

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:

1 Section 1. The general business law is amended by adding a new section
2 396-aaaa to read as follows:

3 § 396-aaaa. Prohibition on geofencing. 1. For the purposes of this
4 section, the following terms shall have the following meanings:

5 a. "Digital advertiser" shall mean any person, corporation, partner-
6 ship or association that delivers digital advertisements by electronic
7 means.

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

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

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

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

LBD03292-01-3

1 e. "Health care facility" shall mean any governmental or private agen-
2 cy, department, institution, clinic, laboratory, hospital, physician's
3 office, nursing care facility, health maintenance organization, associ-
4 ation or other similar entity that provides medical care or related
5 services pursuant to the provisions of the public health law or the
6 mental hygiene law, including the building or structure in which the
7 facility is located.

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

11 g. "Vicinity" shall mean within two hundred fifty feet of the perime-
12 ter of a health care facility.

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

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

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