

STATE OF NEW YORK

6224

2023-2024 Regular Sessions

IN SENATE

April 4, 2023

Introduced by Sen. GONZALEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

AN ACT to amend the general business law, in relation to safeguarding abortion access through data privacy protection

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

1 Section 1. The general business law is amended by adding a new
2 section 394-f to read as follows:

3 § 394-f. Warrants for reproductive health related electronic data. 1.
4 For the purposes of this section, the following terms shall have the
5 following meanings:

6 a. "Electronic communication" means any transfer of signs, signals,
7 writing, images, sounds, data, or intelligence of any nature transmitted
8 in whole or in part by a wire, radio, electromagnetic, photoelectronic
9 or photo-optical system; provided, however, such term shall not include:

10 i. any telephonic or telegraphic communication.

11 ii. any communication made through a tone only paging device.

12 iii. any communication made through a tracking device consisting of an
13 electronic or mechanical device which permits the tracking of the move-
14 ment of a person or object.

15 iv. any communication that is disseminated by the sender through a
16 method of transmission that is configured so that such communication is
17 readily accessible to the public.

18 b. "Electronic communication services" means any service which
19 provides to users thereof the ability to send or receive wire or elec-
20 tronic communications.

21 c. "Prohibited violation" means any civil or criminal offense defined
22 under the laws of another state that creates civil or criminal liability
23 or any theory of vicarious, joint, several or conspiracy liability for,
24 in whole or in part based on or arising out of, either of the following,
25 unless such out-of-state proceeding i. sounds in tort or contract; ii.

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

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1 is actionable, in an equivalent or similar manner, under the laws of
2 this state; or iii. was brought by the patient who received reproductive
3 health care, or the patient's legal representative:

4 (1) providing, facilitating, or obtaining reproductive health care
5 services that are lawful under New York law; or

6 (2) intending or attempting to provide, facilitate, or obtain repro-
7 ductive health care services that are lawful under New York law.

8 d. "Reproductive health care services" means any services related to
9 the performance or aiding within the performance of an abortion
10 performed within this state that is performed in accordance with the
11 applicable law of this state, ending, seeking to end, or aiding another
12 in ending their pregnancy within this state, or procuring or aiding in
13 the procurement of an abortion within this state.

14 2. Any person or entity that is headquartered or incorporated in New
15 York that provides electronic communications services to the general
16 public, when served with a warrant issued by another state to produce
17 records that would reveal the identity of the customers using those
18 services, data stored by or on behalf of the customers, the customers'
19 usage of those services, the recipient or destination of communications
20 sent to or from those customers, or the content of those communications,
21 shall not produce those records when the corporation knows or should
22 know that the warrant relates to an investigation into, or enforcement
23 of, a prohibited violation.

24 3. Any person or entity that is headquartered or incorporated in New
25 York may comply with a warrant as described in subdivision two of this
26 section if the warrant is accompanied by an attestation made by the
27 entity seeking the records that the evidence sought is not related to an
28 investigation into, or enforcement of, a prohibited violation.

29 4. The attorney general may commence a civil action to compel any
30 corporation headquartered or incorporated in New York that provides
31 electronic communications services or remote computing services to the
32 general public to comply with the provisions of this section.

33 § 2. The general business law is amended by adding a new section 394-g
34 to read as follows:

35 § 394-g. Geofencing of health care facilities. 1. For the purposes of
36 this section, the following terms shall have the following meanings:

37 a. "Digital advertisement" means any communication delivered by elec-
38 tronic means that is intended to be used for the purposes of marketing,
39 solicitation, or dissemination of information related, directly or indi-
40 rectly, to goods or services provided by the digital advertiser or a
41 third party.

42 b. "Geofencing" means a technology that uses global positioning system
43 coordinates, cell tower connectivity, cellular data, radio frequency
44 identification, Wi-Fi data and/or any other form of location detection,
45 to establish a virtual boundary or "geofence" around a particular
46 location that allows a digital advertiser to track the location
47 of an individual user and electronically deliver targeted digital
48 advertisements directly to such user's mobile device upon such user's
49 entry into the geofenced area.

50 c. "Health care facility" means any governmental or private agency,
51 department, institution, clinic, laboratory, hospital, physician's
52 office, nursing care facility, health maintenance organization, associ-
53 ation or other similar entity that provides medical care or related
54 services pursuant to the provisions of the public health law or the
55 mental hygiene law, including the building or structure in which the
56 facility is located.

1 d. "User" means a natural person who owns or uses a mobile device or
2 any other connected electronic device capable of receiving digital
3 advertisements.

4 2. It shall be unlawful for any person, corporation, partnership, or
5 association to establish a geofence or similar virtual boundary around
6 any health care facility, as defined pursuant to paragraph c of subdivi-
7 sion one of this section, for the purpose of delivering by electronic
8 means a digital advertisement to a user at or within such health care
9 facility, and it shall be unlawful for any person, corporation, partner-
10 ship, or association to deliver by electronic means any digital adver-
11 tisement to a user at or within any such health care facility through
12 the use of geofencing or similar virtual boundary.

13 § 3. Severability. If any provision of this article or the application
14 thereof to any person or circumstances is held invalid, the invalidity
15 thereof shall not affect other provisions or applications of the article
16 which can be given effect without the invalid provision or application,
17 and to this end the provisions of this article are severable.

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