

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4874 (Substitute S-1 as reported)
Sponsor: Representative Tony Stamas
House Committee: Civil Law and the Judiciary
Senate Committee: Judiciary

Date Completed: 3-21-02

RATIONALE

The Family Educational Rights and Privacy Act (FERPA) is a Federal law designed to protect the privacy of a student's educational records. In general, schools must have written permission from a parent or an eligible student before releasing information from a student's record. Under FERPA, Federal funds may not be made available under any applicable program to any educational agency or institution that has a policy or practice of permitting the release of educational records or personally identifiable information contained in educational records without the written consent of the students' parents, except as provided in that Act. This prohibition, however, does not apply to "directory information". (Under FERPA, "directory information" relating to a student includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student (20 USC 1232g).)

Michigan's Freedom of Information Act (FOIA) requires a public body, such as a school district, to exempt from disclosure information that, if released, would prevent it from complying with FERPA.

The FERPA and FOIA restrictions became an issue when the Midland Public School District received FOIA requests for student information that was sought for commercial purposes. The school district was sued when it denied a request for student names going back 15 years by an individual who wanted to sell the names to a company that organizes class reunions. The Ingham County Circuit

Court ruled that the FOIA exemption did not apply, because disclosing directory information would not prevent the school district from complying with FERPA, and ordered that the school district release the requested information (which was contained in commencement programs). Some people feel that, in addition to being required to exempt FERPA-protected information from disclosure under FOIA, school districts should be allowed to exempt student directory information from disclosure.

CONTENT

The bill would amend the Freedom of Information Act to allow a public body to exempt from disclosure under the Act "directory information" as defined in the Family Educational Rights and Privacy Act. The bill would retain the current requirement that a public body exempt from disclosure information that, if released, would prevent the public body from complying with FERPA.

The bill specifies that it would not authorize the withholding of directory information if a request for the information were made by a recognized news organization for the purpose of gathering or preparing news for broadcast or publication. The bill also would not authorize the withholding of directory information regarding a student who was employed at an institution of higher education, if that information were requested by a collective bargaining organization seeking to organize or service a collective bargaining unit. A collective bargaining organization or unit that obtained directory information under the bill could use it only for collective bargaining purposes and could not sell the directory information to another person.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although FERPA protects certain student-related information from disclosure and FOIA requires school districts to exempt from disclosure information that, if released, would violate FERPA, that protection does not extend to student directory information. As a result of this exception to the FERPA and FOIA disclosure exemptions, at least one school district has been ordered by a court to release student directory information to someone who sought that information purely for a commercial purpose.

The Midland Public Schools denied a FOIA request for information about current and former students by a person who sought that information in order to sell it to a business that coordinates class reunions. Midland officials evidently believed that the desired use of that information did not fall within the scope of FOIA and refused to release the information, even though the district sometimes willingly releases student lists for a public purpose (e.g., listing the names of graduating seniors in the local newspaper). The person requesting the information sued the Midland school district for release of the student information. The court ruled that, because the requested information was included in FERPA's definition of directory information, which FERPA excludes from its provision barring the release of student information, the FOIA exemption for information that, if released, would violate FERPA, did not protect the Midland schools' information from disclosure.

By allowing a public body to exempt student directory information from disclosure, the bill would offer a degree of privacy protection to students and former students. By denying a FOIA request that was made strictly for a commercial purpose, a school district could protect its students and former students from unwanted and unnecessary intrusion by commercial solicitors.

Supporting Argument

The Freedom of Information Act is a significant tool in the operation of democracy.

As stated in Section 2 of FOIA, Michigan's public policy entitles the State's citizens "to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees". The Act also states, "the people shall be informed so that they may fully participate in the democratic process." Gaining access to student lists in order to turn a profit in a marketing strategy, such as selling the names to businesses that coordinate class reunions, has nothing to do with being informed regarding the affairs of government or the actions of public officials and does not enhance participation in the democratic process. Under the bill, school districts would be allowed to exempt from release information that was requested for such a purpose. At its discretion, however, a school could continue to release directory information for other purposes, such as recruitment by the military or universities.

Supporting Argument

While the bill would protect students' privacy by allowing a school district to exempt directory information from disclosure, it also includes safeguards to ensure the availability of that information for two specific legitimate purposes. The bill would not authorize the withholding of directory information that was requested by a recognized news organization for the purpose of gathering or preparing news for broadcast or publication. It also would not authorize an institution of higher education to withhold directory information about a student employed by the institution if the request were made by a collective bargaining organization seeking to organize or service a collective bargaining unit.

Response: The bill specifies that a collective bargaining organization that obtained directory information could use that information only for collective bargaining purposes and could not sell the directory information. A similar restriction also should apply to a news organization that obtained directory information under the bill.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Kathryn Summers-Coty

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.