

SECOND REGULAR SESSION

SENATE BILL NO. 989

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time January 27, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4680S.04I

AN ACT

To amend chapter 160, RSMo, by adding thereto sixteen new sections relating to protecting the privacy of student data, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 160, RSMo, is amended by adding thereto sixteen new sections, to be known as sections 160.1500, 160.1503, 160.1506, 160.1509, 160.1512, 160.1515, 160.1518, 160.1521, 160.1524, 160.1527, 160.1530, 160.1533, 160.1536, 160.1539, 160.1542, and 160.1545, to read as follows:

160.1500. 1. It is the law of the state of Missouri under article I, section 15 of the Missouri constitution, that the people shall be secure in their electronic communications and data from unreasonable searches and seizures and that no warrant to access any electronic data or communication shall issue without describing the data or communication to be accessed as nearly as may be, nor without probable cause, supported by written oath or affirmation. As used in sections 160.1500 to 160.1545, the following terms shall mean:

(1) "Affective computing", systems and devices that can or attempt to recognize, interpret, process, or simulate aspects of human feelings or emotions;

(2) "Aggregate data", data collected and/or reported at the group, cohort, or institutional level;

(3) "Biometric record", a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voice prints, DNA sequence, including newborn screening information, facial characteristics, and handwriting;

(4) "Cloud computing service", a service that enables on-demand

20 network access to a shared pool of configurable computing resources,
21 including but not limited to networks, servers, storage, applications,
22 and services to provide a student, teacher, or staff member
23 account-based productivity applications, including but not limited to
24 email, document storage, and document editing that can be rapidly
25 provisioned and released with minimal management effort, or cloud
26 computing service provider interaction. A cloud computing service has
27 the characteristics of on-demand self-service, broad network access,
28 resource pooling, rapid elasticity, and measured service;

29 (5) "Cloud computing service provider", an entity, other than an
30 education institution, that operates a cloud computing service;

31 (6) "Department", the department of elementary and secondary
32 education;

33 (7) "Education institution" or "institution", any school district,
34 charter school, private school, community college, and any public or
35 private institution of higher education;

36 (8) "Education program", a program of instruction administered
37 by an education institution within this state;

38 (9) "Interpersonal resources" or "interpersonal skills",
39 noncognitive, emotional, and psychological or behavioral
40 characteristics and attributes and skills used to manage relationships
41 and interactions among or between individuals;

42 (10) "Intrapersonal resources" or "intrapersonal skills",
43 noncognitive, emotional, and psychological or behavioral
44 characteristics and attributes used to manage emotions and attitudes
45 within an individual;

46 (11) "Parent", shall include a student's parent or legal guardian;

47 (12) "Predictive modeling", the use of educational data-mining
48 methods to make predictions about future behaviors or performance;

49 (13) "Process" or "processing", to use, access, manipulate, scan,
50 modify, transform, disclose, store, transmit, transfer, retain, aggregate,
51 or dispose of student or teacher data;

52 (14) "Psychological resources", noncognitive, emotional
53 characteristics, attributes, and skills, including mindsets, learning
54 strategies, and effortful control, used by an individual to address or
55 manage various life situations;

56 (15) "State agency" or "state agencies", the department, the

57 department of higher education, the state board of education, the P-20
58 Council, the coordinating board for early childhood, the coordinating
59 board for higher education, and companion student-finance agencies,
60 any regional education service agency, or any other state education
61 entity, excluding a state operated institution of higher education when
62 acting in their capacity as an education provider;

63 (16) "Student database", the Missouri Student Information System
64 (MOSIS), as well as any other data system or data warehouse
65 containing student information, including regional, interstate, or
66 federal data warehouse organizations under contract to or with a
67 memorandum of understanding with the department;

68 (17) "Track", to collect and maintain records of a student's
69 activities once the student exits the education system, including but not
70 limited to the student's entrance into and progression through the
71 workforce or the military;

72 (18) "Workforce information", information related to
73 unemployment insurance, wage records, unemployment insurance
74 benefit claims, or employment and earnings data from workforce data
75 sources, such as state wage records, wage record interchange system,
76 or the federal employment data exchange system;

77 (19) "Written consent", written consent given within six months
78 before the data collection or disclosure consented to, specifically
79 referencing that data collection or disclosure, and dated and signed on
80 the same day.

81 2. As used in sections 160.1500 to 160.1545, the following terms
82 shall have the same meaning as defined in 34 C.F.R. §99.3:

83 (1) "Disclosure";

84 (2) "Education records";

85 (3) "Eligible student";

86 (4) "Parent";

87 (5) "Party";

88 (6) "Personally identifiable information";

89 (7) "Record"; and

90 (8) "Student".

160.1503. 1. Student data collected by any state agency without
2 the written consent of parents for any student under the age of
3 eighteen or eligible students shall be limited to the following:

4 **(1) The student's identification number for the Missouri student**
5 **information system assigned by the local school district which shall not**
6 **be or include the Social Security number of a student in whole or in**
7 **part;**

8 **(2) Assessment results of the statewide assessment system;**

9 **(3) Course taking and completion, credits earned, course grades,**
10 **grade point average, date of birth, grade level, and expected graduation**
11 **date and graduation cohort;**

12 **(4) Degree, diploma, or credential attainment;**

13 **(5) Enrollment, attendance, and transfers;**

14 **(6) Medical, health, and mental health records limited to**
15 **immunization records required by state law, or records required by the**
16 **Individuals with Disabilities Education Act or section 504 of the**
17 **Rehabilitation Act;**

18 **(7) Discipline reports limited to objective information about**
19 **disciplinary incidents or that are required to be disclosed to**
20 **appropriate law enforcement authorities under section 160.261 or, for**
21 **institutions of higher education, objective information sufficient to**
22 **produce the Title IV Annual Incident Report pursuant to the Clery Act,**
23 **20 U.S.C. Section 1092(f);**

24 **(8) Remediation data;**

25 **(9) Special education data, limited to data required by the**
26 **Individuals with Disabilities Education Act or Section 504 of the**
27 **Rehabilitation Act;**

28 **(10) Demographic data, limited to that required by the federal**
29 **Elementary and Secondary Education Act, including race, economic**
30 **status, disability status, and English language proficiency status;**

31 **(11) Student workforce information, limited to information**
32 **related to work-study programs participated in for academic credit;**

33 **(12) Student or family income data, limited to data required by**
34 **law to determine eligibility to participate in or receive financial**
35 **assistance under a program; and**

36 **(13) Information about extracurricular activities, limited to**
37 **activities that are school-sponsored and engaged in for academic credit.**

38 **2. A state agency shall not collect from parents, eligible K-12**
39 **students, or through data sharing agreements with any other entity,**
40 **any of the following except with expressed written consent by the**

41 **parent:**

42 (1) Medical, health information, including but not limited to
43 height, weight, and body mass index, and mental health records, except
44 as provided in subdivision (6) of subsection 1 of this section;

45 (2) Student or family workforce information, except as provided
46 in subdivision (12) of subsection 1 of this section;

47 (3) Student biometric records;

48 (4) Any data collected via affective computing, including analysis
49 of facial expressions, EEG brain wave patterns, skin conductance,
50 galvanic skin response, heart-rate variability, pulse, blood volume,
51 posture, and eye-tracking;

52 (5) Any data, including any data resulting from state or national
53 assessments, that measure psychological or behavioral resources,
54 mindsets, learning strategies, effortful control, attributes, dispositions,
55 social skills, attitudes, or intrapersonal resources;

56 (6) Any data collected through predictive modeling; and

57 (7) Information about student or family religious affiliation.

58 3. No funds, whether from federal American Reinvestment and
59 Recovery Act funds, including statewide longitudinal data system
60 grants, or any other source, shall be used on construction,
61 enhancement, or expansion of any data system that does not comply
62 with the provisions of section 160.1500 to 160.1545, or that is designed
63 to track students beyond their K-12 or postsecondary education careers
64 or compile their personal, nonacademic information, or evaluation of
65 academic programs and student progress.

66 4. No state agency shall pursue or accept any grant, whether
67 from the federal government or any private entity, that would require
68 collecting or reporting any types of data in violation of this section.

69 5. Neither the department nor the state board of education shall
70 develop or approve policies requiring parental or student disclosure of
71 student or family income data, including completion of federal financial
72 aid applications, as a condition of attendance or graduation from any
73 education program.

160.1506. 1. By June thirtieth annually, state agencies shall
2 publicly and conspicuously disclose on their websites the existence and
3 character of any personally identifiable information from education
4 records maintained by the agencies or education institutions, directly

5 or through contracts with outside parties. By June thirtieth annually,
6 state agencies shall also provide electronic notification of this
7 information to the chairs of the senate education committee, house of
8 representatives elementary and secondary education committee, and
9 the joint committee on education. Such disclosure and electronic
10 notifications shall include the following:

11 (1) The legal authority that authorizes the establishment and
12 existence of the data repository;

13 (2) The principal purpose or purposes for which the information
14 is intended to be used;

15 (3) The categories of individuals on whom records are
16 maintained in the data repository;

17 (4) The categories of records maintained in the data repository;

18 (5) Each expected disclosure of the records contained in the data
19 repository, including the categories of recipients and the purpose of
20 such disclosure;

21 (6) The policies and practices of the state agency or education
22 institution regarding storage, retrievability, access controls, retention,
23 and disposal of the records;

24 (7) The title and business address of the official who is
25 responsible for the data repository, and the name and business address
26 of any contractor or other outside party maintaining the data
27 repository for or on behalf of the state agency or education institution;

28 (8) The procedures whereby parents or eligible students, or
29 teachers, can be notified at their request if the data repository contains
30 a record pertaining to that student or teacher; and

31 (9) The procedures whereby parents or eligible students, or
32 teachers, can be notified at their request how to gain access to any
33 record pertaining to that student or teacher contained in the data
34 repository, and how they can contest its content.

35 2. Upon request, parents and eligible students shall be provided
36 a printed copy of their education records that are held in an education
37 database, and shall have the right to correct those education records
38 in a manner that is consistent with requirements of state and federal
39 law.

40 3. State agencies shall use only aggregate data in published
41 reports.

160.1509. No state or national student assessment shall be
2 adopted or administered in this state by any school district or charter
3 school that collects any type of psychological or behavioral data,
4 including assessment of noncognitive skills or attributes, psychological
5 resources, mindsets, learning strategies, effortful control, attitudes,
6 dispositions, social skills, or other interpersonal or intrapersonal
7 resources.

160.1512. No state agency, school board, or education institution
2 offering grades prekindergarten through twelve shall administer any
3 student survey, assessment, analysis, evaluation, or similar instrument
4 that solicits information about the student or the student's family
5 concerning the following:

- 6 (1) Political affiliations or beliefs;
- 7 (2) Mental or psychological problems, psychological resources,
8 mindsets, learning strategies, effortful control, attributes, dispositions,
9 social skills, attitudes, or intrapersonal resources;
- 10 (3) Sexual behavior or attitudes;
- 11 (4) Illegal, antisocial, self-incriminating, or demeaning behavior;
- 12 (5) Critical appraisals of another individual with whom a student
13 has a close family relationship;
- 14 (6) Legally recognized privileged or analogous relationships,
15 such as those with a lawyer, physician, or clergy member;
- 16 (7) Religious practices, affiliations, or beliefs;
- 17 (8) Personal or family firearm ownership;
- 18 (9) Income or other income-related information except that
19 which is required by law to determine eligibility to participate in or
20 receive financial assistance under a program; or
- 21 (10) Juvenile delinquency records, or criminal records except as
22 required by subdivision (7) of section 1 of section 160.1503.

160.1515. 1. Subject to the exceptions contained in sections
2 160.1500 to 160.1545, access to student education records in the student
3 database shall be restricted to the authorized representatives of the
4 department, state agency, or education institution who require such
5 access to perform their assigned duties. No party may be designated
6 an authorized representative unless that party is an employee of the
7 department, state agency, or education institution and is under the
8 direct control of the department, state agency, or education institution.

9 2. Subject to the exceptions contained in sections 160.1500 to
10 160.1545, no personally identifiable student or teacher data shall be
11 disclosed without the written consent of the parents for any student
12 under age of eighteen or eligible students.

13 3. Personally identifiable information from an education record
14 of a student shall not be released to a party conducting studies for or
15 on behalf of the state agencies or education institutions without the
16 written consent of the parent or eligible student, or of the affected
17 teacher, except to develop, validate, or administer assessments or
18 administer student-aid programs. Any outside party conducting such
19 a study shall meet all the requirements for contractors set forth in
20 subsection 5 of this section.

21 4. In conducting any audit or evaluation of an education
22 program, or any compliance or enforcement activity in connection with
23 legal requirements that relate to state or district supported education
24 programs, when such audit, evaluation, or activity involves access to
25 personally identifiable student data or information, education records
26 may be released only to authorized representatives of state agencies,
27 school boards, or institutions. No party may be designated an
28 authorized representative unless that party is an employee of the
29 department, state agency, or education institution and is under the
30 direct control of the department, state agency, or education institution.

31 5. State agencies shall not disclose personally identifiable
32 information from education records without the written consent of
33 parents or students eighteen years of age or older, unless formally
34 emancipated, to a contractor, consultant, or other party to whom the
35 state agency has outsourced institutional services or functions unless
36 that outside party:

37 (1) Performs an institutional service or function for which the
38 state agency would otherwise use its employees;

39 (2) Is under the direct control of the state agency with respect
40 to the use and maintenance of education records or teacher records;

41 (3) Limits internal access to education records to those
42 individuals who require access to those records for completion of the
43 contract;

44 (4) Does not use the education records for any purposes other
45 than those explicitly authorized in the contract;

46 **(5) Does not disclose any personally identifiable information**
47 **from education records to any other party:**

48 **(a) Without the written consent of the parent for any student**
49 **under the age of eighteen, or student eighteen years of age or older**
50 **unless formally emancipated; or**

51 **(b) Unless required by statute or court order and the party**
52 **provides a notice of the disclosure to the state agency that provided the**
53 **information no later than the time the information is disclosed, unless**
54 **providing notice of the disclosure is expressly prohibited by the statute**
55 **or court order;**

56 **(6) Maintains reasonable administrative, technical, and physical**
57 **safeguards to protect the security, confidentiality, and integrity of the**
58 **personally identifiable student or teacher data in its custody;**

59 **(7) Uses encryption technologies to protect data while in motion**
60 **or in its custody from unauthorized disclosure using a technology or**
61 **methodology specified by the Secretary of the United States**
62 **Department of Health and Human Services in guidance issued under**
63 **section 13402(H)(2) of Public Law 111-5;**

64 **(8) Has sufficient administrative and technical procedures to**
65 **monitor continuously the security of personally identifiable student or**
66 **teacher data in its custody;**

67 **(9) Conducts a security audit annually and provides the results**
68 **of that audit to each state agency that provides education records or**
69 **teacher records;**

70 **(10) Provides the state agency with a breach-remediation plan**
71 **acceptable to the state agency before initial receipt of education**
72 **records;**

73 **(11) Reports all suspected security breaches to the state agency**
74 **that provided education records as soon as possible but not later than**
75 **forty-eight hours after a suspected breach was known or would have**
76 **been known by exercising reasonable diligence;**

77 **(12) Reports all actual security breaches to the state agency that**
78 **provided education records as soon as possible but not later than**
79 **twenty-four hours after an actual breach was known or would have**
80 **been known by exercising reasonable diligence;**

81 **(13) In the event of a security breach or unauthorized disclosure**
82 **of personally identifiable information, pays all costs and liabilities**

83 incurred by the state agency related to the security breach or
84 unauthorized disclosure, including but not limited to the costs of
85 responding to inquiries about the security breach or unauthorized
86 disclosure, of notifying subjects of personally identifiable information
87 about the breach, of mitigating the effects of the breach for the subjects
88 of the personally identifiable information, and of investigating the
89 cause or consequences of the security breach or unauthorized
90 disclosure; and

91 (14) Destroys or returns to the state agency all personally
92 identifiable information in its custody upon request and at the
93 termination of the contract.

160.1518. In the event of a security breach or unauthorized
2 disclosure of personally identifiable student data, whether by a state
3 agency or by a third party given access to education records pursuant
4 to section 160.1515, the state agency shall:

5 (1) Immediately notify any individual whose personally
6 identifiable student data may have been affected of the breach or
7 disclosure;

8 (2) Report the breach or disclosure to the Family Policy
9 Compliance Office of the United States Department of Education; and

10 (3) Investigate the causes and consequences of the breach or
11 disclosure.

160.1521. 1. Personally identifiable information collected by any
2 state agency in education records shall not be disclosed to any party
3 for a commercial use, including but not limited to marketing products
4 or services, compilation of lists for sale or rental, development of
5 products or services, or creation of individual, household, or group
6 profiles.

7 2. Any cloud computing service provider performing services for
8 a state agency is prohibited from using information from education
9 records, or information relating to a student or created by a student
10 through the use of a cloud computing service, for any purpose other
11 than providing the cloud computing service to the state agency for
12 educational purposes and maintaining the integrity of that specific
13 service. Prohibited purposes for processing the information identified
14 in this subsection include, but are not limited to, the following:

15 (1) Online behavioral advertising;

16 **(2) Creating or correcting an individual or household profile for**
17 **advertising, marketing, or similar commercial purposes;**

18 **(3) Analyzing information to facilitate the advertising, sale, or**
19 **marketing of a product or service;**

20 **(4) The sale of the information for any commercial purpose;**

21 **(5) Disclosing the information to any third party other than a**
22 **service provider that is performing services on behalf of the cloud**
23 **computing service provider and that is subject to all of the privacy and**
24 **data security restrictions that apply to the cloud computing service**
25 **provider; or**

26 **(6) Any other similar commercial for-profit activity; provided**
27 **however, that a cloud computing service provider may process or**
28 **monitor student data solely to provide such service to the state agency**
29 **and to maintain the integrity of such service.**

30 **3. Any cloud computing service provider that enters into an**
31 **agreement to provide cloud computing services to a state agency shall**
32 **certify in writing to that state agency that:**

33 **(1) It shall comply with the terms and conditions set forth in**
34 **subsection 6 of section 160.1515;**

35 **(2) The state agency maintains ownership of all student data; and**

36 **(3) The cloud computing service provider shall be responsible for**
37 **all damages associated with a data breach as provided in section**
38 **160.1545.**

39 **4. Any student data stored by a cloud computing service provider**
40 **shall be stored within the boundaries of the United States.**

160.1524. No student data shall be used for predictive modeling
2 **for detecting behaviors, beliefs, or value systems, or predicting or**
3 **forecasting student outcomes.**

160.1527. There shall be no video monitoring of classrooms for
2 **any purpose, including for teacher evaluation, without the approval of**
3 **the district's school board after public hearings and the written consent**
4 **of the teacher and of the parents of all students in the classroom.**

160.1530. Personally identifiable information from education
2 **records shall not be disclosed to any noneducation government agency,**
3 **including but not limited to the Missouri department of labor and**
4 **industrial relations, whether within or outside the state, or to any**
5 **party that intends to use or disclose the information or data for the**

6 purpose of workforce development or economic planning. Data
7 linkages or sharing of data with other states without expressed
8 permission of the individuals affected are prohibited.

160.1533. Personally identifiable information from education
2 records shall not be disclosed to any government agency or other entity
3 outside the state, except disclosure in the following circumstances:

4 (1) To an institution attended by a student who has transferred
5 out of state;

6 (2) To an out-of-state program in which a student voluntarily
7 participates and for which such a data transfer is a condition or
8 requirement of participation; or

9 (3) When a student is classified as a "migrant" for federal
10 reporting purposes.

160.1536. 1. No personally identifiable information from
2 education records may be disclosed to any federal agency, including
3 but not limited to the United States Department of Education or the
4 United States Department of Labor or their representatives, unless:

5 (1) Such disclosure is required by the United States Department
6 of Education as a condition of receiving a federal education grant;

7 (2) The United States Department of Education agrees in writing
8 to use the information from the education records or teacher records
9 only to evaluate the program or programs funded by the grant;

10 (3) The United States Department of Education agrees in writing
11 that the information shall not be used for any research beyond that
12 related to evaluation of the program or programs funded by the grant,
13 unless the parent or eligible student, or any teacher, whose information
14 or data shall be used for such evaluation affirmatively consents in
15 writing to that use;

16 (4) The United States Department of Education agrees in writing
17 to destroy the information or data upon completion of the evaluation
18 of the program or programs for which the information or data were
19 compiled; and

20 (5) The grant or program in connection with which the
21 information or data are required is one explicitly authorized by federal
22 statute or by federal rule properly promulgated under the federal
23 Administrative Procedure Act, 5 U.S.C. Section 500, et seq.

24 2. If the United States Department of Education requires, as a

25 condition of making a federal education grant, that the grant recipient
26 disclose student information under circumstances that do not comply
27 with subdivision (1) of subsection 1 of this section, the grant recipient
28 shall obtain written consent from the parents of every student, or from
29 eligible students, whose information shall be disclosed.

30 3. If the United States Department of Education demands
31 personally identifiable student information without the written consent
32 of the affected parents or eligible students, the grant recipient shall
33 provide written notification to those parents and eligible students of
34 the following:

35 (1) That the grant recipient has been required to disclose the
36 student's information or the teacher's data to the United States
37 Department of Education;

38 (2) That neither the grant recipient nor any other entity within
39 the state of Missouri shall have control over use or further disclosure
40 of that information or data; and

41 (3) The contact information, including the name, telephone
42 number, and email address of the United States Department of
43 Education official who demands the disclosure.

160.1539. State agencies, school boards, or institutions shall not
2 disclose student or teacher information to any assessment consortium
3 of which the state is a member, or company with which the state
4 contracts for development or administration of any assessment, unless:

5 (1) The information is transmitted in nonindividual record
6 format;

7 (2) The information is limited to information directly related to
8 the assessment, such as a student's grade level and test scores; and

9 (3) No psychological or behavioral information of any kind,
10 including that listed in section 160.1503, is included as part of the test
11 scores.

160.1542. An education institution shall destroy and remove from
2 the student database all education records of a student within five
3 years of the student's graduation or withdrawal from that institution,
4 provided that the institution may retain records showing dates of
5 attendance, diploma, or degree received and contact information. If a
6 student withdraws from an education institution before graduating, the
7 institution shall, within one year of the student's withdrawal, destroy

8 and remove from the database all education records of that student
9 except records showing dates of attendance. Destruction shall be
10 compliant with the standards of data destruction identified in the
11 National Institute of Standards and Technology (NIST) special
12 publication 800-88.

160.1545. 1. Each violation of any provision of sections 160.1500
2 to 160.1545 by an organization or entity other than a state agency, a
3 school board, or an institution shall be punishable by a civil penalty of
4 up to one thousand dollars. A second violation by the same
5 organization or entity involving the education records and privacy of
6 the same student shall be punishable by a civil penalty of up to five
7 thousand dollars. Any subsequent violation by the same organization
8 or entity involving the education records and privacy of the same
9 student shall be punishable by a civil penalty of up to ten thousand
10 dollars. Each violation involving a different individual education
11 record or a different individual student shall be considered a separate
12 violation for purposes of civil penalties.

13 2. The attorney general shall have the authority to enforce
14 compliance with this section by investigation and subsequent
15 commencement of a civil action, to seek civil penalties for violations of
16 sections 160.1500 to 160.1545, and to seek appropriate injunctive relief,
17 including but not limited to a prohibition on obtaining personally
18 identifiable information for an appropriate time period. In carrying
19 out such investigation and in maintaining such civil action, the
20 attorney general or any deputy or assistant attorney general is
21 authorized to subpoena witnesses, compel their attendance, examine
22 them under oath, and require that any books, records, documents,
23 papers, or electronic records relevant to the inquiry be turned over for
24 inspection, examination, or audit. Subpoenas issued under this
25 subsection may be enforced pursuant to the Missouri rules of civil
26 procedure.

27 3. Nothing contained in this section shall be construed as
28 creating a private right of action against a state agency, a school board,
29 or an institution as defined in 160.1500.

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