

SENATE No. 2346

Senate March 15, 2018, – Text of the Senate Bill relative to social media privacy protection
(being the text of Senate document number 2320, printed as amended)

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 or prospective student's personal
49 social media account to ensure compliance with applicable state or federal laws, rules or
50 regulations, legally-mandated investigations of a student's or prospective student's actions or
51 judicial directives; or due to the reasonable belief of the presence of an immediate danger of
52 death or serious bodily injury to any person provided, however, that prior to making a request to
53 a student or prospective student for access to the student's or prospective student's personal
54 social media account, an educational institution shall notify the student or prospective student
55 and, if a minor, the student's or prospective student's parent or guardian of the grounds for the
56 request and inform the student or prospective student, and the parent or guardian when

57 applicable, that the student or prospective student is not required to give access to a personal
58 social media account; provided further, that if the situation does not allow for prior notice to a
59 parent or guardian due to the educational institution's reasonable belief of the presence of an
60 immediate danger of death or serious bodily injury to any person, notice to a minor student's or
61 prospective student's parent or guardian shall be provided in a reasonable period of time
62 thereafter. An educational institution shall only make the request for access to a student's or
63 prospective student's personal social media account if: (i) the educational institution has no
64 reasonable means of otherwise obtaining the relevant information; (ii) information gained from
65 access to a student's or prospective student's personal social media account shall be used solely
66 for purposes of the investigation or a related proceeding; and (iii) any access to a student's or
67 prospective student's personal social media account shall be limited to identifying relevant
68 evidence. If a student or prospective student does not permit access to a personal social media
69 account, the educational institution shall not take or threaten adverse action against a student or
70 prospective student for such refusal.

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

76 (h) No public employer shall be liable for injury, loss of property, personal injury or
77 death, except to the extent allowed in subsection (d), caused by an act or omission of a public
78 employee while acting in the scope of the public employee's employment and arising out of the

79 implementation of this section. This section shall not be construed as creating or imposing a
80 specific duty of care.

81 (i) Except as proof of a violation of this section, no data obtained, accessed, used, copied,
82 disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be
83 admissible in any criminal, civil, administrative or other proceeding. SECTION 2. Chapter 71 of
84 the General Laws is hereby amended by adding the following section:-

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

87 "Educational institution", a public or private institution that provides elementary or
88 secondary education.

89 "Personal social media account", a social media account, service or profile that is used by
90 a current or prospective student exclusively for personal communications unrelated to any
91 educational purpose of the educational institution; provided, however, that "personal social
92 media account" shall not include a social media account created, maintained, used or accessed by
93 a student or prospective student for education-related communications or for a related
94 educational purpose of the educational institution.

95 "Social media", an electronic medium that allows users to create, share and view user-
96 generated content including, but not limited to, uploading or downloading videos or still
97 photographs, blogs, video blogs, podcasts, messages, emails and internet website profiles or
98 locations.

99 (b) An educational institution shall not:

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

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

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

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

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

117 (d) An aggrieved student or prospective student may institute a civil action for damages
118 or to restrain a violation of this section and may recover: (i) \$500 for each request that is found
119 to have been a willful violation of clause (i) or (ii) of subsection (b); and (ii) \$500 for each
120 adverse action that is found to have been a willful violation of clause (iii) of said subsection (b);
121 or (iii) actual damages if the amount of actual damages exceeds the amounts provided for in

122 clauses (i) and (ii). In awarding damages under this section, the court may also award reasonable
123 costs, interests and attorneys' fees.

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

127 (f) Nothing in this section shall prevent an educational institution, upon receipt of specific
128 relevant information, from requesting access to a student's or prospective student's personal
129 social media account to ensure compliance with section 37O or any other applicable state or
130 federal laws, rules or regulations, legally-mandated investigations of a student's or prospective
131 student's actions or judicial directives or due to the reasonable belief of the presence of an
132 immediate danger of death or serious bodily injury to any person; provided, however, that prior
133 to making a request to a student or prospective student for access to the student's or prospective
134 student's personal social media account, an educational institution shall notify the student or
135 prospective student and, if a minor, the student's or prospective student's parent or guardian of
136 the grounds for the request and inform the student or prospective student, and the parent or
137 guardian when applicable, that the student or prospective student is not required to give access
138 to a personal social media account; provided further, that if the situation does not allow for prior
139 notice to a parent or guardian due to the educational institution's reasonable belief of the
140 presence of an immediate danger of death or serious bodily injury to any person, notice to a
141 minor student's or prospective student's parent or guardian shall be provided in a reasonable
142 period of time thereafter. An educational institution shall only make the request for access to a
143 student's or prospective student's personal social media account if: (i) the educational institution
144 has no reasonable means of otherwise obtaining the relevant information; (ii) information gained

145 from access to the student's or prospective student's personal social media account shall be used
146 solely for the purposes of the investigation or a related proceeding; and (iii) any access to a
147 student's or prospective student's personal social media account shall be limited to identifying
148 relevant evidence. If a student or prospective student does not permit access to a personal social
149 media account, the educational institution shall not take or threaten adverse action against a
150 student or prospective student for such refusal.

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

156 (h) No public employer shall be liable for injury, loss of property, personal injury or
157 death, except to the extent allowed in subsection (d), caused by an act or omission of a public
158 employee while acting in the scope of the public employee's employment and arising out of the
159 implementation of this section. This section shall not be construed as creating or imposing a
160 specific duty of care.

161 (i) Except as proof of a violation of this section, no data obtained, accessed, used, copied,
162 disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be
163 admissible in any criminal, civil, administrative or other proceeding.

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

166 Section 48. (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 student exclusively for personal communications unrelated to any
170 educational purpose of the University of Massachusetts; provided, however, that “personal social
171 media account” shall not include a social media account created, maintained, used or accessed by
172 a student or prospective student for education-related communications or for an educational
173 purpose of the University of Massachusetts.

174 “Social media”, an electronic medium that allows 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, emails and internet website profiles or
177 locations.

178 (b) The University of Massachusetts shall not:

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

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

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

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

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

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

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

206 (f) Nothing in this section shall prevent the University of Massachusetts, upon receipt of
207 specific relevant information, from requesting access to a student's or prospective student's

208 personal social media account to ensure compliance with applicable state or federal laws, rules or
209 regulations, legally-mandated investigations of a student's or prospective student's actions or
210 judicial directives or due to the reasonable belief of the presence of an immediate danger of death
211 or serious bodily injury to any person; provided, however, that prior to making a request to a
212 student or prospective student for access to the student's or prospective student's personal
213 social media account, the University of Massachusetts shall notify the student or prospective
214 student and, if a minor, the student's or prospective student's parent or guardian of the grounds
215 for the request and inform the student or prospective student, and the parent or guardian when
216 applicable, that the student or prospective student is not required to give access to a personal
217 social media account; provided, further however, that if the situation does not allow for prior
218 notice to a parent or guardian due to the university's reasonable belief of the presence of an
219 immediate danger of death or serious bodily injury to any person, notice to a minor student's or
220 prospective student's parent or guardian shall be provided in a reasonable period of time
221 thereafter. The university shall only make the request for access to a student's or prospective
222 student's personal social media account if: (i) the university has no reasonable means of
223 otherwise obtaining the relevant information; (ii) information gained from access to the student's
224 or prospective student's personal social media account shall be used solely for purposes of the
225 investigation or a related proceeding; and (iii) any access to a student's or prospective student's
226 personal social media account shall be limited to identifying relevant evidence. If a student or
227 prospective student does not permit access to a personal social media account, the university
228 shall not take or threaten adverse action against a student or prospective student for such refusal.

229 (g) Nothing in this section shall prevent the University of Massachusetts from disclosing
230 lawfully obtained information derived from a student's or prospective student's personal social

231 media account to parties including, but not limited to, law enforcement when disclosure to those
232 parties of such information is necessary to protect a person against an immediate danger of death
233 or serious bodily injury or as otherwise required by law.

234 (h) No public employer shall be liable for injury, loss of property, personal injury or
235 death, except to the extent allowed in subsection (d), caused by an act or omission of a public
236 employee while acting in the scope of the public employee's employment and arising out of the
237 implementation of this section. This section shall not be construed as creating or imposing a
238 specific duty of care.

239 (i) Except as proof of a violation of this section, no data obtained, accessed, used, copied,
240 disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be
241 admissible in any criminal, civil, administrative or other proceeding.

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

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

247 Section 192.

248 (a) As used in this section, the following words shall have the following meanings unless
249 the context clearly requires otherwise:

250 "Law enforcement agency", the department of state police, a police department of a
251 political subdivision of the commonwealth, the environmental police, the police department of

252 the Massachusetts Bay Transportation Authority, a sheriff's office, a college or university
253 campus police department, the department of correction, the parole board, the probation service
254 in the office of probation and any other law enforcement entity, except a federal law enforcement
255 agency, that enforces the laws of the commonwealth and possesses criminal arrest power.

256 "Personal social media account", a social media account, service or profile that is used by
257 a current or prospective employee exclusively for personal communications unrelated to any
258 business purposes of the employer; provided, however, that "personal social media account"
259 shall not include a social media account created, maintained, used or accessed by a current or
260 prospective employee for business-related communications or for another business related
261 purpose.

262 "Social media", an electronic medium that allows users to create, share and view user-
263 generated content including, but not limited to, uploading or downloading videos or still
264 photographs, blogs, video blogs, podcasts, messages, emails and internet website profiles or
265 locations.

266 "Sworn employee", an employee of a law enforcement agency who takes an oath to
267 enforce the laws of the commonwealth and possesses criminal arrest power.

268 (b) An employer shall not:

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

272 (ii) compel an employee or a prospective employee to add a person including, but
273 not limited to, the employer or an agent of the employer to the employee's or prospective
274 employee's list of contacts associated with a personal social media account as a condition of
275 employment or consideration for employment;

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

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

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

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

288 (e) Nothing in this section shall prevent an employer, upon receipt of specific relevant
289 information, from requesting access to an employee or prospective employee's personal social
290 media account to ensure compliance with applicable state and federal laws, municipal ordinances
291 and by-laws, rules and regulations, legally-mandated investigations of an employee's or
292 prospective employee's actions, employer prohibitions against unauthorized transfers of an
293 employer's proprietary information or other nonpublic financial information, judicial directives

294 or rules of self-regulatory organizations as defined in the federal Securities Exchange Act of
295 1934, 15 U.S.C. 78c(a)(26) or due to the reasonable belief of the presence of an immediate
296 danger of death or serious bodily injury to any person; provided, however, that an employer,
297 prior to requesting access to a personal social media account, shall notify the employee or
298 prospective employee of the grounds for the request; and provided further, that the employer
299 shall only make the request for access to an employee's or prospective employee's personal
300 social media account if: (i) the employer has no reasonable means of otherwise obtaining the
301 relevant information; (ii) information gained from access to an employee's or prospective
302 employee's personal social media account shall be used solely for purposes of the investigation
303 or a related proceeding; and (iii) any access to an employee's or prospective employee's personal
304 social media account shall be limited to identifying relevant evidence.

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

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

312 (h) The head of a law enforcement agency or a designee, pursuant to an active and
313 ongoing internal administrative investigation into whether a sworn employee or group of sworn
314 employees has engaged in unlawful discrimination or harassment of a person or class of persons
315 under section 4 of chapter 151B and acting upon a credible complaint lodged against such sworn

316 employee or group of sworn employees that the personal social media account of the sworn
317 employee or sworn employees contains specific information relevant to the investigation, may
318 require or request a sworn employee of a law enforcement agency to reproduce or disclose
319 photographs, videos or other information contained within a personal social media account. The
320 head or designee may take or threaten an adverse employment action against a sworn employee
321 for refusing to disclose such information, photographs or videos upon request.

322 (i) If, during a standard departmental background investigation for the prospective
323 employment of a candidate for employment as a sworn employee, the head of a law enforcement
324 agency or a designee receives specific relevant information that the candidate has engaged in
325 unlawful discrimination or harassment of a person under section 4 of chapter 151B, the head or
326 designee may require or request the candidate to reproduce or disclose photographs, videos or
327 other information contained within a personal social media account. The head or designee may
328 take or threaten an adverse employment action against a candidate for employment as a sworn
329 employee for refusing to disclose such information, photographs or videos upon request.

330 (j) Except as proof of a violation of this section, no data obtained, accessed, used, copied,
331 disclosed or retained in violation of this section, nor any evidence derived therefrom, shall be
332 admissible in any criminal, civil, administrative or other proceeding

333 SECTION 6. Notwithstanding any general or special law to the contrary, nothing in
334 subsection (h) or (i) of section 192 of chapter 149 of the General Laws shall impact the rights to
335 collectively bargain.