

**HOUSE . . . . . No. 80**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*David M. Rogers*

*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 internet privacy rights for children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/19/2023</i>

**HOUSE . . . . . No. 80**

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By Representative Rogers of Cambridge, a petition (accompanied by bill, House, No. 80) of David M. Rogers relative to internet privacy rights for children. Advanced Information Technology, the Internet and Cybersecurity.

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**The Commonwealth of Massachusetts**

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

An Act relative to internet privacy rights for children.

*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. Chapter 93 of the General Laws is hereby amended by adding the following  
2 section:-

3 Section 115. (a) For the purposes of this section the following words shall, unless the  
4 context clearly requires otherwise, have the following meanings:

5 “Internet web site, online service, online application or mobile application directed to  
6 minors”, an internet web site, online service, online application or mobile application or a  
7 portion thereof, that is created for the purpose of reaching an audience that is predominately  
8 comprised of minors and is not intended for a more general audience comprised of adults;  
9 provided, however, that an internet web site, online service, online application or mobile  
10 application or a portion thereof, shall not be deemed to be directed at minors solely because it  
11 refers or links to an internet web site, online service, online application or mobile application

12 directed to minors by using information location tools including, a directory, index, reference,  
13 pointer or hypertext link.

14 “Less lethal weapon”, any device that is designed to or that has been converted to expel  
15 or propel less lethal ammunition by any action, mechanism or process for the purpose of  
16 incapacitating, immobilizing or stunning a human being through the infliction of any less than  
17 lethal impairment of physical condition, function or senses including, physical pain or  
18 discomfort.

19 “Marketing or advertising”, in exchange for monetary compensation, to make a  
20 communication to 1 or more individuals or to arrange for the dissemination to the public of a  
21 communication about a product or service the primary purpose of which is to encourage  
22 recipients of the communication to purchase or use the product or service.

23 “Minor”, a natural person under 18 years of age who resides in the commonwealth.

24 “Obscene matter”, a matter, taken as a whole, that to the average person, applying  
25 contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts  
26 or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious  
27 literary, artistic, political or scientific value.

28 “Operator”, any person or entity that owns an internet web site, online service, online  
29 application or mobile application. It does not include any third party that operates, hosts or  
30 manages but, does not own an internet web site, online service, online application or mobile  
31 application on the owner’s behalf or processes information on the owner’s behalf.

32           “Posted”, content or information that can be accessed by a user in addition to the minor  
33 who posted the content or information, whether the user is a registered user or not, of the internet  
34 web site, online service, online application or mobile application where the content or  
35 information is posted.

36           (b) An operator of an internet web site, online service, online application or mobile  
37 application directed to minors shall not market or advertise a product or a service described in  
38 subsection (g) on its internet web site, online service, online application or mobile application  
39 directed to minors.

40           (c) (1) An operator of an internet web site, online service, online application or mobile  
41 application shall not market or advertise a product or service described in subsection (g) to a  
42 minor who the operator has actual knowledge is using its internet web site, online service, online  
43 application or mobile application and is a minor, if the marketing or advertising is specifically  
44 directed to that minor based upon information specific to that minor including, but not limited to,  
45 the minor's profile, activity, address or location sufficient to establish contact with a minor and  
46 excluding internet protocol address and product identification numbers for the operation of a  
47 service.

48           (2) An operator of an internet web site, online service, online application or mobile  
49 application shall be deemed to be in compliance with paragraph (1) if the operator takes  
50 reasonable actions in good faith designed to avoid marketing or advertising under circumstances  
51 prohibited under paragraph (1).

52           (d) An operator of an internet web site, online service, online application or mobile  
53 application directed to minors or who has actual knowledge that a minor is using its internet web

54 site, online service, online application or mobile application shall not knowingly use, disclose,  
55 compile, or allow a third party to use, disclose or compile, the personal information of a minor  
56 with actual knowledge that the use, disclosure or compilation is for the purpose of marketing or  
57 advertising products or services to that minor for a product described in subsection (g).

58 (e) This section shall not be construed to require an operator of an internet web site,  
59 online service, online application or mobile application to collect or retain age information about  
60 users.

61 (f)(1) With respect to marketing or advertising provided by an advertising service, the  
62 operator of an internet web site, online service, online application or mobile application directed  
63 to minors shall be deemed to be in compliance with subsection (b) if the operator notifies the  
64 advertising service, in the manner required by the advertising service, that the site, service or  
65 application is directed to minors.

66 (2) If an advertising service is notified, in the manner required by the advertising service,  
67 that an internet web site, online service, online application or mobile application is directed to  
68 minors pursuant to paragraph (1), the advertising service shall not market or advertise a product  
69 or service on the operator's internet web site, online service, online application or mobile  
70 application that is described in subsection (g).

71 (g) The marketing and advertising restrictions described in subsections (b) and (c) shall  
72 apply to the following products and services: (i) alcoholic beverages; (ii) firearms or handguns;  
73 (iii) ammunition or reloaded ammunition; (iv) firearms safety certificates; (v) aerosol container  
74 of paint that is capable of defacing property; (vi) etching cream that is capable of defacing  
75 property; (vii) any tobacco, cigarette or cigarette papers, blunt wraps or any other preparation of

76 tobacco or any other instrument or paraphernalia that is designed for the smoking or ingestion of  
77 tobacco, products prepared from tobacco or any controlled substance; (viii) any cannabis,  
78 cannabis product, cannabis business or any instrument or paraphernalia that is designed for the  
79 smoking or ingestion of cannabis or cannabis products; (ix) BB, pellet expelling device or a less  
80 lethal weapon; (x) fireworks; (xi) tanning in an ultraviolet tanning device; (xii) dietary  
81 supplement products containing ephedrine group alkaloids; (xiii) tickets or shares in a lottery  
82 game; (ivx) Salvia divinorum or Salvinorin A or any substance or material containing Salvia  
83 divinorum or Salvinorin A; (xv) body branding; (xvi) permanent tattoo; (xvii) drug  
84 paraphernalia; (xviii) electronic cigarette; or (xix) obscene matter.

85 (h) The marketing and advertising restrictions described in subsections (b), (c) and (d)  
86 shall not apply to the incidental placement of products or services embedded in content if the  
87 content is not distributed by or at the direction of the operator primarily for the purposes of  
88 marketing and advertising of the products or services described in subsection (g).

89 (i) An operator of an internet web site, online service, online application or mobile  
90 application directed to minors or an operator of an internet web site, online service, online  
91 application or mobile application that has actual knowledge that a minor is using its internet web  
92 site, online service, online application or mobile application shall do all of the following:

93 (1) permit a minor who is a registered user of the operator's internet web site, online  
94 service, online application or mobile application to remove or if the operator prefers, to request  
95 and obtain removal of, content or information posted on the operator's internet web site, online  
96 service, online application or mobile application by the user;

97           (2) provide notice to a minor who is a registered user of the operator's internet web site,  
98 online service, online application or mobile application that the minor may remove or, if the  
99 operator prefers, request and obtain removal of, content or information posted on the operator's  
100 internet web site, online service, online application or mobile application by the registered user;

101           (3) provide clear instructions to a minor who is a registered user of the operator's internet  
102 web site, online service, online application or mobile application on how the user may remove or  
103 if the operator prefers, request and obtain the removal of content or information posted on the  
104 operator's internet web site, online service, online application or mobile application; and

105           (4) provide notice to a minor who is a registered user of the operator's internet web site,  
106 online service, online application or mobile application that the removal described under  
107 paragraph (1) does not ensure complete or comprehensive removal of the content or information  
108 posted on the operator's internet web site, online service, online application or mobile application  
109 by the registered user.

110           (j) An operator of an internet web site, online service, online application or mobile  
111 application directed to minors who violated any provision of this section shall be held liable for a  
112 civil penalty of not more than \$2,500 per violation. The attorney general may file a civil action in  
113 the superior or district court in the name of the commonwealth to recover such penalties.

114           (k) An operator or a third party is not required to erase or otherwise eliminate or to enable  
115 erasure or elimination of, content or information in any of the following circumstances:

116           (i) federal law or a general or special law requires the operator or third party to maintain  
117 the content or information;

118 (ii) the content or information was stored on or posted to the operator's internet web site,  
119 online service, online application or mobile application by a third party other than the minor,  
120 who is a registered user including, any content or information posted by the registered user that  
121 was stored, republished or reposted by the third party;

122 (iii) the operator anonymizes the content or information posted by the minor who is a  
123 registered user, so that the minor who is a registered user cannot be individually identified;

124 (iv) the minor does not follow the instructions provided to the minor pursuant to  
125 paragraph (3) of subsection (i) on how the registered user may request and obtain the removal of  
126 content or information posted on the operator's internet web site, online service, online  
127 application or mobile application by the registered user; and

128 (v) the minor has received compensation or other consideration for providing the content.

129 (l) This section shall not be construed to limit the authority of a law enforcement agency  
130 to obtain any content or information from an operator as authorized by law or pursuant to an  
131 order of a court.

132 (m) An operator shall be deemed compliant with this section if:

133 (i) it renders the content or information posted by the minor user no longer visible to  
134 other users of the service and the public even if the content or information remains on the  
135 operator's servers in some form; and

136 (ii) despite making the original posting by the minor user invisible, it remains visible  
137 because a third party has copied the posting or reposted the content or information posted by the  
138 minor.



139           (n) This section shall not be construed to require an operator of an internet web site,  
140 online service, online application or mobile application to collect age information about users.

141           SECTION 2. This act shall take effect on January 1, 2024.