

SENATE No. 1055

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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 Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/1/2019</i>

SENATE No. 1055

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1055) of Cynthia Stone Creem and Michael J. Barrett for legislation relative to social media privacy protection. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2346 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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, as appearing in the 2016 Official
2 Edition, is hereby amended by adding the following section:-

3 Section 45. (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

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) An educational institution shall not:

(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;

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

(iv) take or threaten adverse action against a student or applicant, including but not limited to restraining the student’s participation in extracurricular activities, for refusing to 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

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

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

Section 97. (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) An educational institution shall not:

(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;

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

(iv) take or threaten adverse action against a student or applicant, including, but not limited to, restraining the student's participation in extracurricular activities, for refusing to disclose information specified in clause (i) or clause (iii) 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.

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

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 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 University of Massachusetts.

“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) The University of Massachusetts shall not:

(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;

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

(iv) take or threaten adverse action against a student or applicant, including, but not limited to, restraining the student's participation in extracurricular activities, for refusing to disclose information specified in clause (i) or clause (iii) 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 the University of Massachusetts' 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.

(f) Nothing in this section shall prevent the University of Massachusetts, after receipt of specific relevant information, from requesting access to a student's personal social media account to ensure compliance with applicable state or federal laws, rules or regulations; legally mandated investigations of students' actions; or judicial directives; provided, however, that the

University of Massachusetts, prior to requesting access to a personal social media account, shall notify the student and the student's parent or guardian, if a minor, of the grounds for the request and that the student is not required to give access to a personal social media account; and provided further, that (i) the University of Massachusetts has no other means of obtaining the relevant information; (ii) information gained from access to the 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 personal social media account shall be limited to identifying relevant evidence. If a student does not permit access to a personal social media account, the University of Massachusetts shall not take or threaten adverse action against a student for refusing to permit access to said personal social media account.

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 40, the words "or 190" and inserting in place thereof the following words:- , 190, 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:

"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

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.