



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill # HB0745

Title: Enact a student online personal information protection act

Primary Sponsor: Olsen, Andrea

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2020</u> <u>Difference</u>	<u>FY 2021</u> <u>Difference</u>	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: HB 745 creates the Montana Pupil Online Personal Information Protection Act. There is no state fiscal impact.

FISCAL ANALYSIS

Assumptions:

1. HB 745 establishes restrictions on companies that gather personal information for educational purposes. The act prohibits companies that market an application or service for K-12 school purposes from using or selling pupil information for the purpose of advertising or marketing of other applications or services.
2. The bill establishes a fine of \$200 to \$500 for violations.
3. The bill also sets requirements on agreements between school districts and third parties who provide digital storage, management, and retrieval of pupil records, or provide digital education software.
4. This bill is modeled after legislation passed in California in 2014 known as the Student Online Personal Information Protection Act (SOPIPA). At least six other states have passed legislation based upon SOPIPA.
5. Existing Montana statute 20-7-104(9), MCA, sets restrictions on the sharing of student data by the Office of Public Instruction.

6. The Family Educational Rights and Privacy Act of 1974 (FERPA) establishes federal protections of the privacy of student education records.
7. Because the bill only affects service providers or possibly school districts, the Office of Public Instruction (OPI) will not incur any costs as a result of this bill.
8. Section 3 sets restrictions on “operators” defined as “the operator of a K-12 online application who knows or reasonably should know that the application is used primarily for K-12 school purposes.” Examples include providers of scholarship information and applications, supplementary education software, college entrance exams, textbooks, college matching systems, and other educational services. It is not known how often the actions prohibited by this bill occur in Montana.
9. Section 4 establishes some requirements for agreements between school districts and third parties who provide digital storage, management, and retrieval of pupil records or digital educational software. The bill does not define school districts so this fiscal note assumes this refers to 201-6-701(1), MCA, that defines a “district” as a public school district.
10. Montana public school districts typically contract with a third party to provide a School Information System (SIS) which stores pupil records for the purpose of school administration functions. Five different SIS’s are used in Montana. The SIS used by the most school districts has modeled its privacy policy to comply with the California SOPIPA legislation, but the status of the other four SIS’s is not known.
11. The most common provider of digital education software to Montana public schools is the Montana Digital Academy (MTDA). Other providers are used, but how many and the nature of the data maintained are not known.

Effect on County or Other Local Revenues or Expenditures:

1. School districts may have some administrative expense related to modifying agreements with SIS providers or digital education providers, but the OPI does not have a basis for estimating the magnitude.

Technical Notes:

1. Section 2(5)(a) uses the term “personally identifiable information” (PII) without defining the term. Montana statute defines PII in 2-17-551, MCA, as part of the “Governmental Internet Information Privacy Act”. FERPA defines PII in 34 CFR § 99.3. The two definitions are not the same. The statute would be clearer with either a definition of personally identifiable information or a reference to an existing definition.

Sponsor's Initials

Date

Budget Director's Initials

Date