

HCS HB 1873 -- MISSOURI STUDENT DATA PROTECTION ACT

SPONSOR: Guernsey

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Downsizing State Government by a vote of 8 to 4.

This bill establishes the Missouri Student Data Protection Act to protect the privacy of educational data, including student performance data and teacher records. In its main provisions, the bill:

- (1) Specifies that it must be unlawful for a public education agency or educational institution to collect specified information without the informed written consent of the parent or guardian of a student or the consent of the student if he or she is an emancipated minor and specifies what information may be collected without any consent;
- (2) Prohibits the use of federal or state funds to construct, enhance, or expand any data system that fails to comply with specified privacy provisions in the bill or that is designed to track students beyond the twelfth grade or to compile student personal, nonacademic information beyond what is necessary for administrative functions directly related to a student's education or evaluation of academic programs and student progress;
- (3) Prohibits the collection or dissemination of data in a manner that violates the federal Fair Labor Standards Act of 1938;
- (4) Prohibits the pursuit or acceptance of any grant that requires collecting or reporting any type of data in violation of the provisions of the bill;
- (5) Requires a public education agency or an educational institution that maintains a data system to disclose publicly and conspicuously on its website the existence of the data system and specified information about the nature of the data system;
- (6) Requires that parents and eligible students must be provided, on request, with a printed copy of their educational records held in any database and must have the right to correct those records in a manner consistent with the requirements of state and federal law;
- (7) Requires public education agencies to also annually notify the chairs of the Education Committee of the Senate and the Elementary and Secondary Education Committee of the House of Representatives of the existence of any data system and to use only aggregated data in published reports;

(8) Prohibits a school classroom, school district, or state or national student assessment from being adopted or administered in this state if it collects any type of psychological data as specified in the bill, except as otherwise prohibited by law;

(9) Prohibits the administration of any student survey, assessment, analysis, evaluation, or similar instrument that solicits information about the student or the student's family concerning political affiliations or beliefs; mental or psychological problems, psychological resources, mindsets, learning strategies, effortful control, attributes, dispositions, social skills, attitudes, or intrapersonal resources; sexual behavior or attitudes; illegal, antisocial, self-incriminating, or demeaning behavior; critical appraisals of another individual with whom a student has a close familial relationship; legally recognized privileged relationships; religious practices or beliefs; personal or family gun ownership; or income or other income-related information except that required by law to determine eligibility to participate in or receive financial assistance under a program;

(10) Restricts access to information collected in a data system to specified individuals of the agency or institution, requires the Department of Elementary and Secondary Education to develop and publish criteria for the approval of research-related data requests, and limits the release of personally identifiable information to a contractor by specifying the requirements for its release;

(11) Specifies that these provisions must not be construed to prohibit the release by a public education agency or educational institution of quantifiable student performance data for purposes of teacher evaluation or for an audit or evaluation of a teacher evaluation system as long as the data released does not permit identification of an individual student;

(12) Establishes procedures for reporting a security breach or unauthorized disclosure of personally identifiable student or teacher data by a public education agency, educational institution, or third party;

(13) Prohibits the disclosure of personally identifiable information from educational or teacher records to any party for commercial use, including use by any cloud computing service provider except to provide, improve, develop, or maintain its service integrity and requires any student or teacher data stored by the provider to be stored within the United States;

(14) Prohibits the use of student data for predictive modeling for

detecting behaviors, beliefs, or value systems or predicting or forecasting student outcomes;

(15) Prohibits the video monitoring of classrooms for any purpose without the approval of the district school board after a public hearing and the written consent of the teacher, all emancipated students, and the parents or guardians of all other students in the classroom;

(16) Prohibits the disclosure of personally identifiable information from education or teacher records to any noneducation government agency, including the Missouri Department of Labor, or to any party that intends to use or disclose the data for the purpose of workforce planning or economic planning. Data linkages or sharing of data with other states without express permission of the affected individuals is prohibited;

(17) Specifies when personally identifiable information from education or teacher records may be disclosed to any government agency or other entity outside Missouri or to any federal agency;

(18) Requires the grant recipient to provide written notification to emancipated students, parents, and teachers of specified information if the United States Department of Education demands personally identifiable student information or teacher data disclosure for a grant without the written consent of the students, parents, or the teacher;

(19) Requires the transmission of data to an assessment consortium to be in nonindividual record format, directly related to the assessment, and not to contain psychological information of any kind as part of the test scores; and

(20) Specifies that each violation of these provisions by an organization or entity other than a public education agency or educational institution must be punishable by a civil penalty of at least \$1,000, at least \$5,000 for a second violation by the same entity involving the education records and privacy of the same student, and at least \$10,000 for any subsequent violation by the same entity involving the same student. Each violation involving a different education record or a different individual student must be considered a separate violation for purposes of assessing civil penalties. The Attorney General must have the authority to enforce compliance with these provisions.

The bill contains an emergency clause.

PROPOSERS: Supporters say that we must protect the individual privacy of the citizens of Missouri. The bill specifically limits

the collection of data and outlines how data can be stored and used in the future. The bill does not address higher education, only K-12. Once data is collected, there is no guarantee how that data will be used or shared.

Testifying for the bill were Representative Guernsey; Kevin Weigler; Anne Gassel, Missouri Coalition Against Common Core; Dr. Mary Byrne; Jill Carter; Missouri Family Network; and Robert Hollinger.

OPPONENTS: Those who oppose the bill say that things such as eye screenings and scoliosis screenings would be prohibited by the bill. The press wants to be able to cover school events and to make sure information such as box scores or information from the school newspaper are not prohibited by the language of the bill.

Testifying against the bill were Missouri School Boards Association; Google, Incorporated; and Missouri Press Association.

OTHERS: Others say that nothing in the bill would restrict the use of Windows in the school or Microsoft's ability to put its products in the school. The ultimate local control is parental control, and parents should decide if their children's information is monetized. Do not let the schools get in bed with the services to put the kids information in a cloud. The school districts have policies that trump the parent's decisions regarding access to technology.

Testifying on the bill were Microsoft Corporation; Laura Martin; Cynthia Mulhall; and Stacy Shore.