

SENATE No. 2054

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Thursday, November 12, 2015

The committee on Ways and Means, to whom was referred the Senate Bill relative to social media privacy protection (Senate, No. 2034),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2054).

For the committee,
Karen E. Spilka

SENATE No. 2054

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**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 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; or

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

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

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

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

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

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

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

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

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

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

71 (b) An educational institution shall not:

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

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

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

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

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

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

95 (f) Nothing in this section shall prevent the educational institution, after receipt of
96 specific relevant information, from requesting access to a student's personal social media

97 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
98 mandated investigations of students' actions; or judicial directives; provided, however, that an
99 educational institution, prior to requesting access to a personal social media account, shall notify
100 the student and the student's parent or guardian, if a minor, of the grounds for the request and
101 that the student is not required to give access to a personal social media account; and provided
102 further, that (i) the educational institution has no other means of obtaining the relevant
103 information; (ii) information gained from access to the student's personal social media account
104 shall be used solely for purposes of the investigation or a related proceeding; and (iii) any access
105 to a student's personal social media account shall be limited to identifying relevant evidence. If a
106 student does not permit access to a personal social media account, the educational institution
107 shall not take or threaten adverse action against a student for refusing to permit access to said
108 personal social media account.

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

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

113 "Personal social media account", a social media account, service or profile that is used by
114 a current or prospective student exclusively for personal communications unrelated to any
115 educational purpose of the University of Massachusetts; provided however, that "personal social
116 media account" shall not include any social media account created, maintained, used or accessed
117 by a student or prospective student for education related communications or for an educational
118 purpose of the University of Massachusetts.

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

123 (b) The University of Massachusetts shall not:

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

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

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

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

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

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

147 (f) Nothing in this section shall prevent the University of Massachusetts, after receipt of
148 specific relevant information, from requesting access to a student's personal social media
149 account to ensure compliance with applicable state or federal laws, rules or regulations; legally
150 mandated investigations of students' actions; or judicial directives; provided, however, that the
151 University of Massachusetts, prior to requesting access to a personal social media account, shall
152 notify the student and the student's parent or guardian, if a minor, of the grounds for the request
153 and that the student is not required to give access to a personal social media account; and
154 provided further, that (i) the University of Massachusetts has no other means of obtaining the
155 relevant information; (ii) information gained from access to the student's personal social media
156 account shall be used solely for purposes of the investigation or a related proceeding; and (iii)
157 any access to a student's personal social media account shall be limited to identifying relevant
158 evidence. If a student does not permit access to a personal social media account, the University
159 of Massachusetts shall not take or threaten adverse action against a student for refusing to permit
160 access to said personal social media account.

161 SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2014
162 Official Edition, is hereby amended by striking out, in line 40, the words “or 190” and inserting
163 in place thereof the following words:- , 190, 192.

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

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

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

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

178 (b) An employer shall not:

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

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

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

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

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

194 (e) Nothing in this section shall prevent an employer, after receipt of specific relevant
195 information, from requesting access to an employee's personal social media account to ensure
196 compliance with applicable state or federal laws, rules or regulations; legally mandated
197 investigations of employees' actions; judicial directives; or rules of self-regulatory organizations,
198 as defined in the federal Securities Exchange Act of 1934, 15 U.S.C. § 78c (a)(26); provided,
199 however, that an employer, prior to requesting access to a personal social media account, shall
200 notify the employee of the grounds for the request; and provided further, that (i) the employer
201 has no other means of obtaining the relevant information; (ii) information gained from access to
202 the employee's personal social media account shall be used solely for purposes of the

203 investigation or a related proceeding; and (iii) any access to an employee's personal social media
204 account shall be limited to identifying relevant evidence.