HOUSE DOCKET, NO. 3282 FILED ON: 1/20/2017

HOUSE . . . . . No. 2879

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

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 the disclosure or use of certain student data and information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Jeffrey N. Roy	*10th Norfolk*	*1/20/2017*
Denise Provost	*27th Middlesex*	*1/20/2017*
Keiko M. Orrall	*12th Bristol*	*1/20/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/20/2017*
David M. Rogers	*24th Middlesex*	*2/3/2017*
Marjorie C. Decker	*25th Middlesex*	*1/20/2017*
Claire D. Cronin	*11th Plymouth*	*1/20/2017*
Paul McMurtry	*11th Norfolk*	*1/20/2017*

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HOUSE . . . . . No. 2879

By Mr. Roy of Franklin, a petition (accompanied by bill, House, No. 2879) of Jeffrey N. Roy and others relative to the disclosure of certain student information by schools or school districts. Education.

The Commonwealth of Massachusetts

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

An Act relative to the disclosure or use of certain student data and information.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 71 of the Massachusetts General Laws is hereby amended by adding at the end thereof the following section 98:--

Section 1. This act shall be known and may be cited as the "Student Online Personal Information Protection Act".

Section 2. As used in this act:

(a) "Covered information" means personally identifiable information or material, or information that is linked to personally identifiable information or material, in any media or format that is not publically available and is any of the following:

(i) Created by or provided to an operator by a student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K–12 school purposes.

(ii) Created by or provided to an operator by an employee or agent of a K-12 school or school district for K-12 school purposes.

(iii) Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

(b) "Interactive computer service" means that term as defined in 47 USC 230.

(c) "K-12 school" means a school that offers any of grades kindergarten to 12 and that is operated by a school district.

(d) "K–12 school purposes" means purposes that are directed by or that customarily take place at the direction of a K-12 school, teacher, or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are otherwise for the use and benefit of the school.

(e) "Operator" means, to the extent that it is operating in this capacity, the operator of an Internet website, online service, online application, or mobile application with knowledge that

the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes.

(f) "School district" means a school district, intermediate school district, or public school academy, as those terms are defined in Chapter 71 of the Massachusetts General Laws.

(h) "Targeted advertising" means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. It does not include advertising to a student at an online location based upon that student's current visit to that location, or in response to that student’s request for information or feedback, without the retention of that student's online activities or requests over time for the purpose of targeting subsequent ads.

Section 3. (1) An operator shall not knowingly or negligently do any of the following:

(a) Engage in targeted advertising on the operator's site, service, or application, or target advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for K-12 school purposes.

(b) Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a student except in furtherance of K–12 school purposes. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or guardian, or K-12 school.

(c) Sell or rent a student's information, including covered information. This subdivision does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, if the operator or successor entity complies with this section regarding previously acquired student information, or to national assessment providers if the provider secures the express written consent of the parent or student, given in response to clear and conspicuous notice, solely to provide access to employment, educational scholarships or financial aid, or postsecondary educational opportunities.

(d) Except as otherwise provided in subsection (3), disclose covered information unless the disclosure is made for the following purposes:

(i) In furtherance of the K–12 school purpose of the site, service, or application, if the recipient of the covered information disclosed under this subparagraph does not further disclose the information unless done to allow or improve operability and functionality of the operator's site, service, or application.

(ii) To ensure legal and regulatory compliance or protect against liability.

(iii) To respond to or participate in the judicial process.

(iv) To protect the safety or integrity of users of the site or others or the security of the site, service, or application.

(v) For a school, educational, or employment purpose requested by the student or the student's parent or guardian, provided that the information is not used or further disclosed for any other purpose.

(vi) To a third party, if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

(e) Nothing in this Section 3(1) shall prohibit the operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

(2) An operator shall do all of the following:

(a) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure.

(b) Delete within a reasonable time period a student's covered information if the K-12 school or school district requests deletion of covered information under the control of the K-12 school or school district, unless the school district provides written documentation from a student or parent or guardian consenting to the maintenance of the covered information.

(3) An operator may use or disclose covered information of a student under the following circumstances:

(a) If other provisions of federal or state law require the operator to disclose the information, and the operator complies with the requirements of federal and state law in protecting and disclosing that information.

(b) As long as no covered information is used for advertising or to amass a profile on the student for purposes other than elementary, middle school, or high school purposes, for legitimate research purposes: as required by state or federal law and subject to the restrictions under applicable state and federal law; or as allowed by state or federal law and in furtherance of K–12 school purposes or postsecondary educational purposes.

(c) To a state or local educational agency, including K-12 schools and school districts, for K–12 school purposes, as permitted by state or federal law.

(4) This section does not prohibit an operator from doing any of the following:

(a) Using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator.

(b) Using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in their marketing.

(c) Sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications.

(d) Using recommendation engines to recommend to a student either of the following:

(i) Additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party.

(ii) Additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party.

(e) Responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

(5) This section does not do any of the following:

(a) Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order.

(b) Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes.

(c) Apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

(d) Limit service providers from providing Internet connectivity to schools or students and their families.

(e) Prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents if the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section.

(f) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software.

(g) Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this section by third-party content providers.

(h) Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents.

Section 4. An aggrieved student may institute a civil action for damages or to restrain a violation of this section and may recover: (i) $1,000 for each request that violates Section 3; (ii) $1,000 for each adverse action, which violates Section 3, or actual damages, whichever amount is higher; (iii) punitive damages if a court determines that a violation was willful; and (iv) reasonable attorneys' fees and other litigation costs reasonably incurred.

This act takes effect January 1, 2018.