SENATE . . . . . No. 2063

Senate, November 18, 2015 -- Text of the Senate Bill relative to social media privacy protection (Senate, No. 2063) (being the text of Senate, No. 2054, printed as amended)

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:

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

Section 45. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Educational institution", a public or private higher education institution located in the commonwealth.

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

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;

25 (iii) require, request or cause a student or applicant to reproduce in any manner,
26 photographs, videos, or information contained within a personal social media account; or

27 (iv) take or threaten adverse action against a student or applicant, including but
28 not limited to restraining the student’s participation in extracurricular activities, for refusing to
29 disclose information specified in clause (i) or clause (iii) or for refusing to add a coach, teacher,
30 school administrator or other school employee or school volunteer to a list of contacts associated
31 with a personal social media account, as specified in clause (ii).

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

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

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

43 (f) Nothing in this section shall prevent the educational institution, after receipt of
44 specific relevant information, from requesting access to a student's personal social media
45 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
46 mandated investigations of students' actions; or judicial directives; provided, however, that an
47 educational institution, prior to requesting access to a personal social media account, shall notify
48 the student and the student's parent or guardian, if a minor, of the grounds for the request and
49 that the student is not required to give access to a personal social media account; and provided
50 further, that (i) the educational institution has no other means of obtaining the relevant
51 information; (ii) information gained from access to the student's personal social media account
52 shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access
53 to a student's personal social media account shall be limited to identifying relevant evidence. If a
54 student does not permit access to a personal social media account, the educational institution
55 shall not take or threaten adverse action against a student for refusing to permit access to said
56 personal social media account.

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

59 Section 97. (a) As used in this section, the following words shall have the following
60 meanings unless the context clearly requires otherwise:

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

63 "Personal social media account", a social media account, service or profile that is used by
64 a current or prospective student exclusively for personal communications unrelated to any
65 educational purpose of the educational institution; provided however, that "personal social media
66 account" shall not include any social media account created, maintained, used or accessed by a
67 student or prospective student for education related communications or for an educational
68 purpose of the educational institution.

69 "Social media", an electronic medium allowing users to create, share and view user-
70 generated content including, but not limited to, uploading or downloading videos or still
71 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or
72 locations.

73 (b) An educational institution shall not:

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

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

81 (iii) require, request or cause a student or applicant to reproduce in any manner,
82 photographs, videos, or information contained within a personal social media account; or

83 (iv) take or threaten adverse action against a student or applicant, including, but
84 not limited to, restraining the student's participation in extracurricular activities, for refusing to
85 disclose information specified in clause (i) or clause (iii) or for refusing to add a coach, teacher,
86 school administrator or other school employee or school volunteer to a list of contacts associated
87 with a personal social media account, as specified in clause (ii)

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

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

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

99 (f) Nothing in this section shall prevent the educational institution, after receipt of
100 specific relevant information, from requesting access to a student's personal social media
101 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
102 mandated investigations of students' actions; or judicial directives; provided, however, that an
103 educational institution, prior to requesting access to a personal social media account, shall notify
104 the student and the student's parent or guardian, if a minor, of the grounds for the request and
105 that the student is not required to give access to a personal social media account; and provided
106 further, that (i) the educational institution has no other means of obtaining the relevant
107 information; (ii) information gained from access to the student's personal social media account
108 shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access
109 to a student's personal social media account shall be limited to identifying relevant evidence. If a
110 student does not permit access to a personal social media account, the educational institution
111 shall not take or threaten adverse action against a student for refusing to permit access to said
112 personal social media account.

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

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

117 "Personal social media account", a social media account, service or profile that is used by
118 a current or prospective student exclusively for personal communications unrelated to any
119 educational purpose of the University of Massachusetts; provided however, that "personal social
120 media account" shall not include any social media account created, maintained, used or accessed

121 by a student or prospective student for education related communications or for an educational
122 purpose of the University of Massachusetts.

123 "Social media", an electronic medium allowing users to create, share and view user-
124 generated content including, but not limited to, uploading or downloading videos or still
125 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or
126 locations.

127 (b) The University of Massachusetts shall not:

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

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

135 (iii) require, request or cause a student or applicant to reproduce in any manner,
136 photographs, videos, or information contained within a personal social media account; or

137 (iv) take or threaten adverse action against a student or applicant, including, but
138 not limited to, restraining the student's participation in extracurricular activities, for refusing to
139 disclose information specified in clause (i) or clause (iii) or for refusing to add a coach, teacher,
140 school administrator or other school employee or school volunteer to a list of contacts associated
141 with a personal social media account, as specified in clause (ii).

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

144 (d) Nothing in this section shall limit the University of Massachusetts' right to
145 promulgate and maintain lawful policies governing the use of the educational institution's
146 electronic equipment, including policies regarding use of the internet, email or social media.

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

153 (f) Nothing in this section shall prevent the University of Massachusetts, after receipt of
154 specific relevant information, from requesting access to a student's personal social media
155 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
156 mandated investigations of students' actions; or judicial directives; provided, however, that the
157 University of Massachusetts, prior to requesting access to a personal social media account, shall
158 notify the student and the student's parent or guardian, if a minor, of the grounds for the request
159 and that the student is not required to give access to a personal social media account; and
160 provided further, that (i) the University of Massachusetts has no other means of obtaining the
161 relevant information; (ii) information gained from access to the student's personal social media
162 account shall be used solely for purposes of the investigation or a related proceeding; and (iii)
163 any access to a student's personal social media account shall be limited to identifying relevant

164 evidence. If a student does not permit access to a personal social media account, the University
165 of Massachusetts shall not take or threaten adverse action against a student for refusing to permit
166 access to said personal social media account.

167 SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2014
168 Official Edition, is hereby amended by striking out, in line 40, the words "or 190" and inserting
169 in place thereof the following words:- , 190, 192.

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

172 Section 192. (a) As used in this section, the following words shall have the following
173 meanings unless the context clearly requires otherwise:

174 "Personal social media account" a social media account, service or profile that is used by
175 a current or prospective employee exclusively for personal communications unrelated to any
176 business purposes of the employer; provided however, that "personal social media account" shall
177 not include any social media account created, maintained, used or accessed by a current or
178 prospective employee for business purposes of the employer or to engage in business related
179 communications.

180 "Social media", an electronic medium allowing users to create, share and view user-
181 generated content including, but not limited to, uploading or downloading videos or still
182 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or
183 locations.

184 (b) An employer shall not:

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

188 (ii) compel an employee or applicant, as a condition of employment or
189 consideration for employment, to add a person, including but not limited to, the employer or an
190 agent of the employer, to the employee's or applicant's list of contacts associated with a personal
191 social media account;

192 (iii) require, request or cause an employee or applicant to reproduce in any
193 manner, photographs, videos, or information contained within a personal social media account;
194 or

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

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

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

203 (e) Nothing in this section shall prevent an employer, after receipt of specific relevant
204 information, from requesting to be provided, within a reasonable period of time, access to an
205 employee's personal social media account to ensure compliance with applicable state or federal

206 laws, rules or regulations; legally mandated investigations of employees' actions; judicial
207 directives; or rules of self-regulatory organizations, as defined in the federal Securities Exchange
208 Act of 1934, 15 U.S.C. § 78c (a)(26); provided, however, that an employer, prior to requesting
209 access to a personal social media account, shall notify the employee of the grounds for the
210 request; and provided further, that (i) the employer has no other means of obtaining the relevant
211 information; (ii) information gained from access to the employee's personal social media account
212 shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access
213 to an employee's personal social media account shall be limited to identifying relevant evidence.

214 (f) For purposes of this section, an intern, paid or unpaid, shall be considered an
215 employee.