

SENATE BILL No. 367

AN ACT concerning schools; creating the student data privacy act; amending K.S.A.
2013 Supp. 72-6214 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 through 9, and amendments thereto, shall be known and may be cited as the student data privacy act.

New Sec. 2. As used in sections 1 through 9, and amendments thereto:

(a) "Aggregate data" means data collected or reported at the group, cohort or institutional level and which contains no personally identifiable student data.

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

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

(d) "Directory information" means a student's name, address, telephone listing, participation in officially recognized activities and sports, weight and height if the student is a member of an athletic team, and degrees, honors or awards received.

(e) "Educational agency" means a school district or the department.

(f) "School district" means a unified school district organized and operated under the laws of this state.

(g) "Statewide longitudinal student data system" means any student data system maintained by the department, which assigns a state identification number for each student who attends an accredited public or private school in Kansas and uses the state identification number to collect student data.

(h) "Student data" means the following information contained in a student's educational record:

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

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

(3) course grades and grade point average;

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

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

(6) attendance and mobility;

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

(8) remediation;

(9) special education data;

(10) demographic data and program participation information; and

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

(i) "Personally identifiable student data" means student data that, alone or in combination, is linked or linkable to a specific student and would allow a reasonable person to identify the student with reasonable certainty.

New Sec. 3. (a) Any student data submitted to and maintained by a statewide longitudinal student data system shall only be disclosed by an educational agency in accordance with the provisions of this section. An educational agency shall provide annual written notice to each student's parent or legal guardian that student data may be disclosed in accordance with this section. Such notice shall be signed by the student's parent or legal guardian and maintained on file with the district.

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

(1) The authorized personnel of an educational agency who require such disclosures to perform their assigned duties;

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

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

(c) Student data may be disclosed to the authorized personnel of any state agency not specified in subsection (b), or to a service provider of a state agency, educational agency or school who is engaged to perform a function of instruction, assessment or longitudinal reporting, provided

there is a data-sharing agreement between the educational agency and such other state agency or service provider that provides the following:

- (1) The purpose, scope and duration of the data-sharing agreement;
- (2) that the recipient of the student data use such information solely for the purposes specified in the agreement;
- (3) that the recipient shall comply with data access, use and security restrictions that are specifically described in the agreement; and
- (4) that the student data shall be destroyed when no longer necessary for the purposes of the data-sharing agreement or upon expiration of the data-sharing agreement, whichever occurs first. Except that a service provider engaged to perform a function of instruction may retain student transcripts as required by applicable laws and rules and regulations. Destruction shall comply with the NISTSP800-88 standards of data destruction.

(d) (1) Except as otherwise provided in paragraph (2), student data may be disclosed to any governmental entity not specified in subsection (b) or (c), or to any public or private audit and evaluation or research organization, provided that only aggregate data is disclosed to such governmental entity or audit and evaluation or research organization.

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

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

(1) Directory information of a student when such agency deems such disclosure necessary and the disclosure of which has been consented to in writing by such student's parent or legal guardian;

(2) directory information to an enhancement vendor that provides photography services, class ring services, yearbook publishing services, memorabilia services or other substantially similar services;

(3) any information required to be disclosed pursuant to K.S.A. 65-101, 65-118 and 65-202, and amendments thereto, provided such information is disclosed in accordance with any provisions of such statutes regarding the confidentiality and disclosure of such information;

(4) any student data in order to comply with any lawful subpoena or court order directing such disclosure; and

(5) student data to a public or private postsecondary educational institution which is required by such postsecondary educational institution for the purposes of application or admission of a student to such postsecondary educational institution, provided that such disclosure is consented to in writing by such student.

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

New Sec. 5. No test, questionnaire, survey or examination containing any questions about the student's personal beliefs or practices on issues such as sex, family life, morality or religion, or any questions about the student's parents' or guardians' beliefs and practices on issues such as sex, family life, morality or religion, shall be administered to any student enrolled in kindergarten or grades one through 12, unless the parent or guardian of the student is notified in writing that this test, questionnaire, survey or examination is to be administered and the parent or guardian of the student gives written permission for the student to take this test, questionnaire, survey or examination. This section shall not prohibit school counselors from providing counseling services to a student, including the administration of tests and forms which are part of a counselor's student counseling services. Any information obtained through such tests or counseling services shall not be stored on any personal mobile electronic device which is not owned by the school district, including but not limited to, laptops, tablets, phones, flash drives, external hard drives or virtual servers.

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

dent data in violation of the provisions of sections 1 through 8, and amendments thereto.

New Sec. 7. In the event of a security breach or unauthorized disclosure of student data or personally identifiable information of any student, whether by a school district, the department, the state board of education, state agency, or other entity or third party given access to student data or personally identifiable information of any student, the school district, department, state board of education, state agency, or other entity or third party shall immediately notify each affected student, if an adult, or the parent or legal guardian of the student, if a minor, of the breach or unauthorized disclosure and investigate the causes and consequences of the breach or unauthorized disclosure.

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

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

- (a) Any categories of student data collected for the statewide longitudinal student data system that are not otherwise described as student data under section 2, and amendments thereto;
- (b) any changes to existing data collections, which includes changes to federal reporting requirements by the secretary of the United States department of education;
- (c) an explanation of any exceptions provided by the state board in the preceding calendar year regarding the release or transfer of student data; and
- (d) the scope and nature of any privacy or security audits completed in the preceding calendar year.

Sec. 10. K.S.A. 2013 Supp. 72-6214 is hereby amended to read as follows: 72-6214. (a) As used in this section, the following terms shall have the meanings respectively ascribed to them unless the context requires otherwise:

(1) "Board" means the state board of regents, the state board of education, the board of trustees of any public community college, the board of regents of any municipal university, the governing board of any technical college and the board of education of any school district.

(2) "Student" means a person who has attained 18 years of age, or is attending an institution of postsecondary education.

(3) "Pupil" means a person who has not attained 18 years of age and is attending an educational institution below the postsecondary level.

(b) Every board shall adopt a policy in accordance with *the student data privacy act and* applicable federal laws and regulations to protect the right of privacy of any student, or pupil and such pupil's family regarding personally identifiable records, files and data directly related to such student or pupil. The board shall adopt and implement procedures to effectuate such policy by January 1, 1977. Such procedures shall provide for: (1) Means by which any student or parent of a pupil, as the case may be, may inspect and review any records or files directly related to the student or pupil; and (2) restricting the accessibility and availability of any personally identifiable records or files of any student or pupil and preventing disclosure thereof unless made upon written consent of such student or parent of such pupil, as the case may be. ~~To the extent that any other provision of law conflicts with this section, this section shall control.~~

Sec. 11. K.S.A. 2013 Supp. 72-6214 is hereby repealed.

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Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.