

February 25, 2025

The Honorable William C. Smith, Jr., Chair
The Honorable Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 889 – Distribution of Students’ Personal Information

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Committee:

The State Privacy & Security Coalition (SPSC), a coalition representing over 30 companies and six trade associations across sectors including retail, telecommunications, technology, automotive, healthcare, and payment cards, appreciates the opportunity to provide feedback on Maryland Senate Bill 889 – *Distribution of Students’ Personal Information*. While protecting student privacy is a critical concern, we have serious reservations about the bill’s scope and its potential unintended consequences.

First, the Maryland Online Data Privacy Act of 2024 (MODPA) already includes strong protections for children’s personal data. Given these existing safeguards, enacting a separate criminal statute with potentially unintended consequences may be unnecessary. For instance, MODPA provides the following key protections:

- **Compliance with COPPA**: The bill aligns with the Children’s Online Privacy Protection Act (COPPA) by recognizing controllers and processors that meet COPPA’s verifiable parental consent standards as compliant with Maryland’s parental consent requirements.
- **Definition of “Child”**: The legislation adopts COPPA’s definition of “child,” ensuring consistency with federal regulations.
- **Parental Rights Over Children’s Data**: Parents and legal guardians have the right to access, correct, or request deletion of their child’s personal information.
- **Restrictions on Targeted Advertising**: The bill prohibits processing children’s data for targeted advertising when the controller knows or should know the consumer is between ages 13 and 18.
- **General Data Security Requirements**: Controllers and processors handling children’s data must implement reasonable administrative, technical, and physical safeguards to prevent unauthorized access or processing.

Given these comprehensive protections under MODPA, additional criminal provisions should be carefully evaluated to avoid unnecessary duplication and unintended legal consequences.

Second, the bill appears to extend beyond the traditional educational context, creating liability for individuals who may not even be aware that they are handling covered student data. The broad definition of “distribute” and the inclusion of secondary and post-secondary students significantly expand liability in ways that could be impractical to enforce and inadvertently criminalize routine information sharing. As drafted, the bill could apply to common student-related activities, such as sharing information in social media posts, job applications, or networking events, even without intent to harm. This raises serious concerns about over-criminalization and potential First Amendment implications.

To appropriately regulate student data, the Committee should consider amending the bill to reference MD Education Code § 4-131 (2024) and apply its requirements to “operators” as defined in that statute. This would ensure that educational vendors handling student data in an educational context are properly regulated, while avoiding undue burdens on individuals who may unknowingly share such information.

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Finally, while we believe that the education code is the best place to protect student information, if this bill proceeds, it is imperative to clarify intent and knowledge requirements in its criminal provisions. Specifically, we recommend amending Page 3, Line 22 as follows:

WITH:

(I) INTENT AND KNOWLEDGE THAT THE PERSONAL IDENTIFYING INFORMATION OR IMAGE WILL BE USED TO HARM THE STUDENT; AND

(II) RECKLESS DISREGARD FOR THE RISK THAT THE PERSONAL IDENTIFYING INFORMATION OR IMAGE WILL BE USED TO HARM THE STUDENT.

Requiring actual knowledge and intent to cause harm is essential to prevent the criminalization of individuals who inadvertently share benign student-related information. Given that secondary and post-secondary students routinely share their own and others' information in various contexts, criminal penalties should be reserved for those acting with malicious intent rather than individuals engaging in common or incidental data sharing.

For these reasons, we urge the Committee to amend SB 889 to align with existing education data privacy statutes and ensure that criminal penalties are narrowly tailored to truly harmful conduct.

We would be happy to answer any questions and look forward to continued conversations.

Respectfully submitted,



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