



Rep. Scott Drury

Filed: 11/28/2016

09900SB1393ham001

LRB099 08398 MLM 51831 a

1 AMENDMENT TO SENATE BILL 1393

2 AMENDMENT NO. _____. Amend Senate Bill 1393 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Student Data Privacy Act.

6 Section 5. Legislative intent. It is the intent of the
7 General Assembly to ensure that information generated by and
8 about students in the course of and in connection with their
9 education is safeguarded and that student privacy is honored,
10 respected, and protected. The General Assembly finds the
11 following:

12 (1) Information generated by and about students in the
13 course of and in connection with their education is a vital
14 resource for teachers and school staff in planning
15 education programs and services, scheduling students into
16 appropriate classes, and completing reports for school

1 districts.

2 (2) Information generated by and about students in the
3 course of and in connection with their education is
4 critical to educators in helping students successfully
5 graduate from high school and being ready to enter the
6 workforce or postsecondary education.

7 (3) While information generated by and about students
8 in the course of and in connection with their education is
9 important for educational purposes, it is also critically
10 important to ensure that the information is protected,
11 safeguarded, and kept private and used only by appropriate
12 educational authorities or their permitted designees, and
13 then only to serve the best interests of the student.

14 To that end, this Act helps ensure that information
15 generated by and about students in the course of and in
16 connection with their education is protected and expectations
17 of privacy are honored.

18 Section 10. Definitions. As used in this Act:

19 "Biometric information" has the meaning ascribed to that
20 term in Section 10-20.40 of the School Code.

21 "Directory information" means any personally identifiable
22 information that the State Board of Education has designated as
23 directory information under Section 375.80 of Title 23 of the
24 Illinois Administrative Code.

25 "Educational online product" means an Internet website,

1 online service, online application, cloud computing service,
2 or mobile application that is designed and marketed or may
3 reasonably be used for educational purposes.

4 "Educational purposes" means any activity that is directed
5 by an employee or agent of a school district with authority to
6 give the direction and is intended to assist with the school
7 district's educational curriculum.

8 "Interactive computer service" means any service, system,
9 or software provider that provides or enables multiple users
10 access to a computer server, including a service or system that
11 provides access to the Internet and systems or services offered
12 by libraries or educational institutions.

13 "Operator" means the owner or operator, or any agent
14 thereof, of an educational online product or interactive
15 computer service that may reasonably be used for educational
16 purposes or was designed and marketed for educational purposes.
17 For the purposes of this Act, the term "operator" shall not be
18 construed to include any school district, or school district
19 employee or agent acting on behalf of a school district
20 employer, that operates or owns an educational online product
21 that is solely used within the school district for educational
22 purposes.

23 "Personally identifiable information" means information
24 that, alone or in combination, identifies an individual student
25 with reasonable certainty or that is linked to information that
26 identifies an individual student, including, but not limited

1 to: (1) information in the student's school student record,
2 student permanent record, or student temporary record, as those
3 terms are defined in the Illinois School Student Records Act,
4 or other educational record or electronic mail; (2) the
5 student's first and last name or the name of the student's
6 parent or guardian or other family members; (3) the home
7 address of the student or student's family; (4) the telephone
8 number of the student or student's family; (5) the electronic
9 mail address of the student or student's family; (6) any other
10 information that allows physical or online contact with the
11 student; (7) discipline records; (8) test results; (9) data
12 that is a part of or related to any individualized education
13 program for such student; (10) juvenile dependency records;
14 (11) grades; (12) evaluations; (13) criminal records; (14)
15 medical records; (15) health records; (16) social security
16 number or other personal identifiers; (17) biometric
17 information; (18) disabilities; (19) socioeconomic
18 information; (20) food purchases; (21) political affiliations;
19 (22) religious information; (23) text messages; (24)
20 documents; (25) student identifiers, such as date of birth,
21 place of birth, and mother's maiden name; (26) search activity;
22 (27) photos; (28) voice recordings; (29) geolocation
23 information; (30) directory information; (31) online accounts;
24 (32) other information that, alone or in combination, is linked
25 or linkable to a specific student that would allow a reasonable
26 person in the school community who does not have knowledge of

1 the relevant circumstances to identify the student with
2 reasonable certainty; or (33) information requested by a person
3 whom the school district or an employee or agent of the school
4 district reasonably believes knows the identity of the student
5 to whom the information relates.

6 "Service provider" means a person, subcontractor, agent,
7 independent contractor, or other entity that provides a service
8 to an operator or provides a service that enables users to
9 access content, information, electronic mail, or other
10 services offered over the Internet or a computer network.

11 "Student data" means any information or record, including
12 personally identifiable information, not otherwise available
13 to the public that was collected or created by or otherwise
14 provided to an operator, in any media or format, for or in
15 connection with an educational purpose. "Student data"
16 includes any aggregated information or records capable of being
17 de-aggregated or reconstructed to the point that any student
18 may be individually identified therefrom.

19 "Targeted advertising" means presenting an advertisement
20 to a student or group of students in which the advertisement is
21 selected based on a known or assumed trait of the student or
22 group of students or information obtained or inferred over time
23 from that student's or group of students' online behavior;
24 usage of online applications, educational online products,
25 online services, cloud computing services, or mobile
26 applications; or student data. Targeted advertising does not

1 include information provided to a student for an educational
2 purpose.

3 Section 15. Operator and service provider duties.

4 (a) An operator or service provider shall not knowingly:

5 (1) engage in targeted advertising based in whole or in
6 part on any student data;

7 (2) use data created or collected through the operation
8 of educational online products or interactive services to
9 amass a profile about a student, except in furtherance of
10 specifically defined educational purposes that are set
11 forth in writing as required by subsection (e) of this
12 Section;

13 (3) sell, rent, or provide student data to a third
14 party, unless the data is part of assets being transferred
15 during the purchase, merger, or other acquisition of an
16 operator by another entity, provided that the successor
17 entity agrees in writing to be subject to and bound by the
18 provisions of this Act as though it were an operator with
19 respect to the acquired student data and information;

20 (4) exercise or claim any rights, implied or otherwise,
21 to any student data, unless otherwise authorized by this
22 Act;

23 (5) disclose student data, unless the disclosure is
24 made for the following purposes:

25 (A) for legitimate research purposes, subject to

1 and as allowed by federal law and in compliance with
2 subsection (a) of Section 6 of the Illinois School
3 Student Records Act, and under the direction of a
4 school district, provided that the student data is not
5 used for advertising or to amass a profile on the
6 student or for any other purposes other than
7 specifically defined educational purposes that are set
8 forth in writing as required by subsection (e) of this
9 Section;

10 (B) in response to requests by a school district or
11 State agency for personal information for educational
12 purposes;

13 (C) in response to legally permissible and
14 authorized requests or orders by law enforcement
15 agencies or courts of competent jurisdiction, as long
16 as the operator complies with the requirements of
17 federal and State law in protecting and disclosing that
18 information; or

19 (D) to a service provider, provided that the
20 operator contractually: (i) prohibits the service
21 provider from using any student data for any purpose
22 prohibited by this Act; (ii) prohibits the service
23 provider from disclosing any student data provided by
24 the operator with subsequent third parties; and (iii)
25 requires the service provider to implement and
26 maintain reasonable security procedures and practices

1 to ensure the confidentiality of the student data; or
2 (6) subject to the provisions of subsection (e) of this
3 Section, modify or otherwise alter the terms and conditions
4 of any agreement with a school district related to student
5 data without the express written consent of the school
6 district.

7 (b) An operator or service provider shall:

8 (1) implement and maintain reasonable security
9 procedures and practices appropriate to the nature of
10 the student data that are designed to protect the
11 information from unauthorized access, destruction,
12 use, modification, or disclosure; and

13 (2) delete student data within a reasonable period
14 of time, not to exceed 60 days, upon written request by
15 the school district, provided that the school district
16 provides the student or the student's parent or legal
17 guardian with written notice of the request and
18 provides an opportunity to object.

19 (c) Nothing in this Section shall be construed to prohibit
20 an operator or service provider from:

21 (1) using or sharing aggregated, de-identified student
22 data that is not capable of being deaggregated or otherwise
23 manipulated to allow for the identification of any
24 individual student to maintain, develop, support, improve,
25 or diagnose educational online products or interactive
26 computer services;

1 (2) using aggregated, de-identified student data that
2 is not capable of being deaggregated or otherwise
3 manipulated to allow for the identification of any
4 individual student to demonstrate the effectiveness of
5 educational online products or interactive computer
6 services, including marketing; or

7 (3) providing a response for a non-advertising,
8 educational purpose to a student's request for information
9 or feedback, provided that (i) the response is not
10 determined in whole or in part by payment or other
11 consideration from a third party, (ii) the operator does
12 not receive any payment or other consideration upon a
13 student selecting any information or responding to the
14 request, and (iii) the operator does not keep a record or
15 otherwise collect or retain data regarding a student's
16 online activities over time or that links or otherwise ties
17 the student to the request.

18 (d) Nothing in this Section shall be construed to:

19 (1) limit the authority of a law enforcement agency to
20 obtain any content or information from an operator as
21 authorized by law or pursuant to a court order;

22 (2) limit the ability of a school district to authorize
23 an operator to use student data for adaptive learning or
24 customized student-learning purposes, provided it is done
25 in a manner consistent with this Act;

26 (3) limit service providers from providing Internet

1 connectivity to schools or to students and the students'
2 parents or legal guardians;

3 (4) prohibit an operator from marketing educational
4 products to general audiences, provided that the marketing
5 is not based on any student data and does not constitute
6 targeted advertising;

7 (5) impose a duty upon a provider of an electronic
8 store, gateway, marketplace, or other means of purchasing
9 or downloading software or applications to review or
10 enforce compliance with this Section on such software or
11 applications, unless the provider is also an operator or
12 affiliated with an operator, in which case the provider is
13 required to comply with this Section with respect to
14 software or applications offered by or otherwise provided
15 by the operator or affiliate;

16 (6) impose a duty upon a provider of an interactive
17 computer service to review or enforce compliance with this
18 Section by third-party content providers, unless the
19 third-party content providers are affiliated with the
20 interactive computer service, in which case the
21 interactive computer service is required to comply with
22 this Section with respect to software or applications
23 offered or otherwise provided by those content providers;
24 or

25 (7) prohibit students from downloading, exporting,
26 transferring, saving, or maintaining the student's own

1 student data or documents, provided that an operator does
2 not offer or receive any consideration from a student
3 engaging in such an activity.

4 (e) Any operator who seeks to receive any student data may
5 do so only by entering into a written agreement with the
6 applicable school district before any records may be released
7 or transferred.

8 (1) The agreement shall include, but not be limited to,
9 all of the following:

10 (A) Provisions consistent with the prohibitions or
11 requirements of this Section.

12 (B) A statement of the educational products or
13 interactive computer services being provided.

14 (C) A statement that the operator is acting as a
15 school official with a legitimate educational
16 interest, is performing an institutional service or
17 function for which the school district would otherwise
18 use employees, is under the direct control of the
19 school district with respect to the use and maintenance
20 of student data, and is using such student data only
21 for an authorized purpose and will not redisclose it to
22 third parties or affiliates unless otherwise permitted
23 under this Act.

24 (D) A description of the actions the operator will
25 take, including a description of the training the
26 operator will provide to anyone who will receive or

1 have access to student data, to ensure the security and
2 confidentiality of student data. Compliance with this
3 subdivision (D) does not, in itself, absolve the
4 operator of liability in the event of an unauthorized
5 disclosure of student data.

6 (E) A provision stating that (i) any dispute
7 arising out of or otherwise connected to student data
8 must be litigated using Illinois law, (ii) the proper
9 venue is in the county in which the school district is
10 located, and (iii) the court in the proper venue shall
11 have jurisdiction over the operator.

12 (F) A statement that the agreement is the entire
13 agreement between the school district, including
14 school district employees or agents and other users,
15 and the operator.

16 (2) The agreement shall not include any provisions that
17 require a school district or its employees or agents to:

18 (A) pay the operator's attorney's fees or costs in
19 connection with any dispute arising out of or otherwise
20 connected to student data, except in the case of
21 willful or wanton conduct by a school district or its
22 employees or agents, in which case indemnification by
23 the school district may be permitted; or

24 (B) arbitrate any dispute arising out of or
25 otherwise connected to student data.

1 Section 20. Disclosure of student data by school district.
2 A school district or its employees or agents shall only
3 disclose student data in accordance with the provisions of this
4 Section.

5 Without prior written authorization from the school
6 district in which an individual employee or agent works, no
7 individual employee or agent of that school district may enter
8 into any agreements with operators or service providers that
9 concern the use of educational online products that utilize
10 student data. If an operator enters into an agreement with any
11 unauthorized individual employee or agent or other user, then
12 the school district must have the authority to unilaterally
13 cancel the agreement and require the operator or service
14 provider to provide all collected student data to the school
15 district or to delete it.

16 The school district may disclose personally identifiable
17 information or directory information if the student (if the
18 student is an adult) or the student's parent or legal guardian
19 (if the student is a minor) consents to the disclosure in
20 writing. An operator may not solicit any student or parent or
21 legal guardian to disclose student data.

22 Section 25. Collection of biometric information. No school
23 district may collect biometric information from a student or
24 use any device or mechanism to assess a student's physiological
25 or emotional state, unless the student (if the student is an

1 adult) or the student's parent or legal guardian (if student is
2 a minor) consents in writing.

3 Section 30. Security breach.

4 (a) Each school district must establish a policy for
5 notifying students and parents of any security breach or
6 unauthorized disclosure of student data by the school district
7 or by an operator, service provider, or other entity or third
8 party given access to student data or personally identifiable
9 information of a student.

10 (b) In the event of any security breach or unauthorized
11 disclosure of any student data by an operator, service
12 provider, or other entity or third party given access to
13 student data or personally identifiable information of any
14 student, the operator, service provider, or other entity or
15 third party shall immediately notify any Illinois school
16 district that has provided student data to the operator,
17 service provider, or other entity or third party of the breach
18 or unauthorized disclosure, investigate the causes and
19 consequences of the breach or unauthorized disclosure, and
20 reimburse the school district in full for all reasonable costs
21 and expenses incurred by the school district as a result of the
22 breach, including (i) providing notification to students,
23 parents, and guardians; (ii) providing at least one year's
24 credit monitoring to impacted students; and (iii) paying all
25 legal fees, costs, fines, and damages imposed against the

1 school district as a result of the breach.

2 (c) In the event of a security breach or unauthorized
3 disclosure of student data by a school district, State agency,
4 or other third party not covered by subsection (b) of this
5 Section and given access to student data or personally
6 identifiable information of any student, the school district,
7 State agency, or other third party shall immediately notify
8 each affected student (if the student is an adult) or the
9 student's parent or legal guardian (if the student is a minor)
10 of the breach or unauthorized disclosure and investigate the
11 causes and consequences of the breach or unauthorized
12 disclosure.

13 Section 35. Rulemaking; notice.

14 (a) The State Board of Education shall adopt rules in
15 accordance with this Act and applicable federal and State laws
16 and rules to protect the right of privacy of any student and
17 his or her family regarding personally identifiable records,
18 files, and data directly related to the student by January 1,
19 2018. The rules shall provide for:

20 (1) means by which any student (if the student is an
21 adult) or the student's parent or guardian (if the student
22 is a minor) may inspect and review any records or files
23 directly related to the student;

24 (2) restricting the accessibility and availability of
25 any personally identifiable information in records or

1 files of any student and preventing disclosure thereof
2 unless made upon written consent of such student (if the
3 student is an adult) or the student's parent or guardian
4 (if the student is a minor); and

5 (3) which employees or agents may bind the school
6 district to the terms of any written agreements, not
7 including electronic, click-through, or click-wrap
8 agreements, which agreements may not be entered into with a
9 school district.

10 (b) The State Board of Education must create a model notice
11 that school districts shall annually provide to parents, legal
12 guardians, and students that student data may be disclosed in
13 accordance with this Act. The notice shall be signed by the
14 student (if the student is an adult) or by the student's parent
15 or legal guardian (if the student is a minor) and maintained on
16 file with the school district. The notice must provide what
17 types of student data are collected and shared with operators
18 or service providers and the purpose for collection or use.

19 Section 40. Enforcement.

20 (a) Any person aggrieved by any violation of this Act may
21 institute an action for injunctive relief in the circuit court
22 of the county in which the violation has occurred or the
23 circuit court of any of the counties in which the school
24 district is located.

25 (b) Any person injured by a willful or negligent violation

1 of this Act may institute an action for damages in the circuit
2 court of the county in which the violation has occurred or the
3 circuit court of any of the counties in which the school
4 district is located.

5 (c) In the case of any successful action under subsection
6 (a) or (b) of this Section, any person or entity found to have
7 willfully or negligently violated any provision of this Act is
8 liable to the plaintiff for the plaintiff's damages, the costs
9 of the action, and reasonable attorney's fees, as determined by
10 the court.

11 (d) Actions for injunctive relief to secure compliance with
12 this Act may be brought by the State Board of Education, by the
13 State's Attorney of the county in which the alleged violation
14 has occurred, or by the State's Attorney of any of the counties
15 in which the school district is located, in each case in the
16 circuit court of such county.

17 (e) Willful failure to comply with any Section of this Act
18 is a petty offense.

19 Section 95. The Children's Privacy Protection and Parental
20 Empowerment Act is amended by changing Section 5 as follows:

21 (325 ILCS 17/5)

22 Sec. 5. Definitions. As used in this Act:

23 "Child" means a person under the age of 18 ~~16~~. "Child" does
24 not include a minor emancipated by operation of law.

1 "Parent" means a parent, step-parent, or legal guardian.

2 "Personal information" means any of the following:

3 (1) A person's name.

4 (2) A person's address.

5 (3) A person's telephone number.

6 (4) A person's driver's license number or State of
7 Illinois identification card as assigned by the Illinois
8 Secretary of State or by a similar agency of another state.

9 (5) A person's social security number.

10 (6) Any other information that can be used to locate or
11 contact a specific individual.

12 "Personal information" does not include any of the
13 following:

14 (1) Public records as defined by Section 2 of the
15 Freedom of Information Act.

16 (2) Court records.

17 (3) Information found in publicly available sources,
18 including newspapers, magazines, and telephone
19 directories.

20 (4) Any other information that is not known to concern
21 a child.

22 (Source: P.A. 93-462, eff. 1-1-04.)".