



Rep. Robert Martwick

Filed: 4/9/2019

10100HB3606ham003

LRB101 09053 AXK 59528 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, and 33 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 "Interactive computer service" has the meaning ascribed to  
26 that term in Section 230 of the federal Communications Decency

1 Act of 1996 (47 U.S.C. 230).

2 "K through 12 school purposes" means purposes that are  
3 directed by or that customarily take place at the direction of  
4 a school, teacher, or school district; aid in the  
5 administration of school activities, including, but not  
6 limited to, instruction in the classroom or at home,  
7 administrative activities, and collaboration between students,  
8 school personnel, or parents; or are otherwise for the use and  
9 benefit of the school.

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

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

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

20 "School" means (1) any preschool, public kindergarten,  
21 elementary or secondary educational institution, vocational  
22 school, special educational facility, or any other elementary  
23 or secondary educational agency or institution or (2) any  
24 person, agency, or institution that maintains school student  
25 records from more than one school. Except as otherwise provided  
26 in this Act, "school" ~~"School"~~ includes a private or nonpublic

1 school.

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

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

16 (105 ILCS 85/10)

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

19 (1) Engage in targeted advertising on the operator's  
20 site, service, or application or target advertising on any  
21 other site, service, or application if the targeting of the  
22 advertising is based on any information, including covered  
23 information and persistent unique identifiers, that the  
24 operator has acquired because of the use of that operator's  
25 site, service, or application for K through 12 school

1 purposes.

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

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

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

19 (A) In furtherance of the K through 12 school  
20 purposes of the site, service, or application if the  
21 recipient of the covered information disclosed under  
22 this clause (A) does not further disclose the  
23 information, unless done to allow or improve  
24 operability and functionality of the operator's site,  
25 service, or application.

26 (B) To ensure legal and regulatory compliance or

1 take precautions against liability.

2 (C) To respond to the judicial process.

3 (D) To protect the safety or integrity of users of  
4 the site or others or the security of the site,  
5 service, or application.

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

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

20 Nothing in this Section prohibits the operator's use of  
21 information for maintaining, developing, supporting,  
22 improving, or diagnosing the operator's site, service, or  
23 application.

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

25 (105 ILCS 85/15)

1           Sec. 15. Operator duties. An operator shall do the  
2 following:

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

16           (2) Delete, within a reasonable time period, a  
17 student's covered information if the school or school  
18 district requests deletion of covered information under  
19 the control of the school or school district, unless a  
20 student or his or her parent or legal guardian consents to  
21 the maintenance of the covered information.

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

26           (4) Except for a nonpublic school, for any operator who

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

13 (A) A listing of the categories or types of covered  
14 information to be provided to the operator.

15 (B) A statement of the product or service being  
16 provided to the school by the operator.

17 (C) A statement that the operator is acting as a  
18 school official with a legitimate educational  
19 interest, is performing an institutional service or  
20 function for which the school would otherwise use  
21 employees, under the direct control of the school, with  
22 respect to the use and maintenance of covered  
23 information, and is using the covered information only  
24 for an authorized purpose and may not re-disclose it to  
25 third parties or affiliates, unless otherwise  
26 permitted under this Act, without permission from the



1 school or pursuant to court order.

2 (D) A description of how, if a breach is attributed  
3 to the operator, any costs and expenses incurred by the  
4 school in investigating and remediating the breach  
5 will be allocated between the operator and the school.  
6 The costs and expenses may include, but are not limited  
7 to:

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

12 (ii) providing credit monitoring to those  
13 students whose covered information was exposed in  
14 a manner during the breach that a reasonable person  
15 would believe that it could impact his or her  
16 credit or financial security;

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

20 (iv) providing any other notifications or  
21 fulfilling any other requirements adopted by the  
22 State Board or of any other State or federal laws.

23 (E) A statement that the operator must delete or  
24 transfer to the school all covered information if the  
25 information is no longer needed for the purposes of the  
26 written agreement and to specify the time period in

1           which the information must be deleted or transferred  
2           once the operator is made aware that the information is  
3           no longer needed for the purposes of the written  
4           agreement.

5           (F) A statement that the school must publish the  
6           written agreement on the school's website. If mutually  
7           agreed upon by the school and the operator, provisions  
8           of the written agreement, other than those under  
9           subparagraphs (A), (B), and (C), may be redacted in the  
10           copy of the written agreement published on the school's  
11           website.

12           (5) In case of any breach, within the most expedient  
13           time possible and without unreasonable delay, but no later  
14           than 30 calendar days after the determination that a breach  
15           has occurred, notify the school of any breach of the  
16           students' covered information.

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

18           (105 ILCS 85/26 new)

19           Sec. 26. School prohibitions. A school may not do either of  
20           the following:

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

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

1           (A) to the extent permitted by federal law, to law  
2           enforcement officials to protect the safety of users or  
3           others or the security or integrity of the operator's  
4           service;

5           (B) required by court order or State or federal  
6           law; or

7           (C) to ensure legal or regulatory compliance.

8           This paragraph (2) does not apply to nonpublic schools.

9           (105 ILCS 85/27 new)

10          Sec. 27. School duties.

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

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

20           (2) A list of operators that the school has written  
21           agreements with, a copy of each written agreement, and a  
22           business address for each operator.

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

25           (4) A written description of the procedures that a

1 parent may use to carry out the rights enumerated under  
2 Section 33.

3 (5) A list of any breaches of covered information  
4 maintained by the school or breaches under Section 15 that  
5 includes, but is not limited to, all of the following  
6 information:

7 (A) The number of students whose covered  
8 information is involved in the breach.

9 (B) The date, estimated date, or estimated date  
10 range of the breach.

11 (C) For a breach under Section 15, the name of the  
12 operator.

13 The school must, at a minimum, update the items under  
14 paragraphs (1), (3), (4), and (5) no later than 30 calendar  
15 days following the start of a school year and no later than 30  
16 days following the beginning of a calendar year.

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

26 (c) A school must post on its website each written

1 agreement entered into under this Act, along with any  
2 information required under subsection (a), no later than 5  
3 business days after entering into the agreement.

4 (d) After receipt of notice of a breach under Section 15 or  
5 determination of a breach of covered information maintained by  
6 the school, a school shall electronically notify, no later than  
7 30 calendar days after receipt of the notice or determination  
8 that a breach has occurred, the parent of any student whose  
9 covered information is involved in the breach. 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) use technologies and methodologies that are consistent with  
5 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 or (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.

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

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

24 (h) This Section does not apply to nonpublic schools.

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

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

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

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

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

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

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

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

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

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

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

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



1 terms, the types of student data that are collected by the  
2 schools and shared with operators under this Act and the  
3 purposes of collecting and using the student data. After  
4 creation of the notice under this subsection, a school shall,  
5 at the beginning of each school year, provide the notice to  
6 parents by the same means generally used to send notices to  
7 them. This subsection does not apply to nonpublic schools.

8 (105 ILCS 85/33 new)

9 Sec. 33. Parent and student 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 K through 12 school purposes and not further processed in a  
14 manner that is incompatible with those purposes.

15 (c) A student's covered information shall only be adequate,  
16 relevant, and limited to what is necessary in relation to the K  
17 through 12 school purposes for which it is processed.

18 (d) Except for a parent of a student enrolled in a  
19 nonpublic school, the parent of a student enrolled in a school  
20 has the right to all of the following:

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

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

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

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

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

26 (B) Notify the operator who must confirm the

1           correction with the parent within 90 calendar days  
2           after receiving the parent's request if the covered  
3           information that contains the factual inaccuracy is  
4           maintained by an operator.

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

8           Section 99. Effective date. This Act takes effect July 1,  
9           2021."