

FIRST REGULAR SESSION

# HOUSE BILL NO. 201

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE POGUE.

0287H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 161.096, RSMo, and to enact in lieu thereof one new section relating to collection of student data by school districts.

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

Section A. Section 161.096, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 161.096, to read as follows:

161.096. 1. The state board of education shall promulgate a rule relating to student data accessibility, transparency, and accountability relating to the statewide longitudinal data system. This rule shall mandate that the department of elementary and secondary education do the following:

(1) Create and make publicly available a data inventory and index of data elements with definitions of individual student data fields in the student data system to include, but not be limited to:

(a) Any personally identifiable student data required to be reported by state and federal education laws; and

(b) Any other individual student data which has been proposed for inclusion in the student data system with a statement regarding the purpose or reason for the proposed collection;

(2) Develop policies to comply with all relevant state and federal privacy laws and policies, including but not limited to the federal Family Educational Rights and Privacy Act (FERPA) and other relevant privacy laws and policies. These policies shall include, but not be limited to the following requirements:

(a) Access to personally identifiable student data in the statewide longitudinal data system shall be restricted to:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18           a. The authorized staff of the department of elementary and secondary education and the  
19 contractors working on behalf of the department who require such access to perform their  
20 assigned duties as required by law;
- 21           b. District administrators, teachers, and school personnel who require such access to  
22 perform their assigned duties;
- 23           c. Students and their parents for their own data; and
- 24           d. The authorized staff of other state agencies in this state as required by law and  
25 governed by interagency data sharing agreements;
- 26           (b) The department of elementary and secondary education shall develop criteria for the  
27 approval of research and data requests from state and local agencies, researchers working on  
28 behalf of the department, and the public;
- 29           (3) Shall not, unless otherwise provided by law and authorized by policies adopted  
30 pursuant to this section, transfer personally identifiable student data;
- 31           (4) Develop a detailed data security plan that includes:
- 32           (a) Guidelines for authorizing access to the student data system and to individual student  
33 data including guidelines for authentication of authorized access;
- 34           (b) Privacy compliance standards;
- 35           (c) Privacy and security audits;
- 36           (d) Breach planning, notification and procedures;
- 37           (e) Data retention and disposition policies; and
- 38           (f) Data security policies including electronic, physical, and administrative safeguards,  
39 such as data encryption and training of employees;
- 40           (5) Ensure routine and ongoing compliance by the department of elementary and  
41 secondary education with FERPA, other relevant privacy laws and policies, and the privacy and  
42 security policies and procedures developed under the authority of this section, including the  
43 performance of compliance audits;
- 44           (6) Ensure that any contracts that govern databases, assessments, or instructional  
45 supports that include student or redacted data and are outsourced to private vendors include  
46 express provisions that safeguard privacy and security, including provisions that prohibit private  
47 vendors from selling student data or from using student data in furtherance of advertising, with  
48 penalties for noncompliance, except to a local service provider for the limited purpose authorized  
49 by the school or district whose access to student data, if any, is limited to "directory information"  
50 as that term is defined in the federal regulations implementing the federal Family Educational  
51 Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and
- 52           (7) Notify the governor, the president pro tempore of the senate, the speaker of the house  
53 of representatives, and the joint committee on education annually of the following:

54 (a) New student data proposed for inclusion in the state student data system; and  
55 (b) Changes to existing data collections required for any reason, including changes to  
56 federal reporting requirements made by the U.S. Department of Education.

57 2. Quantifiable student performance data shall only include performance on locally  
58 developed or locally approved assessments, including but not limited to formative assessments  
59 developed by classroom teachers.

60 3. The department of elementary and secondary education shall not collect nor shall  
61 school districts report the following individual student data:

62 (1) Juvenile court delinquency records;

63 (2) Criminal records;

64 (3) Student biometric information;

65 (4) Student political affiliation; or

66 (5) Student religion.

67 4. **School districts shall not collect biometric information on any student without**  
68 **the express written consent of the student's parent or legal guardian. For purposes of this**  
69 **section, "biometric information" means a record of one or more measurable biological or**  
70 **behavioral characteristics that can be used for automated recognition of an individual,**  
71 **including fingerprints, retina and iris patterns, voice prints, DNA sequence, newborn**  
72 **screening information, facial characteristics, and handwriting.**

73 [4.] 5. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
74 created under the authority delegated in this section shall become effective only if it complies  
75 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
76 This section and chapter 536 are nonseverable and if any of the powers vested with the general  
77 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and  
78 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and  
79 any rule proposed or adopted after August 28, 2014, shall be invalid and void.

80 [5.] 6. Each violation of any provision of any rule promulgated pursuant to this section  
81 by an organization or entity other than a state agency, a school board, or an institution shall be  
82 punishable by a civil penalty of up to one thousand dollars. A second violation by the same  
83 organization or entity involving the education records and privacy of the same student shall be  
84 punishable by a civil penalty of up to five thousand dollars. Any subsequent violation by the  
85 same organization or entity involving the education records and privacy of the same student shall  
86 be punishable by a civil penalty of up to ten thousand dollars. Each violation involving a  
87 different individual education record or a different individual student shall be considered a  
88 separate violation for purposes of civil penalties.

89           ~~[6.]~~ 7. The attorney general shall have the authority to enforce compliance with this  
90 section by investigation and subsequent commencement of a civil action, to seek civil penalties  
91 for violations of this section, and to seek appropriate injunctive relief, including but not limited  
92 to a prohibition on obtaining personally identifiable information for an appropriate time period.  
93 In carrying out such investigation and in maintaining such civil action, the attorney general or  
94 any deputy or assistant attorney general is authorized to subpoena witnesses, compel their  
95 attendance, examine them under oath, and require that any books, records, documents, papers,  
96 or electronic records relevant to the inquiry be turned over for inspection, examination, or audit.  
97 Subpoenas issued under this subsection may be enforced pursuant to the Missouri rules of civil  
98 procedure.

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