

HOUSE No. 1893

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth I. Gordon

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:	DATE ADDED:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/10/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/31/2023</i>

HOUSE No. 1893

By Representative Gordon of Bedford, a petition (accompanied by bill, House, No. 1893) of Kenneth I. Gordon and Michael J. Barrett relative to social media consumer privacy protection. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1982 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 2020 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

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) An educational institution shall not:

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;

25 (iii) require, request or cause an employee or applicant to reproduce in any
26 manner, photographs, videos, or information contained within a personal social media account
27 without cause to believe that such photographs, video, or information would interfere with an
28 educational institution's right to enforce lawful school policies; or

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

31 disclose information specified in clause (i) or clause (iii) or for refusing to add a coach, teacher,
32 school administrator or other school employee or school volunteer to a list of contacts associated
33 with a personal social media account, as specified in clause (ii).

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

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

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

45 (f) Nothing in this section shall prevent the educational institution, after receipt of
46 specific relevant information, from requesting access to a student's personal social media
47 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
48 mandated investigations of students' actions; or judicial directives; provided, however, that an
49 educational institution, prior to requesting access to a personal social media account, shall notify
50 the student and the student's parent or guardian, if a minor, of the grounds for the request and
51 that the student is not required to give access to a personal social media account; and provided
52 further, that (i) the educational institution has no other means of obtaining the relevant

53 information; (ii) information gained from access to the student’s personal social media account
54 shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access
55 to a student’s personal social media account shall be limited to identifying relevant evidence. If a
56 student does not permit access to a personal social media account, the educational institution
57 shall not take or threaten adverse action against a student for refusing to permit access to said
58 personal social media account.

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

61 Section 97. (a) As used in this section, the following words shall have the following
62 meanings unless the context clearly requires otherwise:

63 "Educational institution", a public or private institution providing elementary or
64 secondary education located in the commonwealth.

65 "Personal social media account", a social media account, service or profile that is used by
66 a current or prospective student exclusively for personal communications unrelated to any
67 educational purpose of the educational institution; provided however, that "personal social media
68 account" shall not include any social media account created, maintained, used or accessed by a
69 student or prospective student for education related communications or for an educational
70 purpose of the educational institution.

71 "Social media", an electronic medium allowing users to create, share and view user-
72 generated content including, but not limited to, uploading or downloading videos or still
73 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or
74 locations.

75 (b) An educational institution shall not:

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

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

83 (iii) require, request or cause an employee or applicant to reproduce in any
84 manner, photographs, videos, or information contained within a personal social media account
85 without cause to believe that such photographs, video, or information would interfere with an
86 educational institution's right to enforce lawful school policies; or

87 (iv) take or threaten adverse action against a student or applicant, including, but
88 not limited to, restraining the student's participation in extracurricular activities, for refusing to
89 disclose information specified in clause (i) or clause (iii) or for refusing to add a coach, teacher,
90 school administrator or other school employee or school volunteer to a list of contacts associated
91 with a personal social media account, as specified in clause (ii)

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

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

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

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

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

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

121 “Personal social media account”, a social media account, service or profile that is used by
122 a current or prospective student exclusively for personal communications unrelated to any
123 educational purpose of the University of Massachusetts; provided however, that “personal social
124 media account” shall not include any social media account created, maintained, used or accessed
125 by a student or prospective student for education related communications or for an educational
126 purpose of the University of Massachusetts.

127 “Social media”, an electronic medium allowing users to create, share and view user-
128 generated content including, but not limited to, uploading or downloading videos or still
129 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or
130 locations.

131 (b) The University of Massachusetts shall not:

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

135 (ii) compel a student or applicant, as a condition of acceptance or participation in
136 curricular or extracurricular activities, to add a person, including but not limited to, a coach,

137 teacher, school administrator or other school employee or school volunteer, to the student's or
138 applicant's list of contacts associated with a personal social media account;

139 (iii) require, request or cause an employee or applicant to reproduce in any
140 manner, photographs, videos, or information contained within a personal social media account
141 without cause to believe that such photographs, video, or information would interfere with the
142 University of Massachusetts's right to enforce lawful school policies; or

143 (iv) take or threaten adverse action against a student or applicant, including, but
144 not limited to, restraining the student's participation in extracurricular activities, for refusing to
145 disclose information specified in clause (i) or clause (iii) or for refusing to add a coach, teacher,
146 school administrator or other school employee or school volunteer to a list of contacts associated
147 with a personal social media account, as specified in clause (ii).

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

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

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

159 (f) Nothing in this section shall prevent the University of Massachusetts, after receipt of
160 specific relevant information, from requesting access to a student’s personal social media
161 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
162 mandated investigations of students’ actions; or judicial directives; provided, however, that the
163 University of Massachusetts, prior to requesting access to a personal social media account, shall
164 notify the student and the student’s parent or guardian, if a minor, of the grounds for the request
165 and that the student is not required to give access to a personal social media account; and
166 provided further, that (i) the University of Massachusetts has no other means of obtaining the
167 relevant information; (ii) information gained from access to the student’s personal social media
168 account shall be used solely for purposes of the investigation or a related proceeding; and (iii)
169 any access to a student’s personal social media account shall be limited to identifying relevant
170 evidence. If a student does not permit access to a personal social media account, the University
171 of Massachusetts shall not take or threaten adverse action against a student for refusing to permit
172 access to said personal social media account.

173 SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2020
174 Official Edition, is hereby amended by striking out, in line 40, the words “or 190” and inserting
175 in place thereof the following words:- , 190, 192.

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

178 Section 192. (a) As used in this section, the following words shall have the following
179 meanings unless the context clearly requires otherwise:

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

186 “Social media”, an electronic medium allowing users to create, share and view user-
187 generated content including, but not limited to, uploading or downloading videos or still
188 photographs, blogs, video blogs, podcasts, messages, e-mails or internet website profiles or
189 locations.

190 (b) An employer shall not:

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

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

198 (iii) require, request or cause an employee or applicant to reproduce in any
199 manner, photographs, videos, or information contained within a personal social media account
200 without cause to believe that such photographs, video, or information would interfere with an
201 employer's right to enforce lawful workplace policies; or

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

205 (c) This section shall not apply to information about an employee or applicant that is
206 publicly available.

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

210 (e) Nothing in this section shall prevent an employer, after receipt of specific relevant
211 information, from requesting to be provided, within a reasonable period of time, access to an
212 employee's personal social media account to ensure compliance with applicable state or federal
213 laws, rules or regulations; legally mandated investigations of employees' actions; judicial
214 directives; or rules of self-regulatory organizations, as defined in the federal Securities Exchange
215 Act of 1934, 15 U.S.C. § 78c (a)(26); provided, however, that an employer, prior to requesting
216 access to a personal social media account, shall notify the employee of the grounds for the
217 request; and provided further, that (i) the employer has no other means of obtaining the relevant
218 information; (ii) information gained from access to the employee's personal social media account
219 shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access
220 to an employee's personal social media account shall be limited to identifying relevant evidence.

221 (f) For purposes of this section, an intern, paid or unpaid, shall be considered an
222 employee.