

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5666-01
Bill No.: SB 819
Subject: Education, Elementary and Secondary; Department of Elementary and Secondary Education; Boards, Commissions, Committees, Councils; Department of Higher Education; General Assembly; Governor and Lt. Governor; Search and Seizure; Telecommunications; Office of Attorney General
Type: Original
Date: March 5, 2014

Bill Summary: This proposal enacts multiple provisions to protect the privacy of individuals from government intrusion.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0 or (Unknown greater than \$171,910,086)	\$0 or (Unknown greater than \$171,900,000)	\$0 or (Unknown greater than \$171,900,000)
Total Estimated Net Effect on General Revenue Fund	\$0 or (Unknown greater than \$171,910,086)	\$0 or (Unknown greater than \$171,900,000)	\$0 or (Unknown greater than \$171,900,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
State Road Fund	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 23 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Federal Funds	\$0 or (Unknown greater than \$34,166,951)	\$0 or (Unknown greater than \$34,166,951)	\$0 or (Unknown greater than \$34,166,951)
Unemployment Compensation	\$0 or (\$40,000,000)	\$0 or (\$40,000,000)	\$0 or (\$40,000,000)
Wagner-Peyser	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Unknown greater than \$87,166,951)	\$0 or (Unknown greater than \$87,166,951)	\$0 or (Unknown greater than \$87,166,951)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Oversight notes this proposal in §§1.270, 1.275 and 1.280 prohibit the state, agencies, political subdivisions, employees of agencies or political subdivisions, corporations or contractors from working with any federal agency in the collection of personal electronic data or metadata. §§160.1500 - 160.1545 prohibit the collection of certain data and the use of certain data by schools, colleges and universities.

Officials at the **Office of Administration's Division of Budget and Planning (BAP)** assume this proposal would not fiscally impact BAP. However, there could be an impact to federal funds; other departments may be able to provide additional information.

Officials at the **Office of Attorney General (AGO)** assume this proposal provides that the AGO will be responsible for investigating and prosecuting violations of numerous provisions of the proposal. As the number and nature of such violations are unknown, costs are likewise unknown but may be significant. The AGO would require additional appropriations to enforce the proposal.

Oversight will reflect an Unknown cost to General Revenue for the additional enforcement costs.

Officials at the **Department of Labor and Industrial Relations (DOL)** assume §§1.270 and 1.275 prohibit agencies from providing support, assistance, or participation to a federal agency or with federal law that authorizes the collection of "electronic data or metadata". These terms are not defined specifically, and therefore could be construed extremely broadly. The DES obtains personal information, of various types, on all unemployment claimants. Also, the DES obtains wage records and employment information on students employed by employers.

In addition, the Missouri Commission on Human Rights (MCHR) has shared databases of discrimination complaints with the federal Equal Employment Opportunity Commission (EEOC) and with the Office of Fair Housing and Equal Opportunity in the U. S. Department of Housing and Urban Development (HUD) pursuant to work sharing agreements with those agencies. If the bill is interpreted in a way which restricts the Missouri Commission on Human Rights cost sharing agreements with EEOC & HUD, then the \$1,266,951 in federal funding could be in jeopardy.

§160.1530 may prohibit the disclosure of personal identifying teacher records to the DES. This could prohibit schools from providing information about a teacher's employment in an unemployment case, which could have an impact on the DES when a teacher applies for unemployment benefits.

JH:LR:OD

ASSUMPTION (continued)

All government agencies, including the DES, obtain or collect information of all kinds by electronic means today. This proposal may prohibit the electronic obtaining or collecting of required information and disclosures.

The intent of this proposal is unclear to the DOLIR. If this bill is interpreted to prohibit the DES from collecting data necessary to administer Missouri's unemployment insurance (UI) law, it would raise a conformity issue with federal law. The federal and state governments jointly are responsible for administering the UI program. State laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program, and for employers to qualify for certain tax credits.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$40 million in federal funds the state receives annually to administer the UI program. Additionally, Missouri would lose approximately \$13 million in federal funds each year that the Department of Economic Development – Division of Workforce Development receives to administer Wagner-Peyser re-employment services.

The Federal Unemployment Tax Act (FUTA) imposes a 6.0 percent payroll tax on employers. Most employers never actually pay the total 6.0 percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. Employers are allowed tax credits up to a maximum of 5.4 percent against the FUTA payroll tax if the Secretary of Labor approves the state's UI program. However, if the proposed legislation causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0 percent, or approximately an additional \$880 million per year.

The changes proposed in this bill would have no fiscal impact as long as Missouri interprets the bill in a manner that does not raise conformity issues with federal law. However, if the language is construed to prohibit agencies from obtaining/collecting electronic data from claimants or sharing information on discrimination complaints, this proposal could have a significant negative fiscal impact on DOL.

Oversight will reflect the potential loss of federal funding by the Department of Labor and Industrial Relations.

ASSUMPTION (continued)

Officials at the **Department of Health and Senior Services (DHSS)** assume virtually every program within DHSS which has federal funding collects electronic data.

DHSS, Division of Community and Public Health (DCPH)

Some of the functions which could be affected by this bill include:

- Communicable disease reporting and investigations;
- Investigations of foodborne illnesses;
- Provision of immunizations;
- Provision of Women, Infants and Children's supplemental nutrition services;
- Participation in the state and national Cancer Registry;
- Provision of Show-Me Healthy Women and WiseWoman services;
- Provision and reporting of newborn screening;
- Collection of a variety of survey information (Behavioral Risk Factor Surveillance System, Youth Risk Behavior Survey, Youth Tobacco Survey, Pregnancy Risk Assessment Monitoring System), which is used by the state, local public health agencies and numerous agencies to evaluate programs and apply for funding from a variety of sources;
- Provision of birth and death records with the Social Security Administration to assist in the prevention of identity theft and fraud.
- Working with the National Center for Health Statistics to determine trends in vital statistics; and
- Provision of Healthy Children and Youth Program and Medically Fragile Adult Waiver services, and AIDS Waiver Services.

If DHSS cannot participate in these programs, the federal funding could be lost and the public health programs funded by these federal dollars would need state funds to operate the programs.

DHSS, Division of Senior and Disability Services (DSDS)

§§1.270-1.280 will have an unknown fiscal impact on DSDS. Since there are several variables that cannot be predicted, including how the proposal would be implemented and enforced, DSDS cannot calculate a fiscal impact for this proposal. It could result in the loss of federal funding if the state is found non-compliant with data reporting requirements and audits of federal grants. Currently, DSDS receives approximately \$476,708,513 in federal funding.

DHSS, Division of Regulation and Licensure (DRL)

DRL is unsure of the impact of this legislation on the federal funding we receive, as well as the General Revenue we receive for Medicaid match purposes. DRL assumes an unknown impact related to approximately \$21,560,602 of federal grant/contract funding. The potential impact is unknown.

ASSUMPTION (continued)

Officials at the **Department of Mental Health** assume the Division of Behavioral Health currently operates with two major block grants – the Substance Abuse Block Grant (SABG) and Mental Health Block Grant (MHBG). The SABG requires the Department of Mental Health to report client level information to the "TEDS" (Treatment Episode Data System). The MHBG is also slated to report to that system eventually. It would appear that the type of data required by "TEDS" would likely violate the terms of this legislation. Although it is unknown as to the extent of the problem in not reporting to the TEDS system, both block grants could be jeopardized, totaling \$32.7 million. The proposed bill could also compromise the State's ability to compete for Federal discretionary grants.

Officials at the **Department of Social Services's Children's Division** assume §160.1536 describes the conditions and limitations required by this proposal on the use of the information and provides for the sharing of information for the purposes of receiving federal grants under limited circumstances. This may affect the reimbursement of educational expenses for youth in the Division's custody.

As a matter of statutory interpretation, courts will want to interpret this statute consistently with other statutes passed by the legislature and will ordinarily determine that general statutory requirements are superseded by more specific statutory provisions. Accordingly, it may happen that courts will take a narrow interpretation of this legislation and decide that the warrant requirements of §§1.270 through 1.280, apply only in those instances when a division does not have specific statutory authority to share electronic information with a federal agency or federal contractor. In this event, enactment of this proposal will only require each division of the Department of Social Services to analyze how it handles electronic data and how it administers certain programs in order to determine that it has the specific authority and ability to share information.

On the other hand, a broader and different interpretation of this legislation could potentially lead to the loss of federal financial participation for various programs. This would occur if a court should determine that the general warrant requirements of this bill are to be applied to specific programs that rely upon federal funding. In such instances, the inability to share electronic data could conceivably lead to sanctions against a division that was unable to supply the data necessary for federal reimbursement purposes. These sanctions could include disallowances and loss of federal financial participation in impacted programs administered by the Department of Social Services.

It may be anticipated that the Department of Social Services would request legal assistance and representation from the Division of Legal Services if this bill is enacted. The extent of this need for representation is unknown at this time.

ASSUMPTION (continued)

Officials at the **Department of Social Services's Division of Legal Services** defers to the Division of Youth Services for its analysis of this proposal and how it will impact the Division's ability to obtain specific educational funding for youth in its custody. The impact is unknown.

Officials at the **Department of Social Services's Division of Youth Services (DYS)** assume this enactment of this proposal appears to prohibit in many circumstances the sharing of information ("material support, participation, or assistance") with any federal agency without the production of a warrant. Further, and more specifically, it defines what "student data" may be collected by a state agency or educational institution for students under eighteen years of age without a parental consent and an expanded list of data points for students under eighteen years of age with parental consent. It goes on to regulate the collection, storage, and notification requirements related to the existence and use of the data.

DYS follows all guidelines and procedures for reporting student data and academic achievement to DESE for evaluation purposes, including the following federal programs: Title I, Carl Perkins Vocational and Special Education programs. As an Accredited Missouri Public School District, DYS receive all federal monies thru DESE. Evaluation reports for federal programs are completed by DYS annually for DESE compliance.

PROGRAM	ALLOCATION	CARRYOVER	TOTAL
Title I	\$902,770	\$389,661	\$1,292,431
Special Education	\$223,373	\$151,798	\$375,171
Carl Perkins Vocational	\$103,730		\$103,730
TOTAL			\$1,771,332

Enactment of this proposal may modify the ability of DESE to comply with existing conditions surrounding the grants listed above. This could jeopardize current funding structures for the Division of Youth Services. The Division recognizes the addition of §160.1536. This section allows for information to be exchanged for purposes of grant program evaluation provided the federal entity agrees in writing to the limited use of the provided information. There is no way to be certain the federal entity will comply.

Beyond the jeopardy that may exist with educational funding structures it appears that enactment of this bill would bring into question other federal funding sources for the Division's operation. The Division would defer to the Division of Finance and Administrative Services for an

ASSUMPTION (continued)

estimated impact. The fiscal impact is unknown. The Division receives 50% of its funding from federal funds. Current federal funding would be negatively impacted, however the degree is unknown.

Officials at the **Office of Administration's Information Technology Services Division (ITSD)** assume they would need to make changes to the Division of Youth Services system for the Department of Social Services. §160.1542 would require changes to the purge program for the DYS system. Assumptions:

- All of the effort would be completed by state staff at a cost of \$63.04 per hour.
- All of the work will be completed in FY15. No costs for IT work are projected beyond the initial expense.
- This estimate assumes all costs will be funded by General revenue.
- Estimate to code, test, and implement = 160 hours x 63.04 = \$10,086.

Oversight will reflect in the fiscal note the one time costs of the Division of Youth Services computer programming changes.

Officials at the **Department of Social Services's Family Support Division (FSD)** assume there are many programs administered by the FSD that require data sharing with federal agencies. These include but are not limited to: Medicaid, TANF, Food Stamps, Child Support and Rehabilitation Services for the Blind (RSB).

Modernized rules regarding verification of Medicaid and CHIP eligibility will mean that state Medicaid and CHIP agencies will rely on data sources such as the Social Security Administration and the Departments of Homeland Security and Labor.

The Family Support Division (FSD) administers public assistance programs such as TANF and Food Stamps. These programs issue benefits through electronic benefit transfer (EBT) cards. The federal government pays 100 percent of such SNAP/Food Stamp program benefits. In addition, the U.S. Department of Agriculture through the Food and Nutrition Service (FNS) continues to conduct research and studies aimed at improving the program.

These public benefit programs and other such programs require the Family Support Division to participate in data sharing with federal agencies. For example, RSB must provide data to the Rehabilitation Services Administration to maintain the federal funding to administer the program. This will also prohibit the transmission of data to the Administration of Children and Families (ACF) by Child Support, which would essentially hinder the program.

ASSUMPTION (continued)

The FSD relies upon electronic data to administer its programs. Depending on how these sections are interpreted, each division could be limited in its ability to engage in data-sharing with federal agencies and federal contractors. In the instance in which a court may determine that a Division does not have statutory authorization to engage in data-sharing, this legislation would likely be interpreted to require that a warrant be issued prior to the sharing of information.

The FSD provides data, including Social Security Numbers, for Food Stamp and Temporary Assistance participants to DESE for the purpose of determining eligibility for free and reduced meals for students as outlined in 7 CFR 245. In 7 CFR 245.2, the definition of documentation allows schools to obtain information from the FSD including information in sufficient detail to match the child attending school with the name of a child who receives benefits through the Food Stamp or Temporary Assistance programs.

The FSD understands this proposed legislation would no longer allow the SSNs to be shared with DESE. Therefore, the FSD would remove them from the data provided to DESE for free and reduced meals for students. While this could impact schools ability to determine eligibility for free or reduced meals for students, there is no fiscal impact to the Family Support Division in this section.

The fiscal impact of sections 1.270 through 1.280 are otherwise unknown due to the intricacies described above.

Officials at the **Department of Social Services's Missouri Medicaid Audit and Compliance Unit (MMAC)** assume this proposal adds nineteen new sections to Chapters 1 and 160 RSMo. Three of these sections, §§1.270, 1.275 and 1.280 may impact MMAC. There are some instances where MMAC is required to share data in order to fulfill its duty to audit and monitor providers who participate in the Medicaid program. These include but are not limited to: sharing information with the Office of the Inspector General in cases of suspected fraud; sharing information with the Federal Bureau of Investigations in cases of suspected fraud; sharing information with the Center for Medicare and Medicaid Services (CMS) for providers who participate both in Medicaid and Medicare; data sharing to complete the required Payment Error Rate Measurement to receive federal funding; and data sharing with entities that contract with the federal government and conduct audits of providers in the state of Missouri.

Depending on how these sections are interpreted, MMAC could be limited in its ability to engage in data-sharing with federal agencies and federal contractors. In the instance in which a court may determine that a MMAC does not have statutory authorization to engage in data-sharing, this legislation would likely be interpreted to require that a warrant be issued prior to the sharing of information. Hindering the ability to exchange data with the federal government may result in

ASSUMPTION (continued)

loss of federal financial participation (FFP). In other words, as a condition of receiving federal funding for the Medicaid program, MMAC must abide by federal regulations as they pertain to the integrity of the Medicaid program. The amount of FFP that may be lost is unknown.

Officials at the **Department of Social Services's MoHealthNet Division** assume no fiscal impact from this proposal.

Oversight will reflect a \$0 or Unknown impact over \$100,000 for the potential loss of federal funds for the Department of Social Services.

Officials at the **Missouri Department of Transportation (MoDOT)** assume this proposal does not define "electronic data". If "electronic data" includes any information provided electronically, then MoDOT, along with every other state agency, would arguably be in violation of this bill any time it does business electronically when that business is tied to moneys received from a federal program or is in furtherance of or enforcing a federal program. As such, by failing to define "electronic data", this proposal could make numerous state agencies who allow for electronic claims, forms, documents, etc. to be suddenly in violation of its provisions. Because this bill could be interpreted extremely broadly, it could have a substantial unknown negative fiscal impact on MoDOT.

Oversight will reflect a \$0 or Unknown negative impact to the State Road Fund.

Officials at the **Department of Higher Education (MHDE)** assume with regard to the operation of the MDHE, §160.1503 of this bill would restrict the types of personally identifiable information that the department could collect without the written consent of the individual. Based on a review of the data currently collected by the MDHE, we do not believe any restricted data is currently collected or stored by the MDHE.

There is an additional restriction relating to the sharing of such data with the federal government. Currently the only data that is shared with the federal government relates specifically to grants received from the USDE (United States Department of Education) and which would be used to verify compliance with grant requirements and to assess the performance of the grant. While there would not be an impact for implementation of this requirement, it could impact the ability of the MDHE to apply for and receive such grants in the future.

Officials at the **Department of Elementary and Secondary Education (DESE)** assume various language within the proposal will result in an unknown impact on the department:

ASSUMPTION (continued)

§160.1509 - No state or national student assessment shall be adopted or administered in this state by any school district or charter school that collects any type of psychological data, including assessment of non-cognitive skills or attributes, psychological resources, mindsets, learning strategies, effortful control, attitudes, dispositions, social skills, or other interpersonal or intrapersonal resources. We are uncertain whether this would allow the use of work keys. If so, this could impact federal Perkins funding.

§160.1524 - No student data shall be used for predictive modeling for detecting behaviors, beliefs, or value systems, or predicting or forecasting student outcomes. We are uncertain as to whether this would mean the department could not calculate the student level growth measure.

§160.1527 - There shall be no video monitoring of classrooms for any purpose, including for teacher evaluation, without the approval of the district's school board after public hearings and the written consent of the teacher, of all eligible students, and of the parents of all students in the classroom. We are uncertain whether this would cause an impact for teacher evaluations.

§160.1530 - Personally identifiable information from education records or teacher records shall not be disclosed to any non-education government agency, including but not limited to the Missouri department of labor and industrial relations, whether within or outside the state, or to any party that intends to use or disclose the information or data for the purpose of workforce development or economic planning. Data linkages or sharing of data with other states without expressed permission of the individuals affected are prohibited. We are uncertain as to whether this would prohibit the department from providing information to the National Student Clearinghouse to obtain follow-up data for students.

Officials at the **Department of Natural Resources** assume while the department does not currently collect data on students and teachers or conduct video monitoring of classrooms, as described in the proposed legislation, the department does provide environmental education events and opportunities to school districts throughout the state, which are often videotaped or photographed for promotional purposes. The department assumes the proposed changes to Chapter 160 would not have a direct fiscal impact to the department because the definition of state agency, as indicated in the proposed legislation, does not include the Department of Natural Resources.

The department assumes it would revise processes and the general terms and conditions, as a result of the proposed legislation, in order to verify entities to be awarded grants or sub grants have not violated the proposed legislation. The department would not anticipate a direct fiscal impact as a result of the proposed legislation.

ASSUMPTION (continued)

Officials at the **Department of Revenue (DOR)** assume that while this legislation does not have a fiscal impact on the Department, the provisions may create a loss in state revenues.

Taxation:

This legislation would prohibit DOR from providing assistance in any form to any federal agency. If DOR can no longer share information with the Internal Revenue Service, the Department will not be able to provide the information necessary for the state to collect outstanding tax debt through the federal debt offset programs. These programs collect more than \$140.9 million annually.

Motor Vehicle Bureau:

This legislation may prohibit DOR from requiring commercial driver license and commercial driver's instruction permit applicants to certify to their driver qualifications under §302.768, RSMo. The state law was adopted based on a federal regulation promulgated by the Federal Motor Carriers Safety Administration, which could be interpreted as providing material support, participation, or assistance with a federal rule or regulation which purports to authorize the collection of electronic data of any person.

Failure to comply with federal regulations could result in the loss of Missouri's portion of federal highway funds, with the first year of non-compliance resulting in a 4 percent reduction (approximately \$31 million), and each subsequent year subject to an 8 percent reduction.

Oversight will reflect a \$0 to \$171.9 million loss to General Revenue.

Officials at the **City of Jefferson City**, the **Department of Agriculture**, the **Department of Conservation**, the **Department of Corrections**, the **Department of Economic Development**, the **Department of Public Safety's Division of Alcohol and Tobacco Control**, the **Department of Public Safety's Division of Fire Safety**, the **Fulton Public Schools**, the **Linn State Technical College**, the **Missouri Gaming Commission**, the **Missouri Highway Patrol**, the **Missouri National Guard**, the **Missouri Southern State University**, the **Northwest Missouri State University**, the **Office of Administration's Division of Accounting and Division of Purchasing and Materials Management**, the **Office of the Secretary of State**, the **Office of the State Auditor**, the **Office of State Courts Administrator**, the **Office of the State Public Defender**, the **Office of State Treasurer** and the **University of Missouri** each assume there is no fiscal impact to their respective organizations from this proposal.

Officials at the **Department of Insurance, Financial Institutions and Professional Registration** assume an unknown impact.

ASSUMPTION (continued)

Officials at the **University of Central Missouri** assume impact in the form of man hours to ensure compliance, but it is not quantifiable at this time.

Officials at the **Missouri State University** assume this proposal would have a significant negative fiscal impact which can not be determined at this time.

Officials at **St. Louis County** assume this could have a significant impact on the County but it is difficult to determine. It could jeopardize federal and state grants awarded to St. Louis County that would lead to a reduction in programs and services provided to our residents.

Oversight assumes this proposal may require additional administrative costs for schools, colleges and universities. Oversight will reflect the impact as \$0 to Unknown.

Oversight assumes this proposal may result in local political subdivisions no longer receiving federal funds. Oversight will reflect the impact as \$0 to Unknown.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Joplin, Kansas City, Kearney, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Pacific, Peculiar, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Charleston R-I Schools, Cole R-I Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Johnson County R-7 Schools, Kirksville Public Schools, Kirbyville R-VI Schools, Lee Summit Public Schools, Malden R-I Schools, Malta Bend Schools, Mexico Public Schools, Monroe City R-I Schools, Nixa Public Schools, Parkway Public Schools, Pattonville Schools, Raymore-Peculiar R-III Schools, Raytown School District, Sedalia School District, Sikeston Public Schools, Silex Public Schools, Special School District of St. Louis County, Spickard School District, St Joseph School District, St Louis Public Schools, St. Charles Public Schools, Sullivan Public Schools and Warren County R-III School District did not respond to **Oversight's** request for fiscal impact.

ASSUMPTION (continued)

Officials at the following counties: Andrew, Audrain, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Kansas City Metro Community College, Lincoln University, Moberly Area Community College, Missouri Western State University, Missouri State University, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College and the Truman State University did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2015	FY 2016	FY 2017
GENERAL REVENUE			
<u>Cost</u> - Attorney General - additional enforcement costs	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Office of Administration ITSD one time computer programing for DYS	(\$10,086)	\$0	\$0
<u>Loss</u> - Department of Revenue - potential loss of tax revenue	\$0 or (\$171,900,000)	\$0 or (\$171,900,000)	\$0 or (\$171,900,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE	\$0 or (Unknown greater than <u>\$171,910,086</u>)	\$0 or (Unknown greater than <u>\$171,900,000</u>)	\$0 or (Unknown greater than <u>\$171,900,000</u>)

FISCAL IMPACT - State Government
 (continued)

FY 2015

FY 2016

FY 2017

STATE ROAD FUND

<u>Loss</u> - MoDOT potential loss of federal funding	\$0 or (Unknown greater than <u>\$100,000</u>)	\$0 or (Unknown greater than <u>\$100,000</u>)	\$0 or (Unknown greater than <u>\$100,000</u>)
	\$0 or (Unknown greater than <u>\$100,000</u>)	\$0 or (Unknown greater than <u>\$100,000</u>)	\$0 or (Unknown greater than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON STATE ROAD FUND			

FEDERAL FUNDING

<u>Loss</u> - Department of Labor - potential loss of EEOC and HUD funding	\$0 or (\$1,266,951)	\$0 or (\$1,266,951)	\$0 or (\$1,266,951)
<u>Loss</u> - Department of Health and Senior Services - potential loss of federal funding	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)
<u>Loss</u> - Department of Mental Health - potential loss of federal funding	\$0 to (\$32,700,000)	\$0 to (\$32,700,000)	\$0 to (\$32,700,000)
<u>Loss</u> - Department of Social Services - potential loss of federal funding	\$0 or (Unknown greater than <u>\$100,000</u>)	\$0 or (Unknown greater than <u>\$100,000</u>)	\$0 or (Unknown greater than <u>\$100,000</u>)
	\$0 or (Unknown greater than <u>\$34,166,951</u>)	\$0 or (Unknown greater than <u>\$34,166,951</u>)	\$0 or (Unknown greater than <u>\$34,166,951</u>)
ESTIMATED NET EFFECT ON FEDERAL FUNDING			

FISCAL IMPACT - Local Government FY 2015 FY 2016 FY 2017

LOCAL POLITICAL SUBDIVISIONS

Loss - Local Political Subdivisions - potential loss of funding from federal funds \$0 to (Unknown) \$0 to (Unknown) \$0 to (Unknown)

Cost - Schools & Universities - administration to ensure compliance \$0 to (Unknown) \$0 to (Unknown) \$0 to (Unknown)

ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS **\$0 to (Unknown)** **\$0 to (Unknown)** **\$0 to (Unknown)**

FISCAL IMPACT - Small Business

Small businesses that collect electronic data could be impacted.

FISCAL DESCRIPTION

This act enacts multiple provisions to protect personal privacy from government intrusion.

Fourth Amendment Protection Act: This act creates the Fourth Amendment Protection Act. The act provides that it is the policy of the state of Missouri to refuse material support, participation or assistance, to any federal agency that claims the power or uses any federal law to purport to authorize the collection of electronic data or metadata of any person not based on a warrant that particularly describes the person, place, and thing to be searched or seized. (§1.270)

This act prohibits any agency of this state, political subdivision, employee, or corporation or contractor providing services on behalf of the state or a political subdivision from doing the following without a warrant that particularly describes the person, place, and thing to be searched or seized: provide material support, participation or assistance to any federal agency, as described in the act, with the collection of electronic data or metadata of any person; utilize any assets, state funds, or state funds allocated to local entities to engage in any activity that aids a federal agency, agent, or corporation or contractor providing services to the federal government with the collection of electronic data or metadata of any person; provide services or participate or assist in any way with the providing of services to a federal agency, agent, or corporation or contractor

FISCAL DESCRIPTION (continued)

providing services to the federal government that is involved in the collection of electronic data or metadata of any person. (§1.275)

This act prohibits political subdivisions from receiving state grant funds if the political subdivision adopts a rule, order, ordinance, or policy that violates the prohibition on the collection of electronic data or metadata of any person as provided in the act. (§1.280)

Any state agent or employee of the state or political subdivision who knowingly violates the prohibition on the collection of electronic data or metadata of any person will be deemed to have resigned any commission of which he or she possesses. His or her office will be deemed vacant and he or she will be ineligible to hold any office under the laws of Missouri. In addition, any corporation, contractor, or person that violates the prohibition on the collection of electronic data or metadata of any person will be forever ineligible to act on behalf of, or provide services to the state or any political subdivision. (§1.280)

Education Data: This act establishes limits and procedures for how certain entities may use student data and teacher data.

State agencies and education institutions are limited in the student data they may collect without written consent. The data they may collect includes the following, as described in the act: name, address, email, and family contact information; assessment results from the statewide assessment system; course taking and completion, credits earned, grades, date of birth; attendance; certain medical, health and mental-health records when used for certain purposes; discipline reports and juvenile delinquency or criminal or correctional records when used for certain purposes; remediation data; special education data; certain demographic data; student workforce information; social security numbers if required to comply with state or federal law; income data; and extracurricular activity data. State agencies or education institutions must obtain written consent before collecting other data points. Examples are listed in the act. (§160.503)

No funds, regardless of source, can be spent on the construction, enhancement, or expansion of any data system that does not comply with these limitations or that is designed to track students beyond their K-12 or post-secondary education careers, or that compiles personal non-academic information. (§160.1503)

This act prohibits state agencies and education institutions from pursuing or accepting any grant that would require the collecting or reporting of any type of data that violates these prohibitions. (§160.1503)

FISCAL DESCRIPTION (continued)

State agencies and education institutions must publicly disclose on their websites the existence and character of any personally identifiable information from education records or teacher records maintained by them. They must annually notify parents, eligible students, and teachers of this website posting. (§160.1506)

These entities must annually notify the chairs of the Senate Education Committee, House Elementary and Secondary Education Committee, and the Joint Committee on Education. (§160.1506)

The disclosure and notifications must include multiple explanations, including the legal authority authorizing the establishment of a data repository, the principal purpose for which the information is intended to be used, categories of records and individuals maintained in the repository, expected disclosure of records, and policies and practices that must be followed, as described in the act. (§160.1506)

State agencies must only use aggregate data in published reports. (§160.1506)

School districts and charter schools are prohibited from adopting or administering any state or national student assessment that collects psychological data, as described in the act. (§160.1509)

State agencies, school boards, and education institutions offering grades pre-kindergarten through twelve cannot administer any student survey, assessment, analysis, evaluation, or similar instrument that solicits certain personal information about the student or student's family, as described in the act. (§160.1512)

Access to student education records in the Department of Elementary and Secondary Education's Missouri Student Information System (MOSIS) must be restricted to the authorized representatives of the Department of Elementary and Secondary Education, state agency, or education institution who require access to it. An authorized representative must be an employee of the Department, state agency, or education institution and be under its direct control. Personally identifiable student or teacher data cannot be disclosed without the written consent of the parents, eligible students, or affected teachers. (§160.1515)

The Department of Elementary and Secondary Education must develop and publish criteria for the approval of research-related data requests from state agencies, political subdivisions, local government agencies, the General Assembly, academic researchers, and the public. Written consent is required for the release of personally identifiable student or teacher information to a party conducting studies. Outside parties conducting studies must meet the requirements for contractors, as described in the act. (§160.1515)

FISCAL DESCRIPTION (continued)

In addition, state agencies, school boards, and institutions must not disclose personally identifiable information from education records or teacher records without written consent to an outside party, unless the outside party meets the criteria established in the act. (§160.1515)

If a security breach or unauthorized disclosure of personally identifiable student or teacher data occurs, the state agency, school board, or education institution responsible for the data must immediately notify the subjects of the breach or disclosure, report it to the Family Policy Compliance Office of the U.S. Department of Education, and investigate the causes and consequences of the breach or disclosure. (§160.1518)

Personally identifiable information from education records or teacher records cannot be disclosed to any party for commercial use. Cloud computing service providers that provide services for state agencies, school boards, or education institutions cannot use any information from education records or teacher records for any secondary purpose that would benefit the cloud computing service provider. (§160.1521)

Any cloud computing service provider that enters into a service agreement with a state agency, school board, or institution must certify in writing that it will comply with data use requirements and that the state agency, school board, or institution maintains ownership of all teacher and student data. All student or teacher data stored by a cloud computing service provider must be stored within the boundaries of the United States. (§160.1521)

Student data cannot be used for predictive modeling, as defined in the act, for detecting behaviors, beliefs, or value systems, or predicting or forecasting student outcomes. (§160.1524)

This act prohibits video monitoring in classrooms unless the local school board approves it after public hearings and the written consent of the teacher, eligible students, and the parents of all students in the classroom. (§160.1527)

This act prohibits the disclosure of personally identifiable information from education records and teacher records to any non-education government agency, including the Missouri Department of Labor and Industrial Relations, or to any party for the purpose of workforce development or economic planning. Data linkages or sharing of data with other states without expressed permission of the individuals affected are prohibited. (§160.1530)

Personally identifiable information from education records or teacher records cannot be disclosed to any government agency or other entity outside Missouri except to an institution attended by a student who has transferred out of state, to an out-of-state program in which a student voluntarily participates and a data transfer is required, or for migrant students for federal reporting purposes. (§160.1533)

FISCAL DESCRIPTION (continued)

Personally identifiable information from education records or teacher records cannot be disclosed to any federal agency unless certain conditions are satisfied. First, the disclosure must be required by the U.S. Department of Education as a condition of receiving a federal education grant. Second, the U.S. Department of Education must agree in writing to use the information only to evaluate the program funded by the grant. Third, the U.S. Department of Education must agree in writing that the information must not be used for any research beyond what is needed to evaluate the program, unless the parent or eligible student, or teacher, whose information or data is used, affirmatively consents. Fourth, the U.S. Department of Education must agree in writing to destroy the information or data upon completion of the program evaluation. Fifth, the grant or program must be authorized by federal statute or rule. Additional requirements on the use of data, and procedures in which written consent is required, are described in the act. (§160.1536)

State agencies, school boards, and education institutions are prohibited from disclosing student or teacher information to any assessment consortium of which Missouri is a member or any company with which Missouri contracts for development or administration of any assessment. However, these entities may disclose such information if it is transmitted in non-individual record format, it is limited to information directly related to the assessment, and no psychological information is included as part of the test scores. (§160.1539)

Education institutions must destroy and remove from their student databases all education records of a student within five years of the student's graduation. An institution may retain records showing the student's data of attendance, diploma or degree earned, and contact information. For any student who withdraws before graduation, the institution must, within one year, destroy and remove all records of the student except those showing dates of attendance. (§160.1542)

Each violation of any provision of this act by an organization or entity other than a state agency, a school board, or an institution shall be punishable by a civil penalty of up to one thousand dollars. A second violation involving the education records and privacy of the same student is punishable by a civil penalty of up to five thousand dollars. A subsequent violation by the same organization or entity involving the education records and privacy of the same student is punishable by a civil penalty of up to ten thousand dollars. (§160.1545)

The Attorney General is granted authority to enforce compliance with this act by investigation and subsequent commencement of a civil action, to seek civil penalties for violations, and to seek injunctive relief. (§160.1545)

This act contains an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

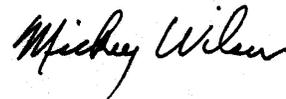
JH:LR:OD

SOURCES OF INFORMATION

City of Jefferson City
Department of Agriculture
Department of Conservation
Department of Corrections
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education
Department of Insurance, Financial Institutions and Professional Registration
 Division of Alcohol and Tobacco Control
 Division of Fire Safety
Department of Mental Health
Department of Natural Resources
Department of Revenue
Department of Social Services
 Children's Division
 Division of Legal Service
 Division of Youth Services
 MoHealthNet Division
 Missouri Medicaid Audit and Compliance Unit
Fulton Public Schools
Linn State Technical College
Missouri Department of Transportation
Missouri Gaming Commission
Missouri Highway Patrol
Missouri National Guard
Missouri Southern State University
Missouri State University
Northwest Missouri State University
Office of Administration
 Division of Accounting
 Division of Budget and Planning
 Division of Purchasing and Materials Management
 Division of Information Technology Services
Office of Attorney General
Office of the Secretary of State
Office of the State Auditor

SOURCES OF INFORMATION (continued)

Office of State Courts Administrator
Office of the State Public Defender
Office of State Treasurer
St. Louis County
University of Central Missouri
University of Missouri



Mickey Wilson, CPA
Director
March 5, 2014

Ross Strobe
Assistant Director
March 5, 2014