

# HOUSE . . . . . No. 4844

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 9, 2024.

The committee on Ways and Means, to whom was referred the message from Her Excellency the Governor recommending legislation making appropriations for the fiscal year 2024 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 4496), reports, in part, recommending that the accompanying bill (House, No. 4844) ought to pass.

For the committee,

AARON MICHLEWITZ.

**HOUSE . . . . . No. 4844**

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**The Commonwealth of Massachusetts**

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

An Act providing protections for reproductive or gender-affirming care location information.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide protections for reproductive and gender-affirming care location information, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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 are hereby amended by inserting after chapter 93L the  
2 following chapter:-

3 CHAPTER 93M.

4 REPRODUCTIVE OR GENDER-AFFIRMING CARE LOCATION INFORMATION

5 PRIVACY PROTECTIONS

6 Section 1. As used in this chapter, the following words shall, unless the context clearly  
7 requires otherwise, have the following meanings:

8 “Application”, a software program that runs on the operating system of a device.

9           “Collect”, to buy, rent, receive, acquire, derive, obtain, infer, generate, create, receive or  
10 otherwise access an individual’s reproductive or gender-affirming care location information.

11           “Consent”, a clear affirmative act that signifies an individual’s freely given, specific,  
12 informed and unambiguous opt-in agreement. Consent shall not include: (i) agreement secured  
13 without first providing to the individual a clear and conspicuous disclosure of any information  
14 material to the consent, apart from any privacy policy, terms of service, terms of use, general  
15 release, user agreement or other similar document; or (ii) agreement obtained through the use of  
16 a user interface designed or manipulated with the substantial effect of subverting or impairing  
17 user autonomy, decision making or choice.

18           “Covered entity”, any person, partnership, corporation, limited liability company,  
19 association or other group, however organized, and all agents of the covered entity, that: (i) does  
20 business, produces or provides a service in the commonwealth; and (ii) collects, processes or  
21 discloses or has the ability to collect, process or disclose an individual’s reproductive or gender-  
22 affirming care location information. A covered entity shall not include: (1) a state or local  
23 government agency, any court of the commonwealth or a clerk, judge or justice of the court; or  
24 (2) an individual acting in a non-commercial context.

25           “Device”, a mobile telephone, as defined in section 1 of chapter 90, or any other  
26 electronic device that is or may be carried by or on an individual and is capable of connecting to  
27 a cellular, bluetooth or other wireless network; provided, that device shall include any hand-held  
28 or other portable electronic equipment capable of providing data communication between 2 or  
29 more persons, including, but not limited to, a mobile telephone, a text messaging device, a  
30 paging device, a personal digital assistant, a laptop computer, electronic equipment that is

31 capable of playing a video game or digital video disk, equipment on which digital photographs  
32 are taken or transmitted or any combination thereof, or equipment that is capable of visually  
33 receiving a television broadcast.

34 “Disclose”, to make reproductive or gender-affirming care location information available  
35 to a third party, including, but not limited to, by selling, renting, sharing, publishing, releasing,  
36 transferring, disseminating, providing access to or otherwise communicating such reproductive  
37 or gender-affirming care location information orally, in writing, electronically or by any other  
38 means.

39 “Individual”, a natural person located in the commonwealth or who was located in the  
40 commonwealth at the time that their reproductive or gender-affirming care location information  
41 was collected, processed or disclosed.

42 “Location privacy policy”, policies, practices and procedures controlling a covered  
43 entity’s collection, processing, management, storage, retention and deletion of reproductive or  
44 gender-affirming care location information, as set forth in regulations promulgated by the  
45 attorney general pursuant to section 4.

46 “Permissible purpose”, as described in subsection (a) of section 2 and any regulations  
47 promulgated by the attorney general pursuant to section 4.

48 “Process”, to perform any action or set of actions on or with reproductive or gender-  
49 affirming care location information, including, but not limited to, accessing, using, storing,  
50 retaining, analyzing, creating, generating, aggregating, altering, correlating, operating on,  
51 recording, modifying, organizing, structuring, disposing of, destroying, de-identifying or

52 otherwise manipulating reproductive or gender-affirming care location information. Process shall  
53 not include disclosing reproductive or gender-affirming care location information.

54 “Public safety release of information”, response to an emergency service agency, an  
55 emergency alert, a 911 communication or any other communication reporting an imminent threat  
56 to human life.

57 “Reproductive or gender-affirming care location information”, information concerning  
58 reproductive or gender-affirming health care services that: (i) is linked or easily linkable to an  
59 individual; (ii) is derived from a device or from interactions between devices, with or without the  
60 knowledge of the user and regardless of the technological method used; and (iii) pertains to or  
61 directly or indirectly reveals the present or past geographical location of an individual or device  
62 within the commonwealth with sufficient precision to identify street-level location information  
63 within a range of 1,850 feet or less; provided, that reproductive or gender-affirming care location  
64 information shall include any location information that could reasonably indicate an individual’s  
65 attempt to acquire or receive reproductive or gender-affirming health care services or efforts to  
66 research or obtain reproductive or gender-affirming health care services. Reproductive or gender-  
67 affirming care location information shall not include: (1) location information identifiable or  
68 derived solely from the visual content of a legally obtained image, including the location of the  
69 device that captured such image or publicly posted words; and (2) information that meets the  
70 definition of protected health information for purposes of the federal Health Insurance Portability  
71 and Accountability Act of 1996 and any regulations promulgated thereunder.

72 “Reproductive or gender-affirming health care services”, all supplies, care and services of  
73 a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic,

74 preventative, rehabilitative or supportive nature relating to: (i) the treatment of gender dysphoria;  
75 or (ii) pregnancy, contraception, assisted reproduction, miscarriage management or the  
76 termination of a pregnancy.

77 “Service feature”, a discrete aspect of a service provided by a covered entity or service  
78 provider, including, but not limited to, real-time directions, real-time weather and identity  
79 authentication.

80 “Service provider”, an individual, partnership, corporation, limited liability company,  
81 association or other group, however organized, that collects, processes or transfers reproductive  
82 or gender-affirming care location information for the sole purpose of, and only to the extent that  
83 such service provider is, conducting business activities on behalf of, for the benefit of, at the  
84 direction of or under contractual agreement with a covered entity.

85 “Third party”, any covered entity or person other than: (i) a covered entity or service  
86 provider that collected or processed reproductive or gender-affirming care location information  
87 in accordance with this chapter; or (ii) the individual to whom the reproductive or gender-  
88 affirming care location information pertains; provided, however, that a third party shall not  
89 include a government entity.

90 Section 2. (a) No covered entity or service provider shall collect or process an  
91 individual’s reproductive or gender-affirming care location information; provided, however, that  
92 a covered entity or service provider may collect or process an individual’s reproductive or  
93 gender-affirming care location information if: (i) a covered entity or service provider provides  
94 the individual with a copy of their location privacy policy; (ii) obtains consent from the  
95 individual; provided, however, that clause (i) and (ii) shall not be required when the collection or

96 processing is done for the public safety release of information; and (iii) is consistent with 1 or  
97 more of the following permissible purposes:

98 (A) provision of a product, service or service feature to the individual to whom the  
99 reproductive or gender-affirming care location information pertains when that individual  
100 requested the provision of such product, service or service feature by subscribing to, creating an  
101 account or otherwise contracting with a covered entity;

102 (B) initiation, management, execution or completion of a financial or commercial  
103 transaction or fulfill an order for a specific product or service requested by an individual to  
104 whom the reproductive or gender-affirming care location information pertains, including any  
105 associated routine administrative, operational and account-servicing activity such as billing,  
106 shipping, delivery, storage and accounting;

107 (C) compliance with an obligation under federal or any state law; or

108 (D) public safety release of information.

109 (b) No covered entity or service provider that collects or processes reproductive or  
110 gender-affirming care location information for a permissible purpose shall:

111 (i) collect more precise reproductive or gender-affirming care location information than  
112 necessary to carry out the permissible purpose;

113 (ii) retain reproductive or gender-affirming care location information longer than  
114 necessary to carry out the permissible purpose;

115 (iii) sell, rent, trade, gift or lease reproductive or gender-affirming care location  
116 information to third parties;

117 (iv) derive or infer from reproductive or gender-affirming care location information any  
118 data that is not necessary to carry out a permissible purpose; or

119 (v) disclose, cause to disclose or assist with or facilitate the disclosure of an individual's  
120 reproductive or gender-affirming care location information to a third party, unless such  
121 disclosure is: (A) necessary to carry out the permissible purpose for which the reproductive or  
122 gender-affirming care location information was collected; or (B) requested by the individual to  
123 whom the reproductive or gender-affirming care location information pertains.

124 (c) No covered entity or service provider shall disclose an individual's reproductive or  
125 gender-affirming care location information to any federal, state or local government agency or  
126 official unless: (i) the agency or official serves the covered entity or service provider with a valid  
127 warrant or establishes the existence of exigent circumstances that make it impracticable to obtain  
128 a warrant; (ii) disclosure is mandated under federal or any state law; or (iii) the individual  
129 requests such disclosure.

130 Section 3. (a) A violation of this chapter or a regulation promulgated under this chapter  
131 regarding an individual's reproductive or gender-affirming care location information shall be  
132 deemed an unfair or deceptive act or practice in the conduct of trade or commerce under chapter  
133 93A.

134 (b) The attorney general may bring an action pursuant to section 4 of chapter 93A against  
135 a covered entity or service provider to remedy violations of this chapter and for other relief that  
136 may be appropriate.

137 Section 4. The attorney general shall promulgate regulations for the administration of this  
138 chapter, including, but not limited to:



139 (i) determining minimum requirements for inclusion in a location privacy policy,  
140 including, but not limited to: (A) reproductive or gender-affirming care location information that  
141 is collected, processed or disclosed; (B) specific reproductive or gender-affirming care location  
142 information that is disclosed or shared with a third party; (C) a list of the third parties that the  
143 reproductive or gender-affirming care location information is disclosed to; (D) any updates to the  
144 location privacy policy and notice to the individual; (E) if there are multiple permissible  
145 purposes, a disclosure of each such purpose; and (F) posting on the covered entity or service  
146 provider's website and application the location privacy policy;

147 (ii) any limitations or restrictions on the use of targeted advertisements by a covered  
148 entity or service provider;

149 (iii) requirements for consent by individuals to the collection or processing of their  
150 reproductive or gender-affirming care location information, including, but not limited, to the  
151 duration of consent, any situations where consent shall be obtained again if a covered entity or  
152 service provider amends its location privacy policy and how consent may be revoked;

153 (iv) circumstances when reproductive or gender-affirming care location information shall  
154 be permanently destroyed;

155 (v) prohibitions on adverse actions by a covered entity or service provider against an  
156 individual because the individual exercised or refused to waive any rights under this chapter;

157 (vi) notice requirement for any disclosure of reproductive or gender-affirming care  
158 location information pursuant to subsection (c) of section 2; and

159 (vii) any other regulations necessary for the implementation of this chapter.

160           SECTION 2. The attorney general shall promulgate regulations pursuant to section 4 of  
161 chapter 93M, inserted by section 1, not later than 120 days after the effective date of this act.

162           SECTION 3. Section 1 shall take effect 1 year after the effective date of this act.