



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3606

by Rep. Robert Martwick

SYNOPSIS AS INTRODUCED:

New Act	
105 ILCS 10/2	from Ch. 122, par. 50-2
105 ILCS 10/6	from Ch. 122, par. 50-6
105 ILCS 85/Act rep.	
815 ILCS 505/2Z	from Ch. 121 1/2, par. 262Z

Creates the Student Online Personal Protection Act of 2019. Provides for legislative intent and definitions. Provides for operator prohibitions, operator duties, school authority prohibitions, school authority duties, State Board of Education duties, and parent rights. Creates the Student Data Protection Oversight Committee and provides for the Committee's membership and support. Requires the Committee to submit an annual report to the General Assembly and the State Board of Education with recommendations, if any, for policy revisions and legislative amendments that would carry out the intent of the Act. Amends the Illinois School Student Records Act. Adds a definition of record. Requires written consent of a student's parent to publish student directories that list student names, addresses, and other identifying information and similar publications. Amends the Consumer Fraud and Deceptive Business Practices Act to make a conforming change. Repeals the Student Online Personal Protection Act. Effective immediately.

LRB101 09053 AXK 54146 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Student Online Personal Protection Act of 2019.

6 Section 5. Legislative intent. Schools today are
7 increasingly using a wide range of technologies to help
8 students learn, but concerns have been raised about whether
9 sufficient safeguards exist to protect the privacy and security
10 of data about students and their families. This Act is intended
11 to ensure that students' and families' data will be protected,
12 safeguarded, and kept private and disclosed only to appropriate
13 educational authorities or to properly authorized designees
14 under their control to serve the best interests of the student
15 and that no student shall be required to disclose data or be
16 required to consent to a school authority sharing covered
17 information with an operator in order to receive a free,
18 high-quality public education.

19 Section 10. Definitions. In this Act:

20 "Biometric information" has the meaning given to that term
21 under Section 10-20.40 of the School Code.

22 "Breach" means the unauthorized disclosure of data or

1 unauthorized provision of physical or electronic means of
2 gaining access to data that compromises the security,
3 confidentiality, or integrity of covered information or a
4 school student record.

5 "Covered information" means any information or records
6 regarding a student or generated by a student collected by or
7 provided to an operator, school authority, or the State Board
8 of Education for or in connection with a school purpose,
9 including personally identifiable information and information
10 that is linked to personally identifiable information.

11 "Covered information" does not include aggregated information
12 or records to the extent no student may be individually
13 identified from the information or records in any manner or
14 other information or records that do not include personally
15 identifiable information or other data by which a student may
16 be identified in any manner. "Covered information" does include
17 aggregated information or records that are capable of being
18 de-aggregated or reconstructed to the point that any student
19 may be individually identified from the information or records.

20 "Criminal records" means any criminal record or criminal
21 history, including, but not limited to, juvenile delinquency
22 records.

23 "Destroy" means to remove covered information so that it is
24 permanently irretrievable in the normal course of business.

25 "Educational benefit" means an educational or
26 instructional program, service, curriculum, course, material,

1 aid, or intervention provided by a school authority.

2 "Electronic network activity information" means any
3 information collected via the use of a technological device,
4 including keystroke log, browsing history, search history,
5 information regarding the user's interaction with a website,
6 application, or advertisement and any persistent identifiers
7 used to recognize a user over time and across different
8 websites or online services. Persistent identifiers may
9 include, but are not limited to, a user number held in a
10 cookie, an Internet Protocol address, a processor or device
11 serial number, or unique device identifier.

12 "Geolocation information" means information that (i) is
13 not the contents of a communication, (ii) is generated by or
14 derived from, in whole or in part, the operation of a
15 technological device, and (iii) is sufficient to determine or
16 infer the precise location of that device.

17 "Health information" means information or records about
18 the past, present, or future physical or mental health
19 condition or disability of a student or the provision of health
20 care or medical treatment of a student.

21 "Highly sensitive student information" means covered
22 information that includes, but is not limited to, all of the
23 following types of information:

- 24 (1) Criminal records.
25 (2) Disciplinary records.
26 (3) Health information.

1 (4) Immigration and citizenship status.

2 (5) Information protected under the federal Protection
3 of Pupil Rights Amendment of 1978.

4 (6) Personally identifiable information.

5 (7) Geolocation information.

6 (8) Electronic network activity information.

7 (9) Photograph, video, or audio files in which the file
8 contains a student's image or voice.

9 "Longitudinal data system" has the meaning given to that
10 term under the P-20 Longitudinal Education Data System Act.

11 "Operator" means any entity that, for a fee or free of
12 charge:

13 (1) provides a product or service to a school authority
14 that collects, maintains, utilizes, or discloses covered
15 information;

16 (2) designs or markets a product or service for use by
17 a school authority or, with the school authority's or its
18 officials' involvement, by the student that collects,
19 maintains, utilizes, or discloses covered information; or

20 (3) knows or reasonably should know that a product or
21 service that collects, retains, or uses covered
22 information will be used for a school purpose.

23 "Parent" has the meaning given to that term in the Illinois
24 School Student Records Act.

25 "Personally identifiable information" means any data
26 concerning a student by which a student may be individually or

1 personally identified and includes, but is not limited to, any
2 of the following:

3 (1) The student's name.

4 (2) The name of the student's parent or other family
5 members.

6 (3) The address of the student or the student's family.

7 (4) A personal identifier, such as the student's social
8 security number, student number, or biometric information.

9 (5) Other indirect identifiers, such as the student's
10 date of birth, place of birth, or mother's maiden name.

11 (6) Other information that, alone or in combination, is
12 linked or linkable to a specific student and that would
13 allow a reasonable person in the school community who does
14 not have personal knowledge of the relevant circumstances
15 to identify the student with reasonable certainty.

16 (7) Information requested by a person whom a school
17 reasonably believes knows the identity of the student to
18 whom the school student record relates.

19 "Profile" means a file or other mechanism used to collect
20 and retain, and that uses, covered information or other
21 information by which to identify or otherwise keep track of an
22 individual student or group of students.

23 "Publicly available" means information that is lawfully
24 made available from federal, State, or local government
25 records. "Publicly available" does not mean biometric
26 information collected by an operator about a student without

1 the parent's knowledge. "Publicly available" does not include
2 information that is used for a purpose that is not compatible
3 with the purpose for which the data is maintained and made
4 available in the government records or for which it is publicly
5 maintained and aggregate information or information that is
6 de-identified in a manner that precludes the possibility of
7 re-identification.

8 "Record" has the meaning given to that term under the
9 Illinois School Student Records Act.

10 "School" means (i) any preschool, day care center, nursery,
11 kindergarten, elementary or secondary educational institution,
12 vocational school, or special educational facility or any other
13 elementary or secondary educational agency or institution or
14 (ii) any person, agency, or institution that maintains school
15 student records from more than one school. "School" includes a
16 private or nonpublic school.

17 "School authority" means any school board, school
18 district, board of directors, or other governing body of a
19 school established under the School Code or through any other
20 means.

21 "School purpose" means any activity that is directed by or
22 takes place at the direction of a school authority or its
23 employees or designees. "School purpose" does not include
24 advertising that is not otherwise specifically authorized in
25 this Act is not a school purpose.

26 "School student record" has the meaning given to that term

1 under the Illinois School Student Records Act.

2 "State Board" means the State Board of Education.

3 "Student" has the meaning given to that term under the
4 Illinois School Student Records Act.

5 "Targeted advertising" means advertising to an individual
6 student or group of students in which the advertisements are
7 selected based on a known or assumed trait of the student or
8 group of students or information obtained or inferred from the
9 student's or group of students' online behavior within an
10 operator's product or service or the student's or group of
11 students' use of an operator's products or services, whether
12 over time or at the time of access. "Targeted advertising" does
13 not include providing a response to a request for information
14 or feedback or a recommendation from a student, provided the
15 response or recommendation is not determined in whole or in
16 part by payment or other consideration from a third party.

17 "Technological device" means any computer, cellular phone,
18 smart phone, digital camera, video camera, audio recording
19 device, radio frequency identification tag reader, or other
20 electronic device that can be used for creating, storing, or
21 transmitting information in the form of electronic data.

22 Section 15. Operator prohibitions. An operator may not do
23 any of the following:

24 (1) Sell, lease, or rent covered information.

25 (2) Disclose covered information to any person,

1 entity, or third party other than the school authority or
2 State Board.

3 (3) Unless it is already publicly available, use,
4 disclose, or share covered information, including
5 de-identified or aggregated student information, for any
6 commercial purpose that is not a school purpose, including,
7 without limitation:

8 (A) to develop, maintain, support, improve,
9 evaluate, or diagnose the operator's software or
10 website;

11 (B) for adaptive learning purposes or customized
12 student learning;

13 (C) to provide recommendation engines to recommend
14 content or services;

15 (D) to demonstrate or market the effectiveness of
16 the operator's website, online service, or mobile
17 application; or

18 (E) for targeted advertising.

19 (4) Disclose or otherwise allow any third party to have
20 access to covered information, unless such disclosure is:

21 (A) made only in furtherance of a school purpose
22 with the school authority's prior consent and the
23 recipient of the covered information is legally
24 required to comply with this Act;

25 (B) to the extent permitted by federal law, to law
26 enforcement to protect the safety of users or others or

1 the security or integrity of the operator's service;
2 (C) required by court order or State or federal
3 law;
4 (D) to ensure legal or regulatory compliance; or
5 (E) to a subcontractor, agent, independent
6 contractor or other entity hired by the operator for
7 the purpose of enabling the operator to meet its
8 contractual obligations to the school authority if
9 that entity first acknowledges in writing that it has
10 read and understands the requirements of this Act and
11 agrees in writing to be bound by its provisions and the
12 terms of any agreement entered into between the
13 operator and the school authority and a copy of that
14 written acknowledgment and agreement is provided to
15 the school authority.

16 Section 20. Operator duties. An operator must do the
17 following:

18 (1) For any operator who seeks to receive from a school
19 authority or the State Board in any manner any covered
20 information, enter into a written agreement with the school
21 authority before any covered information may be
22 transferred, which agreement must contain all of the
23 following:

24 (A) Provisions consistent with each prohibition or
25 requirement set forth in this Act.

1 (B) A listing of the categories or types of covered
2 information to be provided to the operator.

3 (C) A statement of the product or service being
4 provided to the school authority by the operator.

5 (D) A statement that the operator is acting as a
6 school official with a legitimate educational
7 interest, is performing an institutional service or
8 function for which the school authority would
9 otherwise use employees, under the direct control of
10 the school authority, with respect to the use and
11 maintenance of covered information, and is using the
12 covered information for only an authorized purpose and
13 will not re-disclose it to third parties or affiliates,
14 unless otherwise permitted under this Act, without
15 permission from the school authority or pursuant to
16 court order.

17 (E) A description of the actions the operator will
18 take, including a description of the training the
19 operator will provide to anyone who receives or has
20 access to covered information, to ensure the security
21 and confidentiality of covered information. Compliance
22 with this subparagraph shall not, in itself, absolve
23 the operator of liability in the event of an
24 unauthorized disclosure of covered information.

25 (F) A statement that the operator will destroy or
26 transfer to the school authority all covered

1 information if the information is no longer needed for
2 the purposes of the contract and to specify the time
3 period in which the information must be destroyed or
4 returned.

5 (G) A statement that the school authority will
6 publish the contract on the school authority's
7 website.

8 (H) A statement that the agreement is the entire
9 agreement with the school authority, including school
10 authority employees and other end users, and the
11 operator.

12 (2) For any operator with covered information in its
13 possession, implement and maintain security procedures and
14 practices designed to protect covered information from
15 unauthorized access, destruction, use, modification or
16 disclosure that, based on the sensitivity of the data and
17 the risk from unauthorized access (i) uses technologies and
18 methodologies that are consistent with the guidance issued
19 pursuant to the federal American Recovery and Reinvestment
20 Act of 2009, (ii) maintains technical safeguards as it
21 relates to the possession of covered information in a
22 manner consistent with the provisions of 45 CFR 164.312,
23 and (iii) otherwise meets or exceeds industry standards.

24 (3) Destroy, within a reasonable time period, a
25 student's covered information if the school authority
26 requests destruction of covered information under the

1 control of the operator, unless the student's parent
2 consents in writing to the maintenance of the covered
3 information. A school authority shall make such a request
4 to the operator on behalf of a student's parent if the
5 parent requests that the student's covered information be
6 destroyed, if the destruction is not in violation of the
7 Illinois School Student Records Act.

8 (4) In the case of any breach, within the most
9 expedient time possible and without unreasonable delay,
10 but no later than 72 hours after the determination that a
11 breach has occurred, notify the school authority of the
12 breach of the school authority's student's covered
13 information.

14 (5) Permit a school authority or its designee to audit
15 and inspect, on an annual basis or after any breach, the
16 operator's practices with respect to any covered
17 information received by the operator from the school
18 authority or any student profiles, provided that this
19 requirement shall be satisfied if the operator provides the
20 school authority with an independent, third-party audit
21 acceptable to the school authority that has been conducted
22 within the previous 12 months or, in the case of a breach,
23 within 3 months after the breach.

24 (6) In the event of a breach resulting, in whole or in
25 part, from the operator's conduct, in addition to any other
26 remedies available to the school authority under law or

1 equity, reimburse the school authority in full for all
2 reasonable costs and expenses incurred by the school
3 authority as a result of the operator's conduct in
4 investigating and remediating the breach, including, but
5 not limited to:

6 (A) providing notification to the parents of those
7 students whose covered information was compromised and
8 to regulatory agencies or other entities as required by
9 law or contract;

10 (B) providing one year of credit monitoring to
11 those students whose covered information was exposed
12 in such a manner during the breach that a reasonable
13 person would believe that it could impact his or her
14 credit or financial security;

15 (C) legal fees, audit costs, fines, and any other
16 fees or damages imposed against the school authority as
17 a result of the security breach; and

18 (D) providing any other notifications or
19 fulfilling any other requirements adopted by the State
20 Board or of any other State or federal laws.

21 Section 25. School authority prohibitions. A school
22 authority may not do any of the following:

23 (1) Access, search, read, inspect, copy, monitor, log
24 or otherwise use information transmitted via a
25 technological device unless it is owned by a school

1 authority and the information is used for a school purpose.
2 Information obtained or collected in violation of this
3 paragraph must be promptly destroyed and may not be used by
4 a school authority in any legal proceeding, disciplinary
5 action, or administrative hearing or for any other purpose.

6 (2) Require that any student must, as part of any
7 applicable program, disclose highly sensitive student
8 information to an operator without prior written consent of
9 the student's parent, which must include an explanation
10 that is clear and understandable by a layperson of the data
11 elements of highly sensitive student information to be
12 shared and for what purpose and to whom it will be
13 disclosed.

14 (3) Withhold an educational benefit from or take a
15 punitive measure against a student or a student's parent
16 based in whole or in part upon the student's or parent's
17 (i) refusal to allow disclosure or sharing of covered
18 information to an operator, (ii) revocation of consent for
19 disclosure or sharing of covered information to an
20 operator, or (iii) request for destruction of covered
21 information maintained by an operator.

22 (4) Sell, rent, lease, or trade covered information.

23 (5) Share, transfer, disclose, or provide access to a
24 student's covered information to an entity or individual,
25 other than the student's parent or the State Board, without
26 a contract, unless such disclosure or transfer is:

- 1 (A) to the extent permitted by federal law, to law
2 enforcement to protect the safety of users or others or
3 the security or integrity of the operator's service;
4 (B) required by court order or State or federal
5 law; or
6 (C) to ensure legal or regulatory compliance.

7 Section 30. School authority duties.

8 (a) Each school authority shall post and maintain on its
9 website all of the following information:

10 (1) An explanation that is clear and understandable by
11 a layperson of the data elements of covered information
12 that the school authority collects, maintains, or
13 discloses to any person, entity, third party, or
14 governmental agency. The information must explain how the
15 school authority uses, to whom it discloses, and for what
16 purpose it discloses the covered information.

17 (2) A list of operators that the school authority
18 contracts with, a copy of each contract, and a business
19 address and telephone number for each operator.

20 (3) For each operator, a list of any subcontractors to
21 whom covered information may be disclosed under Section 15.

22 (4) A written description of the procedures that a
23 parent may use to carry out the rights enumerated under
24 Section 40.

25 (5) An explanation that if a school authority does not

1 comply with the requirements of this subsection, a parent
2 may submit a complaint with the State Board in accordance
3 with the complaint policy adopted under Section 35.

4 (b) Each school authority must adopt a policy regarding
5 school employees who are authorized to enter into contracts
6 with operators. A school authority must post on its website
7 each contract, along with the information under subsection (a)
8 before the contract is implemented and before any covered
9 information is disclosed to an operator. Any agreement or
10 contract entered into in violation of this Act shall be void
11 and unenforceable as against public policy. This subsection may
12 not be construed to limit individual school employees outside
13 of the scope of their employment from entering into agreements
14 with operators on their own behalf and for a non-school
15 purpose, provided that no covered information is provided to
16 the operators.

17 (c) Upon receipt of notice of a breach under Section 20 or
18 determination of a breach of covered information maintained by
19 the school authority, a school authority shall electronically
20 notify, no later than 72 hours after receipt of the notice or
21 determination that a breach has occurred, the parent of any
22 student whose covered information is involved in the breach.
23 The school authority must also post the notice on the school
24 authority's website. The notification must include, but is not
25 limited to, all of the following:

26 (1) The date, estimated date, or estimated date range

1 of the breach.

2 (2) A description of the covered information that was
3 compromised or reasonably believed to have been
4 compromised in the breach.

5 (3) Information that the parent may use to contact the
6 operator and school authority to inquire about the breach.

7 (4) The toll-free numbers, addresses, and websites for
8 consumer reporting agencies.

9 (5) The toll-free number, address, and website for the
10 Federal Trade Commission.

11 (6) A statement that the parent may obtain information
12 from the Federal Trade Commission and credit reporting
13 agencies about fraud alerts and security freezes.

14 (d) Each school authority must implement and maintain
15 security procedures and practices designed to protect covered
16 information from unauthorized access, destruction, use,
17 modification, or disclosure that, based on the sensitivity of
18 the covered information and the risk from unauthorized access,
19 (i) use technologies and methodologies that are consistent with
20 the guidance issued pursuant to the federal American Recovery
21 and Reinvestment Act of 2009, (ii) maintain technical
22 safeguards as they relate to the possession of student records
23 in a manner consistent with the provisions of 45 CFR 164.312,
24 and (iii) otherwise meet or exceed industry standards.

25 (e) Each school authority shall designate an appropriate
26 staff person as a privacy officer, who may also be official

1 records custodian as designated under the Illinois School
2 Student Records Act, to carry out the duties and
3 responsibilities assigned to school authorities and to ensure
4 compliance with the requirements under Sections 25 and 30.

5 Section 35. State Board duties.

6 (a) The State Board may not sell, rent, lease, or trade
7 covered information.

8 (b) The State Board may not share, transfer, disclose, or
9 provide covered information to an entity or individual without
10 a contract or agreement, with an exception for disclosures
11 required by federal law to federal agencies.

12 (c) The State Board must publish and maintain on its
13 website a list of all of the entities or individuals,
14 including, but not limited to, operators, individual
15 researchers, research organizations, institutions of higher
16 education, and government agencies, that the State Board
17 contracts with or has agreements with and that hold covered
18 information and a copy of each contract or agreement. The list
19 must include all of the following information:

20 (1) The name of the entity or individual. In naming an
21 individual, the list must include the entity that sponsors
22 the individual or with which the individual is affiliated,
23 if any. If the individual is conducting research at an
24 institution of higher education, the list may include the
25 name of that institution and a contact person in the

1 department that is associated with the research in lieu of
2 the name of the researcher. If the entity is an operator,
3 the list must include a business address and telephone
4 number for the operator.

5 (2) The purpose and scope of the contract or agreement.

6 (3) The duration of the contract or agreement.

7 (4) The types of covered information that the entity or
8 individual holds under the contract or agreement.

9 (5) The use of the covered information under the
10 contract.

11 (6) The length of time for which the entity or
12 individual may hold the covered information.

13 (7) A list of any subcontractors to whom covered
14 information may be disclosed under Section 15.

15 (d) The State Board shall create, publish, and make
16 publicly available an inventory, along with a dictionary or
17 index of data elements and their definitions, of covered
18 information collected or maintained by the State Board,
19 including, but not limited to, both of the following:

20 (1) Covered information that school authorities are
21 required to report to the State Board by State or federal
22 law.

23 (2) Covered information in the State longitudinal data
24 system or any data warehouse used by the State Board to
25 populate the longitudinal data system.

26 The inventory shall make clear for what purposes the State

1 Board uses the covered information.

2 (e) Within 180 days after the effective date of this Act,
3 the State Board shall develop, publish, and make publicly
4 available for the benefit of school authorities model student
5 data privacy policies and procedures that comply with relevant
6 State and federal law, including, but not limited to, all of
7 the following:

8 (1) A model notice that school authorities must use to
9 provide notice to parents and students about operators. The
10 notice must be titled "Student Data Shared With Operators"
11 and state, in general terms, the types of student data that
12 are collected by the school authority and shared with
13 operators under this Act and the purposes of collecting and
14 using the student data. Upon the creation of the notice
15 under this paragraph, a school authority shall, at the
16 beginning of each school year, provide the notice to
17 parents by the same means generally used to send notices to
18 them.

19 (2) A model consent form that school authorities may
20 use to obtain written consent from a parent to allow
21 disclosure of highly sensitive information to an operator,
22 as required under Section 25. The consent form must be
23 titled "Consent for Highly Sensitive Data Sharing with
24 Operators" and must include an explanation that is clear
25 and understandable by a layperson of the data elements of
26 highly sensitive student information to be shared and for

1 what purpose and to whom it will be disclosed.

2 (f) The State Board must adopt, implement, and administer a
3 policy for hearing complaints from a parent regarding a school
4 authority's compliance with Sections 25 and 30. At a minimum,
5 the policy must provide a parent the opportunity to submit
6 information and receive a hearing from the State Board and must
7 require the State Board to take action on the parent's
8 complaint no later than 60 days after the hearing.

9 Section 40. Parent rights.

10 (a) A student's covered information is the sole property of
11 the student's parent.

12 (b) A student's covered information shall be collected only
13 for specified, explicit, and legitimate school purposes and not
14 further processed in a manner that is incompatible with those
15 purposes.

16 (c) A student's covered information shall only be adequate,
17 relevant, and limited to what is necessary in relation to the
18 school purpose for which it is processed.

19 (d) The parent of a student enrolled in a school has the
20 right to all of the following:

21 (1) Inspect and review the student's student data,
22 regardless of whether it is maintained by the school, the
23 school authority, the State Board, or an operator.

24 (2) Request from a school authority a paper or
25 electronic copy of the student's covered information,

1 including covered information maintained by an operator or
2 the State Board. If a parent requests an electronic copy of
3 the student's covered information under this paragraph,
4 the school authority must provide an electronic copy of
5 that information unless the school authority does not
6 maintain the information in an electronic format and
7 reproducing the information in an electronic format would
8 be unduly burdensome to the school authority. If a parent
9 requests a paper copy of the student's covered information,
10 the school authority may charge the parent the reasonable
11 cost for copying the information in an amount not to exceed
12 the amount fixed in a schedule adopted by the State Board,
13 except that no parent may be denied a copy of the
14 information due to the parent's inability to bear the cost
15 of the copying.

16 (3) Request corrections of factual inaccuracies
17 contained in the student's covered information. After
18 receiving a request for corrections that documents a
19 factual inaccuracy, a school authority must complete
20 either of the following:

21 (A) Confirm the correction with the parent within
22 90 days after receiving the parent's request if the
23 school authority or State Board maintains the covered
24 information that contains the factual inaccuracy.

25 (B) Notify the operator who must confirm the
26 correction with the parent within 90 days after

1 receiving the parent's request if the covered
2 information that contains the factual inaccuracy is
3 maintained by an operator.

4 (e) Nothing in this Act shall be construed to limit the
5 rights granted to parents and students under the Illinois
6 School Student Records Act.

7 Section 45. Right of action.

8 (a) Any person aggrieved by a violation of this Act shall
9 have a right of action in a State circuit court or as a
10 supplemental claim in federal district court against an
11 offending party. A prevailing party may recover for each
12 violation any of the following:

13 (1) Against a private entity that negligently violates
14 a provision of this Act, liquidated damages of \$1,000 or
15 actual damages, whichever one is greater.

16 (2) Against a private entity that intentionally or
17 recklessly violates a provision of this Act, liquidated
18 damages of \$5,000 or actual damages, whichever one is
19 greater.

20 (3) Reasonable attorney's fees and costs, including
21 expert witness fees and other litigation expenses.

22 (4) Other relief, including an injunction, as the State
23 or federal court deems appropriate.

24 (b) An individual who knowingly or intentionally permits
25 the unauthorized collecting, sharing, or using of covered

1 information under this Act is guilty of a class A misdemeanor.

2 Section 50. Oversight.

3 (a) There is created a Student Data Protection Oversight
4 Committee that consists of all of the following members,
5 appointed by the State Board of Education:

6 (1) A high school student enrolled in a public school
7 in this State.

8 (2) A parent of a student in a school district
9 organized under Article 34 of the School Code.

10 (3) A parent of a student in a school district located
11 in Lake, Kane, Will, DuPage, McHenry, or Cook County, but
12 not in a school district organized under Article 34 of the
13 School Code.

14 (4) A parent of a student enrolled in a small, rural
15 school district.

16 (5) An expert in information technology systems.

17 (6) An expert in digital privacy law.

18 (7) A representative of a computer and information
19 technology trade group.

20 (8) A representative of a civil rights advocacy
21 organization.

22 (9) A representative of a different civil rights or a
23 privacy rights advocacy organization.

24 (10) A representative of an association representing
25 principals in a city having a population exceeding 500,000.

1 (11) A representative of a statewide association
2 representing school administrators.

3 (12) A representative of a statewide professional
4 teachers' organization.

5 (13) A representative of a different statewide
6 professional teachers' organization.

7 (14) A representative of a professional teachers'
8 organization in a city having a population exceeding
9 500,000.

10 (15) A representative of a statewide association
11 representing school boards.

12 (16) A representative of a school district organized
13 under Article 34 of the School Code.

14 (17) The Attorney General or his or her designee.

15 (18) The State Superintendent of Education or his or
16 her designee.

17 The State Board, in consultation with the Committee, may
18 appoint no more than 2 additional individuals to the Committee
19 who shall serve in an advisory role and may not have voting or
20 other decision-making rights.

21 (b) The Committee shall initially meet at the call of the
22 Governor, at which meeting it shall designate a chairperson.
23 The Committee shall meet thereafter at the call of the
24 chairperson, but no less than 4 times within one year after the
25 effective date of this Act and at least once per year
26 thereafter to review existing laws and federal regulations on

1 covered information in light of technological and legal
2 developments. The Committee shall serve without compensation
3 but may be reimbursed for reasonable and necessary expenses
4 incurred in performing their duties from funds appropriated to
5 the State Board for that purpose. The State Board must provide
6 administrative and other support to the Committee. The
7 Committee shall submit an annual report to the General Assembly
8 and the State Board no later than December 15, 2019 and each
9 December 15 thereafter with recommendations, if any, for policy
10 revisions and legislative amendments that would carry out the
11 intent of this Act. The Committee is subject to the Open
12 Meetings Act.

13 Section 100. Severability. The provisions of this Act are
14 severable under Section 1.31 of the Statute on Statutes.

15 Section 105. The Illinois School Student Records Act is
16 amended by changing Sections 2 and 6 as follows:

17 (105 ILCS 10/2) (from Ch. 122, par. 50-2)

18 Sec. 2. As used in this Act,

19 (a) "Student" means any person enrolled or previously
20 enrolled in a school.

21 (b) "School" means any public preschool, day care center,
22 kindergarten, nursery, elementary or secondary educational
23 institution, vocational school, special educational facility

1 or any other elementary or secondary educational agency or
2 institution and any person, agency or institution which
3 maintains school student records from more than one school, but
4 does not include a private or non-public school.

5 (c) "State Board" means the State Board of Education.

6 (d) "School Student Record" means any writing or other
7 recorded information concerning a student and by which a
8 student may be individually identified or personally
9 identified that is ~~7~~ maintained by a school or at its direction
10 or by an employee of a school, regardless of how or where the
11 information is stored. The following shall not be deemed school
12 student records under this Act: writings or other recorded
13 information maintained by an employee of a school or other
14 person at the direction of a school for his or her exclusive
15 use; provided that all such writings and other recorded
16 information are destroyed not later than the student's
17 graduation or permanent withdrawal from the school; and
18 provided further that no such records or recorded information
19 may be released or disclosed to any person except a person
20 designated by the school as a substitute unless they are first
21 incorporated in a school student record and made subject to all
22 of the provisions of this Act. ~~School student records shall not~~
23 ~~include information maintained by law enforcement~~
24 ~~professionals working in the school.~~

25 (e) "Student Permanent Record" means the minimum personal
26 information necessary to a school in the education of the

1 student and contained in a school student record. Such
2 information may include the student's name, birth date,
3 address, grades and grade level, parents' names and addresses,
4 attendance records, and such other entries as the State Board
5 may require or authorize.

6 (f) "Student Temporary Record" means all information
7 contained in a school student record but not contained in the
8 student permanent record. Such information may include family
9 background information, intelligence test scores, aptitude
10 test scores, psychological and personality test results,
11 teacher evaluations, and other information of clear relevance
12 to the education of the student, all subject to regulations of
13 the State Board. The information shall include information
14 provided under Section 8.6 of the Abused and Neglected Child
15 Reporting Act. In addition, the student temporary record shall
16 include information regarding serious disciplinary infractions
17 that resulted in expulsion, suspension, or the imposition of
18 punishment or sanction. For purposes of this provision, serious
19 disciplinary infractions means: infractions involving drugs,
20 weapons, or bodily harm to another.

21 (g) "Parent" means a person who is the natural parent of
22 the student or other person who has the primary responsibility
23 for the care and upbringing of the student. All rights and
24 privileges accorded to a parent under this Act shall become
25 exclusively those of the student upon his 18th birthday,
26 graduation from secondary school, marriage or entry into

1 military service, whichever occurs first. Such rights and
2 privileges may also be exercised by the student at any time
3 with respect to the student's permanent school record.

4 (h) "Record" means any information maintained in any way,
5 including, but not limited to, electronically-generated data,
6 handwriting, print, computer media, video or audio tape, film,
7 microfilm, and microfiche.

8 (Source: P.A. 92-295, eff. 1-1-02.)

9 (105 ILCS 10/6) (from Ch. 122, par. 50-6)

10 Sec. 6. (a) No school student records or information
11 contained therein may be released, transferred, disclosed or
12 otherwise disseminated, except as follows:

13 (1) to a parent or student or person specifically
14 designated as a representative by a parent, as provided in
15 paragraph (a) of Section 5;

16 (2) to an employee or official of the school or school
17 district or State Board with current demonstrable
18 educational or administrative interest in the student, in
19 furtherance of such interest;

20 (3) to the official records custodian of another school
21 within Illinois or an official with similar
22 responsibilities of a school outside Illinois, in which the
23 student has enrolled, or intends to enroll, upon the
24 request of such official or student;

25 (4) to any person for the purpose of research,

1 statistical reporting, or planning, provided that such
2 research, statistical reporting, or planning is
3 permissible under and undertaken in accordance with the
4 federal Family Educational Rights and Privacy Act (20
5 U.S.C. 1232g);

6 (5) pursuant to a court order, provided that the parent
7 shall be given prompt written notice upon receipt of such
8 order of the terms of the order, the nature and substance
9 of the information proposed to be released in compliance
10 with such order and an opportunity to inspect and copy the
11 school student records and to challenge their contents
12 pursuant to Section 7;

13 (6) to any person as specifically required by State or
14 federal law;

15 (6.5) to juvenile authorities when necessary for the
16 discharge of their official duties who request information
17 prior to adjudication of the student and who certify in
18 writing that the information will not be disclosed to any
19 other party except as provided under law or order of court.
20 For purposes of this Section "juvenile authorities" means:
21 (i) a judge of the circuit court and members of the staff
22 of the court designated by the judge; (ii) parties to the
23 proceedings under the Juvenile Court Act of 1987 and their
24 attorneys; (iii) probation officers and court appointed
25 advocates for the juvenile authorized by the judge hearing
26 the case; (iv) any individual, public or private agency

1 having custody of the child pursuant to court order; (v)
2 any individual, public or private agency providing
3 education, medical or mental health service to the child
4 when the requested information is needed to determine the
5 appropriate service or treatment for the minor; (vi) any
6 potential placement provider when such release is
7 authorized by the court for the limited purpose of
8 determining the appropriateness of the potential
9 placement; (vii) law enforcement officers and prosecutors;
10 (viii) adult and juvenile prisoner review boards; (ix)
11 authorized military personnel; (x) individuals authorized
12 by court;

13 (7) subject to regulations of the State Board, in
14 connection with an emergency, to appropriate persons if the
15 knowledge of such information is necessary to protect the
16 health or safety of the student or other persons;

17 (8) to any person, with the prior specific dated
18 written consent of the parent designating the person to
19 whom the records may be released, provided that at the time
20 any such consent is requested or obtained, the parent shall
21 be advised in writing that he has the right to inspect and
22 copy such records in accordance with Section 5, to
23 challenge their contents in accordance with Section 7 and
24 to limit any such consent to designated records or
25 designated portions of the information contained therein;

26 (9) to a governmental agency, or social service agency

1 contracted by a governmental agency, in furtherance of an
2 investigation of a student's school attendance pursuant to
3 the compulsory student attendance laws of this State,
4 provided that the records are released to the employee or
5 agent designated by the agency;

6 (10) to those SHOCAP committee members who fall within
7 the meaning of "state and local officials and authorities",
8 as those terms are used within the meaning of the federal
9 Family Educational Rights and Privacy Act, for the purposes
10 of identifying serious habitual juvenile offenders and
11 matching those offenders with community resources pursuant
12 to Section 5-145 of the Juvenile Court Act of 1987, but
13 only to the extent that the release, transfer, disclosure,
14 or dissemination is consistent with the Family Educational
15 Rights and Privacy Act;

16 (11) to the Department of Healthcare and Family
17 Services in furtherance of the requirements of Section
18 2-3.131, 3-14.29, 10-28, or 34-18.26 of the School Code or
19 Section 10 of the School Breakfast and Lunch Program Act;
20 or

21 (12) to the State Board or another State government
22 agency or between or among State government agencies in
23 order to evaluate or audit federal and State programs or
24 perform research and planning, but only to the extent that
25 the release, transfer, disclosure, or dissemination is
26 consistent with the federal Family Educational Rights and

1 Privacy Act (20 U.S.C. 1232g).

2 (b) No information may be released pursuant to subparagraph
3 (3) or (6) of paragraph (a) of this Section 6 unless the parent
4 receives prior written notice of the nature and substance of
5 the information proposed to be released, and an opportunity to
6 inspect and copy such records in accordance with Section 5 and
7 to challenge their contents in accordance with Section 7.
8 Provided, however, that such notice shall be sufficient if
9 published in a local newspaper of general circulation or other
10 publication directed generally to the parents involved where
11 the proposed release of information is pursuant to subparagraph
12 (6) of paragraph (a) of this Section 6 and relates to more than
13 25 students.

14 (c) A record of any release of information pursuant to this
15 Section must be made and kept as a part of the school student
16 record and subject to the access granted by Section 5. Such
17 record of release shall be maintained for the life of the
18 school student records and shall be available only to the
19 parent and the official records custodian. Each record of
20 release shall also include:

21 (1) the nature and substance of the information
22 released;

23 (2) the name and signature of the official records
24 custodian releasing such information;

25 (3) the name of the person requesting such information,
26 the capacity in which such a request has been made, and the

1 purpose of such request;

2 (4) the date of the release; and

3 (5) a copy of any consent to such release.

4 (d) Except for the student and his parents, no person to
5 whom information is released pursuant to this Section and no
6 person specifically designated as a representative by a parent
7 may permit any other person to have access to such information
8 without a prior consent of the parent obtained in accordance
9 with the requirements of subparagraph (8) of paragraph (a) of
10 this Section.

11 (e) Nothing contained in this Act shall prohibit, with the
12 written consent of a student's parent, the publication of
13 student directories which list student names, addresses and
14 other identifying information and similar publications which
15 comply with regulations issued by the State Board.

16 (Source: P.A. 99-78, eff. 7-20-15.)

17 (105 ILCS 85/Act rep.)

18 Section 110. The Student Online Personal Protection Act is
19 repealed.

20 Section 115. The Consumer Fraud and Deceptive Business
21 Practices Act is amended by changing Section 2Z as follows:

22 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

23 Sec. 2Z. Violations of other Acts. Any person who knowingly

1 violates the Automotive Repair Act, the Automotive Collision
2 Repair Act, the Home Repair and Remodeling Act, the Dance
3 Studio Act, the Physical Fitness Services Act, the Hearing
4 Instrument Consumer Protection Act, the Illinois Union Label
5 Act, the Installment Sales Contract Act, the Job Referral and
6 Job Listing Services Consumer Protection Act, the Travel
7 Promotion Consumer Protection Act, the Credit Services
8 Organizations Act, the Automatic Telephone Dialers Act, the
9 Pay-Per-Call Services Consumer Protection Act, the Telephone
10 Solicitations Act, the Illinois Funeral or Burial Funds Act,
11 the Cemetery Oversight Act, the Cemetery Care Act, the Safe and
12 Hygienic Bed Act, the Illinois Pre-Need Cemetery Sales Act, the
13 High Risk Home Loan Act, the Payday Loan Reform Act, the
14 Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
15 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
16 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
17 Internet Caller Identification Act, paragraph (6) of
18 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
19 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
20 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
21 Residential Real Property Disclosure Act, the Automatic
22 Contract Renewal Act, the Reverse Mortgage Act, Section 25 of
23 the Youth Mental Health Protection Act, the Personal
24 Information Protection Act, or the Student Online Personal
25 Protection Act of 2019 commits an unlawful practice within the
26 meaning of this Act.

1 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642,
2 eff. 7-28-16; 100-315, eff. 8-24-17; 100-416, eff. 1-1-18;
3 100-863, eff. 8-14-18.)

4 Section 999. Effective date. This Act takes effect upon
5 becoming law.