

SESSION OF 2014

SUPPLEMENTAL NOTE ON SENATE BILL NO. 367

As Amended by House Committee of the Whole

Brief*

SB 367 would enact the Student Data Privacy Act that would provide restrictions on what data contained in a student's educational record can be disclosed, and to whom it may be disclosed. The bill would require that any student data submitted to and maintained by a statewide longitudinal student data system could be disclosed only to individuals or organizations as outlined in the bill.

The bill would permit student data to be disclosed at any time to the following:

- The student and the student's parent or legal guardian, but only if the data pertains solely to that student;
- Authorized personnel of the State Department of Education, school district, or the Kansas Board of Regents who require such disclosures to perform their assigned duties;
- Any authorized personnel of any state agency with a data sharing agreement between the state agency and the educational institution; and
- A service provider of a state agency who is engaged to perform a function of instruction, assessment, or longitudinal reporting.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Authorization would be granted for disclosure of student data to any state agency or service provider not specified above, provided there is a data-sharing agreement between the relevant educational agency and the state agency that provides for specific procedures, including data security and destruction or return of the data at the appropriate specified time. (Destruction of data would be required to comply with National Institute of Standards and Technology requirements.)

The bill would permit student data to be disclosed to any governmental entity not otherwise specified or to any public or private audit and evaluation or research organization, provided the data disclosed is aggregate, and contains no personally identifiable student information.

Personally identifiable information could be disclosed if an adult student or a minor student's parent or legal guardian consents in writing.

In addition, an educational agency would be allowed to disclose certain directory information to such entities as yearbook publishing companies and class ring vendors, including 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, awards, and honors received, if consent is given in writing by a student's parent or legal guardian.

The bill also would allow the disclosure of any information required to be disclosed to public health officials for urgent health or safety reasons, in which cases confidentiality requirements would apply.

The bill would prohibit school districts from collecting biometric data, or assessing a student's emotional state unless written consent is granted. The bill would grant the Attorney General or any district attorney enforcement authority. The bill also would require the Department to publish annually on its website a list of the categories of

student data that are collected by any statewide longitudinal student data system.

The bill would prohibit the administration of any test, questionnaire, survey, or examination containing questions regarding a student's or student's parents' or guardians' beliefs or practices on issues such as sex, family life, morality, and religion, unless permission is requested in writing and granted by a student's parent or guardian.

The bill would require the State Board of Education to submit a written report to the Governor and the Legislature by May 15, 2015, that includes:

- Categories of student data collected;
- Changes to existing data collection, including federal reporting requirements;
- Explanations of any exceptions made related to student data releases; and
- Scope and nature of any privacy or security audits.

Finally, in the event of a security breach or unauthorized disclosure of personally identifiable student data, the State Board, local school district board, or any entity having access to the data would be required to notify the subjects of the breach or disclosure and conduct an investigation.

Background

Proponents at the hearing before the Senate Committee on Education included representatives from Educational Management Consultants and the Kansas Association of School Boards.

A representative of the Kansas Department of Health and Environment testified regarding concerns that the bill

may impede the work of local health departments to prevent and control infectious diseases because it would not allow for disclosure of student data to public health officials for urgent health or safety reasons. A representative of the Kansas Board of Regents asked for a technical amendment to remove references to postsecondary educational institutions, since those institutions are not involved in the activities addressed in the bill.

The Senate Committee on Education amended the bill to allow for disclosure of student data to public health officials for urgent health or safety reasons and to make technical changes.

The House Education Committee amendment added language prohibiting certain questions to be asked on tests and surveys, unless granted permission by a student's parent or guardian. The Committee added a requirement for a data collection report to be submitted to the Governor and Legislature by May 15, 2015. The Committee also inserted a requirement related to notification and investigation of security breaches.

The House Committee of the Whole added an amendment removing references to the federal Family Educational Rights and Privacy Act; added a provision allowing certain student information to be given for inclusion in directories, such as to class ring vendors, with written permission; added a provision allowing student information to be provided to a service provider of a state agency engaged to perform a function of instruction, assessment, or longitudinal reporting; and added requirements relating to the destruction of data.

According to the fiscal note prepared by the Division of the Budget, the State Department of Education indicates enactment of the bill, as introduced, would have no fiscal effect.