



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB1578

Introduced 2/26/2021, by Sen. Robert F. Martwick

#### SYNOPSIS AS INTRODUCED:

105 ILCS 85/10  
105 ILCS 85/15  
105 ILCS 85/26  
105 ILCS 85/28  
105 ILCS 85/33

Amends the Student Online Personal Protection Act. Provides that an operator shall not knowingly sell, rent, lease, or trade a student's information (rather than knowingly sell or rent a student's information). Regarding an operator's request to receive covered information from a school, a school district, or the State Board of Education, provides that the written agreement related thereto must require the operator to provide a parent with a means to view and to request edits to the covered information to be maintained by the operator. If a breach occurs and is attributed to the operator, provides that any investigation and remediation costs and expenses incurred by the school as a result of the breach shall be borne by the operator (rather than the costs and expenses shall be allocated between the operator and the school). Removes local school council members as individuals who are authorized to share, transfer, disclose, or provide access to a student's covered information without a written agreement. Requires the State Board of Education to develop and make available model student data privacy policies and procedures as soon as practical after July 1, 2021. Makes changes concerning parent and student rights. Effective immediately.

LRB102 14184 CMG 19536 b

FISCAL NOTE ACT  
MAY APPLY

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 5. The Student Online Personal Protection Act is  
5 amended by changing Sections 10, 15, 26, 28, and 33 as follows:

6 (105 ILCS 85/10)

7 (Text of Section before amendment by P.A. 101-516)

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

10 (1) Engage in targeted advertising on the operator's  
11 site, service, or application or target advertising on any  
12 other site, service, or application if the targeting of  
13 the advertising is based on any information, including  
14 covered information and persistent unique identifiers,  
15 that the operator has acquired because of the use of that  
16 operator's site, service, or application for K through 12  
17 school purposes.

18 (2) Use information, including persistent unique  
19 identifiers, created or gathered by the operator's site,  
20 service, or application to amass a profile about a  
21 student, except in furtherance of K through 12 school  
22 purposes. "Amass a profile" does not include the  
23 collection and retention of account information that

1 remains under the control of the student, the student's  
2 parent or legal guardian, or the school.

3 (3) Sell or rent a student's information, including  
4 covered information. This subdivision (3) does not apply  
5 to the purchase, merger, or other type of acquisition of  
6 an operator by another entity if the operator or successor  
7 entity complies with this Act regarding previously  
8 acquired student information.

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

12 (A) In furtherance of the K through 12 school  
13 purposes of the site, service, or application if the  
14 recipient of the covered information disclosed under  
15 this clause (A) does not further disclose the  
16 information, unless done to allow or improve  
17 operability and functionality of the operator's site,  
18 service, or application.

19 (B) To ensure legal and regulatory compliance or  
20 take precautions against liability.

21 (C) To respond to the judicial process.

22 (D) To protect the safety or integrity of users of  
23 the site or others or the security of the site,  
24 service, or application.

25 (E) For a school, educational, or employment  
26 purpose requested by the student or the student's

1 parent or legal guardian, provided that the  
2 information is not used or further disclosed for any  
3 other purpose.

4 (F) To a third party if the operator contractually  
5 prohibits the third party from using any covered  
6 information for any purpose other than providing the  
7 contracted service to or on behalf of the operator,  
8 prohibits the third party from disclosing any covered  
9 information provided by the operator with subsequent  
10 third parties, and requires the third party to  
11 implement and maintain reasonable security procedures  
12 and practices.

13 Nothing in this Section prohibits the operator's use of  
14 information for maintaining, developing, supporting,  
15 improving, or diagnosing the operator's site, service, or  
16 application.

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

18 (Text of Section after amendment by P.A. 101-516)

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

21 (1) Engage in targeted advertising on the operator's  
22 site, service, or application or target advertising on any  
23 other site, service, or application if the targeting of  
24 the advertising is based on any information, including  
25 covered information and persistent unique identifiers,

1 that the operator has acquired because of the use of that  
2 operator's site, service, or application for K through 12  
3 school purposes.

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

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

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

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

1 service, or application.

2 (B) To ensure legal and regulatory compliance or  
3 take precautions against liability.

4 (C) To respond to the judicial process.

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

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

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

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

25 (Source: P.A. 100-315, eff. 8-24-17; 101-516, eff. 7-1-21.)

1 (105 ILCS 85/15)

2 (Text of Section before amendment by P.A. 101-516)

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

5 (1) Implement and maintain reasonable security  
6 procedures and practices appropriate to the nature of the  
7 covered information and designed to protect that covered  
8 information from unauthorized access, destruction, use,  
9 modification, or disclosure.

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

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

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

21 (Text of Section after amendment by P.A. 101-516)

22 Sec. 15. Operator duties. An operator shall do the  
23 following:

24 (1) Implement and maintain reasonable security  
25 procedures and practices that otherwise meet or exceed

1 industry standards designed to protect covered information  
2 from unauthorized access, destruction, use, modification,  
3 or disclosure.

4 (2) Delete, within a reasonable time period, a  
5 student's covered information if the school or school  
6 district requests deletion of covered information under  
7 the control of the school or school district, unless a  
8 student or his or her parent consents to the maintenance  
9 of the covered information.

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

14 (4) Except for a nonpublic school, for any operator  
15 who seeks to receive from a school, school district, or  
16 the State Board in any manner any covered information,  
17 enter into a written agreement with the school, school  
18 district, or State Board before the covered information  
19 may be transferred. The written agreement may be created  
20 in electronic form and signed with an electronic or  
21 digital signature or may be a click wrap agreement that is  
22 used with software licenses, downloaded or online  
23 applications and transactions for educational  
24 technologies, or other technologies in which a user must  
25 agree to terms and conditions before using the product or  
26 service. Any written agreement entered into, amended, or



1 renewed must contain all of the following:

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

4 (A-5) A requirement that the operator provide to a  
5 parent a means through the parent's dashboard to view  
6 and to request edits to the covered information to be  
7 maintained by the operator.

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

10 (C) A statement that, pursuant to the federal  
11 Family Educational Rights and Privacy Act of 1974, the  
12 operator is acting as a school official with a  
13 legitimate educational interest, is performing an  
14 institutional service or function for which the school  
15 would otherwise use employees, under the direct  
16 control of the school, with respect to the use and  
17 maintenance of covered information, and is using the  
18 covered information only for an authorized purpose and  
19 may not re-disclose it to third parties or affiliates,  
20 unless otherwise permitted under this Act, without  
21 permission from the school or pursuant to court order.

22 (D) A description of how, if a breach is  
23 attributed to the operator, any costs and expenses  
24 incurred by the school in investigating and  
25 remediating the breach will be borne by ~~allocated~~  
26 ~~between~~ the operator ~~and the school~~. The costs and

1 expenses may include, but are not limited to:

2 (i) providing notification to the parents of  
3 those students whose covered information was  
4 compromised and to regulatory agencies or other  
5 entities as required by law or contract;

6 (ii) providing credit monitoring to those  
7 students whose covered information was exposed in  
8 a manner during the breach that a reasonable  
9 person would believe that it could impact his or  
10 her credit or financial security;

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

14 (iv) providing any other notifications or  
15 fulfilling any other requirements adopted by the  
16 State Board or of any other State or federal laws.

17 (E) A statement that the operator must delete or  
18 transfer to the school all covered information if the  
19 information is no longer needed for the purposes of  
20 the written agreement and to specify the time period  
21 in which the information must be deleted or  
22 transferred once the operator is made aware that the  
23 information is no longer needed for the purposes of  
24 the written agreement.

25 (F) If the school maintains a website, a statement  
26 that the school must publish the written agreement on

1 the school's website. If the school does not maintain  
2 a website, a statement that the school must make the  
3 written agreement available for inspection by the  
4 general public at its administrative office. If  
5 mutually agreed upon by the school and the operator,  
6 provisions of the written agreement, other than those  
7 under subparagraphs (A), (B), and (C), may be redacted  
8 in the copy of the written agreement published on the  
9 school's website or made available at its  
10 administrative office.

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

16 (6) Except for a nonpublic school, provide to the  
17 school a list of any third parties or affiliates to whom  
18 the operator is currently disclosing covered information  
19 or has disclosed covered information. This list must, at a  
20 minimum, be updated and provided to the school by the  
21 beginning of each State fiscal year and at the beginning  
22 of each calendar year.

23 (Source: P.A. 100-315, eff. 8-24-17; 101-516, eff. 7-1-21.)

24 (105 ILCS 85/26)

25 (This Section may contain text from a Public Act with a

1 delayed effective date)

2 Sec. 26. School prohibitions. A school may not do either  
3 of the following:

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

5 (2) Share, transfer, disclose, or provide access to a  
6 student's covered information to an entity or individual,  
7 other than the student's parent, school personnel,  
8 appointed or elected school board members ~~or local school~~  
9 ~~council members~~, or the State Board, without a written  
10 agreement, unless the disclosure or transfer is:

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

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

17 (C) to ensure legal or regulatory compliance.

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

20 (Source: P.A. 101-516, eff. 7-1-21.)

21 (105 ILCS 85/28)

22 (This Section may contain text from a Public Act with a  
23 delayed effective date)

24 Sec. 28. State Board duties.

25 (a) The State Board may not sell, rent, lease, or trade

1 covered information.

2 (b) Except for an employee of the State Board or a State  
3 Board official acting within his or her official capacity, the  
4 State Board may not share, transfer, disclose, or provide  
5 covered information to an entity or individual without a  
6 contract or written agreement, except for disclosures required  
7 by State or federal law.

8 (c) At least once 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 written agreements with and that  
14 hold covered information and a copy of each contract or  
15 written agreement. The list must include all of the following  
16 information:

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

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

1 agreement.

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

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

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

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

9 (7) A list of any subcontractors to whom covered  
10 information may be disclosed under Section 15 or a link to  
11 a page on the operator's website that clearly lists that  
12 information.

13 If mutually agreed upon by the State Board and the  
14 operator, provisions of a contract or written agreement, other  
15 than those pertaining to paragraphs (1) through (7), may be  
16 redacted on the State Board's website.

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

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

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

1           The inventory shall make clear for what purposes the State  
2 Board uses the covered information.

3           (e) As soon as practical after July 1, 2021 (the effective  
4 date of Public Act 101-516), the ~~The~~ State Board shall  
5 develop, publish, and make publicly available, for the benefit  
6 of schools, model student data privacy policies and procedures  
7 that comply with relevant State and federal law, including,  
8 but not limited to, a model notice that schools must use to  
9 provide notice to parents and students about operators. The  
10 notice must state, in general terms, the types of student data  
11 that are collected by the schools and shared with operators  
12 under this Act and the purposes of collecting and using the  
13 student data. After creation of the notice under this  
14 subsection, a school shall, at the beginning of each school  
15 year, provide the notice to parents by the same means  
16 generally used to send notices to them. This subsection does  
17 not apply to nonpublic schools.

18           (Source: P.A. 101-516, eff. 7-1-21.)

19           (105 ILCS 85/33)

20           (This Section may contain text from a Public Act with a  
21 delayed effective date)

22           Sec. 33. Parent and student rights.

23           (a) A student's covered information shall be collected  
24 only for K through 12 school purposes and not further  
25 processed in a manner that is incompatible with those

1 purposes.

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

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

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

12 (1.5) Request from the operator the ability to edit  
13 the student's covered information.

14 (2) Request from a school a paper or electronic copy  
15 of the student's covered information, including covered  
16 information maintained by an operator ~~or the State Board~~.  
17 If a parent requests an electronic copy of the student's  
18 covered information under this paragraph, the school must  
19 provide an electronic copy of that information, unless the  
20 school does not maintain the information in an electronic  
21 format and reproducing the information in an electronic  
22 format would be unduly burdensome to the school. If a  
23 parent requests a paper copy of the student's covered  
24 information, the school may charge the parent the  
25 reasonable cost for copying the information in an amount  
26 not to exceed the amount fixed in a schedule adopted by the



1 State Board, except that no parent may be denied a copy of  
2 the information due to the parent's inability to bear the  
3 cost of the copying. The State Board must adopt rules on  
4 the methodology and frequency of requests under this  
5 paragraph.

6 (2.5) Request from the State Board a paper or  
7 electronic copy of the student's covered information,  
8 including covered information maintained by an operator of  
9 the State Board or by the State Board.

10 (3) Request corrections of factual inaccuracies  
11 contained in the student's covered information. After  
12 receiving a request for corrections and determining that a  
13 factual inaccuracy exists, a school or the State Board  
14 must do either of the following:

15 (A) If the school or the State Board maintains or  
16 possesses the covered information that contains the  
17 factual inaccuracy, correct the factual inaccuracy and  
18 confirm the correction with the parent within 90  
19 calendar days after receiving the parent's request.

20 (B) If the operator ~~or State Board~~ maintains or  
21 possesses the covered information that contains the  
22 factual inaccuracy, notify the operator ~~or the State~~  
23 ~~Board~~ of the correction. The operator ~~or the State~~  
24 ~~Board~~ must correct the factual inaccuracy and confirm  
25 the correction with the school or the State Board  
26 within 90 calendar days after receiving the notice.

1           Within 10 business days after receiving confirmation  
2           of the correction from the operator ~~or State Board~~,  
3           the school or the State Board must confirm the  
4           correction with the parent.

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

9           (Source: P.A. 101-516, eff. 7-1-21.)

10           Section 95. No acceleration or delay. Where this Act makes  
11           changes in a statute that is represented in this Act by text  
12           that is not yet or no longer in effect (for example, a Section  
13           represented by multiple versions), the use of that text does  
14           not accelerate or delay the taking effect of (i) the changes  
15           made by this Act or (ii) provisions derived from any other  
16           Public Act.

17           Section 99. Effective date. This Act takes effect upon  
18           becoming law.