STATE OF NEW YORK

6448

2021-2022 Regular Sessions

IN SENATE

April 29, 2021

Introduced by Sens. JORDAN, BORRELLO -- 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:

Section 1. The penal law is amended by adding two new sections 250.70 and 250.75 to read as follows:

§ 250.70 Unlawful dissemination of contact tracing information.

A person is guilty of unlawful dissemination of contact tracing information when he or she:

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

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

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

§ 250.75 Unlawful use of a surveillance drone.

A person is guilty of unlawful use of a surveillance drone when he or she knowingly uses or causes to be used a drone for the purposes of surveillance without the consent of all persons within the area surveilled by such drone for the purposes of collecting contact tracing

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

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information or for monitoring the vital signs or social distancing practices of individuals.

For the purposes of this section, the term "contact tracing information" shall mean any information collected for the purposes of performing the process of identification of persons who may have come into contact with or into close proximity to an infected person and any subsequent collection of further information about these persons and contacts.

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

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

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

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

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

2. The use of applications created for the purpose of collecting contact tracing information shall be voluntary. The user of any application shall be required to give explicit consent to the application being downloaded, to the application being used, and to the application providing any information collected to any person. The user shall be provided with a conspicuous, plain language explanation of the application, the application's functions and any information that the application will collect prior to the user being able to give consent to the download of the application. Such consent shall be revocable at anytime at which point the application shall terminate the functionality to which the user is no longer consenting. If consent to having the application downloaded is revoked, the application shall fully remove itself or enable the user to easily remove the application from the device it is downloaded onto.

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

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

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

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

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

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

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

2. The use of applications created for the purpose of collecting contact tracing information shall be voluntary. The user of any application shall be required to give explicit consent to the application being downloaded, to the application being used, and to the application providing any information collected to any person. The user shall be provided with a conspicuous, plain language explanation of the application, the application's functions and any information that the application will collect prior to the user being able to give consent to the download of the application. Such consent shall be revocable at any time at which point the application shall terminate the functionality to which the user is no longer consenting. If consent to having the application downloaded is revoked, the application shall fully remove itself or enable the user to easily remove the application from the device it is downloaded onto.

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

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

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

§ 4. The civil rights law is amended by adding a new section 79-q to read as follows:

§ 79-q. Right to privacy; contact tracing. 1. The following definitions are applicable to this section:

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

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

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

(b) No person, business, or governmental entity shall restrict the rights and privileges of a person based on such persons refusal to down-

load, installation or use of an application for the purposes of collecting contact tracing information.

(c) No person, business, or governmental entity shall collect, use, or distribute contact tracing information in violation of section 250.70 or 250.75 of the penal law, section two hundred nine of the state technology law, or section eight hundred ninety-nine-cc of the general business law.

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

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

§ 5. This act shall take effect immediately.