

# STATE OF NEW YORK

8327

## IN SENATE

May 11, 2020

Introduced by Sen. JACOBS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the state technology law, the general business law and the civil rights law, in relation to protecting people's privacy during contact tracing

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

1 Section 1. The penal law is amended by adding a new section 250.70 to  
2 read as follows:

3 § 250.70 Unlawful dissemination of contact tracing information.

4 A person is guilty of unlawful dissemination of contact tracing infor-  
5 mation when he or she:

6 1. knowingly uses, causes to be used, or accesses a computer, computer  
7 service, or computer network without authorization and he or she thereby  
8 knowingly gains access to contact tracing information; or

9 2. knowingly disseminates contact tracing information to any person  
10 not authorized by the governor or the commissioner of the department of  
11 health to receive such information. For the purposes of this section,  
12 the term "contact tracing information" shall mean any information  
13 collected for the purposes of performing the process of identification  
14 of persons who may have come into contact with or into close proximity  
15 to an infected person and any subsequent collection of additional infor-  
16 mation about these persons and contacts.

17 Unlawful dissemination of contact tracing information is a class E  
18 felony.

19 § 2. The penal law is amended by adding a new section 250.75 to read  
20 as follows:

21 § 250.75 Unlawful use of a surveillance drone.

22 A person is guilty of unlawful use of a surveillance drone when he or  
23 she knowingly uses or causes to be used a drone for the purposes of  
24 surveillance without the consent of all persons within the area surv-  
25 eilled by such drone for the purposes of collecting contact tracing  
26 information or for monitoring the vital signs or social distancing prac-  
27 tices of individuals.

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

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1 For the purposes of this section, the term "contact tracing informa-  
2 tion" shall mean any information collected for the purposes of perform-  
3 ing the process of identification of persons who may have come into  
4 contact with or into close proximity to an infected person and any  
5 subsequent collection of further information about these persons and  
6 contacts.

7 Unlawful use of a surveillance drone is a class E felony.

8 § 3. The state technology law is amended by adding a new section 209  
9 to read as follows:

10 § 209. Contact tracing application privacy. 1. For the purposes of  
11 this section, the term:

12 (a) "contact tracing information" shall mean any information collected  
13 for the purposes of performing the process of identification of persons  
14 who may have come into contact with or into close proximity to an  
15 infected person and any subsequent collection of additional information  
16 about these persons and contacts.

17 (b) "application" shall mean computer software, applications and other  
18 forms of technology created and used for the purposes of collecting  
19 contact tracing information.

20 2. The use of applications created for the purpose of collecting  
21 contact tracing information shall be voluntary. The user of any applica-  
22 tion shall be required to give explicit consent to the application being  
23 downloaded, to the application being used, and to the application  
24 providing any information collected to any person. The user shall be  
25 provided with a conspicuous, plain language explanation of the applica-  
26 tion, the application's functions and any information that the applica-  
27 tion will collect prior to the user being able to give consent to the  
28 download of the application. Such consent shall be revocable at anytime  
29 at which point the application shall terminate the functionality to  
30 which the user is no longer consenting. If consent to having the appli-  
31 cation downloaded is revoked, the application shall fully remove itself  
32 or enable the user to easily remove the application from the device it  
33 is downloaded onto.

34 3. Any information stored or transmitted by an application shall be  
35 stored or transmitted in an encrypted manner as to prevent access by an  
36 unauthorized person.

37 4. Any information collected by an application shall be completely  
38 deleted, destroyed and erased and no further information shall be  
39 collected upon the end of the state public emergency requiring the  
40 creation of the application.

41 5. Notwithstanding any other provision of law to the contrary, any  
42 person, business or governmental entity in violation of this section  
43 shall be liable to any person who used an application involuntarily or  
44 without giving properly informed consent or whose contact tracing infor-  
45 mation was disclosed or used improperly. Liability under this section is  
46 in addition to any other applicable penalties and causes of action. An  
47 action to recover damages under this section may be maintained as a  
48 class action, notwithstanding subdivision b of section nine hundred one  
49 of the civil practice law and rules.

50 § 4. The general business law is amended by adding a new section 899-  
51 cc to read as follows:

52 § 899-cc. Contact tracing application privacy. 1. For the purposes of  
53 this section, the term:

54 (a) "contact tracing information" shall mean any information collected  
55 for the purposes of performing the process of identification of persons  
56 who may have come into contact with or into close proximity to an

1 infected person and any subsequent collection of additional information  
2 about these persons and contacts.

3 (b) "application" shall mean computer software, applications and other  
4 forms of technology created and used for the purposes of collecting  
5 contact tracing information.

6 2. The use of applications created for the purpose of collecting  
7 contact tracing information shall be voluntary. The user of any applica-  
8 tion shall be required to give explicit consent to the application being  
9 downloaded, to the application being used, and to the application  
10 providing any information collected to any person. The user shall be  
11 provided with a conspicuous, plain language explanation of the applica-  
12 tion, the application's functions and any information that the applica-  
13 tion will collect prior to the user being able to give consent to the  
14 download of the application. Such consent shall be revocable at any  
15 time at which point the application shall terminate the functionality to  
16 which the user is no longer consenting. If consent to having the appli-  
17 cation downloaded is revoked, the application shall fully remove itself  
18 or enable the user to easily remove the application from the device it  
19 is downloaded onto.

20 3. Any information stored or transmitted by an application shall be  
21 stored or transmitted in an encrypted manner as to prevent access by an  
22 unauthorized person.

23 4. Any information collected by an application shall be completely  
24 deleted, destroyed and erased and no further information shall be  
25 collected upon the end of the state public emergency requiring the  
26 creation of the application.

27 5. Notwithstanding any other provision of law to the contrary, any  
28 person, business or governmental entity in violation of this section  
29 shall be liable to any person who used an application involuntarily or  
30 without giving properly informed consent or whose contact tracing infor-  
31 mation was disclosed or used improperly. Liability under this section is  
32 in addition to any other applicable penalties and causes of action. An  
33 action to recover damages under this section may be maintained as a  
34 class action, notwithstanding subdivision b of section nine hundred one  
35 of the civil practice law and rules.

36 § 5. The civil rights law is amended by adding a new section 79-p to  
37 read as follows:

38 § 79-p. Right to privacy; contact tracing. 1. The following defi-  
39 nitions are applicable to this section:

40 (a) "contact tracing information" shall mean any information collected  
41 for the purposes of performing the process of identification of persons  
42 who may have come into contact with or into close proximity to an  
43 infected person and any subsequent collection of further additional  
44 information about these persons and contacts.

45 (b) "application" shall mean computer software, or applications and  
46 other forms of technology created and used for the purposes of collect-  
47 ing contact tracing information.

48 2. (a) No person, business, or governmental entity shall require the  
49 download, installation or use of an application of the purposes of  
50 collecting contact tracing information for any reason and the use of  
51 such applications shall be voluntary.

52 (b) No person, business, or governmental entity shall restrict the  
53 rights and privileges of a person based on such persons refusal to down-  
54 load, installation or use of an application for the purposes of collect-  
55 ing contact tracing information.

1 (c) No person, business, or governmental entity shall collect, use,  
2 or distribute contact tracing information in violation of section 250.70  
3 or 250.75 of the penal law, section two hundred nine of the state tech-  
4 nology law, or section eight hundred ninety-nine-cc of the general busi-  
5 ness law.

6 3. Any person aggrieved by a violation of the protections created by  
7 this section shall have the right to bring an action or special proceed-  
8 ing in a court of appropriate jurisdiction to seek damages and/or  
9 declaratory and injunctive relief or any other remedies as provided by  
10 law with respect to such violation. The right to bring an action under  
11 this section is in addition to any other applicable penalties and causes  
12 of action.

13 4. An action to recover damages under this section may be maintained  
14 as a class action, notwithstanding subdivision b of section nine hundred  
15 one of the civil practice law and rules.

16 § 6. This act shall take effect immediately.