

ENROLLED
 HB 7119

2009 Legislature

1 A bill to be entitled
 2 An act relating to public records; creating s. 1002.221,
 3 F.S.; providing an exemption from public records
 4 requirements for K-12 education records held by an agency,
 5 public school, center, institution, or other entity that
 6 is part of the state's education system; providing
 7 requirements for the release, use, and maintenance of
 8 education records; providing for future legislative review
 9 and repeal of the exemption under the Open Government
 10 Sunset Review Act; amending s. 1006.52, F.S.; expanding
 11 the exemption from public records requirements for records
 12 of students in public postsecondary educational
 13 institutions to include education records and applicant
 14 records; providing requirements for the release, use, and
 15 maintenance of education records; providing for future
 16 legislative review and repeal of the exemption under the
 17 Open Government Sunset Review Act; providing legislative
 18 findings; providing a statement of public necessity;
 19 providing a contingent effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 1002.221, Florida Statutes, is created
 24 to read:

25 1002.221 K-12 education records.--
 26 (1) Education records, as defined in the Family
 27 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,
 28 and the federal regulations issued pursuant thereto, are

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29 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
30 of the State Constitution.

31 (2) An agency, as defined in s. 1002.22(1)(a), or a public
32 school, center, institution, or other entity that is part of
33 Florida's education system under s. 1000.04(1), (3), or (4), may
34 not release a student's education records without the written
35 consent of the student or parent to any individual, agency, or
36 organization, except in accordance with and as permitted by the
37 FERPA. Education records released by an agency, as defined in s.
38 1002.22(1)(a), or by a public school, center, institution, or
39 other entity that is part of Florida's education system under s.
40 1000.04 (1), (3), or (4), to the Auditor General or the Office
41 of Program Policy Analysis and Government Accountability, which
42 are necessary for such agencies to perform their official duties
43 and responsibilities, shall be used and maintained by the
44 Auditor General and the Office of Program Policy Analysis and
45 Government Accountability in accordance with the FERPA.

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

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

52 1006.52 Education ~~Student~~ records and applicant records.--

53 (1) Each public postsecondary educational institution
54 ~~university~~ may prescribe the content and custody of records that
55 ~~and reports which~~ the institution ~~university~~ may maintain on its
56 students and applicants for admission. A student's education

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57 ~~Such records, as defined in the Family Educational Rights and~~
 58 ~~Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal~~
 59 ~~regulations issued pursuant thereto, and applicant records are~~
 60 ~~confidential and exempt from the provisions of s. 119.07(1) and~~
 61 ~~s. 24(a), Art. I of the State Constitution are open to~~
 62 ~~inspection only as provided in s. 1002.22. For the purpose of~~
 63 ~~this subsection, applicant records shall be considered to be~~
 64 ~~records that are:~~

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

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

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

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

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85 through reenactment by the Legislature.

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

91 Section 3. (1) The Legislature finds that it is a public
92 necessity to continue to make confidential and exempt from
93 disclosure education records, as defined in the Family
94 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,
95 and the federal regulations issued pursuant thereto, which are
96 maintained by public postsecondary educational institutions or
97 persons acting for such institutions. The state has historically
98 protected education records from public disclosure and continues
99 to provide for the confidential and exempt nature of education
100 records; however, the state does not currently conform to the
101 federal definition of education records, which is more inclusive
102 than the state law. Such inconsistency may result in
103 noncompliance with federal law, for which public educational
104 institutions could be sanctioned by the loss of all federal
105 funds received from the United States Department of Education.

106 (2) The Legislature finds that it is a public necessity
107 that student applicant records held by public postsecondary
108 educational institutions be made confidential and exempt in
109 accordance with public records requirements. Student applicant
110 records maintained by public postsecondary educational
111 institutions may include, but are not limited to, academic
112 transcripts, test scores, records of disciplinary proceedings,

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113 disability and health records, and other records that are
114 protected from disclosure under state and federal law. An
115 exemption for student applicant records is necessary because the
116 release of certain information from the records of applicants
117 who are not admitted to or who do not enroll in an institution
118 would negatively affect the applicants' privacy interests in
119 their education records, which are already confidential and
120 exempt as maintained by the transmitting educational
121 institutions. The Legislature finds that the private and
122 confidential nature of the records of an applicant who is not
123 accepted for admission or who otherwise does not enroll in an
124 institution is identical to the nature of the records of an
125 enrolled student, which are confidential and exempt from public
126 records requirements. The Legislature further finds that the
127 release of an applicant's records to the public would harm the
128 applicant's ability to protect his or her personal and education
129 records and could result in identity theft and hinder applicants
130 from providing truthful and complete information during the
131 admission process.

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

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

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

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