SENATE . . . . . No. 2346

Senate March 15, 2018, – Text of the Senate Bill relative to social media privacy protection (being the text of Senate document number 2320, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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 chartered, located, offering courses or otherwise doing business in the commonwealth or authorized by the commonwealth to grant degrees.

"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 a social media account created, maintained, used or accessed by a student or prospective student for education-related communications or for a related educational purpose of the educational institution.

"Social media", an electronic medium that allows 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, emails and internet website profiles or locations.

(b) An educational institution shall not:

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

(ii) compel a student or prospective student 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 prospective student's list of contacts associated with a personal social media account as a condition of acceptance or as a condition of participation in curricular or extracurricular activities;

(iii) require, request or coerce a student or prospective student to reproduce or disclose photographs, videos or information contained within a personal social media account; or

(iv) take or threaten adverse action against a student or prospective student for refusing to disclose information specified in clause (i) or (iii) or for refusing to add a person including, but not limited to, 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); provided, however, that taking or threatening adverse action shall include, but not be limited to, restraining a student's participation in curricular or extracurricular activities.

(c) Nothing in this section shall apply to publicly available information about a student or prospective student.

(d) 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) $500 for each request that is found to have been a willful violation of clause (i) or (ii) of subsection (b); and (ii) $500 for each adverse action that is found to have been a willful violation of clause (iii) of said subsection (b); or (iii) actual damages if the amount of actual damages exceeds the amounts provided for in clauses (i) and (ii). In awarding damages under this section, the court may also award reasonable costs, interests and attorneys' fees.

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

(f) Nothing in this section shall prevent an educational institution, upon receipt of specific relevant information, from requesting access to a student's or prospective student's personal social media account to ensure compliance with applicable state or federal laws, rules or regulations, legally-mandated investigations of a student's or prospective student's actions or judicial directives; or due to the reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person provided, however, that prior to making a request to a student or prospective student for access to the student's or prospective student's personal social media account, an educational institution shall notify the student or prospective student and, if a minor, the student's or prospective student's parent or guardian of the grounds for the request and inform the student or prospective student, and the parent or guardian when

applicable, that the student or prospective student is not required to give access to a personal social media account; provided further, that if the situation does not allow for prior notice to a parent or guardian due to the educational institution's reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person, notice to a minor student's or prospective student's parent or guardian shall be provided in a reasonable period of time thereafter. An educational institution shall only make the request for access to a student's or prospective student's personal social media account if: (i) the educational institution has no reasonable means of otherwise obtaining the relevant information; (ii) information gained from access to a student's or prospective student's personal social media account shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access to a student's or prospective student's personal social media account shall be limited to identifying relevant evidence. If a student or prospective student does not permit access to a personal social media account, the educational institution shall not take or threaten adverse action against a student or prospective student for such refusal.

(g) Nothing in this section shall prevent an educational institution from disclosing lawfully obtained information derived from a student's or prospective student's personal social media account to parties, including, but not limited to law enforcement, when disclosure to those parties of such information is necessary to protect a person against an immediate danger of death or serious bodily injury or as otherwise required by law.

(h) No public employer shall be liable for injury, loss of property, personal injury or death, except to the extent allowed in subsection (d), caused by an act or omission of a public employee while acting in the scope of the public employee's employment and arising out of the

implementation of this section. This section shall not be construed as creating or imposing a specific duty of care.

(i) Except as proof of a violation of this section, no data obtained, accessed, used, copied, disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be admissible in any criminal, civil, administrative or other proceeding.SECTION 2. Chapter 71 of the General Laws is hereby amended by adding the following section:-

Section 98. (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 that provides elementary or secondary education.

"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 a social media account created, maintained, used or accessed by a student or prospective student for education-related communications or for a related educational purpose of the educational institution.

"Social media", an electronic medium that allows 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, emails and internet website profiles or locations.

(b) An educational institution shall not:

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

(ii) compel a student or prospective student 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 prospective student's list of contacts associated with a personal social media account as a condition of acceptance or participation in curricular or extracurricular activities;

(iii) require, request or coerce a student or prospective student to reproduce or disclose photographs, videos or information contained within a personal social media account; or

(iv) take or threaten adverse action against a student or prospective student for refusing to disclose information specified in clause (i) or (iii) or for refusing to add a person including, but not limited to, 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); provided, however, that taking or threatening adverse action shall include, but not be limited to, restraining a student's participation in curricular or extracurricular activities.

(c) Nothing in this section shall apply to publicly available information about a student or prospective student.

(d) 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) $500 for each request that is found to have been a willful violation of clause (i) or (ii) of subsection (b); and (ii) $500 for each adverse action that is found to have been a willful violation of clause (iii) of said subsection (b); or (iii) actual damages if the amount of actual damages exceeds the amounts provided for in

clauses (i) and (ii). In awarding damages under this section, the court may also award reasonable costs, interests and attorneys' fees.

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

(f) Nothing in this section shall prevent an educational institution, upon receipt of specific relevant information, from requesting access to a student's or prospective student's personal social media account to ensure compliance with section 37O or any other applicable state or federal laws, rules or regulations, legally-mandated investigations of a student's or prospective student's actions or judicial directives or due to the reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person; provided, however, that prior to making a request to a student or prospective student for access to the student's or prospective student's personal social media account, an educational institution shall notify the student or prospective student and, if a minor, the student's or prospective student's parent or guardian of the grounds for the request and inform the student or prospective student, and the parent or guardian when applicable, that the student or prospective student is not required to give access to a personal social media account; provided further, that if the situation does not allow for prior notice to a parent or guardian due to the educational institution's reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person, notice to a minor student's or prospective student's parent or guardian shall be provided in a reasonable period of time thereafter. An educational institution shall only make the request for access to a student's or prospective student's personal social media account if: (i) the educational institution has no reasonable means of otherwise obtaining the relevant information; (ii) information gained

from access to the student's or prospective student's personal social media account shall be used solely for the purposes of the investigation or a related proceeding; and (iii) any access to a student's or prospective student's personal social media account shall be limited to identifying relevant evidence. If a student or prospective student does not permit access to a personal social media account, the educational institution shall not take or threaten adverse action against a student or prospective student for such refusal.

(g) Nothing in this section shall prevent an educational institution from disclosing lawfully obtained information derived from a student's or prospective student's personal social media account to parties including, but not limited to, law enforcement when disclosure to those parties of such information is necessary to protect a person against an immediate danger of death or serious bodily injury or as otherwise required by law.

(h) No public employer shall be liable for injury, loss of property, personal injury or death, except to the extent allowed in subsection (d), caused by an act or omission of a public employee while acting in the scope of the public employee's employment and arising out of the implementation of this section. This section shall not be construed as creating or imposing a specific duty of care.

(i) Except as proof of a violation of this section, no data obtained, accessed, used, copied, disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be admissible in any criminal, civil, administrative or other proceeding.

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:

"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 University of Massachusetts; provided, however, that "personal social media account" shall not include a 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 University of Massachusetts.

"Social media", an electronic medium that allows 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, emails and internet website profiles or locations.

(b) The University of Massachusetts shall not:

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

(ii) compel a student or prospective student 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 prospective student's list of contacts associated with a personal social media account as a condition of acceptance or participation in curricular or extracurricular activities;

(iii) require, request or coerce a student or prospective student to reproduce or disclose photographs, videos or information contained within a personal social media account; or

(iv) take or threaten adverse action against a student or prospective student for refusing to disclose information specified in clause (i) or (iii) or for refusing to add a person including, but not limited to, 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 provided in clause (ii); provided, however, that taking or threatening adverse action shall include, but not limited to, restraining a student's participation in curricular or extracurricular activities.

(c) Nothing in this section shall apply to publicly available information about a student or prospective student.

(d) An aggrieved student or a prospective student may institute a civil action for damages or to restrain a violation of this section and may recover: (i) $500 for each request that constitutes a willful violation of clause (i) or (ii) of subsection (b); and (ii) $500 for each adverse action that constitutes a willful violation of clause (iii) of subsection (b); or (iii) actual damages if the amount of actual damages exceeds the amounts provide for in clauses (i) and (ii). In awarding damages under this section, the court may also award reasonable costs, interests and attorneys' fees.

(e) Nothing in this section shall limit the right of the University of Massachusetts to promulgate and maintain lawful policies governing the use of the university's electronic equipment, including policies regarding use of the internet, email and social media.

(f) Nothing in this section shall prevent the University of Massachusetts, upon receipt of specific relevant information, from requesting access to a student's or prospective student's

personal social media account to ensure compliance with applicable state or federal laws, rules or regulations, legally-mandated investigations of a student's or prospective student's actions or judicial directives or due to the reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person; provided, however, that prior to making a request to a student or prospective student for access to the student's or prospective student's personal social media account, the University of Massachusetts shall notify the student or prospective student and, if a minor, the student's or prospective student's parent or guardian of the grounds for the request and inform the student or prospective student, and the parent or guardian when applicable, that the student or prospective student is not required to give access to a personal social media account; provided, further however, that if the situation does not allow for prior notice to a parent or guardian due to the university's reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person, notice to a minor student's or prospective student's parent or guardian shall be provided in a reasonable period of time thereafter. The university shall only make the request for access to a student's or prospective student's personal social media account if: (i) the university has no reasonable means of otherwise obtaining the relevant information; (ii) information gained from access to the student's or prospective student's personal social media account shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access to a student's or prospective student's personal social media account shall be limited to identifying relevant evidence. If a student or prospective student does not permit access to a personal social media account, the university shall not take or threaten adverse action against a student or prospective student for such refusal.

(g) Nothing in this section shall prevent the University of Massachusetts from disclosing lawfully obtained information derived from a student's or prospective student's personal social

media account to parties including, but not limited to, law enforcement when disclosure to those parties of such information is necessary to protect a person against an immediate danger of death or serious bodily injury or as otherwise required by law.

(h) No public employer shall be liable for injury, loss of property, personal injury or death, except to the extent allowed in subsection (d), caused by an act or omission of a public employee while acting in the scope of the public employee's employment and arising out of the implementation of this section. This section shall not be construed as creating or imposing a specific duty of care.

(i) Except as proof of a violation of this section, no data obtained, accessed, used, copied, disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be admissible in any criminal, civil, administrative or other proceeding.

SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 22, the words "or 190" and inserting in place thereof the following words:- , 190 or 192.

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

Section 192.

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

"Law enforcement agency", the department of state police, a police department of a political subdivision of the commonwealth, the environmental police, the police department of

the Massachusetts Bay Transportation Authority, a sheriff's office, a college or university campus police department, the department of correction, the parole board, the probation service in the office of probation and any other law enforcement entity, except a federal law enforcement agency, that enforces the laws of the commonwealth and possesses criminal arrest power.

"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 a social media account created, maintained, used or accessed by a current or prospective employee for business-related communications or for another business related purpose.

"Social media", an electronic medium that allows 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, emails and internet website profiles or locations.

"Sworn employee", an employee of a law enforcement agency who takes an oath to enforce the laws of the commonwealth and possesses criminal arrest power.

(b) An employer shall not:

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

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

(iii) require, request or coerce an employee or a prospective employee to reproduce or disclose photographs, videos or information contained within a personal social media account; or

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

(c) Nothing in this section shall apply to publicly available information about an employee or a prospective employee.

(d) 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 and social media.

(e) Nothing in this section shall prevent an employer, upon receipt of specific relevant information, from requesting access to an employee or prospective employee's personal social media account to ensure compliance with applicable state and federal laws, municipal ordinances and by-laws, rules and regulations, legally-mandated investigations of an employee's or prospective employee's actions, employer prohibitions against unauthorized transfers of an employer's proprietary information or other nonpublic financial information, judicial directives

or rules of self-regulatory organizations as defined in the federal Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26) or due to the reasonable belief of the presence of an immediate danger of death or serious bodily injury to any person; provided, however, that an employer, prior to requesting access to a personal social media account, shall notify the employee or prospective employee of the grounds for the request; and provided further, that the employer shall only make the request for access to an employee's or prospective employee's personal social media account if: (i) the employer has no reasonable means of otherwise obtaining the relevant information; (ii) information gained from access to an employee's or prospective employee's personal social media account shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access to an employee's or prospective employee's personal social media account shall be limited to identifying relevant evidence.

(f) Nothing in this section shall prevent an employer from disclosing lawfully obtained information derived from an employee's or prospective employee's personal social media account to parties, including, but not limited to, law enforcement, when disclosure to those parties is necessary to protect against an immediate danger of death or serious bodily injury to the employee or prospective employee or another individual or as otherwise required by law.

(g) For the purposes of this section, an intern, whether paid or unpaid, shall be an employee.

(h) The head of a law enforcement agency or a designee, pursuant to an active and ongoing internal administrative investigation into whether a sworn employee or group of sworn employees has engaged in unlawful discrimination or harassment of a person or class of persons under section 4 of chapter 151B and acting upon a credible complaint lodged against such sworn

employee or group of sworn employees that the personal social media account of the sworn employee or sworn employees contains specific information relevant to the investigation, may require or request a sworn employee of a law enforcement agency to reproduce or disclose photographs, videos or other information contained within a personal social media account. The head or designee may take or threaten an adverse employment action against a sworn employee for refusing to disclose such information, photographs or videos upon request.

(i) If, during a standard departmental background investigation for the prospective employment of a candidate for employment as a sworn employee, the head of a law enforcement agency or a designee receives specific relevant information that the candidate has engaged in unlawful discrimination or harassment of a person under section 4 of chapter 151B, the head or designee may require or request the candidate to reproduce or disclose photographs, videos or other information contained within a personal social media account. The head or designee may take or threaten an adverse employment action against a candidate for employment as a sworn employee for refusing to disclose such information, photographs or videos upon request.

(j) Except as proof of a violation of this section, no data obtained, accessed, used, copied, disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be admissible in any criminal, civil, administrative or other proceeding

SECTION 6. Notwithstanding any general or special law to the contrary, nothing in subsection (h) or (i) of section 192 of chapter 149 of the General Laws shall impact the rights to collectively bargain.