

HB 1240 -- PRIVACY OF STUDENT DATA

SPONSOR: Anderson

This bill changes the laws regarding protections for the privacy of student data. Consistent with Article I, Section 15 of the Missouri Constitution, the bill specifies that the people must be secure in their electronic communications and data from unreasonable searches and seizures and that no warrant to access any electronic data or communication must 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.

Student data collected by any state agency without the written consent of the parents for any student younger than 18 years of age must be limited to specified information. The term "state agency" is defined to include the Department of Elementary and Secondary Education, the Department of Higher Education, the State Board of Education, the P-20 Council, the Coordination Board for Early Childhood, the Coordination Board for Higher Education, companion student-finance agencies, any regional education service agency, or any other state education entity. A state agency is prohibited from collecting specified information from parents, eligible students, or through data sharing agreements with any other entity.

No funds, regardless of source, can be used on the construction, enhancement, or expansion of any data system that does not comply with these limitations, that is designed to track students beyond their K-12 or postsecondary education careers or compiles personal nonacademic information, or that evaluates academic programs and student progress. The bill prohibits any state agency from pursuing or accepting any grant that would require the collecting or reporting of any type of data that violates these prohibitions.

By June 30 annually, state agencies must publicly disclose on their websites the existence and character of any personally identifiable information from education records maintained by them or education institutions directly or through contracts with outside parties. State agencies must also annually provide electronic notification of the information, by June 30, to the chairs of the Senate Education Committee, House Elementary and Secondary Education Committee, and the Joint Committee on Education that includes specified information. Upon request, parents and eligible students must be provided a printed copy of their education records that are held in an education database, and they have the right to correct those records in a manner that is consistent with state and federal requirements. State agencies must only use aggregate data in published reports.

School districts and charter schools are prohibited from adopting or administering any state or national student assessment that collects psychological or behavioral data, as described in the bill.

State agencies, school boards, and education institutions offering grades pre-kindergarten through 12 cannot administer any student survey, assessment, analysis, evaluation, or similar instrument that solicits specified personal information about the student or the student's family. Access to student education records in the Department of Elementary and Secondary Education's Missouri Student Information System (MOSIS) must be restricted to the authorized representatives of the department, state agency, or education institution who require access to it to perform their assigned duties. An authorized representative must be an employee of the department, state agency, or education institution and be under its direct control. Personally identifiable student or teacher data cannot be disclosed without the written consent of the parents for any student under 18 years old or eligible students.

The Department of Elementary and Secondary Education must develop and publish criteria for the approval of research-related data requests from state agencies, political subdivisions, local government agencies, the General Assembly, academic researchers, and the public. Written consent is required for the release of personally identifiable student or teacher information to a party conducting studies for or on behalf of a state agency or education institution. Any outside party conducting a study must meet all of the requirements for contractors as specified in the bill.

State agencies must not disclose personally identifiable information from education records without the written consent of parents or students 18 years of age or older unless formally emancipated to an outside party to whom the agency has outsourced institutional services or functions unless the outside party meets specified requirements.

If a security breach or unauthorized disclosure of personally identifiable student data occurs, the state agency responsible for the data must immediately notify any individual whose personally identifiable student data may have been affected by the breach or disclosure, report it to the Family Policy Compliance Office of the United States Department of Education, and investigate the causes and consequences of the breach or disclosure.

Personally identifiable information collected by any state agency in education records cannot be disclosed to any party for commercial use. Any cloud computing service provider performing services for a state agency is prohibited from using information

from education records or information relating to a student or created by a student through the use of a cloud computing service for any purpose other than providing the cloud computing service to the state agency for educational purposes and maintaining the integrity of that specific service. Examples of prohibited purposes for processing of the information are specified.

Any cloud computing service provider that enters into a service agreement with a state agency must certify in writing that it will comply with data use requirements and that the state agency maintains ownership of all student data. The agreement must also provide that the cloud computing service provider will be responsible for all damages associated with a data breach. All student data stored by a cloud computing service provider must be stored within the boundaries of the United States.

Student data cannot be used for predictive modeling, as defined in the bill, for detecting behaviors, beliefs, or value systems or for predicting or forecasting student outcomes.

Video monitoring of classrooms for any purpose is prohibited unless the local school district board approves it after public hearings and the written consent of the teacher and the parents of all students in the classroom.

The bill prohibits the disclosure of personally identifiable information from education records to any non-education government agency, including the Department of Labor and Industrial Relations or to any party for the purpose of workforce development or economic planning. Data linkages or sharing of data with other states without expressed permission of the individuals affected are prohibited.

Personally identifiable information from education records cannot be disclosed to any government agency or other entity outside Missouri except to an institution attended by a student who has transferred out of state, to an out-of-state program in which a student voluntarily participates and a data transfer is a condition or requirement for participation, or for a student classified as a migrant for federal reporting purposes.

Personally identifiable information from education records cannot be disclosed to any federal agency unless certain conditions are satisfied as specified in the bill.

State agencies, school boards, and education institutions are prohibited from disclosing student or teacher information to any assessment consortium of which Missouri is a member or any company with which Missouri contracts for development or administration of

any assessment. However, these entities may disclose the information if it is transmitted in non-individual record format, it is limited to information directly related to the assessment, and no psychological or behavioral information is included as part of the test scores.

Education institutions must destroy and remove from their student databases all education records of a student within five years of the student's graduation or withdrawal from the institution. An institution may retain records showing the student's data of attendance, diploma or degree earned, and contact information. For any student who withdraws before graduation, the institution must, within one year, destroy and remove all records of the student from the database except those showing dates of attendance. Destruction must comply with the standards of data destruction identified in the National Institute of Standards and Technology special publication 800-88.

Each violation of any provision of the bill by an organization or entity other than a state agency, a school board, or an institution must be punishable by a civil penalty of up to \$1,000. A second violation by the same organization or entity involving the education records and privacy of the same student must be punishable by a civil penalty of up to 5,000. Any subsequent violation by the same organization or entity involving the education records and privacy of the same student must be punishable by a civil penalty of up to \$10,000. The Attorney General must have the authority to enforce compliance with these provisions by investigation and subsequent commencement of a civil action, to seek civil penalties for violations, and to seek appropriate injunctive relief.

The bill contains an emergency clause.