

SENATE BILL 838

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SB 434/12 – EHE

3lr0904

By: **Senators Young, Montgomery, Rosapepe, and Shank**

Introduced and read first time: February 6, 2013

Assigned to: Rules

A BILL ENTITLED

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
9 extracurricular activities, to add certain individuals to a certain list of contacts
10 or to change certain privacy settings; prohibiting an educational institution
11 from taking or threatening to take certain actions against a student, or failing
12 or refusing to admit an applicant, as a result of the student's or applicant's
13 refusal to grant access to, allow observation of, or disclose certain information
14 relating to a personal electronic account, add certain individuals to a certain list
15 of contacts, or change certain privacy settings; providing that this Act may not
16 be construed to prohibit an educational institution from requesting or requiring
17 a student to disclose access information to certain electronic accounts, to
18 prohibit or restrict an educational institution from viewing, accessing, or
19 utilizing certain information that is available in the public domain, to create a
20 duty to search or monitor the activity of a personal electronic account, to make
21 an educational institution liable for failing to request or require a student,
22 applicant, or prospective student to grant access to, allow observation of, or
23 disclose certain information relating to a personal electronic account, to prohibit
24 a student, an applicant, or a prospective student from allowing a certain
25 individual to view certain communications, or to apply to a certain investigation
26 conducted by a certain department of or in accordance with a certain policy or
27 protocol of an institution of postsecondary education; establishing that a person
28 who violates this Act is guilty of a misdemeanor and is subject to a certain fine;
29 authorizing an individual who is the subject of a violation of this Act to take
30 certain legal action; establishing that an educational institution's action in
31 compliance with federal or State law is an affirmative defense to a claim under

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 this Act; defining certain terms; and generally relating to the personal
2 electronic accounts of students, applicants, and prospective students of
3 educational institutions.

4 BY adding to

5 Article – Education

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

8 Annotated Code of Maryland

9 (2008 Replacement Volume and 2012 Supplement)

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

12 **Article – Education**

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

14 **26–401.**

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

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

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

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

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

1 **(5) “STUDENT” INCLUDES AN INDIVIDUAL WHO IS A**
2 **PARTICIPANT, TRAINEE, OR STUDENT IN AN ORGANIZED COURSE OF STUDY OR**
3 **TRAINING OFFERED BY AN EDUCATIONAL INSTITUTION.**

4 **(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EDUCATIONAL**
5 **INSTITUTION MAY NOT:**

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

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

13 **(I) ADD TO THE LIST OF CONTACTS ASSOCIATED WITH A**
14 **PERSONAL ELECTRONIC ACCOUNT ANY INDIVIDUAL, INCLUDING A COACH, A**
15 **TEACHER, AN ADMINISTRATOR, ANOTHER EMPLOYEE OF THE EDUCATIONAL**
16 **INSTITUTION, OR A VOLUNTEER; OR**

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

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

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

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

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

30 **(4) FAIL OR REFUSE TO ADMIT AN APPLICANT AS A RESULT OF**
31 **THE APPLICANT’S REFUSAL TO:**

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

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

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

8 **(C) THIS SECTION MAY NOT BE CONSTRUED TO:**

9 **(1) PROHIBIT AN EDUCATIONAL INSTITUTION FROM REQUESTING**
10 **OR REQUIRING A STUDENT TO DISCLOSE ACCESS INFORMATION TO ALLOW THE**
11 **EDUCATIONAL INSTITUTION TO GAIN ACCESS TO AN ELECTRONIC ACCOUNT:**

12 **(I) OPENED AT THE EDUCATIONAL INSTITUTION’S BEHEST;**
13 **OR**

14 **(II) PROVIDED BY, AND INTENDED TO BE USED SOLELY ON**
15 **BEHALF OF, THE EDUCATIONAL INSTITUTION;**

16 **(2) PROHIBIT OR RESTRICT AN EDUCATIONAL INSTITUTION FROM**
17 **VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT A STUDENT, AN**
18 **APPLICANT, OR A PROSPECTIVE STUDENT THAT:**

19 **(I) CAN BE OBTAINED WITHOUT ACCESS INFORMATION; OR**

20 **(II) IS AVAILABLE IN THE PUBLIC DOMAIN;**

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

23 **(4) MAKE AN EDUCATIONAL INSTITUTION LIABLE FOR FAILING**
24 **TO REQUEST OR REQUIRE A STUDENT, AN APPLICANT, OR A PROSPECTIVE**
25 **STUDENT TO GRANT ACCESS TO, ALLOW OBSERVATION OF, OR DISCLOSE**
26 **INFORMATION THAT ALLOWS ACCESS TO OR OBSERVATION OF THE**
27 **INDIVIDUAL’S PERSONAL ELECTRONIC ACCOUNT;**

28 **(5) PROHIBIT A STUDENT, AN APPLICANT, OR A PROSPECTIVE**
29 **STUDENT FROM ALLOWING AN ATHLETIC COACH OR ADMINISTRATOR TO VIEW**
30 **THE STUDENT’S, APPLICANT’S, OR PROSPECTIVE STUDENT’S PUBLICLY**
31 **ACCESSIBLE COMMUNICATIONS; OR**

1 **(6) APPLY TO:**

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

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

12 **(D) (1) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF THIS**
13 **SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A**
14 **FINE NOT EXCEEDING \$1,000.**

15 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN**
16 **INDIVIDUAL WHO IS THE SUBJECT OF A VIOLATION OF ANY PROVISION OF THIS**
17 **SECTION MAY:**

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

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

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

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

28 **(I) INCLUDES REASONABLE DOCUMENTATION OF THE**
29 **VIOLATION; AND**

30 **(II) IS SERVED IN THE MANNER PROVIDED FOR SERVICE OF**
31 **PROCESS IN A CIVIL ACTION UNDER THE MARYLAND RULES OR BY CERTIFIED**

1 MAIL TO THE RESIDENCE OR PRINCIPAL OFFICE OR PLACE OF BUSINESS OF THE
2 ALLEGED VIOLATOR.

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

5 (I) THE ALLEGED VIOLATION OCCURRED; OR

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

8 (E) IT IS AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS
9 SECTION THAT THE EDUCATIONAL INSTITUTION ACTED TO COMPLY WITH THE
10 REQUIREMENTS OF A FEDERAL OR STATE LAW.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2013.