

HOUSE BILL 769

F1
HB 1062/21 – W&M

2lr1023
CF SB 325

By: **Delegates D. Jones and Kaiser**

Introduced and read first time: February 3, 2022

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 2, 2022

CHAPTER _____

1 AN ACT concerning

2 **Student Data Privacy – Protections, Digital Tools, and Student Data Privacy**
3 **Council**

4 FOR the purpose of altering certain definitions to provide increased protections for certain
5 student data; ~~requiring each county board of education to provide a list of digital~~
6 ~~tools to the State Department of Education on or before a certain date each year;~~
7 ~~requiring the Department to publish information on digital tools provided by each~~
8 ~~county board on or before a certain date each year;~~ establishing the Student Data
9 Privacy Council; and generally relating to student data privacy in the State.

10 BY repealing and reenacting, with amendments,
11 Article – Education
12 Section 4–131(a)
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2021 Supplement)

15 ~~BY adding to~~
16 ~~Article – Education~~
17 ~~Section 4–131(p)~~
18 ~~Annotated Code of Maryland~~
19 ~~(2018 Replacement Volume and 2021 Supplement)~~

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1

Article – Education

2 4–131.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) (i) “Covered information” means information or material that[:

5 1. Personally identifies an individual student in this State or
6 that is linked to information or material that personally identifies an individual student in
7 this State; and8 2. Is gathered by an operator through the operation of a site,
9 a service, or an application], **ALONE OR IN COMBINATION WITH OTHER INFORMATION**
10 **OR MATERIAL, IS LINKED OR COULD BE LINKED TO A STUDENT IN A MANNER THAT**
11 **WOULD ALLOW AN EMPLOYEE OR A STUDENT OF THE STUDENT’S SCHOOL TO**
12 **IDENTIFY THE STUDENT WITH REASONABLE CERTAINTY.**

13 (ii) “Covered information” includes a student’s:

14 1. Educational [and disciplinary record] **RECORDS AS**
15 **DEFINED IN § 7–1303 OF THIS ARTICLE;**

16 2. First and last name;

17 3. Home address and geolocation information;

18 4. Telephone number;

19 5. Electronic mail address or other information that allows
20 physical or online contact;

21 6. Test results, grades, and student evaluations;

22 7. Special education [data] **INFORMATION;**

23 8. Criminal records;

24 9. Medical records and health records;

25 10. Social Security number;

26 11. Biometric information;

27 12. Socioeconomic information;

- 13. Food purchases;
- 14. Political and religious affiliations;
- 15. Text messages;
- 16. Student identifiers;
- 17. Search activity;
- 18. Photos; [and]
- 19. Voice recordings;

20. DISCIPLINARY INFORMATION;

21. ONLINE BEHAVIOR OR USAGE OF APPLICATIONS WHEN LINKED OR LINKABLE TO A SPECIFIC STUDENT;

22. PERSISTENT UNIQUE IDENTIFIERS; AND

23. CONFIDENTIAL INFORMATION AS DEFINED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY.

(3) (I) “Operator” means [a person] AN INDIVIDUAL OR AN ENTITY who ENGAGES WITH INSTITUTIONS UNDER THE SCHOOL OFFICIAL EXCEPTION OF THE FEDERAL FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT AND is operating in accordance with a contract or an agreement with a public school or local school system in the State to provide an Internet website, an online service, an online application, or a mobile application that:

1. PROCESSES COVERED INFORMATION; AND

- 21 [OR (i)] **2. A.** Is used [primarily] for a PreK–12 school purpose;
- 23 [(ii)] **B.** Is issued at the direction of a public school, a teacher, or
- 24 any other employee of a public school, local school system, or the Department[; and
- 25 (iii) Was designed and marketed primarily for a PreK–12 school
- 26 purpose].

(II) “OPERATOR” INCLUDES A DIVISION OF A PARENT ENTITY IF THE DIVISION:

- 1 **1. SERVES EDUCATION CLIENTS; AND**
 2 **2. DOES NOT SHARE COVERED INFORMATION WITH THE**
 3 **PARENT ENTITY.**

4 (4) **(I)** “Persistent unique identifier” means [a unique reference number
 5 used as an identifier in computer software that is stored across different usage sessions]
 6 **AN IDENTIFIER THAT CAN BE USED TO IDENTIFY, RECOGNIZE, TRACK, SINGLE OUT,**
 7 **OR MAKE REFERENCES ABOUT A STUDENT ENROLLED IN PREKINDERGARTEN**
 8 **THROUGH GRADE 12, THE PARENT OR GUARDIAN OF THE STUDENT, AND ANY OTHER**
 9 **STUDENT OF WHOM THE PARENT OR GUARDIAN HAS CUSTODY.**

10 **(II) “PERSISTENT UNIQUE IDENTIFIER” INCLUDES:**

- 11 **1. COOKIE IDENTIFIERS;**
 12 **2. CUSTOMER NUMBERS;**
 13 **3. DEVICE IDENTIFIERS;**
 14 **4. HASHED E-MAIL ADDRESSES;**
 15 **5. HASHED PHONE NUMBERS;**
 16 **6. IDENTIFIERS GENERATED THROUGH PROBABILISTIC**
 17 **METHODS;**
 18 **7. MOBILE AD IDENTIFIERS;**
 19 **8. UNIQUE PSEUDONYMS; AND**
 20 **9. USER ALIASES.**

21 (5) (i) “PreK–12 school purpose” means an activity that:

- 22 1. Takes place at the direction of a public school, a teacher,
 23 an administrator, or a local school system; or
 24 2. Aids in the administration of public school activities.

25 (ii) “PreK–12 school purpose” includes:

- 26 1. Instruction in the classroom;
 27 2. Home instruction;

- 1 (b) There is a Student Data Privacy Council.
- 2 (c) The Council consists of the following members:
- 3 (1) one member of the Senate of Maryland, appointed by the President of
4 the Senate;
- 5 (2) one member of the House of Delegates, appointed by the Speaker of the
6 House;
- 7 (3) the State Superintendent of Schools, or the Superintendent's designee;
- 8 (4) the Secretary of Information Technology, or the Secretary's designee;
- 9 (5) the Executive Director of the Public School Superintendents'
10 Association of Maryland, or the Executive Director's designee;
- 11 (6) the Executive Director of the Maryland Association of Boards of
12 Education, or the Executive Director's designee;
- 13 (7) the President of the Maryland Association of Boards of Education, or
14 the President's designee;
- 15 (8) the President of the Maryland State Education Association, or the
16 President's designee;
- 17 (9) the President of the Maryland PTA, or the President's designee; and
- 18 (10) the following members appointed by the Chair of the Council:
- 19 (i) one School Data Privacy Officer, or the Officer's designee;
- 20 (ii) one School Information Technology Officer, or the Officer's
21 designee;
- 22 (iii) one representative of a company, trade association, or group who
23 has professional experience in the area of student data privacy or online educational
24 technology services;
- 25 (iv) one member of the academic community who studies K–12
26 student data privacy;
- 27 (v) one advocate for student data privacy who does not have a
28 professional relationship with a provider of online educational technology services;

1 (vi) one attorney who is knowledgeable in the laws and regulations
2 that pertain to local school systems;

3 (vii) one school-based administrator from a public school in the State;
4 and

5 (viii) one teacher from a public school in the State.

6 (d) The State Superintendent of Schools or the Superintendent's designee shall
7 chair the Council and is responsible for the administration of the Council.

8 (e) The State Department of Education shall provide staff for the Council.

9 (f) A member of the Council:

10 (1) may not receive compensation as a member of the Council; but

11 (2) is entitled to reimbursement for expenses under the Standard State
12 Travel Regulations, as provided in the State budget.

13 (g) The Council shall:

14 (1) study the development and implementation of the Student Data
15 Privacy Act of 2015 to evaluate the impact of the Act on:

16 (i) the protection of covered information from unauthorized access,
17 destruction, use, modification, or disclosure;

18 (ii) the implementation and maintenance of reasonable security
19 procedures and practices to protect covered information under the Act; and

20 (iii) the implementation and maintenance of reasonable privacy
21 controls to protect covered information under the Act;

22 (2) review and analyze similar laws and best practices in other states;

23 (3) review and analyze developments in technologies as they may relate to
24 student data privacy; and

25 (4) make recommendations regarding:

26 (i) statutory and regulatory changes to the Student Data Privacy
27 Act based on the findings of the Council; and

28 (ii) repealing the termination date of this Act to allow the Council to
29 continue its evaluation of student data privacy in the State on a permanent basis.

1 (h) On or before December 1, 2025, the Student Data Privacy Council shall report
2 to the Governor and, in accordance with § 2–1257 of the State Government Article, the
3 General Assembly on:

4 ~~(1) the implementation of § 4–131(p) of the Education Article, as enacted~~
5 ~~by Section 1 of this Act; and~~

6 ~~(2)~~ best practices for student data privacy protection for parents and
7 guardians of students in the State, including:

8 ~~(i)~~ (1) the actions that should occur if an operator engages in an
9 activity prohibited under § 4–131 of the Education Article;

10 ~~(ii)~~ (2) the type of investigation that should be done if an operator
11 is suspected of engaging in an activity prohibited under § 4–131 of the Education Article;

12 ~~(iii)~~ (3) the best remedies available to students and parents in
13 case of an operator engaging in an activity prohibited under § 4–131 of the Education
14 Article; and

15 ~~(iv)~~ (4) any statutory or regulatory changes necessary to best
16 effectuate items ~~(i) through (iii)~~ (1) through (3) of this item.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
18 1, 2022. Section 2 of this Act shall remain effective for a period of 6 years and 4 months
19 and, at the end of September 30, 2028, Section 2 of this Act, with no further action required
20 by the General Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.