

Chapter 164

(House Bill 769)

AN ACT concerning

Student Data Privacy – Protections, Digital Tools, and Student Data Privacy Council

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

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

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

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

Article – Education

4–131.

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

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

1. Personally identifies an individual student in this State or that is linked to information or material that personally identifies an individual student in this State; and

2. Is gathered by an operator through the operation of a site, a service, or an application], **ALONE OR IN COMBINATION WITH OTHER INFORMATION OR MATERIAL, IS LINKED OR COULD BE LINKED TO A STUDENT IN A MANNER THAT**

WOULD ALLOW AN EMPLOYEE OR A STUDENT OF THE STUDENT’S SCHOOL TO IDENTIFY THE STUDENT WITH REASONABLE CERTAINTY.

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

1. Educational [and disciplinary record] **RECORDS AS DEFINED IN § 7-1303 OF THIS ARTICLE;**
2. First and last name;
3. Home address and geolocation information;
4. Telephone number;
5. Electronic mail address or other information that allows physical or online contact;
6. Test results, grades, and student evaluations;
7. Special education [data] **INFORMATION;**
8. Criminal records;
9. Medical records and health records;
10. Social Security number;
11. Biometric information;
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

OR
[(i)] **2. A.** Is used [primarily] for a PreK–12 school purpose;

[(ii)] **B.** Is issued at the direction of a public school, a teacher, or any other employee of a public school, local school system, or the Department[; and

(iii) Was designed and marketed primarily for a PreK–12 school purpose].

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

1. SERVES EDUCATION CLIENTS; AND

2. DOES NOT SHARE COVERED INFORMATION WITH THE PARENT ENTITY.

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

(II) “PERSISTENT UNIQUE IDENTIFIER” INCLUDES:

- METHODS;**
- 1. COOKIE IDENTIFIERS;**
 - 2. CUSTOMER NUMBERS;**
 - 3. DEVICE IDENTIFIERS;**
 - 4. HASHED E-MAIL ADDRESSES;**
 - 5. HASHED PHONE NUMBERS;**
 - 6. IDENTIFIERS GENERATED THROUGH PROBABILISTIC**
 - 7. MOBILE AD IDENTIFIERS;**
 - 8. UNIQUE PSEUDONYMS; AND**
 - 9. USER ALIASES.**

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

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

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

1. Instruction in the classroom;
2. Home instruction;
3. Administrative activities;
4. Collaboration among students, public school employees, and parents;
5. Maintaining, developing, supporting, improving, or diagnosing the operator’s site, service, or application; and
6. An activity that is for the use and benefit of the public school.

(6) (i) “Targeted advertising” means presenting advertisements to an individual student that are selected based on information obtained or inferred from the student’s [online behavior, usage of applications, or] covered information.

(ii) “Targeted advertising” does not include advertisements presented to an individual student at an online location:

1. Based on the student’s current visit to the online location [without] **IF THERE IS NO** collection or retention of the student’s [online activities] **COVERED INFORMATION** over time; or

2. In response to a single search query [without] **IF THERE IS NO** collection or retention of the student’s [online activities] **COVERED INFORMATION** over time.

~~(P) (1) ON OR BEFORE JULY 1, 2022, AND EACH JULY 1 THEREAFTER, EACH COUNTY BOARD SHALL SUBMIT TO THE DEPARTMENT A LIST OF THE FOLLOWING DIGITAL TOOLS WITH RESPECT TO THE IMMEDIATELY PRECEDING SCHOOL YEAR:~~

- ~~(i) APPROVED DIGITAL TOOLS;~~
- ~~(ii) DIGITAL TOOLS KNOWN TO BE USED BY EDUCATORS; AND~~
- ~~(iii) DIGITAL TOOLS NOT AUTHORIZED BY THE COUNTY BOARD.~~

~~(2) ON OR BEFORE SEPTEMBER 1, 2022, AND EACH SEPTEMBER 1 THEREAFTER, THE DEPARTMENT SHALL PUBLISH AN ONLINE DATABASE OF THE DIGITAL TOOLS REPORTED BY EACH COUNTY BOARD IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

- (a) In this section, “Council” means the Student Data Privacy Council.
- (b) There is a Student Data Privacy Council.
- (c) The Council consists of the following members:
 - (1) one member of the Senate of Maryland, appointed by the President of the Senate;
 - (2) one member of the House of Delegates, appointed by the Speaker of the House;

- (3) the State Superintendent of Schools, or the Superintendent's designee;
 - (4) the Secretary of Information Technology, or the Secretary's designee;
 - (5) the Executive Director of the Public School Superintendents' Association of Maryland, or the Executive Director's designee;
 - (6) the Executive Director of the Maryland Association of Boards of Education, or the Executive Director's designee;
 - (7) the President of the Maryland Association of Boards of Education, or the President's designee;
 - (8) the President of the Maryland State Education Association, or the President's designee;
 - (9) the President of the Maryland PTA, or the President's designee; and
 - (10) the following members appointed by the Chair of the Council:
 - (i) one School Data Privacy Officer, or the Officer's designee;
 - (ii) one School Information Technology Officer, or the Officer's designee;
 - (iii) one representative of a company, trade association, or group who has professional experience in the area of student data privacy or online educational technology services;
 - (iv) one member of the academic community who studies K–12 student data privacy;
 - (v) one advocate for student data privacy who does not have a professional relationship with a provider of online educational technology services;
 - (vi) one attorney who is knowledgeable in the laws and regulations that pertain to local school systems;
 - (vii) one school–based administrator from a public school in the State; and
 - (viii) one teacher from a public school in the State.
- (d) The State Superintendent of Schools or the Superintendent's designee shall chair the Council and is responsible for the administration of the Council.

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

(f) A member of the Council:

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

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

(g) The Council shall:

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

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

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

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

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

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

(4) make recommendations regarding:

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 21, 2022.