

SENATE BILL 1089

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By: **Senator M. Washington**

Introduced and read first time: February 2, 2024

Assigned to: Education, Energy, and the Environment

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Student and School Employee Data Privacy – Protections**

3 FOR the purpose of requiring certain operators of certain Internet sites, services, and
4 applications to protect certain school employee information from unauthorized
5 access, to implement and maintain certain security procedures and practices, and to
6 delete certain school employee information under certain circumstances; prohibiting
7 certain operators from knowingly engaging in certain activities with respect to
8 certain sites, services, and applications relating to targeted advertising, selling
9 certain school employee information, and disclosing certain school employee
10 information under certain circumstances; providing that certain operators may use
11 certain de-identified or aggregated school employee information under certain
12 circumstances; and generally relating to student and school employee data privacy.

13 BY repealing and reenacting, with amendments,
14 Article – Education
15 Section 4–131
16 Annotated Code of Maryland
17 (2022 Replacement Volume and 2023 Supplement)

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

20 **Article – Education**

21 4–131.

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

23 (2) (i) “Covered information” means information or material that, alone
24 or in combination with other information or material, is linked or could be linked to a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 student **OR SCHOOL EMPLOYEE** in a manner that would allow an employee or a student
2 of the student's school to identify the student **OR SCHOOL EMPLOYEE** with reasonable
3 certainty.

4 (ii) "Covered information" includes, **AS APPLICABLE**, a student's **OR**
5 **SCHOOL EMPLOYEE'S**:

- 6 1. Educational records as defined in § 7–1303 of this article;
- 7 2. First and last name;
- 8 3. Home address and geolocation information;
- 9 4. Telephone number;
- 10 5. Electronic mail address or other information that allows
11 physical or online contact;
- 12 6. Test results, grades, and student evaluations;
- 13 7. Special education information;
- 14 8. Criminal records;
- 15 9. Medical records and health records;
- 16 10. Social Security number;
- 17 11. Biometric information;
- 18 12. Socioeconomic information;
- 19 13. Food purchases;
- 20 14. Political and religious affiliations;
- 21 15. Text messages;
- 22 16. Student **OR SCHOOL EMPLOYEE** identifiers;
- 23 17. Search activity;
- 24 18. Photos;
- 25 19. Voice recordings;
- 26 20. Disciplinary information;

1 21. Online behavior or usage of applications when linked or
2 linkable to a specific student **OR SCHOOL EMPLOYEE**;

3 22. Persistent unique identifiers; and

4 23. Confidential information as defined by the Department of
5 Information Technology.

6 (3) (i) “Operator” means an individual or an entity who engages with
7 institutions [under the school official exception of the federal Family Educational Rights
8 and Privacy Act], **INCLUDING A VIRTUAL SCHOOL UNDER TITLE 7, SUBTITLE 14 OF**
9 **THIS ARTICLE** and is operating in accordance with a contract or an agreement with a
10 public school or local school system in the State to provide an Internet website, an online
11 service, an online application, or a mobile application, **INCLUDING A WEBSITE, A**
12 **SERVICE, OR AN APPLICATION THAT UTILIZES ARTIFICIAL INTELLIGENCE**, that:

13 1. Processes covered information; and

14 2. A. Is used for a PreK–12 school purpose; or

15 B. Is issued at the direction of a public school, a teacher, or
16 any other employee of a public school, local school system, or the Department.

17 (ii) “Operator” includes [a]:

18 1. A division of a parent entity if the division:

19 [1.] A. Serves education clients; and

20 [2.] B. Does not share covered information with the parent
21 entity; **AND**

22 2. **AN INDIVIDUAL OR ENTITY WHO ENGAGES WITH**
23 **INSTITUTIONS UNDER THE SCHOOL OFFICIAL EXCEPTION OF THE FEDERAL FAMILY**
24 **EDUCATIONAL RIGHTS AND PRIVACY ACT AND IN ACCORDANCE WITH**
25 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

26 (4) (i) “Persistent unique identifier” means an identifier that can be
27 used to identify, recognize, track, single out, or make references about **A SCHOOL**
28 **EMPLOYEE OR** a student enrolled in prekindergarten through grade 12, the parent or
29 guardian of the student, and any other student of whom the parent or guardian has custody.

30 (ii) “Persistent unique identifier” includes:

- 1 1. Cookie identifiers;
- 2 2. Customer numbers;
- 3 3. Device identifiers;
- 4 4. Hashed e-mail addresses;
- 5 5. Hashed phone numbers;
- 6 6. Identifiers generated through probabilistic methods;
- 7 7. Mobile ad identifiers;
- 8 8. Unique pseudonyms; and
- 9 9. User aliases.

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

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

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

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

24 (6) **“SCHOOL EMPLOYEE” MEANS AN EMPLOYEE OF A STUDENT’S**
25 **SCHOOL.**

26 (7) (i) “Targeted advertising” means presenting advertisements to an
27 individual student **OR SCHOOL EMPLOYEE** that are selected based on information

1 obtained or inferred from the student's **OR SCHOOL EMPLOYEE'S** covered information.

2 (ii) "Targeted advertising" does not include advertisements
3 presented to an individual student **OR SCHOOL EMPLOYEE** at an online location:

4 1. Based on the student's **OR SCHOOL EMPLOYEE'S** current
5 visit to the online location if there is no collection or retention of the student's **OR SCHOOL**
6 **EMPLOYEE'S** covered information over time; or

7 2. In response to a single search query if there is no collection
8 or retention of the student's **OR SCHOOL EMPLOYEE'S** covered information over time.

9 (b) This section does not apply to a general audience Internet website, general
10 audience online service, general audience online application, or general audience mobile
11 application, even if log-in credentials created for an operator's site, service, or application
12 may be used to access the general audience site, service, or application.

13 (c) An operator shall:

14 (1) Protect covered information from unauthorized access, destruction, use,
15 modification, or disclosure;

16 (2) Implement and maintain reasonable security procedures and practices
17 to protect covered information; and

18 (3) If covered information is under the authority of a public school or local
19 school system in accordance with a contract or an agreement, delete within a reasonable
20 time the covered information if the public school or local school system requests deletion of
21 the covered information.

22 (d) (1) An operator may not knowingly engage in any of the following activities
23 with respect to the operator's site, service, or application:

24 (i) Engage in targeted advertising if the advertising is based on
25 information, including covered information and persistent unique identifiers, that the
26 operator has acquired because of the use of the operator's site, service, or application;

27 (ii) Except in furtherance of a PreK-12 school purpose, use
28 information, including covered information and persistent unique identifiers, created or
29 gathered by the operator's site, service, or application, to make a profile about a student
30 **OR SCHOOL EMPLOYEE**;

31 (iii) Subject to paragraph (2) of this subsection and except as provided
32 in subsection (f) of this section, sell a student's **OR SCHOOL EMPLOYEE'S** information; or

33 (iv) Except as provided in subsection (e) of this section, disclose

1 covered information.

2 (2) Nothing in this subsection shall be construed to prohibit the operator's
3 use of information for maintaining, developing, supporting, improving, or diagnosing the
4 operator's site, service, or application.

5 (3) For purposes of paragraph (1)(ii) of this subsection, making a profile of
6 a student **OR SCHOOL EMPLOYEE** does not include the collection and retention of account
7 information that remains under the authority of a student, a student's parent or guardian,
8 **A SCHOOL EMPLOYEE**, a public school, or a local school system.

9 (e) Notwithstanding subsection (d)(1)(iv) of this section, an operator may disclose
10 a student's **OR SCHOOL EMPLOYEE'S** covered information:

11 (1) If the disclosure is made only in furtherance of the PreK–12 school
12 purpose of the site, service, or application and the recipient of the covered information:

13 (i) Does not further disclose the information; and

14 (ii) Is legally required to comply with subsections (c) and (d)(1) of this
15 section;

16 (2) To ensure legal or regulatory compliance;

17 (3) To take precautions against liability;

18 (4) To respond to or participate in judicial process;

19 (5) To protect the safety of users or others or the security or integrity of the
20 site, service, or application;

21 (6) To a service provider, provided the operator contractually:

22 (i) Prohibits the service provider from using any covered
23 information for any purpose other than providing the contracted service to, or on behalf of,
24 the operator;

25 (ii) Except for a purpose expressly permitted under this subsection,
26 prohibits the service provider from disclosing covered information provided by the operator
27 with a third party; and

28 (iii) Requires the service provider to comply with the requirements of
29 subsections (c) and (d)(1)(i) through (iii) of this section;

30 (7) If subsection (d)(1)(i) through (iii) of this section is not violated;

31 (8) If federal or State law requires the operator to disclose the information,

1 and the operator complies with the requirements of federal and State law in protecting and
2 disclosing the information;

3 (9) For a legitimate research purpose as:

4 (i) Required by federal or State law; or

5 (ii) Allowed by federal or State law and under the direction of a
6 public school, local school system, or the Department, if a student's **OR SCHOOL**
7 **EMPLOYEE'S** covered information is not used for advertising or to make a profile on the
8 student for a purpose other than a PreK–12 school purpose; or

9 (10) To a State or local education agency, including public schools and local
10 school systems, for a PreK–12 school purpose, as permitted by federal and State law.

11 (f) If an operator of a site, a service, or an application used for a PreK–12 school
12 purpose is merged with or acquired by another entity, the successor entity is subject to this
13 section for previously collected covered information.

14 (g) Nothing in this section prohibits an operator from:

15 (1) Using aggregated or de-identified covered information:

16 (i) To develop or improve an educational product or service within
17 any site, service, or application the operator owns; or

18 (ii) To demonstrate the effectiveness of the operator's products or
19 services; or

20 (2) Sharing aggregated or de-identified covered information for the
21 development or improvement of educational sites, services, or applications.

22 (h) (1) Except for subsection (d)(1)(iii) of this section and subject to paragraph
23 (2) of this subsection, nothing in subsections (d) and (e) of this section may be construed to
24 prohibit the use or disclosure of a student's **OR SCHOOL EMPLOYEE'S** covered information
25 by an operator.

26 (2) An operator may use or disclose covered information under paragraph
27 (1) of this subsection if the operator:

28 (i) Provided clear and conspicuous notice of the use or disclosure of
29 [the]:

30 1. **THE** student's covered information to the student or the
31 student's parent or guardian; **OR**

1 **2. THE SCHOOL EMPLOYEE'S COVERED INFORMATION**
2 **TO THE SCHOOL EMPLOYEE;** and

3 (ii) Obtained the affirmative consent of [the]:

4 **1. THE** student, if the student is at least 18 years old, or the
5 student's parent or guardian to use or disclose the student's covered information; **OR**

6 **2. THE SCHOOL EMPLOYEE.**

7 (i) This section may not be construed to limit the authority of a law enforcement
8 agency to obtain content or information from an operator as authorized by federal or State
9 law or in accordance with an order of a court of competent jurisdiction.

10 (j) This section does not limit the ability of an operator to:

11 (1) Use a student's covered information for adaptive learning or customized
12 student learning purposes;

13 (2) Use recommendation engines to recommend to a student **OR SCHOOL**
14 **EMPLOYEE** additional content or services relating to an educational, other learning, or
15 employment opportunity purpose within an operator's site, service, or application if the
16 recommendation is not determined in whole or in part by payment or other consideration
17 from a third party;

18 (3) Respond to a student's **OR SCHOOL EMPLOYEE'S** search query, other
19 request for information, or request for feedback if the information or response is not
20 determined in whole or in part by payment or other consideration from a third party; or

21 (4) Use or retain covered information to:

22 (i) Ensure legal or regulatory compliance; or

23 (ii) Take precautions against liability.

24 (k) This section may not be construed to prohibit an operator of an Internet
25 website, an online service, an online application, or a mobile application from marketing
26 educational products directly to parents if the marketing was not a result of the use of
27 covered information obtained by the operator through the provision of services covered
28 under this section.

29 (l) This section may not be construed to impose a duty on a provider of an
30 electronic store, a gateway, a marketplace, or any other means of purchasing or
31 downloading software or applications to review or enforce compliance of this section.

32 (m) This section may not be construed to impose a duty on a provider of an

1 interactive computer service, as defined in Chapter 5, Title 47 of the United States Code,
2 to review or enforce compliance with this section by third-party content providers.

3 (n) This section may not be construed to impede the ability of students **OR**
4 **SCHOOL EMPLOYEES** to download, export, transfer, or otherwise save or maintain their
5 own data or documents.

6 (o) The provisions of this section may not be construed to prohibit an Internet
7 service provider from providing Internet connectivity to public schools, students, **[or]**
8 students' families, **SCHOOL EMPLOYEES, OR SCHOOL EMPLOYEES' FAMILIES.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2024.