SENATE BILL 30

F5   4lr0701
SB 838/13 – EHE   (PRE–FILED)

By: **Senator Young**
Requested: October 22, 2013
Introduced and read first time: January 8, 2014
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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, an applicant, or a prospective student to grant access to, allow
24   observation of, or disclose certain information relating to a personal electronic
25   account, to prohibit a student, an applicant, or a prospective student from
26   allowing a certain individual to view certain communications, or to apply to a
27   certain investigation conducted by a certain department of or in accordance
28   with a certain policy or protocol of an institution of postsecondary education;
29   authorizing an individual who is the subject of a violation of this Act to take
30   certain legal action; establishing that an educational institution's action in

1   compliance with federal or State law is an affirmative defense to a claim under
2   this Act; defining certain terms; and generally relating to the personal
3   electronic accounts of students, applicants, and prospective students of
4   educational institutions.

5   BY adding to
6   Article – Education
7   Section 26–401 to be under the new subtitle "Subtitle 4. Personal Electronic
8   Account Privacy Protection"
9   Annotated Code of Maryland
10   (2008 Replacement Volume and 2013 Supplement)

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

Article – Education

SUBTITLE 4. PERSONAL ELECTRONIC ACCOUNT PRIVACY PROTECTION.

26–401.

16   (A)   (1)   IN THIS SECTION THE FOLLOWING WORDS HAVE THE
17   MEANINGS INDICATED.

18   (2)   "ACCESS INFORMATION" MEANS A USER NAME, A PASSWORD,
19   LOG–IN INFORMATION, AN ACCOUNT NAME, OR ANY OTHER SECURITY
20   INFORMATION THAT PROTECTS ACCESS TO A PERSONAL ELECTRONIC ACCOUNT.

21   (3)   "EDUCATIONAL INSTITUTION" MEANS A PUBLIC OR PRIVATE
22   EDUCATIONAL INSTITUTION THAT OFFERS STUDENTS AN ORGANIZED COURSE
23   OF STUDY OR TRAINING THAT IS ACADEMIC, TECHNICAL, TRADE ORIENTED, OR
24   PREPARATORY FOR GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION.

25   (4)   (I)   "PERSONAL ELECTRONIC ACCOUNT" MEANS AN
26   ACCOUNT CREATED VIA AN ELECTRONIC MEDIUM OR A SERVICE THAT ALLOWS
27   USERS TO CREATE, SHARE, OR VIEW USER–GENERATED CONTENT, INCLUDING
28   UPLOADING OR DOWNLOADING VIDEOS OR STILL PHOTOGRAPHS, BLOGS, VIDEO
29   BLOGS, PODCASTS, MESSAGES, ELECTRONIC MAIL, INTERNET WEB SITE
30   PROFILES OR LOCATIONS, OR ANY OTHER ELECTRONIC INFORMATION.

31   (II)   "PERSONAL ELECTRONIC ACCOUNT" DOES NOT
32   INCLUDE AN ACCOUNT THAT IS OPENED ON BEHALF OF, OR OWNED OR
33   PROVIDED BY, AN EDUCATIONAL INSTITUTION.

1   **(5)**   **"STUDENT"** INCLUDES AN INDIVIDUAL WHO IS A
2 PARTICIPANT, TRAINEE, OR STUDENT IN AN ORGANIZED COURSE OF STUDY OR
3 TRAINING OFFERED BY AN EDUCATIONAL INSTITUTION.

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

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

10   **(2)**   COMPEL A STUDENT, AN APPLICANT, OR A PROSPECTIVE
11 STUDENT, AS A CONDITION OF ACCEPTANCE OR PARTICIPATION IN CURRICULAR
12 OR EXTRACURRICULAR ACTIVITIES, TO:

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

17   **(II)**   CHANGE THE PRIVACY SETTINGS ASSOCIATED WITH A
18 PERSONAL ELECTRONIC ACCOUNT;

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

23   **(I)**   GRANT ACCESS TO, ALLOW OBSERVATION OF, OR
24 DISCLOSE ANY INFORMATION THAT ALLOWS ACCESS TO OR OBSERVATION OF A
25 PERSONAL ELECTRONIC ACCOUNT;

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

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

30   **(4)**   FAIL OR REFUSE TO ADMIT AN APPLICANT AS A RESULT OF
31 THE APPLICANT'S REFUSAL TO:

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

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

6   **(III)** CHANGE THE PRIVACY SETTINGS ASSOCIATED WITH A
7 PERSONAL ELECTRONIC ACCOUNT.

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

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

12   **(I)** OPENED AT THE EDUCATIONAL INSTITUTION'S BEHEST;
13 OR

14   **(II)** PROVIDED BY THE EDUCATIONAL INSTITUTION;

15   **(2)** PROHIBIT OR RESTRICT AN EDUCATIONAL INSTITUTION FROM
16 VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT A STUDENT, AN
17 APPLICANT, OR A PROSPECTIVE STUDENT THAT:

18   **(I)** CAN BE OBTAINED WITHOUT ACCESS INFORMATION;

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

20   **(III)** IS AVAILABLE TO THE EDUCATIONAL INSTITUTION AS
21 THE RESULT OF ACTIONS UNDERTAKEN INDEPENDENTLY BY THE STUDENT;

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

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

29   **(5)**   PROHIBIT A STUDENT, AN APPLICANT, OR A PROSPECTIVE
30 STUDENT FROM ALLOWING AN ATHLETIC COACH OR ADMINISTRATOR TO VIEW

1 THE STUDENT'S, APPLICANT'S, OR PROSPECTIVE STUDENT'S PUBLICLY
2 ACCESSIBLE COMMUNICATIONS; OR

3   **(6)** APPLY TO:

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

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

14   **(D)** **(1)** SUBJECT TO PARAGRAPH **(2)** OF THIS SUBSECTION, AN
15 INDIVIDUAL WHO IS THE SUBJECT OF A VIOLATION OF ANY PROVISION OF THIS
16 SECTION MAY:

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

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

21   **(III)** RECOVER NOT MORE THAN **$1,000** IN DAMAGES PLUS
22 REASONABLE ATTORNEY'S FEES AND COURT COSTS.

23   **(2)** AN INDIVIDUAL MAY NOT BRING AN ACTION FOR DAMAGES OR
24 ADD A CLAIM FOR DAMAGES TO AN ACTION SEEKING INJUNCTIVE RELIEF
25 UNDER THIS SECTION UNTIL AT LEAST **60** DAYS AFTER MAKING A WRITTEN
26 DEMAND OF THE ALLEGED VIOLATOR FOR NOT MORE THAN **$1,000** THAT:

27   **(I)** INCLUDES REASONABLE DOCUMENTATION OF THE
28 VIOLATION; AND

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

1   **(3)   AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT IN**
2 **THE DISTRICT COURT FOR THE COUNTY IN WHICH:**

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

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

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

9   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 June 1, 2014.