

{As Amended by House Committee of the Whole}

As Amended by House Committee

As Amended by Senate Committee

Session of 2014

SENATE BILL No. 367

By Committee on Ways and Means

2-10

1 AN ACT concerning schools; creating the student data privacy act.

2
3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through ~~69~~, and amendments thereto, shall be
5 known and may be cited as the student data privacy act.

6 Sec. 2. As used in sections 1 through ~~69~~, and amendments thereto:

7 (a) "Aggregate data" means data collected or reported at the group,
8 cohort or institutional level.

9 (b) "Biometric data" means one or more measurable biological or
10 behavioral characteristics that can be used for automated recognition of an
11 individual, such as fingerprints, retina and iris patterns, voiceprints, DNA
12 sequence, facial characteristics and handwriting.

13 (c) "Department" means the state department of education.

14 (d) "Directory information" means ~~personally identifiable student~~
15 ~~data that has been designated as directory information by an educational~~
16 ~~agency in accordance with the federal family educational rights and~~
17 ~~privacy act, 20 U.S.C. § 1232g, and the disclosure of which has been~~
18 ~~consented to in writing by the student, if an adult, or such student's parent~~
19 ~~or legal guardian, if a minor. {a student's name, address, telephone~~
20 **listing, participation in officially recognized activities and sports,**
21 **weight and height if the student is a member of an athletic team, and**
22 **degrees, honors or awards received.}**

23 (e) "Educational agency" means a school district; *or* the department
24 or a postsecondary educational institution.

25 (f) ~~"Postsecondary educational institution" shall have the same~~
26 ~~meaning as that term is defined in K.S.A. 74-3201b, and amendments~~
27 ~~thereto.~~

28 ~~(g)~~ "School district" means a unified school district organized and
29 operated under the laws of this state.

30 ~~(h)~~**(g)** "Statewide longitudinal student data system" means any
31 student data system maintained by the department, which assigns a state
32 identification number for each student who attends an accredited public or

1 private school in Kansas and uses the state identification number to collect
2 student data.

3 ~~(i)~~**(h)** "Student data" means the following information contained in a
4 student's educational record:

5 (1) State and national assessment results, including information on
6 untested students;

7 (2) course taking and completion, credits earned and other transcript
8 information;

9 (3) course grades and grade point average;

10 (4) date of birth, grade level and expected date of graduation;

11 (5) degree, diploma, credential attainment and other school exit
12 information such as general education development and drop-out data;

13 (6) attendance and mobility;

14 (7) data required to calculate the federal four-year adjusted cohort
15 graduation rate, including sufficient exit and drop-out information;

16 (8) remediation;

17 (9) special education data;

18 (10) demographic data and program participation information; and

19 (11) any other information included in a student's educational record.

20 Sec. 3. (a) Any student data submitted to and maintained by a
21 statewide longitudinal student data system shall only be disclosed by an
22 educational agency in accordance with the provisions of this section.

23 (b) Student data may be disclosed at any time to:

24 (1) The authorized personnel of the department or a school district
25 who require such disclosures to perform their assigned duties;

26 (2) the authorized personnel of the state board of regents who require
27 such disclosures to perform their assigned duties; and

28 (3) the student and the parent or legal guardian of the student,
29 provided the student data pertains solely to such student.

30 (c) Student data may be disclosed to the authorized personnel of any
31 state agency not specified in subsection (b), **{or to a service provider of a
32 state agency who is engaged to perform a function of instruction,
33 assessment or longitudinal reporting,}** provided there is a data-sharing
34 agreement between the educational agency and such other state agency **{or
35 service provider}** that provides the following:

36 (1) The purpose, scope and duration of the data-sharing agreement;

37 (2) that the recipient of the student data use such information solely
38 for the purposes specified in the agreement;

39 (3) that the recipient shall comply with data access, use and security
40 restrictions that are specifically described in the agreement; and

41 (4) that the student data shall be destroyed ~~or returned~~ when no
42 longer necessary for the purposes of the data-sharing agreement, or upon
43 expiration of the data-sharing agreement**{, whichever occurs first.**

1 **Destruction shall comply with the NISTPS800-88 standards of data**
 2 **destruction}.**

3 (d) (1) Except as otherwise provided in paragraph (2), student data
 4 may be disclosed to any governmental entity not specified in subsection
 5 (b) or (c), or to any public or private *audit and evaluation or* research
 6 organization, provided:

7 (A) Only aggregate data is disclosed to such governmental entity or
 8 *audit and evaluation or* research organization; **{and}**

9 (B) the disclosed aggregate data contains no personally identifiable
 10 information of any student; ~~and~~

11 ~~(C) the disclosure is made in compliance with the federal family~~
 12 ~~educational rights and privacy act, 20 U.S.C. § 1232g.~~

13 (2) Personally identifiable student data may be disclosed if the
 14 student, if an adult, or the parent or legal guardian of the student, if a
 15 minor, consents to such disclosure in writing.

16 (e) Notwithstanding the provisions of subsections (b), (c) and (d), an
 17 educational agency may disclose:

18 (1) Directory information of ~~any~~ **{a}** student when such agency
 19 deems such disclosure necessary **{and the disclosure of which has been**
 20 **consented to in writing by such student's parent or legal guardian};**
 21 ~~and~~

22 **{(2) directory information to an enhancement vendor that**
 23 **provides photography services, class ring services, yearbook**
 24 **publishing services, memorabilia services or other substantially**
 25 **similar services;}**

26 ~~(2){(3)}~~ *any information required to be disclosed pursuant to K.S.A.*
 27 *65-101, 65-118 and 65-202, and amendments thereto, provided such*
 28 *information is disclosed in accordance with any provisions of such*
 29 *statutes regarding the confidentiality and disclosure of such*
 30 *information; and*

31 ~~(2){(3)}~~ **{(4)}** any student data in order to comply with any lawful
 32 subpoena or court order directing such disclosure.

33 Sec. 4. No school district shall collect biometric data from a student,
 34 or use any device or mechanism to assess a student's physiological or
 35 emotional state, unless the student, if an adult, or the parent or legal
 36 guardian of the student, if a minor, consents in writing.

37 Sec. 5. **No test, questionnaire, survey or examination containing**
 38 **any questions about the student's personal beliefs or practices on**
 39 **issues such as sex, family life, morality and religion or any questions**
 40 **about the student's parents' or guardians' beliefs and practices on**
 41 **issues such as sex, family life, morality and religion, shall be**
 42 **administered to any student enrolled in kindergarten or grades one**
 43 **through 12, unless the parent or guardian of the student is notified in**

1 **writing that this test, questionnaire, survey or examination is to be**
2 **administered and the parent or guardian of the student gives written**
3 **permission for the student to take this test, questionnaire, survey or**
4 **examination.**

5 ~~Sec. 5.~~ **6.** The attorney general or any district attorney may enforce
6 the provisions of sections 1 through ~~68~~, and amendments thereto, by
7 bringing an action in a court of competent jurisdiction, and may seek
8 injunctive relief to enjoin any educational agency, any employee or agent
9 thereof, or any other entity in possession of student data from disclosing
10 any student data in violation of the provisions of sections 1 through ~~68~~,
11 and amendments thereto.

12 **Sec. 7. In the event of a security breach or unauthorized**
13 **disclosure of student data or personally identifiable information of**
14 **any student, whether by a school district, the department, the state**
15 **board of education, state agency, or other entity or third party given**
16 **access to student data or personally identifiable information of any**
17 **student, the school district, department, state board of education, state**
18 **agency, or other entity or third party shall immediately notify the**
19 **parent or legal guardian of each affected student of the breach or**
20 **unauthorized disclosure and investigate the causes and consequences**
21 **of the breach or unauthorized disclosure.**

22 ~~Sec. 6.~~ **8.** The department shall annually publish on its website the
23 categories of student data that are submitted to and maintained in any
24 statewide longitudinal student data system. Publications required by this
25 section shall be published with an easily identifiable link located on the
26 department's website homepage.

27 **Sec. 9. On or before May 15, 2015, and each year thereafter, the**
28 **state board shall submit to the governor and the legislature a written**
29 **report. The report shall include, but not be limited to, the following**
30 **information:**

31 **(a) Any categories of student data collected for the statewide**
32 **longitudinal student data system that are not otherwise described as**
33 **student data under section 2, and amendments thereto;**

34 **(b) any changes to existing data collections, which includes**
35 **changes to federal reporting requirements by the secretary of the**
36 **United States department of education;**

37 **(c) an explanation of any exceptions provided by the state board**
38 **in the preceding calendar year regarding the release or transfer of**
39 **student data or de-identified data; and**

40 **(d) the scope and nature of any privacy or security audits**
41 **completed in the preceding calendar year.**

42 ~~Sec. 7.~~ **10.** This act shall take effect and be in force from and after its
43 publication in the statute book.