



**Written Testimony
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Software & Information Industry Association**

**SENATE EDUCATION, HEALTH & ENVIRONMENTAL AFFAIRS COMMITTEE
Bill Hearing: SB 733 (Education - Student Data Privacy - Reports and Student Data
Privacy Council Sunset Extension)**

March 9, 2021

Thank you for holding this important hearing. The Software & Information Industry Association (SIIA) is pleased to offer testimony on SB 733.

SIIA is a professional organization connecting more than 700 financial information, education technology, specialized content and publishing, and health technology companies. Our education technology membership develops and delivers software applications, digital instructional content, online and distance learning services, online assessment, and related technologies for millions of learners across the nation. Our members are dedicated to partnering with educators and schools across the country to improve student outcomes while protecting student privacy.

Maryland is a leader in that the establishment and work product of the Student Data Privacy Council, with representation from a diverse number of stakeholders, offers the state a perspective like no other state has on student data privacy. The Student Data Privacy Council's report should play an important role in the development of practices at the school level as well as possible amendments to the state's student privacy laws.

We are concerned that some of the language in SB 733 does not align with the Student Data Privacy Council report and that some of the requirements may place an undue burden on schools without additional resources and guidance. We urge the committee to

consider a few amendments to the text that would help align the bill to the report and strengthen protections for student privacy in Maryland.

- The proposed language could expand the scope of the law to cover non-education services that are not intended for use in schools. These non-education services would have no knowledge they are being used in schools nor subject to the law. We support maintaining the second prong of the definition of operator so that a mere recommendation by teacher or employee of a school will not make an entity an operator. In addition to keeping the connection with the school, we recommend deleting the word “purpose” so that the scope is narrowed
- We support language in the definition of persistent unique identifier to clarify that it is a unique identifier stored across usage sessions. Without putting this language back into the definition, it simply is not persistent.
- We continue to support the existence and work of the Student Data Privacy Council. We are concerned that the requirement for county boards to submit lists of approved, known, and not authorized digital tools to the Department comes without funding or guidance. We are also concerned that there is no clear process for getting added as an approved digital tool or being listed as a digital tool that is not authorized by the county board. Instead, SIIA encourages the removal of this provision and adding new requirements for the Student Data Privacy Council’s 2024 report that would help establish best practices for school privacy programs.

Suggested amendment language is included below. Thank you for your time.

Respectfully,

Sara Kloek
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Software & Information Industry Association

Suggested Amendments
Software & Information Industry Association
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A BILL
ENTITLED

1 AN ACT concerning

Education – Student Data Privacy – Reports and Student Data Privacy Council

2 **Sunset Extension**

3 FOR the purpose of requiring each county board of education to provide a
4 certain list of

5 digital tools to the State Department of Education on or before a certain
6 date each

7 year; requiring the Department to publish certain information on digital
8 tools

9 provided by each county board on or before a certain date each year;
10 requiring the

11 Student Data Privacy Council to submit a certain report to the Governor
12 and the

13 General Assembly on or before a certain date; extending the termination date
14 for the

15 Council; altering certain definitions; and generally relating to student data
16 privacy

in the State.

11 BY repealing and reenacting, with amendments,

12 Article – Education

13 Section 4–131(a)

14 Annotated Code of Maryland

15 (2018 Replacement Volume and 2020 Supplement)

16 BY adding to

17 Article – Education
18 Section 4–131(p)
19 Annotated Code of Maryland
20 (2018 Replacement Volume and 2020 Supplement)

21 BY repealing and reenacting, with amendments,
22 Chapter 398 of the Acts of the General Assembly of 2019
23 Section 1(h) and 2

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

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; and

8 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 OR MATERIAL, IS LINKED OR COULD BE LINKED
TO A STUDENT IN A MANNER THAT WOULD ALLOW AN EMPLOYEE OR STUDENT OF THE STUDENT'S
SCHOOL TO IDENTIFY THE STUDENT WITH REASONABLE CERTAINTY.**

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

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

13 2. First and last name;

14 3. Home address and geolocation information;

15 4. Telephone number;

16 5. Electronic mail address or other information that allows
17 physical or online contact;

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

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

20 8. Criminal records;

21 9. Medical records and health records;

22 10. Social Security number;

23 11. Biometric information;

24 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) "Operator" means [a person] **AN INDIVIDUAL OR AN ENTITY** who 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:

(i) PROCESSES COVERED INFORMATION; AND

[(i)] (ii) 1. Is used [primarily]-for a PreK-12 school purpose;

OR

[(ii)] 2. 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 schools. [purpose].

(4) **(i)** "Persistent unique identifier" means [a unique referencenumber

used as an identifier in computer software that is stored across different usage sessions]

AN IDENTIFIER THAT IS USED TO IDENTIFY, RECOGNIZE, TRACK, SINGLE OUT,

28 OR MAKE REFERENCES ABOUT A STUDENT ENROLLED IN PREKINDERGARTEN
29 THROUGH GRADE 12, THE PARENT OR GUARDIAN OF THE STUDENT, AND ANY OTHER

1 STUDENT OF WHOM THE PARENT OR GUARDIAN HAS CUSTODY **THAT IS STORED ACROSS USAGE**
2 **SESSIONS.**

2 (ii) "PERSISTENT UNIQUE IDENTIFIER" INCLUDES:

3 1. COOKIE IDENTIFIERS;

4 2. CUSTOMER NUMBERS;

5 3. DEVICE IDENTIFIERS;

6 4. HASHED E-MAIL ADDRESSES;

7 5. HASHED PHONE NUMBERS;

8 6. IDENTIFIERS GENERATED THROUGH PROBABILISTIC
9 METHODS;

10 7. MOBILE AD IDENTIFIERS;

11 8. UNIQUE PSEUDONYMS; AND

12 9. USER ALIASES.

13 (5) (i) "PreK-12 school purpose" means an activity that:

14 1. Takes place at the direction of a public school, a teacher,
15 an administrator, or a local school system; or

16 2. Aids in the administration of public school activities.

17 (ii) "PreK-12 school purpose" includes:

18 1. Instruction in the classroom;

19 2. Home instruction;

20 3. Administrative activities;

21 4. Collaboration among students, public school employees,
22 and parents;

23 5. Maintaining, developing, supporting, improving, or
24 diagnosing the operator's site, service, or application; and

6. An activity that is for the use and benefit of the public

1 school.

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

5 (ii) "Targeted advertising" does not include advertisements
6 presented to an individual student at an online location:

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

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

13 [(P) (1) ON OR BEFORE JULY 1, 2021, AND EACH JULY 1 THEREAFTER,
14 EACH COUNTY BOARD SHALL SUBMIT TO THE DEPARTMENT A LIST OF THE
15 FOLLOWING DIGITAL TOOLS WITH RESPECT TO THE IMMEDIATELY PRECEDING
16 SCHOOL YEAR:

17 (i) APPROVED DIGITAL TOOLS;

18 (ii) DIGITAL TOOLS KNOWN TO BE USED BY EDUCATORS; AND

19

20 (iii) DIGITAL TOOLS NOT AUTHORIZED BY THE COUNTY BOARD.

21 (2) ON OR BEFORE SEPTEMBER 1, 2021, AND EACH SEPTEMBER 1
22 THEREAFTER, THE DEPARTMENT SHALL PUBLISH AN ONLINE DATABASE OF THE
23 DIGITAL TOOLS REPORTED BY EACH COUNTY BOARD IN ACCORDANCE WITH
24 PARAGRAPH (1) OF THIS SUBSECTION.]

24 Chapter 398 of the Acts of 2019

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That:

27 (h) (1) On or before December 31, 2020, the Student Data Privacy Council
28 shall report its findings and recommendations to the Governor and, in accordance with §
29 2-1246 of the State Government Article, the General Assembly.

30 (2) ON OR BEFORE DECEMBER 1, 2024, THE STUDENT DATA

31 **PRIVACY COUNCIL SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH**
32 **§ 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON:**

1 [(I) THE IMPLEMENTATION OF § 4-131(P) OF THE EDUCATION
2 ARTICLE;
AND]

3 (I) BEST PRACTICES FOR STUDENT DATA PRIVACY
4 PROTECTION TO PROVIDE TO PARENTS AND GUARDIANS OF STUDENTS IN THE
5 STATE;

6 (II) BEST PRACTICES FOR DEVELOPING TRANSPARENT STUDENT PRIVACY
PROGRAMS AT THE SCHOOL AND/OR COUNTY LEVEL; AND

7 (III) BEST PRACTICES FOR COMMUNICATING ABOUT STUDENT DATA PRIVACY
PROGRAMS AT THE SCHOOL AND/OR COUNTY LEVEL.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
9 1, 2019. It shall remain in effect for a period of [2] 6 years and 4 MONTHS AND, at the end
10 of [May 31, 2021] **SEPTEMBER 30, 2025**, this Act, with no further action required by the
11 General Assembly, shall be abrogated and of no further force and effect.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 11 1,
2021.