

SENATE No. 2270

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen
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SENATE, Tuesday, July 15, 2014

The committee on Ways and Means, to whom was referred the Senate Bill relative to social media privacy protection (Senate, No. 2118), reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2270).

For the committee,
Stephen M. Brewer

SENATE No. 2270

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Fourteen
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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 44. (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) No educational institution shall:

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
26 restraining the student’s participation in extracurricular activities, for refusing to disclose
27 information specified in clause (i) or for refusing to add a coach, teacher, school administrator or
28 other school employee or school volunteer to a list of contacts associated with a personal social
29 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 an educational institution from investigating an
42 alleged violation of an applicable law or regulation; provided, however, that an educational
43 institution, prior to requesting access to a personal social media account, shall notify the student
44 that the request is a result of an investigation; and provided further, that (i) the social media is
45 used solely for purposes of that investigation or a related proceeding and (ii) the educational
46 institution has no other means of obtaining the relevant information.

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

49 Section 95. (a) As used in this section, the following words shall have the following
50 meanings unless the context clearly requires otherwise:

51 “Educational institution”, a public or private institution providing elementary or
52 secondary education located in the commonwealth.

53 “Personal social media account”, a social media account, service or profile that is used by
54 a current or prospective student exclusively for personal communications unrelated to any
55 educational purpose of the educational institution; provided however, that “personal social media
56 account” shall not include any social media account created, maintained, used or accessed by a
57 student or prospective student for education related communications or for an educational
58 purpose of the educational institution.

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

63 (b) No educational institution shall:

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

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

71 (iii) take or threaten adverse action against a student or applicant, including
72 restraining the student’s participation in extracurricular activities, for refusing to disclose
73 information specified in clause (i) or for refusing to add a coach, teacher, school administrator or

74 other school employee or school volunteer to a list of contacts associated with a personal social
75 media account, as specified in clause (ii).

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

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

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

87 (f) Nothing in this section shall prevent an educational institution from investigating an
88 alleged violation of an applicable law or regulation; provided, however, that an educational
89 institution, prior to requesting access to a personal social media account, shall notify the student
90 and the student's parent or guardian that the request is a result of an investigation; and provided
91 further, that (i) the social media is used solely for purposes of that investigation or a related
92 proceeding and (ii) the educational institution has no other means of obtaining the relevant
93 information.

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

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

98 “Educational institution”, the university of Massachusetts.

99 “Personal social media account”, a social media account, service or profile that is used by
100 a current or prospective student exclusively for personal communications unrelated to any
101 educational purpose of the educational institution; provided however, that “personal social media
102 account” shall not include any social media account created, maintained, used or accessed by a
103 student or prospective student for education related communications or for an educational
104 purpose of the educational institution.

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

109 (b) No educational institution shall:

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

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

117 (iii) take or threaten adverse action against a student or applicant, including
118 restraining the student's participation in extracurricular activities, for refusing to disclose
119 information specified in clause (i) or for refusing to add a coach, teacher, school administrator or
120 other school employee or school volunteer to a list of contacts associated with a personal social
121 media account, as specified in clause (ii).

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

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

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

133 (f) Nothing in this section shall prevent an educational institution from investigating an
134 alleged violation of an applicable law or regulation; provided, however, that an educational
135 institution, prior to requesting access to a personal social media account, shall notify the student
136 that the request is a result of an investigation; and provided further, that (i) the social media is
137 used solely for purposes of that investigation or a related proceeding and (ii) the educational
138 institution has no other means of obtaining the relevant information.

139 SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2012
140 Official Edition, is hereby amended by striking out, in line 21, the words “or 159C” and inserting
141 in place thereof the following words:- , 159C or 190.

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

144 Section 190. (a) As used in this section, the following words shall have the following
145 meanings unless the context clearly requires otherwise:

146 “Personal social media account” a social media account, service or profile that is used by
147 a current or prospective employee exclusively for personal communications unrelated to any
148 business purposes of the employer; provided however, that “personal social media account” shall
149 not include any social media account created, maintained, used or accessed by a current or
150 prospective employee for business purposes of the employer or to engage in business related
151 communications.

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

156 (b) No employer shall:

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

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

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

167 (c) This section shall not apply to information about an employee or applicant that is
168 publicly available. Nothing in this section shall be construed to prevent an employer from
169 complying with the requirements of: state or federal statutes, rules or regulations; case law; or
170 rules of self-regulatory organizations, as defined in the federal Securities Exchange Act of 1934,
171 15 U.S.C. § 78c (a)(26).

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

175 (e) Nothing in this section shall affect an employer's right to request an employee to
176 provide access to a personal social media account reasonably believed to be relevant to an
177 investigation of an allegation of employee misconduct or an employee's violation of an
178 applicable law or regulation; provided, that (i) the social media is used solely for purposes of that
179 investigation or a related proceeding and (ii) the employer has no other means of obtaining the
180 relevant information.