Bill Number: H. 103
Title: An Act to establish the Massachusetts neural data privacy protection act
Lead Sponsor: Representative Andres Vargas
Hearing Date: April 9, 2025
Report Date: June 8, 2025

Current Law:

- **M.G.L. Chapter 66A** regulates government uses and protection of personal information.
- **M.G.L. Chapter 93A** prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce.
- **M.G.L. Chapter 93A § 4** outlines how the Attorney General may bring suit for a violation of Chapter 93A.
- **M.G.L. Chapter 93A § 9** outlines how a consumer or class may bring suit for a violation of Chapter 93A
- **M.G.L. Chapter 93H** outlines the requirements for notification for data breaches.
- **M.G.L. Chapter 151B** prohibits employment discrimination based on status as a member of a protected class.
- **M.G.L. Chapter 214 § 1B** establishes an equitable right of privacy that may be enforced by the superior court.
- **M.G.L. Chapter 214 § 3B** establishes liability for violations of Chapter 66A.

Executive Summary: H. 103 establishes a legal framework around data privacy notices and consumer rights over personal data and sets further restrictions on how neural data may be collected and used in Massachusetts. Data holders are only permitted to collect or process sensitive data (including neural data) when it is strictly necessary to provide a specific product or service requested by an individual. Data holders cannot transfer neural data without consent or use it for ad targeting. The Attorney General is empowered with rulemaking authority and to enforce violations under the Commonwealth's consumer protection law, Chapter 93A. Consumers are also able to bring claims on their own behalf through a private right of action.

Legislative History: New File

Section 1. Definitions
"covered data", information, including derived data, inferences, and unique persistent identifiers that identifies or is linked or reasonably linkable, alone or in combination with other information, to an individual or a device that identifies or is linked or reasonably linkable to an individual. However, the term "covered data" does not include de-identified data or publicly available information.
"neural data", means information that is generated by measuring the activity of an individual's central or peripheral nervous system, and that is not inferred from non-neural information.
"sensitive covered data", a form of covered data, including neural data.

(i) neural data;
(ii) covered data processed from neural data concerning an individual's past, present or future mental or physical health condition, disability, diagnosis or treatment, including pregnancy and cosmetic treatment;

Section 2. Sensitive Covered Data
Puts additional restrictions on the collection and use of sensitive data, including a ban on using sensitive data target ads.

Section 3. Data Subject Rights
Provides consumers with a set of rights over their data commonly found in other data privacy laws, including the right to access and download copies of their data, the right to correct inaccuracies, the right to delete their data, and the right to transfer their data to others. The section provides additional details on how the exercise of these rights can be facilitated, including information on deadlines for requests to be fulfilled, whether or not data holders can charge a fee, and circumstances where a data holder is permitted to refuse to honor particular requests.

Section 4. Consent Practices
Outlines requirements for requests for consent, including requirements for clarity, particularity, and revocability for specific data processing purposes. The section also requires that the wording and design of the request for consent make the options to accept and decline equally as prominent and understandable.

Section 5. Privacy by Design
Requires data holders and processors to consider privacy risks and adopt practices and designs that proportionally account for those risks based on the amount and kinds of data covered, the size and role of the company, and cost.

Section 6. Pricing
Prohibits retaliatory pricing based on the exercise of data rights under this chapter and other unjust, unreasonable, coercive, or usurious pricing schemes while allowing for pricing based on loyalty programs and other financial incentive participation.

Section 7. Civil Rights Protections
Prohibits the use of personal data to discriminate based on listed protected characteristics found in other areas of Massachusetts law, with an exception for private uses exempted from the federal Civil Rights Act of 1964.

Section 8. Privacy Policy
Outlines required content in privacy policies, including explanations of what types of personal information a data holder collects, what they use the data for, how long they keep it, and who they send it to. Privacy policies must also include a description of how consumers may exercise the rights granted by this chapter and how the consumer can contact the data holder and other corporate affiliates who share their data.

Section 9. Advanced Data Rights
Provides for additional data rights, including the right to opt-out of processing for the purposes of targeted advertising, data transfers, and profiling. Additional subsections outline details

facilitating the exercise of such rights and consent practices similar to those found in sections 3 and 4.

Section 10. Service Providers
Outlines the legal requirements for service providers, who provide processing services on behalf of a data holder. Requirements include clearly outlining the relationship between the service provider and the company in a written contract and cooperating with the data holder to fulfill their obligations under this chapter. The section also clarifies liability depending upon whether or not a data holder or service provider knows that the other has or will violate this chapter and places restrictions on third parties who receive covered data.

Section 11. Enforcement
Establishes a private right of action for consumers in addition to enforcement by the attorney general. Sets a range for penalties for violations based on a variety of factors including company size, intent, previous history of privacy violations, severity of the violation, the amount of covered data in question, and more.

Section 12. Information Non-applicability
Exempts data largely covered by other federal or state privacy laws, including data covered by HIPAA, the Gramm-Leach-Bliley Act, and FERPA, contact information shared in the workplace or other interpersonal communications, and the publication of member lists or employee contact information by an organization or employer in the ordinary course of business.

Section 13. Implementation
Gives the Attorney General rulemaking authority to implement the law and investigatory capacities derived from M.G.L. ch. 93A, the commonwealth's Consumer Protection Law.

Section 14. Authorized Agents
Allows an individual to have an authorized agent exercise their privacy rights, describes technical details of how such requests may be verified, and how parents and other guardians may make such requests on the behalf of children or persons subject to guardianships or conservatorships.

Section 15. Severability and Relationship to Other Laws
Outlines the relationship between this chapter and other privacy, data protection, and consumer protections laws in Massachusetts.