STATE OF NEW YORK

4920

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. L. ROSENTHAL, DINOWITZ, SIMON, SEAWRIGHT, KELLES, FORREST, SILLITTI -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting geofencing by digital advertisers at health care facilities

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 section 396-aaaa to read as follows:

§ 396-aaaa. Prohibition on geofencing. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Digital advertiser" shall mean any person, corporation, partnership or association that delivers digital advertisements by electronic means.

b. "Digital advertisement" shall include any communication delivered by electronic means that is intended to be used for the purposes of marketing, solicitation, or dissemination of information related, directly or indirectly, to goods or services provided by the digital advertiser or a third party.

c. "Delivered by electronic means" shall include delivery to an electronic mail address, posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device used by a natural person.

d. "Geofencing" shall mean the process of identifying whether a device enters, exits, or is present within a geographic area through the use of any information stored, transmitted, or received by such device, including but not limited to latitude, longitude, global positioning system coordinates, internet protocol address, wireless internet access information, Bluetooth technology, near-field communication information, cell tower connectivity, device identification information, and/or any other form of location detection.

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

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e. "Health care facility" shall mean any governmental or private agency, department, institution, clinic, laboratory, hospital, physician's office, nursing care facility, health maintenance organization, association or other similar entity that provides medical care or related services pursuant to the provisions of the public health law or the mental hygiene law, including the building or structure in which the facility is located.

f. "User" shall mean a natural person who owns or uses a mobile device or any other connected electronic device capable of receiving digital advertisements.

g. "Vicinity" shall mean within two hundred fifty feet of the perimeter of a health care facility.

2. a. It shall be unlawful for any person, corporation, partnership or association to deliver by electronic means any digital advertisement to a user through the use of geofencing or a similar virtual boundary created around or within the vicinity of any health care facility as defined in paragraph e of subdivision one of this section.

b. It shall be unlawful for any person, corporation, partnership or association to establish a geofence or similar virtual boundary around or within the vicinity of any health care facility for the purpose of delivering by electronic means a digital advertisement to a user in or within the vicinity of such health care facility, building consumer profiles, or inferring the health status, medical condition, or medical treatment of any person.

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