

HOUSE BILL 298

F1

(5lr0867)

ENROLLED BILL

— *Ways and Means/ Education, Health, and Environmental Affairs* —

Introduced by **Delegates Kaiser, Aumann, B. Barnes, Carr, Chang, Cullison, Ebersole, Fraser-Hidalgo, Frush, Ghrist, Glenn, Gutierrez, Hayes, Haynes, Healey, Hixson, Jackson, Jones, Krebs, Lafferty, Lam, Lierman, McComas, McCray, McDonough, McIntosh, Moon, Morhaim, Pendergrass, Rosenberg, Sample-Hughes, Simonaire, Sophocleus, Tarlau, Turner, Valderrama, Valentino-Smith, Waldstreicher, Walker, A. Washington, M. Washington, B. Wilson, C. Wilson, P. Young, ~~and Zucker~~ Zucker, Barron, C. Howard, Patterson, Afzali, D. Barnes, Buckel, Fennell, Hornberger, Luedtke, Metzgar, Platt, Reilly, and Shoemaker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Education – Student Data Privacy Act of 2015**

3 FOR the purpose of requiring certain operators of certain Internet sites, services, and
4 applications to protect certain student information from unauthorized access, to
5 implement and maintain certain security procedures and practices, and to delete
6 certain student information under certain circumstances; prohibiting certain
7 operators from *knowingly* engaging in certain activities with respect to certain sites,

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.

Italics indicate opposite chamber/conference committee amendments.



1 services, and applications relating to targeted advertising, selling certain student
2 information, and disclosing certain student information under certain
3 circumstances; providing that certain operators may use certain de-identified or
4 aggregated student information under certain circumstances; providing for the
5 application of this Act; defining certain terms; and generally relating to student data
6 privacy.

7 BY adding to

8 Article – Education

9 Section 4–131

10 Annotated Code of Maryland

11 (2014 Replacement Volume and 2014 Supplement)

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

14 **Article – Education**

15 **4–131.**

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

18 (2) (I) “COVERED INFORMATION” MEANS INFORMATION OR
19 MATERIAL THAT:

20 1. PERSONALLY IDENTIFIES AN INDIVIDUAL STUDENT
21 IN THIS STATE OR THAT IS LINKED TO INFORMATION OR MATERIAL THAT
22 PERSONALLY IDENTIFIES AN INDIVIDUAL STUDENT IN THIS STATE; AND

23 2. IS GATHERED BY AN OPERATOR THROUGH THE
24 OPERATION OF A SITE, A SERVICE, OR AN APPLICATION.

25 (II) “COVERED INFORMATION” INCLUDES A STUDENT’S:

26 1. EDUCATIONAL AND DISCIPLINARY RECORD;

27 2. FIRST AND LAST NAME;

28 3. HOME ADDRESS AND GEOLOCATION INFORMATION;

29 4. TELEPHONE NUMBER;

30 5. ELECTRONIC MAIL ADDRESS OR OTHER
31 INFORMATION THAT ALLOWS PHYSICAL OR ONLINE CONTACT;

1 (III) WAS DESIGNED AND MARKETED PRIMARILY FOR A
2 PREK-12 SCHOOL PURPOSE.

3 (4) "PERSISTENT UNIQUE IDENTIFIER" MEANS A UNIQUE
4 REFERENCE NUMBER USED AS AN IDENTIFIER IN COMPUTER SOFTWARE THAT IS
5 STORED ACROSS DIFFERENT USAGE SESSIONS.

6 (5) (I) "PREK-12 SCHOOL PURPOSE" MEANS AN ACTIVITY THAT
7 ~~CUSTOMARILY:~~

8 1. TAKES PLACE AT THE DIRECTION OF A PUBLIC
9 SCHOOL, A TEACHER, AN ADMINISTRATOR, OR A LOCAL SCHOOL SYSTEM; OR

10 2. AIDS IN THE ADMINISTRATION OF PUBLIC SCHOOL
11 ACTIVITIES.

12 (II) "PREK-12 SCHOOL PURPOSE" INCLUDES:

13 1. INSTRUCTION IN THE CLASSROOM;

14 2. HOME INSTRUCTION;

15 3. ADMINISTRATIVE ACTIVITIES;

16 4. COLLABORATION AMONG STUDENTS, PUBLIC SCHOOL
17 EMPLOYEES, AND PARENTS;

18 5. MAINTAINING, DEVELOPING, SUPPORTING,
19 IMPROVING, OR DIAGNOSING THE OPERATOR'S SITE, SERVICE, OR APPLICATION;
20 AND

21 6. AN ACTIVITY THAT IS FOR THE USE AND BENEFIT OF
22 THE PUBLIC SCHOOL.

23 (6) (I) "TARGETED ADVERTISING" MEANS PRESENTING
24 ADVERTISEMENTS TO AN INDIVIDUAL STUDENT THAT ARE SELECTED BASED ON
25 INFORMATION OBTAINED OR INFERRED FROM THE STUDENT'S ONLINE BEHAVIOR,
26 USAGE OF APPLICATIONS, OR COVERED INFORMATION.

27 (II) "TARGETED ADVERTISING" DOES NOT INCLUDE
28 ADVERTISEMENTS PRESENTED TO AN INDIVIDUAL STUDENT AT AN ONLINE
29 LOCATION:

1 **1. BASED ON THE STUDENT'S CURRENT VISIT TO THE**
2 **ONLINE LOCATION WITHOUT COLLECTION OR RETENTION OF THE STUDENT'S**
3 **ONLINE ACTIVITIES OVER TIME; OR**

4 **2. IN RESPONSE TO A SINGLE SEARCH QUERY WITHOUT**
5 **COLLECTION OR RETENTION OF THE STUDENT'S ONLINE ACTIVITIES OVER TIME.**

6 **(B) THIS SECTION DOES NOT APPLY TO A GENERAL AUDIENCE INTERNET**
7 **WEB SITE, GENERAL AUDIENCE ONLINE SERVICE, GENERAL AUDIENCE ONLINE**
8 **APPLICATION, OR GENERAL AUDIENCE MOBILE APPLICATION, EVEN IF LOG-IN**
9 **CREDENTIALS CREATED FOR AN OPERATOR'S SITE, SERVICE, OR APPLICATION MAY**
10 **BE USED TO ACCESS THE GENERAL AUDIENCE SITE, SERVICE, OR APPLICATION.**

11 **(C) AN OPERATOR SHALL:**

12 **(1) PROTECT COVERED INFORMATION FROM UNAUTHORIZED**
13 **ACCESS, DESTRUCTION, USE, MODIFICATION, OR DISCLOSURE;**

14 **(2) IMPLEMENT AND MAINTAIN REASONABLE SECURITY**
15 **PROCEDURES AND PRACTICES TO PROTECT COVERED INFORMATION; AND**

16 **(3) IF COVERED INFORMATION IS UNDER THE ~~CONTROL~~ AUTHORITY**
17 **OF A PUBLIC SCHOOL OR LOCAL SCHOOL SYSTEM IN ACCORDANCE WITH A CONTRACT**
18 **OR AN AGREEMENT, DELETE WITHIN A REASONABLE TIME THE COVERED**
19 **INFORMATION IF THE PUBLIC SCHOOL OR LOCAL SCHOOL SYSTEM REQUESTS**
20 **DELETION OF THE COVERED INFORMATION.**

21 **(D) (1) AN OPERATOR MAY NOT KNOWINGLY ENGAGE IN ANY OF THE**
22 **FOLLOWING ACTIVITIES WITH RESPECT TO THE OPERATOR'S SITE, SERVICE, OR**
23 **APPLICATION:**

24 **(I) ENGAGE IN TARGETED ADVERTISING IF THE ADVERTISING**
25 **IS BASED ON INFORMATION, INCLUDING COVERED INFORMATION AND PERSISTENT**
26 **UNIQUE IDENTIFIERS, THAT THE OPERATOR HAS ACQUIRED BECAUSE OF THE USE**
27 **OF THE OPERATOR'S SITE, SERVICE, OR APPLICATION;**

28 **(II) ~~USE~~ EXCEPT IN FURTHERANCE OF A PREK-12 SCHOOL**
29 **PURPOSE, USE INFORMATION, INCLUDING COVERED INFORMATION AND**
30 **PERSISTENT UNIQUE IDENTIFIERS, CREATED OR GATHERED BY THE OPERATOR'S**
31 **SITE, SERVICE, OR APPLICATION, TO MAKE A PROFILE ABOUT A STUDENT;**

32 **(III) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION AND**
33 **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, SELL A STUDENT'S**
34 **INFORMATION; OR**

1 (IV) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION,
2 DISCLOSE COVERED INFORMATION.

3 (2) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO
4 PROHIBIT THE OPERATOR'S USE OF INFORMATION FOR MAINTAINING, DEVELOPING,
5 SUPPORTING, IMPROVING, OR DIAGNOSING THE OPERATOR'S SITE, SERVICE, OR
6 APPLICATION.

7 (3) FOR PURPOSES OF PARAGRAPH (1)(II) OF THIS SUBSECTION,
8 MAKING A PROFILE OF A STUDENT DOES NOT INCLUDE THE COLLECTION AND
9 RETENTION OF ACCOUNT INFORMATION THAT REMAINS UNDER THE AUTHORITY OF
10 A STUDENT, A STUDENT'S PARENT OR GUARDIAN, A PUBLIC SCHOOL, OR A LOCAL
11 SCHOOL SYSTEM.

12 (E) NOTWITHSTANDING SUBSECTION (D)(1)(IV) OF THIS SECTION, AN
13 OPERATOR MAY DISCLOSE A STUDENT'S COVERED INFORMATION:

14 (1) IF THE DISCLOSURE IS MADE ONLY IN FURTHERANCE OF THE
15 PREK-12 SCHOOL PURPOSE OF THE SITE, SERVICE, OR APPLICATION AND THE
16 RECIPIENT OF THE COVERED INFORMATION:

17 (I) DOES NOT FURTHER DISCLOSE THE INFORMATION; AND

18 (II) IS LEGALLY REQUIRED TO COMPLY WITH ~~SUBSECTION~~
19 SUBSECTIONS (C) AND (D)(1) OF THIS SECTION;

20 (2) TO ENSURE LEGAL ~~AND~~ OR REGULATORY COMPLIANCE;

21 (3) TO TAKE PRECAUTIONS AGAINST LIABILITY;

22 ~~(3)~~ (4) TO RESPOND TO OR PARTICIPATE IN JUDICIAL PROCESS;

23 ~~(4)~~ (5) TO PROTECT THE SAFETY OF USERS OR OTHERS OR THE
24 SECURITY OR INTEGRITY OF THE SITE, SERVICE, OR APPLICATION;

25 ~~(5)~~ (6) TO A SERVICE PROVIDER, PROVIDED THE OPERATOR
26 CONTRACTUALLY:

27 (I) PROHIBITS THE SERVICE PROVIDER FROM USING ANY
28 COVERED INFORMATION FOR ANY PURPOSE OTHER THAN PROVIDING THE
29 CONTRACTED SERVICE TO, OR ON BEHALF OF, THE OPERATOR;

1 (II) ~~PROHIBITS~~ EXCEPT FOR A PURPOSE EXPRESSLY
2 PERMITTED UNDER THIS SUBSECTION, PROHIBITS THE SERVICE PROVIDER FROM
3 DISCLOSING COVERED INFORMATION PROVIDED BY THE OPERATOR WITH A THIRD
4 PARTY; AND

5 (III) REQUIRES THE SERVICE PROVIDER TO COMPLY WITH THE
6 REQUIREMENTS OF SUBSECTIONS (C) AND (D)(1)(I) THROUGH (III) OF THIS
7 SECTION;

8 ~~(6)~~ (7) IF SUBSECTION (D)(1)(I) THROUGH (III) OF THIS SECTION IS
9 NOT VIOLATED;

10 ~~(7)~~ (8) IF FEDERAL OR STATE LAW REQUIRES THE OPERATOR TO
11 DISCLOSE THE INFORMATION, AND THE OPERATOR COMPLIES WITH THE
12 REQUIREMENTS OF FEDERAL AND STATE LAW IN PROTECTING AND DISCLOSING THE
13 INFORMATION;

14 ~~(8)~~ (9) FOR A LEGITIMATE RESEARCH PURPOSE AS:

15 (I) REQUIRED BY FEDERAL OR STATE LAW; OR

16 (II) ALLOWED BY FEDERAL OR STATE LAW AND UNDER THE
17 DIRECTION OF A PUBLIC SCHOOL, LOCAL SCHOOL SYSTEM, OR THE DEPARTMENT,
18 IF A STUDENT'S COVERED INFORMATION IS NOT USED FOR ADVERTISING OR TO
19 MAKE A PROFILE ON THE STUDENT FOR A PURPOSE OTHER THAN A PREK-12
20 SCHOOL PURPOSE; OR

21 ~~(9)~~ (10) TO A STATE OR LOCAL EDUCATION AGENCY, INCLUDING
22 PUBLIC SCHOOLS AND LOCAL SCHOOL SYSTEMS, FOR A PREK-12 SCHOOL PURPOSE,
23 AS PERMITTED BY FEDERAL AND STATE LAW.

24 (F) IF AN OPERATOR OF A SITE, A SERVICE, OR AN APPLICATION USED FOR
25 A PREK-12 SCHOOL PURPOSE IS MERGED WITH OR ACQUIRED BY ANOTHER ENTITY,
26 THE SUCCESSOR ENTITY IS SUBJECT TO THIS SECTION FOR PREVIOUSLY COLLECTED
27 COVERED INFORMATION.

28 (G) NOTHING IN THIS SECTION PROHIBITS AN OPERATOR FROM:

29 (1) USING AGGREGATED OR DE-IDENTIFIED COVERED
30 INFORMATION:

31 (I) TO DEVELOP OR IMPROVE AN EDUCATIONAL PRODUCT OR
32 SERVICE WITHIN ANY SITE, SERVICE, OR APPLICATION THE OPERATOR OWNS; OR

1 (II) TO DEMONSTRATE THE EFFECTIVENESS OF THE
2 OPERATOR'S PRODUCTS OR SERVICES; OR

3 (2) SHARING AGGREGATED OR DE-IDENTIFIED COVERED
4 INFORMATION FOR THE DEVELOPMENT ~~AND~~ OR IMPROVEMENT OF EDUCATIONAL
5 SITES, SERVICES, OR APPLICATIONS.

6 ~~(H) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A NONPROFIT
7 WEB SITE, MOBILE APPLICATION, OR ONLINE SERVICE FROM USING OR DISCLOSING
8 A STUDENT'S COVERED INFORMATION ONLY FOR THE PURPOSE OF CONDUCTING A
9 COLLEGE OR CAREER READINESS ASSESSMENT IF THE NONPROFIT WEB SITE,
10 MOBILE APPLICATION, OR ONLINE SERVICE:~~

11 ~~(1) GAVE CLEAR AND CONSPICUOUS NOTICE OF THE USE OR
12 DISCLOSURE OF THE STUDENT'S COVERED INFORMATION TO THE STUDENT OR THE
13 STUDENT'S PARENT OR GUARDIAN; AND~~

14 ~~(2) OBTAINED THE AFFIRMATIVE CONSENT OF THE STUDENT OR THE
15 STUDENT'S PARENT OR GUARDIAN TO USE OR DISCLOSE THE STUDENT'S COVERED
16 INFORMATION.~~

17 (1) EXCEPT FOR SUBSECTION (D)(1)(III) OF THIS SECTION AND
18 SUBJECT TO PARAGRAPH ~~(3)~~ (2) OF THIS SUBSECTION, NOTHING IN SUBSECTIONS
19 (D) AND (E) OF THIS SECTION MAY BE CONSTRUED TO PROHIBIT THE USE OR
20 DISCLOSURE OF A STUDENT'S COVERED INFORMATION BY AN OPERATOR.

21 ~~(2) THE USE OR DISCLOSURE OF A STUDENT'S COVERED
22 INFORMATION UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE THE USE
23 OR DISCLOSURE FOR THE PURPOSE OF:~~

24 ~~(I) CONDUCTING A COLLEGE OR CAREER READINESS
25 ASSESSMENT;~~

26 ~~(II) LONGITUDINAL RESEARCH TO IMPROVE EDUCATIONAL
27 PRACTICE OR POLICY; OR~~

28 ~~(III) PROVIDING ACCESS TO POSTSECONDARY EDUCATION OR
29 SCHOLARSHIPS.~~

30 ~~(3)~~ (2) AN OPERATOR MAY USE OR DISCLOSE COVERED
31 INFORMATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE OPERATOR:

1 **(I) PROVIDED CLEAR AND CONSPICUOUS NOTICE OF THE USE**
 2 **OR DISCLOSURE OF THE STUDENT'S COVERED INFORMATION TO THE STUDENT OR**
 3 **THE STUDENT'S PARENT OR GUARDIAN; AND**

4 **(II) OBTAINED THE AFFIRMATIVE CONSENT OF THE STUDENT, IF**
 5 **THE STUDENT IS AT LEAST 18 YEARS OLD, OR THE STUDENT'S PARENT OR GUARDIAN**
 6 **TO USE OR DISCLOSE THE STUDENT'S COVERED INFORMATION.**

7 ~~(H)~~ **(I) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE AUTHORITY**
 8 **OF A LAW ENFORCEMENT AGENCY TO OBTAIN CONTENT OR INFORMATION FROM AN**
 9 **OPERATOR AS AUTHORIZED BY FEDERAL OR STATE LAW OR IN ACCORDANCE WITH**
 10 **AN ORDER OF A COURT OF COMPETENT JURISDICTION.**

11 ~~(H)~~ **(J) THIS SECTION DOES NOT LIMIT THE ABILITY OF AN OPERATOR TO:**

12 **(1) USE USE A STUDENT'S COVERED INFORMATION FOR ADAPTIVE**
 13 **LEARNING OR CUSTOMIZED STUDENT LEARNING PURPOSES;**

14 **(2) USE RECOMMENDATION ENGINES TO RECOMMEND TO A STUDENT**
 15 **ADDITIONAL CONTENT OR SERVICES RELATING TO AN EDUCATIONAL, OTHER**
 16 **LEARNING, OR EMPLOYMENT OPPORTUNITY PURPOSE WITHIN AN OPERATOR'S SITE,**
 17 **SERVICE, OR APPLICATION IF THE RECOMMENDATION IS NOT DETERMINED IN**
 18 **WHOLE OR IN PART BY PAYMENT OR OTHER CONSIDERATION FROM A THIRD PARTY;**

19 **(3) RESPOND TO A STUDENT'S SEARCH QUERY, OTHER REQUEST FOR**
 20 **INFORMATION, OR REQUEST FOR FEEDBACK IF THE INFORMATION OR RESPONSE IS**
 21 **NOT DETERMINED IN WHOLE OR IN PART BY PAYMENT OR OTHER CONSIDERATION**
 22 **FROM A THIRD PARTY; OR**

23 **(4) USE OR RETAIN COVERED INFORMATION TO:**

24 **(I) ENSURE LEGAL OR REGULATORY COMPLIANCE; OR**

25 **(II) TAKE PRECAUTIONS AGAINST LIABILITY.**

26 ~~(J)~~ **(K) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN**
 27 **OPERATOR OF AN INTERNET WEB SITE, AN ONLINE SERVICE, AN ONLINE**
 28 **APPLICATION, OR A MOBILE APPLICATION FROM MARKETING EDUCATIONAL**
 29 **PRODUCTS DIRECTLY TO PARENTS IF THE MARKETING WAS NOT A RESULT OF THE**
 30 **USE OF COVERED INFORMATION OBTAINED BY THE OPERATOR THROUGH THE**
 31 **PROVISION OF SERVICES COVERED UNDER THIS SECTION.**

32 ~~(K)~~ **(L) THIS SECTION ~~DOES NOT~~ MAY NOT BE CONSTRUED TO IMPOSE A**
 33 **DUTY ON A PROVIDER OF AN ELECTRONIC STORE, A GATEWAY, MARKETPLACE, OR**

1 ANY OTHER MEANS OF PURCHASING OR DOWNLOADING SOFTWARE OR
2 APPLICATIONS TO REVIEW OR ENFORCE COMPLIANCE OF THIS SECTION.

3 ~~(L)~~ (M) THIS SECTION ~~DOES NOT~~ MAY NOT BE CONSTRUED TO IMPOSE A
4 DUTY ON A PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN
5 CHAPTER 5, TITLE 47 OF THE UNITED STATES CODE, TO REVIEW OR ENFORCE
6 COMPLIANCE WITH THIS SECTION BY THIRD-PARTY CONTENT PROVIDERS.

7 ~~(M)~~ (N) THIS SECTION ~~DOES NOT~~ MAY NOT BE CONSTRUED TO IMPEDE THE
8 ABILITY OF STUDENTS TO DOWNLOAD, EXPORT, TRANSFER, OR OTHERWISE SAVE OR
9 MAINTAIN THEIR OWN ~~STUDENT CREATED~~ DATA OR DOCUMENTS.

10 (O) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO
11 PROHIBIT AN INTERNET SERVICE PROVIDER FROM PROVIDING INTERNET
12 CONNECTIVITY TO PUBLIC SCHOOLS, STUDENTS, OR STUDENTS' FAMILIES.

13 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
14 the application thereof to any person or circumstance is held invalid for any reason in a
15 court of competent jurisdiction, the invalidity does not affect other provisions or any other
16 application of this Act that can be given effect without the invalid provision or application,
17 and for this purpose the provisions of this Act are declared severable.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
19 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.