

# SENATE . . . . . No. 2034

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## The Commonwealth of Massachusetts

—  
In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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SENATE, Monday, October 19, 2015

The committee on Labor and Workforce Development to whom was referred the petition (accompanied by bill, Senate, No. 962) of Cynthia S. Creem, Michael O. Moore, Jason M. Lewis, Ryan C. Fattman and other members of the General Court for legislation relative to employees social media privacy protection,- reports the accompanying bill (Senate, No. 2034).

For the committee,  
Daniel A. Wolf

# SENATE . . . . . No. 2034

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## The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court  
(2015-2016)

An Act relative to social media privacy protection.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 15A of the General Laws is hereby amended by adding the  
2 following section:-

3           Section 44. (a) As used in this section, the following words shall have the following  
4 meanings unless the context clearly requires otherwise:

5           “Educational institution”, a public or private higher education institution located in the  
6 commonwealth.

7           “Personal social media account", a social media account, service or profile that is used by  
8 a current or prospective student exclusively for personal communications unrelated to any  
9 educational purpose of the educational institution; provided however, that “personal social media  
10 account” shall not include any social media account created, maintained, used or accessed by a  
11 student or prospective student for education related communications or for an educational  
12 purpose of the educational institution.

13           “Social media”, an electronic medium allowing users to create, share and view user-  
14 generated content including, but not limited to, uploading or downloading videos or still  
15 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or  
16 locations.

17           (b) No educational institution shall:

18                   (i) require, request or cause a student or applicant to disclose a user name,  
19 password or other means for access, or provide access through a user name or password, to a  
20 personal social media account;

21                   (ii) compel a student or applicant, as a condition of acceptance or participation in  
22 curricular or extracurricular activities, to add a person, including but not limited to, a coach,  
23 teacher, school administrator or other school employee or school volunteer, to the student’s or  
24 applicant’s list of contacts associated with a personal social media account; or

25                   (iii) take or threaten adverse action against a student or applicant, including  
26 restraining the student’s participation in extracurricular activities, for refusing to disclose  
27 information specified in clause (i) or for refusing to add a coach, teacher, school administrator or  
28 other school employee or school volunteer to a list of contacts associated with a personal social  
29 media account, as specified in clause (ii).

30           (c) This section shall not apply to information about a student or applicant that is  
31 publicly available.

32 (d) Nothing in this section shall limit an educational institution's right to promulgate and  
33 maintain lawful policies governing the use of the educational institution's electronic equipment,  
34 including policies regarding use of the internet, email or social media.

35 (e) An aggrieved student or prospective student may institute a civil action for damages  
36 or to restrain a violation of this section and may recover: (i) \$1,000 for each request that violates  
37 clause (i) or (ii) of subsection (b); (ii) \$1,000 for each adverse action, which violates clause (iii)  
38 of subsection (b), or actual damages, whichever amount is higher; (iii) punitive damages if a  
39 court determines that a violation was willful; and (iv) reasonable attorneys' fees and other  
40 litigation costs reasonably incurred.

41 SECTION 2. Chapter 71 of the General Laws is hereby amended by adding the following  
42 section:-

43 Section 95. (a) As used in this section, the following words shall have the following  
44 meanings unless the context clearly requires otherwise:

45 "Educational institution", a public or private institution providing elementary or  
46 secondary education located in the commonwealth.

47 "Personal social media account", a social media account, service or profile that is used by  
48 a current or prospective student exclusively for personal communications unrelated to any  
49 educational purpose of the educational institution; provided however, that "personal social media  
50 account" shall not include any social media account created, maintained, used or accessed by a  
51 student or prospective student for education related communications or for an educational  
52 purpose of the educational institution.

53 “Social media”, an electronic medium allowing users to create, share and view user-  
54 generated content including, but not limited to, uploading or downloading videos or still  
55 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or  
56 locations.

57 (b) No educational institution shall:

58 (i) require, request or cause a student or applicant to disclose a user name,  
59 password or other means for access, or provide access through a user name or password, to a  
60 personal social media account;

61 (ii) compel a student or applicant, as a condition of acceptance or participation in  
62 curricular or extracurricular activities, to add a person, including but not limited to, a coach,  
63 teacher, school administrator or other school employee or school volunteer, to the student’s or  
64 applicant’s list of contacts associated with a personal social media account; or

65 (iii) take or threaten adverse action against a student or applicant, including  
66 restraining the student’s participation in extracurricular activities, for refusing to disclose  
67 information specified in clause (i) or for refusing to add a coach, teacher, school administrator or  
68 other school employee or school volunteer to a list of contacts associated with a personal social  
69 media account, as specified in clause (ii).

70 (c) This section shall not apply to information about a student or applicant that is  
71 publicly available.

72 (d) Nothing in this section shall limit an educational institution's right to promulgate and  
73 maintain lawful policies governing the use of the educational institution's electronic equipment,  
74 including policies regarding use of the internet, email or social media.

75 (e) An aggrieved student or prospective student may institute a civil action for damages  
76 or to restrain a violation of this section and may recover: (i) \$1,000 for each request that violates  
77 clause (i) or (ii) of subsection (b); (ii) \$1,000 for each adverse action, which violates clause (iii)  
78 of subsection (b), or actual damages, whichever amount is higher; (iii) punitive damages if a  
79 court determines that a violation was willful; and (iv) reasonable attorneys' fees and other  
80 litigation costs reasonably incurred.

81 SECTION 3. Chapter 75 of the General Laws is hereby amended by adding the following  
82 section:-

83 Section 48. (a) As used in this section, the following words shall have the following  
84 meanings unless the context clearly requires otherwise:

85 "Educational institution", the university of Massachusetts.

86 "Personal social media account", a social media account, service or profile that is used by  
87 a current or prospective student exclusively for personal communications unrelated to any  
88 educational purpose of the educational institution; provided however, that "personal social media  
89 account" shall not include any social media account created, maintained, used or accessed by a  
90 student or prospective student for education related communications or for an educational  
91 purpose of the educational institution.

92           “Social media”, an electronic medium allowing users to create, share and view user-  
93 generated content including, but not limited to, uploading or downloading videos or still  
94 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or  
95 locations.

96           (b) No educational institution shall:

97                   (i) require, request or cause a student or applicant to disclose a user name,  
98 password or other means for access, or provide access through a user name or password, to a  
99 personal social media account;

100                   (ii) compel a student or applicant, as a condition of acceptance or participation in  
101 curricular or extracurricular activities, to add a person, including but not limited to, a coach,  
102 teacher, school administrator or other school employee or school volunteer, to the student’s or  
103 applicant’s list of contacts associated with a personal social media account; or

104                   (iii) take or threaten adverse action against a student or applicant, including  
105 restraining the student’s participation in extracurricular activities, for refusing to disclose  
106 information specified in clause (i) or for refusing to add a coach, teacher, school administrator or  
107 other school employee or school volunteer to a list of contacts associated with a personal social  
108 media account, as specified in clause (ii).

109           (c) This section shall not apply to information about a student or applicant that is  
110 publicly available.

111 (d) Nothing in this section shall limit an educational institution's right to promulgate and  
112 maintain lawful policies governing the use of the educational institution's electronic equipment,  
113 including policies regarding use of the internet, email or social media.

114 (e) An aggrieved student or prospective student may institute a civil action for damages  
115 or to restrain a violation of this section and may recover: (i) \$1,000 for each request that violates  
116 clause (i) or (ii) of subsection (b); (ii) \$1,000 for each adverse action, which violates clause (iii)  
117 of subsection (b), or actual damages, whichever amount is higher; (iii) punitive damages if a  
118 court determines that a violation was willful; and (iv) reasonable attorneys' fees and other  
119 litigation costs reasonably incurred.

120 SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2012  
121 Official Edition, is hereby amended by striking out, in line 21, the words "or 159C" and inserting  
122 in place thereof the following words:- , 159C or 190.

123 SECTION 5. Said chapter 149 is hereby further amended by adding the following  
124 section:-

125 Section 190. (a) As used in this section, the following words shall have the following  
126 meanings unless the context clearly requires otherwise:

127 "Personal social media account" a social media account, service or profile that is used by  
128 a current or prospective employee exclusively for personal communications unrelated to any  
129 business purposes of the employer; provided however, that "personal social media account" shall  
130 not include any social media account created, maintained, used or accessed by a current or  
131 prospective employee for business purposes of the employer or to engage in business related  
132 communications.

133           “Social media”, an electronic medium allowing users to create, share and view user-  
134 generated content including, but not limited to, uploading or downloading videos or still  
135 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or  
136 locations.

137           (b) No employer shall:

138                   (i) require, request or cause an employee or applicant to disclose a user name,  
139 password or other means for access, or provide access through a user name or password, to a  
140 personal social media account;

141                   (ii) compel an employee or applicant, as a condition of employment or  
142 consideration for employment, to add a person, including but not limited to, the employer or an  
143 agent of the employer, to the employee’s or applicant’s list of contacts associated with a personal  
144 social media account; or

145                   (iii) take or threaten adverse action against an employee or applicant for refusing  
146 to disclose information specified in clause (i) or for refusing to add the employer to a list of  
147 contacts associated with a personal social media account, as specified in clause (ii).

148           (c) This section shall not apply to information about an employee or applicant that is  
149 publicly available.

150           (d) Nothing in this section shall limit an employer’s right to promulgate and maintain  
151 lawful workplace policies governing the use of the employer’s electronic equipment, including  
152 policies regarding use of the internet, email or social media.

153 (e) Nothing in this section shall prevent an employer from requesting access to an  
154 employee's personal social media account when gaining such access is reasonably necessary to  
155 comply with the requirements of: state or federal statutes, rules or regulations; legally mandated  
156 investigations of employees' actions; judicial directives; or rules of self-regulatory organizations,  
157 as defined in the federal Securities Exchange Act of 1934, 15 U.S.C. § 78c (a)(26); provided,  
158 however, that an employer, prior to requesting access to a personal social media account, shall  
159 notify the employee of the grounds for the request; and provided further, that (i) any access to an  
160 employee's personal social media account shall be limited to identifying relevant evidence, (ii)  
161 the social media is used solely for purposes of the investigation or a related proceeding, and (iii)  
162 the employer has no other means of obtaining the relevant information.