

SENATE No. 962

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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:
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>

<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>

SENATE No. 962

By Ms. Creem, a petition (accompanied by bill, Senate, No. 962) of Cynthia S. Creem, Michael O. Moore, Jason M. Lewis, Ryan C. Fattman and other members of the General Court for legislation relative to employees social media privacy protection. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 852 OF 2013-2014.]

The Commonwealth of Massachusetts

—————
**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 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, password or
19 other means for access, or provide access through a user name or password, to a personal social
20 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 restraining
26 the student’s participation in extracurricular activities, for refusing to disclose information
27 specified in clause (i) or for refusing to add a coach, teacher, school administrator or other school
28 employee or school volunteer to a list of contacts associated with a personal social media
29 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 SECTION 2. Chapter 71 of the General Laws is hereby amended by adding the following
42 section:-

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

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

47 "Personal social media account", a social media account, service or profile that is used by
48 a current or prospective student exclusively for personal communications unrelated to any
49 educational purpose of the educational institution; provided however, that "personal social media
50 account" shall not include any social media account created, maintained, used or accessed by a

51 student or prospective student for education related communications or for an educational
52 purpose of the educational institution.

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

57 (b) No educational institution shall:

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

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

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

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

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

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

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

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

85 “Educational institution”, the university of Massachusetts.

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

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

96 (b) No educational institution shall:

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

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

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

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

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

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

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

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

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

127 “Personal social media account” a social media account, service or profile that is used by
128 a current or prospective employee exclusively for personal communications unrelated to any
129 business purposes of the employer; provided however, that “personal social media account” shall
130 not include any social media account created, maintained, used or accessed by a current or
131 prospective employee for business purposes of the employer or to engage in business related
132 communications.

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

137 (b) No employer shall:

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

141 (ii) compel an employee or applicant, as a condition of employment or consideration for
142 employment, to add a person, including but not limited to, the employer or an agent of the
143 employer, to the employee’s or applicant’s list of contacts associated with a personal social
144 media account; or

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

148 (c) This section shall not apply to information about an employee or applicant that is
149 publicly available. Nothing in this section shall be construed to prevent an employer from
150 complying with the requirements of: state or federal statutes, rules or regulations; case law; or
151 rules of self-regulatory organizations, as defined in the federal Securities Exchange Act of 1934,
152 15 U.S.C. § 78c (a)(26).

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