

# HOUSE BILL 934

F5  
SB 30/14 – EHE

5lr2191  
CF SB 210

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By: ~~Delegate K. Young~~ **Delegates K. Young, Hettleman, Korman, B. Robinson, and Vogt**

Introduced and read first time: February 13, 2015

Assigned to: Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2015

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

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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 a certain individual to view certain communications, or to apply to a certain  
 2 investigation conducted by a certain department of or in accordance with a certain  
 3 policy or protocol of an institution of postsecondary education; authorizing the  
 4 governing board of an institution of higher education to adopt a policy authorizing  
 5 an employee to request a student to create a certain personal electronic account for  
 6 a certain purpose or to request to observe certain information to fulfill a certain  
 7 obligation or conduct a certain investigation or assessment; authorizing an  
 8 individual who is the subject of a violation of this Act to take certain legal action;  
 9 establishing that an educational institution's action in compliance with federal or  
 10 State law is an affirmative defense to a claim under this Act; defining certain terms;  
 11 and generally relating to the personal electronic accounts of students, applicants,  
 12 and prospective students of educational institutions.

13 BY adding to

14 Article – Education

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

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**

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

23 **26–401.**

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

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

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

33 (4) (I) “PERSONAL ELECTRONIC ACCOUNT” MEANS AN ACCOUNT  
 34 CREATED VIA AN ELECTRONIC MEDIUM OR A SERVICE THAT ALLOWS USERS TO  
 35 CREATE, SHARE, OR VIEW USER-GENERATED CONTENT, INCLUDING UPLOADING OR  
 36 DOWNLOADING VIDEOS OR STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS,

1 MESSAGES, ELECTRONIC MAIL, INTERNET WEB SITE PROFILES OR LOCATIONS, OR  
2 ANY OTHER ELECTRONIC INFORMATION.

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

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

9 (B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EDUCATIONAL  
10 INSTITUTION MAY NOT:

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

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

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

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

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

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

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

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

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

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

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

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

12 (C) THIS SECTION MAY NOT BE CONSTRUED TO:

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

16 (I) OPENED AT THE EDUCATIONAL INSTITUTION'S BEHEST; OR

17 (II) PROVIDED BY 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;

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

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

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

28 (4) MAKE AN EDUCATIONAL INSTITUTION LIABLE FOR FAILING TO  
29 REQUEST OR REQUIRE A STUDENT, AN APPLICANT, OR A PROSPECTIVE STUDENT TO  
30 GRANT ACCESS TO, ALLOW OBSERVATION OF, OR DISCLOSE INFORMATION THAT

1 ALLOWS ACCESS TO OR OBSERVATION OF THE INDIVIDUAL'S PERSONAL  
2 ELECTRONIC ACCOUNT;

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

7 (6) APPLY TO:

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

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

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

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

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

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

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

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

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

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

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

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

11                   **(I) INCLUDES REASONABLE DOCUMENTATION OF THE**  
12 **VIOLATION; AND**

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

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

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

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

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

25                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
26 1, 2015.