

HB0288S01 compared with HB0288

~~text~~ shows text that was in HB0288 but was deleted in HB0288S01.

inserted text shows text that was not in HB0288 but was inserted into HB0288S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

EDUCATIONAL RECORDS PROTECTION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: ~~_____~~ Todd Weiler

LONG TITLE

General Description:

This bill amends provisions related to records ~~that are subject to federal law~~ to which access is governed or limited by statute, rule, or regulation.

Highlighted Provisions:

This bill:

- ▶ ~~exempts certain~~ adds a reference to education records ~~from the Government Records and Access Management Act, and~~

~~makes technical and conforming changes~~ in provisions related to records to which access is governed by statute, rule, or regulation.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

~~{63G-2-107}~~63G-2-201, as ~~{renumbered and}~~last amended by Laws of Utah
~~{2008}~~2013, Chapter ~~{382}~~445

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

Section 1. Section ~~{63G-2-107}~~63G-2-201 is amended to read:

~~{63G-2-107}~~63G-2-201. ~~{Disclosure of records subject to federal law.~~

~~——~~Notwithstanding [the provisions of Subsections 63G-2-201(6)(a) and (b)] }Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection ~~{63G-2-201(6), this chapter does not apply to:~~

~~——~~(1) a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:

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~~— (1) (a) controlled or maintained by a~~ 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

~~— (2) (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information[.]; or~~

~~(2) (III) the public; and~~

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

(6) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, and including an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, if the record is:

~~— (a) controlled or maintained by~~ Act, 20 U.S.C. Sec. 1232g, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

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(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) In response to a request, a governmental entity ~~is~~ and

~~(b) governed by Family Educational Rights and Privacy, 34 C.F.R. Part 99.~~

Legislative Review Note

~~Office of Legislative Research and General Counsel~~ is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.

(9) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

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(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

(12) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

(a) the person making the request requests or states a preference for an electronic copy;

(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and

(c) the electronic copy of the record:

(i) does not disclose other records that are exempt from disclosure; or

(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.