

# HOUSE . . . . . No. 4642

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, April 16, 2020.

The committee on Education, to whom were referred the petition (accompanied by bill, House, No. 448) of Kimberly N. Ferguson and others relative to student data privacy, and the petition (accompanied by bill, House, No. 564) of Jeffrey N. Roy, Josh S. Cutler and Brian M. Ashe relative to the disclosure of certain student information by schools or school districts, reports recommending that the accompanying bill (House, No. 4642) ought to pass.

For the committee,

ALICE HANLON PEISCH.

**HOUSE . . . . . No. 4642**

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**The Commonwealth of Massachusetts**

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

An Act relative to student 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 five sections:--

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

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

6 "Covered information", student personally identifiable information or material, or  
7 information that is linked to student personally identifiable information or material, in any media  
8 or format that is not publicly available and is: (i) created by or provided to an operator by a  
9 student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal  
10 guardian's use of the operator's site, service, or application for K–12 school purposes; (ii) created  
11 by or provided to an operator by an employee or agent of a K-12 school or school district for K-  
12 12 school purposes; or (iii) gathered by an operator through the operation of its site, service, or  
13 application for K-12 school purposes and personally identifies a student, including, but not

14 limited to, information in the student's educational record or electronic mail, first and last name,  
15 home address, telephone number, electronic mail address, or other information that allows  
16 physical or online contact, discipline records, test results, special education data, juvenile  
17 dependency records, grades, evaluations, criminal records, medical records, health records, social  
18 security number, biometric information, disabilities, socioeconomic information, food purchases,  
19 political affiliations, religious information, text messages, documents, student identifiers, search  
20 activity, photos, voice recordings, or geolocation information.

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

22 “District” or “school district”, the school department of a city, town, regional school  
23 district, vocational or agricultural school, independent vocational school, charter school, or  
24 private school.

25 “Educational entity”, a K-12 school, district, department, or any subdivision thereof, as  
26 well as employees acting under the authority or on behalf of an educational entity.

27 "Interactive computer service", any information service, system, or access software  
28 provider that provides or enables computer access by multiple users to a computer server,  
29 including specifically a service or system that provides access to the Internet and such systems  
30 operated or services offered by libraries or educational institutions.

31 "K-12 school", a school that offers any of grades kindergarten to 12 and that is operated  
32 by a school district.

33 "K-12 school purposes", uses that are directed by or that customarily take place at the  
34 direction of a K-12 school, teacher, or school district or aid in the administration of school

35 activities, including, but not limited to, instruction in the classroom or at home, administrative  
36 activities, and collaboration between students, school personnel, or parents, or are otherwise for  
37 the use and benefit of the school.

38 "Operator", an entity other than the department, district, school, or other educational  
39 entity that operates an Internet website, online service, online application, or mobile application  
40 with actual knowledge that the site, service, or application is used primarily for K–12 school  
41 purposes and was designed and marketed for K–12 school purposes.

42 "Personal social media account", an account, service, or profile that is used by a student  
43 exclusively for personal communications unrelated to any K-12 school purpose, as defined  
44 herein; provided, however, that a personal social media account shall not include any account,  
45 service, or profile created, maintained, used or accessed by a student exclusively for any K-12  
46 purposes or any education related communications.

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

53 "Social media", an electronic medium allowing users to create, share and view user-  
54 generated content, including, but not limited to, uploading or downloading videos or still  
55 photographs, audio content, blogs, video blogs, podcasts, messages, e-mails or internet website  
56 profiles or locations.

57 “Student personally identifiable information”, data or information that alone, or in  
58 combination, is linked to a specific student and would allow a reasonable person, with no  
59 personal knowledge of the relevant circumstances, to identify the student.

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

62 (1) Engage in targeted advertising on the operator's site, service, or application, or  
63 target advertising on any other site, service, or application if the targeting of the advertising is  
64 based on any information, including covered information and persistent unique identifiers, that  
65 the operator has acquired because of the use of that operator's site, service, or application for K-  
66 12 school purposes.

67 (2) Use information, including persistent unique identifiers, created or gathered by the  
68 operator's site, service, or application, to amass a profile about a student except in furtherance of  
69 K–12 school purposes. "Amass a profile" does not include the collection and retention of account  
70 information that remains under the control of the student, the student's parent or guardian, or K-  
71 12 school.

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

79 (4) Disclose covered information.

80 (b) Notwithstanding subparagraph (4) of subsection (a), an operator may disclose  
81 covered information of a student, so long as subparagraphs (1) through (3) inclusive are not  
82 violated, under the following circumstances:

83 (1) If other provisions of federal or state law require the operator to disclose the  
84 information, and the operator complies with the requirements of federal and state law in  
85 protecting and disclosing that information;

86 (2) For legitimate research purposes as required by state or federal law and subject to the  
87 restrictions under applicable state and federal law; or as allowed by state or federal law and  
88 under the direction of the department, in furtherance of K–12 school purposes or postsecondary  
89 educational purposes; or

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

92 (c) An operator shall: (1) implement and maintain reasonable security procedures and  
93 practices appropriate to the nature of the covered information designed to protect that covered  
94 information from unauthorized access, destruction, use, modification, or disclosure; and (2)  
95 immediately delete a student’s covered information if requested by the educational institution.

96 (d) Subject to the provisions of this section, an operator may use covered information to  
97 maintain, develop, support, improve, or diagnose the operator's site, service, or application.

98 Subject to the provisions of this section, an operator may use aggregated or non-identifiable  
99 student information to demonstrate the effectiveness of the operator’s products or services,

100 including marketing or within the operator’s site, service, or application or other sites, services,  
101 or applications owned by the operator to improve educational purposes.

102 (e) Nothing in this section shall be construed to: (i) limit the authority of a law  
103 enforcement agency to obtain any content or information from an operator as authorized by law  
104 or pursuant to an order of a court of competent jurisdiction; (ii) limit the ability of an operator to  
105 use student data, including covered information, for adaptive learning or customized student  
106 learning purposes; (iii) apply to general audience Internet websites, general audience online  
107 services, general audience online applications, or general audience mobile applications, even if  
108 login credentials created for an operator's site, service, or application may be used to access those  
109 general audience sites, services, or applications; (iv) limit service providers from providing  
110 Internet connectivity to schools or students and their families; (vi) prohibit an operator of an  
111 Internet website, online service, online application, or mobile application from marketing  
112 educational products directly to parents if the marketing did not result from the use of covered  
113 information obtained by the operator through the provision of services covered under this  
114 section; (vii) impose a duty upon a provider of an electronic store, gateway, marketplace, or  
115 other means of purchasing or downloading software or applications to review or enforce  
116 compliance with this section on those applications or software; (viii) impose a duty upon a  
117 provider of an interactive computer service to review or enforce compliance with this section by  
118 third-party content providers; or (ix) prohibit students from downloading, exporting, transferring,  
119 saving, or maintaining their own student data or documents.

120 (f) An aggrieved student or educational entity may institute a civil action for damages or  
121 to restrain a violation of this section and may recover: (i) up to \$10,000 for each request that  
122 violates this section; (ii) up to \$10,000 for each adverse action, which violates this section, or

123 actual damages, whichever amount is higher; (iii) punitive damages if a court determines that a  
124 violation was willful; and (iv) reasonable attorneys' fees and other litigation costs reasonably  
125 incurred.

126 Section 34K. (a) Any contract or agreement that is entered between an educational entity  
127 and a third party, including an operator as defined in section 34I of chapter 71, pursuant to which  
128 the third party sells, leases, provides, operates, or maintains a service that grants access to  
129 covered information, or creates any covered information, including, but not limited to (i) any  
130 cloud-based services for the digital storage, management, and retrieval of pupil records; or (ii)  
131 any digital software that authorizes a third-party provider to access and acquire student records,  
132 shall contain:

133 (1) a statement that student records continue to be the property and under the control of  
134 the educational entity;

135 (2) a prohibition against the third party using covered information for commercial or  
136 advertising purposes, or any information in the student record for any purpose other than for the  
137 requirements of the contract;

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

141 (4) a description of the actions the third party will take to ensure the security of student  
142 records; however, compliance with this requirement shall not, in itself, absolve the third party of  
143 liability in the event of an unauthorized disclosure of records;



144 (5) a description of the procedures for notifying any and all affected parties in the event  
145 of an unauthorized disclosure of student records;

146 (6) a certification that student records shall not be retained or available to the third party  
147 upon completion of the terms of the contract;

148 (7) a description of how the educational entity and the third party will jointly ensure the  
149 compliance with applicable federal and state law, including, but not limited to 20 U.S.C. section  
150 1232g, 15 U.S.C. section 6501 et. seq., and sections 34A through 34M inclusive of chapter 71.

151 (b) Any contract that fails to comply with the requirements of this section shall be  
152 voidable and all student records in possession of the third party shall be returned to the  
153 educational entity.

154 (c) For purposes of this section, “student records” means information directly related to a  
155 pupil that is maintained by the local educational agency or information acquired directly from the  
156 pupil through the use of instructional software or applications assigned to the pupil by a teacher  
157 or other local educational agency employee. “student records” do not include records of teachers  
158 and school administrators that are kept in their sole possession and not revealed to any other  
159 individual except a substitute teacher.

160 Section 34L. (a) a school district shall not: (i) require, request or cause a student to  
161 disclose a user name, password or other means for access, or provide access through a user name  
162 or password, to a personal social media account; (ii) compel a student , as a condition of  
163 acceptance or participation in curricular or extracurricular activities, to add a person, including,  
164 but not limited to, a coach, teacher, school administrator or other school employee or school  
165 volunteer, to the student’s or applicant’s list of contacts associated with a personal social media

166 account; (iii) require, request or cause a student to reproduce in any manner photographs, videos,  
167 or information contained within a personal social media account; or (iv) take or threaten adverse  
168 action against a student , including, but not limited to, restraining the student's participation in  
169 extracurricular activities, for refusing to disclose information specified in clause (i) or clause (iii)  
170 or for refusing to add a coach, teacher, school administrator or other school employee or school  
171 volunteer to a list of contacts associated with a personal social media account, as specified in  
172 clause (ii).

173 (b) This section shall not apply to information about a student that is publicly available.

174 (c) Nothing in this section shall limit a school district's right to promulgate and maintain  
175 policies governing the use of the school district's electronic equipment, including policies  
176 regarding use of the internet, email or social media.

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

183 (e) Nothing in this section shall prevent the school district from requesting access to a  
184 student's personal social media account to ensure compliance with applicable state or federal  
185 laws, judicial directives, or an order of a court of competent jurisdiction; provided, however,  
186 that a school district, prior to requesting access to a personal social media account, shall notify  
187 the student and the student's parent or guardian of the grounds for the request; and provided

188 further, that (i) the school district has no other means of obtaining the relevant information; (ii)  
189 information gained from access to the student's personal social media account shall be used  
190 solely for purposes of the investigation or a related proceeding; and (iii) any access to a student's  
191 personal social media account shall be limited to identifying relevant evidence. If a student does  
192 not permit access to a personal social media account, the school district shall not take or threaten  
193 adverse action against a student for refusing to permit access to said personal social media  
194 account.

195 (f) Nothing in this section shall limit or prevent a school district from completing an  
196 investigation pursuant to section 37O of chapter 71.

197 (g) The board shall promulgate regulations as needed to implement this section. The  
198 board shall submit any regulations to the house and senate committees on ways and means and  
199 the joint committee on education not less than 60 days before adoption. The joint committee on  
200 education shall review and may comment on these regulations during that time period.

201 Section 34M. (a) The department shall make publicly available a list of categories of  
202 student personally identifiable information collected by the department including, but not limited  
203 to, student personally identifiable information required to be collected or reported by state or  
204 federal law. The list shall contain the source of the information, the reason for the collection of  
205 the information, and the use of the information collected.

206 (b) The department shall issue guidance and recommendations to assist districts in  
207 complying with relevant state and federal law pertaining to student personally identifiable  
208 information including, but not limited to, 20 U.S.C. 1232g, sections 34A through 34M, inclusive,  
209 of chapter 71 of the General Laws, and chapter 66A of the General Laws.

210 (c) The department shall develop a detailed security plan for the state data system.

211 (d) Each district shall make publicly available on their website a list of categories of  
212 student personally identifiable information collected at the school, district, or classroom level.

213 The list shall contain the source of the information, the reason for collection of the information,

214 and the use of the information. Each district shall develop a detailed security plan for the

215 protection of student personally identifiable information that includes security breach planning,

216 notice and procedures.