

STATE OF NEW YORK

4037

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to establishing a prohibition on sharing location data with third parties

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article
2 29-CCC to read as follows:

3 ARTICLE 29-CCC
4 PROHIBITION ON SHARING LOCATION DATA

5 Section 539. Definitions.

6 539-a. Prohibition on sharing location data.

7 539-b. Exceptions.

8 539-c. Enforcement.

9 539-d. Penalties.

10 539-e. Private right of action.

11 539-f. Rulemaking.

12 539-g. Local laws or ordinances.

13 § 539. Definitions. As used in this article, the following terms shall
14 have the following meanings:

15 (a) (1) "Authorized use" means the sharing of a customer's location
16 data:

17 (i) for the purpose of providing a service explicitly requested by
18 such customer;

19 (ii) exclusively for the purpose of providing a service explicitly
20 requested by such customer; and

21 (iii) where such data is not collected, shared, stored or otherwise
22 used by a third party for any purpose other than providing a service
23 explicitly requested by such customer.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (2) Such term does not include any instance in which a customer's
2 location data is shared in exchange for products or services.

3 (b) "Customer" means a current or former subscriber to a telecommuni-
4 cations carrier or a current or former user of a mobile application.

5 (c) "Location data" means information related to the physical or
6 geographical location of a person or the person's mobile communications
7 device, regardless of the particular technological method used to obtain
8 this information.

9 (d) "Mobile application" means a software program that runs on the
10 operating system of a mobile communications device.

11 (e) "Mobile application developer" means a person that owns, operates
12 or maintains a mobile application and makes such application available
13 for the use of customers, whether for a fee or otherwise.

14 (f) "Mobile communications device" means any portable wireless tele-
15 communications equipment that is utilized for the transmission or recep-
16 tion of data, including location data, and that is or may be commonly
17 carried by or on a person or commonly travels with a person, including
18 in or as part of a vehicle a person drives.

19 (g) "Municipality" shall mean any county, city, town or village within
20 the state.

21 (h) "Share" means to make location data available to another person,
22 whether for a fee or otherwise.

23 (i) "Telecommunications carrier" means a service offered to the public
24 for a fee that transmits sounds, images or data through wireless tele-
25 communications technology.

26 § 539-a. Prohibition on sharing location data. (a) It is unlawful for
27 a mobile application developer or a telecommunications carrier to share
28 a customer's location data where such location data was collected while
29 the customer's mobile communications device was physically present in
30 the state.

31 (b) It is unlawful for a person who receives location data that is
32 shared in violation of subdivision (a) of this section to share such
33 data with any other person.

34 (c) Each instance in which a mobile application developer, telecommu-
35 nications carrier or other person shares a customer's location data with
36 another person in a manner prohibited by this section constitutes a
37 separate violation of this section.

38 § 539-b. Exceptions. The provisions of section five hundred thirty-
39 nine-a of this article do not apply to:

40 (a) information provided to a law enforcement agency in response to a
41 lawful process;

42 (b) information provided to an emergency service agency responding to
43 a 911 communication or any other communication reporting an imminent
44 threat to life or property;

45 (c) information required to be provided by federal, state or local
46 law; or

47 (d) a customer providing the customer's own location data to a mobile
48 application or telecommunications carrier to be shared for an authorized
49 use.

50 § 539-c. Enforcement. The office of information technology services
51 shall enforce the provisions of this section.

52 § 539-d. Penalties. (a) Except as provided in subdivision (b) of this
53 section, any person who violates the provisions of section five hundred
54 thirty-nine-a of this article shall be subject to a civil penalty of one
55 thousand dollars for each such violation.

1 (b) Where a person commits multiple violations of subdivision (a) or
2 (b) of section five hundred thirty-nine-a of this article on the same
3 day, the maximum civil penalty assessed against such person for all
4 violations occurring on such day shall be a cumulative penalty of ten
5 thousand dollars per person whose location data was shared unlawfully.

6 § 539-e. Private right of action. (a) Any customer whose location data
7 has been shared in violation of this article may bring an action in any
8 court of competent jurisdiction. If a court of competent jurisdiction
9 finds that a person has violated a provision of this article, the court
10 may award: (1) actual damages, computed at a rate of one thousand
11 dollars per violation up to ten thousand dollars per day; and (2)
12 reasonable attorney's fees and costs incurred in maintaining such civil
13 action.

14 (b) The private right of action provided by this section does not
15 supplant any other claim or cause of action available to a customer
16 under common law or by statute. The provisions of this section are in
17 addition to any such common law and statutory remedies.

18 (c) Nothing in this article shall be construed as creating a private
19 right of action against the city or any agency or employee thereof.

20 § 539-f. Rulemaking. The director of the office of information tech-
21 nology services may promulgate and amend rules in furtherance of the
22 administration of this article.

23 § 539-g. Local laws or ordinances. Nothing in this article shall be
24 deemed to preempt any provision of local law or ordinance restricting
25 the sharing of location data with third parties, provided that the
26 provisions of such local law or ordinance are at least as stringent as
27 the provisions of this article.

28 § 2. This act shall take effect on the one hundred twentieth day after
29 it shall have become a law.