

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>1/19/2023</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

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

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.

(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 2020 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:

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

(iv) take or threaten adverse action against an employee or applicant for refusing to disclose information specified in clause (i) or clause (iii) 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.

(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 or social media.

(e) Nothing in this section shall prevent an employer, after receipt of specific relevant information, from requesting to be provided, within a reasonable period of time, access to an employee's personal social media account to ensure compliance with applicable state or federal laws, rules or regulations; legally mandated investigations of employees' actions; 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); provided, however, that an employer, prior to requesting access to a personal social media account, shall notify the employee of the grounds for the request; and provided further, that (i) the employer has no other means of obtaining the relevant information; (ii) information gained from access to the 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 personal social media account shall be limited to identifying relevant evidence.

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