

# SENATE BILL 838

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SB 434/12 – EHE

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By: **Senators Young, Montgomery, Rosapepe, and Shank**

Introduced and read first time: February 6, 2013

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 14, 2013

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Educational Institutions – Personal Electronic Account – Privacy Protection**

3 FOR the purpose of prohibiting an educational institution from requiring, requesting,  
4 suggesting, or causing a student, an applicant, or a prospective student to grant  
5 access to, allow observation of, or disclose information that allows access to or  
6 observation of the individual’s personal electronic account; prohibiting an  
7 educational institution from compelling a student, an applicant, or a prospective  
8 student, as a condition of acceptance or participation in curricular or  
9 extracurricular activities, to add certain individuals to a certain list of contacts  
10 or to change certain privacy settings; prohibiting an educational institution  
11 from taking or threatening to take certain actions against a student, or failing  
12 or refusing to admit an applicant, as a result of the student’s or applicant’s  
13 refusal to grant access to, allow observation of, or disclose certain information  
14 relating to a personal electronic account, add certain individuals to a certain list  
15 of contacts, or change certain privacy settings; providing that this Act may not  
16 be construed to prohibit an educational institution from requesting or requiring  
17 a student to disclose access information to certain electronic accounts, to  
18 prohibit or restrict an educational institution from viewing, accessing, or  
19 utilizing certain information that is available in the public domain or available  
20 to an educational institution as the result of certain actions of the student, to  
21 create a duty to search or monitor the activity of a personal electronic account,  
22 to make an educational institution liable for failing to request or require a  
23 student, applicant, or prospective student to grant access to, allow observation  
24 of, or disclose certain information relating to a personal electronic account, to

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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 prohibit a student, an applicant, or a prospective student from allowing a  
 2 certain individual to view certain communications, or to apply to a certain  
 3 investigation conducted by a certain department of or in accordance with a  
 4 certain policy or protocol of an institution of postsecondary education;  
 5 ~~establishing that a person who violates this Act is guilty of a misdemeanor and~~  
 6 ~~is subject to a certain fine;~~ authorizing an individual who is the subject of a  
 7 violation of this Act to take certain legal action; establishing that an educational  
 8 institution's action in compliance with federal or State law is an affirmative  
 9 defense to a claim under this Act; defining certain terms; and generally relating  
 10 to the personal electronic accounts of students, applicants, and prospective  
 11 students of educational institutions.

12 BY adding to  
 13 Article – Education  
 14 Section 26–401 to be under the new subtitle “Subtitle 4. Personal Electronic  
 15 Account Privacy Protection”  
 16 Annotated Code of Maryland  
 17 (2008 Replacement Volume and 2012 Supplement)

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

20 **Article – Education**

21 **SUBTITLE 4. PERSONAL ELECTRONIC ACCOUNT PRIVACY PROTECTION.**

22 **26–401.**

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
 24 MEANINGS INDICATED.

25 (2) “ACCESS INFORMATION” MEANS A USER NAME, A PASSWORD,  
 26 LOG-IN INFORMATION, AN ACCOUNT NAME, OR ANY OTHER SECURITY  
 27 INFORMATION THAT PROTECTS ACCESS TO A PERSONAL ELECTRONIC ACCOUNT.

28 (3) “EDUCATIONAL INSTITUTION” MEANS A PUBLIC OR PRIVATE  
 29 EDUCATIONAL INSTITUTION THAT OFFERS STUDENTS AN ORGANIZED COURSE  
 30 OF STUDY OR TRAINING THAT IS ACADEMIC, TECHNICAL, TRADE-ORIENTED, OR  
 31 PREPARATORY FOR GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION.

32 (4) (I) “PERSONAL ELECTRONIC ACCOUNT” MEANS AN  
 33 ACCOUNT CREATED VIA AN ELECTRONIC MEDIUM OR A SERVICE THAT ALLOWS  
 34 USERS TO CREATE, SHARE, OR VIEW USER-GENERATED CONTENT, INCLUDING  
 35 UPLOADING OR DOWNLOADING VIDEOS OR STILL PHOTOGRAPHS, BLOGS, VIDEO  
 36 BLOGS, PODCASTS, MESSAGES, ELECTRONIC MAIL, INTERNET WEB SITE  
 37 PROFILES OR LOCATIONS, OR ANY OTHER ELECTRONIC INFORMATION.

1                   **(II) “PERSONAL ELECTRONIC ACCOUNT” DOES NOT**  
2 **INCLUDE AN ACCOUNT THAT IS OPENED ON BEHALF OF, OR OWNED OR**  
3 **PROVIDED BY, AN EDUCATIONAL INSTITUTION.**

4                   **(5) “STUDENT” INCLUDES AN INDIVIDUAL WHO IS A**  
5 **PARTICIPANT, TRAINEE, OR STUDENT IN AN ORGANIZED COURSE OF STUDY OR**  
6 **TRAINING OFFERED BY AN EDUCATIONAL INSTITUTION.**

7                   **(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EDUCATIONAL**  
8 **INSTITUTION MAY NOT:**

9                   **(1) REQUIRE, REQUEST, SUGGEST, OR CAUSE A STUDENT, AN**  
10 **APPLICANT, OR A PROSPECTIVE STUDENT TO GRANT ACCESS TO, ALLOW**  
11 **OBSERVATION OF, OR DISCLOSE INFORMATION THAT ALLOWS ACCESS TO OR**  
12 **OBSERVATION OF THE INDIVIDUAL’S PERSONAL ELECTRONIC ACCOUNT;**

13                   **(2) COMPEL A STUDENT, AN APPLICANT, OR A PROSPECTIVE**  
14 **STUDENT, AS A CONDITION OF ACCEPTANCE OR PARTICIPATION IN CURRICULAR**  
15 **OR EXTRACURRICULAR ACTIVITIES, TO:**

16                   **(I) ADD TO THE LIST OF CONTACTS ASSOCIATED WITH A**  
17 **PERSONAL ELECTRONIC ACCOUNT ANY INDIVIDUAL, INCLUDING A COACH, A**  
18 **TEACHER, AN ADMINISTRATOR, ANOTHER EMPLOYEE OF THE EDUCATIONAL**  
19 **INSTITUTION, OR A VOLUNTEER; OR**

20                   **(II) CHANGE THE PRIVACY SETTINGS ASSOCIATED WITH A**  
21 **PERSONAL ELECTRONIC ACCOUNT;**

22                   **(3) TAKE ANY ACTION OR THREATEN TO TAKE ANY ACTION TO**  
23 **DISCHARGE, DISCIPLINE, PROHIBIT FROM PARTICIPATING IN CURRICULAR OR**  
24 **EXTRACURRICULAR ACTIVITIES, OR OTHERWISE PENALIZE A STUDENT AS A**  
25 **RESULT OF THE STUDENT’S REFUSAL TO:**

26                   **(I) GRANT ACCESS TO, ALLOW OBSERVATION OF, OR**  
27 **DISCLOSE ANY INFORMATION THAT ALLOWS ACCESS TO OR OBSERVATION OF A**  
28 **PERSONAL ELECTRONIC ACCOUNT;**

29                   **(II) ADD ANY INDIVIDUAL TO THE LIST OF CONTACTS**  
30 **ASSOCIATED WITH A PERSONAL ELECTRONIC ACCOUNT; OR**

31                   **(III) CHANGE THE PRIVACY SETTINGS ASSOCIATED WITH A**  
32 **PERSONAL ELECTRONIC ACCOUNT; OR**

1           **(4) FAIL OR REFUSE TO ADMIT AN APPLICANT AS A RESULT OF**  
2 **THE APPLICANT’S REFUSAL TO:**

3           **(I) GRANT ACCESS TO, ALLOW OBSERVATION OF, OR**  
4 **DISCLOSE ANY INFORMATION THAT ALLOWS ACCESS TO OR OBSERVATION OF A**  
5 **PERSONAL ELECTRONIC ACCOUNT;**

6           **(II) ADD ANY INDIVIDUAL TO THE LIST OF CONTACTS**  
7 **ASSOCIATED WITH A PERSONAL ELECTRONIC ACCOUNT; OR**

8           **(III) CHANGE THE PRIVACY SETTINGS ASSOCIATED WITH A**  
9 **PERSONAL ELECTRONIC ACCOUNT.**

10       **(C) THIS SECTION MAY NOT BE CONSTRUED TO:**

11           **(1) PROHIBIT AN EDUCATIONAL INSTITUTION FROM REQUESTING**  
12 **OR REQUIRING A STUDENT TO DISCLOSE ACCESS INFORMATION TO ALLOW THE**  
13 **EDUCATIONAL INSTITUTION TO GAIN ACCESS TO AN ELECTRONIC ACCOUNT:**

14           **(I) OPENED AT THE EDUCATIONAL INSTITUTION’S BEHEST;**  
15 **OR**

16           **(II) PROVIDED BY, ~~AND INTENDED TO BE USED SOLELY ON~~**  
17 **~~BEHALF OF,~~ THE EDUCATIONAL INSTITUTION;**

18           **(2) PROHIBIT OR RESTRICT AN EDUCATIONAL INSTITUTION FROM**  
19 **VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT A STUDENT, AN**  
20 **APPLICANT, OR A PROSPECTIVE STUDENT THAT:**

21           **(I) CAN BE OBTAINED WITHOUT ACCESS INFORMATION; ~~OR~~**

22           **(II) IS AVAILABLE IN THE PUBLIC DOMAIN; OR**

23           **(III) IS AVAILABLE TO THE INSTITUTION AS THE RESULT OF**  
24 **ACTIONS UNDERTAKEN INDEPENDENTLY BY THE STUDENT;**

25           **(3) CREATE A DUTY REQUIRING AN EDUCATIONAL INSTITUTION**  
26 **TO SEARCH OR MONITOR THE ACTIVITY OF A PERSONAL ELECTRONIC ACCOUNT;**

27           **(4) MAKE AN EDUCATIONAL INSTITUTION LIABLE FOR FAILING**  
28 **TO REQUEST OR REQUIRE A STUDENT, AN APPLICANT, OR A PROSPECTIVE**  
29 **STUDENT TO GRANT ACCESS TO, ALLOW OBSERVATION OF, OR DISCLOSE**  
30 **INFORMATION THAT ALLOWS ACCESS TO OR OBSERVATION OF THE**  
31 **INDIVIDUAL’S PERSONAL ELECTRONIC ACCOUNT;**

1           **(5) PROHIBIT A STUDENT, AN APPLICANT, OR A PROSPECTIVE**  
2 **STUDENT FROM ALLOWING AN ATHLETIC COACH OR ADMINISTRATOR TO VIEW**  
3 **THE STUDENT’S, APPLICANT’S, OR PROSPECTIVE STUDENT’S PUBLICLY**  
4 **ACCESSIBLE COMMUNICATIONS; OR**

5           **(6) APPLY TO:**

6           **(I) A SUSPECTED CRIMINAL ACTIVITY INVESTIGATION INTO**  
7 **THE PUBLICLY ACCESSIBLE COMMUNICATIONS OF A STUDENT, AN APPLICANT,**  
8 **OR A PROSPECTIVE STUDENT THAT IS PERFORMED BY A PUBLIC SAFETY**  
9 **DEPARTMENT OR POLICE AGENCY OF AN INSTITUTION OF POSTSECONDARY**  
10 **EDUCATION; OR**

11           **(II) AN INVESTIGATION, AN INQUIRY, OR A DETERMINATION**  
12 **RELATING TO THE PUBLICLY ACCESSIBLE COMMUNICATIONS OF A STUDENT, AN**  
13 **APPLICANT, OR A PROSPECTIVE STUDENT THAT IS CONDUCTED IN ACCORDANCE**  
14 **WITH THE HEALTH OR PUBLIC SAFETY ADMINISTRATION ASSESSMENT POLICY**  
15 **OR PROTOCOL OF AN INSTITUTION OF POSTSECONDARY EDUCATION.**

16           **(D) (1) ~~A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF THIS~~**  
17 **~~SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A~~**  
18 **~~FINE NOT EXCEEDING \$1,000.~~**

19           **~~(2)~~ SUBJECT TO PARAGRAPH ~~(3)~~ (2) OF THIS SUBSECTION, AN**  
20 **INDIVIDUAL WHO IS THE SUBJECT OF A VIOLATION OF ANY PROVISION OF THIS**  
21 **SECTION MAY:**

22           **(I) BRING A CIVIL ACTION TO ENJOIN THE VIOLATION OR**  
23 **FOR DAMAGES;**

24           **(II) ADD A CLAIM FOR DAMAGES TO AN ACTION SEEKING**  
25 **INJUNCTIVE RELIEF; AND**

26           **(III) RECOVER NOT MORE THAN \$1,000 IN DAMAGES PLUS**  
27 **REASONABLE ATTORNEY’S FEES AND COURT COSTS.**

28           **~~(3)~~ (2) AN INDIVIDUAL MAY NOT BRING AN ACTION FOR**  
29 **DAMAGES OR ADD A CLAIM FOR DAMAGES TO AN ACTION SEEKING INJUNCTIVE**  
30 **RELIEF UNDER THIS SECTION UNTIL AT LEAST 60 DAYS AFTER MAKING A**  
31 **WRITTEN DEMAND OF THE ALLEGED VIOLATOR FOR NOT MORE THAN \$1,000**  
32 **THAT:**

1                   **(I) INCLUDES REASONABLE DOCUMENTATION OF THE**  
2 **VIOLATION; AND**

3                   **(II) IS SERVED IN THE MANNER PROVIDED FOR SERVICE OF**  
4 **PROCESS IN A CIVIL ACTION UNDER THE MARYLAND RULES OR BY CERTIFIED**  
5 **MAIL TO THE RESIDENCE OR PRINCIPAL OFFICE OR PLACE OF BUSINESS OF THE**  
6 **ALLEGED VIOLATOR.**

7                   ~~**(4)**~~ **(3) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT**  
8 **IN THE DISTRICT COURT FOR THE COUNTY IN WHICH:**

9                   **(I) THE ALLEGED VIOLATION OCCURRED; OR**

10                   **(II) THE ALLEGED VIOLATOR RESIDES OR HAS A PRINCIPAL**  
11 **OFFICE OR PLACE OF BUSINESS.**

12                   **(E) IT IS AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS**  
13 **SECTION THAT THE EDUCATIONAL INSTITUTION ACTED TO COMPLY WITH THE**  
14 **REQUIREMENTS OF A FEDERAL OR STATE LAW.**

15                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 June 1, 2013.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.