STATE OF NEW YORK

5517

2023-2024 Regular Sessions

IN ASSEMBLY

March 15, 2023

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Consumer Affairs and Protection

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:

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

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

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

i. any telephonic or telegraphic communication.

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

iii. any communication made through a tracking device consisting of an electronic or mechanical device which permits the tracking of the movement of a person or object.

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

b. "Electronic communication services" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

c. "Prohibited violation" means any civil or criminal offense defined under the laws of another state that creates civil or criminal liability or any theory of vicarious, joint, several or conspiracy liability for, in whole or in part based on or arising out of, either of the following, 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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is actionable, in an equivalent or similar manner, under the laws of this state; or iii. was brought by the patient who received reproductive health care, or the patient's legal representative:

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

(2) intending or attempting to provide, facilitate, or obtain reproductive health care services that are lawful under New York law.

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

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

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

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

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

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

a. "Digital advertisement" means 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.

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

c. "Health care facility" means 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.

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

2. It shall be unlawful for any person, corporation, partnership, or association to establish a geofence or similar virtual boundary around any health care facility, as defined pursuant to paragraph c of subdivision one of this section, for the purpose of delivering by electronic means a digital advertisement to a user at or within such health care facility, and it shall be unlawful for any person, corporation, partnership, or association to deliver by electronic means any digital advertisement to a user at or within any such health care facility through the use of geofencing or similar virtual boundary.

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

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