

# 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~~ Zucker, Barron, C. Howard, Patterson, Afzali, D. Barnes, Buckel, Fennell, Hornberger, Luedtke, Metzgar, Platt, Reilly, and Shoemaker

Introduced and read first time: February 4, 2015

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2015

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## 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 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

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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 Annotated Code of Maryland  
2 (2014 Replacement Volume and 2014 Supplement)

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

5 **Article – Education**

6 **4–131.**

7 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
8 **INDICATED.**

9 **(2) (I) “COVERED INFORMATION” MEANS INFORMATION OR**  
10 **MATERIAL THAT:**

11 **1. PERSONALLY IDENTIFIES AN INDIVIDUAL STUDENT**  
12 **OR THAT IS LINKED TO INFORMATION OR MATERIAL THAT PERSONALLY IDENTIFIES**  
13 **AN INDIVIDUAL STUDENT; AND**

14 **2. IS GATHERED BY AN OPERATOR THROUGH THE**  
15 **OPERATION OF A SITE, A SERVICE, OR AN APPLICATION.**

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

17 **1. EDUCATIONAL AND DISCIPLINARY RECORD;**

18 **2. FIRST AND LAST NAME;**

19 **3. HOME ADDRESS AND GEOLOCATION INFORMATION;**

20 **4. TELEPHONE NUMBER;**

21 **5. ELECTRONIC MAIL ADDRESS OR OTHER**  
22 **INFORMATION THAT ALLOWS PHYSICAL OR ONLINE CONTACT;**

23 **6. TEST RESULTS, GRADES, AND STUDENT**  
24 **EVALUATIONS;**

25 **7. SPECIAL EDUCATION DATA;**

26 **8. CRIMINAL RECORDS;**

27 **9. MEDICAL RECORDS AND HEALTH RECORDS;**

- 1                   **10. SOCIAL SECURITY NUMBER;**
- 2                   **11. BIOMETRIC INFORMATION;**
- 3                   **12. SOCIOECONOMIC INFORMATION;**
- 4                   **13. FOOD PURCHASES;**
- 5                   **14. POLITICAL AND RELIGIOUS AFFILIATIONS;**
- 6                   **15. TEXT MESSAGES;**
- 7                   **16. STUDENT IDENTIFIERS;**
- 8                   **17. SEARCH ACTIVITY;**
- 9                   **18. PHOTOS; AND**
- 10                  **19. VOICE RECORDINGS.**

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

14                   **(I) IS USED PRIMARILY FOR A PREK–12 SCHOOL PURPOSE;**

15                   **(II) IS ISSUED AT THE DIRECTION OF A SCHOOL, A TEACHER, OR**  
16 **ANY OTHER EMPLOYEE OF A SCHOOL, LOCAL SCHOOL SYSTEM, OR THE**  
17 **DEPARTMENT; AND**

18                   **(III) WAS DESIGNED AND MARKETED PRIMARILY FOR A**  
19 **PREK–12 SCHOOL PURPOSE.**

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

23                   **(5) (I) “PREK–12 SCHOOL PURPOSE” MEANS AN ACTIVITY THAT**  
24 **CUSTOMARILY:**

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

27                   **2. AIDS IN THE ADMINISTRATION OF SCHOOL**  
28 **ACTIVITIES.**

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

**1. INSTRUCTION IN THE CLASSROOM;**

**2. HOME INSTRUCTION;**

**3. ADMINISTRATIVE ACTIVITIES;**

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

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

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

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

**(C) AN OPERATOR SHALL:**

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

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

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

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

**(I) ENGAGE IN TARGETED ADVERTISING IF THE ADVERTISING IS BASED ON INFORMATION, INCLUDING COVERED INFORMATION AND PERSISTENT UNIQUE IDENTIFIERS, THAT THE OPERATOR HAS ACQUIRED BECAUSE OF THE USE 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 MADE ONLY IN FURTHERANCE OF THE  
16 PREK-12 SCHOOL PURPOSE OF THE SITE, SERVICE, OR APPLICATION AND THE  
17 RECIPIENT OF THE COVERED INFORMATION:

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

19 (II) IS LEGALLY REQUIRED TO COMPLY WITH ~~SUBSECTION~~  
20 SUBSECTIONS (C) AND (D)(1) 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 PROHIBIT A NONPROFIT**  
5 **WEB SITE, MOBILE APPLICATION, OR ONLINE SERVICE FROM USING OR DISCLOSING**  
6 **A STUDENT'S COVERED INFORMATION ONLY FOR THE PURPOSE OF CONDUCTING A**  
7 **COLLEGE- OR CAREER-READINESS ASSESSMENT IF THE NONPROFIT WEB SITE,**  
8 **MOBILE APPLICATION, OR ONLINE SERVICE:**

9           **(1) GAVE CLEAR AND CONSPICUOUS NOTICE OF THE USE OR**  
10 **DISCLOSURE OF THE STUDENT'S COVERED INFORMATION TO THE STUDENT OR THE**  
11 **STUDENT'S PARENT OR GUARDIAN; AND**

12           **(2) OBTAINED THE AFFIRMATIVE CONSENT OF THE STUDENT OR THE**  
13 **STUDENT'S PARENT OR GUARDIAN TO USE OR DISCLOSE THE STUDENT'S COVERED**  
14 **INFORMATION.**

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

19           ~~**(H)**~~ **(J)**       **THIS SECTION DOES NOT LIMIT THE ABILITY OF AN OPERATOR TO**  
20 **USE A STUDENT'S COVERED INFORMATION FOR ADAPTIVE LEARNING OR**  
21 **CUSTOMIZED STUDENT LEARNING PURPOSES.**

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

28           ~~**(H)**~~ **(L)**       **THIS SECTION DOES NOT IMPOSE A DUTY ON A PROVIDER OF AN**  
29 **ELECTRONIC STORE, A GATEWAY, MARKETPLACE, OR ANY OTHER MEANS OF**  
30 **PURCHASING OR DOWNLOADING SOFTWARE OR APPLICATIONS TO REVIEW OR**  
31 **ENFORCE COMPLIANCE OF THIS SECTION.**

32           ~~**(H)**~~ **(M)**       **THIS SECTION DOES NOT IMPOSE A DUTY ON A PROVIDER OF AN**  
33 **INTERACTIVE COMPUTER SERVICE, AS DEFINED IN CHAPTER 5, TITLE 47 OF THE**  
34 **UNITED STATES CODE, TO REVIEW OR ENFORCE COMPLIANCE WITH THIS SECTION**  
35 **BY THIRD-PARTY CONTENT PROVIDERS.**

1           ~~(M)~~ (N)       **THIS SECTION DOES NOT IMPEDE THE ABILITY OF STUDENTS TO**  
 2 **DOWNLOAD, EXPORT, OR OTHERWISE SAVE OR MAINTAIN THEIR OWN STUDENT**  
 3 **CREATED DATA OR DOCUMENTS.**

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

9           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
 10 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.