

# HOUSE BILL 298

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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**

Introduced and read first time: February 4, 2015

Assigned to: Ways and Means

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## A BILL ENTITLED

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 engaging in certain activities with respect to certain sites, services,  
8 and applications relating to targeted advertising, selling certain student  
9 information, and disclosing certain student information under certain  
10 circumstances; providing that certain operators may use certain de-identified or  
11 aggregated student information under certain circumstances; providing for the  
12 application of this Act; defining certain terms; and generally relating to student data  
13 privacy.

14 BY adding to

15 Article – Education

16 Section 4-131

17 Annotated Code of Maryland

18 (2014 Replacement Volume and 2014 Supplement)

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

21 **Article – Education**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 4-131.

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

4 (2) (I) "COVERED INFORMATION" MEANS INFORMATION OR  
5 MATERIAL THAT:

6 1. PERSONALLY IDENTIFIES AN INDIVIDUAL STUDENT  
7 OR THAT IS LINKED TO INFORMATION OR MATERIAL THAT PERSONALLY IDENTIFIES  
8 AN INDIVIDUAL STUDENT; AND

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

11 (II) "COVERED INFORMATION" INCLUDES A STUDENT'S:

12 1. EDUCATIONAL AND DISCIPLINARY RECORD;

13 2. FIRST AND LAST NAME;

14 3. HOME ADDRESS AND GEOLOCATION INFORMATION;

15 4. TELEPHONE NUMBER;

16 5. ELECTRONIC MAIL ADDRESS OR OTHER  
17 INFORMATION THAT ALLOWS PHYSICAL OR ONLINE CONTACT;

18 6. TEST RESULTS, GRADES, AND STUDENT  
19 EVALUATIONS;

20 7. SPECIAL EDUCATION DATA;

21 8. CRIMINAL RECORDS;

22 9. MEDICAL RECORDS AND HEALTH RECORDS;

23 10. SOCIAL SECURITY NUMBER;

24 11. BIOMETRIC INFORMATION;

25 12. SOCIOECONOMIC INFORMATION;

1                   13.   **FOOD PURCHASES;**

2                   14.   **POLITICAL AND RELIGIOUS AFFILIATIONS;**

3                   15.   **TEXT MESSAGES;**

4                   16.   **STUDENT IDENTIFIERS;**

5                   17.   **SEARCH ACTIVITY;**

6                   18.   **PHOTOS; AND**

7                   19.   **VOICE RECORDINGS.**

8                   (3)   **“OPERATOR” MEANS A PERSON WHO IS IN CONTROL OF AN**  
9 **INTERNET WEB SITE, AN ONLINE SERVICE, AN ONLINE APPLICATION, OR A MOBILE**  
10 **APPLICATION THAT:**

11                   (1)   **IS USED PRIMARILY FOR A PREK–12 SCHOOL PURPOSE;**

12                   (2)   **IS ISSUED AT THE DIRECTION OF A SCHOOL, A TEACHER, OR**  
13 **ANY OTHER EMPLOYEE OF A SCHOOL, LOCAL SCHOOL SYSTEM, OR THE**  
14 **DEPARTMENT; AND**

15                   (3)   **WAS DESIGNED AND MARKETED PRIMARILY FOR A**  
16 **PREK–12 SCHOOL PURPOSE.**

17                   (4)   **“PERSISTENT UNIQUE IDENTIFIER” MEANS A UNIQUE**  
18 **REFERENCE NUMBER USED AS AN IDENTIFIER IN COMPUTER SOFTWARE THAT IS**  
19 **STORED ACROSS DIFFERENT USAGE SESSIONS.**

20                   (5)   (1)   **“PREK–12 SCHOOL PURPOSE” MEANS AN ACTIVITY THAT**  
21 **CUSTOMARILY:**

22                           1.   **TAKES PLACE AT THE DIRECTION OF A SCHOOL, A**  
23 **TEACHER, AN ADMINISTRATOR, OR A LOCAL SCHOOL SYSTEM; OR**

24                           2.   **AIDS IN THE ADMINISTRATION OF SCHOOL**  
25 **ACTIVITIES.**

26                   (2)   **“PREK–12 SCHOOL PURPOSE” INCLUDES:**

1                   1.     **INSTRUCTION IN THE CLASSROOM;**

2                   2.     **HOME INSTRUCTION;**

3                   3.     **ADMINISTRATIVE ACTIVITIES;**

4                   4.     **COLLABORATION AMONG STUDENTS, SCHOOL**  
5 **EMPLOYEES, AND PARENTS;**

6                   5.     **MAINTAINING, DEVELOPING, SUPPORTING,**  
7 **IMPROVING, OR DIAGNOSING THE OPERATOR'S SITE, SERVICE, OR APPLICATION;**  
8 **AND**

9                   6.     **AN ACTIVITY THAT IS FOR THE USE AND BENEFIT OF**  
10 **THE SCHOOL.**

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

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

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

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

21                   **(3) IF COVERED INFORMATION IS UNDER THE CONTROL OF A SCHOOL**  
22 **OR LOCAL SCHOOL SYSTEM, DELETE THE COVERED INFORMATION IF THE SCHOOL**  
23 **OR LOCAL SCHOOL SYSTEM REQUESTS DELETION OF THE COVERED INFORMATION.**

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

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

1           **(II) USE INFORMATION, INCLUDING COVERED INFORMATION**  
2 **AND PERSISTENT UNIQUE IDENTIFIERS, CREATED OR GATHERED BY THE**  
3 **OPERATOR'S SITE, SERVICE, OR APPLICATION, TO MAKE A PROFILE ABOUT A**  
4 **STUDENT;**

5           **(III) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, SELL A**  
6 **STUDENT'S INFORMATION; OR**

7           **(IV) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION,**  
8 **DISCLOSE COVERED INFORMATION.**

9           **(2) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO**  
10 **PROHIBIT THE OPERATOR'S USE OF INFORMATION FOR MAINTAINING, DEVELOPING,**  
11 **SUPPORTING, IMPROVING, OR DIAGNOSING THE OPERATOR'S SITE, SERVICE, OR**  
12 **APPLICATION.**

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

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

18           **(I) DOES NOT FURTHER DISCLOSE THE INFORMATION; AND**

19           **(II) IS LEGALLY REQUIRED TO COMPLY WITH SUBSECTION (C)**  
20 **OF THIS SECTION;**

21           **(2) TO ENSURE LEGAL AND REGULATORY COMPLIANCE;**

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

23           **(4) TO PROTECT THE SAFETY OF USERS OR THE SECURITY OF THE**  
24 **SITE;**

25           **(5) 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 THE SERVICE PROVIDER FROM DISCLOSING  
2 COVERED INFORMATION PROVIDED BY THE OPERATOR WITH A THIRD PARTY; AND

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

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

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

12 (8) FOR A LEGITIMATE RESEARCH PURPOSE AS:

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

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

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

22 (F) IF AN OPERATOR OF A SITE, A SERVICE, OR AN APPLICATION USED FOR  
23 A PREK-12 SCHOOL PURPOSE IS MERGED WITH OR ACQUIRED BY ANOTHER ENTITY,  
24 THE SUCCESSOR ENTITY IS SUBJECT TO THIS SECTION.

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

26 (1) USING DE-IDENTIFIED COVERED INFORMATION:

27 (I) TO IMPROVE AN EDUCATIONAL PRODUCT WITHIN ANY SITE,  
28 SERVICE, OR APPLICATION THE OPERATOR OWNS; OR

29 (II) TO DEMONSTRATE THE EFFECTIVENESS OF THE  
30 OPERATOR'S PRODUCTS OR SERVICES; OR

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

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

8           **(I) THIS SECTION DOES NOT LIMIT THE ABILITY OF AN OPERATOR TO USE A**  
9 **STUDENT'S COVERED INFORMATION FOR ADAPTIVE LEARNING OR CUSTOMIZED**  
10 **STUDENT LEARNING PURPOSES.**

11           **(J) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN OPERATOR OF**  
12 **AN INTERNET WEB SITE, AN ONLINE SERVICE, AN ONLINE APPLICATION, OR A**  
13 **MOBILE APPLICATION FROM MARKETING EDUCATIONAL PRODUCTS DIRECTLY TO**  
14 **PARENTS IF THE MARKETING WAS NOT A RESULT OF THE USE OF COVERED**  
15 **INFORMATION OBTAINED BY THE OPERATOR THROUGH THE PROVISION OF**  
16 **SERVICES COVERED UNDER THIS SECTION.**

17           **(K) THIS SECTION DOES NOT IMPOSE A DUTY ON A PROVIDER OF AN**  
18 **ELECTRONIC STORE, A GATEWAY, MARKETPLACE, OR ANY OTHER MEANS OF**  
19 **PURCHASING OR DOWNLOADING SOFTWARE OR APPLICATIONS TO REVIEW OR**  
20 **ENFORCE COMPLIANCE OF THIS SECTION.**

21           **(L) THIS SECTION DOES NOT IMPOSE A DUTY ON A PROVIDER OF AN**  
22 **INTERACTIVE COMPUTER SERVICE, AS DEFINED IN CHAPTER 5, TITLE 47 OF THE**  
23 **UNITED STATES CODE, TO REVIEW OR ENFORCE COMPLIANCE WITH THIS SECTION**  
24 **BY THIRD-PARTY CONTENT PROVIDERS.**

25           **(M) THIS SECTION DOES NOT IMPEDE THE ABILITY OF STUDENTS TO**  
26 **DOWNLOAD, EXPORT, OR OTHERWISE SAVE OR MAINTAIN THEIR OWN STUDENT**  
27 **CREATED DATA OR DOCUMENTS.**

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

33           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
34 1, 2015.