

SENATE No. 2320

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Thursday, March 1, 2018

The committee on Ways and Means to whom was referred the Senate Bill relative to social media privacy protection (Senate, No. 991),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2320)

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 chartered,
6 located, offering courses or otherwise doing business in the commonwealth or authorized by the
7 commonwealth to grant degrees.

8 “Personal social media account”, a social media account, service or profile that is used by
9 a current or prospective student exclusively for personal communications unrelated to any
10 educational purpose of the educational institution; provided, however, that “personal social
11 media account” shall not include a social media account created, maintained, used or accessed by
12 a student or prospective student for education-related communications or for a related
13 educational purpose of the educational institution.

14 “Social media”, an electronic medium that allows users to create, share and view user-
15 generated content including, but not limited to, uploading or downloading videos or still
16 photographs, blogs, video blogs, podcasts, messages, emails and internet website profiles or
17 locations.

18 (b) An educational institution shall not:

19 (i) require, request or coerce a student or prospective student to disclose a user
20 name, password or other means for access to a personal social media account or to provide
21 access through a user name or password to a personal social media account;

22 (ii) compel a student or prospective student to add a person including, but not
23 limited to, a coach, teacher, school administrator or other school employee or school volunteer to
24 the student’s or prospective student’s list of contacts associated with a personal social media
25 account as a condition of acceptance or as a condition of participation in curricular or
26 extracurricular activities;

27 (iii) require, request or coerce a student or prospective student to reproduce or
28 disclose photographs, videos or information contained within a personal social media account; or

29 (iv) take or threaten adverse action against a student or prospective student for
30 refusing to disclose information specified in clause (i) or (iii) or for refusing to add a person
31 including, but not limited to, a coach, teacher, school administrator or other school employee or
32 school volunteer to a list of contacts associated with a personal social media account as specified
33 in clause (ii); provided, however, that taking or threatening adverse action shall include, but not
34 be limited to, restraining a student’s participation in curricular or extracurricular activities.

35 (c) Nothing in this section shall apply to publicly available information about a student or
36 prospective student.

37 (d) 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) \$500 for each request that is found
39 to have been a willful violation of clause (i) or (ii) of subsection (b); and (ii) \$500 for each
40 adverse action that is found to have been a willful violation of clause (iii) of said subsection (b);
41 or (iii) actual damages if the amount of actual damages exceeds the amounts provided for in
42 clauses (i) and (ii). In awarding damages under this section, the court may also award reasonable
43 costs, interests and attorneys' fees.

44 (e) Nothing in this section shall limit the right of an educational institution to promulgate
45 and maintain lawful policies governing the use of the educational institution's electronic
46 equipment, including policies regarding the use of the internet, email and social media.

47 (f) Nothing in this section shall prevent an educational institution, upon receipt of specific
48 relevant information, from requesting access to a student's personal social media account to
49 ensure compliance with applicable state or federal laws, rules or regulations, legally-mandated
50 investigations of a student's actions or judicial directives; provided, however, that prior to
51 making a request to a student for access to the student's personal social media account, an
52 educational institution shall notify the student and, if a minor, the student's parent or guardian of
53 the grounds for the request and inform the student, and the parent or guardian when applicable,
54 that the student is not required to give access to a personal social media account; provided
55 further, that if the situation does not allow for prior notice to a parent or guardian due to the
56 educational institution's reasonable belief of the presence of an immediate danger of death or

57 serious bodily injury to any person, notice to a minor student's parent or guardian shall be
58 provided in a reasonable period of time thereafter. An educational institution shall only make the
59 request for access to a student's personal social media account if: (i) the educational institution
60 has no reasonable means of otherwise obtaining the relevant information; (ii) information gained
61 from access to a student's personal social media account shall be used solely for purposes of the
62 investigation or a related proceeding; and (iii) any access to a student's personal social media
63 account shall be limited to identifying relevant evidence. If a student does not permit access to a
64 personal social media account, the educational institution shall not take or threaten adverse
65 action against a student for such refusal.

66 (g) Nothing in this section shall prevent an educational institution from disclosing
67 lawfully obtained information derived from a student's personal social media account to parties,
68 including, but not limited to law enforcement, when disclosure to those parties of such
69 information is necessary to protect a person against an immediate danger of death or serious
70 bodily injury or as otherwise required by law.

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

73 Section 98. (a) As used in this section, the following words shall have the following
74 meanings unless the context clearly requires otherwise:

75 "Educational institution", a public or private institution that provides elementary or
76 secondary education.

77 "Personal social media account", a social media account, service or profile that is used by
78 a current or prospective student exclusively for personal communications unrelated to any

79 educational purpose of the educational institution; provided, however, that “personal social
80 media account” shall not include a social media account created, maintained, used or accessed by
81 a student or prospective student for education-related communications or for a related
82 educational purpose of the educational institution.

83 “Social media”, an electronic medium that allows users to create, share and view user-
84 generated content including, but not limited to, uploading or downloading videos or still
85 photographs, blogs, video blogs, podcasts, messages, emails and internet website profiles or
86 locations.

87 (b) An educational institution shall not:

88 (i) require, request or coerce a student or prospective student to disclose a user
89 name, password or other means for access or to provide access through a user name or password
90 to a personal social media account;

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

95 (iii) require, request or coerce a student or prospective student to reproduce or
96 disclose photographs, videos or information contained within a personal social media account; or

97 (iv) take or threaten adverse action against a student or prospective student for
98 refusing to disclose information specified in clause (i) or (iii) or for refusing to add a person
99 including, but not limited to, a coach, teacher, school administrator or other school employee or

100 school volunteer to a list of contacts associated with a personal social media account as specified
101 in clause (ii); provided, however, that taking or threatening adverse action shall include, but not
102 be limited to, restraining a student's participation in curricular or extracurricular activities.

103 (c) Nothing in this section shall apply to publicly available information about a student or
104 prospective student.

105 (d) An aggrieved student or prospective student may institute a civil action for damages
106 or to restrain a violation of this section and may recover: (i) \$500 for each request that is found
107 to have been a willful violation of clause (i) or (ii) of subsection (b); and (ii) \$500 for each
108 adverse action that is found to have been a willful violation of clause (iii) of said subsection (b);
109 or (iii) actual damages if the amount of actual damages exceeds the amounts provided for in
110 clauses (i) and (ii). In awarding damages under this section, the court may also award reasonable
111 costs, interests and attorneys' fees.

112 (e) Nothing in this section shall limit the right of an educational institution to promulgate
113 and maintain lawful policies governing the use of the educational institution's electronic
114 equipment, including policies regarding use of the internet, email and social media.

115 (f) Nothing in this section shall prevent an educational institution, upon receipt of specific
116 relevant information, from requesting access to a student's personal social media account to
117 ensure compliance with section 370 or any other applicable state or federal laws, rules or
118 regulations, legally-mandated investigations of a student's actions or judicial directives;
119 provided, however, that prior to making a request to a student for access to the student's personal
120 social media account, an educational institution shall notify the student and, if a minor, the
121 student's parent or guardian of the grounds for the request and inform the student, and the parent

122 or guardian when applicable, that the student is not required to give access to a personal social
123 media account; provided further, that if the situation does not allow for prior notice to a parent or
124 guardian due to the educational institution's reasonable belief of the presence of an immediate
125 danger of death or serious bodily injury to any person, notice to a minor student's parent or
126 guardian shall be provided in a reasonable period of time thereafter. An educational institution
127 shall only make the request for access to a student's personal social media account if: (i) the
128 educational institution has no reasonable means of otherwise obtaining the relevant information;
129 (ii) information gained from access to the student's personal social media account shall be used
130 solely for the purposes of the investigation or a related proceeding; and (iii) any access to a
131 student's personal social media account shall be limited to identifying relevant evidence. If a
132 student does not permit access to a personal social media account, the educational institution
133 shall not take or threaten adverse action against a student for such refusal.

134 (g) Nothing in this section shall prevent an educational institution from disclosing
135 lawfully obtained information derived from a student's personal social media account to parties
136 including, but not limited to, law enforcement when disclosure to those parties of such
137 information is necessary to protect a person against an immediate danger of death or serious
138 bodily injury or as otherwise required by law.

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

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

143 “Personal social media account”, a social media account, service or profile that is used by
144 a current or prospective student exclusively for personal communications unrelated to any
145 educational purpose of the University of Massachusetts; provided, however, that “personal social
146 media account” shall not include a social media account created, maintained, used or accessed by
147 a student or prospective student for education-related communications or for an educational
148 purpose of the University of Massachusetts.

149 “Social media”, an electronic medium that allows users to create, share and view user-
150 generated content including, but not limited to, uploading or downloading videos or still
151 photographs, blogs, video blogs, podcasts, messages, emails and internet website profiles or
152 locations.

153 (b) The University of Massachusetts shall not:

154 (i) require, request or coerce a student or prospective student to disclose a user
155 name, password or other means for access or to provide access through a user name or password
156 to a personal social media account;

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

161 (iii) require, request or coerce a student or prospective student to reproduce or
162 disclose photographs, videos or information contained within a personal social media account; or

163 (iv) take or threaten adverse action against a student or prospective student for
164 refusing to disclose information specified in clause (i) or (iii) or for refusing to add a person
165 including, but not limited to, a coach, teacher, school administrator or other school employee or
166 school volunteer to a list of contacts associated with a personal social media account as provided
167 in clause (ii); provided, however, that taking or threatening adverse action shall include, but not
168 limited to, restraining a student's participation in curricular or extracurricular activities.

169 (c) Nothing in this section shall apply to publicly available information about a student or
170 prospective student.

171 (d) An aggrieved student or a prospective student may institute a civil action for damages
172 or to restrain a violation of this section and may recover: (i) \$500 for each request that
173 constitutes a willful violation of clause (i) or (ii) of subsection (b); and (ii) \$500 for each adverse
174 action that constitutes a willful violation of clause (iii) of subsection (b); or (iii) actual damages
175 if the amount of actual damages exceeds the amounts provide for in clauses (i) and (ii). In
176 awarding damages under this section, the court may also award reasonable costs, interests and
177 attorneys' fees.

178 (e) Nothing in this section shall limit the right of the University of Massachusetts to
179 promulgate and maintain lawful policies governing the use of the university's electronic
180 equipment, including policies regarding use of the internet, email and social media.

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

185 prior to making a request to a student for access to the student’s personal social media account,
186 the University of Massachusetts shall notify the student and, if a minor, the student’s parent or
187 guardian of the grounds for the request and inform the student, and the parent or guardian when
188 applicable, that the student is not required to give access to a personal social media account;
189 provided, further however, that if the situation does not allow for prior notice to a parent or
190 guardian due to the university’s reasonable belief of the presence of an immediate danger of
191 death or serious bodily injury to any person, notice to a minor student’s parent or guardian shall
192 be provided in a reasonable period of time thereafter. The university shall only make the request
193 for access to a student’s personal social media account if: (i) the university has no reasonable
194 means of otherwise obtaining the relevant information; (ii) information gained from access to the
195 student’s personal social media account shall be used solely for purposes of the investigation or a
196 related proceeding; and (iii) any access to a student’s personal social media account shall be
197 limited to identifying relevant evidence. If a student does not permit access to a personal social
198 media account, the university shall not take or threaten adverse action against a student for such
199 refusal.

200 (g) Nothing in this section shall prevent the University of Massachusetts from disclosing
201 lawfully obtained information derived from a student’s personal social media account to parties
202 including, but not limited to, law enforcement when disclosure to those parties of such
203 information is necessary to protect a person against an immediate danger of death or serious
204 bodily injury or as otherwise required by law.

205 SECTION 4. Section 150 of chapter 149 of the General Laws, as appearing in the 2016
206 Official Edition, is hereby amended by striking out, in line 22, the words “or 190” and inserting
207 in place thereof the following words:- , 190 or 192.

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

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

212 “Personal social media account”, a social media account, service or profile that is used by
213 a current or prospective employee exclusively for personal communications unrelated to any
214 business purposes of the employer; provided however, that “personal social media account” shall
215 not include a social media account created, maintained, used or accessed by a current or
216 prospective employee for business-related communications or for another business related
217 purpose.

218 “Social media”, an electronic medium that allows users to create, share and view user-
219 generated content including, but not limited to, uploading or downloading videos or still
220 photographs, blogs, video blogs, podcasts, messages, emails and internet website profiles or
221 locations.

222 (b) An employer shall not:

223 (i) require, request or coerce an employee or a prospective employee to disclose a
224 user name, password or other means for access or to provide access through a user name or
225 password to a personal social media account;

226 (ii) compel an employee or a prospective employee to add a person including, but
227 not limited to, the employer or an agent of the employer to the employee’s or prospective

228 employee's list of contacts associated with a personal social media account as a condition of
229 employment or consideration for employment;

230 (iii) require, request or coerce an employee or a prospective employee to
231 reproduce or disclose photographs, videos or information contained within a personal social
232 media account; or

233 (iv) take or threaten adverse action against an employee or a prospective
234 employee for refusing to disclose information specified in clause (i) or (iii) or for refusing to add
235 the employer or an agent of the employer to a list of contacts associated with a personal social
236 media account as specified in clause (ii).

237 (c) Nothing in this section shall apply to publicly available information about an
238 employee or a prospective employee.

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

242 (e) Nothing in this section shall prevent an employer, upon receipt of specific relevant
243 information, from requesting access to an employee personal social media account to ensure
244 compliance with applicable state and federal laws, municipal ordinances and by-laws, rules and
245 regulations, legally-mandated investigations of an employee's actions, employer prohibitions
246 against unauthorized transfers of an employer's proprietary information or other nonpublic
247 financial information, judicial directives or rules of self-regulatory organizations as defined in

248 the federal Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26); provided, however, that an
249 employer, prior to requesting access to a personal social media account, shall notify the
250 employee of the grounds for the request; and provided further, that the employer shall only make
251 the request for access to an employee's personal social media account if: (i) the employer has no
252 reasonable means of otherwise obtaining the relevant information; (ii) information gained from
253 access to an employee's personal social media account shall be used solely for purposes of the
254 investigation or a related proceeding; and (iii) any access to an employee's personal social media
255 account shall be limited to identifying relevant evidence.

256 (f) Nothing in this section shall prevent an employer from disclosing lawfully obtained
257 information derived from an employee's personal social media account to parties, including, but
258 not limited to, law enforcement, when disclosure to those parties is necessary to protect against
259 an immediate danger of death or serious bodily injury to the employee or another individual or as
260 otherwise required by law.

261 (g) For the purposes of this section, an intern, whether paid or unpaid, shall be an
262 employee.