

HOUSE BILL 934

F5

(5lr2191)

ENROLLED BILL

— Appropriations/Education, Health, and Environmental Affairs —

Introduced by ~~Delegate K. Young~~ Delegates K. Young, Hettleman, Korman, B. Robinson, and Vogt

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

4 FOR the purpose of prohibiting an ~~educational institution~~ *institution of postsecondary*
5 *education* from requiring, requesting, suggesting, or causing a student, an applicant,
6 or a prospective student to grant access to, allow observation of, or disclose
7 information that allows access to or observation of the individual's personal
8 electronic account; prohibiting an ~~educational institution~~ *institution of postsecondary*
9 *education* from compelling a student, an applicant, or a prospective student, as a
10 condition of acceptance or participation in curricular or extracurricular activities, to
11 add certain individuals to a certain list of contacts or to change certain privacy
12 settings; prohibiting an ~~educational institution~~ *institution of postsecondary*
13 *education* from taking or threatening to take certain actions against a student, or
14 failing or refusing to admit an applicant, as a result of the student's or applicant's

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 refusal to grant access to, allow observation of, or disclose certain information
 2 relating to a personal electronic account, add certain individuals to a certain list of
 3 contacts, or change certain privacy settings; providing that this Act may not be
 4 construed to prohibit an ~~educational institution~~ *institution of postsecondary*
 5 *education* from requesting or requiring a student to disclose access information to
 6 certain electronic accounts, to prohibit or restrict an ~~educational institution~~
 7 *institution of postsecondary education* from viewing, accessing, or utilizing certain
 8 information that is ~~available in the public domain~~ publicly accessible or available to
 9 an ~~educational institution~~ *institution of postsecondary education* as the result of
 10 certain actions of the student, to create a duty to search or monitor the activity of a
 11 personal electronic account, to make an ~~educational institution~~ *institution of*
 12 *postsecondary education* liable for failing to request or require a student, an
 13 applicant, or a prospective student to grant access to, allow observation of, or disclose
 14 certain information relating to a personal electronic account, to prohibit a student,
 15 an applicant, or a prospective student from allowing a certain individual to view
 16 certain communications, or to apply to a certain investigation conducted by a certain
 17 department of or in accordance with a certain policy or protocol of an institution of
 18 postsecondary education; authorizing the governing board of an institution of higher
 19 education to adopt a policy authorizing an employee to request a student to create a
 20 certain personal electronic account for a certain purpose or to request to observe
 21 certain information to fulfill a certain obligation or conduct a certain investigation
 22 or assessment; authorizing an individual who is the subject of a violation of this Act
 23 to take certain legal action; establishing that an ~~educational institution's~~ *institution*
 24 *of postsecondary education's* action in compliance with federal or State law is an
 25 affirmative defense to a claim under this Act; defining certain terms; and generally
 26 relating to the personal electronic accounts of students, applicants, and prospective
 27 students of ~~educational~~ institutions *of postsecondary education*.

28 BY adding to

29 Article – Education

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

32 Annotated Code of Maryland

33 (2014 Replacement Volume and 2014 Supplement)

34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

35 That the Laws of Maryland read as follows:

36 **Article – Education**

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

38 **26–401.**

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

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

4 (3) ~~“EDUCATIONAL INSTITUTION” MEANS A PUBLIC OR PRIVATE~~
5 ~~EDUCATIONAL INSTITUTION THAT OFFERS STUDENTS AN ORGANIZED COURSE OF~~
6 ~~STUDY OR TRAINING THAT IS ACADEMIC, TECHNICAL, TRADE ORIENTED, OR~~
7 ~~PREPARATORY FOR GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION~~
8 INSTITUTION OF POSTSECONDARY EDUCATION” HAS THE MEANING STATED IN §
9 10-101(I) OF THIS ARTICLE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (I) CAN BE OBTAINED WITHOUT ACCESS INFORMATION;

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

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

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

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

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

23 (6) APPLY TO:

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

28 (II) AN INVESTIGATION, AN INQUIRY, OR A DETERMINATION
29 RELATING TO THE PUBLICLY ACCESSIBLE COMMUNICATIONS OF A STUDENT, AN
30 APPLICANT, OR A PROSPECTIVE STUDENT THAT IS CONDUCTED IN ACCORDANCE
31 WITH THE HEALTH OR PUBLIC SAFETY ADMINISTRATION ASSESSMENT POLICY OR
32 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:

1 (I) INCLUDES REASONABLE DOCUMENTATION OF THE
2 VIOLATION; AND

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

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

9 (I) THE ALLEGED VIOLATION OCCURRED; OR

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

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
17 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.