STATE OF NEW YORK

6142

2023-2024 Regular Sessions

IN SENATE

March 30, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the public authorities law, in relation to prohibiting the disclosure of individualized fare payment data by the metropolitan commuter transportation authority and the New York city transit authority

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

Section 1. Section 1266 of the public authorities law is amended by adding a new subdivision 16-a to read as follows:

16-a. If an entry system requires the purchase of a card, token, or other device in order to enter the system, then (i) such card, token, or other device shall be available for purchase throughout all hours of operation of the passenger station, (ii) such card, token, or other device shall not be registered to or otherwise associated with the identity of any individual, and (iii) such card, token, or other device shall not cost in excess of the present-day value of five dollars as of January first, two thousand twenty-three.

§ 2. The public authorities law is amended by adding a new section 1279-j to read as follows:

§ 1279-j. Customer privacy. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Data subject" shall have the same meaning as such term is defined pursuant to subdivision three of section ninety-two of the public officers law.

(b) "Disclose" shall have the same meaning as such term is defined pursuant to subdivision four of section ninety-two of the public officers law.

(c) "Police agency" shall have the same meaning as such term is defined pursuant to subdivision eight of section eight hundred thirty-five of the executive law.

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

LBD09852-02-3

(d) "Law enforcement agency" shall have the same meaning as such term is defined pursuant to subdivision four of section 705.00 of the criminal procedure law.

(e) "Law enforcement officer" shall mean a police officer or peace officer, including transit police under subdivision sixteen of section one thousand two hundred four of this article and including any person employed by the authority police force established pursuant to section one thousand two hundred sixty-six of this title.

(f) "Police officer" shall have the same meaning as such term is defined pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law.

(g) "Peace officer" shall mean any individual listed pursuant to section 2.10 of the criminal procedure law.

(h) "Person employed" shall mean any employee, independent contractor, or volunteer under the statutory and common law of the state of New York acting in the scope of their duties as an employee, independent contractor, or volunteer.

(i) "Individualized fare payment data" shall mean personal information, as defined in subdivision seven of section ninety-two of the public officers law, related to payment of fares to the authority or its subsidiary corporations in order to enter, access, or otherwise use a transportation system administered by the authority or its subsidiary corporations. "Individualized fare payment data" shall include, but not be limited to, data that correlates a card, token, or device used to pay a fare and the locations at which such card, token or device was used.

2. (a) The authority and its subsidiary corporations shall not disclose a data subject's individualized fare payment data to a police agency, law enforcement agency, or law enforcement officer, or use a data subject's individualized fare payment data for law enforcement purposes, unless such a disclosure is:

(i) reasonably necessary to prevent a serious and imminent threat to the life or safety of the data subject or others, and notification of the disclosure is transmitted to the data subject within twenty days if such notice is practicable;

(ii) pursuant to a search warrant, supported by particularized probable cause with respect to each data subject whose individualized fare payment data is disclosed; or

(iii) made to a person or entity that agrees in writing not to disclose any individualized fare payment data except pursuant to this subdivision.

(b) If the authority enters into a partnership or agreement with another entity to provide services, including but not limited to fare payment services, and such other entity directly collects individualized fare payment data pursuant to such a partnership or agreement, the entity shall not disclose such individualized fare payment data other than pursuant to exceptions specified in paragraph (a) of this subdivision.

(c) The authority shall not enter into an agreement described in paragraph (b) of this subdivision with any police agency or law enforcement agency.

3. (a) Any data subject or caller whose communication was disclosed in violation of this section may seek judicial review and relief against the authority or private entity responsible for such disclosure for:

(i) five thousand dollars per violation or actual damages, whichever is greater;

(ii) punitive damages; and

(iii) any other relief the court deems warranted.

(b) In assessing the amount of punitive damages awarded to a plaintiff in an action brought under paragraph (a) of this subdivision, the court shall consider:

(i) the defendant's pattern of violations of this section; and

(ii) the impact of the violation on the data subject's or caller's exercise of constitutional and statutory rights, including, but not limited to, religion, political views, and medical care.

(c) In any action brought under paragraph (a) of this subdivision, the court shall award reasonable attorneys' fees, expenses, and costs to a prevailing plaintiff.

(d) The attorney general may seek an injunction from any court of proper jurisdiction for any violation of this section.

4. Nothing in this section shall be construed to:

(a) limit or abridge the right of any person to obtain judicial review or pecuniary or other relief, in any other form or upon any other basis, otherwise available to a person; or

(b) require the authority or any other entity to collect or retain any information about a caller or data subject.

§ 3. Section 1205 of the public authorities law is amended by adding a new subdivision 9 to read as follows:

9. If an entry system requires the purchase of a card, token, or other device in order to enter the system, then (i) such card, token, or other device shall be available for purchase throughout all hours of operation of the passenger station, (ii) such card, token, or other device shall not be registered to or otherwise associated with the identity of any individual, and (iii) such card, token, or other device shall not cost in excess of the present-day value of five dollars as of January first, two thousand twenty-three.

§ 4. The public authorities law is amended by adding a new section 1204-g to read as follows:

§ 1204-g. Customer privacy. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Data subject" shall have the same meaning as such term is defined pursuant to subdivision three of section ninety-two of the public officers law.

(b) "Disclose" shall have the same meaning as such term is defined pursuant to subdivision four of section ninety-two of the public officers law.

(c) "Police agency" shall have the same meaning as such term is defined pursuant to subdivision eight of section eight hundred thirty-five of the executive law.

(d) "Law enforcement agency" shall have the same meaning as such term is defined pursuant to subdivision four of section 705.00 of the criminal procedure law.

(e) "Law enforcement officer" shall mean a police officer or peace officer, including transit police under subdivision sixteen of section one thousand two hundred four of this title and including any person employed by the authority police force established pursuant to section one thousand two hundred sixty-six of this article.

(f) "Police officer" shall have the same meaning as such term is defined pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law.

(g) "Peace officer" shall mean any individual listed pursuant to section 2.10 of the criminal procedure law.

(h) "Person employed" shall mean any employee, independent contractor, or volunteer under the statutory and common law of the state of New York

acting in the scope of their duties as an employee, independent contractor, or volunteer.

(i) "Individualized fare payment data" shall mean personal information, as defined in subdivision seven of section ninety-two of the public officers law, related to payment of fares to the authority or its subsidiary corporations in order to enter, access, or otherwise use a transportation system administered by the authority or its subsidiary corporations. "Individualized fare payment data" shall include, but not be limited to, data that correlates a card, token, or device used to pay a fare and the locations at which such card, token or device was used.

2. The authority shall comply with the requirements of subdivision two of section one thousand two hundred seventy-nine-j of this article.

3. (a) Any data subject or caller whose communication was disclosed in violation of this section may seek judicial review and relief against the authority or private entity responsible for such disclosure for:

(i) five thousand dollars per violation or actual damages, whichever is greater;

(ii) punitive damages; and

(iii) any other relief the court deems warranted.

(b) In assessing the amount of punitive damages awarded to a plaintiff in an action brought under paragraph (a) of this subdivision, the court shall consider:

(i) the defendant's pattern of violations of this section; and

(ii) the impact of the violation on the data subject's or caller's exercise of constitutional and statutory rights, including, but not limited to, religion, political views, and medical care.

(c) In any action brought under paragraph (a) of this subdivision, the court shall award reasonable attorneys' fees, expenses, and costs to a prevailing plaintiff.

(d) The attorney general may seek an injunction from any court of proper jurisdiction for any violation of this section.

4. Nothing in this section shall be construed to:

(a) limit or abridge the right of any person to obtain judicial review or pecuniary or other relief, in any other form or upon any other basis, otherwise available to a person; or

(b) require the authority or any other entity to collect or retain any information about a caller or data subject.

§ 5. This act shall take effect immediately.