

HOUSE No. 1403

The Commonwealth of Massachusetts

PRESENTED BY:

Carolyn C. Dykema

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 online privacy of minors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/17/2019</i>

HOUSE No. 1403

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 1403) of Carolyn C. Dykema relative to the online privacy of minors. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the online privacy of minors.

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

1 Chapter 93 of the General Laws, as appearing in the 2016 Official Edition, is hereby
2 amended by inserting after section 114 the following section:-

3 Section 115. (a) For the purposes of this section, the following terms shall have the
4 following meanings:-

5 “Minor”, a person under 18 years of age who resides in the commonwealth.

6 “Minor user”, a person of any age who posted on an operator’s site while a minor and
7 while registered to use such operator’s site.

8 “Operator”, any person or entity that owns a site. Operator does not include any third
9 party that operates, hosts or manages, but does not own, a site on the owner’s behalf or processes
10 information on the owner’s behalf.

11 “Post”, content or information stored on a site that can be accessed by any user of a site,
12 regardless of whether an accessing user is a registered user of the site where the content or
13 information was provided, or the act of generating the content or information.

14 “Register”, to provide credentials or unique identifying information to a site in the form
15 of, at a minimum, a user ID, or email address, and a password in order to post on such site.

16 “Site”, a website, online service, online application, mobile application or other server or
17 software application that enables user access via an internet connection.

18 (b) An operator shall permit minor users to independently remove or, at a minimum, to
19 request and obtain the removal of all posts by the minor user, while a minor, on the operator’s
20 site.

21 (c) An operator shall provide notice to registered users that they may remove, or request
22 and obtain the removal of, all posts made while a minor. Such notice shall provide clear
23 instructions on how a minor user may remove, or request and obtain the removal of, such a post.
24 Such notice shall also include a disclaimer that the removal of a post pursuant to this section may
25 not ensure complete or comprehensive removal of the post if any of the circumstances described
26 in subsections (d) and (e) apply.

27 (d) An operator shall not be required to erase or otherwise eliminate, or to enable erasure
28 or elimination of, a post by a minor user, while a minor, in any of the following circumstances:

29 (1) Any other provision of federal or state law requires the operator to maintain the post.

30 (2) The operator anonymizes the post, such that the minor user cannot be individually
31 identified.

32 (3) The minor user has received the notice and instructions required by subsection (c) but
33 has failed to follow such instructions.

34 (4) The minor user has received compensation or other consideration for the post.

35 (e) An operator shall be considered compliant with this section; provided, that:

36 (1) The operator renders the post of a minor-user, posted while a minor, no longer visible
37 to other users of the site, even if the post remains on the operator's servers in some form; or

38 (2) Despite making the original post of the minor user, posted while a minor, invisible,
39 such post remains visible because it was stored, republished or reposted by a third party on the
40 operator's site.

41 (f) This section shall not be construed to require an operator to collect or retain
42 information about the age of any user.

43 (g) This section shall not be construed to limit the authority of a law enforcement agency
44 to obtain any post from an operator as authorized by law or pursuant to an order of a court of
45 competent jurisdiction.

46 (h) A minor user aggrieved by a violation of this section may notify the office of the
47 attorney general. The attorney general may bring an action on behalf of the commonwealth to
48 enforce the provisions of this section, and may promulgate rules or regulations necessary for
49 enforcement.