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SENATE . . . . . No. 2118

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

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. Section 150 of Chapter 149 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding in line 21 after the words "159C" the following:- ", 190"

SECTION 2. Chapter 149 of the General Laws is hereby amended by adding the following section:-

Section 190. It shall be unlawful for any employer to:

(a) require, request, suggest, or cause an employee or applicant to disclose a user name, password or any other means for access, or provide access through a user name or password, to a personal social media account or service;

(b) compel an employee or applicant, as a condition of employment or consideration for employment, to add anyone, including the employer or their agent, to the employee or applicant's list of contacts associated with a personal social media account or service; or

(c) take or threaten any adverse action against an employee or applicant for refusing to disclose any information specified in clause (a) of this section or for refusing to add the employer to a list of contacts associated with a social media account or service, as specified in clause (b) of this section.

(d) For the purposes of this section, "Social media" means an electronic medium allowing users to create, share, and view user-generated content, including, but not limited to, uploading or downloading videos or still photographs, blogs, video blogs, podcasts, messages, e-mails, or Internet Web site profiles or locations.

(e) This section shall not apply to: (1) any social media account or service opened for or provided by an employer and intended solely for professional purposes; or (2) information about an employee or applicant that ispublicly available. Nothing in this act shall be construed to prevent an employer from complying with the requirements of State or federal statutes, rules of regulations, case law or rules of self-regulatory organizations as defined in section 3(a)(26) of the Securities Exchange Act of 1934, as amended.

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

SECTION 3. Chapter 71 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after section 93 the following new section:-

Section 94. It shall be unlawful for any public or private institution providing elementary, secondary, or higher education to:

(a) require, request, suggest, or cause a student or applicant to disclose a user name, password or any other means for access, or provide access through a user name or password, to a personal social media account or service;

(b) compel a student or applicant, as a condition of acceptance or participation in curricular or extracurricular activities, to add anyone, including a coach, teacher, school administrator, or other school employee or school volunteer, to the student or applicant's list of contacts associated with a personal social media account or service; or

(c) take or threaten any adverse action against a student or applicant, including restraining his or her participation in extracurricular activities, for refusing to disclose any information specified in clause (a) of this section or for refusing to add a coach, teacher, school administrator, or other school employee or school volunteer to a list of contacts associated with a social media account or service, as specified in clause (b) of this section.

(d) For the purposes of this section, "Social media" means an electronic medium allowing users to create, share, and view user-generated content, including, but not limited to, uploading or downloading videos or still photographs, blogs, video blogs, podcasts, messages, e-mails, or Internet Web site profiles or locations.

(e) This section shall not apply to: (1) any social media account or service opened for or provided by an educational institution and intended solely for educational purposes; or (2) information about an employee or applicant that ispublicly available.

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

(g) Any aggrieved student or prospective student may institute a civil action for damages or to restrain any violation of this section and shall be entitled to recover liquidated damages computed at the rate of $1000 per improper request under subsection (a) or (b) or any adverse action is found under subsection (c) or actual damages, whichever amount is higher; punitive damages when a willful violation is found; and reasonable attorneys' fees and other litigation costs reasonably incurred.