

SENATE No. 2034

The Commonwealth of Massachusetts

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

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

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.