

House Bill No. 7119

An act relating to public records; creating s. 1002.221, F.S.; providing an exemption from public records requirements for K-12 education records held by an agency, public school, center, institution, or other entity that is part of the state's education system; providing requirements for the release, use, and maintenance of education records; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; amending s. 1006.52, F.S.; expanding the exemption from public records requirements for records of students in public postsecondary educational institutions to include education records and applicant records; providing requirements for the release, use, and maintenance of education records; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing legislative findings; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1002.221, Florida Statutes, is created to read:

1002.221 K-12 education records.—

(1) Education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) An agency, as defined in s. 1002.22(1)(a), or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4), may not release a student's education records without the written consent of the student or parent to any individual, agency, or organization, except in accordance with and as permitted by the FERPA. Education records released by an agency, as defined in s. 1002.22(1)(a), or by a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04 (1), (3), or (4), to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 1006.52, Florida Statutes, is amended to read:

1006.52 Education Student records and applicant records.—

(1) Each public postsecondary educational institution university may prescribe the content and custody of records that and reports which the institution university may maintain on its students and applicants for admission. A student's education ~~Such~~ records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, and applicant records are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution are open to inspection only as provided in s. 1002.22. For the purpose of this subsection, applicant records shall be considered to be records that are:

(a) Directly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at the institution; and

(b) Maintained by a public postsecondary educational institution or by a party acting on behalf of the public postsecondary educational institution.

(2) A public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual, agency, or organization, except in accordance with and as permitted by the FERPA. Education records released by public postsecondary educational institutions to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

~~(2)—Rules of the State Board of Education may prescribe the content and custody of records and reports which a community college may maintain on its students. Such records are confidential and exempt from s. 119.07(1) and are open to inspection only as provided in s. 1002.22.~~

Section 3. (1) The Legislature finds that it is a public necessity to continue to make confidential and exempt from disclosure education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, which are maintained by public postsecondary educational institutions or persons acting for such institutions. The state has historically protected education records from public disclosure and continues to provide for the confidential and exempt nature of education records; however, the state does not currently conform to the federal definition of education records, which is more inclusive than the state law. Such inconsistency may result in noncompliance with federal law, for which public educational institutions could be

sanctioned by the loss of all federal funds received from the United States Department of Education.

(2) The Legislature finds that it is a public necessity that student applicant records held by public postsecondary educational institutions be made confidential and exempt in accordance with public records requirements. Student applicant records maintained by public postsecondary educational institutions may include, but are not limited to, academic transcripts, test scores, records of disciplinary proceedings, disability and health records, and other records that are protected from disclosure under state and federal law. An exemption for student applicant records is necessary because the release of certain information from the records of applicants who are not admitted to or who do not enroll in an institution would negatively affect the applicants' privacy interests in their education records, which are already confidential and exempt as maintained by the transmitting educational institutions. The Legislature finds that the private and confidential nature of the records of an applicant who is not accepted for admission or who otherwise does not enroll in an institution is identical to the nature of the records of an enrolled student, which are confidential and exempt from public records requirements. The Legislature further finds that the release of an applicant's records to the public would harm the applicant's ability to protect his or her personal and education records and could result in identity theft and hinder applicants from providing truthful and complete information during the admission process.

(3) The Legislature finds that the public and private harm in disclosing personal and educational information contained in public postsecondary applicant records significantly outweighs any public benefit derived from disclosure and that the exemption of public postsecondary applicant records from public disclosure will enhance the ability of applicants and public postsecondary educational institutions to protect the privacy rights that otherwise attach to such information outside the admission process.

(4) Public disclosure of a public school student's educational information, especially sensitive information, including, but not limited to, academic achievement, diagnostic tests, and the existence of mental and physical disabilities, would significantly inhibit the educational process, the functions of the school, and the ability of parents to oversee their children's education. Although the Legislature has historically provided for significant mandatory disclosure and public reporting of information on student achievement and other factors, the disclosure and public reporting are released in aggregate form and do not personally identify students or disclose their education records.

(5) The Legislature finds that in order to comply with the applicable federal requirements regarding the collection, use, and release of education records, such records must be made confidential and exempt from public disclosure. Therefore, the Legislature finds that state law must be updated to maintain consistency with federal requirements, including newly promulgated exemptions to public disclosure.

Section 4. This act shall take effect on the same date that HB 7117 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor June 24, 2009.

Filed in Office Secretary of State June 24, 2009.