

**HOUSE . . . . . No. 386**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Lindsay N. Sabadosa and Steven Owens***

*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 consumer health data.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/20/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>1/20/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/25/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/27/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>7/17/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/5/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>9/8/2023</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>9/18/2023</i>
<i>Manny Cruz</i>	<i>7th Essex</i>	<i>9/19/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>9/19/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>9/26/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>9/28/2023</i>
<i>Jennifer Balinsky Armini</i>	<i>8th Essex</i>	<i>9/29/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>10/4/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>10/12/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>10/16/2023</i>
<i>Smitty Pignatelli</i>	<i>3rd Berkshire</i>	<i>10/17/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>10/17/2023</i>

<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>10/18/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>10/19/2023</i>
<i>Dawne Shand</i>	<i>1st Essex</i>	<i>10/19/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>10/19/2023</i>
<i>Estela A. Reyes</i>	<i>4th Essex</i>	<i>10/23/2023</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>10/24/2023</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>10/24/2023</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>10/25/2023</i>
<i>Ryan M. Hamilton</i>	<i>15th Essex</i>	<i>10/26/2023</i>
<i>Aaron L. Saunders</i>	<i>7th Hampden</i>	<i>10/30/2023</i>
<i>Priscila S. Sousa</i>	<i>6th Middlesex</i>	<i>10/30/2023</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>11/3/2023</i>
<i>Shirley B. Arriaga</i>	<i>8th Hampden</i>	<i>11/6/2023</i>
<i>William F. MacGregor</i>	<i>10th Suffolk</i>	<i>11/9/2023</i>
<i>Rita A. Mendes</i>	<i>11th Plymouth</i>	<i>11/16/2023</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>11/20/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>11/20/2023</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>11/22/2023</i>
<i>Kate Donaghue</i>	<i>19th Worcester</i>	<i>12/6/2023</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>12/14/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>1/23/2024</i>

**HOUSE . . . . . No. 386**

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By Representatives Sabadosa of Northampton and Owens of Watertown, a petition (accompanied by bill, House, No. 386) of Lindsay N. Sabadosa, Steven Owens and others relative to consumer health data. Consumer Protection and Professional Licensure.

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**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
\_\_\_\_\_

An Act relative to consumer health data.

*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. The General Laws, as appearing in the 2018 Official Edition, are hereby  
2 amended by inserting after chapter 93M the following chapter:

3 Chapter 93M. Consumer Health Data Act

4 Section 1. Definitions

5 As used in this chapter, the following words shall, unless the context clearly requires  
6 otherwise, have the following meanings:—

7 “Affiliate,” a legal entity that shares common branding with another legal entity and  
8 controls, is controlled by or is under common control with another legal entity. For the purposes  
9 of this definition, “control” or “controlled” means:

10 (a) Ownership of, or the power to vote, more than fifty percent of the outstanding shares  
11 of any class of voting security of a company;

12 (b) Control in any manner over the election of a majority of the directors or of individuals  
13 exercising similar functions; or

14 (c) The power to exercise controlling influence over the management of a company.

15 “Biometric data,” an individual’s physiological, biological, or behavioral characteristics  
16 that can be used individually or in combination with other data to identify a consumer. Biometric  
17 data includes:

18 (a) An individual’s deoxyribonucleic acid (DNA);

19 (b) Imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice  
20 recordings, from which an identifier template can be extracted; or

21 (c) Keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise  
22 data that contain identifying information.

23 “Collect,” to buy, rent, access, retain, receive, or acquire Consumer Health Data in any  
24 manner.

25 “Consent,” a clear affirmative act by a consumer that openly communicates a consumer’s  
26 freely given, informed, opt-in, voluntary, specific, and unambiguous written consent (which may  
27 include written consent provided by electronic means). Consent cannot be obtained by:

28 (i) A consumer’s acceptance of a general or broad Terms of Use agreement or a similar  
29 document that contains descriptions of personal data processing along with other, unrelated  
30 information;

31 (ii) A consumer hovering over, muting, pausing, or closing a given piece of content; or

32 (iii) A consumer’s agreement obtained through the use of deceptive designs, including by  
33 the use of pre-checked or pre-selected options.

34 “Consumer,” a natural person who is a Massachusetts resident acting only in an  
35 individual or household context, however identified, including by any unique identifier. A person  
36 located in Massachusetts when their Consumer Health Data is collected by a Regulated Entity  
37 will create a presumption that the person is a Massachusetts resident for purposes of enforcing  
38 this chapter.

39 “Consumer Health Data,” personal information relating to the past, present, or future  
40 physical or mental health of a consumer, including any personal information relating to:

41 (i) Individual health conditions, treatment, status, diseases, or diagnoses;

42 (ii) Social, psychological, behavioral, and medical interventions;

43 (iii) Health related surgeries or procedures;

44 (iv) Use or purchase of medication;

45 (v) Bodily functions, vital signs, measurements, or symptoms;

46 (vi) Diagnoses or diagnostic testing, treatment, or medication;

47 (vii) Efforts to research or obtain health services or supplies;

48 (viii) Location information that could reasonably indicate a consumer’s attempt to  
49 acquire or receive health services or supplies; and

50 (ix) Any information described in subparagraphs (i) through (ix) that is derived or  
51 extrapolated from non-health information (such as proxy, derivative, inferred, or emergent data  
52 by any means, including algorithms or machine learning).

53 (b) Consumer Health Data does not include:

54 (i) Data processed or maintained in the course of employment, including applications for  
55 employment and the administration of benefits; or

56 (ii) Personal Information that is used to engage in public or peer-reviewed scientific,  
57 historical, or statistical research in the public interest that adheres to all other applicable ethics  
58 and privacy laws and is approved, monitored, and governed by an institutional review board,  
59 human subjects research ethics review board, or a similar independent oversight entity that  
60 determines that the Regulated Entity has implemented reasonable safeguards to mitigate privacy  
61 risks associated with research, including any risks associated with reidentification, so long as  
62 consent has first been obtained;

63 “Deceptive design,” a user interface designed or manipulated with the potential effect of  
64 subverting or impairing user autonomy, decision making, or choice.

65 “Homepage,” the introductory page of an internet website and any internet web page  
66 where personal information is collected. In the case of an online service, such as a mobile  
67 application, homepage means the application’s platform page or download page, and a link  
68 within the application, such as from the application configuration, “About,” “Information,” or  
69 settings page.

70 “Personal Information,” information that identifies, relates to, describes, is reasonably  
71 capable of being associated with, or linked, directly or indirectly, with a particular consumer.  
72 Personal information does not include publicly available information. For purposes of this  
73 paragraph, “publicly available” means information that is lawfully made available from federal,  
74 state, or local government records. Any biometric data collected about a consumer by a business  
75 without the consumer's knowledge is not publicly available information.

76 “Regulated Entity,” any legal entity that (a) conducts business in Massachusetts or  
77 produces products or services that are targeted to consumers in Massachusetts and (b) collects,  
78 shares, or sells Consumer Health Data. Regulated Entity does not mean government agencies,  
79 tribal nations, or an individual acting in a non-commercial manner.

80 “Sell” or “Sale,” the sharing of Consumer Health Data for monetary or other valuable  
81 consideration. Sell or Sale does not include the sharing of Consumer Health Data for monetary or  
82 other valuable consideration to:

83 (i) A third party as an asset that is part of a merger, acquisition, bankruptcy, or other  
84 transaction in which the third party assumes control of all or part of the Regulated Entity’s assets  
85 that shall comply with the requirements and obligations in this chapter;

86 (ii) A third party at the direction of a consumer; or

87 (iii) A third party where the Regulated Entity maintains control and ownership of the  
88 Consumer Health Data, and the third-party only uses the Consumer Health Data at direction from  
89 the Regulated Entity and consistent with the purpose for which it was collected and disclosed to  
90 the consumer.

91 “Share” or “Sharing,” to release, disclose, disseminate, divulge, make available, provide  
92 access to, license, or otherwise communicate orally, in writing, or by electronic or other means,  
93 Consumer Health Data by a Regulated Entity to a third party where the Regulated Entity  
94 maintains control and/or ownership of the Consumer Health Data. The term share or sharing  
95 does not include:

96 (i) The disclosure of Consumer Health Data to an entity who collects and/or processes the  
97 personal data on behalf of the Regulated Entity, when the Regulated Entity maintains control and  
98 ownership of the data and the third party only uses the Consumer Health Data at direction from  
99 the Regulated Entity and consistent with the purpose for which it was collected and disclosed to  
100 the consumer;

101 (ii) The disclosure of Consumer Health Data to a third party with whom the consumer has  
102 a direct relationship for purposes of providing a product or service requested by the consumer  
103 when the Regulated Entity maintains control and ownership of the data and the third party only  
104 uses the Consumer Health Data at direction from the Regulated Entity and consistent with the  
105 purpose for which it was collected and disclosed to the consumer; or

106 (iii) The disclosure or transfer of personal data to a third party as an asset that is part of a  
107 merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of  
108 all or part of the Regulated Entity’s assets and shall comply with the requirements and  
109 obligations in this chapter.

110 Section 2. Consumer Health Data Privacy Policy.

111 (1) A Regulated Entity shall maintain a Consumer Health Data Privacy Policy that clearly  
112 and conspicuously discloses:



113 (a) The specific types of Consumer Health Data collected and the purpose for which the  
114 data is collected, including the specific ways in which it will be used;

115 (b) The specific sources from which the Consumer Health Data is collected;

116 (c) The specific Consumer Health Data that is shared;

117 (d) A list of specific third parties and affiliates with whom the Regulated Entity shares  
118 the Consumer Health Data, including an active electronic mail address or other online  
119 mechanism that the consumer may use to contact these third parties and affiliates; and

120 (e) How a consumer can exercise the rights provided in Section 6.

121 (2) A Regulated Entity shall prominently publish its Consumer Health Privacy Policy on  
122 its homepage.

123 (3) A Regulated Entity shall not collect or share additional categories of Consumer  
124 Health Data not disclosed in the Consumer Health Data Privacy Policy without first disclosing  
125 the additional categories and obtaining the consumer's affirmative consent prior to the collection  
126 or sharing of such Consumer Health Data.

127 (4) A Regulated Entity shall not collect or share Consumer Health Data for additional  
128 purposes not disclosed in the Consumer Health Data Privacy Policy without first disclosing the  
129 additional purposes and obtaining the consumer's affirmative consent prior to the collection or  
130 sharing of such Consumer Health Data.

131 Section 3. Consent to Collect and Share Consumer Health Data.

132 (1) A Regulated Entity shall not collect any Consumer Health Data except:

133 (a) With consent from the consumer for such collection for a specified purpose; or

134 (b) To the extent strictly necessary to provide a product or service that the consumer to  
135 whom such Consumer Health Data relates has requested from such Regulated Entity.

136 (2) A Regulated Entity shall not share any Consumer Health Data except:

137 (a) With consent from the consumer for such sharing that is separate and distinct from the  
138 consent obtained to collect Consumer Health Data; or

139 (b) To the extent strictly necessary to provide a product or service that the consumer to  
140 whom such Consumer Health Data relates has requested from such Regulated Entity.

141 (3) Consent required under this section must be obtained prior to the collection or  
142 sharing, as applicable, of any Consumer Health Data, and the request for consent must clearly  
143 and conspicuously disclose:

144 (a) the categories of Consumer Health Data collected or shared,

145 (b) the purpose of the collection or sharing of the Consumer Health Data, including the  
146 specific ways in which it will be used, and

147 (c) how the consumer can withdraw consent from future collection or sharing of their  
148 Consumer Health Data.

149 (4) A Regulated Entity shall not discriminate against a consumer for exercising any rights  
150 included in this chapter including by means of a) refusing to do business with the consumer, b)  
151 charging a higher price to the consumer or c) providing a lower quality product or service to the  
152 consumer.

153 Section 4. Consumer Health Data Rights.

154 (1) A consumer has the right to know whether a Regulated Entity is collecting or sharing  
155 their Consumer Health Data.

156 (2) A consumer has the right to withdraw consent from the Regulated Entity's collection  
157 and sharing of their Consumer Health Data.

158 (3) A consumer has the right to have their Consumer Health Data deleted by informing  
159 the Regulated Entity of their request for deletion.

160 (a) A Regulated Entity that receives a consumer's request to delete any of their Consumer  
161 Health Data shall without unreasonable delay and no more than thirty calendar days from  
162 receiving the deletion request:

163 (i) Delete the Consumer Health Data from its records, including from all parts of the  
164 Regulated Entity's network or backup systems; and

165 (ii) Notify all affiliates, service providers, contractors, and other third parties with whom  
166 the Regulated Entity has shared Consumer Health Data of the deletion request.

167 (b) All affiliates, service providers, contractors, other third parties that receive notice of a  
168 consumer's deletion request shall honor the consumer's deletion request and delete the  
169 Consumer Health Data from its records, including from all parts of its network or backup  
170 systems.

171 (4) A consumer or a consumer's authorized agent may exercise the rights set forth in this  
172 chapter by submitting a request, at any time, to a Regulated Entity. Such a request may be made:

173 (a) By contacting the Regulated Entity through the manner included in its Consumer  
174 Health Privacy policy;

175 (b) By designating an authorized agent who may exercise the rights on behalf of the  
176 consumer; or

177 (c) In the case of collecting Consumer Health Data concerning a consumer subject to  
178 guardianship, conservatorship, or other protective arrangement under the Consumer Protection  
179 Act, the guardian or the conservator of the consumer may exercise the rights of this chapter on  
180 the consumer's behalf.

#### 181 Section 5. Consumer Health Data Security and Minimization.

182 (1) A Regulated Entity shall restrict access to Consumer Health Data by the employees,  
183 service providers, and contractors of such Regulated Entity to only those employees, services  
184 providers, and contractors for which access is necessary to provide a product or service that the  
185 consumer to whom such data and information relates has requested from such Regulated Entity.

186 (2) A Regulated Entity shall establish, implement and maintain administrative, technical  
187 and physical data security practices that at least satisfy reasonable standard of care within the  
188 Regulated Entity's industry to protect the confidentiality, integrity and accessibility of Consumer  
189 Health Data appropriate to the volume and nature of the personal data at issue.

190 (3) A Regulated Entity shall document the measures used to ensure compliance and shall  
191 make this documentation publicly available.

#### 192 Section 6. Unlawful to Sell Consumer Health Data.

193 It shall be unlawful for a Regulated Entity to sell Consumer Health Data.

194 Section 7. Enforcement - Consumer Protection Act.

195 The legislature finds that the practices covered by this chapter are matters vitally  
196 affecting the public interest for the purpose of applying the Consumer Protection Act. A  
197 violation of this chapter is not reasonable in relation to the development and preservation of  
198 business, and is an unfair or deceptive act in trade or commerce and an unfair method of  
199 competition for the purpose of applying the Consumer Protection Act.

200 Section 8. Exemptions.

201 (1) This chapter does not apply to protected health information collected, used, or  
202 disclosed by covered entities and business associates when the protected health information is  
203 collected, used, or disclosed in accordance with the federal health insurance portability and  
204 accountability act of 1996 and its implementing regulations and afforded all the privacy  
205 protections and security safeguards of that federal law. For the purpose of this subsection (1),  
206 “protected health information,” “covered entity,” and “business associate” have the same  
207 meaning as in the federal health insurance portability and accountability act of 1996 and its  
208 implementing regulations.

209 (2) Nothing in this chapter shall be construed to prohibit disclosure as required by law.

210 (3) If any provision of this chapter, or the application thereof to any person or  
211 circumstance, is held invalid, the remainder of this chapter and the application of such provision  
212 to other persons not similarly situated or to other circumstances shall not be affected by the  
213 invalidation.