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AB-677 Data collection: sexual orientation. (2017-2018)

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Assembly Bill No. 677

CHAPTER 744

An act to add Section 51514 to the Education Code, and to amend Section 8310.8 of the Government Code, relating to data collection.

[Approved by Governor October 13, 2017. Filed with Secretary of State October 13, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 677, Chiu. Data collection: sexual orientation.

(1) Existing law relating to elementary and secondary education instruction prohibits the administration, as specified, of a test, questionnaire, survey, or examination that contains any questions about a pupil's personal beliefs or practices in sex, family life, morality, and religion, or any questions about the pupils parents' or guardians' beliefs and practices in those areas unless the pupil's parent or guardian gives written permission. Existing law authorizes local educational agencies granted specific funding to submit pupil data to an operator of an after school program or summer program regarding the results of certain survey information in aggregate form.

This bill would prohibit a local educational agency that chooses to administer a voluntary survey already including questions pertaining to sexual orientation and gender identity from removing those questions.

(2) The Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act requires specific state departments, in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, to collect voluntary self-identification information pertaining to sexual orientation and gender identity, except as specified. Existing law prohibits these state departments from reporting demographic data that would permit identification of individuals or would result in statistical unreliability and limits the use of the collected data by these state departments, as specified. Existing law requires these state departments to comply with these provisions as early as possible, but no later than July 1, 2018.

This bill would expand the list of state entities that must comply with these reporting requirements, and would require those entities to comply as early as possible, but no later than July 1, 2019.

Existing law requires those state entities, during the regular process of reporting demographic data to the Legislature, to also report data collected with respect to sexual orientation and gender discrimination and the method used to collect that data, except for confidential personal identifying information. Existing law authorizes those state entities to collect demographic information from other entities, under specified circumstances.

This bill would instead make these separate reporting requirements. The bill would also authorize those state entities to collect aggregated data provided to a state department by a 3rd-party entity, including, but not limited to, a private employer.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the

need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the goal of state government, in collecting demographic data, to gather accurate information in order to understand, compare, report, and apply that data to the enhancement and improvement of public services.

(b) There are ongoing efforts to collect demographic data related to sexual orientation or gender identity at the state and county levels, focusing on addressing health disparities.

(c) Until these efforts yield data, there will still be limited data available for the lesbian, gay, bisexual, and transgender (LGBT) communities, including all of the following:

(1) According to a University of California, Los Angeles, study from the Williams Institute, nearly one in five children being raised by same-sex couples (approximately 24 percent) lives in poverty compared to 14 percent of children being raised by different-sex couples.

(2) Current data from the Williams Institute on patterns of poverty in LGBT communities in California shows that 13 percent of LGBT people are unemployed, compared with 10 percent of Californians overall. Twenty percent of LGBT Californians have annual incomes under twenty-four thousand dollars (\$24,000), while 26 percent of Californians overall have annual incomes below twenty-four thousand dollars (\$24,000).

(3) According to the Gay Lesbian & Straight Education Network's (GLSEN) 2015 National School Climate Survey, the majority of LGBT students in California regularly heard anti-LGBT remarks, and most LGBT students in California had been victimized at school. Sixty-two percent of students victimized never reported the incident to school staff. Only 39 percent of those students who did report incidents said it resulted in effective staff intervention.

(d) Due to historical systemic exclusion of data collection of LGBT communities, significant disparities in their health and welfare have been prolonged compared to the broader community. LGBT communities face disproportionately high rates of poverty, suicide, homelessness, isolation, substance abuse, and violence. These problems are more prevalent for youth and seniors, communities of color, and bisexual, transgender, and undocumented communities.

(e) It is in the best interests of the state to respect, embrace, and understand the full diversity of its residents and to collect accurate data to effectively implement and deliver critical state services and programs.

(f) It is the intent of the Legislature that the state entities specified in Section 8310.8 of the Government Code utilize existing work and research, including, but not limited to, referencing research on promising and community-defined practices and stakeholders when developing questions to collect voluntary self-identified information pertaining to sexual orientation and gender identity. Further, it is the intent of the Legislature that the state entities specified in subdivision (a) of Section 8310.8 of the Government Code that collect demographic data consider urging the collection of voluntary self-identified information pertaining to sexual orientation and gender identity in circumstances in which an entity not covered by this act does not already collect this information.

SEC. 2. Section 51514 is added to the Education Code, to read:

51514. If a local educational agency administers a voluntary survey that already includes questions pertaining to sexual orientation and gender identity, the local educational agency shall not remove those questions.

SEC. 3. Section 8310.8 of the Government Code is amended to read:

8310.8. (a) (1) This section shall only apply to the following state entities:

(A) The State Department of Health Care Services.

(B) The State Department of Public Health.

(C) The State Department of Social Services.

(D) The California Department of Aging.

(E) The State Department of Education and the Superintendent of Public Instruction, except this section shall not apply to the California Longitudinal Pupil Achievement Data System (CALPADS).

(F) The Commission on Teacher Credentialing.

(G) The Department of Fair Employment and Housing.

(H) The Labor and Workforce Development Agency.

(I) The Department of Industrial Relations.

(J) The Employment Training Panel.

(K) The Employment Development Department, except this section shall not apply to the unemployment insurance program within the department.

(2) This section shall be known and may be cited as the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act.

(b) (1) Except as specified in paragraph (2), in addition to the duties imposed by Section 8310.5 and to the extent permissible by federal law, the state entities identified in subdivision (a), in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, shall collect voluntary self-identification information pertaining to sexual orientation and gender identity.

(2) The state entities identified in subdivision (a) may, but are not required to, collect demographic data pursuant to this section under either of the following circumstances:

(A) Pursuant to federal programs or surveys, whereby the guidelines for demographic data collection categories are defined by the federal program or survey.

(B) Demographic data is collected by other entities including:

(i) State offices, departments, and agencies not included in subdivision (a).

(ii) Surveys administered by third-party entities and the state department is not the sole funder.

(iii) Third-party entities, including, but not limited to, private employers, that provide aggregated data to a state department.

(c) (1) The state entities identified in subdivision (a) shall report to the Legislature the data collected pursuant to this section and the method used to collect that data, and make the data available to the public in accordance with state and federal law, except for personal identifying information, which shall be deemed confidential and shall not be disclosed.

(2) The state entities identified in subdivision (a) shall not report demographic data that would permit identification of individuals or would result in statistical unreliability. Demographic reports on data collected pursuant to this section, to prevent identification of individuals, may aggregate categories at a state, county, city, census tract, or ZIP Code level to facilitate comparisons and identify disparities.

(3) The state entities identified in subdivision (a) may use information voluntarily provided about sexual orientation and gender identity only for demographic analysis, coordination of care, quality improvement of its services, conducting approved research, fulfilling reporting requirements, and guiding policy or funding decisions. All information about sexual orientation and gender identity collected pursuant to this section shall be used only for purposes specified in this section.

(d) The state entities identified in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (a) shall comply with the requirements of this section as early as possible following the effective date of this section, but no later than July 1, 2018.

(e) The state entities identified in subparagraphs (E) to (K), inclusive, of paragraph (1) of subdivision (a) shall comply with the requirements of this section as early as possible following the effective date of this section, but no later than July 1, 2019.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which amends Section 8310.8 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Due to the sensitive general nature of data relating to sexual orientation and gender identity and the need to protect the safety of those who would provide voluntary self-identification information pertaining to their sexual orientation and gender identity, it is necessary to prohibit the public disclosure of personal identifying information that would allow the identification of an individual who provided voluntary self-identification information pertaining to sexual orientation and gender identity.

