

SENATE No. 962**The Commonwealth of Massachusetts**

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to social media privacy protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/23/2015</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Jose F. Tosado</i>	<i>9th Hampden</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	
<i>Thomas M. McGee</i>	<i>Third Essex</i>	
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	

<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>	
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>James Arciero</i>	<i>2nd Middlesex</i>	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	
<i>Thomas P. Kennedy</i>	<i>Second Plymouth and Bristol</i>	<i>3/4/2015</i>

SENATE No. 962

By Ms. Creem, a 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. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 852 OF 2013-2014.]

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

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.

“Social media”, 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 website profiles or locations.

(b) No educational institution shall:

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

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

(iii) take or threaten adverse action against a student or applicant, including restraining the student’s participation in extracurricular activities, for refusing to disclose information specified in clause (i) 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 personal social media account, as specified in clause (ii).

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

(d) 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.

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

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

Section 95. (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 institution providing elementary or secondary education 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.

“Social media”, 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 website profiles or locations.

(b) No educational institution shall:

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

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

(iii) take or threaten adverse action against a student or applicant, including restraining the student’s participation in extracurricular activities, for refusing to disclose information specified in clause (i) 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 personal social media account, as specified in clause (ii).

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

(d) 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.

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

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

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

"Educational institution", the university of Massachusetts.

"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.

“Social media”, 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 website profiles or locations.

(b) No educational institution shall:

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

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

(iii) take or threaten adverse action against a student or applicant, including restraining the student’s participation in extracurricular activities, for refusing to disclose information specified in clause (i) 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 personal social media account, as specified in clause (ii).

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

(d) 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.

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

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

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

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

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

“Social media”, 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 website profiles or locations.

(b) No employer shall:

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

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

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

(c) This section shall not apply to information about an employee or applicant that is publicly available. Nothing in this section shall be construed to prevent an employer from complying with the requirements of: state or federal statutes, rules or regulations; case law; or rules of self-regulatory organizations, as defined in the federal Securities Exchange Act of 1934, 15 U.S.C. § 78c (a)(26).

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