STATE OF NEW YORK

5125--B

2019-2020 Regular Sessions

IN SENATE

April 10, 2019

Introduced by Sens. MONTGOMERY, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple dwelling law, in relation to limitations on smart access systems for entry and restricts information that may be gathered from such systems

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

Section 1. The multiple dwelling law is amended by adding a new section 50-b to read as follows:

§ 50-b. Entrances; keys and electronic or computerized entry system. 1. Consistent with the provisions of this title, for every entrance from the street, passageway, court, yard, cellar, or similar entrance to a class A multiple dwelling, a tenant, at their request, shall be provided with a key at no charge that does not rely on an electronic or computerized entry system to facilitate entrance to such multiple dwelling.

2. Data collection. a. Electronic and/or computerized data. If an electronic and/or computerized entry system is utilized to gain entrance to a class A multiple dwelling, the only information gathered by any electronic and/or computerized entry system shall be limited to the lessee or tenant's name and apartment number, and the preferred method of contact for such lessee or tenant. For electronic and computerized entry systems that rely on the collection of biometric data and which have already been installed at the time this section shall have become law, a biometric identifier may be collected pursuant to this section in order to register a lessee or tenant for an electronic and/or computerized entry system. No new electronic and/or computerized entry systems that rely on the collection of biometric data shall be installed in

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

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class A multiple dwellings for three years after the effective date of this section.

(i) The owner of the multiple dwelling may collect only the minimum data required by the technology used in the electronic and/or computerized entry system to effectuate such entrance and protect the privacy of such tenants.

(ii) A copy of such data may be retained for reference at the point of authentication by the electronic and/or computerized entry system. Such reference data may be retained only for tenants or those authorized by the tenant.

(iii) The owner of the multiple dwelling shall destroy the electronic, physical, and/or computerized data collected, except for reference data, within a reasonable time, but not later than thirty days after the date collected.

(iv) Reference data for a tenant or those authorized by a tenant shall be destroyed within thirty days of (1) the tenant permanently vacating the dwelling, or (2) a request by the tenant to withdraw authorization for those previously authorized by the tenant.

b. Biometric identifier. (i) For the purposes of this section, "biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand, face geometry or other similar feature.

(ii) An entity may not capture a biometric identifier of an individual to gain entrance to a class A multiple dwelling unless the person is a tenant or person authorized by the tenant, and informs the individual before capturing the biometric identifier; and receives their express consent to capture the biometric identifier.

(iii) Any entity that possesses a biometric identifier of an individual that is captured to gain entrance to a class A multiple dwelling:

(1) May not sell, lease or otherwise disclose the biometric identifier to another person unless pursuant to a grand jury subpoena or court ordered warrant, subpoena, or other authorized court ordered process.

(2) Shall store, transmit and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the person stores, transmits and protects confidential information the person possesses; and

(3) Shall destroy the biometric identifier within a reasonable time, but not later than forty-eight hours after the date collected, except for reference data. If any prohibited information is collected, such as the likeness of a minor or a non-tenant, the information shall be destroyed immediately.

c. Policy. The owner of the multiple dwelling, or the managing agent, must develop written procedures which describe the process used to add persons authorized by the tenant to electronic and/or computerized entry systems on a temporary or permanent basis, such as visitors, children, their employees, and caregivers to such building.

(i) The procedures must clearly establish the owner's retention schedule and guidelines for permanently destroying the data collected.

(ii) The procedures cannot limit time or place of entrance by such people authorized by the tenant.

3. Prohibitions. a. No form of location tracking, including but not limited to satellite location based services, shall be included in any equipment, key, or software provided to tenants or guests as part of an electronic and/or computerized entry system.

b. It shall be prohibited to collect through an electronic and/or computerized entry system the likeness of a minor occupant, information on the relationship status of tenants, lessees and/or guests, the

frequency of the use of the electronic and/or computerized entry system by a lessee, tenant or guest, or the frequency, time and use of guest access codes.

c. Information that is acquired via the use of an electronic and/or computerized entry system shall not be used for any purposes other than monitoring building entrances and shall not be used as the basis or support for an action to evict a lessee or tenant, or an administrative hearing seeking a change in regulatory coverage for an individual or unit. However, a tenant may authorize their information to be used by a third party, but such a request must clearly state who will have access to such information, for what purpose it will be used, and the privacy policies which will protect their information. Under no circumstances may a lease or a renewal be contingent upon authorizing such use. Electronic and/or computerized systems may use third-party services to the extent required to maintain and operate system infrastructure, including cloud-based hosting and storage. The provider or providers of third-party infrastructure services must meet or exceed the privacy protections set forth in this section and will be subject to the same liability for breach of any of the requirements of this section.

d. Information and data collected shall not be made available to any third party, unless authorized as described above, including but not limited to law enforcement, except upon a grand jury subpoena or a court ordered warrant, subpoena, or other authorized court ordered process.

4. Storage of information. Any information or data collected shall be stored in a secure manner to prevent unauthorized access by both employees and contractors and those unaffiliated with the landlord or their agents, except as otherwise provided in this section. Future or continuing tenancy shall not be conditioned upon consenting to the use of an electronic and/or computerized entry system.

5. Waiver of rights; void. Any agreement by a lessee or tenant of a dwelling waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

6. Penalties. A person who violates this section is subject to a civil penalty of not more than five thousand dollars for each violation. The attorney general may bring an action to recover the civil penalty. An individual injured by a violation of this section may bring an action to recover damages. A court may also award attorneys' fees to a prevailing plaintiff.

7. Exemption. Nothing herein shall apply to multiple dwellings owned or managed by an entity subject to 42 U.S.C. § 1437 et seq., or any of its subsidiaries.

§ 2. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 3. This act shall take effect immediately.