 (1) "Academic progress" means advancement toward mastery of state academic standards

57   through practice, application, feedback, or demonstration of knowledge or skill.

58 (2) "Academically effective" means software that:

59   (a) is designed to provide support, or enable student active learning, skill development,

60   or academic progress in the intended subject area;

61   (b) where applicable, aligns with the public education core standards described in

62   Section 53E-4-202;

63   (c) does not employ design features that primarily:

64   (i) interfere with active learning; or

65   (ii) undermine teacher instructional authority; and

66   (d) contributes to or enables measurable academic progress or skill development when

67   used as intended.

68 (3) "Active learning" means instruction that requires a student to engage in cognitive

69   processes including analyzing, reasoning, practicing, or creating to understand or apply

70   knowledge or skills.

71 (4)(a) "Addictive design feature" means a feature or component of a digital or online

72   product that encourages or increases a student's frequency, time spent, or engagement

73   with the product.

74   (b) "Addictive design feature" includes the following features:

75   (i) infinite scroll;

76   (ii) autoplay that continues beyond the educational task or lesson;

77   (iii) points, badges, or other gamification rewards tied to time spent on the product

78   rather than learning objectives or academic progress;

79   (iv) persistent notifications prompting re-engagement when the product is not

80   actively in use, unless:

81   (A) a teacher initiates the notification; and

82   (B) the notification is directly related to assigned schoolwork;

83   (v) personalized recommendation systems designed to maximize time-on-platform

84   rather than learning outcomes; or

85   (vi) engagement metrics, streaks, or social comparison features designed to create

86   fear of missing out or compulsive checking behavior.

87   (c) "Addictive design feature" does not include a:

88   (i) recommendation of next lessons or learning activities based on curriculum

89   progression or mastery of prerequisites;

90   (ii) notification about a teacher-assigned or course-required assignment, deadline, or

91   teacher feedback; or

92   (iii) feature that encourages active learning rather than passive consumption.

93 (5) "Administrative software" means software that a contracting entity uses solely for

94   administrative, operational, or other non-instructional functions of the contracting entity.

95 (6) "Clickstream data" means data an LEA or third-party provider collects from a student's

96   use of an online service, application, or device that records the student's navigation or

97   sequence of actions.

98   (7) "Contracting entity" means the following entities if that entity contracts with a vendor

99   for software:

100   (a) an LEA;

101   (b) the state board; or

102   (c) UETN.

103   (8) "Digital privacy agreement" means a contract between a contracting entity and a digital

104   provider that:

105   (a) ensures compliance with Title 53E, Chapter 9, Student Privacy and Data Protection;

106   and

107   (b) governs access, use, protection, retention, and disclosure of student data.

108   (9)(a) "Educational purpose" means a purpose directly related to:

109   (i) student instruction;

110   (ii) assessment of a student; or

111   (iii) school operations necessary for instruction of a student.

112   (b) "Educational purpose" does not include:

113   (i) marketing;

114   (ii) targeted advertising;

115   (iii) behavioral profiling; or

116   (iv) any other commercial purpose.

117   (10) "Educational software" means software that:

118   (a) serves an educational purpose;

119   (b) is designed for student instruction, assessment, or instructional support;

120   (c) is executed under the statewide digital privacy agreement; and

121   (d) is verified for academic effectiveness in accordance with the requirements of this

122   section.

123   (11) "Independently verified" means the characteristic of software that an impartial third

124   party with demonstrated expertise appropriate to the software type, whom the vendor

125   does not own, control or direct, and whose compensation does not depend on the

126   evaluation outcome, evaluates for:

127   (a) academic effectiveness; and

128   (b) compliance with the requirements of this part.

129   (12) "Internet service provider" means the same as that term is defined in Section 76-5c-401.

130   (13) "Passive consumption" means receiving information through viewing, listening, or

131   browsing without requiring the student to engage in cognitive processing necessary to

132   analyze, apply, or create knowledge or skills.

133   (14) "School-issued device" means any electronic hardware device an LEA provides to a

134   student for educational use.

135   (15) "Skill development" means the acquisition or improvement of academic abilities or

136   competencies necessary to perform a task aligned to state academic standards, including

137   guided practice, modeling, or feedback.

138   (16)(a) "Software" means any application, web-based service, plug-in, or other

139   code-based product, regardless of whether the application is free or for purchase, that:

140   (i) runs on or is accessible from a school-issued device; or

141   (ii) an LEA assigns, requires, installs, or otherwise makes available for student use in

142   connection with classroom instruction, including through a school-issued account

143   or identity.

144   (b) "Software" includes software an individual uses during school hours in connection

145   with school-related purposes for:

146   (i) instruction;

147   (ii) assessment;

148   (iii) communication;

149   (iv) collaboration; or

150   (v) enrichment.

151   (c) "Software" does not include physical, electronic hardware.

152   (17) "Statewide digital privacy agreement" means the digital privacy agreement the state

153   board creates in accordance with Section 53G-7-1402.

154   (18)(a) "Student data" means the same as that term is defined in Section 53E-9-301.

155   (b) "Student data" includes a student's:

156   (i) personal data as that term is defined in Section 13-61-101;

157   (ii) metadata, device identifiers, and clickstream data;

158   (iii) behavioral, engagement, or usage data; and

159   (iv) information a software collects, generates, or infers in the course of student use.

160   (19) "Sub-processor" means a third-party vendor or service that a primary data processor

161   engages to process personal data on the processor's behalf.

162   (20)(a) "Telecommunications carrier" means an entity that provides transmission,

163   routing, or connectivity services for digital communications, including wireless,

164   broadband, or data transport services, without modifying the content of

165   communications.

166   (b) "Telecommunications carrier" includes an internet service provider.

167   (21) "Utah Education and Telehealth Network" or "UETN" means the same as that term is

168   defined in Section 53H-4-213.1.

169   (22)(a) "Vendor" means an entity that provides software, digital tools, digital services, or

170   related technology to a contracting entity for student use, whether free or paid.

171   (b) "Vendor" does not include:

172   (i) a telecommunications carrier; or

173   (ii) an internet service provider.

174   (23) "Voice-print" means a digital representation of an individual's voice that a person

175   creates, derives, or uses to identify or authenticate the individual.

176   Section 2. Section **53G-7-1402** is enacted to read:

177   **53G-7-1402 . Statewide digital privacy agreement -- Exceptions.**

178   (1) The state board shall create a statewide digital privacy agreement, before July 1, 2027,

179   that:

180   (a) governs student use of educational software and digital services in a public school

181   for:

182   (i) kindergarten through grade 6; and

183   (ii) core standards, described in Section 53E-4-202, in grades 7 through 12;

184   (b) complies with the requirements of Title 53E, Chapter 9, Student Privacy and Data

185   Protection, including:

186   (i) data minimization;

187   (ii) prohibitions on advertising or promotional content, including:

188   (A) advertising products or services to a student while the student is using

189   educational software;

190   (B) allowing a third-party to advertise a product or a service to a student; and

191   (C) the inclusion of advertising or promotional content within educational

192   software accessible to a student;

193   (iii) limits on secondary data use;

194   (iv) security safeguards;

195   (v) breach notifications;

196   (vi) data retention and deletion requirements; and

197   (vii) directory information protections;

198   (c) complies with the sensitive materials requirements described in Section 53G-10-103;

199   (d) requires that educational software may not display, recommend, algorithmically

200   generate, or provide access to any instructional or supplemental content that

201   constitutes:

202   (i) pornographic or indecent material as that term is defined in Section 76-5c-208; or

203   (ii) sexual exploitation or abuse;

204   (e) prohibits addictive design features;

205   (f) prohibits a vendor from collecting, storing, or analyzing:

206   (i) biometric identifiers, except for:

207   (A) voice recognition for speech-to-text accessibility features; or

208   (B) other biometric data explicitly required for a student's IEP or Section 504

209   accommodation plan; and

210   (ii) behavioral or emotional signals for purposes of:

211   (A) psychological profiling;

212   (B) emotional manipulation;

213   (C) commercial marketing or advertising; or

214   (D) any purpose other than improving educational outcomes;

215   (g) provides that any data collected under Subsection (1)(f):

216   (i) is disclosed in the statewide digital privacy agreement;

217   (ii) is the minimum amount necessary for the educational purpose;

218   (iii) is not used for commercial purposes; and

219   (iv) is subject to strict security safeguards;

220   (h) requires a vendor to:

221   (i) use encryption for data in transit and at rest;

222   (ii) disclose the use of sub-processors; and

223   (iii) disclose to the contracting entity all data elements collected, third-party

224   recipients, embedded libraries and analytics tools, device-level permissions, and

225   artificial intelligence components and functions;

226   (i) prohibits educational software from accessing a device's camera and microphone

227   unless:

228   (i) necessary for an educational function; and

229   (ii) disclosed in the digital privacy agreement;

230   (j) prohibits a vendor from conditioning access, features, pricing, or support on a:

231   (i) usage quota; or

232   (ii) screen-time expectation;

233   (k) includes a termination-for-cause provision that:

234   (i) requires the vendor to cure any violation of the digital privacy agreement within a

235   timeline the state board establishes;

236   (ii) authorizes the contracting entity to terminate the contract if the vendor fails to

237   cure the violation of the digital privacy agreement required under Subsection

238   (1)(k)(i);

239   (iii) provides that the termination described in this Subsection (1)(k) may occur

240   without penalty, early-termination fee, or additional obligation to the contracting

241   entity;

242   (iv) requires the vendor to acknowledge that termination under this Subsection (1)(k)

243   does not constitute a breach by the contracting entity; and

244   (v) when a vendor fails to cure as required under Subsection (1)(k)(i), authorizes the

245   state board to direct the contracting entity to terminate the contract or terminate

246   the contracting entity's participation in the contract on the contracting entity's

247   behalf; and

248   (l) prohibits educational software that a vendor designs for peer-to-peer communication

249   unless the educational software includes an administrative control that enables an

250   administrator to turn peer-to-peer communication on or off.

251 (2) Notwithstanding the requirements of Subsection (1) the state board may allow a

252   contracting entity to modify the statewide data privacy agreement if the state board

253   determines the modification to be necessary for a contract with a specific vendor.

254 (3)(a) A contracting entity may use administrative software without executing the

255   statewide digital privacy agreement.

256   (b) Before a contracting entity uses administrative software, the contracting entity shall

257   execute a digital privacy agreement that includes the requirements described in

258   Subsection (1)(b).

259 (4) This part does not apply to a telecommunications carrier or internet service provider, or

260   to any affiliate of the telecommunication carrier or internet service provider, when acting

261   solely as a passive conduit for the transmission, routing, or provision of internet

262   connectivity or network access for software or digital services a student uses, including:

263   (a) the transmission or routing of data packets;

264   (b) the provision of wireless or broadband connectivity;

265   (c) network management, quality-of-service, cybersecurity, or fraud-prevention

266   functions; or

267   (d) the provision of device-level operating systems or firmware updates that are not

268   designed to collect, analyze, or monetize student data.

269   Section 3. Section **53G-7-1403** is enacted to read:

270   **53G-7-1403 . Vendor -- Duties.**

271   (1) Before the vendor allows a contracting entity to install, assign, or otherwise make the

272   educational software available for student use, the vendor shall:

273   (a) execute the statewide digital privacy agreement; and

274   (b) subject to Section 53G-7-1407, verify that the educational software is academically

275   effective through self-verification or independent verification, in accordance with the

276   process the state board creates in Section 53G-7-1405.

277   (2) A vendor shall:

278   (a) submit to the state board a written certification that the educational software is

279   academically effective;

280   (b) comply with the rules and timelines the state board establishes under Section

281   53G-7-1405;

282   (c) provide the state board access to all records, documents, and data necessary to

283   comply with the monitoring requirements described in Section 53G-7-1405; and

284   (d) execute the statewide digital privacy agreement before providing educational

285   software or digital services to a contracting entity.

286   (3) A vendor may appeal a finding of noncompliance, issued under Section 53G-7-1405,

287   through the administrative process the state board establishes.

288   (4) A vendor-proposed privacy agreement, end-user license agreement, click-through terms,

289   terms of service, or substitute contract is void and unenforceable with respect to student

290   data or student use.

291   (5) A vendor may not:

292   (a) alter, supplement, replace, or modify the statewide digital privacy agreement; or

293   (b) request or require that a parent or contracting entity:

294   (i) waive any right under this part;

295   (ii) agree to arbitration that limits this part; or

296   (iii) accept liability limitations inconsistent with this part.

297   Section 4. Section **53G-7-1404** is enacted to read:

298   **53G-7-1404 . Contracting Entity -- Duties.**

299   (1) A contracting entity shall:

300   (a) execute the statewide digital privacy agreement for any educational software the

301   contracting entity adopts or continues using;

302   (b) unless the entity is contracting for an educational software that the state board has

303   previously approved and listed on the list described in Subsection

304   53G-7-1405(1)(a)(ii), obtain documentation of a vendor's verification of academic

305   effectiveness, in accordance with the timelines and rules the state board establishes

306   under Section 53G-7-1405, before adopting or continuing use of the educational

307   software for an individual to:

308   (i) install;

309   (ii) assign; or

310   (iii) make available for student use;

311   (c) submit to the state board for listing:

312   (i) the executed statewide digital privacy agreement required under Subsection (1);

313   and

314   (ii) if necessary under Subsection (1)(b), the verification documentation described in

315   Subsection (1)(b); and

316   (d) provide the state board access to all records, documents, and data necessary to

317   comply with the monitoring requirements described in Section 53G-7-1405.

318 (2) A contracting entity may:

319   (a) charge a reasonable fee to a vendor to administer the requirements of this section; and

320   (b) appeal a finding of noncompliance the state board issues under Section 53G-7-1405

321   through the administrative process the state board establishes.

322 (3)(a) A contracting entity that is not the state board may request a modification to the

323   statewide data privacy agreement in accordance with Subsection 53G-7-1402(2).

324   (b) Except as provided in Subsection (4)(a), a contracting entity may not alter,

325   supplement, replace, or modify the statewide digital privacy agreement.

326 (4)(a) A contracting entity shall ensure that a digital privacy agreement between a

327   vendor and a contracting entity executed before January 1, 2028, complies with the

328   requirements of this section before July 1, 2029.

329   (b) Between January 1, 2028, and July 1, 2029, a contracting entity may continue to use

330   an existing digital privacy agreement if the contracting entity actively works toward

331   compliance with the statewide digital privacy agreement.

332   Section 5. Section **53G-7-1405** is enacted to read:

333   **53G-7-1405 . State board and local education agencies -- Compliance -- Duties.**

334 (1)(a) The state board shall:

335   (i) ensure that educational software is not available for use in student instruction

336   without verifying the software for academic effectiveness;

337   (ii) maintain a public list of independent evaluators that a vendor may use to verify

338   educational software as academically effective; and

339   (iii) before July 1, 2028, create a process that allows a vendor to demonstrate

340   academic effectiveness through:

341   (A) vendor self-verification; or

342   (B) independent verification.

343   (b) The state board may consult software vendors for technical input regarding

344   functionality or implementation of the requirements of this section.

345 (2)(a) The state board shall:

346   (i) monitor compliance with this section;

347   (ii) beginning July 1, 2029, periodically monitor each LEA to confirm that, for every

348   educational software product students use that is not on the state board approved

349   list described in Subsection (1)(a)(ii), the LEA has:

350   (A) executed the statewide digital privacy agreement; and

351   (B) obtained the verification documentation; and

352   (iii) issue a written compliance report, when monitoring compliance under this

353   Subsection (2)(a), identifying:

354   (A) findings of compliance and noncompliance;

355   (B) required corrective actions; and

356   (C) applicable timelines for remediation.

357   (b) The state board may publish findings under Subsection (2)(a) to:

358   (i) promote transparency; and

359   (ii) make the public aware of compliant and noncompliant practices.

360 (3) If the state board finds an LEA to be out of compliance with the requirements of Section

361   53G-7-1404, the LEA shall:

362   (a) discontinue use of the noncompliant educational software;

363   (b) remedy the source of the noncompliance; and

364   (c) implement a corrective-action plan to prevent future violations.

365 (4) The state board shall provide:

366   (a) technical guidance and transition support to contracting entities and vendors

367   regarding the transition to the statewide digital privacy agreement and academic

368   effectiveness requirements; and

369   (b) implementation timelines and instructions necessary for contracting entities to

370   achieve compliance.

371 (5) The state board may prioritize technical guidance and transition support for:

372   (a) vendors executing digital privacy agreements with multiple contracting entities;

373   (b) statewide or consortium contracts; or

374   (c) software with known privacy, safety, or effectiveness concerns.

375 (6) An LEA may not use software other than educational software in a public school for

376   instruction of a student.

377 (7) Before an LEA enters into a digital privacy agreement with a vendor for educational

378   software, the LEA shall ensure that the digital privacy agreement meets each of the

379   requirements of the statewide digital privacy agreement the state board creates under

380   Section 53G-7-1402.

381 (8) An LEA shall:

382   (a) provide a parent, annually, with a list of all educational software products:

383   (i) for which the vendor has executed a statewide digital privacy agreement;

384   (ii) for which a vendor has completed the verification of academic effectiveness

385   required under Section 53G-7-1403; and

386   (iii) that the LEA may assign, require, recommend, or otherwise made available for

387   student use during the upcoming school year;

388   (b) ensure that the list described in Subsection (8)(a) includes, at minimum:

389   (i) the product name and vendor;

390   (ii) the educational software's primary instructional purpose;

391   (iii) a link to the educational software's statewide digital privacy agreement; and

392   (iv) except as provided in Section 53G-7-1407, a link to the academic effectiveness

393   verification a vendor is required to produce under Section 53G-7-1403;

394   (c) publish the list described in Subsection (8)(a) on the LEA's public website; and

395   (d) update the list described in Subsection (8)(a) with any addition or removal of an

396   educational software product.

397 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

398   state board shall make rules to implement the requirements of this part, including rules

399   to:

400   (a) create a statewide digital privacy agreement;

401   (b) create an administrative process for a parent to submit a complaint in accordance

402   with Section 53G-7-1406;

403   (c) create a process for vendors and contracting entities to appeal a finding of

404   noncompliance;

405   (d) before January 1, 2028, create a process for ensuring all educational software is

406   academically effective, including:

407   (i) classifying software based on whether the software is:

408   (A) student-facing and if the student uses the software directly for instruction,

409   practice, assessment, feedback, communication, collaboration, accessibility, or

410   other learning-related interaction; or

411   (B) used solely for administrative or technical infrastructure functions;

412   (ii) requiring evaluation of educational software within each classification and

413   establishing classification-specific methodologies or evidentiary standards for

414   determining whether educational software provides, enables, or supports:

415   (A) active learning;

416   (B) skill development; or

417   (C) academic progress; and

418   (iii) creating the verification process described in Subsection (1)(a)(iii);

419   (e) create standards and a process for approving and listing the educational software

420   described in Subsection (1)(a)(ii); and

421   (f) create a process for receiving and responding to complaints a parent submits under

422   Section 53G-7-1406.

423   Section 6. Section **53G-7-1406** is enacted to read:

424   **53G-7-1406 . Complaints -- Enforcement.**

425 (1)(a) A parent may submit a written complaint to the state board alleging:

426   (i) a contracting entity using educational software without executing a statewide

427   digital privacy agreement;

428   (ii) a contracting entity using educational software without being verified as

429   academically effective; or

430   (iii) a vendor's violation of the statewide digital privacy agreement.

431   (b) Upon receiving a complaint described in Subsection (1)(a), the state board shall

432   consult with the Office of the Attorney General to:

433   (i) review the complaint;

434   (ii) determine if a violation has occurred;

435   (iii) notify the parent of the determination; and

436   (iv) take appropriate enforcement action under this part if noncompliance is found.

437   (2) A court shall award the Office of the Attorney General reasonable attorney fees, court

438   costs, and investigative expenses incurred in an action under this part.

439   Section 7. Section **53G-7-1407** is enacted to read:

440   **53G-7-1407 . Provisional software.**

441   (1) Notwithstanding Subsection 53G-7-1403(1)(a)(ii) and before July 1, 2028, a vendor

442   may make educational software available for use to a contracting entity on a provisional

443   basis for up to 24 months from the initial deployment of the software if:

444   (a) the vendor submits a verification plan to the contracting entity before the educational

445   software is made available for student use, including:

446   (i) a proposed methodology for demonstrating academic effectiveness;

447   (ii) a timeline for completion of verification of academic effectiveness; and

448   (iii) interim measures to assess active learning, skill development, or academic

449   progress in the intended subject area; and

450   (b) the vendor demonstrates to the contracting entity that the educational software:

451   (i) aligns with state core education standards; and

452   (ii) meets an educational purpose.

453   (2) A student may not use educational software made available under Subsection (1)(a)

454   without consent from the student's parent.

455   (3) A contracting entity shall notify a student's parent of:

456   (a) the implementation of educational software on a provisional basis in accordance with

457   Subsection (1)(a); and

458   (b) the consent required to use the educational software under Subsection (1)(b).

459   (4) During the provisional period described in Subsection (1)(a), the contracting entity and

460   vendor shall collect data necessary for academic effectiveness verification in accordance

461   with the statewide digital privacy agreement.

462   Section 8. **Effective Date.**

463   This bill takes effect on July 1, 2026.