

Chapter 465

(House Bill 934)

AN ACT concerning

~~Educational~~ Institutions of Postsecondary Education – Personal Electronic Account – Privacy Protection

FOR the purpose of prohibiting an ~~educational institution~~ institution of postsecondary education from requiring, requesting, suggesting, or causing a student, an applicant, or a prospective student to grant access to, allow observation of, or disclose information that allows access to or observation of the individual's personal electronic account; prohibiting an ~~educational institution~~ institution of postsecondary education from compelling a student, an applicant, or a prospective student, as a condition of acceptance or participation in curricular or extracurricular activities, to add certain individuals to a certain list of contacts or to change certain privacy settings; prohibiting an ~~educational institution~~ institution of postsecondary education from taking or threatening to take certain actions against a student, or failing or refusing to admit an applicant, as a result of the student's or applicant's refusal to grant access to, allow observation of, or disclose certain information relating to a personal electronic account, add certain individuals to a certain list of contacts, or change certain privacy settings; providing that this Act may not be construed to prohibit an ~~educational institution~~ institution of postsecondary education from requesting or requiring a student to disclose access information to certain electronic accounts, to prohibit or restrict an ~~educational institution~~ institution of postsecondary education from viewing, accessing, or utilizing certain information that is ~~available in the public domain~~ publicly accessible or available to an ~~educational institution~~ institution of postsecondary education as the result of certain actions of the student, to create a duty to search or monitor the activity of a personal electronic account, to make an ~~educational institution~~ institution of postsecondary education liable for failing to request or require a student, an applicant, or a prospective student to grant access to, allow observation of, or disclose certain information relating to a personal electronic account, to prohibit a student, an applicant, or a prospective student from allowing a certain individual to view certain communications, or to apply to a certain investigation conducted by a certain department of or in accordance with a certain policy or protocol of an institution of postsecondary education; authorizing the governing board of an institution of higher education to adopt a policy authorizing an employee to request a student to create a certain personal electronic account for a certain purpose ~~or to request to observe certain information to fulfill a certain obligation or conduct a certain investigation or assessment~~; authorizing an individual who is the subject of a violation of this Act to take certain legal action; establishing that an ~~educational institution's~~ institution of postsecondary education's action in compliance with federal or State law is an affirmative defense to a claim under this Act; defining certain terms; and generally relating to the personal electronic accounts of students, applicants, and prospective students of ~~educational~~ institutions of postsecondary education.

BY adding to

Article – Education

Section 26–401 to be under the new subtitle “Subtitle 4. Personal Electronic Account Privacy Protection”

Annotated Code of Maryland

(2014 Replacement Volume and 2014 Supplement)

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

Article – Education

SUBTITLE 4. PERSONAL ELECTRONIC ACCOUNT PRIVACY PROTECTION.

26–401.

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

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

(3) ~~“EDUCATIONAL INSTITUTION” MEANS A PUBLIC OR PRIVATE EDUCATIONAL INSTITUTION THAT OFFERS STUDENTS AN ORGANIZED COURSE OF STUDY OR TRAINING THAT IS ACADEMIC, TECHNICAL, TRADE ORIENTED, OR PREPARATORY FOR GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION~~ INSTITUTION OF POSTSECONDARY EDUCATION” HAS THE MEANING STATED IN § 10–101(I) OF THIS ARTICLE.

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

(II) “PERSONAL ELECTRONIC ACCOUNT” DOES NOT INCLUDE AN ACCOUNT THAT IS OPENED ON BEHALF OF, OR OWNED OR PROVIDED BY, AN ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION.

(5) "STUDENT" INCLUDES AN INDIVIDUAL WHO IS A PARTICIPANT, TRAINEE, OR STUDENT IN AN ORGANIZED COURSE OF STUDY OR TRAINING OFFERED BY AN ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION.

(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION MAY NOT:

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

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

(I) ADD TO THE LIST OF CONTACTS ASSOCIATED WITH A PERSONAL ELECTRONIC ACCOUNT ANY INDIVIDUAL, INCLUDING A COACH, A TEACHER, AN ADMINISTRATOR, ANOTHER EMPLOYEE OF THE ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION, OR A VOLUNTEER; OR

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

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

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

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

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

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

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

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

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

(C) THIS SECTION MAY NOT BE CONSTRUED TO:

(1) PROHIBIT AN ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION FROM REQUESTING OR REQUIRING A STUDENT TO DISCLOSE ACCESS INFORMATION TO ALLOW THE ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION TO GAIN ACCESS TO AN ELECTRONIC ACCOUNT:

(I) OPENED AT THE ~~EDUCATIONAL INSTITUTION'S~~ INSTITUTION OF POSTSECONDARY EDUCATION'S BEHEST; OR

(II) PROVIDED BY THE ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION;

(2) PROHIBIT OR RESTRICT AN ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION FROM VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT A STUDENT, AN APPLICANT, OR A PROSPECTIVE STUDENT THAT:

(I) CAN BE OBTAINED WITHOUT ACCESS INFORMATION;

(II) IS ~~AVAILABLE IN THE PUBLIC DOMAIN~~ PUBLICLY ACCESSIBLE; OR

(III) IS AVAILABLE TO THE ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION AS THE RESULT OF ACTIONS UNDERTAKEN INDEPENDENTLY BY THE STUDENT;

(3) CREATE A DUTY REQUIRING AN ~~EDUCATIONAL INSTITUTION~~ INSTITUTION OF POSTSECONDARY EDUCATION TO SEARCH OR MONITOR THE ACTIVITY OF A PERSONAL ELECTRONIC ACCOUNT;

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

(5) PROHIBIT A STUDENT, AN APPLICANT, OR A PROSPECTIVE STUDENT FROM ALLOWING AN ATHLETIC COACH OR ADMINISTRATOR TO VIEW THE STUDENT'S, APPLICANT'S, OR PROSPECTIVE STUDENT'S PUBLICLY ACCESSIBLE COMMUNICATIONS; OR

(6) APPLY TO:

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

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

~~(D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE GOVERNING BOARD OF AN INSTITUTION OF HIGHER EDUCATION MAY ADOPT A POLICY AUTHORIZING AN EMPLOYEE OF THE INSTITUTION OF HIGHER EDUCATION TO:~~

~~(1) REQUEST A STUDENT, IN ORDER TO COMPLETE AN ACADEMIC OR CAREER-BASED ACTIVITY, TO CREATE A GENERIC PERSONAL ELECTRONIC ACCOUNT; OR~~

~~(2) REQUEST TO OBSERVE INFORMATION ON A STUDENT'S PERSONAL ELECTRONIC ACCOUNT TO:~~

~~(I) FULFILL AN OBLIGATION OF THE EMPLOYEE OR THE INSTITUTION UNDER FEDERAL OR STATE LAW; OR~~

~~(II) CONDUCT A HEALTH AND SAFETY INVESTIGATION OR ASSESSMENT.~~

(D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE GOVERNING BOARD OF AN INSTITUTION OF POSTSECONDARY EDUCATION MAY

ADOPT A POLICY AUTHORIZING AN EMPLOYEE OF THE INSTITUTION OF POSTSECONDARY EDUCATION TO REQUEST A STUDENT, IN ORDER TO COMPLETE AN ACADEMIC OR CAREER-BASED ACTIVITY, TO CREATE A GENERIC PERSONAL ELECTRONIC ACCOUNT.

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

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

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

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

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

(I) INCLUDES REASONABLE DOCUMENTATION OF THE VIOLATION; AND

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

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

(I) THE ALLEGED VIOLATION OCCURRED; OR

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2015.

Approved by the Governor, May 12, 2015.