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:

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

ARTICLE 29-CCC
PROHIBITION ON SHARING LOCATION DATA

Section 539. Definitions.
539-a. Prohibition on sharing location data.
539-b. Exceptions.
539-c. Enforcement.
539-d. Penalties.
539-e. Private right of action.
539-f. Rulemaking.
539-g. Local laws or ordinances.

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

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

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

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

(iii) where such data is not collected, shared, stored or otherwise used by a third party for any purpose other than providing a service 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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(2) Such term does not include any instance in which a customer's location data is shared in exchange for products or services.

(b) "Customer" means a current or former subscriber to a telecommunications carrier or a current or former user of a mobile application.

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

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

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

(f) "Mobile communications device" means any portable wireless telecommunications equipment that is utilized for the transmission or reception of data, including location data, and that is or may be commonly carried by or on a person or commonly travels with a person, including in or as part of a vehicle a person drives.

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

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

(i) "Telecommunications carrier" means a service offered to the public for a fee that transmits sounds, images or data through wireless telecommunications technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 539-f. Rulemaking. The director of the office of information technology services may promulgate and amend rules in furtherance of the administration of this article.

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

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