SENATE BILL No. 389

By Committee on Ways and Means

2-6

1 AN ACT concerning children and minors; relating to collection of student
2   data; the student data privacy act; changing requirements to administer
3   certain tests, questionnaires, surveys and examinations; allowing
4   disclosure of de-identified student data; amending K.S.A. 2017 Supp.
5   72-6313, 72-6314 and 72-6316 and repealing the existing sections.
6
7 *Be it enacted by the Legislature of the State of Kansas:*
8   Section 1.   K.S.A. 2017 Supp. 72-6313 is hereby amended to read as
9 follows: 72-6313. As used in K.S.A. 2017 Supp. 72-6312 through 72-
10 6320, and amendments thereto:
11   (a)   "Aggregate data" means data collected or reported at the group,
12 cohort or institutional level ~~and which~~ *that* contains no personally
13 identifiable student data.
14   (b)   "Biometric data" means one or more measurable biological or
15 behavioral characteristics that can be used for automated recognition of an
16 individual, such as fingerprints, retina and iris patterns, voiceprints, DNA
17 sequence, facial characteristics and handwriting.
18   (c)   *"De-identified student data" means student data collected or*
19 *reported at the individual level that contains no personally identifiable*
20 *student data.*
21   *(d)*   "Department" means the state department of education.
22   ~~(d)~~*(e)*   "Directory information" means a student's name, address,
23 telephone listing, participation in officially recognized activities and
24 sports, weight and height*,* if the student is a member of an athletic team,
25 and degrees, honors or awards received.
26   ~~(e)~~*(f)*   "Educational agency" means a school district or the department.
27   ~~(f)~~*(g)*   "School district" means a unified school district organized and
28 operated under the laws of this state.
29   ~~(g)~~*(h)*   "Statewide longitudinal student data system" means any
30 student data system maintained by the department~~, which~~ *that* assigns a
31 state identification number for each student who attends an accredited
32 public or private school in Kansas and uses the state identification number
33 to collect student data.
34   ~~(h)~~*(i)*   "Student data" means the following information contained in a
35 student's educational record:
36   (1)   State and national assessment results, including information on

1   untested students;
2   (2)   course taking and completion, credits earned and other transcript
3   information;
4   (3)   course grades and grade point average;
5   (4)   date of birth, grade level and expected date of graduation;
6   (5)   degree, diploma, credential attainment and other school exit
7   information such as general education development and drop-out data;
8   (6)   attendance and mobility;
9   (7)   data required to calculate the federal four-year adjusted cohort
10   graduation rate, including sufficient exit and drop-out information;
11   (8)   remediation;
12   (9)   special education data;
13   (10)   demographic data and program participation information; and
14   (11)   any other information included in a student's educational record.
15   (i)(j)   "Personally identifiable student data" means student data that,
16   alone or in combination, is linked or linkable to a specific student and
17   would allow a reasonable person to identify the student with reasonable
18   certainty.
19   Sec. 2.   K.S.A. 2017 Supp. 72-6314 is hereby amended to read as
20   follows: 72-6314. (a) Any student data submitted to and maintained by a
21   statewide longitudinal student data system shall only be disclosed by an
22   educational agency in accordance with the provisions of this section. An
23   educational agency shall provide annual written notice to each student's
24   parent or legal guardian that student data may be disclosed in accordance
25   with this section. Such notice shall be signed by the student's parent or
26   legal guardian and maintained on file with the district.
27   (b)   Student data may be disclosed at any time to:
28   (1)   The authorized personnel of an educational agency who require
29   such disclosures to perform their assigned duties;
30   (2)   the authorized personnel of the state board of regents who require
31   such disclosures to perform their assigned duties; and
32   (3)   the student and the parent or legal guardian of the student,
33   provided the student data pertains solely to such student.
34   (c)   Student data may be disclosed to the authorized personnel of any
35   state agency not specified in subsection (b), or to a service provider of a
36   state agency, educational agency or school who is engaged to perform a
37   function of instruction, assessment or longitudinal reporting, provided
38   there is a data-sharing agreement between the educational agency and such
39   other state agency or service provider that provides the following:
40   (1)   The purpose, scope and duration of the data-sharing agreement;
41   (2)   that the recipient of the student data use such information solely
42   for the purposes specified in the agreement;
43   (3)   that the recipient shall comply with data access, use and security

1   restrictions that are specifically described in the agreement; and
2   (4)   that the student data shall be destroyed when no longer necessary
3   for the purposes of the data-sharing agreement or upon expiration of the
4   data-sharing agreement, whichever occurs first. Except that a service
5   provider engaged to perform a function of instruction may retain student
6   transcripts as required by applicable laws and rules and regulations.
7   Destruction shall comply with the NISTSP800-88 standards of data
8   destruction.
9   (d)   *De-identified student data may be disclosed to any public or*
10   *private audit and evaluation or research organization, provided that any*
11   *personally identifiable data is redacted prior to disclosure to the*
12   *organization. Nothing in this subsection shall prohibit an organization*
13   *from using a unique identifier for individual records, provided that such*
14   *unique identifier is not associated with any personally identifiable student*
15   *data of a particular student.*
16   *(e)* (1)   Except as otherwise provided in paragraph (2), student data
17   may be disclosed to any governmental entity not specified in subsection
18   (b) or (c), or to any public or private audit and evaluation or research
19   organization, provided that only aggregate data is disclosed to such
20   governmental entity or audit and evaluation or research organization.
21   (2)   Personally identifiable student data may be disclosed if the
22   student, if an adult, or the parent or legal guardian of the student, if a
23   minor, consents to such disclosure in writing.
24   (e)*(f)*   Notwithstanding the provisions of subsections (b), (c) and (d)
25   *through (e)*, an educational agency may disclose:
26   (1)   Directory information of a student when such agency deems such
27   disclosure necessary and the disclosure of which has been consented to in
28   writing by such student's parent or legal guardian;
29   (2)   directory information to an enhancement vendor that provides
30   photography services, class ring services, yearbook publishing services,
31   memorabilia services or other substantially similar services;
32   (3)   any information required to be disclosed pursuant to K.S.A. 65-
33   101, 65-118 and 65-202, and amendments thereto, provided such
34   information is disclosed in accordance with any provisions of such statutes
35   regarding the confidentiality and disclosure of such information;
36   (4)   any student data in order to comply with any lawful subpoena or
37   court order directing such disclosure; and
38   (5)   student data to a public or private postsecondary educational
39   institution which is required by such postsecondary educational institution
40   for the purposes of application or admission of a student to such
41   postsecondary educational institution, provided that such disclosure is
42   consented to in writing by such student.
43   Sec. 3.   K.S.A. 2017 Supp. 72-6316 is hereby amended to read as

1 follows: 72-6316. *(a)* No test, questionnaire, survey or examination
2 containing any questions about the student's personal beliefs or practices
3 on issues such as sex, family life, morality or religion, or any questions
4 about the student's parents' or guardians' beliefs and practices on issues
5 such as sex, family life, morality or religion, shall be administered to any
6 student enrolled in kindergarten or grades one through 12, unless the
7 parent or guardian of the student is notified in writing that this test,
8 questionnaire, survey or examination is to be administered and the parent
9 or guardian of the student gives written permission for the student to take
10 this test, questionnaire, survey or examination.
11   *(b)*   This section shall not prohibit school counselors from providing
12 counseling services to a student, including the administration of tests and
13 forms ~~which~~ *that* are part of a counselor's student counseling services. Any
14 information obtained through such tests or counseling services shall not be
15 stored on any personal mobile electronic device ~~which~~ *that* is not owned
16 by the school district, including, but not limited to, laptops, tablets,
17 phones, flash drives, external hard drives or virtual servers.
18   *(c)   The provisions of subsection (a) shall not apply to any test,*
19 *questionnaire, survey or examination containing questions about the*
20 *student's or the student's parents' or guardians' beliefs on issues such as*
21 *sex, family life, morality or religion that is administered to any student*
22 *enrolled in kindergarten or grades one through 12, provided that:*
23   *(1)   The test, questionnaire, survey or examination does not record,*
24 *request or solicit a student to provide any personally identifiable student*
25 *data;*
26   *(2)   the student is informed that the student's participation in such*
27 *test, questionnaire, survey or examination is voluntary;*
28   *(3)   the parent or legal guardian of the student is informed in writing*
29 *in advance of the test, questionnaire, survey or examination that such*
30 *parent or legal guardian may opt a student out of the questionnaire,*
31 *survey or examination; and*
32   *(4)   the results of the test, questionnaire, survey or examination are*
33 *reported only as aggregate data or de-identified student data.*
34   Sec. 4.   K.S.A. 2017 Supp. 72-6313, 72-6314 and 72-6316 are hereby
35 repealed.
36   Sec. 5.   This act shall take effect and be in force from and after its
37 publication in the statute book.