



Sen. Omar Aquino

**Filed: 5/17/2019**

10100HB3606sam003

LRB101 09053 AXK 60836 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,  
12              appointed or elected school board members or local school  
13              council members, or the State Board, without a written  
14              agreement, unless the disclosure or transfer is:

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

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

21                      (C) to ensure legal or regulatory compliance.

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

23       (105 ILCS 85/27 new)

24       Sec. 27. School duties.

1       (a) Each school shall post and maintain on its website or,  
2 if the school does not maintain a website, make available for  
3 inspection by the general public at its administrative office  
4 all of the following information:

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

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

18           (3) For each operator, a list of any subcontractors to  
19 whom covered information may be disclosed or a link to a  
20 page on the operator's website that clearly lists that  
21 information, as provided by the operator to the school  
22 under paragraph (6) of Section 15.

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

26           (5) A list of any breaches of covered information

1 maintained by the school or breaches under Section 15 that  
2 includes, but is not limited to, all of the following  
3 information:

4 (A) The number of students whose covered  
5 information is involved in the breach, unless  
6 disclosing that number would violate the provisions of  
7 the Personal Information Protection Act.

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

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

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

25 The school must, at a minimum, update the items under  
26 paragraphs (1), (3), (4), and (5) no later than 30 calendar

1 days following the start of a fiscal year and no later than 30  
2 days following the beginning of a calendar year.

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

12 (c) A school must post on its website or, if the school  
13 does not maintain a website, make available at its  
14 administrative office for inspection by the general public each  
15 written agreement entered into under this Act, along with any  
16 information required under subsection (a), no later than 10  
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           A notice of breach required under this subsection may be  
14           delayed if an appropriate law enforcement agency determines  
15           that the notification will interfere with a criminal  
16           investigation and provides the school with a written request  
17           for a delay of notice. A school must comply with the  
18           notification requirements as soon as the notification will no  
19           longer interfere with the investigation.

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

1 covered information is disclosed to implement and maintain  
2 reasonable security procedures and practices that otherwise  
3 meet or exceed industry standards designed to protect covered  
4 information from unauthorized access, destruction, use,  
5 modification, or disclosure. The State Board must make  
6 available on its website a guidance document for schools  
7 pertaining to reasonable security procedures and practices  
8 under this subsection.

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

15 (g) A school shall make a request, pursuant to paragraph  
16 (2) of Section 15, to an operator to delete covered information  
17 on behalf of a student's parent if the parent requests from the  
18 school that the student's covered information held by the  
19 operator be deleted, so long as the deletion of the covered  
20 information is not in violation of State or federal records  
21 laws.

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

23 (105 ILCS 85/28 new)

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 written  
15 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 agreement.

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

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

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

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

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

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

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

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

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

26           The inventory shall make clear for what purposes the State

1 Board uses the covered information.

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

15 (105 ILCS 85/30)

16 Sec. 30. Applicability. This Act does not do any of the  
17 following:

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

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

24 (3) Apply to general audience Internet websites,  
25 general audience online services, general audience online

1 applications, or general audience mobile applications,  
2 even if login credentials created for an operator's site,  
3 service, or application may be used to access those general  
4 audience sites, services, or applications.

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

7 (5) Prohibit an operator of an Internet website, online  
8 service, online application, or mobile application from  
9 marketing educational products directly to parents if the  
10 marketing did not result from the use of covered  
11 information obtained by the operator through the provision  
12 of services covered under this Act.

13 (6) Impose a duty upon a provider of an electronic  
14 store, gateway, marketplace, or other means of purchasing  
15 or downloading software or applications to review or  
16 enforce compliance with this Act on those applications or  
17 software.

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

21 (8) Prohibit students from downloading, exporting,  
22 transferring, saving, or maintaining their own student  
23 data or documents.

24 (9) Supersede the federal Family Educational Rights  
25 and Privacy Act of 1974, ~~or rules adopted pursuant to that~~  
26 ~~Act or~~ the Illinois School Student Records Act, or any

1 rules adopted pursuant to those Acts.

2 (10) Prohibit an operator or school from producing and  
3 distributing, free or for consideration, student class  
4 photos and yearbooks to the school, students, parents, or  
5 individuals authorized by parents and to no others, in  
6 accordance with the terms of a written agreement between  
7 the operator and the school.

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

9 (105 ILCS 85/33 new)

10 Sec. 33. Parent and student rights.

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

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

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

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

23 (2) Request from a school a paper or electronic copy of  
24 the student's covered information, including covered  
25 information maintained by an operator or the State Board.

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

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

21 (A) If the school maintains or possesses the  
22 covered information that contains the factual  
23 inaccuracy, correct the factual inaccuracy and confirm  
24 the correction with the parent within 90 calendar days  
25 after receiving the parent's request.

26 (B) If the operator or State Board maintains or

1           possesses the covered information that contains the  
2           factual inaccuracy, notify the operator or the State  
3           Board of the correction. The operator or the State  
4           Board must correct the factual inaccuracy and confirm  
5           the correction with the school within 90 calendar days  
6           after receiving the notice. Within 10 business days  
7           after receiving confirmation of the correction from  
8           the operator or State Board, the school must confirm  
9           the correction with the parent.

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

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