

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 2627 (Bauer-Kahan) – As Introduced February 18, 2022

SUBJECT: Electronically collected personal information: state and local agencies: the California Community Colleges: memorandum of understanding

SUMMARY: This bill would authorize a state or local agency, at the request of the governing board of a California Community College (CC) district, to enter into a memorandum of understanding (MOU) that would allow the agency and the district to share electronically collected personal information (PI) about users, unless the user has not granted permission for that disclosure, for purposes of facilitating outreach to, and enrollment, of individuals in the CC system and notifying the user of all available support resources. Specifically, **this bill would:**

- 1) Permit a state agency, including, but not limited to, the California Health and Human Services Agency, the Department of Housing and Community Development, the Labor and Workforce Development Agency, the State Department of Social Services, and the Department of Veterans Affairs, and a local agency, to enter into a MOU that would allow the agency and the CC district to share electronically collected PI about users, unless the user has not granted permission for that disclosure.
- 2) Provide that the electronically collected PI may only be used for facilitating outreach to, and enrollment of, individuals in the CC system and notifying the user of all available support resources.
- 3) Require, upon first contact with the user, the CC district shall notify the individual of any educational services available to them and include an opportunity to opt-out of future contact. In any subsequent contact, the CC district shall notify the user of the opportunity to opt-out of future contact.
- 4) Require the CC district to discard without reuse or distribution any electronically collected information upon the request by the user or when the user has matriculated out of the CC system.
- 5) Permit specified electronically collected PI to be used for the purpose of determining credit for prior learning through work experience, training, professional development, and similar learning activities.

EXISTING LAW:

- 1) Provides, under the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const. art. I, Sec. 1.)
- 2) Establishes the Information Practices Act (IPA) to protect the privacy of individuals by mandating the strict limits to the maintenance and dissemination of PI. (Civ. Code Sec. 1798 et seq.)

- 3) Provides that a state agency shall not distribute or sell any electronically collected PI about users to any third party without prior written permission from the user, except as required to investigate possible violations or as authorized under the IPA. (Gov. Code 11015.5(b).)
- 4) Defines “electronically collected PI” for the purposes of the statute above to mean any information that is maintained by an agency that identifies or describes an individual user, including, but not limited to, the user’s name, social security number, physical description, home address, home telephone number, education, financial matters, medical or employment history, password, electronic mail address, and information that reveals any network location or identity, but excludes any information manually submitted to a state agency by a user, whether electronically or in written form, and information on or relating to individuals who are users serving in a business capacity, including, but not limited to, business owners, officers, or principals of that business. (Gov. Code 11015.5(d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to create a process by which a CC district may obtain PI about individuals from state and local agencies for the limited purpose of facilitating outreach to, and enrollment, of individuals in the CC system and notifying the individual of all available support resources. This bill is sponsored by the Contra Costa Community College District.
- 2) **Author’s statement:** According to the author:

Community colleges have been experiencing declining enrollment. Since the pandemic enrollments have continued to decline, reaching their lowest point in years. With declining enrollment at the K-12 level, community colleges are in a situation where 18-23 year old enrollment may never fully come back. Additionally, community colleges need to find ways to serve their local communities and by addressing adult learners that may need short-term vocational programs to get back into the workforce, those who want to retrain, or those that have some college, but may want to return to continue and finish their educational journey.

Community colleges need the tools to get students back into the classroom and back on their education or job-training pathway. AB 2627 is an ideal way to fill the empty seats at community colleges that provides them with a marketing mechanism to provide outreach to the most needy students. It should be noted that these are students that are often preyed on by private, proprietary institutions and end their time with those institutions loaded with debt. Under AB 2627, community colleges could let potential students know that they are a low-cost (likely fee-free) option for them while at the same time being able to “onboard” those students (provide information for counseling and financial aid and other wrap around services) into the college’s programs.

- 3) **Community colleges are experiencing declining enrollment:** During recessions, enrollment at CCs tends to increase as those who become unemployed go back to school. This trend has not held true during Covid-19 pandemic. Experts theorize that the impact COVID had on low-income and non-white Americans, populations community colleges tend to serve, was the cause of the plunge in CC attendance during the pandemic. A recent article reports:

While overall college attendance dropped 5%, or 727,000 students, this spring compared with last year as many students opted out of virtual learning, community colleges saw the steepest declines when compared to four-year institutions and graduate schools. Enrollment at graduate schools actually increased 4.6% compared with last year.

The bulk of enrollment drops at community colleges were seen by schools' youngest students, ages 18 to 24. Separate data from the National Student Clearinghouse has shown a 6.8% decline in graduates of the class of 2020 who attended college immediately after high school compared to the class of 2019.

This means while students with undergraduate degrees were getting advanced degrees in high numbers, many high school graduates chose not to attend college at all this year.

Davis Jenkins, a senior research scholar and research professor at Columbia's Teachers College, said the decline in college enrollment among graduating high school students is "chilling".

"Delaying college really diminishes your chance of completing college," Jenkins said. Particularly, if community college enrollment is declining, "you take away the opportunity of college for millions of students".

"It's going to increase the divide between education have and have-nots." (Aratani, *US community colleges see 'chilling' decline in enrollment during pandemic*, The Guardian (Jul. 10, 2021).)

Seeking to ensure that the populations the CCs have traditionally served are aware of opportunities available to them, this bill would authorize CCs to enter into MOUs with local and state agencies to share PI about potential students that the CCs may use for facilitating outreach and enrollment of students. AMVETS-Department of California, California Association of County Veterans Service Officers, California State Commanders Veterans Council, Military Officers Association of America-California Council of Chapters, and the Vietnam Veterans of America-California State Council write in support:

GI Bill benefits help service members, veterans, and families reach their education goals. The Post-9/11 GI Bill covers full tuition, school fees, housing, books, and supplies. There are also GI Bill programs which assist active-duty personnel, Reserve and National Guard, disabled veterans, and some family members of veterans.

However, like many beneficial programs, outreach to those who may be eligible is the challenge. Some GI Bill benefits also have an expiration date; therefore, it is imperative that every effort be made to contact veterans and educate them on what is available.

It benefits the state to have veterans take full advantage of their federal veterans benefits to secure the education and skills they need to become dynamic members of California's economy.

- 4) **Bill includes strong privacy protections:** This bill includes a number of data privacy protections that should ensure any PI shared with a CC is adequately maintained, used, and discarded. For example, the bill provides that CCs and agencies must comply with all

applicable federal and state laws, and that the material used by the CC district must be protected so that the user's membership in the targeted population is not revealed. The author notes that they spoke with the ACLU and Electronic Frontier Foundation (EFF) extensively during the drafting of this bill and the input of those groups is reflected in the bill in print. The bill also includes the following additional privacy protective provisions.

- a. Bill requires consent for the sharing of PI: Existing law requires that a user be provided notice of the type of PI that is collected by a state or local agency and the purpose for which the information will be used. (Gov. Code Sec. 11015.5(a).) This bill would additionally require that users "grant permission" for the disclosure of their PI to facilitate outreach to, and enrollment of, individuals in the CC system. Accordingly, an agency (e.g., the Department of Social Services or the Department of Veterans Affairs) will need to begin asking individuals if they can share their information for the purposes of facilitating outreach prior to any PI being shared pursuant to an MOU. In other words, this bill's application is prospective and should not result in the PI of users being shared without their specific permission.
- b. Bill limits the purpose for which PI may be used: This bill provides that PI disclosed to a CC district may only be used for facilitating outreach to, and enrollment of, individuals in the CC system and notifying the user of all available support resources. The bill also provides that the PI may not be reused once the purpose for which it was collected is achieved.
- c. Bill requires that users have opt-out rights: This bill provides that upon first contact with the user, the CC district shall notify the individual of any educational services available to them and include an opportunity to opt-out of future contact. In any subsequent contact, the CC district shall notify the user of the opportunity to opt-out of future contact.
- d. Bill requires that PI is discarded in a variety of situations: This bill requires that a CC district shall discard electronically collected PI upon the request by the user or when the user has matriculated out of the CC system. These deletion requirements serve two important purposes. First, it gives individuals control over their own PI, and second, deleting PI limits the amount of information that can be acquired in a data breach.

Despite the careful considerations that the author has given to the protection of PI, CCs have been the subject of many data breaches in recent years and likely need to bolster the cybersecurity system wide to adequately ensure the PI of students, applicants, potential students, and staff is protected. To this end, staff notes that the CCs are seeking millions of dollars in funding through the state budget process this year for this exact purpose, which may ultimately assist in fortifying their cybersecurity systems. Even so, as this bill moves through the legislative process, the author may wish to consider whether CC districts that are subject to repeated data breaches should be able to receive PI about potential students from state and local agencies.

- 5) **Double referral**: This bill was double referred to the Assembly Higher Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion, Department of California

Amvets, Department of California

Antelope Valley Community College District

California Association of County Veterans Service Officers

California State Commanders Veterans Council

Contra Costa Community College District

Military Officers Association of America, California Council of Chapters

San Diego Community College District

Vietnam Veterans of America, California State Council

Yuba Community College District

Opposition

None on file

Analysis Prepared by: Nichole Rocha / P. & C.P. / (916) 319-2200