



Sen. Omar Aquino

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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, 15, and 30 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 acquisition of
10 computerized data that compromises the security,
11 confidentiality, or integrity of covered information
12 maintained by an operator or school. "Breach" does not include
13 the good faith acquisition of personal information by an
14 employee or agent of an operator or school for a legitimate
15 purpose of the operator or school if the covered information is
16 not used for a purpose prohibited by this Act or subject to

1 further unauthorized disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (105 ILCS 85/10)

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

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

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

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

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

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

24 (A) In furtherance of the K through 12 school
25 purposes of the site, service, or application if the
26 recipient of the covered information disclosed under

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

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

7 (C) To respond to the judicial process.

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

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

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

25 Nothing in this Section prohibits the operator's use of
26 information for maintaining, developing, supporting,

1 improving, or diagnosing the operator's site, service, or
2 application.

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

4 (105 ILCS 85/15)

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

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

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

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

23 (4) Except for a nonpublic school, for any operator who
24 seeks to receive from a school, school district, or the
25 State Board in any manner any covered information, enter

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

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

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

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

26 (D) A description of how, if a breach is attributed

1 to the operator, any costs and expenses incurred by the
2 school in investigating and remediating the breach
3 will be allocated between the operator and the school.
4 The costs and expenses may include, but are not limited
5 to:

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

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

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

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

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

1 no longer needed for the purposes of the written
2 agreement.

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

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

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

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

22 (105 ILCS 85/26 new)

23 Sec. 26. School prohibitions. A school may not do either of
24 the following:

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

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

5 (A) to the extent permitted by federal law, to law
6 enforcement officials to protect the safety of users or
7 others or the security or integrity of the operator's
8 service;

9 (B) required by court order or State or federal
10 law; or

11 (C) to ensure legal or regulatory compliance.

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

13 (105 ILCS 85/27 new)

14 Sec. 27. School duties.

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

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

24 (2) A list of operators that the school has written
25 agreements with, a copy of each written agreement, and a

1 business address for each operator.

2 (3) For each operator, a list of any subcontractors to
3 whom covered information may be disclosed, as provided by
4 the operator to the school under paragraph (6) of Section
5 15.

6 (4) A written description of the procedures that a
7 parent may use to carry out the rights enumerated under
8 Section 33.

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

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

15 (B) The date, estimated date, or estimated date
16 range of the breach.

17 (C) For a breach under Section 15, the name of the
18 operator.

19 The school may omit from the list required under this
20 paragraph (5) (i) any breach in which, to the best of the
21 school's knowledge at the time of updating the list, the
22 number of students whose covered information is involved in
23 the breach is less than 10% of the school's enrollment or
24 (ii) any breach in which, at the time of posting the list,
25 the school is not required to notify the parent of a
26 student under subsection (d).

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

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

14 (c) A school must post on its website each written
15 agreement entered into under this Act, along with any
16 information required under subsection (a), no later than 5
17 business days after entering into the agreement.

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

25 (1) The date, estimated date, or estimated date range
26 of the breach.

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

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

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

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

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

13 (e) Each school must implement and maintain reasonable
14 security procedures and practices that otherwise meet or exceed
15 industry standards designed to protect covered information
16 from unauthorized access, destruction, use, modification, or
17 disclosure. Any written agreement under which the disclosure of
18 covered information between the school and a third party takes
19 place must include a provision requiring the entity to whom the
20 covered information is disclosed to implement and maintain
21 reasonable security procedures and practices that otherwise
22 meet or exceed industry standards designed to protect covered
23 information from unauthorized access, destruction, use,
24 modification, or disclosure.

25 (f) Each school shall designate an appropriate staff person
26 as a privacy officer, who may also be an official records

1 custodian as designated under the Illinois School Student
2 Records Act, to carry out the duties and responsibilities
3 assigned to schools and to ensure compliance with the
4 requirements of this Section and Section 26.

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

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

13 (105 ILCS 85/28 new)

14 Sec. 28. State Board duties.

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

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

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

1 Board contracts with or has agreements with and that hold
2 covered information and a copy of each contract or agreement.

3 The list must include all of the following information:

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

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

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

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

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

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

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

23 (d) The State Board shall create, publish, and make
24 publicly available an inventory, along with a dictionary or
25 index of data elements and their definitions, of covered
26 information collected or maintained by the State Board,

1 including, but not limited to, both of the following:

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

4 (2) Covered information in the State longitudinal data
5 system or any data warehouse used by the State Board to
6 populate the longitudinal data system.

7 The inventory shall make clear for what purposes the State
8 Board uses the covered information.

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

22 (105 ILCS 85/30)

23 Sec. 30. Applicability. This Act does not do any of the
24 following:

25 (1) Limit the authority of a law enforcement agency to

1 obtain any content or information from an operator as
2 authorized by law or under a court order.

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

6 (3) Apply to general audience Internet websites,
7 general audience online services, general audience online
8 applications, or general audience mobile applications,
9 even if login credentials created for an operator's site,
10 service, or application may be used to access those general
11 audience sites, services, or applications.

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

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

20 (6) Impose a duty upon a provider of an electronic
21 store, gateway, marketplace, or other means of purchasing
22 or downloading software or applications to review or
23 enforce compliance with this Act on those applications or
24 software.

25 (7) Impose a duty upon a provider of an interactive
26 computer service to review or enforce compliance with this

1 Act by third-party content providers.

2 (8) Prohibit students from downloading, exporting,
3 transferring, saving, or maintaining their own student
4 data or documents.

5 (9) Supersede the federal Family Educational Rights
6 and Privacy Act of 1974 or rules adopted pursuant to that
7 Act or the Illinois School Student Records Act.

8 (10) Prohibit an operator or school from producing and
9 distributing, free or for consideration, student class
10 photos and yearbooks to the school, students, parents, or
11 individuals authorized by parents and to no others, in
12 accordance with the terms of a written agreement between
13 the operator and the school.

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

15 (105 ILCS 85/33 new)

16 Sec. 33. Parent and student rights.

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

19 (b) A student's covered information shall be collected only
20 for K through 12 school purposes and not further processed in a
21 manner that is incompatible with those purposes.

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

25 (d) Except for a parent of a student enrolled in a

1 nonpublic school, the parent of a student enrolled in a school
2 has the right to all of the following:

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

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

24 (3) Request corrections of factual inaccuracies
25 contained in the student's covered information. After
26 receiving a request for corrections that documents a

1 factual inaccuracy, a school must do either of the
2 following:

3 (A) Confirm the correction with the parent within
4 90 calendar days after receiving the parent's request
5 if the school or State Board maintains the covered
6 information that contains the factual inaccuracy.

7 (B) Notify the operator who must confirm the
8 correction with the parent within 90 calendar days
9 after receiving the parent's request if the covered
10 information that contains the factual inaccuracy is
11 maintained by an operator.

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

15 Section 99. Effective date. This Act takes effect July 1,
16 2021."