

HOUSE No. 127

The Commonwealth of Massachusetts

PRESENTED BY:

Kate Lipper-Garabedian and 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 student and educator data privacy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/19/2021</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>2/19/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/24/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/24/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/25/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>2/25/2021</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/26/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/26/2021</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/26/2021</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>3/3/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/6/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/10/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>7/7/2021</i>

HOUSE No. 127

By Representatives Lipper-Garabedian of Melrose and Roy of Franklin, a petition (accompanied by bill, House, No. 127) of Kate Lipper-Garabedian, Jeffrey N. Roy and others relative to student and educator data privacy. Advanced Information Technology, the Internet and Cybersecurity.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to student and educator data privacy.

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 71 of the General Laws, as appearing in the 2018 Official Edition, is hereby
2 amended by inserting after section 34H the following four sections:--

3 Section 34I. As used in sections 34I through 34L, the following words shall, unless the
4 context clearly requires otherwise, have the following meanings:

5 “Aggregated data,” data collected and reported at the group, cohort, school, school
6 district, region or state level that is aggregated using protocols that are both intended and
7 reasonably likely to preserve the anonymity of each individual.

8 “Board”, the board of elementary and secondary education.

9 “Commissioner”, the commissioner of the department of elementary and secondary
10 education.

11 "Covered information", information or material that, alone or in combination, is linked
12 or linkable to a specific student, teacher, principal, or administrator that would allow a
13 reasonable person in the school community, who does not have personal knowledge of the
14 relevant circumstances, to identify the individual with reasonable certainty and is: (i) created by
15 or provided to an operator by a student, or the student's parent or legal guardian, in the course of
16 the student's, parent's or legal guardian's use of the operator's site, service or application for K–
17 12 school purposes; (ii) created by or provided to an operator by an employee or agent of a
18 school district or K-12 school for K-12 school purposes; (iii) gathered by an operator through the
19 operation of its site, service or application for K-12 school purposes and personally identifies a
20 student, including, but not limited to, information in the student's educational record or electronic
21 mail, including student-generated work; first and last name; home address and geolocation
22 information; telephone number; electronic mail address or other information that allows physical
23 or online contact; discipline records; test results, grades, and student evaluations; special
24 education data; juvenile dependency records; criminal records; medical records and health
25 records; social security number; student identifiers; biometric information; socioeconomic
26 information; food purchases; political and religious affiliations; text messages; student
27 identifiers; search activity and online behavior or usage of applications when linked or linkable
28 to a student; photographs; voice recordings and persistent unique identifiers; or (iv) gathered by
29 an operator through the operation of its site, service or application in connection with
30 performance evaluations conducted pursuant to section 38 of this chapter and personally
31 identifies a teacher, principal or administrator.

32 "De-identified data", records and information from which all personally identifiable
33 information has been removed or obscured such that the remaining information does not

34 reasonably identify a specific individual, including, but not limited to, any information that alone
35 or in combination is linkable to a specific individual.

36 “Department”, the department of elementary and secondary education.

37 “Destroy”, action taken in the normal course of business that is intended, and what a
38 reasonable person would believe in the context of the information’s medium, to make such
39 information permanently irretrievable

40 “District” or “school district”, the school department of a city or town, regional school
41 district, vocational or agricultural school, independent vocational school or charter school.

42 “Educational entity”, a state educational agency, school district, K-12 school or
43 subdivision thereof, education collaborative as defined in section 4E of chapter 40, approved
44 public or private day and residential school providing special education services to publicly
45 funded eligible students pursuant to chapter 71B or institutional K-12 school program overseen
46 by a state agency including the department of youth services, the department of mental health or
47 the department of public health as well as employees acting under the authority or on behalf of
48 an educational entity.

49 "K-12 school", a school that offers any of grades kindergarten to 12 and that is operated
50 by a school district; provided that, a K-12 school shall include any preschool or prekindergarten
51 program or course of instruction provided by a school district.

52 "K-12 school purposes", uses that are directed by or that customarily take place at the
53 direction of a school district, K-12 school or teacher or that aid in the administration of school
54 activities, including, but not limited to, instruction in the classroom or at home, administrative

55 activities and collaboration between students, school personnel or parents, or are otherwise for
56 the use and benefit of the K-12 school; provided that, K-12 school purposes shall include
57 comparable purposes in the administration of any preschool or prekindergarten program or
58 course of instruction provided by a school district.

59 "Operator", a person or entity operating in accordance with an agreement with an
60 educational entity to provide an Internet website, online service, online application, or mobile
61 application for K-12 school purposes or at the direction of an educational entity or an employee
62 of an educational entity; provided, however, that this definition shall not apply to the department,
63 school district, K-12 school, or other educational entity.

64 "Persistent unique identifier", an identifier that can be used to recognize a consumer, a
65 family, or a device that is linked to a consumer or family, over time and across different services,
66 including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons,
67 pixel tags, mobile ad identifiers or similar technology; customer number, unique pseudonym or
68 user alias; telephone number or other forms of persistent or probabilistic identifiers that can be
69 used to identify a particular consumer or device; provided that, for the purposes of this definition
70 "family" means a custodial parent or guardian and any minor children over which the parent or
71 guardian has custody.

72 "Targeted advertising", presenting advertisements to a student where the advertisement is
73 selected based on information obtained or inferred over time from that student's online behavior,
74 usage of applications or covered information. It does not include advertising to a student at an
75 online location based upon that student's current visit to that location or in response to that

76 student's request for information or feedback without the retention of that student's online
77 activities or requests over time for the purpose of targeting subsequent advertisements.

78 Section 34J. (a) An operator shall not engage in any of the following activities with
79 respect to its site, service or application:

80 (1) Engage in targeted advertising on the operator's site, service or application, or
81 targeted advertising on any other site, service or application if the targeting of the advertising is
82 based on any information, including covered information and persistent unique identifiers, that
83 the operator has acquired because of the use of that operator's site, service or application for K-
84 12 school purposes.

85 (2) Use covered information, including persistent unique identifiers, created or
86 gathered by the operator's site, service or application, to amass a profile about a student or a
87 teacher, principal, or administrator except in furtherance of K–12 school purposes

88 (3) Sell or rent a student's information, including covered information. This subsection
89 shall not apply to the purchase, merger, or other type of acquisition of an operator by another
90 entity, if the operator or successor entity complies with sections 34I through 34L of this chapter,
91 or to national assessment providers if the national assessment provider secures the express
92 written consent of the parent or student if 18 years old, given in response to clear and
93 conspicuous notice solely to provide access to employment, educational scholarships or financial
94 aid or postsecondary educational opportunities.

95 (4) Disclose covered information; provided that, an operator may disclose covered
96 information of a student, so long as subparagraphs (1) through (3), inclusive, of subsection (a)
97 are not violated, under the following circumstances:

98 (i) If provisions of federal or state law require the operator to disclose the information,
99 and the operator complies with the requirements of federal and state law in protecting and
100 disclosing that information;

101 (ii) For research purposes with the approval of the relevant educational entity and in
102 compliance with and subject to the restrictions of state and federal law; provided that, the
103 operator shall share research results with the educational entity in advance of any public
104 dissemination; or

105 (iii) To an educational entity, including a K-12 school and school district, for K-12
106 school purposes, as permitted by state or federal law.

107 (b) An operator shall: (1) implement and maintain reasonable security procedures and
108 practices appropriate to the nature of the covered information designed to protect that covered
109 information from unauthorized access, destruction, use, modification, or disclosure and in
110 compliance with regulations promulgated by the board pursuant to section 34L of this chapter;
111 and (2) immediately return or destroy covered information if requested by the educational entity
112 or when covered information is no longer required for K-12 school purposes or other lawful
113 purpose, such as complying with a judicial order or law enforcement request.

114 (c) Subject to the provisions of this section, an operator may use de-identified data to
115 maintain, develop, support, improve, or diagnose the operator's site, service, or application.
116 Subject to the provisions of this section, an operator may use aggregated or de-identified student
117 information to demonstrate the effectiveness of the operator's products or services, including
118 marketing or within the operator's site, service, or application or other sites, services, or
119 applications owned by the operator to improve educational purposes.

120 (d) Nothing in this section shall be construed to: (i) limit the authority of a law
121 enforcement agency to obtain any content or information from an operator as authorized by law
122 or pursuant to an order of a court of competent jurisdiction; (ii) limit the ability of an operator to
123 use student data, including covered information, for adaptive learning or customized student
124 learning purposes; (iii) apply to general audience Internet websites, general audience online
125 services, general audience online applications, or general audience mobile applications, even if
126 login credentials created for an operator's site, service, or application may be used to access those
127 general audience sites, services, or applications; (iv) limit service providers from providing
128 Internet connectivity to schools or students and their families; (v) prohibit an operator of an
129 Internet website, online service, online application, or mobile application from marketing
130 educational products directly to parents if the marketing did not result from the use of covered
131 information obtained by the operator through the provision of services covered under this
132 section; (vi) impose a duty upon a provider of an electronic store, gateway, marketplace, or other
133 means of purchasing or downloading software or applications to review or enforce compliance
134 with this section on those applications or software; or (vii) prohibit students from downloading,
135 exporting, transferring, saving, or maintaining their own data or documents.

136 (f) An aggrieved student or educational entity may institute a civil action against an
137 operator for damages or to restrain a violation of this section and may recover: (i) up to \$10,000
138 for each request that violates this section; (ii) up to \$10,000 for each adverse action, which
139 violates this section, or actual damages, whichever amount is higher; (iii) punitive damages if a
140 court determines that a violation was willful; and (iv) reasonable attorneys' fees and other
141 litigation costs reasonably incurred.

142 (g) The commissioner may bar an operator that improperly discloses covered information
143 from receiving access to student and educator evaluation records of any educational entity in the
144 Commonwealth for a period no less than five years.

145 Section 34K. (a) Any contract or agreement that is entered between an educational entity
146 and an operator, as defined in section 34I, pursuant to which the operator sells, leases, provides,
147 operates, or maintains a service that grants access to covered information, or creates any covered
148 information, including, but not limited to (i) any cloud-based services for the digital storage,
149 management and retrieval of pupil records; or (ii) any digital software that authorizes an operator
150 to access and acquire student records, shall contain:

151 (1) a statement that covered information and student records continue to be the property
152 and under the control of the educational entity;

153 (2) a prohibition against the operator using covered information for commercial or
154 advertising purposes or for any purpose other than K-12 school purposes;

155 (3) a description of the procedures by which a parent, legal guardian, or eligible student
156 may review the student's records and correct erroneous information, in accordance with state and
157 federal law;

158 (4) a requirement that only persons, whether they are employees of the operator or other
159 persons, such as employees of subcontractors, with a legitimate need to access covered
160 information to support professional roles consistent with the terms of the contract or agreement
161 and federal and state law shall have access to it, with either the identification of said persons or
162 an agreement to identify said persons upon request;

163 (6) a description of the reasonable administrative, technical and physical safeguards
164 including with respect to encryption technology to protect covered information while in motion
165 or in the operator's custody that the operator will employ to protect the security, confidentiality
166 and integrity of covered information in its custody; provided, however, compliance with this
167 requirement shall not, in itself, absolve the operator of liability in the event of an unauthorized
168 disclosure of covered information;

169 (7) a description of the procedures for notifying any and all affected parties in the event
170 of an unauthorized disclosure of covered information or any breach of security resulting in an
171 unauthorized release of covered information; provided that, the procedures shall comply with
172 chapter 444 of the acts of 2018 and implementing regulations;

173 (8) a certification that covered information shall be returned or destroyed by the operator
174 upon completion of the terms of the contract; and

175 (9) a description of how the educational entity and the operator will jointly ensure the
176 compliance with applicable federal and state law, including, but not limited to 20 U.S.C. section
177 1232g, 15 U.S.C. section 6501 et. seq. and sections 34A through 34L, inclusive, of this chapter.

178 (b) Any contract that fails to comply with the requirements of this section shall be
179 voidable and all covered information and student records in possession of the third party shall be
180 returned to the educational entity or, if the return of such information is not technologically
181 feasible, destroyed.

182 Section 34L. (a) The board shall promulgate regulations that establish data security and
183 privacy responsibilities of the department and educational entities as well as minimum required
184 security standards for operators, including for use in department and educational entity contracts

185 and agreements with operators, and shall approve the department's data privacy and security
186 policy and security plan for the state data system. The regulations further shall establish the
187 process through which the commissioner, pursuant to subsection (g) of section 34J, may bar an
188 operator from receiving the student and educator evaluation data of any educational entity in the
189 Commonwealth for a period no less than five years. In carrying out these responsibilities, the
190 board shall consult with the executive office of technology services and security and seek the
191 input of security and experts, including those from security, cyber-security and fields in addition
192 to education that have experience with personal data protection.

193 (b) The commissioner shall appoint a chief privacy officer with experience in data
194 privacy and security. The chief privacy officer shall oversee the development and
195 implementation, subject to the board's approval, of a department data privacy and security policy
196 and a detailed security plan for the state data system in consultation with the executive office of
197 technology services and security. The chief privacy officer further shall develop a model school
198 district data privacy and security policy as well as a model operator contract or contracts in
199 consultation with the executive office of technology services and security; otherwise support and
200 supervise implementation of sections 34I through 34L, inclusive, of this chapter and the
201 regulations issued by the board pursuant to subsection (a); develop and provide a program of
202 training and technical assistance to K-12 schools, school districts and other educational entities
203 including through the issuance of guidance and recommendations to assist with compliance with
204 federal and state law pertaining to personally identifiable information including, but not limited
205 to, 20 U.S.C. 1232g, sections 34A through 34L, inclusive, of chapter 71 of the General Laws,
206 chapter 66A of the General Laws and chapter 444 of the acts of 2018; develop and oversee a
207 program of oversight, support and accountability for the department and educational entities

208 responsible for implementing policies pursuant to sections 34I through 34L of this chapter; and
209 assist the commissioner with enforcement responsibilities regarding operators that violate any
210 provision of sections 34I through 34K, inclusive, of this chapter.

211 (c) The department shall make publicly available a list of categories of covered
212 information collected by the department including, but not limited to, covered information
213 required to be collected or reported by state or federal law. The list shall contain the source of the
214 information, the reason for the collection of the information and the use of the information
215 collected.

216 (d) In accordance with the regulations of the board promulgated pursuant to
217 subsection (a), each district shall develop a detailed privacy and security policy for the protection
218 of covered information that includes security breach planning, notice and procedures; provided
219 that, a district may adopt any model policy developed by the chief privacy officer of the
220 department and approved by the board to comply with this requirement. Each district shall
221 designate an individual to act as a student data manager to oversee said policy.

222 (e) Each district shall make publicly available on its website a list of categories of
223 student personally identifiable information collected at the school district, school, or classroom
224 level. The list shall contain the source of the information, the reason for collection of the
225 information and the use of the information. Each district further shall make publicly available on
226 its website a list of the operators with which the district has a contract or agreement that involves
227 the creation, provision or gathering of covered information and a list of operators with which the
228 district had a contract or agreement that involved the creation, provision or gathering of covered
229 information in the last ten years.