



Sen. Omar Aquino

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LRB101 09053 AXK 60667 a

1 AMENDMENT TO HOUSE BILL 3606

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

5 "Section 5. The Student Online Personal Protection Act is
6 amended by changing Sections 5, 10, 15, and 30 and by adding
7 Sections 26, 27, 28, and 33 as follows:

8 (105 ILCS 85/5)

9 Sec. 5. Definitions. In this Act:

10 "Breach" means the unauthorized acquisition of
11 computerized data that compromises the security,
12 confidentiality, or integrity of covered information
13 maintained by an operator or school. "Breach" does not include
14 the good faith acquisition of personal information by an
15 employee or agent of an operator or school for a legitimate
16 purpose of the operator or school if the covered information is

1 not used for a purpose prohibited by this Act or subject to
2 further unauthorized disclosure.

3 "Covered information" means personally identifiable
4 information or material or information that is linked to
5 personally identifiable information or material in any media or
6 format that is not publicly available and is any of the
7 following:

8 (1) Created by or provided to an operator by a student
9 or the student's parent ~~or legal guardian~~ in the course of
10 the student's or ~~parent's, or legal guardian's~~ use of the
11 operator's site, service, or application for K through 12
12 school purposes.

13 (2) Created by or provided to an operator by an
14 employee or agent of a school or school district for K
15 through 12 school purposes.

16 (3) Gathered by an operator through the operation of
17 its site, service, or application for K through 12 school
18 purposes and personally identifies a student, including,
19 but not limited to, information in the student's
20 educational record or electronic mail, first and last name,
21 home address, telephone number, electronic mail address,
22 or other information that allows physical or online
23 contact, discipline records, test results, special
24 education data, juvenile dependency records, grades,
25 evaluations, criminal records, medical records, health
26 records, a social security number, biometric information,

1 disabilities, socioeconomic information, food purchases,
2 political affiliations, religious information, text
3 messages, documents, student identifiers, search activity,
4 photos, voice recordings, or geolocation information.

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

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

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

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

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

26 "School" means (1) any preschool, public kindergarten,

1 elementary or secondary educational institution, vocational
2 school, special educational facility, or any other elementary
3 or secondary educational agency or institution or (2) any
4 person, agency, or institution that maintains school student
5 records from more than one school. Except as otherwise provided
6 in this Act, "school" "School" includes a private or nonpublic
7 school.

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

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

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

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

22 (105 ILCS 85/10)

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

25 (1) Engage in targeted advertising on the operator's

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

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

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

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

25 (A) In furtherance of the K through 12 school
26 purposes of the site, service, or application if the

1 recipient of the covered information disclosed under
2 this clause (A) does not further disclose the
3 information, unless done to allow or improve
4 operability and functionality of the operator's site,
5 service, or application.

6 (B) To ensure legal and regulatory compliance or
7 take precautions against liability.

8 (C) To respond to the judicial process.

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

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

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

26 Nothing in this Section prohibits the operator's use of

1 information for maintaining, developing, supporting,
2 improving, or diagnosing the operator's site, service, or
3 application.

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

5 (105 ILCS 85/15)

6 Sec. 15. Operator duties. An operator shall do the
7 following:

8 (1) Implement and maintain reasonable security
9 procedures and practices that otherwise meet or exceed
10 industry standards ~~appropriate to the nature of the covered~~
11 ~~information~~ and designed to protect ~~that~~ covered
12 information from unauthorized access, destruction, use,
13 modification, or disclosure.

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

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

24 (4) Except for a nonpublic school, for any operator who
25 seeks to receive from a school, school district, or the

1 State Board in any manner any covered information, enter
2 into a written agreement with the school, school district,
3 or State Board before the covered information may be
4 transferred. The written agreement may be created in
5 electronic form and signed with an electronic or digital
6 signature or may be a click wrap agreement that is used
7 with software licenses, downloaded or online applications
8 and transactions for educational technologies, or other
9 technologies in which a user must agree to terms and
10 conditions before using the product or service. Any written
11 agreement entered into, amended, or renewed must contain
12 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, pursuant to the federal
18 Family Educational Rights and Privacy Act of 1974, the
19 operator is acting as a school official with a
20 legitimate educational interest, is performing an
21 institutional service or function for which the school
22 would otherwise use employees, under the direct
23 control of the school, with respect to the use and
24 maintenance of covered information, and is using the
25 covered information only for an authorized purpose and
26 may not re-disclose it to third parties or affiliates,

1 unless otherwise permitted under this Act, without
2 permission from the school or pursuant to court order.

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

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

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

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

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

24 (E) A statement that the operator must delete or
25 transfer to the school all covered information if the
26 information is no longer needed for the purposes of the

1 written agreement and to specify the time period in
2 which the information must be deleted or transferred
3 once the operator is made aware that the information is
4 no longer needed for the purposes of the written
5 agreement.

6 (F) If the school maintains a website, a statement
7 that the school must publish the written agreement on
8 the school's website. If the school does not maintain a
9 website, a statement that the school must make the
10 written agreement available for inspection by the
11 general public at its administrative office. If
12 mutually agreed upon by the school and the operator,
13 provisions of the written agreement, other than those
14 under subparagraphs (A), (B), and (C), may be redacted
15 in the copy of the written agreement published on the
16 school's website or made available at its
17 administrative office.

18 (5) In case of any breach, within the most expedient
19 time possible and without unreasonable delay, but no later
20 than 30 calendar days after the determination that a breach
21 has occurred, notify the school of any breach of the
22 students' covered information.

23 (6) Except for a nonpublic school, provide to the
24 school a list of any third parties or affiliates to whom
25 the operator is currently disclosing covered information
26 or has disclosed covered information. This list must, at a

1 minimum, be updated and provided to the school by the
2 beginning of each State fiscal year and at the beginning of
3 each calendar year.

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

5 (105 ILCS 85/26 new)

6 Sec. 26. School prohibitions. A school may not do either of
7 the following:

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

9 (2) Share, transfer, disclose, or provide access to a
10 student's covered information to an entity or individual,
11 other than the student's parent, school personnel, or the
12 State Board, without a written agreement, unless the
13 disclosure or transfer is:

14 (A) to the extent permitted by State or federal
15 law, to law enforcement officials to protect the safety
16 of users or others or the security or integrity of the
17 operator's service;

18 (B) required by court order or State or federal
19 law; or

20 (C) to ensure legal or regulatory compliance.

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

22 (105 ILCS 85/27 new)

23 Sec. 27. School duties.

24 (a) Each school shall post and maintain on its website or,

1 if the school does not maintain a website, make available for
2 inspection by the general public at its administrative office
3 all of the following information:

4 (1) An explanation, that is clear and understandable by
5 a layperson, of the data elements of covered information
6 that the school collects, maintains, or discloses to any
7 person, entity, third party, or governmental agency. The
8 information must explain how the school uses, to whom or
9 what entities it discloses, and for what purpose it
10 discloses the covered information.

11 (2) A list of operators that the school has written
12 agreements with, a copy of each written agreement, and a
13 business address for each operator. A copy of a written
14 agreement posted or made available by a school under this
15 paragraph may contain redactions, as provided under
16 subparagraph (F) of paragraph (4) of Section 15.

17 (3) For each operator, a list of any subcontractors to
18 whom covered information may be disclosed, as provided by
19 the operator to the school under paragraph (6) of Section
20 15.

21 (4) A written description of the procedures that a
22 parent may use to carry out the rights enumerated under
23 Section 33.

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

1 information:

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

4 (B) The date, estimated date, or estimated date
5 range of the breach.

6 (C) For a breach under Section 15, the name of the
7 operator.

8 The school may omit from the list required under this
9 paragraph (5) (i) any breach in which, to the best of the
10 school's knowledge at the time of updating the list, the
11 number of students whose covered information is involved in
12 the breach is less than 10% of the school's enrollment,
13 (ii) any breach in which, at the time of posting the list,
14 the school is not required to notify the parent of a
15 student under subsection (d), (iii) any breach in which the
16 date, estimated date, or estimated date range in which it
17 occurred is earlier than July 1, 2021, or (iv) any breach
18 previously posted on a list under this paragraph (5) no
19 more than 5 years prior to the school updating the current
20 list.

21 The school must, at a minimum, update the items under
22 paragraphs (1), (3), (4), and (5) no later than 30 calendar
23 days following the start of a fiscal year and no later than 30
24 days following the beginning of a calendar year.

25 (b) Each school must adopt a policy designating which
26 school employees are authorized to enter into written

1 agreements with operators. This subsection may not be construed
2 to limit individual school employees outside of the scope of
3 their employment from entering into agreements with operators
4 on their own behalf and for non-K through 12 school purposes,
5 provided that no covered information is provided to the
6 operators. Any agreement or contract entered into in violation
7 of this Act is void and unenforceable as against public policy.

8 (c) A school must post on its website or, if the school
9 does not maintain a website, make available at its
10 administrative office for inspection by the general public each
11 written agreement entered into under this Act, along with any
12 information required under subsection (a), no later than 10
13 business days after entering into the agreement.

14 (d) After receipt of notice of a breach under Section 15 or
15 determination of a breach of covered information maintained by
16 the school, a school shall notify, no later than 30 calendar
17 days after receipt of the notice or determination that a breach
18 has occurred, the parent of any student whose covered
19 information is involved in the breach. The notification must
20 include, but is not limited to, all of the following:

21 (1) The date, estimated date, or estimated date range
22 of the breach.

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

26 (3) Information that the parent may use to contact the

1 operator and school to inquire about the breach.

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

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

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

9 (e) Each school must implement and maintain reasonable
10 security procedures and practices that otherwise meet or exceed
11 industry standards designed to protect covered information
12 from unauthorized access, destruction, use, modification, or
13 disclosure. Any written agreement under which the disclosure of
14 covered information between the school and a third party takes
15 place must include a provision requiring the entity to whom the
16 covered information is disclosed to implement and maintain
17 reasonable security procedures and practices that otherwise
18 meet or exceed industry standards designed to protect covered
19 information from unauthorized access, destruction, use,
20 modification, or disclosure. The State Board must make
21 available on its website a guidance document for schools
22 pertaining to reasonable security procedures and practices
23 under this subsection.

24 (f) Each school may designate an appropriate staff person
25 as a privacy officer, who may also be an official records
26 custodian as designated under the Illinois School Student

1 Records Act, to carry out the duties and responsibilities
2 assigned to schools and to ensure compliance with the
3 requirements of this Section and Section 26.

4 (g) A school shall make a request, pursuant to paragraph
5 (2) of Section 15, to an operator to delete covered information
6 on behalf of a student's parent if the parent requests from the
7 school that the student's covered information held by the
8 operator be deleted, so long as the deletion of the covered
9 information is not in violation of the Illinois School Student
10 Records Act.

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

12 (105 ILCS 85/28 new)

13 Sec. 28. State Board duties.

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

16 (b) Except for an employee of the State Board or a State
17 Board official acting within his or her official capacity, the
18 State Board may not share, transfer, disclose, or provide
19 covered information to an entity or individual without a
20 contract or written agreement, except for disclosures required
21 by federal law to federal agencies.

22 (c) At least once annually, the State Board must publish
23 and maintain on its website a list of all of the entities or
24 individuals, including, but not limited to, operators,
25 individual researchers, research organizations, institutions

1 of higher education, or government agencies, that the State
2 Board contracts with or has written agreements with and that
3 hold covered information and a copy of each contract or written
4 agreement. The list must include all of the following
5 information:

6 (1) The name of the entity or individual. In naming an
7 individual, the list must include the entity that sponsors
8 the individual or with which the individual is affiliated,
9 if any. If the individual is conducting research at an
10 institution of higher education, the list may include the
11 name of that institution and a contact person in the
12 department that is associated with the research in lieu of
13 the name of the researcher. If the entity is an operator,
14 the list must include its business address.

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

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

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

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

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

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

25 If mutually agreed upon by the State Board and the
26 operator, provisions of a contract or written agreement, other

1 than those pertaining to paragraphs (1) through (7), may be
2 redacted on the State Board's website.

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

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

10 (2) Covered information in the State longitudinal data
11 system or any data warehouse used by the State Board to
12 populate the longitudinal data system.

13 The inventory shall make clear for what purposes the State
14 Board uses the covered information.

15 (e) The State Board shall develop, publish, and make
16 publicly available, for the benefit of schools, model student
17 data privacy policies and procedures that comply with relevant
18 State and federal law, including, but not limited to, a model
19 notice that schools must use to provide notice to parents and
20 students about operators. The notice must state, in general
21 terms, the types of student data that are collected by the
22 schools and shared with operators under this Act and the
23 purposes of collecting and using the student data. After
24 creation of the notice under this subsection, a school shall,
25 at the beginning of each school year, provide the notice to
26 parents by the same means generally used to send notices to

1 them. This subsection does not apply to nonpublic schools.

2 (105 ILCS 85/30)

3 Sec. 30. Applicability. This Act does not do any of the
4 following:

5 (1) Limit the authority of a law enforcement agency to
6 obtain any content or information from an operator as
7 authorized by law or under a court order.

8 (2) Limit the ability of an operator to use student
9 data, including covered information, for adaptive learning
10 or customized student learning purposes.

11 (3) Apply to general audience Internet websites,
12 general audience online services, general audience online
13 applications, or general audience mobile applications,
14 even if login credentials created for an operator's site,
15 service, or application may be used to access those general
16 audience sites, services, or applications.

17 (4) Limit service providers from providing Internet
18 connectivity to schools or students and their families.

19 (5) Prohibit an operator of an Internet website, online
20 service, online application, or mobile application from
21 marketing educational products directly to parents if the
22 marketing did not result from the use of covered
23 information obtained by the operator through the provision
24 of services covered under this Act.

25 (6) Impose a duty upon a provider of an electronic

1 store, gateway, marketplace, or other means of purchasing
2 or downloading software or applications to review or
3 enforce compliance with this Act on those applications or
4 software.

5 (7) Impose a duty upon a provider of an interactive
6 computer service to review or enforce compliance with this
7 Act by third-party content providers.

8 (8) Prohibit students from downloading, exporting,
9 transferring, saving, or maintaining their own student
10 data or documents.

11 (9) Supersede the federal Family Educational Rights
12 and Privacy Act of 1974, ~~or rules adopted pursuant to that~~
13 ~~Act or~~ the Illinois School Student Records Act, or any
14 rules adopted pursuant to those Acts.

15 (10) Prohibit an operator or school from producing and
16 distributing, free or for consideration, student class
17 photos and yearbooks to the school, students, parents, or
18 individuals authorized by parents and to no others, in
19 accordance with the terms of a written agreement between
20 the operator and the school.

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

22 (105 ILCS 85/33 new)

23 Sec. 33. Parent and student rights.

24 (a) A student's covered information shall be collected only
25 for K through 12 school purposes and not further processed in a

1 manner that is incompatible with those purposes.

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

5 (c) Except for a parent of a student enrolled in a
6 nonpublic school, the parent of a student enrolled in a school
7 has the right to all of the following:

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

11 (2) Request from a school a paper or electronic copy of
12 the student's covered information, including covered
13 information maintained by an operator or the State Board.
14 If a parent requests an electronic copy of the student's
15 covered information under this paragraph, the school must
16 provide an electronic copy of that information, unless the
17 school does not maintain the information in an electronic
18 format and reproducing the information in an electronic
19 format would be unduly burdensome to the school. If a
20 parent requests a paper copy of the student's covered
21 information, the school may charge the parent the
22 reasonable cost for copying the information in an amount
23 not to exceed the amount fixed in a schedule adopted by the
24 State Board, except that no parent may be denied a copy of
25 the information due to the parent's inability to bear the
26 cost of the copying. The State Board must adopt rules on

1 the methodology and frequency of requests under this
2 paragraph.

3 (3) Request corrections of factual inaccuracies
4 contained in the student's covered information. After
5 receiving a request for corrections and determining that a
6 factual inaccuracy exists, a school must do either of the
7 following:

8 (A) If the school maintains the covered
9 information that contains the factual inaccuracy,
10 correct the factual inaccuracy and confirm the
11 correction with the parent within 90 calendar days
12 after receiving the parent's request.

13 (B) If the operator or State Board maintains the
14 covered information that contains the factual
15 inaccuracy, notify the operator or the State Board of
16 the correction. The operator or the State Board must
17 correct the factual inaccuracy and confirm the
18 correction with the school within 90 calendar days
19 after receiving the notice. Within 10 business days
20 after receiving confirmation of the correction from
21 the operator or State Board, the school must confirm
22 the correction with the parent.

23 (d) Nothing in this Section shall be construed to limit the
24 rights granted to parents and students under the Illinois
25 School Student Records Act or the federal Family Educational
26 Rights and Privacy Act of 1974.

1 Section 99. Effective date. This Act takes effect July 1,
2 2021.".