



Rep. Robert Martwick

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LRB101 09053 AXK 58960 a

1 AMENDMENT TO HOUSE BILL 3606

2 AMENDMENT NO. _____. Amend House Bill 3606 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Student Online Personal Protection Act is
5 amended by changing Sections 5, 10, and 15 and by adding
6 Sections 26, 27, 28, 33, and 37 as follows:

7 (105 ILCS 85/5)

8 Sec. 5. Definitions. In this Act:

9 "Breach" means the unauthorized disclosure of data or
10 unauthorized provision of physical or electronic means of
11 gaining access to data that compromises the security,
12 confidentiality, or integrity of covered information.

13 "Covered information" means personally identifiable
14 information or material or information that is linked to
15 personally identifiable information or material in any media or
16 format that is not publicly available and is any of the

1 following:

2 (1) Created by or provided to an operator by a student
3 or the student's parent or legal guardian in the course of
4 the student's, parent's, or legal guardian's use of the
5 operator's site, service, or application for K through 12
6 school purposes.

7 (2) Created by or provided to an operator by an
8 employee or agent of a school or school district for K
9 through 12 school purposes.

10 (3) Gathered by an operator through the operation of
11 its site, service, or application for K through 12 school
12 purposes and personally identifies a student, including,
13 but not limited to, information in the student's
14 educational record or electronic mail, first and last name,
15 home address, telephone number, electronic mail address,
16 or other information that allows physical or online
17 contact, discipline records, test results, special
18 education data, juvenile dependency records, grades,
19 evaluations, criminal records, medical records, health
20 records, a social security number, biometric information,
21 disabilities, socioeconomic information, food purchases,
22 political affiliations, religious information, text
23 messages, documents, student identifiers, search activity,
24 photos, voice recordings, or geolocation information.

25 "Destroy" means the removal of covered information so that
26 it is permanently irretrievable in the normal course of

1 business.

2 "Interactive computer service" has the meaning ascribed to
3 that term in Section 230 of the federal Communications Decency
4 Act of 1996 (47 U.S.C. 230).

5 "K through 12 school purposes" means purposes that are
6 directed by or that customarily take place at the direction of
7 a school, teacher, or school district; aid in the
8 administration of school activities, including, but not
9 limited to, instruction in the classroom or at home,
10 administrative activities, and collaboration between students,
11 school personnel, or parents; or are otherwise for the use and
12 benefit of the school. Advertising that is not otherwise
13 specifically authorized in this Act is not a K through 12
14 school purpose.

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

17 "Operator" means, to the extent that an entity is operating
18 in this capacity, the operator of an Internet website, online
19 service, online application, or mobile application with actual
20 knowledge that the site, service, or application is used
21 primarily for K through 12 school purposes and was designed and
22 marketed for K through 12 school purposes.

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

25 "School" means (1) any preschool, public kindergarten,
26 elementary or secondary educational institution, vocational

1 school, special educational facility, or any other elementary
2 or secondary educational agency or institution or (2) any
3 person, agency, or institution that maintains school student
4 records from more than one school. "School" includes a private
5 or nonpublic school.

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

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

9 "Targeted advertising" means presenting advertisements to
10 a student where the advertisement is selected based on
11 information obtained or inferred ~~over time~~ from that student's
12 online behavior, usage of applications, or covered
13 information. The term does not include advertising to a student
14 at an online location based upon that student's current visit
15 to that location or in response to that student's request for
16 information or feedback, without the retention of that
17 student's online activities or requests over time for the
18 purpose of targeting subsequent ads.

19 (Source: P.A. 100-315, eff. 8-24-17.)

20 (105 ILCS 85/10)

21 Sec. 10. Operator prohibitions. An operator shall not
22 knowingly do any of the following:

23 (1) Engage in targeted advertising on the operator's
24 site, service, or application or target advertising on any
25 other site, service, or application if the targeting of the

1 advertising is based on any information, including covered
2 information and persistent unique identifiers, that the
3 operator has acquired because of the use of that operator's
4 site, service, or application for K through 12 school
5 purposes.

6 (2) Use information, including persistent unique
7 identifiers, created or gathered by the operator's site,
8 service, or application to amass a profile about a student,
9 except in furtherance of K through 12 school purposes.
10 "Amass a profile" does not include the collection and
11 retention of account information that remains under the
12 control of the student, the student's parent or legal
13 guardian, or the school.

14 (3) Sell or rent a student's information, including
15 covered information. This subdivision (3) does not apply to
16 the purchase, merger, or other type of acquisition of an
17 operator by another entity if the operator and the ~~or~~
18 successor entity comply ~~complies~~ with this Act regarding
19 previously acquired student information.

20 (4) Except as otherwise provided in Section 20 of this
21 Act, disclose covered information, unless the disclosure
22 is made for the following purposes:

23 (A) In furtherance of the K through 12 school
24 purposes of the site, service, or application if the
25 recipient of the covered information disclosed under
26 this clause (A) does not further disclose the

1 information, unless done to allow or improve
2 operability and functionality of the operator's site,
3 service, or application.

4 (B) To ensure legal and regulatory compliance or
5 take precautions against liability.

6 (C) To respond to the judicial process.

7 (D) To protect the safety or integrity of users of
8 the site or others or the security of the site,
9 service, or application.

10 (E) For a school, educational, or employment
11 purpose requested by the student or the student's
12 parent or legal guardian, provided that the
13 information is not used or further disclosed for any
14 other purpose.

15 (F) To a third party if the operator contractually
16 prohibits the third party from using any covered
17 information for any purpose other than providing the
18 contracted service to or on behalf of the operator,
19 prohibits the third party from disclosing any covered
20 information provided by the operator with subsequent
21 third parties, and requires the third party to
22 implement and maintain ~~reasonable~~ security procedures
23 and practices as required under Section 15.

24 Nothing in this Section prohibits the operator's use of
25 information for maintaining, developing, supporting,
26 improving, or diagnosing the operator's site, service, or

1 application.

2 (Source: P.A. 100-315, eff. 8-24-17.)

3 (105 ILCS 85/15)

4 Sec. 15. Operator duties. An operator shall do the
5 following:

6 (1) Implement and maintain ~~reasonable~~ security
7 procedures and practices ~~appropriate to the nature of the~~
8 ~~covered information and~~ designed to protect ~~that~~ covered
9 information from unauthorized access, destruction, use,
10 modification, or disclosure that, based on the sensitivity
11 of the data and the risk from unauthorized access, (i) uses
12 technologies and methodologies that are consistent with
13 the U.S. Department of Commerce's National Institute of
14 Standards and Technology's Framework for Improving
15 Critical Infrastructure Cybersecurity Version 1.1 and any
16 updates to it, (ii) maintains technical safeguards as it
17 relates to the possession of covered information in a
18 manner consistent with the provisions of 45 CFR 164.312,
19 and (iii) otherwise meets or exceeds industry standards.

20 (2) Destroy ~~Delete~~, within a reasonable time period, a
21 student's covered information if the school or school
22 district requests destruction ~~deletion~~ of covered
23 information under the control of the school or school
24 district, unless a student or his or her parent or legal
25 guardian consents to the maintenance of the covered

1 information.

2 (3) Publicly disclose material information about its
3 collection, use, and disclosure of covered information,
4 including, but not limited to, publishing a terms of
5 service agreement, privacy policy, or similar document.

6 (4) For any operator who seeks to receive from a
7 school, school district, or the State Board in any manner
8 any covered information, enter into a written agreement
9 with the school, school district, or State Board before any
10 covered information may be transferred. The written
11 agreement may be created in electronic form and signed with
12 an electronic or digital signature or may be a click wrap
13 agreement that is used with software licenses, downloaded
14 or online applications and transactions for educational
15 technologies, or other technologies in which a user must
16 agree to terms and conditions prior to using the product or
17 service. The written agreement must contain all of the
18 following:

19 (A) Provisions consistent with each duty,
20 prohibition, or requirement set forth in this Act.

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

23 (C) A statement of the product or service being
24 provided to the school by the operator.

25 (D) A statement that the operator is acting as a
26 school official with a legitimate educational

1 interest, is performing an institutional service or
2 function for which the school would otherwise use
3 employees, under the direct control of the school, with
4 respect to the use and maintenance of covered
5 information, and is using the covered information only
6 for an authorized purpose and may not re-disclose it to
7 third parties or affiliates, unless otherwise
8 permitted under this Act, without permission from the
9 school or pursuant to court order.

10 (E) A description of the actions the operator must
11 take, including a description of the training the
12 operator will provide to anyone who receives or has
13 access to covered information, to ensure the security
14 and confidentiality of covered information. Compliance
15 with this subparagraph (E) shall not, in itself,
16 absolve the operator of liability if an unauthorized
17 disclosure of covered information occurs.

18 (F) A description of how, if a breach is attributed
19 to the operator, any costs and expenses incurred by the
20 school in investigating and remediating the breach
21 must be shared between the operator and the school. The
22 costs and expenses may include, but are not limited to:

23 (i) providing notification to the parents of
24 those students whose covered information was
25 compromised and to regulatory agencies or other
26 entities as required by law or contract;

1 (ii) providing credit monitoring to those
2 students whose covered information was exposed in
3 a manner during the breach that a reasonable person
4 would believe that it could impact his or her
5 credit or financial security;

6 (iii) legal fees, audit costs, fines, and any
7 other fees or damages imposed against the school as
8 a result of the security breach; and

9 (iv) providing any other notifications or
10 fulfilling any other requirements adopted by the
11 State Board or of any other State or federal laws.

12 (G) A statement that the operator must destroy or
13 transfer to the school all covered information if the
14 information is no longer needed for the purposes of the
15 written agreement and to specify the time period in
16 which the information must be destroyed or returned.

17 (H) A statement that the school must publish the
18 written agreement on the school's website.

19 (I) A statement that the agreement is the entire
20 agreement with the school, including school employees
21 and other end users, and the operator.

22 (5) In case of any breach, within the most expedient
23 time possible and without unreasonable delay, but no later
24 than 5 calendar days after the determination that a breach
25 has occurred, notify the school of any breach of the
26 students' covered information.

1 (Source: P.A. 100-315, eff. 8-24-17.)

2 (105 ILCS 85/26 new)

3 Sec. 26. School prohibitions. A school may not do any of
4 the following:

5 (1) Sell, rent, lease, or trade covered information.

6 (2) Share, transfer, disclose, or provide access to a
7 student's covered information to an entity or individual,
8 other than the student's parent or the State Board, without
9 a written agreement, unless the disclosure or transfer is:

10 (A) to the extent permitted by federal law, to law
11 enforcement officials to protect the safety of users or
12 others or the security or integrity of the operator's
13 service;

14 (B) required by court order or State or federal
15 law; or

16 (C) to ensure legal or regulatory compliance.

17 (105 ILCS 85/27 new)

18 Sec. 27. School duties.

19 (a) Each school shall post and maintain on its website all
20 of the following information:

21 (1) An explanation, that is clear and understandable by
22 a layperson, of the data elements of covered information
23 that the school collects, maintains, or discloses to any
24 person, entity, third party, or governmental agency. The

1 information must explain how the school uses, to whom or
2 what entities it discloses, and for what purpose it
3 discloses the covered information.

4 (2) A list of operators that the school has written
5 agreements with, a copy of each written agreement, and a
6 business address and telephone number for each operator.

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

9 (4) A written description of the procedures that a
10 parent may use to carry out the rights enumerated under
11 Section 45.

12 The school must, at a minimum, update the items under
13 paragraphs (1), (3), and (4) of this subsection no later than
14 30 calendar days following the start of a school year and no
15 later than 30 days following the beginning of a calendar year.

16 (b) Each school must adopt a policy designating which
17 school employees are authorized to enter into written
18 agreements with operators. This subsection may not be construed
19 to limit individual school employees outside of the scope of
20 their employment from entering into agreements with operators
21 on their own behalf and for non-K through 12 school purposes,
22 provided that no covered information is provided to the
23 operators. Any agreement or contract entered into in violation
24 of this Act is void and unenforceable as against public policy.

25 (c) A school must post on its website each written
26 agreement entered into under this Act, along with any

1 information required under subsection (a), no later than 5
2 business days after entering into the agreement.

3 (d) After receipt of notice of a breach under Section 15 or
4 determination of a breach of covered information maintained by
5 the school, a school shall electronically notify, no later than
6 5 calendar days after receipt of the notice or determination
7 that a breach has occurred, the parent of any student whose
8 covered information is involved in the breach. The school must
9 also post the notice on the school's website. The notification
10 must include, but is not limited to, all of the following:

11 (1) The date, estimated date, or estimated date range
12 of the breach.

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

16 (3) Information that the parent may use to contact the
17 operator and school to inquire about the breach.

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

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

22 (6) A statement that the parent may obtain information
23 from the Federal Trade Commission and consumer reporting
24 agencies about fraud alerts and security freezes.

25 (e) Each school must implement and maintain security
26 procedures and practices designed to protect covered

1 information from unauthorized access, destruction, use,
2 modification, or disclosure that, based on the sensitivity of
3 the covered information and the risk from unauthorized access,
4 (i) uses technologies and methodologies that are consistent
5 with the U.S. Department of Commerce's National Institute of
6 Standards and Technology's Framework for Improving Critical
7 Infrastructure Cybersecurity Version 1.1 and any updates to it,
8 (ii) maintain technical safeguards as they relate to the
9 possession of student records in a manner consistent with the
10 provisions of 45 CFR 164.312, and (iii) otherwise meet or
11 exceed industry standards.

12 (f) Each school shall designate an appropriate staff person
13 as a privacy officer, who may also be an official records
14 custodian as designated under the Illinois School Student
15 Records Act, to carry out the duties and responsibilities
16 assigned to schools and to ensure compliance with the
17 requirements of this Section and Section 26.

18 (g) A school shall make a request, pursuant to paragraph
19 (2) of Section 15, to an operator to destroy covered
20 information on behalf of a student's parent if the parent
21 requests from the school that the student's covered information
22 held by the operator be destroyed, so long as the destruction
23 of the covered information is not in violation of the Illinois
24 School Student Records Act.

1 Sec. 28. State Board duties.

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

4 (b) The State Board may not share, transfer, disclose, or
5 provide covered information to an entity or individual without
6 a contract or written agreement, except for disclosures
7 required by federal law to federal agencies.

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

16 (1) The name of the entity or individual. In naming an
17 individual, the list must include the entity that sponsors
18 the individual or with which the individual is affiliated,
19 if any. If the individual is conducting research at an
20 institution of higher education, the list may include the
21 name of that institution and a contact person in the
22 department that is associated with the research in lieu of
23 the name of the researcher. If the entity is an operator,
24 the list must include a business address and telephone
25 number for the operator.

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

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

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

4 (5) The use of the covered information under the
5 contract or agreement.

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

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

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

15 (1) Covered information that schools are required to
16 report to the State Board by State or federal law.

17 (2) Covered information in the State longitudinal data
18 system or any data warehouse used by the State Board to
19 populate the longitudinal data system.

20 The inventory shall make clear for what purposes the State
21 Board uses the covered information.

22 (e) The State Board shall develop, publish, and make
23 publicly available, for the benefit of schools, model student
24 data privacy policies and procedures that comply with relevant
25 State and federal law, including, but not limited to, a model
26 notice that schools must use to provide notice to parents and

1 students about operators. The notice must state, in general
2 terms, the types of student data that are collected by the
3 schools and shared with operators under this Act and the
4 purposes of collecting and using the student data. After
5 creation of the notice under this subsection, a schools shall,
6 at the beginning of each school year, provide the notice to
7 parents by the same means generally used to send notices to
8 them.

9 (105 ILCS 85/33 new)

10 Sec. 33. Parent and student rights.

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

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

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

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

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

25 (2) Request from a school a paper or electronic copy of

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

21 (A) Confirm the correction with the parent within
22 90 days after receiving the parent's request if the
23 school 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 Section shall be construed to limit the
5 rights granted to parents and students under the Illinois
6 School Student Records Act.

7 (105 ILCS 85/37 new)

8 Sec. 37. Oversight.

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

12 (1) A high school student enrolled in a public school
13 in this State.

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

16 (3) A parent of a student in a school district located
17 in whole or in part in Lake, Kane, Will, DuPage, McHenry,
18 or Cook County, but not in a school district organized
19 under Article 34 of the School Code.

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

22 (5) An expert in school information technology
23 systems.

24 (6) An expert in digital privacy law.

25 (7) A representative of a computer and information

1 technology trade group.

2 (8) A representative of a civil rights advocacy
3 organization.

4 (9) A representative of a different civil rights or a
5 privacy rights advocacy organization.

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

8 (11) A representative of a statewide association
9 representing school administrators.

10 (12) A representative of a statewide professional
11 teachers' organization.

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

14 (14) A representative of a professional teachers'
15 organization in a city having a population exceeding
16 500,000.

17 (15) A representative of a statewide association
18 representing school boards.

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

21 The Committee shall also consist of the Attorney General or
22 his or her designee and the State Superintendent of Education
23 or his or her designee.

24 The State Board, in consultation with the Committee, may
25 appoint no more than 2 additional individuals to the Committee
26 who shall serve in an advisory role and may not have voting or

1 other decision-making rights.

2 (b) The Committee shall initially meet at the call of the
3 Governor, at which meeting it shall designate a chairperson.
4 The Committee shall meet thereafter at the call of the
5 chairperson, but no less than 4 times within one year after the
6 effective date of this amendatory Act of the 101st General
7 Assembly and at least once per year thereafter to study,
8 review, and make recommendations to the General Assembly about
9 laws and rules in light of technological and legal developments
10 related to the privacy and security of school student data. The
11 members of the Committee shall serve without compensation but
12 may be reimbursed for reasonable and necessary expenses
13 incurred in performing their duties from funds appropriated to
14 the State Board for that purpose. The State Board must provide
15 administrative and other support to the Committee.

16 (c) The Committee shall submit an annual report to the
17 General Assembly and the State Board no later than December 15,
18 2020, and on or before each December 15 thereafter, with
19 recommendations, if any, for policy revisions and legislative
20 amendments that would carry out the intent of this Act.

21 (d) The Committee is subject to the Open Meetings Act and
22 the Freedom of Information Act.

23 Section 99. Effective date. This Act takes effect July 1,
24 2020."