

ASSEMBLY, No. 2489

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

Assemblywoman Vainieri Huttie

SYNOPSIS

Prohibits commercial mobile service providers and mobile application developers from disclosing customer's location data to third parties.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/13/2020)

1 AN ACT concerning commercial mobile service providers and
2 mobile application developers and supplementing Title 56 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Authorized use” means the disclosing of a customer’s location
11 data: for the purpose of providing a service explicitly requested by
12 that customer; exclusively for the purpose of providing a service
13 explicitly requested by that customer; and where that data is not
14 collected, disclosed, stored, or otherwise used by a third party for
15 any purpose other than providing a service explicitly requested by
16 that customer. “Authorized use” shall not include any instance in
17 which a customer’s location data is disclosed in exchange for
18 products or services.

19 “Commercial mobile service” means a type of mobile
20 telecommunications service as defined in subsection (d) of section
21 332 of the Communications Act of 1934 (47 U.S.C. s.332(d)).

22 “Commercial mobile service provider” means an individual,
23 proprietorship, partnership, corporation, association, or other legal
24 entity that provides commercial mobile service on a mobile device.

25 “Customer” means a current or former customer of a commercial
26 mobile service provider or a current or former user of a mobile
27 application.

28 “Disclose” means to make location data available to another
29 person, whether for a fee or otherwise.

30 “Location data” means information related to the physical or
31 geographical location of a customer or the customer’s mobile
32 device, regardless of the particular technological method used to
33 obtain this information.

34 “Mobile application” means a software program that runs on the
35 operating system of a mobile device.

36 “Mobile application developer” means a person that owns,
37 operates, or maintains a mobile application and makes that
38 application available for the use of customers, whether for a fee or
39 otherwise.

40 “Mobile device” means wireless telecommunications device that
41 is capable of collecting a customer’s location data.

42
43 2. a. It shall be an unlawful practice for a commercial mobile
44 service provider or a mobile application developer to disclose a
45 customer’s location data where that location data is collected while
46 the customer’s mobile device is physically present within this State.

47 b. It shall be an unlawful practice for a person who receives
48 location data that is disclosed in violation of subsection a. of this

1 section to disclose that customer's location data with any other
2 person.

3 c. Each instance in which a commercial mobile service
4 provider, mobile application developer, or other person that
5 discloses a customer's location data with another person in a
6 manner prohibited by this section shall constitute a separate
7 violation of this section.

8

9 3. The provisions of section 2 of P.L. , c. (C.)
10 (pending before the Legislature as this bill) shall not apply to:

11 a. information provided to a law enforcement agency in
12 response to a legal process;

13 b. information provided to an emergency service organization
14 responding to a 9-1-1 communication or any other communication
15 reporting an imminent threat to life or property;

16 c. information required to be provided by federal, State, or
17 local law; or

18 d. a customer providing the customer's own location data to a
19 commercial mobile service provider or mobile application
20 developer to be disclosed for an authorized use.

21

22 4. Any person who violates section 2 of P.L. , c. (C.)
23 (pending before the Legislature as this bill) shall be subject to a
24 civil penalty of \$1,000 for each violation. Where a person commits
25 multiple violations of section 2 of P.L. , c. (C.) (pending
26 before the Legislature as this bill) on the same day, the maximum
27 civil penalty assessed against that person for all violations shall be a
28 cumulative penalty of \$10,000 per person. The Division of
29 Consumer Affairs in the Department of Law and Public Safety shall
30 enforce the provisions of P.L. , c. (C.) (pending before the
31 Legislature as this bill).

32

33 5. a. A customer whose location data has been disclosed in
34 violation of section 2 of P.L. , c. (C.) (pending before the
35 Legislature as this bill) may bring an action in any court of
36 competent jurisdiction. If a court of competent jurisdiction finds a
37 person has violated section 2 of P.L. , c. (C.) (pending
38 before the Legislature as this bill), the court may award actual
39 damages, computed at a rate of \$1,000 per violation up to \$10,000
40 per day and reasonable attorney's fees and costs incurred in
41 maintaining that civil action.

42 b. The private right of action authorized pursuant to subsection
43 a. of this section does not supplant any other claim or cause of
44 action available to a customer under common law or by statute.
45 The provisions of this subsection are in addition to any other
46 common law and statutory remedies.

1 c. Nothing in this section shall be construed as creating a
2 private right of action against the State or any political subdivision
3 thereof.

4
5 6. The Director of the Division of Consumer Affairs in the
6 Department of Law and Public Safety shall promulgate rules and
7 regulations, pursuant to the “Administrative Procedure Act,”
8 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
9 purposes of P.L. , c. (C.) (pending before the Legislature as
10 this bill).

11
12 7. This act shall take effect immediately, but shall remain
13 inoperative for 120 days following the date of enactment.

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16 STATEMENT

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18 This bill prohibits commercial mobile service providers and
19 mobile application developers from disclosing a customer’s location
20 data with another person if the customer is located within the State.
21 The bill prohibits anyone who receives the location data from
22 commercial mobile service providers and mobile application
23 developers from disclosing it to another person. Each instance of
24 unlawful disclosure constitutes a separate violation. The bill’s
25 prohibitions do not apply to: 1) information provided to a law
26 enforcement agency in response to a legal process; 2) information
27 provided to an emergency service organization responding to a 9-1-
28 1 communication or any other communication reporting an
29 imminent threat to life or property; 3) information required to be
30 provided by federal, State, or local law; or 4) a customer providing
31 the customer’s own location data to a commercial mobile service
32 provider or mobile application developer to be disclosed for an
33 authorized use.

34 The penalty for violating the prohibitions in the bill is \$1,000 per
35 violation, with a maximum penalty of \$10,000 per person. The
36 Division of Consumer Affairs in the Department of Law and Public
37 Safety is to enforce the bill’s prohibitions. The bill creates a private
38 right of action against commercial mobile service providers and
39 mobile application developers that violate this prohibition.